

# **FINANCE BROKERS SUPERVISORY BOARD**

## **ANNUAL REPORT**

**1 JULY 2001**

**to**

**30 JUNE 2002**

**The Hon. John Kobelke, MLA**  
**MINISTER FOR CONSUMER AND EMPLOYMENT**  
**PROTECTION; TRAINING**

In accordance with section 86(1) of the *Finance Brokers Act (WA) 1975* I hereby submit for your information the Annual Report of the Finance Brokers Supervisory Board for the year ended 30 June 2002.

**Chairman**  
**Peter Jooste QC**

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## STATEMENT FROM THE CHAIRMAN

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As Chairman of the Finance Brokers Supervisory Board, I am pleased to present the Board's Annual Report for the period 1 July 2001 to 30 June 2002.

For the Board, the most significant occurrence of the year was the Royal Commission into the Finance Broking Industry. The Minister for Consumer and Employment Protection tabled the Report of the Commission in Parliament in February of this year.

The primary recommendation of the Report was for the repeal of the *Finance Brokers Control Act 1975 (WA)*. The State Government gave 'in principle' support to the recommendation, subject to there being adequate protection provided for the public. The Minister for Consumer and Employment protection has requested that the areas of mortgage origination and non-pooled loans be included within the regulations administered by the Commonwealth Australian Securities and Investments Commission. However, the Commonwealth Government has not responded favourably to this proposition. Therefore the Minister recently announced that new State legislation will be enacted to regulate that part of the finance broking industry not covered by existing Commonwealth legislation.

With the repeal of the Act will come the dissolution of the Finance Brokers Supervisory Board. The Board is making provisions for an orderly termination of its functions and a smooth transition to whatever regime is enacted upon its cessation. However, whilst the Act remains in place the Board will continue to vigorously enforce the legislation as is its statutory duty, until Parliament directs otherwise.

Accordingly, the Board continues to receive and investigate complaints, hold Inquiries and generally enforce the provisions of the Act. As a result of Inquiries conducted this year, Global Finance Group Pty Ltd, Rowena Nominees Pty Ltd (trading as Grubb Finance) and Knightsbridge Finance Pty Ltd were each permanently disqualified from holding finance brokers' Licences. Other Inquiries continue including Inquiries against several brokers named in the Royal Commission. Upon repeal of the current legislation the Board understands it will continue to function for the purpose of concluding any Inquiries commenced but not completed at that time.

Over the past two years this Board has endeavoured to create policies and set standards to provide protection for the public and enhance the professionalism of the finance broking industry. It has been the objective of the Board that finance brokers entering the industry do so with adequate knowledge and experience of the industry and of their obligations under the legislation, and that the Board's supervisory and enforcement roles are carried out efficiently, promptly and fairly. The Board has also promoted information via its newsletters and website to better educate the industry and the public regarding their respective responsibilities and obligations. It is hoped that these standards will be maintained in the regulatory regime established to replace the Board.

On behalf of all members of the Board I express sincere appreciation to all those who have provided the valuable assistance which has enabled the Board to carry out its functions. I also thank my fellow Board Members and their deputies for their hard work and dedication throughout the year.

Peter Jooste QC  
Chairman

## 1. Members of the Board

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The Finance Brokers Supervisory Board is appointed pursuant to the *Finance Brokers Control Act 1975* (the Act).

Mr Peter Jooste QC was appointed pursuant to section 7(1)(a) of the Act as Chairman of the Board in September 2000. Mr Jooste is a Queens Counsel and practises as a barrister, principally in the areas of corporate and commercial law. Mr Grahame Young is the appointed deputy to Mr Jooste. Mr Young is a lawyer with more than 30 years experience in corporate, commercial and property law.

Ms Barbara Gordon (a legal practitioner) and Mr Keith Lingard (a person experienced in commercial practice) were appointed as members of the Board in November 2000. Ms Gordon is admitted as a practitioner of the Supreme Court of Western Australia and is a Lecturer in corporations law at the University of Western Australia. Mr Lingard is a Fellow of the Institute of Chartered Accountants in Australia.

Mrs Shelley Whitaker is the appointed deputy to Ms Gordon. Mrs Whitaker is a legal practitioner who has worked for many years in financial services consulting. Mr David Liggins is the appointed deputy for Mr Lingard. Mr Liggins is a private consultant who is a licensed valuer and real estate agent, and a Fellow of the Australian Property Institute.

The remaining two positions on the Board are filled by persons who are licensed finance brokers and were elected for appointment by licensed finance brokers. Mr Lindsay Timms and Mrs Janet Lockett were appointed to the Board as Industry Representatives pursuant to section 7(1)(d) of the Act in October 2001. Mr Jeffrey Colley was appointed to the Board as Deputy Member to Mr Timms in October 2001. Mr Colley is also a licensed finance broker.

### Responsibilities

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The Board's key responsibilities as enacted by the *Finance Brokers Control Act 1975 (WA)* are to:

- consider applications and grant licences to qualified applicants;
- consider applications and grant business certificates to industry participants;
- approve a Code of Conduct<sup>1</sup> for finance brokers;
- fix maximum levels of remuneration for services rendered by licensees;
- ensure compliance with and enforcement of any special conditions on licences and business certificates, with the Code of Conduct for finance brokers, and with the *Finance Brokers Control Act 1975 (WA)*,
- conduct disciplinary proceedings, hold Inquiries into the conduct of finance brokers and, when necessary, impose disciplinary penalties; and
- report annually to the Minister on the activities of the Board.

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<sup>1</sup> The current versions of the Code of Conduct and the Maximum Remuneration Schedule are available on the Board's website at [www.financebrokers.wa.gov.au](http://www.financebrokers.wa.gov.au).

## Objectives

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In fulfilling its functions under the Act, the Board's key objectives are to ensure that licensees:

- are fit and proper persons to hold such licences and business certificates;
- enter the industry with adequate financial resources to carry on business in compliance with the Act and with adequate knowledge and experience of the industry;
- inform themselves about their duties and obligations under the Act, Regulations and Code of Conduct;
- conduct finance broking activities in accordance with the Act and adhere to the Code of Conduct;
- provide financial services that are appropriately and accurately described and/or advertised;
- behave in a way that is neither deceptive nor misleading;
- provide accurate and fair information about the terms of, and security offered for, loans;
- advise those who use their services about their responsibilities and obligations under any agreement negotiated by the finance broker;
- maintain trust accounts and have trust accounts audited in accordance with appropriate standards;
- provide protection for those who use their services by maintaining a current fidelity bond or bank guarantee if the licensee also holds a business certificate;
- provide protection to those who use their services by maintaining professional indemnity insurance if an unrestricted business certificate is held; and
- are treated fairly and equitably in any disciplinary procedures, together with all other parties.

### ***Meetings of the Board***

In accordance with section 9 of the *Finance Brokers Control Act 1975*, the Board meets regularly to discharge its principal duties and responsibilities. The Board meets at least monthly to consider new licence applications, renewal applications, policy issues, compliance and enforcement matters, and to initiate Inquiries. When required, additional meetings are held to address these matters. During the year under review the Board held 17 meetings.

**Table 1: Members' Attendance at Board Meetings, 2001-2002**

<i>Member</i>	<i>Meetings attended</i>	<i>Deputy Member</i>	<i>Meetings attended</i>
Mr Peter Jooste QC (Chairman)	17	Mr Grahame Young	1
Ms Barbara Gordon	14	Ms Shelley Whitaker	3
Mr Keith Lingard	12	Mr D Liggins	14
Ms Janet Lockett	10		
Mr Lindsay Timms	10	Mr Jeffrey Colley	1

## 2. PREAMBLE

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### Regulation of Finance Brokers - Overlapping Jurisdictions

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#### ***State Regulation***

The State *Finance Brokers Control Act 1975* ("the Act") regulates the various activities of finance brokers. In general terms, the Act requires that:

- licensees are fit and proper persons;
- licensees must hold a current Business Certificate in order to be able to carry on business;
- annual audits of trust accounts are undertaken and reports submitted to the Finance Brokers Supervisory Board;
- a bond is posted by each broker who has been issued with a Business Certificate in case of defalcation; and
- brokers comply with the Finance Brokers' Code of Conduct and the Maximum Remuneration Schedule, which regulate the relationship between brokers and the parties to loan transactions.

The Finance Brokers Supervisory Board is responsible for administering the licensing, compliance and disciplinary provisions of the Act.

In February 2002 the Report of the Temby Royal Commission was tabled in Parliament by the Hon John Kobelke, Minister for Consumer and Employment Protection. The Report recommended that the *Finance Brokers Control Act (WA) 1975* be repealed. The State Government has endorsed this recommendation subject to the Commonwealth Government providing adequate protection for the Western Australian public.

The Board is aware that repealing the Act may take some time and that it has a responsibility to enforce the Act whilst it is still operational. Thus the Board will continue with all statutory functions until the Parliament determines otherwise. Further details in relation to the Royal Commission are covered later in this Annual Report.

#### ***Commonwealth Regulation***

Finance brokers involved in the promotion of pooled mortgages are regulated under the Corporations Act 2001 (Cth) and related legislation administered by the Australian Securities and Investments Commission (ASIC).

