

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 3 JULY 2000**

SESSION 5 OF 5

Members

**Hon Ken Travers (Chairman)
Hon G.T. Giffard
Hon Ray Halligan**

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- (a) constitute a contempt of the Legislative Council; and**
- (b) mean that the publication or disclosure of the relevant material is not subject to parliamentary privilege.**

[3.04 pm]

MATTHEWS, MR BARRY,
Commissioner of Police, Western Australia Police Service,
2 Adelaide Terrace,
East Perth, examined:

LAVENDER, MR PETER,
Acting Detective Superintendent, Commercial Crime Division,
Western Australia Police Service,
Level 7, Eastpoint Plaza, 233 Adelaide Terrace,
Perth, examined:

CHAIR: Welcome to the committee. The purpose of this hearing is to have a general discussion with the different groups that are mentioned in term of reference (3) of this inquiry about how our inquiry may interfere with or obstruct their activities; and you are one of the groups that is mentioned in that term of reference. This is a private hearing, but the evidence that is given may be made public as part of our report. However, the committee has decided that we will not use in our report any of the evidence that is given at today's meeting and that if we do wish to get evidence from you to use in our report, we will call you back at a future date. You have signed the document headed "Information for Witnesses". Have you read and did you understand that document?

Mr Matthews: Yes.

Mr Lavender: Yes.

CHAIR: Even though this is a private hearing, I advise that the committee may make your evidence public at the time of its report to the Legislative Council. If the committee does decide to make your evidence public, we will first inform you of this determination. You should not disclose your evidence to any other person. However, as I said, we will be taking a slightly different approach on this occasion. You have received a copy of the committee's terms of reference, and it is hoped that today's meeting will help the committee inform itself in order that it does not breach term of reference (3). The committee is interested in any ideas you may be able to offer in order to keep lines of communications open so that we do not breach that term of reference in the future because of the development of your inquiries. Would you like to make a general comment about what inquiries you are conducting and how this committee may impact upon those inquiries?

Mr Matthews: In a sense we are endeavouring to see how we can best help the committee. We have a lot of information, primarily in the commercial fraud area. I have been kept generally briefed about the nature and scope of the inquiries, and Acting Detective Superintendent Lavender can provide greater detail. I can certainly outline where we are at with the inquiries to date, where we think they will go, and some of the issues that concern recovery of lost assets, and we can make some comments about legislation. The issue comes down to whether you want to know all that, and we can provide it. I have seen your terms of reference, but they are fairly open-ended and wide. The Police Service has already made a number of inquiries which have

resulted in arrests. Proceedings are in train, and we anticipate that there will be further inquiries and further arrests as we address what is colloquially known as the finance brokers scandal, or however you wish to put it.

CHAIR: With regard to the general direction of the committee, we are meeting with all of the agencies that come under term of reference (3), before we commence formal hearings, to try to get an idea of what each of those agencies is doing. You may be in a position to give us a brief outline of the nature of your inquiries; obviously you may not wish to go into the specifics.

Mr Matthews: I will endeavour to talk a bit about resources; charges and the amounts to which those charges relate; and inquiries into the various categories of the finance broker cases, because not just one individual or company but a number of individuals and companies are involved. For some time now, 38 sworn police officers in the commercial crime division have been undertaking inquiries into complaints of defalcation, fraud and other aspects associated with the misappropriation or loss of funds of persons who have invested with finance brokers of various types in the State of Western Australia. Five unsworn staff are assisting, and some of those people are qualified in accountancy and law. To date, 10 people have been charged with a total of 245 charges. The charges currently total approximately \$16.5m. Most of the charges are fraud-related, and I will go through the persons who have been charged, the number and nature of the charges, and the amount involved. I will just use the surnames; I am sure these people are not unfamiliar to the committee: Grubb, 33 charges of stealing, \$5.1m; Fermanis, one charge of making a false report; Kennedy, 71 charges of fraud, \$1m; Fisher, 14 charges of fraud, \$1m; O'Brien, 71 charges of fraud, \$4.3m; Bell, nine charges of fraud, \$660 000; Margaria, 21 charges of fraud and one charge of attempted fraud, \$3.75m; Perry, eight charges of fraud, \$445 000; Ferris, six charges of fraud, \$563 000; and Manton, six charges of fraud, \$563 000. It will be apparent that some of those people have been charged for the same transactions, because the amounts are the same. Thirteen files are awaiting allocation - in other words - full investigation - and we anticipate that on current projections further persons will be charged for significant sums of money.

