

**SELECT COMMITTEE INTO THE
FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
FRIDAY, 6 OCTOBER 2000**

SESSION 3 OF 3

Members

Hon Ken Travers (Chairman)

Hon G.T. Giffard

Hon Greg Smith

Hon Ray Halligan

Hon Norm Kelly

MILFORD, MR GERALD,
Registrar, Finance Brokers Supervisory Board,
219 St Georges Terrace,
Perth, examined:

WALKER, MR PATRICK,
Chief Executive Officer,
Ministry of Fair Trading,
219 St Georges Terrace,
Perth, examined:

HARVEY, MR GREG,
Project Officer,
Ministry of Fair Trading,
219 St Georges Terrace,
Perth, examined:

The CHAIRMAN: Welcome to today's meeting. I apologise for the delay. You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. To assist the committee and Hansard please quote for the record the full title of any document to which you refer during this hearing. A transcript of your evidence will be provided to you. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings you should request that the evidence be taken in closed session before speaking about the matter. Further, the committee of its own motion may resolve to take evidence in closed session. The taking of evidence in closed session may be appropriate if, for example, the committee believes that the evidence may breach term of reference (3) of its inquiry. I am sure you are all aware of that. However, if evidence is given to the committee in closed session, that evidence will become public when the committee reports on the item of business to the Legislative Council, unless the Legislative Council grants an ongoing suppression order at the time the committee tables its report.

Mr Walker: At some stage during today's proceedings I would not mind the opportunity to respond to a submission made by Mr Solomon.

I am happy to table that submission, but I have only one copy. Last evening we had access to the submission made by Mr Solomon. I am keen to make a number of comments on his remarks under grouped headings. I have not had an opportunity to comment on a submission from Ms Brailey. We think her submission is deficient in a number of respects. We would therefore like an opportunity in the next day or two to respond either in writing or in person to her submission.

The CHAIRMAN: If you feel you can comfortably reply to it in writing, that would be the best way in the light of our reporting time lines. Obviously if committee members feel they need to test any points, we can invite you back.

Hon RAY HALLIGAN: I have a number of questions I want to ask Mr Walker.

The CHAIRMAN: We will consider towards the end of the hearing whether you are available on Monday afternoon.

We have been advised that some interviews were conducted by investigators from the Ministry of Fair Trading with Kay Blackburne, Ken O'Brien, Domenic Casella and possibly Julie Jones. Can anyone confirm that was the case and whether the tapes or transcripts of those interviews are still in existence?

Mr Walker: None of us appears to be aware of those proceedings. Are you referring to recent times?

The CHAIRMAN: I think we are referring to late 1996-early 1997.

Mr Walker: Mr Milford has been Registrar of the Finance Brokers Supervisory Board since July 1999. Mr Harvey was deputy registrar for a period before that. I commenced employment with the Ministry of Fair Trading in 1998.

The CHAIRMAN: I am aware of that, but in the light of recent events, have you had a fairly detailed look at events of the past?

Mr Walker: No. It is not my role to become directly involved in finance broking related issues. Officers of the board undertake inquiries and there are confidentiality provisions. I have very little day-to-day activity in relation to those issues. Mr Harvey and Mr Milford can comment for themselves, but I am sure we would be happy to make inquiries in relation to those named parties to see whether investigations and interviews were conducted. Presumably statements would be available if interviews were carried out.

Mr Milford: Earlier this week, Ray Weir sent me as registrar a request for advice of whether any complaint was made by Julie Jones. I think a search was done of any complaint lodged by Julie Jones over 1996-97-98. We have no record of any complaint being lodged. A search was also conducted of all complaints relating to Blackburne and Dixon over 1997-98 to see whether any reference was made to Julie Jones. One complaint contained an anonymous, unsigned note referring to Julie Jones as a person who might be a good source of information, or something like that. However, there was nothing further. It was the only reference to Julie Jones in any file that we could locate.

The CHAIRMAN: To the best of your knowledge was there no complaint file at all in the name of Julie Jones?

Mr Milford: That is right.

The CHAIRMAN: Are you aware of her married name? She now goes under the married name of Nyatsambo; although certainly in the time she made the complaint it was Julie Jones.

Hon G.T. GIFFARD: Are you saying there is only a short note on file?

Mr Milford: The search of the files on Blackburne and Dixon was done last week together with a search of Blackburne and Dixon complaints over 1997-98, because there was no record of a complaint lodged by Julie Jones. Among all the files that were searched, the name Julie Jones appeared on only an anonymous, unsigned note attached to one file, of which I do not know the name. It referred to Miss Julie Jones as a person who might have information.

The CHAIRMAN: Do individual investigators have their own working files on which they record initial discussions with someone before they create a formal complaint file?

Mr Milford: Ordinarily, a complaint is made in writing, which generates a complaint file as the working file throughout dealings on the matter. Separate notes are not usually made.

The CHAIRMAN: If someone were to phone an investigator who took notes of a conversation he had with that person, would the investigator then automatically create a

complaint file or would it be kept on another file until a formal statement was made by that person?

Mr Milford: Ordinarily a file would be created immediately.

The CHAIRMAN: Would that be the case to the best of your knowledge in -

Mr Milford: To the best of my knowledge that has happened in the past 20 years.

Mr Walker: There were issues in relation to one ministry investigator, particularly when he was absent from the ministry. I am aware that loose documents were discovered in and around his desk and office; nonetheless, to the best of my knowledge the general practice is that if a complaint is made a complaint file is created. If someone needs to follow-up he can therefore do so.

The CHAIRMAN: What happened to the loose documents?

Mr Walker: I understand they were boxed and retained at the Ministry of Fair Trading.

The CHAIRMAN: Were they part of the documents searched last week?

Mr Milford: I am not sure; it was done in my absence.

Mr Walker: I understand it includes things such as personal items, a T-shirt and cap - the usual items one finds around a work station.

The CHAIRMAN: Does the box contain documents relating to inquiries?