On July 1, 1998, a comprehensive regulatory framework for managed investment schemes became law with the introduction of Chapter 5C of the then Corporations Law. This regime adopted into the Corporations Act 2001 (Cth), regulates finance brokers who operate managed investment schemes with more than 20 members, or who are in the business of promoting pooled mortgage schemes (irrespective of the number of members).



The regime requires finance brokers who manage regulated investment schemes to:

- be a public company;
- be licensed by ASIC;
- issue a prospectus for each scheme; and
- register the investment scheme with ASIC.

Although the *Managed Investments Act 1998* came into effect from July 1, 1998, ASIC's enforcement of the provisions commenced later, towards December 1999.

### ***Financial Services Reform Act 2001***

The *Financial Services Reform Act 2001* (Commonwealth legislation) is an Act that amends Parts 7.6 to 7.8 of the *Corporations Act 2001* (Cwth). These parts refer to the law relating to financial services and markets. The Act passed through both Houses of the Parliament on 23 August 2001 and became operative from the 11 March 2002.

The FSR Act provides a legislative framework through which the Australian Securities and Investments Commission (ASIC) licence and regulate entities providing financial products and advice. Any entity carrying on a financial services business is now required to hold an Australian financial services licence. Failure to comply is an offence that attracts a penalty of up to \$220,000 and/or 2 years' imprisonment for individuals. It is understood that the entities affected by the Act have approximately two years to "transition" into and comply with its requirements.

ASIC have advised that the broking of single private lender loans and the operations of mortgage originators are not necessarily covered under the *Financial Services Reform Act 2001*. Brokers conducting these operations remain under the jurisdiction of the *Finance Brokers Control Act 1975 (WA)*, as do those brokers broking private lender loans.

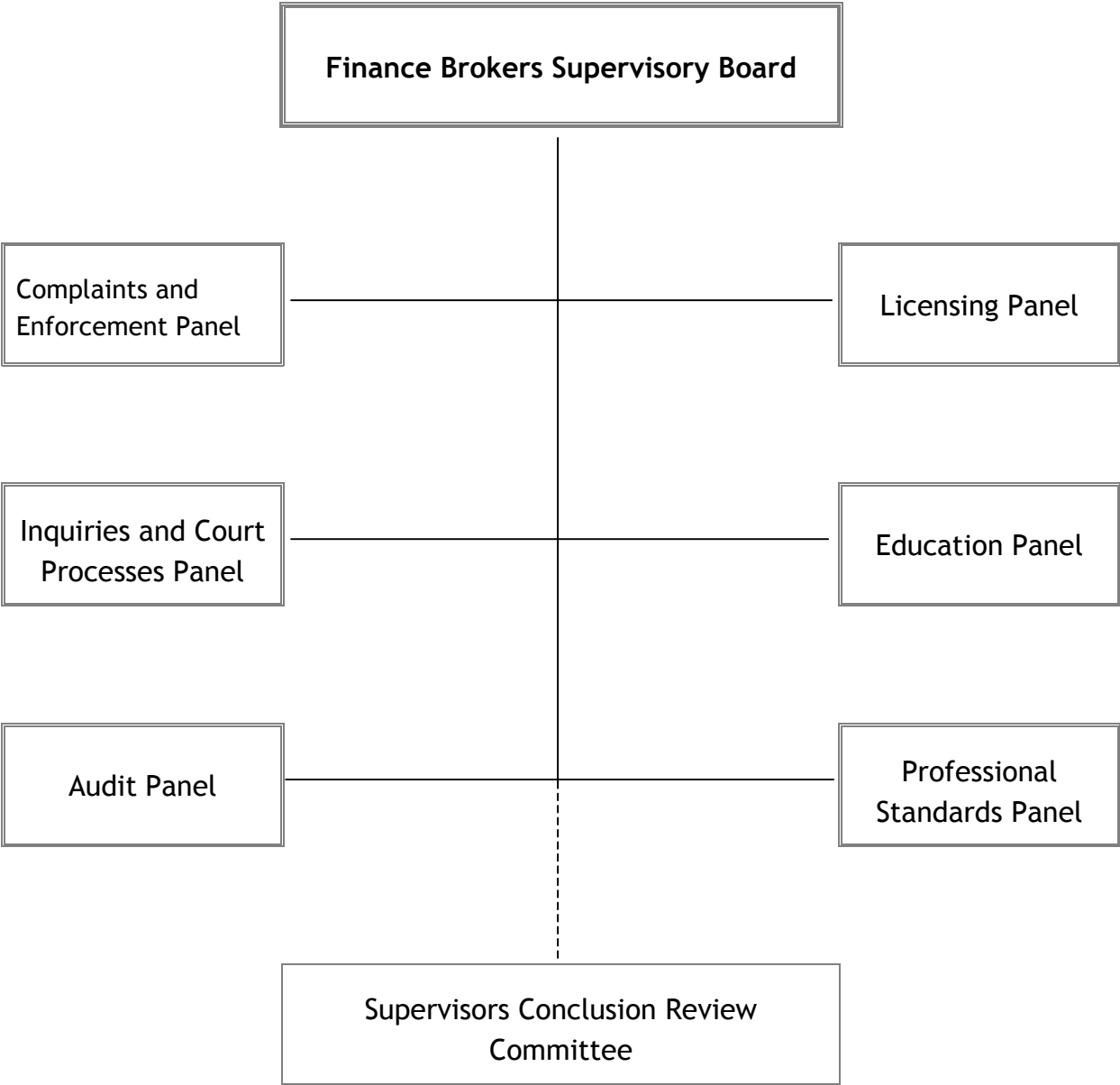
The Board and the Department of Consumer and Employment Protection are monitoring the progress of the Financial Services Reform Act, and assessing its impact on State regulation of finance brokers.

### **Panels of the Board**

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As was reported in last year's annual report, the Board established a number of panels to cover the ambit of its responsibilities in relation to complaints, inquiries, audits, licensing requirements, professional standards and compliance and enforcement within the finance broking industry. The panels have made considerable progress in accomplishing their objectives in the past year and have enabled Board members to critically examine specific issues and provide the full Board with specific recommendations and expert advice in appropriate instances.

**Panels of the Finance Brokers Supervisory Board**



## Transition to the New Regime

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The Board intends to implement its processes such that they will merge neatly into the new regulatory regime. For example, the licensing process is being streamlined so that transfer to the new registration system occurs smoothly. The Board will also have input into the development of a new Code of Conduct for finance brokers to be administered under the new legislation.

All other aspects of the Board's work will continue as normal during the transitional period. The Board continues to hold Inquiry Hearings into allegations of breaches of the legislation and to investigate instances of unlicensed broking. The Minister has advised that the current licensing practices of the Board (more often than not with conditions) are consistent with the approach that the State Government intends to take in the future and so the Board continues to grant licenses to qualified Licence applicants.

## Mortgage Originators

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Although many finance intermediaries do not handle investor funds they still fall within the definition of "finance broker" as contained in the *Finance Brokers Control Act 1975* in that they are involved in *arranging or negotiating loans*.

The Board recognises that the operation of a mortgage originator is quite different to that of a broker dealing in the private mortgage investment market. However, section 26 of the Act requires that anyone carrying on business as a finance broker must hold a finance broker's licence and a current Business Certificate.

Finance intermediaries who are operating as contractors, agents or franchisees of a licensed finance aggregator are not, for the purposes of the Act, as a general rule considered to be in the employ of and under the *bona fide* control of the licensed aggregator. These contractors, agents and franchisees are accordingly required to be licensed in their own right and to hold current Business Certificates.

The Board is keen to ensure that those who operate in the industry are appropriately qualified and licensed. Not only does this enhance consumer protection, it also promotes professionalism within the industry. The Board endeavours to ensure appropriate consultation with the peak industry organisations in the formulation and implementation of its policies and in the fulfillment of its supervisory role.

### 3. Output Structure

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Outputs are the services provided by the Board to the Western Australian community. They align with the State Government's Output Based Management regime. Outputs, which are aimed at achieving the Board's objectives, largely fall into two output areas:

- the Business Regulation Output Area, and
- the Community Interests Output Area.

These output areas reflect an output structure aligned with the objectives of the Department of Consumer and Employment Protection and within the parameters set by the WA Department of Treasury under the Department's resource agreement.

In addition to providing services to the community in the form of outputs, the Board's current Business Plan includes a number of developmental initiatives. The aim of these initiatives is to improve the quality of services and, therefore the quality of outputs, particularly as recommended in the *Report of the Gunning Committee of Inquiry into the Finance Brokers Supervisory Board* and highlighted in the *Report of the Royal Commission into the Finance Broking Industry*.

#### ***Elements of Output Area 1: Business Regulation***

- Licensing Services (see section 4 of this report)
- General Compliance Program (see section 5)
- Financial Compliance Program (see section 6)

#### ***Elements of Output Area 2: Community Interests***

- Information/Education Program for Industry (see section 8)
- Information/Education Program for the Community (see section 8)

## 4. Licensing Services

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### Ongoing Activities

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The Business Plan of the Finance Brokers Supervisory Board identifies the key activities related to providing licensing services as:

- receipt and processing of applications for new licences and Business Certificates, and applications for renewal of Business Certificates;
- assessment of qualifications, experience and financial situation of applicants for licenses, Business Certificates and exceptions;
- inclusion of appropriate conditions on licenses and certificates
- maintenance of licensing databases; and
- consideration of regular reports on licensing and compliance matters and determination of appropriate action.