The process of the police inquiry was fairly standard, with a complaint being initiated, either by a primary complainant or a number of complainants, which would suggest improper conduct by one or more individuals. In the course of that investigation, all documents related to the transactions would be obtained by the police, either directly from the persons affected by the execution of search warrants from the suspects' premises, or from other government or non-government agencies. Following that, there would be interviews with any witnesses who could elucidate the details in the documents or provide details of oral or written representations which led to their parting with the money or giving consent to invest in some particular aspect. That would include valuers who had provided supporting documents to justify their representations. Eventually the point would be reached where the subject of the allegations would be interviewed and a determination would be made by the police, often in consultation with the Director of Public Prosecutions or the Crown Solicitor's Office, as to whether there was a basis to proceed criminally against one or more persons. These cases are often not easy to prove. It very much depends on the available documentary evidence; the availability of persons who can provide both direct or collateral evidence about the transaction; and an independent assessment, together with the police, as to the prospect of being able to lay criminal charges which will meet a standard of proof which is beyond reasonable doubt.

I can go through where we are with each individual case, but the general thrust is that once we have made an arrest, the officers set about solidifying the brief, in conjunction with the Crown Solicitor's Office, to go through the lower court hearings, depending, of course, on whether the people plead guilty or not guilty, elect to go to trial, or whatever. Eventually, if there is a full trial, they will need to present all the evidence to convince a jury of the charges that have been laid against those persons.

CHAIR: We are aware that Grubb has already pleaded guilty. Obviously, any inquiries we made into that would not affect his case. Do you have any ideas about the time lines for the rest of them, and when they are likely to be before the courts? I guess it is hard to know whether they will plead guilty or not.

Mr Lavender: In relation to the charges with MFA Finance, Mr Irwin Ross Fisher and Mr Gregory James Kennedy have been charged with 15 counts of fraud, and they have been remanded until August. That is only an election date when they will indicate whether they wish to have a lower court hearing or go straight to trial. That is the status in relation to them. John Margaria of Global Finance has been charged. We intend to have further inquiries made in relation to a second person of interest, who is currently in Queensland. We intend to travel pretty shortly and speak to him. He has been charged with 21 counts of fraud and one count of attempted fraud, and his remand process will virtually start when this other person of interest has been dealt with. As we have said, all the 10 people we have charged have been charged in only the last month or month and a half. That means their process will take nothing less than 12 months, if they continue to plead not guilty and go through the process. Mr Grubb elected to go straight on fast track and pleaded guilty. I do not expect that to happen in too many cases. I would say that in every other instance, we are again in the Blackburne and Dixon situation. Laurence Ferris and John Manton were charged late last week. They have been remanded to an election date which, again, will be four weeks away from now. We will take our cue from what they do, whether or not they decide to go to a lower court hearing or opt to go straight to trial. All that will take certainly nothing less than 12 months.

Mr Matthews: I think we can anticipate that a number of these people will contest the charges all the way; some will not but, given the nature of who they are and positions they have held, it is likely that there will be contested hearings in a number of these cases.

CHAIR: We understand from the DPP that the police are still conducting further investigations into the charges to see whether they are representative of the actions of the finance brokers in total.

Mr Lavender: Certainly with Mr Grubb. In every instance it would be almost impossible to track down every piece of criminality that we think the finance brokers have been involved in. Therefore, we take a representative sample of their criminality, in conjunction with the DPP, and prefer charges. It would be pointless to go all the way down the track, because I cannot imagine that would affect their sentence in any way, shape or form. Once again, we try to make it as objective as we can, involve the DPP with the decision, and hope that it is a good, representative sample of that criminality.