Mr Walker: I referred to this individual because his working style does not preclude us from thinking that perhaps there may be something relevant on a piece of paper among his things. Probably only the author of any documents could identify them or would be aware of the circumstances in which they arose. I understand the acting director at the time, Mr Hillyard, went through the documents to identify those things which should be on appropriate files so that due process was followed. I am suggesting I could not rule out comprehensively whether a shorthand note or observation may be among that person's things, from which the individual concerned may gain some recollection.

The CHAIRMAN: What happens to the tapes of interviews between witnesses and ministry investigators? Are they stored in a central location? I understand three copies are made of the tapes.

Mr Milford: This is not in a finance broking context, but I think three tapes are made. One tape is given to the person being interviewed and one is retained on file. I am not sure what happens to the third tape.

Mr Walker: We will check on that.

The CHAIRMAN: As registrars, are you responsible for overseeing the investigators in the respective areas?

Mr Milford: No; it is not the function of the registrar to oversee the complaints. I have been filling a dual role of manager of the branch and of registrar. However, to avoid that, earlier this year the ministry created a finance and land valuation industry task force. The investigation function is now separate from that of the registrar.

Hon NORM KELLY: Is that the case, even though you still have the power to investigate?

Mr Milford: I have the power to initiate investigations and to pass them on to the task force and say, "Please investigate and report back."

Hon NORM KELLY: You do have the powers to carry out the investigation.

Mr Milford: Are you suggesting I have the powers to carry out the investigation itself?

Hon NORM KELLY: Yes.

Mr Milford: I am not sure that I do; I would have to refer to the appropriate section of the Act to find out.

Hon NORM KELLY: Section 15 of the Act provides that "The registrar or an inspector may" and it lists the powers of investigation.

Mr Milford: The registrar does not ordinarily perform that function.

The CHAIRMAN: What is your dual role in the ministry?

Mr Milford: Right now I am Registrar of the Finance Brokers Supervisory Board and manager of the finance industry branch, which does not have investigative responsibility for finance brokers.

The CHAIRMAN: Are the investigators appointed as officers of the board?

Mr Milford: Yes.

The CHAIRMAN: Has that always been the case?

Mr Milford: Yes.

The CHAIRMAN: Surely as the registrar, you are the person who is responsible under the Act for directing those investigations.

Mr Milford: I do not think it is necessarily correct to say I am responsible for directing investigations. That falls within the capacity as my previous role of manager.

Hon G.T. GIFFARD: Manager of what?

Mr Milford: Manager of the finance industry branch, which had under its umbrella responsibility for the finance broking area.

Hon G.T. GIFFARD: Hon Norm Kelly referred you to section 15 of the Finance Brokers Control Act, which provides the powers for you as a registrar to inspect. Would you be exercising those powers as registrar or inspector of the Finance Brokers Supervisory Board?

Mr Milford: I would be initiating them or issuing a direction to investigate them.

Hon G.T. GIFFARD: You are not a lawyer are you?

Mr Milford: No.

Hon G.T. GIFFARD: Can you give us the legal basis on which you initiate investigations and give them to someone in the ministry? I do not understand how you can use the powers under this Act as a registrar or inspector and give them to someone else.

Mr Milford: I can issue a direction as registrar to another officer who is an authorised officer of the board.

Hon G.T. GIFFARD: Would that person be an inspector?

Mr Milford: Yes.

Hon G.T. GIFFARD: Would the task be kept within the board?

Mr Milford: Yes.

Hon G.T. GIFFARD: Would you not be sending the task to the ministry to be dealt with by ministry employees? I thought your evidence a minute ago was, "I'll get someone from the ministry to do that." Does the task stay within the board?

Mr Milford: Yes.

The CHAIRMAN: Who oversees the investigations in the ministry?

Mr Walker: I will do my best to clarify the matter. Due to the increased number of complaints, a finance and evaluations industry task force was established. The staff numbers were beefed up. At the moment we have an acting manager, Susan Nulsen; three investigators; including a senior investigator, Gary Prior. They are working with a lawyer. I am not certain what happens when the mail arrives, but essentially complaints are referred to those investigators, whose work is overseen by the senior investigator under the general supervision of Mrs Nulsen.

Hon NORM KELLY: Has the board appointed those investigators?

Mr Milford: Yes it has.

The CHAIRMAN: Has Mrs Nulsen?

Mr Milford: Yes. She is also the registrar.

Hon G.T. GIFFARD: When was that set up?

Mr Walker: I would have to check. It was earlier this year.

The CHAIRMAN: She is an assistant registrar. Mr Walker, just out of interest, have you been appointed an officer of the board?

Mr Walker: No.

Hon G.T. GIFFARD: Is the task force only dealing with finance broking matters or is it dealing with other matters as well. What did you say it was dealing with?

Mr Walker: The valuations industry because there is such a close link between valuers and finance. Essentially, its work is finance broking complaints and industry-related matters.

Hon G.T. GIFFARD: Is the main volume of its work finance broking matters?

Mr Walker: That is correct.

Hon NORM KELLY: Who is in charge of that task force?

Mr Walker: Susan Nulsen heads that unit. We identified some time ago the desirability of having a full-time registrar to the Finance Brokers Supervisory Board and she was identified as someone who would be available and suitable for that role.

Hon NORM KELLY: Who does she report to?

Mr Walker: She reports to the board at the moment, through to the director.

Mr Milford: I am sorry, your question was who does she report to?

Hon NORM KELLY: Who does she report the results of the investigation that the task force undertakes to and who does she take instructions from, about what the task force will be doing?

Mr Walker: The work of the investigations is listed for inquiry. That work will flow through to the board. Does that answer that?

Hon NORM KELLY: I think so. Does that mean that the board will also instruct Ms Nulsen about what further work to do? Does she receive her orders, if you like, from the board?

Mr Milford: She can receive instructions from the board. She might attend the board meetings or the head of the investigations part of the task force would appear at board meetings in her absence, and instructions would flow that way.

Hon G.T. GIFFARD: Does she take instructions from anyone else?

Mr Walker: Not about the investigation process but with things like administration she would report to the director of the particular directorate.

Hon G.T. GIFFARD: Ultimately to yourself?

Mr Walker: Yes. In terms of administrative matters, leave, and corporate services-type matters.

