

FINANCE BROKERS, SUPERVISORS

Grievance

MR MCGINTY (Fremantle) [9.36 am]: My grievance relates to the Ministry of Fair Trading. Supervisors have been appointed to two collapsed finance brokers; that is, Graeme Grubb Finance Broker and Global Finance. Their appointments were made by the Finance Brokers Supervisory Board under section 74 of the Finance Brokers Control Act, with the prior approval of the District Court of Western Australia, given under section 73.

A supervisor's limited range of duties is specified under section 75 of the Act. The section states that a supervisor is to -

... carry on the business for the purpose of concluding or disposing of matters commenced but not concluded on behalf of clients of the business and, where necessary, for the purpose of disposing of, or dealing with, documents relevant to those matters . . .

Apart from that duty, a supervisor may undertake to the District Court under section 78 to pay all trust moneys to the Treasurer for preparation of a scheme for distribution of moneys. If that is done, the Treasurer is required to prepare a scheme and submit it to the District Court for approval. There is no power for the board or the District Court to confer additional powers on a supervisor.

It has now come to light that this Government has had the board purport to confer a range of powers on supervisors without any lawful authority or justification. Those supervisors have then used their non-existent powers for well over a year to unlawfully intermeddle in the affairs of many investors, causing much inconvenience, distress and hardship. For instance, Mr Mark Conlan of RSM Bird Cameron was appointed by the board under a five-page letter dated 21 July 1999. Despite the limited duties and powers of a supervisor specified in the Act, the appointment required Mr Conlan to perform a wide range of services going beyond the duties specified in the Act, such as requiring him to facilitate and assist the proper registration of investors' interests in mortgaged property; to determine the quantum of the trust account's financial interest in advance to borrowers, whether or not supported by a registered mortgage; and to determine the trust account's interest in mortgages, including registration of caveats.

In the light of the extraordinarily bad state of affairs of the Grubb Finance trust account and business affairs, which was well known by 21 July 1999 when the appointment of the supervisor was made, it must have been clear at that time that the function of determining such issues was one to be carried out only by a court of competent jurisdiction. Why and how the board came to confer these powers on Mr Conlan is a matter of grave concern. Since that time, Mr Conlan has intermeddled and interfered with the property and affairs of hundreds of former Grubb Finance clients. Why has this been done? There is one obvious answer: To prevent finalisation of the Grubb Finance affairs until after the next election so that many victims of Grubb Finance will remain filled with false hopes that their life savings have not been lost.

Although section 75 requires a supervisor to only carry on the business for the purpose of concluding or disposing of matters commenced but not concluded, Mr Conlan's appointment by the board required him to maintain Rowena's - that is, Grubb's - existing agency contracts with investors and to determine the contracts where considered appropriate. The implementation of this requirement imposed on Mr Conlan, inconsistent with the limited duties specified in the Act, has been a further means by which Mr Conlan has been a vexatious and officious intermeddler in the affairs of many former Grubb Finance clients.

The board appointed Diana Newman as probity auditor of Mr Mark Conlan and required that, as a term of his appointment, Mr Conlan comply with all of her reasonable requests. There is no mention of a probity auditor in the Act. Appointment of a probity auditor by the Finance Brokers Supervisory Board is entirely beyond power. Despite Dr Newman's appointment as probity auditor, the Premier appointed her in February 2000 as a member of the Gunning committee. Not surprisingly, we will not read any criticism of the terms of Mr Conlan's appointment or performance as supervisor or of Dr Newman's appointment or performance as probity auditor in the Gunning committee report into finance broking. Indeed, the Gunning committee made no findings or recommendations about the provisions of the Act concerning supervisors. In particular, it made no comments about, or recommendations to expand, the very limited powers and duties of supervisors.

Under section 74(1)(b) the board could authorise the supervisor to obtain an advance from the Treasurer for the purpose of carrying on the business of a finance broker to the limited extent permitted by section 75. The Treasurer is authorised by section 74 to make an advance on such terms and conditions as the Treasurer thinks fit. However, the board gave authority to Mr Conlan to apply to the Treasurer for advances to also carry out the many unlawful powers purportedly conferred by his appointment. Without power, the board also stipulated that the advances by the Treasurer would be held in trust by the board, when it was only the Treasurer who could impose such a condition.

Furthermore, the board gave itself the right and the power to provide Mr Conlan with legal services, including those provided by the Ministry of Fair Trading's legal officers. As a result, he ceased using the private-sector lawyers he had engaged when he was only liquidator of Graeme Grubb Finance Broker for some months before also being appointed as supervisor.