### *Licence and Business Certificates: Applications and Renewals*

In the past year the Licensing Panel has interviewed all applicants for new licenses as well as considered documentation provided by the applicants and checks carried out by officers of the Board. Applications for renewal of Business Certificates were generally determined on the basis of documentary evidence without a mandatory requirement for an interview.

**Table 2: Occupational Licensing - Year End Totals, 3 Year Trend**

	<i>Current at 30 June 1999</i>	<i>Current at 30 June 2000</i>	<i>Current at 30 June 2001</i>	<i>Current at 30 June 2002</i>
number of licenses*	438	438	456	535
number of business certificates	156	150	144	160

\* **Note:** Subject to the Act and to the issue of a Business Certificate, or payment of a holding fee every three years, a finance broker's licence is continuous. However, a licence does not confer on a licensee the right to carry on business as a finance broker unless a Business Certificate is issued in respect of the licence. Licensees who do not hold Business Certificates may not carry on business as finance brokers, however they may be in the employ of a licensed broker who holds a Business Certificate.

Upon termination of a Business Certificate the Board requires a termination audit for the relevant part of the year during which the finance broker was operating. The Board also requests those who had operated under Unrestricted Business Certificates to provide information about any arrangements they have made for ongoing management of their loan portfolios.

Eight (8) finance brokers surrendered their Business Certificates to the Board during 2001-2002.

Licensing data for the financial year reveals an increase of 79 in the number of licensed finance brokers and an increase of 16 in the number of licensed finance brokers holding current Business Certificates.

**Table 3: Occupational Licensing - Applications & Renewals, 4 Year Trend**

<b>Applications</b>	<b>Approved</b>				<b>Refused</b>			
	<b>98-99</b>	<b>99-00</b>	<b>00-01</b>	<b>01-02</b>	<b>98-99</b>	<b>99-00</b>	<b>00-01</b>	<b>01-02</b>
New Licences	65	41	43	79	0	1	0	1
New Business Certificates	21	14	14	16	0	0	0	0
Renewal of Business Certificates	25	35	43	22	0	0	0	1

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### **Developmental Activities**

The Board has identified the following areas as priorities for review and development in relation to providing licensing services:

- further development of a Licensing Procedures Manual to guide all aspects of the licensing process and staff training in relation to licensing procedures
- development of a proposal to the Minister for Consumer and Employment Protection to grant an exception to that class of finance broker currently in possession of a licence issued by ASIC under section 780 of the Corporations Act 2001
- development of a proposal to the Minister for Consumer and Employment Protection to grant an exception to that class of finance broker eligible for a Restricted licence (subject to specific conditions), being part of a process in line with the Board's desire for an orderly cessation to its licensing function and substantially seamless transition to any new regime
- reinforcement of its "panel" approach
- database development

### **Licensing Panel**

During 2000-2001 the Board established a Licensing Panel comprising a member of the Board, the Registrar and other appropriate officers of the Board. The Licensing Panel interviews each applicant for a finance broker's licence and makes recommendations regarding the grant of such licenses to the Board. When interviewing applicants the Panel ensures that the applicant has appropriate experience and qualifications and is well informed about the duties and responsibilities imposed on finance brokers by the Act, Regulations, Code of Conduct and Scale of Fees. The Panel also considered other issues, particularly statutory requirements related to the granting of Licenses or Business Certificates to finance brokers.

The key objectives of the Licensing Panel are to ensure that:

- applicants are fit and proper persons to hold finance brokers' licenses and Business Certificates;
- applicants enter the industry with adequate financial resources to carry on business in compliance with the Act and with adequate knowledge and/or experience of the industry; and
- applicants inform themselves about their duties and obligations under the Act, Regulations, Code of Conduct and Scale of Fees.

The Licensing Panel met on 17 occasions during the financial year.

In an effort to improve its quality of service the Board has recently implemented a new procedure for processing licence applications and renewals. This procedure maintains the high level of scrutiny of applicants but will reduce the need for the Panel to interview every new applicant. The new procedure should significantly reduce the amount of time it takes to assess and process applications.

### ***Licensing Policies: Granting of Exceptions***

In light of the recommendation of the Temby Royal Commission for the repeal of the Act, the Board Members believe that a key factor to an orderly and prompt winding up of their regulatory role is the transition of the licensing function towards the new regime.

To achieve this outcome the Board proposed to the Minister an approach that involved granting exceptions under section 5(2) of the Act to the following classes of finance broker:

- those finance brokers currently in possession of a licence issued by ASIC under section 780 of the Corporations Act 2001; and
- those finance brokers eligible for a Restricted licence (mainly mortgage originators/intermediaries).

The Board believed that section 5(2) of the Act could be utilised to address the inevitable tension between the continuation of licensing with the orderly wind up of the licensing system itself and the transition to any new system of regulation and protection. Under the Board's proposal, whilst the licensing regime would continue for non-restricted licence applicants, conditions attached to the grant of the class exception would in respect of potential Restricted licenses, effectively provide for an appropriate level of scrutiny and regulation over finance brokers and also provide for levels of competence and professional indemnity insurance, and code of conduct and scale of fees compliance designed for the protection of clients.

The Minister gave 'in principle' approval to the Board's proposal. However, developments in relation to the State Government's decision to introduce new legislation in relation to the finance broking industry, have prompted the Board to reconsider its proposal on exceptions.

The Board has determined that it is likely that its current licensing process can be adapted to assist in the transition to the proposed new registration system. Under the proposed new legislation, it is likely that those finance brokers eligible for a Restricted licence will be required to be registered with the Commissioner for Fair Trading. Importantly, finance brokers licensed by the Board will be automatically registered under the new system (possibly subject to certain criteria). As such, in continuing to licence finance brokers the Board is assisting those operating in the market to transition to registration under the new system.

## 5. General Compliance Program

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### Ongoing Activities

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The Business Plan of the Finance Brokers Supervisory Board includes a number of key activities related to monitoring general compliance with the requirements of the Act, the Regulations, the Code of Conduct and the Scale of Fees. These key activities include:

- investigation of complaints;
- monitoring of compliance with conditions placed on licenses;
- applications to the District Court for supervision or suspension orders when appropriate;
- formal Inquiries by the Board into matters of compliance and disciplinary penalties when required; and
- application of other compliance/enforcement actions or sanctions as appropriate.

### *Complaints Received*

Individuals wishing to make a complaint in relation to the finance broking industry can make a written complaint, either directly to the Board or through the Department of Consumer and Employment Protection. Every written complaint received by the Board is investigated by Officers of the Board and reports on those investigations are provided to and monitored by the Complaints Panel. When evidence warrants, these investigations may become the basis for District Court applications by the Board, formal Inquiries before the Board, either on application or on the Board's own motion.

In addition to investigating complaints from individuals, the Registrar of the Board may initiate investigations on behalf of the Board if there is reason to believe that a finance broker may not be acting in conformity with any special conditions attached to his/her licence and Business Certificate, or with the finance brokers' Code of Conduct or Scale of Fees. Such investigations are undertaken and, if upon report it is considered appropriate, are brought before the District Court or the Board for appropriate orders or formal Inquiry respectively.

Thus, in appropriate circumstances enforcement action for suspension or supervision of any delinquent finance brokers may be instigated under section 73 of the Act in the District Court. Under section 73, the Board may apply to the District Court for an order to suspend a broker from carrying on business as a finance broker or for their supervision. Such an application is by the Board on notice to the broker and the Court must be satisfied that there are reasonable grounds for believing that a finance broker is incapable of properly conducting business, or is not conducting business in accordance with the Act. The Board regularly monitors the potential for use of this section, so that responses to indications of delinquent conduct can be implemented as effectively and promptly as possible.

### *Number of Complaints*

This financial year has seen the first drop for three years in the number of complaints received. As can be seen from Table 4 there has previously been an upward trend in the number of complaints received about the finance broking industry. The decrease in the rate of complaints has been most noticeable since January of 2002 and most probably reflects the impact of the changes to regulation of the industry and the collapse of the pooled mortgage market. Furthermore, as noted in its previous report, the Board is of the view that the publicity surrounding the inquiries into the industry was itself significant in generating a greater level of complaints and this publicity has since abated.



**Table 4: Complaints by financial year**

Financial Year	<i>Complaints (July-Dec)</i>	<i>Complaints (Jan-June)</i>	Total Number of complaints
1995-6	14	18	32
1996-7	32	26	58
1997-8	19	25	44
1998-9	21	65	86
1999-2000	74	50	124
2000-2001	96	69	165
2001-2002	73	39	112

***Licence Holders the Source of Complaints***

Table 5 indicates the number of complaints received during 2000-2001 about finance broking activities grouped according to whether the finance broker who was the subject of the complaint held an Unrestricted or Restricted licence or was unlicensed. Brokers holding Unrestricted licenses are authorised to deal with private mortgage investments. Restricted licence holders are limited to arranging or negotiating loans (only) where the lender is a credit provider licensed under the *Credit (Administration) Act 1984* (CAA), or an entity exempted from licensing and mentioned in section 7(1) of the CAA, such as banks. Arguably the Restricted brokers in the category pose reduced threats to lenders interests, but could for instance pose threats to borrowers interests.