Hon NORM KELLY: Does she have similar lines of authority connected to the Land Valuers Board as well?

Mr Walker: No. There is a separate registrar of the Land Valuers Board - Mr Michael Johnson - but there is cooperation in terms of information sharing and referrals.

The CHAIRMAN: That branch has three investigators?

Mr Walker: Yes, three investigators.

The CHAIRMAN: And a lawyer?

Mr Walker: Correct.

The CHAIRMAN: How many conciliation officers?

Mr Walker: My understanding is that there is none. There are research people. I do not know whether any conciliation officers are in the group. Changes have been made to the group and we will bring it back into the mainstream. The task force has support people to respond to correspondence and ministerials etc.

The CHAIRMAN: If someone lodges a complaint and you would rather conciliate than investigate, who would do it?

Mr Walker: My understanding is that the investigators would do that as well. They are called compliance officers and, subject to the nature of the complaint and the inquiry, they would - Mr Milford or Mr Harvey can correct me if I am wrong - carry out their role based on the facts of a case, such as whether it is a conciliation matter or whether it needed to go to inquiry.

The CHAIRMAN: They wear the hat that they think is appropriate?

Mr Milford: I do not think the Act actually differentiates between compliance and conciliation officers. They can act as a conciliation officer in their capacity as an inspector.

The CHAIRMAN: They would be an investigator or an inspector even if conciliating a matter?

Mr Milford: Yes, they are still inspectors.

Hon NORM KELLY: While we are still on powers, can Mr Milford explain his powers in relation to the commissioner of police.

Mr Milford: My understanding is that I can ask the police to conduct an investigation into any suspected breach of the Finance Brokers Control Act, and I have done that in the past.

Hon NORM KELLY: How often?

Mr Milford: Once or twice in my time as registrar.

Hon NORM KELLY: Have there been any problems when you have asked or directed the commissioner?

Mr Milford: No problems at all.

The CHAIRMAN: Going back to the matter about Ms Jones, I also asked about interviews with Kaye Blackburne, Ken O'Brien, or Dominic Casella. Are you able to answer any of those issues at this stage? With your scan of the Blackburne and Dixon files, did you identify anything along those lines that you are aware of?

Mr Milford: Those files were examined in my absence and it was for a purpose - to see whether Julie Jones' name had come up.

Mr Harvey: Are you talking about tape recordings or just interviews?

The CHAIRMAN: Either tape recordings or records of interviews or transcripts from the tape recordings of interviews with those people.

Mr Harvey: I am aware that there have been complaints against Blackburne and Dixon that have been investigated. I am not sure whether those complaint files contain transcripts.

The CHAIRMAN: Can I ask you to go back to your office and go through and see whether you can identify any complaints that were made - I think the time line is either late 1996 or early 1997 - from Mr Casella against Blackburne and Dixon and any interviews that were conducted with Ms Blackburne or Mr O'Brien that were taped at that time. Could you also have another look for any tapes from Ms Julie Jones. Would you advise the committee of whether anything along those lines exists. Unless people have anything else on that line, we might throw it back to Mr Walker. Do you want to go through the document you have provided?

Mr Walker: This is an initial response to some issues that appeared in Mr Solomon's submission to the select committee yesterday. He raised issues about liability, duty of care etc. What we would say is that much of Mr Solomon's evidence to the select committee concerned legal issues relating to legal liability, duty of care and immunity. Neither the ministry nor the Finance Brokers Supervisory Board admit liability but these are complex legal issues on which neither the ministry nor the board are in a position to comment.

In relation to Mr Solomon's comments about the Finance Brokers Supervisory Board acting as an "employing authority", my understanding is that Mr Solomon said that it is clear that, in accordance with the Public Sector Management Act, the board is the employing authority of its officers and is empowered under section 12 of the Finance Brokers Control Act and section 64 of the Public Sector Management Act to engage its own staff. This is incorrect. Section 12(2) of the Finance Brokers Control Act provides that officers of the Board are to be appointed as public servants under part 3 of the Public Sector Management Act. The ministry has had advice from the Crown Solicitor's Office that the board is not part of the Public Service and is not covered by part 3 of the Public Sector Management Act. Any staff engaged for the board must be engaged by a public service department and that, historically, has been the Ministry of Fair Trading. The employing authority of these staff is the chief executive of the ministry. In practice, the board appoints all officers of the board, but the Ministry of Fair Trading employs them. The suggestion is that if the committee wishes to clarify this matter, it may be useful for the committee to obtain its own advice. The other comment that is important to make is that, contrary to Mr Solomon's comments, the board receives no separate appropriation from the consolidated fund and has no separate source of income. All its operations are funded by the Ministry of Fair Trading.

The CHAIRMAN: Just on that point, if the board felt that it needed greater resources or assistance, how would it go about doing that?

Mr Walker: In a practical sense it would request that of the minister or perhaps, through its officers, to the ministry through the registrar. Presumably the registrar would communicate with either the minister's office or with me, the chief executive. That happened in November last year, although it was not at the instigation of the board. Following Mr Milford's appointment as registrar, he made a decision, in his capacity as manager of the area, that additional resources were required. Additional funding - an amount of about \$356 000 for four additional staff - was obtained from the Treasury, with the minister's support.

Hon NORM KELLY: Did that go through you for approval on the way to the minister?

Mr Walker: Yes. That was requested from Mr Milford in his capacity as the manager and I referred that to the minister's office, seeking his support for an approach to the Treasury, which was successful.

Hon NORM KELLY: Is that the only occasion since you have become CEO in which a request has come through for additional funds?

Mr Walker: Yes.

Hon NORM KELLY: Are you aware of any requests from the board for additional resources?

Mr Walker: No, I am not aware of that, although I did investigate that matter prior to my appearance at the Gunning inquiry and I could find no evidence of any request from the board for additional resources.

The CHAIRMAN: Going back how far?

Mr Walker: From memory, to the early 1990s.

Hon G.T. GIFFARD: Was that extra \$400 000 at your instigation? That was not a re-allocation of Ministry of Fair Trading money but additional money from Treasury for the finance broking area?

Mr Milford: That is correct.

