

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
THURSDAY, 28 SEPTEMBER, 2000**

SESSION 2 OF 2

Members

Hon Ken Travers (Chairman)

Hon G.T. Giffard

Hon Ray Halligan

Hon Greg Smith

Hon Norm Kelly

URQUHART, MR JOHN,
Chairman, Finance Brokers Board,
C/- Law Society of Western Australia,
33 Barrack Street,
Perth, examined:

The CHAIRMAN: Welcome to this hearing. You have signed a document entitled "Information for Witnesses". Have you read and did you understand that document?

Mr Urquhart: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. To assist the committee and Hansard, please quote the full title of any document to which you refer during the course of this hearing. A transcript of your evidence will be provided to you. I remind you that your transcript will become a matter of public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before speaking about the matter. Further, the committee may of its own motion resolve to take evidence in closed session. The taking of evidence in closed session may be relevant when, for example, the committee believes that the evidence may breach term of reference (3) of its inquiry, which states -

The committee in its proceedings avoid interfering with or obstructing any inquiry being conducted into related matters and in particular inquiries by -

- (a) the police;
- (b) any liquidator or supervisor of any company;
- (c) the Gunning inquiry;
- (d) the Australian Securities and Investments Commission; or
- (e) any prosecution.

However, even if evidence is given to the committee in closed session, that evidence will become public when the committee reports on the items of business to the Legislative Council unless the Legislative Council grants an ongoing suppression order at the time the committee tables its report.

Obviously members have questions they would like to ask. Do you have a statement to make to the committee?

Mr Urquhart: The committee has received a copy of my resignation and the annexures. That explains my present position.

The CHAIRMAN: Yes.

Mr Urquhart: I have a statement that was prepared for the Gunning inquiry. I can produce that if the committee desires. It gives the situation from the Finance Brokers Supervisory Board point of view. I also have the transcript of my evidence to that inquiry. The committee is free to have a copy of that transcript.

The CHAIRMAN: The transcript of that evidence has been made available to the committee. However, I am sure the committee would appreciate a copy of your statement.

Mr Urquhart: I will hand that in later.

Hon GREG SMITH: Please advise the committee on how many occasions you and your board met with the current Minister for Fair Trading.

Mr Urquhart: At least once; it may have been more. The minutes of that meeting were not taken by the board members.

Hon GREG SMITH: You met with the current Minister for Fair Trading on 5 August 1997. Do you recall that meeting?

Mr Urquhart: Yes, I do.

Hon GREG SMITH: Is it not true that at that meeting you raised the issue of amendments to the Finance Brokers Control Act 1975, but that those amendments related to what the board saw as a problem with the minister's granting exemptions from the requirement for mortgage originators to be licensed?

Mr Urquhart: That is how it appears in the papers I have been given this afternoon. The main purpose of that meeting was to discuss the exemptions being granted by the minister under section 5(2) of the Act. We were concerned that there was no control over those persons once they had received the exemption. In other words, they were out in the community doing whatever they wanted to do without being subject to control by the supervisory board because they were operating outside the Act.

Hon GREG SMITH: Was this about the mortgage originators?

Mr Urquhart: That was the main part of it. However, it is not correct to say that we were not worried about further amendments to the Act. My letter of resignation indicates that we met less than one year before with the minister's predecessor and went through these matters. This must also be read in the context that at that time the reference group was meeting and the industry was in hiatus. The question was whether it would be more regulated under statute or self-regulated under the Fair Trading Act and a compulsory code.

Hon GREG SMITH: A series of papers relating to that August meeting was tabled in the Legislative Assembly on 14 September. The first of those documents is a memorandum to the Minister for Fair Trading from the chief executive officer of the ministry dated 13 September. You have a copy of that.

Mr Urquhart: I have had a quick look at that. We have not seen it before.

Hon GREG SMITH: At paragraph 4 of the memorandum, the chief executive officer notes that there was nothing in the notes of the meeting or in the briefing notes prepared for the meeting to suggest that the board members raised concerns about resourcing of the board or general concerns about the need to amend the Act. That is consistent with the comments at page 37 of the Gunning inquiry report on the Finance Brokers Supervisory Board, which indicates that there was evidence that members of the board were concerned about limited resources but took the view that there was little they could do about it. In view of this information, do you agree that you did not seek additional resourcing?

Mr Urquhart: I never went directly to the minister asking for resources. It was said time and again in meetings attended by ministry representatives. It was obviously short of funds because things were not being done.

Hon GREG SMITH: Would you not consider putting it in writing?

Mr Urquhart: It is fine in hindsight. It really annoys me that you can say those things. At the time, things are completely different. There is no doubt that the new chairman will be putting everything in writing and sending a letter to the minister, a copy to Mr Walker and everyone else. It is very unfair that these inferences are being made in hindsight about the conduct of the board and what it was trying to do. We were constantly going on about amendments to the Act while I was chairman. It is not an effective Act and nothing was done by Governments of either persuasion to improve it. The member picks out a slight hiatus

when the industry was about to move in a completely different direction to demonstrate that we stopped pushing, and thus lays blame at our feet. That is unfair.