**Table 5: Complaints received during 2000-2001 categorised according to the licenses held by the brokers**

The 112 complaints in respect of finance broking received during 2001-2002, related to the activities of 92 finance brokers. These have been categorised as follows:

<i>Licence type</i>	<i>No of brokers against whom complaints were lodged</i>	<i>% of brokers</i>
Unrestricted licence holders	19	21%
Restricted licence holders	24	26%
Unlicensed (mainly Mortgage Originators)	47	51%
Exception holders	2	2%
<b>Total</b>	<b>92</b>	<b>100%</b>

Of the 112 complaints, only 12 pertained to key finance broking entities, which were the subject of investigation by the Temby Royal Commission. The previous year the number was 89.

Although a significant number of complaints related to unrestricted finance brokers, many of these involved brokers central to the collapse of the pooled mortgage market and most of these have had their licenses suspended or have been disqualified by the Board. Forty seven complaints pertained to persons or entities allegedly trading as finance brokers without holding the required licence. Of these, the majority related to allegations against persons or entities that carry on business as mortgage originators.

The Board remains of the view that mortgage origination and similar activities are encompassed by the meaning of “finance broker” under section 4 of the *Finance Brokers Control Act 1975*, and as such, they are required to be licensed. Compliance and enforcement actions were implemented in relation to the activities of unlicensed mortgage originators and this has resulted in a steady increase in the number of licence applications.

### ***Sources of Complaints***

Complaints are received from members of the community and are also raised by the Registrar of the Finance Brokers Supervisory Board. Complaints raised by the Registrar are generally as a result of monitoring compliance with the requirements of the *Finance Brokers Control Act 1975*. Table 6 indicates the number and proportion of complaints received from these two discrete sources.

**Table 6: Sources of complaints received by the Board during 2001-2002**

<i>source</i>	<i>no. of complaints</i>	<i>% of complaints</i>
Complaints raised by the Registrar	36	32
Complaints received from the general community	76	68
<b>Total</b>	<b>112</b>	<b>100</b>

During 2001-2002, 76 complaints were received from the general community both from consumers and industry licensees. The consumer complaints primarily related to service delivery issues or the level of fees charged. The complaints from industry members were generally allegations about unlicensed finance broking (in the main Mortgage Originators). Thirty six complaints were raised by the Registrar and most of these related to the activities of unlicensed finance brokers identified from consumer complaints and other information coming to the Board.

### ***Disciplinary Inquiries***

The Board has a disciplinary function pursuant to the *Finance Brokers Control Act 1975*. As such, it holds formal Inquiries to hear allegations of improper or delinquent conduct on the part of finance brokers. The matters heard generally are based on complaints received by the Board, but many arise from “in person applicants” or on the Board’s own motion.

During 2001-2002 the Board approved seventeen (17) new Disciplinary Inquiries and concluded seventeen (17), some of which were commenced in preceding years. Eight (8) of these Inquiries were withdrawn because they related to one finance broker, Mr Leon K Jamieson who consented to a permanent disqualification in relation to a ninth Inquiry.

As a result of other Inquiries two other finance brokers were permanently disqualified from holding finance brokers' licenses, another individual and his company were disqualified from holding a finance broker's licence for three years and one other until further order of the Board. Details of the outcome of these Inquiries are included as **Appendix A** to this Report.

Twenty four (24) Inquiries were before the Board at 30 June 2002. A number of matters were initially heard by the Board but were adjourned pending the outcome of other proceedings in the criminal jurisdiction of the Courts or because of other disciplinary Inquiries. Details of these matters are included in **Appendix B**.

Despite approving applications for Inquiry, the Board did not proceed to hear a number of these matters. In each of these cases the finance broker concerned had received a maximum penalty from the Board in respect of another matter, and was permanently disqualified from holding a finance broker's licence. As such, there was nothing additional the Board could impose by way of sanction on the brokers.

### **Developmental Activities**

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The Board identified the following areas as priorities for review and development in the general compliance program:

- enhanced protocols for the operations of the Complaints and Enforcement Panel, by providing the panel with the authority to close investigations files on behalf of the Board;
- the development and training of compliance staff; (e.g., Board investigation staff attended the training program "*Certificate IV in Statutory Investigation*", offered by the Department of Consumer and Employment Protection).

### **Compliance Strategy**

To meet its objectives the Board has overseen programs designed to ensure industry compliance with:

- the general requirements of the Finance Brokers Control Act 1975, the Regulations and Scale of Fees;
- the articles in the Code of Conduct for finance brokers approved by the Board under section 81 of the Act; and
- general conditions placed on licenses or Business Certificates pursuant to section 34 of the Act.

The Board's general compliance program includes both reactive and proactive elements and is based on three types of activities:

- taking remedial action by investigating complaints and allegations of breaches of the Act, Regulations, Scale of Fees, Code or conditions on licenses, imposing sanctions when such action is warranted and taking court action when appropriate;
- monitoring compliance by checking that brokers are meeting the regulatory requirements; and
- encouraging compliance by providing information to brokers and their clients, and reminding brokers of their obligations.

As a part of its compliance strategy the Board has used graded criteria to assess the relative priority of investigating complaints and allegations of misconduct. Priority assessments have no relationship to the quality of investigations that are carried out. Rather they are used as a tool for directing the resources of the Board to best advantage. The relative priority of taking action on a matter is based on an assessment of:

- the potential impact of the matter;
- the background and history of the broker involved; and
- other factors such as current actions by other authorities or indications of possible systemic problems in the industry.

### ***Complaints and Enforcement Panel***

The Board's Complaints and Enforcement Panel operates in support of the full Board to oversee the investigation of complaints and other matters of interest to the Board. As complaints are received they are categorised to distinguish between unlicensed finance broking, misrepresentation and improper conduct, so that the Panel can prioritise investigations and note the development of any systemic trends or problems.

The Panel's name (formerly Complaints Panel) and responsibility was changed by the Board in January of 2002 to reflect a greater emphasis by the Board for the ongoing management of investigation and enforcement work. The panel met on 12 occasions this financial year and the considerable progress in reducing the number of incomplete investigations can be attributed in great part to the work of the panel.

### ***Cooperation with Police Service***

Regular contact between Inspectors of the Board and Officers of the Major Fraud Squad has been maintained. The Board notes the reports to it indicate that mutual cooperation has resulted in the initiation of a number of Inquiries before the Board. Furthermore the Board's Officers have been able to provide the Police Service with information which has supported several criminal investigations.

The Board believes that continued and improved levels of cooperation between Government agencies are essential to the success of an industry regulatory system.

### ***Cooperation with ASIC***

The Board through the Department of Consumer and Employment Protection has a memorandum of understanding with the Australian Securities and Investments Commission.

The Board has actively encouraged co-operation between the agencies to enhance regulation of common areas of concern in the finance broking industry and has supported efforts to formalise this relationship. Consistent with this Board Officers have met with ASIC staff on several occasions to progress matters of mutual interest, in particular, matters relating to Geraldton Finance Company Pty Ltd and to a product which was being marketed to self funded retirees, namely "mezzanine finance". In addition, the Board notes the provision to the Commissioner for Fair Trading of information to support a warning that was issued in this regard by the Commissioner through the media.

### ***Appointment of Supervisors***

Within the provisions of the *Finance Brokers Control Act 1975* the District Court can, under certain circumstances, authorize the Board to appoint a Supervisor to the business of a finance broker. The role of a Supervisor as set out in section 75 of the Act is such that:

*The supervisor shall 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...*

During 1999 the Board appointed Supervisors to Global Finance Pty Ltd and Rowena Nominees Pty Ltd (trading as Graeme Grubb Finance Broker). In 2001 the Board appointed a Supervisor to Knightsbridge Finance Pty Ltd and in 2002 the Board appointed a Supervisor to Geraldton Finance Pty Ltd Company Pty Ltd. The Board has received funding from the State Government to support the respective Supervisors' activities.

### ***Supervisors' Conclusion Review Committee***

In August 2001, the Supreme Court handed down a decision in a case involving the Supervisor of Grubb Finance, Mr Mark Conlan of RSM Bird Cameron. In this decision, the Court considered that Supervisors appointed under the *Finance Brokers Control Act 1975* have a limited role.

Consequently, in September 2001 the Board convened a committee of persons with expertise in law, accounting and public policy to review the appointment of the Supervisors and make recommendations to the Board, with the Board making any final decisions as to when the appointments of Supervisors would be varied or terminated.

The Committee initially requested that the Supervisors provide the Committee with specific information about their ongoing activities as Supervisor and any further planned activities in that role. All three Supervisors appointed prior to 2002 subsequently advised that, generally and subject to any specific Court orders, their ongoing activities could be carried out by the respective Liquidators.