Hon G.T. GIFFARD: That brought on four extra staff?

Mr Milford: That is right.

Hon G.T. GIFFARD: What were they? Were they four inspectors or compliance officers?

Mr Milford: I suggested that there was a need for two additional inspectors, another legal officer and a research officer.

Hon G.T. GIFFARD: Is that what you got?

Mr Milford: That is the position of the task force.

Hon G.T. GIFFARD: Did you do that in November 1999 or did it happen in November 1999?

Mr Milford: It happened very quickly. It was about November 1999.

The CHAIRMAN: You were doing that as the registrar. The board did not direct you?

Mr Milford: I was not directed by the board. I am not sure whether I did that in my capacity as manager or as registrar or both. I am not sure what I signed off as.

Hon G.T. GIFFARD: Would it be fair to say that, as registrar, you would be privy to the fact that these complaints were not getting dealt with and you needed help?

Mr Milford: That is correct.

Hon G.T. GIFFARD: You started with the board in July. Within four months you had brought on \$400 000 worth of staff because it was clear to you, from three or four meetings, that you needed more staff and needed them straightaway.

Mr Milford: That is correct.

Mr Walker: That followed the liquidation of Global and Grubb and there were an accelerated number of complaints from that period. It might also be useful to mention that additional staff, over and above those four, were allocated to the task as well, but they were relocated from within the ministry's own resources.

Hon G.T. GIFFARD: How many ministry staff do you have?

Mr Walker: The state public sector jargon is 226 full time equivalents.

Hon G.T. GIFFARD: Two hundred and twenty six FTEs.

The CHAIRMAN: You said you researched that there had never been a request from the board for additional staff. As part of your research, did you identify whether there had been requests for additional staff from managers within the various sections that provided support to the board?

Mr Walker: I did not identify that, and perhaps I should make it clear, because, as you would appreciate, people did some research for me. I obviously did not do it all myself but asked that it be done. Nothing of that nature was brought to my attention. There was a general view that the workloads were heavy, but the reality of life was that resources were limited. Any organisation would always appreciate more resources. It seemed to me there was a view that people did their best to work within what was a fairly tight budget.

The CHAIRMAN: With regard to researching the request for additional resources, were all those documents contained on one file, or was it a matter of searching a range of files to try to find that request? Was there a certain section in your filing system where that could be found?

Mr Walker: It would have been done by a search of files, and in a practical sense also by contact with various officers who have been in the ministry for some time. One practical example of the difficulty is that in the eight-year period from 1990 to 1998, there were seven CEOs at the Ministry of Fair Trading. It was done by searching the records and talking with officers who had been at the ministry for some time and had held various positions - former registrars of the board, etc - to see whether they had any consciousness or understanding of those issues.

The CHAIRMAN: This committee has heard evidence from people that suggests that different managers and officers within the department made requests for additional resources for the investigation area. I would like you to check your records to see whether you can identify whether those requests were made, and what happened to those requests.

Mr Walker: I will certainly do that. I might have misled the committee. I do not think my research went back to the early 1990s. I think there was a request from the minister's office, so there is a chance that my research went back to 1997, or thereabouts.

The CHAIRMAN: It was a request from the minister's office? You said earlier that it was before you gave evidence at the Gunning inquiry.

Mr Walker: Yes.

The CHAIRMAN: It was not to prepare you for the Gunning inquiry; it was a request from the minister's office?

Mr Walker: It was both. It was to prepare me for the Gunning inquiry, but also the minister's office was naturally interested in terms of his position.

Hon NORM KELLY: That request was only back to about 1997?

Mr Walker: I cannot recall specifically.

Hon NORM KELLY: Was that request for that research to be done a written request?

Mr Walker: Certainly there would be written information going from our office.

Hon NORM KELLY: Can you provide information about how far back the research has been done to ascertain whether there has been a request for additional funding or resources?

Mr Walker: Certainly.

The CHAIRMAN: Can you provide us with a copy of the minister's request; or, if it was a phone request, the file note, or whatever?

Mr Walker: Yes. It might have been a verbal request, but I will provide -

The CHAIRMAN: I assume you would then have actioned it with a document to so and so saying, "Can you do this for the minister."

Mr Walker: I might not have done that, but there would certainly be a document that gives the information.

Hon G.T. GIFFARD: Mr Harvey, when did you become a deputy registrar?

Mr Harvey: In about January 1999.

The CHAIRMAN: You had previously been a registrar?

Mr Harvey: No. I joined the branch in about December 1998, for a three-month relieving period as registrar. I was appointed registrar the following month, and the three-month period ended up being about six months, until Mr Milford was appointed in the restructure.

Hon G.T. GIFFARD: So you have attended Finance Brokers Supervisory Board meetings since late 1998?

Mr Harvey: Yes, 1998 or early 1999.

Hon G.T. GIFFARD: Did you form the view that the board needed to be given more investigative support?

Mr Harvey: It is probably reasonable to say that the staff were overworked.

Hon G.T. GIFFARD: Was that apparent to you fairly early on?

Mr Harvey: It depends on what you call early on.

Hon G.T. GIFFARD: Within a couple of months of your arrival.

Mr Harvey: It is probably fair to say we had a difficult time in that period, because about six weeks after my appointment Global Finance went into voluntary administration, and we also received a lot of complaints about Grubb Finance Broker, which eventually went down the same path. At that time, we were very busy.

Hon G.T. GIFFARD: Was it raised by members of the board that you needed more help and resources?

Mr Harvey: I do not know whether it was raised by members of the board, but members of the board recognised that there was a high workload.

Hon G.T. GIFFARD: Perhaps the right word is "expressed" rather than "raised".

Mr Harvey: Yes.

Hon G.T. GIFFARD: At any time since late 1988 or early 1989, did any board members express any concerns about how long an investigation was taking?

Mr Harvey: Yes.

Hon G.T. GIFFARD: How did they express it? Did they say, "This investigation is taking a long time", or did they suggest to you that there was a history of investigations taking a long time and they had always had this problem?

Mr Harvey: I cannot remember exactly how it was put to me, but in general comments a concern was expressed about the amount of time that things would take.

