

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

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 27 SEPTEMBER 2000**

**SESSION 2 OF 3**

**Members**

**Hon Ken Travers (Chairman)**

**Hon G.T. Giffard**

**Hon Ray Halligan**

**Hon Greg Smith**

**Hon Norm Kelly**

**Committee met at 2.18 pm**

**NEWCOMBE, MR GARY**

**Director Projects, Ministry of Fair Trading,  
219 St Georges Terrace,  
Perth, examined:**

**WALKER, MR PATRICK**

**Chief Executive Officer, Ministry of Fair Trading  
219 St Georges Terrace,  
Perth, examined:**

**HARVEY, MR GREG**

**Deputy Registrar, Finance Brokers Supervisory Board,  
Ministry of Fair Trading, 219 St Georges Terrace,  
Perth, examined:**

**The CHAIRMAN:** You have signed a document entitled "Information for Witnesses". Have you read and understood that document?

**The Witnesses:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. To assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of this hearing for the record. A transcript of your evidence will be provided to you. Although this is a private hearing, I advise you that the committee may make your evidence public at the time of its report to the Legislative Council. If the committee decides to make your evidence public, we will first inform you of this determination. You should not disclose your evidence to any other person. You may want to make an introductory statement. I want to ask you some questions about your correspondence, unless there is anything you want to say by way of introduction.

**Mr Walker:** No, that is fine.

**The CHAIRMAN:** The main purpose of bringing you here today was for the return of documents and to have an opportunity to clarify them. I assume from the second paragraph of your document that you attempted to identify all the documents but that you will conduct a further search to ensure that is the case.

**Mr Newcombe:** We have in fact identified some additional documents and files that we need to go through, but it was not possible to do that within the time frame. There is a lot of searching to do as the files contain a range of documents; and because they are documents being used by legal officers who are currently engaged in legal representation for the ministry, it is difficult to get hold of them. We are therefore seeking additional time to get some people to go through and extract the relevant documents.

**The CHAIRMAN:** That is only in respect of the ones being used by the legal officers?

**Mr Newcombe:** That is correct; otherwise, with the exception of documents prior to 1992 which were agreed, we have provided everything that we believe fits within the summons.

**Mr Walker:** In terms of context, I indicate that we engaged five contractors to help us search over 1 000 files to produce today's documents. The willingness is there but it is a significant task.

**The CHAIRMAN:** That was a surprise to the committee. We believed it would be easier to locate the documents we requested and we do appreciate that.

I want to confirm whether the documents provided under item 1 include documents from your regional offices as well as your Perth office?

**Mr Newcombe:** They have not been separately searched but those documents should come through to the central office if they are finance broking matters. Our assumption is that they have all come through but we have not physically searched each of the regional offices. There is a process for that. Board matters come to Perth for the board to deal with or for the ministry to deal with as finance brokers matters with the registrar.

**The CHAIRMAN:** We heard evidence this morning that regional offices may have their own filing system and may have done their own investigations.

**Mr Walker:** We are happy to check with the regional offices immediately following today's proceedings. However, our understanding is as Mr Newcombe outlined.

**The CHAIRMAN:** I would appreciate it if you could confirm that for us.

It appears a number of times under item No 3 that there were no audit reports with reference to a letter from Mr Desveaux stating that he would act as auditor in licensing file 862. Could you explain that, particularly in the context of your earlier statement about people with current business certificates?

**Mr Newcombe:** That applies generally when people have made application for a licence in that a licence file has been created and a letter has been received from the person who will do the auditing but it has not necessarily proceeded beyond that point. Therefore, that person has either not been granted a licence or does not have a business certificate. We have simply provided that correspondence as an indicator of a person who would be the auditor, but no audit reports are required or done.

**The CHAIRMAN:** In that case, Kaye and Jason Blackburne applied to be licensed finance brokers and indicated that Mr Desveaux would be the auditor?

**Mr Newcombe:** Mr Desveaux has written to indicate he would be the auditor but it has not proceeded to the point of an audit.

**Hon RAY HALLIGAN:** I will approach that another way. That being the case, are we then to make the assumption that those individuals who may hold a finance broker's licence have not applied and certainly have not been provided with a business certificate?

**Mr Newcombe:** We would need to provide that information to you specifically in relation to each person; however, that may be the case. Some people have applied and there has been an objection - Mr Harvey may be better placed to answer this - and no licence or business certificate was granted. Others are simply licence holders who do not have a business certificate and therefore do not operate. We could provide that specific information in relation to each individual but I could not give you a blanket answer now.

**Hon RAY HALLIGAN:** I understand what you are saying. That was my intent at the beginning and obviously we have not worded our request in a manner that provided you with that information. I would like the information on each of those names included in the subpoena to know whether they hold a finance broker's licence and whether they have applied for and received a business certificate.

**Mr Newcombe:** Yes, there is no problem with providing that information.

**The CHAIRMAN:** You obviously made a comment in respect of the final item 7. Do you have a copy of that confidentiality order of Justice Owen?