### ***Rowena Nominees (trading as Graeme Grubb Finance Broker)***

Mr Mark Conlan of RSM Bird Cameron is the appointed Supervisor of Grubb Finance. Mr Conlan is also the appointed Liquidator of Grubb Finance under Federal legislation. Following his appointments, Mr Conlan identified a range of deficient management practices, which raised conflicting legal arguments as to the potential entitlements of investors and borrowers.

Consequently, the Court issued interim orders to enable Mr Conlan to perform his duties while protecting the interest of investors generally. Mr Conlan subsequently referred a number of matters to the Court seeking directions and, in an attempt to simplify the process, in October 2000 the Court heard matters relating to one investment, that being the Hardie Development project.

In August 2001 the Supreme Court handed down its judgement in this matter. In short, the Court found that:

- based on the doctrine of indefeasibility of title, mortgage entitlements should be distributed to registered mortgagees;
- unregistered mortgagees have recourse to any funds in the trust account; and
- Supervisors have a limited role under the Act.

Since August 2001 approximately \$19 million has been distributed to registered mortgagees in accordance with Justice Owen's decision.

As noted above, following the Court's decision the Board convened a Committee to review the ongoing activities of the Supervisors. Mr Conlan advised the Committee that generally and subject to any specific Court orders, his ongoing activities could be carried out in his capacity as Liquidator.

Since that time, the Board has directed Mr Conlan to extricate himself, as Supervisor, from a number of ongoing activities. As at 30 June 2002 the work of the Supervisor was under review to ensure an orderly and timely completion to his appointment.

### ***Global Finance Pty Ltd***

Mr Jeff Herbert of PPB Ashton Read has been the appointed Supervisor of Global Finance. Mr Herbert is also one of the joint Liquidators appointed to Global Finance under Federal legislation. Mr Herbert identified a number of issues, including the mixing of trust funds amongst separate project accounts, which raised complex legal questions as to the entitlements of investors and borrowers.

Consequently, following consultations with the Global Investors Coordinating Committee and lawyers representing certain investors, Mr Herbert sought directions from the Supreme Court as to the distribution of over \$15 million in trust funds and other assets. At the direction of the Court, Mr Herbert developed a draft model for the distribution of these assets. The Court also invited person(s) who did not agree with this model to submit alternative models.

In September 2001 the Court heard arguments regarding the distribution of the trust funds and other assets. However, at the conclusion of those proceedings the Court reserved its decision pending receipt of a further analysis of the funds held in Global's trust account at 19 February 1999.

Following the receipt of this analysis, on 5 April 2002 the Court handed down its reasons for decision, which substantially accepted Mr Herbert's recommendations for the calculation of investors' and borrowers' entitlements to the trust funds and other assets held by Global. At 30 June 2002, binding orders were yet to be extracted from the Court, and the Board continued to monitor the Supervisor's activity to ensure an orderly and timely completion to his appointment.

Following Court Orders in August 2002 giving effect to its reasons for decision, Mr Herbert advised the Board that there were no outstanding legal or accounting matters to be addressed by him in his capacity as Supervisor that could not be addressed by him in his continuing capacity as Liquidator.

The Board subsequently prepared an application to the District Court seeking authorisation to conclude the Supervisor's appointment. Following Court approval, the Board concluded the Supervisor's appointment in November 2002.

### ***Knightsbridge Finance Pty Ltd***

In February 2001 the Board appointed Mr Robert Dymock, an appropriately qualified Officer of the Board, to the position of Supervisor to Knightsbridge Finance Pty Ltd. Under Federal legislation, a separate Liquidator was also appointed to the company. As such, the Board worked closely with the Australian Securities and Investment Commission (ASIC) in order to ensure that the interests of the investors were protected.

Under the Commonwealth *Corporations Act 2001*, ASIC made an application to the Supreme Court to appoint a Scheme Liquidator to the Knightsbridge Finance Mortgage Scheme (the managed investment scheme). The Court approved this application in December 2001.

Following the appointment of the Scheme Liquidator to the Knightsbridge Finance Mortgage Scheme, the Supervisor reported to the Board that the majority of the remaining loans had effectively been removed from his control. The Supervisor also noted that the Court Orders appointing the Scheme Liquidator provided for mortgagee management committees that would give investors extensive power to direct the liquidation process.

The Board subsequently resolved that an application to the District Court be prepared seeking authorisation to conclude the appointment of the Supervisor and, following Court approval, in April 2002 the Board concluded the Supervisor's appointment.

During the tenure of his appointment the Supervisor successfully reduced the loan portfolio from 169 loans totalling approximately \$88 million to 42 loans totalling approximately \$17 million at the time the Scheme Liquidator was appointed in December 2001. Mr Dymock also facilitated the distribution of trust funds totalling approximately \$8 million to investors.

### ***Geraldton Finance Company Pty Ltd***

On 1 July 2002 Mr Leo McManus, an appropriately qualified Officer of the Board, was appointed Supervisor to Geraldton Finance Company Pty Ltd.

Since his appointment, the Supervisor has held meetings with investor groups to inform them of the status of their loans. In addition, he has encouraged investors to form committees to take control of their loans and decide how they should be managed in the future.

The Supervisor keeps the Board regularly informed as to his progress in concluding or disposing of matters commenced but not concluded on behalf of investors and borrowers with Geraldton Finance Company Pty Ltd.

## 6. Financial Compliance

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### Ongoing Activities

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Following on from last year, the Board has retained its focus on a number of ongoing activities aimed at ensuring compliance with the financial requirements of the *Finance Brokers Control Act (1975)*. These activities include:

#### **Monitoring of audit reports of finance brokers and promotion of best practice in auditing of finance brokers' trust accounts.**

In accordance with Part IV of the *Finance Brokers Control Act 1975*, all finance brokers and finance broking entities with current Business Certificates were required to provide a trust account audit for the year ended 31 December 2001. There were 19 audit reports and 124 statutory declarations received from finance brokers for the period ending 31 December 2001.

Whilst the statutory declaration affords retrospective compliance with *Section 66* of the *Act* for brokers who have not handled any trust funds in the preceding year, in December 2001 the Board introduced a policy making it a requirement that an auditor affirm in writing the declaration of a nil balance in a trust account<sup>2</sup>.

Implementation of this requirement prompted the Board to review its' policy in relation to trust accounts where *Section 48 (1)* of the *Act* requires every finance broker to maintain at least one trust account. In the past, the Board has applied this requirement to every licensed finance broker, whether or not they carry on business.

Following the review of the policy and the relevant sections of the *Act*, the Board now requires only those licensees who have or intend to apply for a Business Certificate to establish and maintain a trust account. A formal review of the Licensing application forms has taken place and a new Business Certificate form is to be introduced in order to implement the trust account requirement.

Following the recommendations of the Gunning Committee<sup>3</sup>, the Board has implemented a policy whereby brokers that hold a Business Certificate must provide an audit report to the Board on the 30<sup>th</sup> June and 31<sup>st</sup> December of each year that their Business Certificate remains current. This condition is being placed on new Unrestricted Business Certificates issued and upon renewal of existing Unrestricted Business Certificates. Nine finance broking entities remain to have this condition included on their Business Certificates upon renewal.

#### **Investigation of all qualified audit reports.**

During the year the Board received a qualified audit report in relation to the trust accounts of Geraldton Finance Company Pty Ltd. An investigation into the operations of Geraldton Finance was undertaken and as a result, the Board forwarded the audit report on to the Fraud Squad. Consequently, the person in bona fide control of Geraldton Finance has been charged with fraud.

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<sup>2</sup> In the Board's view provision of such a statutory declaration does not absolve the broker from the requirement to maintain a trust account so that it is available for holding any monies which may be received and are required to be held in trust during the ensuing period.

<sup>3</sup> *Report of the Gunning Committee of Inquiry into the Finance Brokers Supervisory Board*, 1 September 2001, pages 280 – 282.



A qualified audit report was also received from Cheriton Nominees. Following investigation the matter proceeded to Inquiry before the Board<sup>4</sup>.

### **Monitoring of compliance with bond or bank guarantee requirements;**

Last year, the Board introduced a program that enabled finance brokers with a Restricted Business Certificate to make application to the Board for a reduced bond or bank guarantee. Previously the required amount of surety was \$50,000, however, due to the changing nature of the industry the Board decided to reduce the level of surety required from those brokers holding Restricted Business Certificates to \$5,000 subject to the obtainment of professional indemnity insurance of not less than \$1,000,000 (one million dollars).

Applications are considered on a case by case basis. To date, approximately 60% of Restricted licence holders have taken up this option.

Furthermore, many finance broking entities who have previously operated on an Unrestricted licence and have found that their business has changed over time have also utilised this option by opting for a restriction on their licence and Business Certificate and the associated reduction in their bond or bank guarantee.

### **Monitoring of compliance with financial conditions placed on licenses and Business Certificates;**

The Board has generally imposed additional conditions and requirements on finance broking licenses, including the requirement for a current Professional Indemnity Insurance (PII) policy with a minimum coverage of \$1,000,000. The policy enables the consumer to claim compensation for incompetence or negligence from an insured finance broker.