Hon G.T. GIFFARD: The amount of time that things would take, or the amount of time that things are taking? Was there a sense of history to it?

Mr Harvey: I could not comment about the sense of history, because not having had that previous history it would not have made a lot of sense to me at that time.

Hon NORM KELLY: Who among the board officers would have had the historical information about complaints? Mr Walker was appointed in June 1998, Mr Milford was appointed in July 1999, and Mr Harvey was appointed in December 1998. It seems to be exquisite timing that you all turned up just when the proverbial had hit the fan! Who among the board officers would have had historical knowledge about what was normal and what was abnormal when it came to complaints and the like? When you came into your positions, to whom would you refer with regard to what normally goes on?

Mr Harvey: We had access to information on the ministry's database, which gave us a sense of what was the norm just by looking at previous years and the number of finance broker complaints. That would give us some idea of the history.

Hon NORM KELLY: What about hearsay knowledge, or the sort of knowledge that is passed by word of mouth?

Mr Harvey: There is an investigator, and I am not sure when he started, but it was at least 18 months before my time, so I would have referred those sorts of inquiries to him. That was Mr Willers.

The CHAIRMAN: With regard to your submission, other than picking up what you believe are factual errors in the submission of Mr Solomon, what is the point that you are making that would rebut the general thrust of his arguments?

Mr Walker: We received Mr Solomon's submission yesterday evening, and since that time we have been able to identify what we believe are a number of factual errors or things with which we take issue; and we believe it is important to draw that to your attention today, given that today is our opportunity to come before you.

Hon G.T. GIFFARD: Would it be fair to say there is no contradiction between what you are saying and the point that has been made by Mr Solomon that the board appoints the officers and the board may direct those officers with regard to their responsibilities under the Act?

Mr Walker: I do not think we have challenged that evidence.

Hon G.T. GIFFARD: No. You do not challenge the proposition that the board controls the activities of those officers while they are operating under the auspices of the Act?

Mr Walker: That is my understanding.

Hon G.T. GIFFARD: You are their employing authority and you pay them, and in terms of any other matters they are ultimately subject to your control?

Mr Walker: That is correct. We also have the situation where, in the past, many of them, particularly the registrar, wore two hats. Mr Milford and Mr Harvey will be able to give a more accurate assessment, but I imagine that only half of their working week was devoted to finance broking activities. Obviously as the events of 1999 unfolded, an increasing amount of their time would have been devoted to finance broking issues. However, at other times they were doing ministry work as well. Essentially, it is correct that they are appointed as officers of the board and are subject to the direction and supervision of the board when they are working on board-related matters.

Hon G.T. GIFFARD: It is the responsibility of the board - not the ministry - to ensure that its responsibilities under the Act are met and that investigations are carried out, and it needs to

satisfy itself that the Act is being complied with. I think the point that Mr Solomon made is that it is not for the ministry to say whether the board has the resources. The board must make up its own mind about whether it has the resources, and it must report that to the Government or the Parliament and say, "We cannot fulfil our obligations under the Act." You would not dissent from that explanation that Mr Solomon gave us yesterday?

Mr Walker: I do not have an argument with the general proposition that you have put.

Hon G.T. GIFFARD: The board may take the view that it does not have the resources for a particular inquiry - I am not sure whether that comes under the secrecy provisions of the Act; it probably does not - and you also have a registrar who is answerable to you as a ministry employee on all other matters, in particular matters that are not covered by the secrecy provisions of the Act. That dual role creates a complication, because arguably while that person has his ministry hat on, he is answerable to you and has an obligation to tell you if he becomes aware that the board is not adequately resourced. Is that a bit too convoluted?

Mr Walker: I think we all agree there is a lack of clarity of the roles.

Hon G.T. GIFFARD: It is a bit of a mess.

The CHAIRMAN: Is it that the legislation is causing the lack of clarity, or is it that people are not interpreting and reading the legislation with a sense of clarity, because I believe it is clear from the legislation that the officers who are appointed to the board can be officers from the public sector and can also be officers who hold office in conjunction with other public sector offices. The Ministry of Fair Trading may be the agency that pays their salary, but it is still incumbent upon the board to ensure it has as many staff as it believes is necessary to enable it to carry out its functions.

Mr Walker: Yes.

The CHAIRMAN: I think that was the point of Mr Solomon's submission. We can get into a legal-technical discussion, and I note your comment that we can get our own advice on it, but I am trying to work out what is the thrust of your submission.

Mr Walker: I think that is correct, but Mr Solomon went on to say further, for example, that I was unable to direct a ministry employee who is an officer of the board. If there was a finance broking complaint, it may in fact relate to a breach of fair trading legislation. I understand Mr Solomon suggested that there is no place for the ministry, regarding what you said earlier. But I think he went on to say something which was wrong, as I understand it. That was, that if someone lodges a complaint, if an investigator who is also a ministry employee discovers that it is a breach of legislation other than the Finance Brokers Control Act, then it is an issue for the ministry staff. I would dispute that.

The CHAIRMAN: I do not disagree with that. I have often wondered whether, when an item was knocked out under the client ruling, it was ever investigated by the ministry as an area that could be picked up under the fair trading or consumer affairs legislation. Do you know whether that was ever looked at?

Mr Walker: I imagine it was. I would hope it was.

The CHAIRMAN: Was legal opinion sought on that?

Mr Milford: Yes, and some are being pursued under the Fair Trading Act.

The CHAIRMAN: In relation to the Gamel Ward issue? They were the first ones to have the definition of client used.

Mr Milford: That is not one that I am aware of as far as using the Fair Trading Act is concerned.

The CHAIRMAN: Were they looked at to see whether they could be pursued under fair trading legislation as opposed to finance brokers legislation?

Mr Milford: That one was before my time, and I cannot comment on it.

Mr Walker: There was a suggestion in relation to the Burt commission provisions, and it is important that we should outline the information here. I understand that Mr Solomon has claimed that there is no reason that the so-called "Burt commission provisions", examples of which are found in the Real Estate and Business Agents Act, are included in that Act and the Settlement Agents Act 1981, but not included in the Finance Brokers Control Act 1975.