CHAIR: Other than Grubb, are most of the people to whom you have referred still subject to further investigation in that process of identifying whether you have a representative sample? Are there ongoing investigations into each of those people?

Mr Lavender: Yes. We are certainly looking at further charges on Fermanis, Kennedy, Fisher, O'Brien, Bell and Margaria.

CHAIR: Do you have any idea of the time line involved in that?

Mr Lavender: We have been going six months now, and the intelligence we are now getting is that far more projects are starting to collapse because of the fund sharing that has occurred over time. Provided we do not get a great influx, I dare say that in the next six months this crop of complaints will be fairly well under way.

CHAIR: Did you say your intelligence suggests that further complaints may be made as other projects fall over, and formal complaints are made to the police?

Mr Lavender: Yes. That is information coming through the industry to us.

CHAIR: Do people who have lost money lodge most of the complaints with the police?

Mr Lavender: Yes. We virtually insist that that is the way the complaint comes to us. A person who was actually persuaded by misrepresentation to part with his money is generally the beginning of the charge.

CHAIR: That is the starting point for you to prove an offence.

Mr Lavender: We need somebody. There are several agents. You have probably seen one lady who represents the Real Estate and Business Agents Supervisory Board who tends to make a fair few complaints about these matters. We need the person against whom the criminality was committed to make the complaint. They are crucial as witnesses.

CHAIR: To prove the offence, you must have that person to begin with. Are you still investigating other people around those circumstances?

Mr Lavender: There are certainly other people. I have a summary of the status of the inquiry, and it certainly includes all their names. I do not know whether some of them will mean anything to you. They have all practised as finance brokers in this town over the past five to seven years.

CHAIR: If you are prepared to provide that to the committee, it would certainly be very useful. Obviously, we would keep it as a confidential document. I was about to go into the question of how we can develop a relationship between this committee and the police, to make sure we do not take action that cuts across an inquiry you are conducting. We are required to do that by our terms of reference, but I think it is also fair to say that we are all keen to make sure that people are aware prosecutions can occur and that we do not in any way, directly or indirectly, impede your investigations.

Mr Lavender: I have no problem with preparing a list and submitting it to the committee.

CHAIR: That brings us to the next range of questions, which relate to the relationship between

the police and some of those other bodies, the type of communications listed in the third term of reference, and the communications you have with those other inquiries. Do you have any suggestions on the best mode of communication for keeping this committee informed about the nature of your inquiries, to ensure we do not breach the terms of reference?

Mr Lavender: I have no problem with making myself available at any stage of the game if the committee wishes to discuss anything we are doing. I am available basically 24 hours a day, and I have no problem as far as that is concerned.

Mr Matthews: Twenty-four hours?

Mr Lavender: We have a very effective system of communicating with ASIC, and we deal with the Ministry of Fair Trading all the time in relation to these matters. These matters do have an overlapping set of elements at times between what the ASIC does and our activities. We certainly liaise with ASIC all the time.

CHAIR: In that case, you are obviously the key point of contact for the committee. As I mentioned earlier, Christina is acting as our advisory research officer and once someone is appointed formally, we will make sure that person contacts you. That will probably be the primary point of contact for this committee. We are certainly keen to have a reasonably good relationship in the exchange of information, so that you know what the committee is doing and vice versa. The committee does not want to have any adverse impact on your investigations. One of the differences is that in your case the matters must be beyond reasonable doubt. Obviously, there is a role for royal commissions or select committees to look at things on the balance of probabilities, and draw that to the attention of the community. At some point in the future, there may be cases where you feel you cannot get the evidence to prove an offence beyond reasonable doubt, but it may be still worth this committee looking into that. You may want to draw those matters to the attention of the committee at the appropriate time, when you feel your investigations have gone as far as they can. It could be useful to the broader community to know where people have been acting improperly, on the balance of probabilities, even though it cannot be proved as a criminal offence.

Mr Matthews: We would be happy to do that. The appropriate contact person would be Mr Lavender -- I am not sure about the 24 hours a day!