The majority of finance broking entities now have licence conditions requiring a current professional indemnity insurance policy to be in place

### **Appointment of auditors to conduct special audits of trust accounts as necessary;**

Aside from the special audit of the trust accounts of Geraldton Finance Company Pty Ltd (FB 504), the Board approved two other special audits during the year, for Blackburne and Dixon Pty Ltd (FB 223) and Mortgage and Finance Services Ltd (FB 72). Both of these latter reports have now been received and are unqualified.

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<sup>4</sup> The Board found proper cause for disciplinary action and ordered that the person in bona fide control of Cheriton Nominees be fined and both he and Cheriton Nominees be reprimanded.

## **Developmental Activities**

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### ***Audit Panel***

During the year the Audit Panel fulfilled its key objectives by:

- reviewing all audit issues
- taking the necessary action to ensure that audit reports complied with the directions for audit issued by the Board during the previous year
- taking the necessary action to ensure that qualified audits were properly investigated
- advising the Board in respect to completed audits; and
- implementing the Board's direction in regard to special audits undertaken during the year.

The Audit Panel met on 6 occasions during the financial year.

### ***Guidelines for Auditors***

A final draft of the Guidelines for Auditors of Finance Brokers was completed and provided to the appropriate industry bodies for comment.

## 7. Disciplinary Inquiries & Court Processes

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The Board has a disciplinary function pursuant to the *Finance Brokers Control Act 1975*. As such, it holds formal Inquiries to hear allegations of improper or delinquent conduct on the part of finance brokers. The matters heard generally are based on complaints received by the Board, but may arise from “in person applicants” or on the Board’s own motion. The Board utilises its Inquiries and Court Processes Panel to ensure that Board Inquiries and Court processes are progressed in an effective, efficient and timely manner.

During 2001-2002 seventeen (17) Inquiries were approved by the Board. This included a number of Inquiries approved by the Board on its own motion. However, formal Notices were not issued to the brokers as these Inquiries were effectively overtaken by other Inquiries against the same parties. Where the Board has approved an Application for Inquiry details of such are not made public until after the respondent has been issued with a formal Notice.

As a result of Inquiries conducted during the year, Global Finance Group Pty Ltd, Rowena Nominees Pty Ltd (trading as Grubb Finance) and Knightsbridge Finance Pty Ltd were each permanently disqualified from holding finance brokers’ licenses. In addition, Mr Dennis Pearce and his company Geraldton Finance Company Pty Ltd were both disqualified from holding licenses for a three year period. A number of Inquiries were adjourned pending the outcome of criminal charges against those parties relevantly involved. In each case, the broker has either given an undertaking not to act as a finance broker, or they no longer hold a Business Certificate and, therefore, are precluded from carrying on business as a finance broker. The Board has acted to ensure that there are appropriate safeguards in place to protect the public.

At the end of the year there were twenty four (24) current Inquiries. In some cases there are multiple Inquiries against the same broker. In these instances, if the outcome of any Inquiry results in a maximum penalty against the broker then the Board will consider withdrawing the other Inquiries against that broker as there is nothing additional the Board could impose by way of sanction.

Details of concluded and current Inquiries are listed in **Appendices A and B**, respectively.

Section 73 of the *Finance Brokers Control Act 1975* provides the Board with the power to apply to the District Court for suspension of a finance broker if the Board is satisfied that there are reasonable grounds for believing that a finance broker is incapable of properly conducting his business, or is not conducting it in accordance with the Act. The Board has advised a number of mortgage originators that it will use these powers if the broker continues to conduct a finance broking business without the required licence and Business Certificate. Alternatively, the Board may issue the unlicensed broker with a Notice of Disciplinary Inquiry and a summons to attend a hearing before the Board.

The Board has an Inquiries and Court Processes Panel comprised of a number of Board members and senior Departmental staff. In summary, the role of the Panel is to ensure that disciplinary and enforcement matters are brought before the Board or the District Court in an efficient manner and that appropriate procedures are followed in relation to the principles of natural justice and procedural fairness. The Panel met on 5 occasions during the financial year.

## **8. Education and Information**

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### **Code of Conduct for Finance Brokers**

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During the year, the Board undertook a review of the Code of Conduct for Finance Brokers. The review was prompted in part from issues arising from complaints received by the Board and from issues examined by the Gunning Committee of Inquiry and the Royal Commission.

After a lengthy process involving consultation with the industry bodies a revised Code of Conduct was gazetted in December 2001. A wider review of the Code is planned and will take into account any replacement regime which may follow the Government's decision to repeal the Act.

### **Maximum Remuneration Schedule**

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In response to an urgent request from Commissioner Temby, the Board consulted with the industry bodies and amended the Maximum Remuneration Schedule of Fees for Finance Brokers. The amendment was gazetted in December 2001 and inserted a 2 percent maximum for loans above \$25,000, subject always to the provisions of the Code of Conduct. The Board is consulting with the industry to finalise a wider review of the entire Schedule.

### **Ongoing Activities**

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A number of ongoing activities were initiated in 2001 to increase community and industry awareness:

- liaison with industry organisations and members through publications and face to face meetings;
- maintaining a comprehensive source of information on the Board's website; and
- undertaking various community awareness and education programs.

### **Newsletter**

The newsletter aims to keep both the industry and investors informed about finance broking issues, including the activities of the Board and matters related to regulation of the industry. It is widely distributed, going out to all licensed finance brokers as well as industry groups, seniors organisations and community groups. Two editions of the newsletter were distributed during the financial year.

### **Website**

In April 2001 the Board launched its website. The website was developed to complement the newsletter and contains more detailed information about the Board's role and its activities. It also provides general information on finance broking issues and serves as a reference for investors, borrowers and finance brokers in Western Australia.

As well as the Register of Current Business Certificate Holders and the Register of Expired Licenses, the website contains the various forms needed to apply for a finance broker's licence. The forms can be downloaded and printed directly from the website. Some of the other features of the website include general licensing information including educational requirements, access to relevant statutory regulations, tips for investors, frequently asked questions and links to other relevant sites.

## ***Taxation Issues***

The Board worked in conjunction with the Australian Taxation Office, the Australian Securities and Investments Commission, Centrelink and the Mortgage Information Service on a range of taxation, social security and other issues affecting investors. In meetings with representatives from these organisations Board Member Keith Lingard facilitated the production of two information pamphlets printed and distributed by the Board.

## ***Seminar***

On 28 November 2001, the Board held a seminar on changes to the Finance Brokers Code of Conduct. Board Member Barbara Gordon facilitated the seminar, which was attended by 21 finance brokers.

## ***Meetings with Industry Associations***

During the year the Board held several meetings with both the Mortgage Industry Association of Australasia and the Finance Brokers Association of Australia. Issues discussed ranged from the Board's Education Policy and the licensing of mortgage originators, to the Board's proposals for the granting of class exceptions to the *Finance Brokers Control Act (WA) 1975*.

## ***Education Policy***

In September 2001 the Board undertook a review of its Education Requirements Policy.

Finance brokers are required to have an understanding of the duties and obligations imposed upon them by the *Finance Brokers Control Act 1975 (WA)*. This may not necessarily be achieved through a simple reading of the Act and the Code of Conduct, particularly for people who are inexperienced in interpreting legislation. Thus, the Board developed an education requirement policy based on its determination that the successful completion of educational courses (an empirically measurable standard) by finance brokers would ensure a reasonable level of understanding of the Act. As such, the Board resolved that the successful completion of the Certificate IV in Finance Broking would be required for the grant of a Restricted finance broker's licence, and the successful completion of the Diploma in Finance Broking would be required for the grant of an Unrestricted licence.

In December 2001, via its website and newsletter the Board advised the industry of its new policy in relation to the educational standards required for the grant of a finance broker's licence. Recognising that there were finance brokers working in the industry whose educational qualifications were not up to this standard, the Board proceeded to grant temporary Restricted licenses conditional on applicants successfully completing Finance Broking Practice 1 and 2 by 31 December 2002 and Certificate IV by 1 July 2004. From 1 January 2003 applicants for a Restricted licence will generally need to have successfully completed Finance Broking practice 1 and 2 prior to applying for a licence.

The Board believes that the results of this policy will be beneficial for both consumers and for the professional status of the operators in the industry.

## 9. Other

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### Temby Royal Commission of Inquiry into the Finance Broking Industry

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#### ***Terms of Reference***

The Terms of Reference of the Commission, announced on 8 June 2001, required the Commission “to inquire into and report on whether there have been unlawful or improper activities or practices relating to the finance broking industry in Western Australia, since 1 January 1994, as evidenced by the conduct of finance brokers, borrowers and those who provided services to them and to lenders, including but not limited to advisers, accountants, auditors, bankers, lawyers and valuers.” (paragraph 1)

In addition, the Royal Commission was required to report on whether the conduct of the relevant State regulatory authorities was, in relation to all of the above, adequate in all of the circumstances (paragraph 3). The relevant State regulatory authorities included the Finance Brokers Supervisory Board.