Hon GREG SMITH: During the Gunning inquiry hearings and subsequently, you have made much of the board's lobbying to have the Act amended and pointed out that the deficiencies in the Act are a major contributor to the problems that have come to light. Do you accept that, to the extent that you did raise amendments to the Act with the current minister, those amendments related to the mortgage originators?

Mr Urquhart: They did.

Hon GREG SMITH: Your annual report for the year 1997-98 states on page 7 that the board did not pursue its longstanding proposal to upgrade the Act and was awaiting the outcome of the review with interest.

Mr Urquhart: Yes. If you were to read the transcript of the Gunning inquiry you would see that I did not prepare that report - it was drafted by the ministry. That sort of comment was very helpful from its point of view. If I read it more closely before signing it, I might have excluded that part. It is basically correct. However, members must look at what happened during the previous six years, during my time at the helm and the many years before that - nearly 20 years - when there were constant requests for amendments to the Act. If this minister did not follow up what was said to the previous minister, that is his fault not the board's. I said that in my letter of resignation. The information in that letter must be taken in the context of the questions you have asked me.

The CHAIRMAN: Are you saying that you believe that each minister who occupied the position while you were chairman should have been or would have been aware of the problems in the industry?

Mr Urquhart: Absolutely.

The CHAIRMAN: Does that go as far as the problems now manifesting in the industry or is it restricted to more minor problems?

Mr Urquhart: If amendments were done before my time, the problem would not have occurred. There would have been problems, the same as the legal fraternity of which I am a member; there will always be defalcations. One cannot stop people from going off the rails. However, it would not be in the situation it is in now if that Act had been properly amended and looked at earlier.

This is not in context, but a few weeks ago I spoke to Harry Lodge, a lawyer, who was the first chairman of the board, and he said to me that as soon as he got on the board, he was on to the local member involved to do something about this Act.

The CHAIRMAN: During your time as chairman, did any ministers indicate to you that they were willing to amend the Act?

Mr Urquhart: Yes, Dowding did - not in my time. In October 1996 or 1997, Cheryl Edwards said that she would look at it closely. She left the office in January when the present minister took over.

The CHAIRMAN: How detailed were the changes she had indicated?

Mr Urquhart: They are in the memorandum. I do not have a copy of it in front of me.

Hon GREG SMITH: Was that the impetus for the reference group to be established?

Mr Urquhart: That is probably part of it, yes.

Hon GREG SMITH: You have said that the 1997-98 report was not prepared by you. Is that correct?

Mr Urquhart: The board read it. It is the board's report but the wording is not mine.

Hon GREG SMITH: The code of conduct section at page 7 of the report refers to the ministry urging or asking the board to change the term "client" throughout the code of conduct because of the narrow view that had been taken of the definition of "client", and that was resisted by the board.

Mr Urquhart: Yes, because of the lack of resources, which meant that I personally, together with other members of the board, would have to make amendments to the code with no outside assistance from parliamentary counsel or anybody else. At that stage a clear indication was in the wings that there would be deregulation and a code under the Fair Trading Act; therefore, why was it necessary for the board to do all of this additional beneficial work for the industry for no real cause? The matter of "client" is something of a red herring. If any complaint was brought to the board, it would be heard and the board would decide whether there was a principal-agent relationship between the parties involved. Notwithstanding the word "client", the board could still come to a conclusion as to whether the agent - namely the broker - had a duty to the principal.

Hon GREG SMITH: It had been articulated to you by the ministry that it felt the definition was used too narrowly?

Mr Urquhart: Yes.

The CHAIRMAN: Was the legal opinion about the word "client" in the code of conduct sought by the board or the ministry?

Mr Urquhart: No opinion was sought by the board.

The CHAIRMAN: Who was declaring that the term "client" was too narrow?

Mr Urquhart: The ministry. I will explain my views and those of the board. The investigations were separate from the inquiry. The ministry came to the conclusion that because of whatever the word "client" meant, it could not get a case up before the board; therefore, the ministry did not proceed with it. The Gunning inquiry criticised me for not pressing on further and saying that it should have been done by the board if it was not done by the ministry, but that was not possible.

The CHAIRMAN: Why was it not possible?

Mr Urquhart: It was not possible because there must be a division between the investigation and the inquiry. The board could not proceed against a broker without giving particulars as to why it considered that broker had breached the code or was not a fit and proper person to hold a licence. The committee will find in the papers supplied by the Gunning inquiry that Rob Castiglione came to the view that the ministry could not show that this particular licensee was not a fit and proper person; the ministry did not have sufficient information.