This matter was the subject of evidence given to the Gunning inquiry by Mr Newcombe on 6 July 2000. During that evidence he indicated that the so-called Burt commission provisions were included in the Real Estate and Settlement Agents Acts because the Burt commission recommended that agencies that had the authority to invest funds should be subject to appropriate ministerial power to direct. Both the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board were identified in the Burt commission report as agencies that could invest their fidelity funds, and should be the subject of a ministerial power of direction.

The Finance Brokers Supervisory Board does not have the power to invest funds and that board was not mentioned in the Burt commission report. Therefore, the Government's action in amending the Real Estate and Business Agents Act 1978 and the Settlement Agents Act 1981, but not the Finance Brokers Control Act 1975, to include the Burt commission provisions was totally consistent with the recommendations of the Burt commission.

Mr Solomon's submission made some reference to the minister's entitlement to information from the Board. As I understand it, he has said that in the absence of the so-called Burt commission provisions, the only information the minister is entitled to about the Finance Brokers Supervisory Board is the annual report provided under section 86 of the Finance Brokers Control Act 1975. This is incorrect. The Crown Solicitor's Office has advised that the minister is entitled to a range of information from the board necessary for him to discharge ministerial duties and his obligations to Parliament.

The CHAIRMAN: When was that advice provided by the Crown Solicitor's Office?

Mr Walker: I cannot recall. I could check on it for you.

The CHAIRMAN: If you could. Could you also check whether, when they refer to discharging ministerial duties, they give a definition of what those duties are, and what they mean by ministerial duties?

Mr Walker: I think it is a general reference to the Westminster system. But I will check it.

The CHAIRMAN: I just want to know if the legal advice you referred to gives any explanation of ministerial duties. I am certainly aware of the obligations to Parliament, and it may just be a common law view of what ministerial duties are.

Hon G.T. GIFFARD: Was that Crown Solicitor's Office advice to you? Are you able to provide us with that?

Mr Walker: I have already advised the committee in relation to legal opinions.

Hon G.T. GIFFARD: I don't recall covering that one.

Mr Walker: Any advice I give to the committee will recognise the direction I have had in this.

The CHAIRMAN: Was that direction from the minister in respect to any legal advice, or the specific legal advice requested by the last committee.

Mr Walker: The minister has formed the view in relation to legal professional privilege that would apply across the whole range.

Hon G.T. GIFFARD: That refers to committees mark I and mark II?

Mr Walker: Perhaps you could check the information. You probably have a copy with you. I do not have it at the moment.

The CHAIRMAN: Members have asked if you can inform the committee if the minister is directing you not to provide that advice.

Mr Walker: Yes. One would imagine, however, in terms of the date of the advice, that it might be possible.

The CHAIRMAN: There is the issue of the date and also whether it contained a broader definition of ministerial duties.

Hon NORM KELLY: While we are on the point of ministerial directions, has the minister given you any directions on the investigation of finance brokers or the appointment of supervisors, or any related matter?

Mr Walker: That is a fairly wide-ranging question.

Hon NORM KELLY: I am just thinking about the powers under which he can direct you.

Mr Walker: I report to the minister.

Hon NORM KELLY: I am talking about official, written, ministerial directions.

Mr Walker: I report to the minister, so I need to comply with any lawful direction that he may give me, within the general purview of the Public Sector Management Act.

Hon G.T. GIFFARD: Which the board is not a part of?

Mr Walker: The board is captured in the Public Sector Management Act but not in terms of the nature of the employing authority, as outlined by Mr Solomon.

Hon G.T. GIFFARD: Your advice from the Crown Solicitor's Office was that the board is not part of the Public Service and is not covered by part 3. So it was covered by other parts?

Mr Walker: That is correct. The next heading is about the issue of whether ministry personnel were usurping the duties of the board. This is the issue I referred to in relation to breaches of other legislation. Mr Solomon has asserted that personnel of the Ministry of Fair Trading "usurped, without lawful authority, the function, powers and duties of the Finance Brokers Supervisory Board." This is untrue. The board registrar, deputy registrar and investigators were properly employed by the ministry and appointed by the board. In carrying out their functions as officers of the board they were at all times subject to the control and direction of the board. Ministry officers are also fully entitled to deal with any matter that might constitute a breach of the Fair Trading Act or other related Acts under which they hold valid appointments. It should be noted that after very extensive examination of the role of board and the ministry, the Gunning inquiry made no finding that supports Mr Solomon's allegations.

The CHAIRMAN: With respect to the appointment of officers as officers of the board, are you absolutely sure that they have always been appointed by the board?

Mr Walker: No, I am not absolutely sure.

The CHAIRMAN: So on what basis are you making this claim?

Mr Walker: We are responding to an assertion by Mr Solomon that the board registrar, deputy registrar and investigators “usurped, without lawful authority, the function, powers and duties of the Finance Brokers Supervisory Board.”

The CHAIRMAN: Evidence provided to this committee at one stage indicated that there had been a change of procedure for appointing officers of the board.

Mr Milford: There was some doubt about the validity of authorities for the appointments of inspectors and the registrar. I am not sure of the source of the legal advice, but earlier this year, just to dispel any doubt about the validity of authorities, they were all redone, so that the board is actually appointing the registrar, the deputy registrar, and all the inspectors.

The CHAIRMAN: What was happening prior to that?

Mr Milford: I am not sure. The appointments were not made by the board, but I am not sure who they were made by.

Mr Harvey: They may have been made by the minister.

The CHAIRMAN: But the Act requires them to be made by the board. Do you accept that?

Mr Milford: I think the Act was not clear, which was why it was looked at again.

The CHAIRMAN: But there was concern or questioning with the ministry, as late as early this year, that the appointment of officers of the board was not in accordance with the Act, and as a result of that you took action to ensure that you changed the procedure by which you authorised them?

Mr Milford: I am not sure of the rationale, but there was some doubt about the validity of the authority, so it was done to remove any doubt.

The CHAIRMAN: Do you believe that the statement you made in this document is still correct?