CHAIR: We work fairly long hours, but I do not know about 24 hours a day. I suspect it must be like that for the police at the moment.

Hon RAY HALLIGAN: From whom did the fraud squad receive instructions in relation to the finance brokers? To whom are those 38 persons answerable? Are they answerable to you?

Mr Lavender: Yes.

Hon RAY HALLIGAN: From whom do they receive instructions? Is it from you?

Mr Lavender: Yes.

Hon RAY HALLIGAN: Would any concern or complaint be directed to you?

Mr Lavender: Yes.

Hon RAY HALLIGAN: Would you in turn arrange with your squad to inquire into the matter?

Mr Lavender: Yes.

Hon RAY HALLIGAN: What is the relationship between the fraud squad and the Gunning inquiry?

Mr Lavender: We talk to them constantly.

Hon RAY HALLIGAN: So you are working independently from the Gunning inquiry?

Mr Lavender: Yes, we are certainly working independently. We have discussed with people at the inquiry the possibility of their calling witnesses that may jeopardise our inquiry. Once again, in conjunction with the DPP, they have asked us to supply to them some of the lists in relation to who we are dealing with, so that they do not call those people and in any way jeopardise our inquiry. In conjunction with the DPP, we have responded and said they can call and speak to whoever they want, provided it does not involve some form of coercion that would cause our inquiry to be jeopardised. Once again, even if they were called under coercion, we would avoid the particular evidence obtained at that hearing. We certainly deal with them on that basis.

Hon RAY HALLIGAN: Do you find the Gunning inquiry is providing you with information and direction as to where you might look?

Mr Lavender: At this stage, I do not believe we have had any specific direction, because people have come to us directly and made complaints. I do not believe our complainants needed any form of coercion to come to us. They are a group of people who are angry and want to make complaints.

Hon RAY HALLIGAN: I wonder whether the Gunning inquiry has in fact been able to identify any particular finance broker, individual, or company it believes your squad might investigate.

Mr Lavender: At this stage, I do not believe any specific inquiry has been referred to us from the Gunning inquiry.

Mr Matthews: I would like to clarify one point on the constitutional position of the police; that is, in a strict constitutional sense the Gunning inquiry could not direct the police, in the same way that a minister could not direct the police, with regard to where inquiries would be carried out and who would undertake them. It is my role to do that through the delegated command down to Mr Lavender. He would in essence make sure that appropriate resources in the Police Service were available to undertake the inquiry as an operational matter. Although we have kept in contact with the Gunning inquiry and have agreed to share information to assist its process, and it will assist our process, at the end of the day, having received that information, we make that determination and not the Gunning inquiry.

Hon RAY HALLIGAN: Thank you for clarifying that point. Mr Lavender, do you believe you

may find it necessary to revisit some of the people you have investigated and queried, as further information comes to your attention?

Mr Lavender: That is a possibility. If we receive further information that indicates we need to go back, we will revisit the inquiry.

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CHAIR: I also briefly alluded to the gathering of evidence. Have you found that to be fairly difficult? Is there any suggestion that there has been a systematic destruction of evidence or are the records still there, in the main?

Mr Lavender: We have found most of the records to be quite authentic. We have not had a problem. As the commissioner has just pointed out, we have executed several search warrants on agencies and finance brokers' premises. I do not believe that the files have been sanitised. I cannot say that that has been a problem at all.

CHAIR: That is good. Do you want to raise any other issues?

Mr Matthews: No. I just reinforce that we are happy to assist the inquiry. You have a function to carry out and we will do what we can to assist you with that. Mr Lavender is a contact point, and if you require me, I am happy to be there as well.

CHAIR: We appreciate that and your attendance this afternoon. From our point of view we want to work with you and ensure that we do not cross over. If you can provide us with a list of the people you are looking at, it will give us some guidance. From that point on, we will be able to liaise with you on matters as they come before us. If we hear any allegations of improper or illegal behaviour, we will encourage those people to take those allegations directly to you.

Mr Matthews: Thank you.

CHAIR: Thank you very much for your time.

Committee adjourned at 3.35 pm