Mr Conlan has since allowed almost \$6m to be paid back to some registered mortgagees, but has tied up millions of dollars claimed by other mortgagees. If, as some victims who have no registered mortgages said they want to happen, all assets held by former Grubb Finance clients were to be pooled and divided pro-rata among all Grubb victims, the \$6m would have to be recovered from the investors who received it in good faith, or be put back into the pool by Mr Conlan. Although the board was entitled under section 74(1)(a) to give indemnity to Mr Conlan for his acts or omissions as a term of his appointment, the board did not do so. Instead, it required Mr Conlan to be covered by his own professional indemnity policy. Mr Conlan and his insurers must, at this stage, greatly regret having been drawn into the vortex created by the Government to delay finalisation of the Grubb Finance affairs, through the board's purporting to confer powers on him without any lawful authority and then requiring him to act on legal advice provided by the board through Ministry of Fair Trading legal officers.

The same problem exists for Global Finance Group Pty Ltd investors and their supervisor, Mr Herbert. The investors will be angry when they realise that this latest incompetence by the Minister for Fair Trading has further jeopardised their position.

MR SHAVE (Alfred Cove - Minister for Fair Trading) [9.43 am] This is an extraordinary allegation. On behalf of clients and the people who are tied up with these companies, the supervisors have tried to expedite payments back to the people. Groups such as Global investor groups have come in one after the other requesting that, if no dispute has occurred, funds be paid back to them. To my knowledge, that is exactly what the supervisors have done. To suggest that one of those supervisors would deliberately delay paying back the money to people until after the election is absolute nonsense.

Mr McGinty interjected.

Mr SHAVE: I have very limited time; so I ask the member for Fremantle not to interrupt me. I did not interrupt him while he read out his statement.

Much of that which Mr Solomon said in the Select Committee into the Finance Broking Industry involved legal issues and issues related to liability. He said -

... 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.

That is incorrect. The department then gave me the reasons that it is incorrect. Mr Solomon made other assertions regarding the Burt Commission on Accountability. He also says -

... in the absence of the so-called "Burt Commission provisions", the only information the Minister is entitled to about the Finance Broker's Supervisory Board is the annual report provided under section 86 of the Finance Brokers Control Act 1975.

That 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 his ministerial duties. Crown Solicitors addressed all the issues Mr Solomon raised, most of which they disagreed with. In many cases, the matter amounts to Mr Solomon's legal view and another legal view held by the Crown Solicitor.

It is improper for the member for Fremantle to come in here and make accusations against the supervisors who have been working very hard to try to untangle the messes in those companies. It may serve him well politically to make those accusations in here without their having the opportunity to respond. However, at the end of the day, I have the following advice about the appointment of the supervisors -

- 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. 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.

He gave that opinion in a 10-minute appointment in front of the committee. To continue -

- 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

at 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 a result of an application to, and 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 advice obtained and the fact that the appointment has been before the District Court, there is no reason to prefer Mr Solomon's view to their view.

It may be good politically to say Solomon is right. However, the department and the Government have gone through the proper process and sought the best advice available from the Crown Solicitors and they have sought advice from a professor at law of the University of Western Australia on these issues. To the best of my knowledge, everything that has been done, has been done properly and appropriately.

I will take all the allegations that the member for Fremantle has made and give them to the Crown Solicitor and ask him to analyse them. I will then happily provide the Parliament with the Crown Solicitor's view on those allegations. However, I object to the assertion that people's money is being deliberately held up. Solomon says that we should pay out all the registered mortgagees, but that if the people who think they should be on the mortgage list believe they have an entitlement, they should sue. Is that not beautiful? He is suggesting we should ask an 80-year-old pensioner, for example, to sue for money that has been paid out. I understand from comments by the supervisors that there is a dispute. A court case is in process indicating that perhaps those unregistered people have an entitlement, and Solomon has a different view because the evidence he gave in the select committee last week is that he represents only the registered people. I assume that is now correct.

I am told that at the time of the first hearing Mr Solomon was dealing with people who were registered and unregistered. The supervisor's view is that he has a responsibility to all of the people who believe they have an equity in those companies. I understand that he has proposed that funds be put into an independent trust account until the court makes a determination. That is the proper thing to do. The supervisor would not be doing his job properly if he were to pay out those funds to these other people, and then expect the unregistered people to start suing for the money. I am prepared to leave this to the courts and to the supervisor. If Solomon thinks all those people are wrong and he is right, so be it. At the end of day, as far as I am concerned, all the proper processes have been adhered to. There is no mystery about this, except that a lot of allegations have been made by a number of different people, some of which are untrue.

Point of Order

Mr KOBELKE: The minister quoted from what appeared to be a three-page document. Can the minister table that document?

The SPEAKER: The standing orders indicate that if official documents are being used, the minister should table them. However, if they are the minister's notes, there is no requirement.

Mr SHAVE: They are notes. They are a response to Solomon's view. A ministry officer has forwarded them to me. I do not mind tabling them. There will possibly be further dispute between Solomon and the legal views of the ministry. There is no mystery attached to this document. If people want to read the view of the department they can have it.

Mrs Edwardes: Are they official papers?

Mr SHAVE: No, they are not official papers.

The SPEAKER: If they are not official papers, that is the end of it.