Mr Walker: Yes I do, because it is a reference to paragraph 3.10.3 of Mr Solomon’s submission, which states -

Ministry personnel usurped, without lawful authority, functions, powers and duties of FBSB which, in dereliction of their duty, FBSB and Members wilfully failed to perform.

I was not present when he gave his evidence, but my understanding is that he believes that ministry officers could not examine other matters unless they were members of the board.

The CHAIRMAN: I understand that, but your first line states -

The board registrar, deputy registrar and investigators were properly employed by the ministry and appointed by the board.

Do you still stand by that statement in the light of what Mr Milford has just told us?

Mr Walker: I was not aware of that information. I would need to check what the terms of appointment requirements are and in fact whether the board made appointments which were endorsed by the minister. I would need to clarify that.

The CHAIRMAN: Earlier this year there was still confusion about whether or not that was being done properly, going by what Mr Milford has just told us. If you can provide us with documentation about what led to that situation, and the advice on which those decisions were made, I would very much appreciate it.

Hon G.T. GIFFARD: According to you evidence the procedure is that investigating officers are appointed by the board. There is a distinction between an investigation and an inquiry, and inquiry being the more formal one. Is that right?

Mr Walker: Yes.

Hon G.T. GIFFARD: Before a matter is referred to the board to decide whether an inquiry will take place, do you get your legal people to look at it?

Mr Walker: In making a recommendation whether to proceed one way or the other, consultation with a legal officer would take place about the merits of the case, the likelihood of successful prosecution and so on.

Hon G.T. GIFFARD: Have all those legal officers always been appointed as officers of the board as well?

Mr Walker: I do not know the answer to that question, but I would doubt it.

Hon G.T. GIFFARD: You would doubt it?

Mr Walker: Yes.

Hon G.T. GIFFARD: That would add some substance to Mr Solomon's claim?

Mr Milford: I do not think so. Anyone is entitled to get legal advice. As Commissioner for Fair Trading, for example, if I get legal advice to carry out my function I do not think it could be said that the lawyer is usurping my function.

Hon G.T. GIFFARD: I am thinking in terms of section 88, the secrecy provision, and whether or not, if they wanted a legal opinion, they would need to appoint legal officers to the board rather than go outside. Do you see what I mean?

Mr Milford: I do not think that is the case.

Hon G.T. GIFFARD: I thought that was one of the aspects that Mr Solomon identified yesterday, that, by giving it to legal people who are not officers of the board, you are going outside section 88 of the Act. Could you not simply appoint that legal officer as an officer of the board? Then he would not be outside section 88 because he would fall within it.

Mr Milford: I do not believe that is the case. Indeed, I understand that at another point Mr Solomon was critical because the board had not sought additional external legal advice. That does not appear consistent.

Hon G.T. GIFFARD: For particular investigations, or generally?

Mr Milford: I think generally.

Hon G.T. GIFFARD: I am speaking about particular investigations: The investigator looks at it and makes a decision about whether it should go to an investigation?

Mr Milford: I have not turned my mind to that question, but even now I would not have thought it would be necessary; but I am not a lawyer so I am not sure.

Hon G.T. GIFFARD: As I understand it, the secrecy provision relates to particular inquiries. You cannot share with any other person who is not a member of the board information about specific information that you have been able to obtain by using the powers under this Act.

Mr Milford: Are you extending that argument to say you will go to Crown Law for advice, but you need to get Crown Law authorised by the Act?

Hon G.T. GIFFARD: I do not know. I am asking the questions; I cannot give you that answer. I do not know the answer. I am asking you whether Crown Law has give you advice about whether you can do that. It strikes me as a matter of logic that you have gone outside.

Mr Milford: The Crown Solicitor's opinion, which was referred to earlier, did speak about that information flow. From my recollection, it was not raised as an issue on that occasion, and I would be surprised if it was.

Hon G.T. GIFFARD: I can say to you that when Mr Solomon was discussing that with us yesterday, that was in my mind as one of the consequences of what he was saying without lawful authority, because he was making references to section 88 on a regular basis as well. It was within that context that I was understanding what he was saying to us.

Mr Milford: I think we disagree with Mr Solomon's opinion.

Hon G.T. GIFFARD: I am sure. I am trying to work out why.

Mr Milford: I have taken legal advice -

Hon G.T. GIFFARD: I understand one thing: You disagree.

Mr Milford: Yes.

Hon G.T. GIFFARD: I have not got much further, that is all.

Mr Milford: Bear in mind, we received it last evening. I am happy to get advice, if required.

The CHAIRMAN: In the document you have provided you state -

The Board Registrar, Deputy Registrar and investigators were properly employed by the Ministry and appointed by the Board.

Do I take it that it is your view as registrar and as chief executive officer of the Ministry of Fair Trading that the board registrar, deputy registrar and investigators do need to be appointed by the board to hold those positions?

Mr Walker: That is the latest advice I have received, earlier this year.

The CHAIRMAN: That they need to be formally appointed by the board?

Mr Walker: To remove any doubt as to the validity of their appointments; they certainly should be appointed by the board.

The CHAIRMAN: Is that also your understanding, Mr Milford?

Mr Milford: I cannot give a precise answer. I have not received specific advice.

The CHAIRMAN: That is what you have said in a written document you have provided to the committee. Am I somehow misreading that document?

Mr Milford: The statement reads -

The Board Registrar, Deputy Registrar and investigators were properly employed by the Ministry and appointed by the Board.

My understanding is that the board registrar, deputy registrar and investigators are appointed by the board.

The CHAIRMAN: Can you provide us with advice as to whether that has always been the case?

Mr Milford: From when?

The CHAIRMAN: Whether they have been appointed by the board for the past five years, would be sufficient.

Mr Milford: Yes.

The CHAIRMAN: Would you please continue.

Mr Milford: As to the issue about the Government assuming responsibility for investors' losses, we made the comment that that is a matter of government policy and therefore is not something about which the ministry or the board could comment. It is important to go through the terms of appointment of supervisors. My statement continues -

- The Select Committee gave Mr Solomon a copy of the instrument of appointment of Mr Conlan by the Finance Brokers Supervisory Board and asked him to comment.