**Mr Newcombe:** I believe the legal adviser to the supervisors does. We do not have a copy; however, we could make one available to the committee.

**The CHAIRMAN:** You also indicated that further details of the order could be provided on request.

**Mr Newcombe:** Yes.

**The CHAIRMAN:** Would that again require the legal officer to provide it or are you able to provide it?

**Mr Newcombe:** We could provide it. It is a public order from the Supreme Court. I think it is fairly recent; therefore a copy has not come through us but has been kept by the legal people dealing with it. Given that it is a court order, there is no difficulty in our providing it to you.

**Mr Walker:** I understand the order was made in the last week or so.

**The CHAIRMAN:** Was it a confidential document prior to that?

**Mr Newcombe:** It had not been made public prior to that. One of the applicants in the legal proceedings wanted to obtain access to the agreement and I understand Justice Owen made a decision, after legal argument, that the applicant have access to an edited version of it with most of the document blanked out. A consequence of that order is if that party releases any other provisions of the contract, they will be in contempt of court.

**The CHAIRMAN:** I am trying to understand the terms of the confidentiality order on that document. The only reason there is an order is that the court required you, the board, or whoever, to provide it to the other applicant?

**Mr Newcombe:** No, there was an application for access to it. Prior to that it was treated as a confidential document.

**The CHAIRMAN:** However, that was only a decision between the board and the ministry?

**Mr Newcombe:** Yes, on behalf of the supervisors.

**The CHAIRMAN:** You had an arrangement as an organisation to keep it confidential?

**Mr Newcombe:** That is correct.

**The CHAIRMAN:** The order relates to the copy that has been provided to the applicant in the court case.

**Mr Newcombe:** That is correct.

**The CHAIRMAN:** So it is not a broad-brush order?

**Mr Newcombe:** No, the court would not be able to make a broad-brush order. However, obviously it is a matter of some significance. That is effectively why we are drawing to your attention that an order is in place.

**The CHAIRMAN:** I am trying to get an idea of what that order entails and the background to it. We as a committee have the power to make our own decisions about what we want to do with that document. I am trying to find out whether the order that it remain private is material to the case or whether it is immaterial and the order to make it private is the court's respecting it as a confidential document.

Why do you consider those documents to be highly confidential and how would they interfere with the supervisors?

**Mr Newcombe:** The documents cover a broad range of information. They include personal financial information of investors, information relating to recovery action that the supervisors are taking, information about assessment of suitability or the likelihood of the success and a range of issues about recovery action that must be addressed. Our view is that if they were generally released they would impact directly on the supervisors' capacity to pursue recovery action. It would also impact on third parties. At this stage the supervisors are not aware that we have been required to provide these documents to you, so they have not had an opportunity to comment on individual documents and we have not had the time to go through and identify them. By the nature of the documents, as you look at them, you will see that they cover a range of material that we regard as highly confidential.

**Mr Walker:** To add to what Mr Newcombe has said, I met with the supervisor about another matter this morning, so he was aware that that information had been requested of us.

**The CHAIRMAN:** Obviously we will look at it. You are concerned about the confidentiality clauses mainly when it would impact on recovery operations or release private information?

**Mr Newcombe:** They are the most obvious issues. We have suggested contact with the supervisors because they are best placed to advise the committee on the impact of any document.

**The CHAIRMAN:** We will take that on notice. You made a comment about legal professional privileges not being waived by the production of these documents under compulsion.

**Mr Newcombe:** Our point in making that comment is not an attempt to fetter what the committee does with things. However, if we provide to any organisation documents that are subject to legal professional privilege, a third party could claim that we have waived all legal professional privilege and could not maintain it against that third party. In that sense we are not attempting to apply it to the committee - in fact, I am not sure there are many documents to which that would apply - but we are saying that for third party purposes we have not waived privilege by producing it to this committee under compulsion of a summons.

**The CHAIRMAN:** I do not think a third party would be able to use it anyway. It would be very difficult to use documents that were provided to this committee in any other proceedings.

**Mr Newcombe:** It is not the actual document; it is the waiver of the privilege that is the issue. That is the point of confirming our position on that.

**The CHAIRMAN:** A number of documents were pointed out to us in a hearing and the committee has not had the opportunity to go through them and determine that. I realise your position on the need to have documents summonsed. For the purposes of this committee, if we wanted further documents, is there some way we could have a discussion with you to clearly identify the documents we are after prior to issuing the summons, so we do not keep getting caught up in difficulties? It was not our intention to create the workload that we did. We thought there would be a system whereby those documents would be easily identified. It was a surprise to us. Do you have any suggestions in that regard?

**Mr Walker:** We would welcome that. It would assist both parties. Gary Newcombe would be our contact at the ministry, but he would be prepared to speak with any member of the committee or Jan, if appropriate. We would welcome that, because it would save us a lot of work and trouble.

**The CHAIRMAN:** If you are happy for us to discuss the documents we want and then issue a subpoena based on that discussion, it might make it easier for all concerned. Thank you very much for coming along this afternoon.

**Proceedings suspended from 2.36 to 2.48 pm**