The Commission’s investigators reviewed complaint files and other materials of approximately ninety projects submitted by the then Ministry of Fair Trading, as illustrating the problems experienced by investors. Of these, seventeen projects were selected for examination by the Commission.

One hundred and sixty one witnesses gave evidence to the Commission. Witnesses included present and former members of the Board and officers of the Board.

The Commission opened on 20 June 2001 and delivered its report to the Governor on 21 December 2001<sup>5</sup>.

#### ***Findings***

The Commissioner found that since the Gunning Inquiry the present Board had committed itself to implementing the applicable recommendations of that Inquiry, and had adopted a diligent, focussed and strategic use of available resources.

#### ***Recommendation***

The Report made only one recommendation in relation to the regulation of the finance broking industry; that the *Finance Brokers Control Act 1975 (WA)* be repealed.

The ‘pooled mortgage component’ of the finance broking industry where losses were incurred by investors, is now regulated by the Australian Securities and Investments Commission under the *Corporations Act (Cwth) 2001*. Essentially the Commissioner did not see any necessity for specific state legislation or state government regulation of the finance broking industry in Western Australia<sup>6</sup>.

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<sup>5</sup> The Report of the Royal Commission into the Finance Broking Industry is available for viewing on the Board’s website at [www.financebrokers.wa.gov.au](http://www.financebrokers.wa.gov.au)

<sup>6</sup> The Board notes that the Minister for Consumer and Employment Protection has issued a statement in relation to the future regulation of the finance broking industry. A copy of this statement can be viewed on the Board’s website at [www.financebrokers.wa.gov.au](http://www.financebrokers.wa.gov.au).

## Civil Action against the Finance Brokers Supervisory Board

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In February 2002, approximately 1300 investors commenced an action in the Supreme Court of Western Australia against the Finance Brokers Supervisory Board ("the Board"). The investors claim to have suffered a loss as a result of investments with finance brokers Blackburne and Dixon, Bunbury Finance, Clifton Partners Finance (Knightsbridge Finance), Peter Fermanis (Trust Mortgages), First Charter Mortgages, Gamel Ward, Global Finance, Graeme Grubb Finance Broker, Leon K Jamieson, MFA Finance, Resolute Mortgage and Business Finance and JJ Moylan and Co. The action alleges negligence and misfeasance in public office by the Board and officers of the Board during the period 1990 to 1999. The action is being defended by the Board.

## Revenue and Expenditure

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The Board is not a statutory authority for the purposes of the *Financial Administration and Audit Act 1985*.

All licensing fees paid to the Board are collected and brought to account by the Department of Consumer and Employment Protection and credited to the consolidated fund at State Treasury. The costs of maintaining the operations of the Board are met from funds appropriated by Parliament for the purposes of the Department. Amounts of income and expenditure are incorporated in the accounts of the Department of Consumer and Employment Protection and are published in the Department's Annual Report.

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organizations providing services in relation to advertising, market research, polling, direct mail and media advertising. The Board has not incurred expenditure of this nature.

## Appendix A.

*Concluded Inquiries (including those Inquiries concluded after 30 June 2002 and prior to the printing of this report)*

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breaches</b>	<b>Outcome</b>
<b>2/2000</b>	Gamel Ward Pty Ltd and Mr William Gamel	<p>Alleged breach of Articles 3 &amp; 16 of the Code of Conduct (1991) — Failure to obtain a statement signed by lenders containing particulars of mortgage.</p> <p>Alleged breach of section 34(3) of the Finance Brokers Control Act 1975 (WA) (the “Act”) – Failure to comply with special conditions of licence or Business Certificate.</p>	Gamel Ward and Mr Gamel were permanently disqualified from holding a finance broker’s licence and Business Certificate. Mr Gamel was fined \$1,000 and ordered to pay costs of \$2,500.
<b>6/2000</b>	Mr Peter Fermanis	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not Acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p> <p>Alleged breach of Article 16 of the Code of Conduct (1991)—Failure to obtain a statement signed by lenders containing specified particulars.</p>	Withdrawn on the basis that Mr Fermanis was permanently disqualified from holding a finance broker’s licence as a result of Inquiry 5 of 2000 concluded in March 2001.
<b>7/2000</b>	Mr Peter Fermanis	<p>Alleged breach of Article 15 of the Code of Conduct (1991)—harsh or unconscionable conduct.</p> <p>Alleged breach of Article 16 of the Code of Conduct (1991)—Failure to obtain a statement signed by lenders containing specified particulars.</p>	Withdrawn on the basis that Mr Fermanis was permanently disqualified from holding a finance broker’s licence as a result of Inquiry 5 of 2000 concluded in March 2001.



<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breaches</b>	<b>Outcome</b>
<b>8/2000</b>	Mr Oliver Douglas	<p>Alleged breach of sections 26(1) &amp; 34(3) of the Finance Brokers Control Act 1975 — Conducting business without a current Business Certificate and failure to adhere to conditions of licence.</p> <p>Alleged breach of section 48 of the Finance Brokers Control Act 1975 — Failure to record receipt of funds in trust account.</p> <p>Alleged breach of Article 14 of the Code of Conduct (1991)—Failure to provide lenders with a written statement setting out specified information.</p> <p>Alleged breach of Article 16 of the Code of Conduct (1991)—Failure to obtain a statement signed by lenders containing specified particulars.</p>	At Inquiry the Board approved withdrawal of the application and awarded costs of \$875 in favour of the respondent.
<b>12/2000</b>	Knightsbridge Finance Pty Ltd & Mr Kim Clifton	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not Acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p>	<p>At a hearing on 18 October 2001 the Board accepted an undertaking from Mr Clifton not to act in the industry.</p> <p>At a hearing on 21 November 2001 the Board found proper cause for disciplinary action and ordered that Knightsbridge Finance Pty Ltd be permanently disqualified from holding a licence.</p>
<b>14/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not Acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	<p>Following a hearing held 7 June 2001 Mr Jamieson consented to permanent disqualification on some of the allegations.</p> <p>Based on the disqualification, the Board withdrew the remaining allegations.</p>
<b>15/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>16/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not Acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breaches</b>	<b>Outcome</b>
<b>17/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not Acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>18/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not Acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>19/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>20/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>21/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>22/2000</b>	Leon K Jamieson & Associates	Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.	Withdrawn on the basis that Mr Jamieson was permanently disqualified from holding a finance broker's licence as a result of Inquiry 14 of 2000 concluded in June 2001.
<b>4/2001</b>	Mr Marco Cicchine	Alleged breach of section 34(3) of the Finance Brokers Control Act 1975 – Failing to comply with any special conditions to which under subsection (2) the licence is subject.	Following a hearing on 21 December 2001 the Board found proper cause for disciplinary action and ordered that Mr Cicchine be fined \$500.
<b>6/2001</b>	Mr Wayne Chamberlain	Alleged breach of section 34(3) of the Finance Brokers Control Act 1975 – Failing to comply with any special conditions to which under subsection (2) the licence is subject.	At a hearing on 21 December 2001 the Board did not find cause for disciplinary action.

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breaches</b>	<b>Outcome</b>
<b>10/2001</b>	Australian Finance Group (AFG)	Alleged breach of section 29(1)(c) of the Finance Brokers Control Act 1975 - failing to have the required number of licensed directors.	At a hearing on 24 April 2002 the Board found proper cause for disciplinary action and ordered that AFG be cautioned and pay costs of \$450.
<b>1/2002</b>	Global Finance Group Pty Ltd (in liquidation)	Allegedly unfit to hold a licence owing to financial difficulties – section 83(2)(d) of the Finance Brokers Control Act 1975.	At a hearing on 30 January 2002 the Board found proper cause for disciplinary action and ordered that Global Finance Group Pty Ltd (in liquidation) be permanently disqualified from holding a finance brokers licence.
<b>2/2002</b>	Mr Oliver Douglas and Equity Alliance Finance	Alleged breach of Articles 4, 10, 12 and 15 of the Code of Conduct (1991).  Alleged breach of sections 34(3), 44(3) and 44(6) of the Finance Brokers Control Act 1975.	At Inquiry the Board found proper cause for disciplinary action and ordered that the respondent be reprimanded and fined \$600 and awarded costs of \$6736 in favour of the respondent (on account of allegations not made out).
<b>4/2002</b>	Mr Dennis Pearce and Geraldton Finance	Alleged breach of Article 7 of the Code of Conduct (1991)—Failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.	At a hearing on 3 April 2002 the Board found proper cause for disciplinary action and ordered that the licenses of Mr Pearce and Geraldton Finance Pty Ltd be cancelled and both be disqualified from holding licenses for 3 years. In addition, Mr Pearce was fined \$1,000 and ordered to pay costs of \$250.
<b>5/2002</b>	Blackburne and Dixon Pty Ltd,  Ms K Blackburne,  Mr J Blackburne,  Mr K O'Brien,  Mr C Grida	Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.  Alleged breach of Article 7 of the Code of Conduct (1991)—Failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.  Alleged breach of Article 15 of the Code of Conduct (1991)—Harsh or unconscionable conduct.  Alleged breach of Article 17 of the Code of Conduct (1991)— Not to put his duty to his client in conflict with his own interests or that of any other person.	At Inquiry the Board found proper cause for disciplinary action and ordered that Blackburne & Dixon Pty Ltd, Ms K Blackburne and Mr O'Brien be permanently disqualified from holding a finance broker's licence and Business Certificate. In light of the outcome of Inquiry 8/2002 matters in regard to Mr J Blackburne and Mr Grida were discontinued (with liberty to apply). No findings were made by the Board in regard to either of them.