That is my understanding of what occurred yesterday -

He said that in his view many of the powers and duties given to the Supervisor under the instrument of appointment were ultra vires the *Finance Brokers Control Act 1975*.

- This is simply Mr Solomon's opinion, given without research or detailed consideration.

Presumably.

- The matter of the appointment, powers and duties of the supervisors was the subject of legal advice from: the ministry's legal officers, the Crown Solicitor's office, Dr Jim O'Donovan (Professor of law at the University of Western Australia) and Mr Michael Corboy (Barrister at the Independent Bar).
- In addition, the appointment of the supervisor was as the result of an application to, and an order by, the District Court.
- If the Select Committee wishes, it can obtain its own legal advice on this issue, however, on the basis of the legal advice obtained and the fact that the appointment has been before the District Court, there is no reason to prefer Mr Solomon's view.

The CHAIRMAN: Did the order provided by the District Court include the terms and conditions upon which the supervisor was appointed, or simply that there was approval for the board to appoint a supervisor?

Mr Walker: I am not sure. I would have to check that.

The CHAIRMAN: Are you saying you do not need to check it because the District Court has already signed off on that, and I am assuming from the way this is written that the District Court has signed off on the terms and conditions under which the supervisor has been appointed? Is that what you are intending to convey by this document?

Mr Walker: My understanding was that the terms of appointment of the supervisor would be part of the application. I was not involved in that process.

Hon G.T. GIFFARD: That is an important point, as you would appreciate. If it is not, it is quite misleading.

Mr Walker: Not wishing to mislead the committee, I would be happy to delete that and indicate that we have had three independent legal people provide advice and contrary advice has been given by one lawyer.

The CHAIRMAN: That is a valid point.

Mr Walker: Let us do it that way.

Hon G.T. GIFFARD: Were these three legal opinions provided to the board?

Mr Walker: I believe so.

Hon G.T. GIFFARD: Mr Milford, as registrar of the board, do you have a direction from the minister in the same terms as the direction that the ministry has regarding legal opinions?

Mr Milford: Not that I am aware of.

Hon G.T. GIFFARD: Would you be able to provide those legal opinions to the committee?

Mr Milford: If I have access to them on the board's files, I imagine I would be able to.

Hon G.T. GIFFARD: There is evidence that they were given to the board, so you would be able to as a matter of logic, would you not?

Mr Walker: Mr Chairman, can we clarify what Mr Giffard has said?

Hon G.T. GIFFARD: I asked you whether those three opinions were provided to the board, and you said, "I believe so." I then directed my question to the registrar of the board and asked whether we could have copies of those three opinions.

Mr Walker: We need to ascertain whom they were for, but I do not resile from -

The CHAIRMAN: Why would you provide them for anyone else but the board, in terms of appointing a supervisor?

Mr Walker: I just need to clarify it, that is all. It is important. Mr Milford has received a direction in relation to his role as manager in the ministry.

Hon G.T. GIFFARD: If they were addressed to the board, would you be able to provide them to the committee?

Mr Milford: Yes, if I -

Hon G.T. GIFFARD: Can I take it that that is an undertaking that you will, but you will advise us either way?

Mr Milford: Yes.

The CHAIRMAN: More importantly, could you advise us - if those documents were not documents for the board - on what legal advice the board appointed the supervisor?

Mr Harvey: We will probably take that question on notice if we can, with the legal opinions.

The CHAIRMAN: Unfortunately, one of the committee members has to leave shortly and we will have to finish for today. Mr Walker, I understand you were heavily involved in the discussions relating to the appointment of the supervisors and you certainly attended a number of meetings: Is that correct?

Mr Walker: Not in relation to the appointment of the supervisors.

The CHAIRMAN: In relation to the terms and conditions of appointment?

Mr Walker: No, not that I am aware of. I have been meeting regularly with the supervisors following their appointment, but I do not recall being the subject of a number of meetings in the lead-up to their appointment.

The CHAIRMAN: Maybe not "a number", but you were involved in at least one meeting prior to the appointment of the supervisors when the terms and conditions were discussed on 16 July. Is that not correct?

Mr Walker: I do not recall a meeting.

The CHAIRMAN: I will quote from a letter that we provided to Mr Solomon yesterday, which was signed by Mr Harvey as deputy registrar; it is on Finance Brokers Supervisory Board letterhead; it is dated 21 July and it is addressed to Mr Mark Conlan of Bird Cameron, chartered accountants; and it states -

Dear Mr Conlan,

ROWENA NOMINEES PTY LTD (RECEIVER & MANAGER APPOINTED)
(PROVISIONAL LIQUIDATOR APPOINTED) - ACN 008 818 273 ("ROWENA")

Further to your meeting with Pat Walker, Thomas Staples and Diana Newman on 16 July 1999 the following terms and conditions are proposed:

The letter then proceeds to outline all the terms and conditions under which the supervisor is appointed.

Mr Walker: I do not recall that meeting, but I am not disputing that I was at the meeting. I could search my records.

The CHAIRMAN: Perhaps you could see whether you have any notes about that meeting. Perhaps Mr Harvey could advise us when he wrote that letter, if he remembers that letter?

Mr Harvey: I certainly remember the letter. I could not be absolutely certain what was discussed at that meeting. I suggest that it was probably a meeting to discuss rates and charges that the supervisors would levy for their services, but I would need to check my records to see whether that is accurate.

The CHAIRMAN: My initial reaction from reading that letter was that it indicated that the terms and conditions were as discussed at that meeting. That is logical. I do not know whether that would be your assessment, having just heard me quote that letter - the reason you would put that in is that at the meeting the terms and conditions were discussed, and here are the terms and conditions as a result of that meeting.

Mr Harvey: Yes.

The CHAIRMAN: We have strict time lines, and we would appreciate it if you would make yourselves available at 2.30 pm on Monday. The summons we previously issued will stand until that time. Thank you very much for your time. We would appreciate your providing as much of the information that we requested today on Monday afternoon .

Mr Walker: We will do our best.

Hon G.T. GIFFARD: I hope you will be in a position to advise on those opinions on Monday.

Committee adjourned at 4.15 pm