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breaches</b>	<b>Outcome</b>
<b>8/2002</b>	Blackburne and Dixon Pty Ltd, Ms K Blackburne, Mr J Blackburne, Mr K O'Brien, Mr C Grida	Alleged breach of Articles 4, 7 and 15 of the Code of Conduct (1991). Alleged breach of Articles 2.4, 2.5 and 4.1 of the Code of Conduct (1999). Alleged breach of section 83(2)(b) of the Finance Brokers Control Act 1975 — conduct that constitutes a breach of any law other than this Act and that prejudices any rights or interests of any of the parties.	At Inquiry the Board found proper cause for disciplinary action in the case of Mr Grida, and ordered that Mr Grida receive a severe reprimand only, in respect of breach of Article 15 of the Code of Conduct (1991). In regard to Mr J Blackburne the Board found no proper cause for disciplinary action. Matters in respect of Blackburne & Dixon Pty Ltd, Ms K Blackburne and Mr O'Brien were adjourned sine die.
<b>9/2002</b>	Rowena Nominees Pty Ltd and Mr Graeme Grubb	Alleged breach of section 83(2)(b) of the Finance Brokers Control Act 1975 — conduct that constitutes a breach of any law other than this Act and that prejudices any rights or interests of any of the parties.	At Inquiry the Board found proper cause for disciplinary action and ordered that Rowena Nominees and Mr Grubb be permanently disqualified from holding a finance broker's licence and Business Certificate.
<b>14/2002</b>	Mr J Bell	Alleged breach of Article 7 of the Code of Conduct (1991).	At Inquiry the Board found proper cause for disciplinary action and ordered that Mr Bell be fined \$500 and issued with a severe reprimand.
<b>15/2002</b>	Mr B Barr and Cheriton Nominees	Alleged breach of section 48(3) of the Finance Brokers Control Act 1975.	At Inquiry the Board found proper cause for disciplinary action and ordered that Mr Barr be fined \$600 and ordered to pay costs of \$2000. Both Mr Barr and Cheriton Nominees were issued with written reprimands.

## Appendix B

*Current Inquiries (including progress of Inquiries beyond 30 June 2002 and up to printing of this report)*

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breach</b>	<b>Progress</b>
<b>3/2000</b>	First Charter Mortgage Services (Mr Graeme Perry)	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p>	At a hearing held on 3 May 2001 the Board agreed to adjourn the matter pending criminal charges. The Board noted that Mr Perry had been banned for life from the industry by ASIC. He had also surrendered his State finance broker's licence. The Board accepted an undertaking from Mr Perry that he not act as a finance broker nor re-apply for a licence until the Board's Inquiry was finalised.
<b>4/2000</b>	First Charter Mortgage Services (Mr Graeme Perry)	<p>Alleged breach of section 50(1) of Finance Brokers Control Act 1975—failure to cause trust accounts to be audited by statutory appointed auditor.</p> <p>Alleged breach of Article 5.2 of the Code of Conduct (1999) —failure to take reasonable steps to comply with the auditor's request for further documents necessary to complete the audit report.</p>	At a hearing held on 3 May 2001 the Board agreed to adjourn the matter pending criminal charges. The Board noted that Mr Perry had been banned for life from the industry by ASIC. He had also surrendered his State finance broker's licence. The Board accepted an undertaking from Mr Perry that he a not act as a finance broker nor re-apply for a licence until the Board's Inquiry was finalised.
<b>9/2000</b>	Knightsbridge Finance Pty Ltd & Mr Kim Clifton	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—Failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p> <p>Alleged breach of Article 16 of the Code of Conduct (1991)—Failure to obtain a statement signed by lenders containing specified particulars.</p>	<p>At a hearing held on 18 October 2001 the Board adjourned the matters in respect of Mr Clifton to a date to be set (pending the outcome of Inquiry 10 of 2002).</p> <p>(Note: In another Inquiry 12 of 2000 the Board accepted an undertaking from Mr Clifton not to act in the finance broking industry. In that same Inquiry Knightsbridge Finance Pty Ltd was permanently disqualified from holding a finance broker's licence.)</p>

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breach</b>	<b>Progress</b>
<b>10/2000</b>	Gamel Ward Pty Ltd	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p>	<p>At a hearing held on 10 May 2001 the Board adjourned the matter to a date to be set (pending the outcome of Inquiry 2 of 2000.)</p> <p><i>(Result of Inquiry 2 of 2000:</i> Gamel Ward and Mr Gamel were permanently disqualified from holding a finance broker's licence and Business Certificate. Mr Gamel was fined \$1,000 and ordered to pay costs of \$2,500).</p>
<b>11/2000</b>	MFA Finance Pty Ltd & Mr Herbert Ross Fisher	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p>	At a hearing held on 24 May 2001 the Board adjourned the matter pending criminal proceedings.
<b>1/2001</b>	Knightsbridge Finance Pty Ltd & Mr Kim Clifton	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p>	<p>The Board adjourned the matter pending criminal proceedings and the outcome of Inquiry 10 of 2002.</p> <p>(Note: In another Inquiry 12 of 2000 the Board accepted an undertaking from Mr Clifton not to act in the finance broking industry. In that same Inquiry Knightsbridge Finance Pty Ltd was permanently disqualified from holding a finance broker's licence.)</p>
<b>3/2002</b>	Mr Graeme Perry and First Charter Mortgage Services Pty Ltd	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991)—failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available relevant facts.</p>	At the time of writing, hearings in respect of this matter continue.



<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breach</b>	<b>Progress</b>
<b>10/2002</b>	Mr Kim Clifton	<p>Alleged breach of section 48 of the Finance Brokers Control Act 1975 - failing to maintain a trust account in accordance with the requirements of the Act.</p> <p>Alleged breach of section 48(3) of the Finance Brokers Control Act 1975 - making payments from the trust account without authority from the relevant beneficiary of the funds.</p> <p>Alleged breach of article 2.6 of the Code of Conduct (1999) - knowingly or negligently misleading any party to a loan transaction.</p> <p>Alleged breach of article 2.7 of the Code of Conduct (1999) - failing to give undivided fidelity to the Finance Broker's principal unaffected by any interests of the Finance Broker or of any other person.</p>	<p>At the time of writing, hearings in respect of this matter continue.</p> <p>(Note: In Inquiry 12 of 2000 the Board accepted an undertaking from Mr Clifton not to act in the finance broking industry. In that same Inquiry Knightsbridge Finance Pty Ltd was permanently disqualified from holding a finance broker's licence.)</p>
<b>11/2002</b>	Herbert (Ross) Fisher	<p>Alleged breach of Article 4 of the Code of Conduct (1991)—Not acting at all times in the interests of clients and thereby placing them at a disadvantage for own benefit.</p> <p>Alleged breach of Article 7 of the Code of Conduct (1991) – failure to take all reasonable precautions to protect clients against fraud, misrepresentation, and other unethical practice and to ascertain and communicate to them all available facts.</p>	At the time of writing, hearings in respect of this matter continue.
<b>13/2002</b>	John Margaria	Allegedly not a fit and proper person to hold a licence owing to conduct prejudicing the rights and interests of lenders – section 83 of the Finance Brokers Control Act 1975.	At the time of writing, hearings in respect of this matter continue.
<b>16/2002</b>	Maclane Johnston Money Tree and Wise Mortgage Reduction Service	Alleged breach of section 26(1) of the Finance Brokers Control Act 1975 – carrying on business or holding himself out as a finance broker without the required licence and business certificate.	At the time of writing, hearings in respect of this matter continue.

<b>Number</b>	<b>Defendant(s)</b>	<b>Alleged Breach</b>	<b>Progress</b>
<b>17/2002</b>	Dennis Pearce Geraldton Finance Company Pty Ltd	<p>Alleged breach of section 48(3) of the Finance Brokers Control Act 1975 – misuse of trust funds by withdrawing funds to make payments to persons not entitled or authorised to receive them.</p> <p>Alleged breach of section 48(5) of the Finance Brokers Control Act 1975 – failing to keep a full and accurate account of all moneys received or held on account for other persons.</p> <p>Alleged breach of section 48(1) of the Finance Brokers Control Act 1975 – maintaining a trust account not designated and evidenced as such as required by the Act.</p> <p>Alleged breach of section 50(1) of the Finance Brokers Control Act 1975 – failing to have a trust fund audited.</p>	At the time of writing, hearings in respect of this matter continue
<b>1/2003</b>	Eric Innes Nina Innes Brolect Nominees Pty Ltd t/a WA Mortgage Reduction Information Centre	Alleged breach of section 26(1) of the Finance Brokers Control Act 1975 – carrying on business or holding himself out as a finance broker without the required licence and business certificate.	At the time of writing, hearings in respect of this matter continue