Hon G.T. GIFFARD: Did the ministry not provide a brief in a sufficient form for the board to pursue?

Mr Urquhart: I am of the view that it did not have sufficient proof to be able to establish a case before the board by way of an inquiry that this person was not fit and proper to hold a licence.

Hon G.T. GIFFARD: Was it not providing that proof because of this definition of "client"?

Mr Urquhart: Quite apart from that.

Hon GREG SMITH: Evidence given to the committee suggests that you did not pursue amendments to the Act, other than those relating to the mortgage originators, with the current minister. On that basis, how can you justify the comments made in your letter of resignation accusing the minister of failing to implement the legislative changes which you say you urged?

Mr Urquhart: His predecessor had that information; the letter says that. It is not the board's fault that he did not look into his portfolio as he should have.

Hon GREG SMITH: Is it true to say, as the Gunning inquiry found on page 257 of its report, that whatever the deficiencies of the Act, the board did very little to make the most of the powers it did have?

Mr Urquhart: I referred to that in my letter. The Gunning inquiry is flawed concerning those matters. It has come to the wrong conclusions.

Hon GREG SMITH: Is the failure to use the powers to appoint independent special auditors an example of the board's failure to use its powers?

Mr Urquhart: If public interest is involved, yes.

The CHAIRMAN: During the inquiry into Blackburne and Dixon Pty Ltd, as I understand it, there was a recommendation from Ferrier Hodgson that further investigations should be made into the accounts of Blackburne and Dixon. What did the board do about that?

Mr Urquhart: The audit section was dealt with by the ministry. I was not involved in that inquiry, so I did not have a hands-on approach into that aspect of it. All the audit matters were dealt with by the ministry. The board has no expertise in auditing. The board gives directions as to how a special audit should be done, on advice from the ministry. Many of the questions which might have been raised by the auditor would have been discussed with people from the ministry. It is up to them to advise us as to what they consider should be done in the circumstances.

The CHAIRMAN: Who would have funded that special audit if one had been conducted?

Mr Urquhart: Under the Act the board does. Of course, the board does not have any finance, therefore, it must go through the minister and Treasury. That is sometimes a problem for dealing with matters quickly, because Treasury approval must be sought.

The CHAIRMAN: As I understand it, a request was knocked back for additional funding for the continuation of an investigation by Ferrier Hodgson, an independent auditor, into the books of Blackburne and Dixon. It was suggested that staff at the Ministry of Fair Trading could do the audit.

Mr Urquhart: I have only a vague recollection of that. I cannot remember much more about that. In later years, it was done by Diana Newman.

The CHAIRMAN: Under the powers of the board?

Mr Urquhart: Yes.

Hon GREG SMITH: Would it not be a failure of the board to use its powers to require brokers to have professional indemnity insurance, as stated in section 34(2) of the Act, as a condition of their licence?

Mr Urquhart: Yes, but it was never used. It is not a failure. I had better ask you a question. In what context are you asking that? What was the board to protect by having indemnity insurance?

Hon GREG SMITH: The ministry, or the minister, urged that professional indemnity insurance be taken up by finance brokers.

Mr Urquhart: Yes, I know, but for what purpose? If you are suggesting that it has something to do with defalcation, professional indemnity insurance cannot cover defalcation by a principal. It is not possible.

Hon GREG SMITH: What about in the case of negligence?

Mr Urquhart: In the case of negligence, yes. As far as the board is aware, there may have been one case of a broker being negligent in the past 25 years.

Hon GREG SMITH: It would not stand up in the case of fraud either.

Mr Urquhart: That is right. If members want professional indemnity insurance, as my evidence says, it should be made compulsory under the Act. It is not fair that these matters should be heaped upon the board. At the time the Act was enacted, professional indemnity insurance was not considered. Most lawyers did not have it prior to that time. It is only in recent years that it has become an essential matter. Therefore, the Act should make it compulsory, just as it is compulsory under the Legal Practitioners Act, if that is what the legislators want.

Hon GREG SMITH: What do you see as the role of the supervisory board? To supervise the industry? That is what it sounds like. Could you give your interpretation of your role as the supervisor of the industry?

Mr Urquhart: To ensure that licensed persons, or persons who are applicants for licences, are fit and proper to carry out the duties of a finance broker. To ensure that matters pertaining to the trust account are appropriately carried out, which is a major part of the provisions of the Act. To ensure that investigations are carried out in respect of complaints, and that inquiries are held where necessary.

Hon GREG SMITH: Do you think you fulfilled that role?

Mr Urquhart: To the best of our ability, yes, within the confines of that Act.

The CHAIRMAN: At the board meeting of 10 January 1996 that Blackburne and Dixon special audit report was raised. The minutes state that the special audit report by Gary J. Trevor of Ferrier Hodgson Chartered Accountants was considered by the board, which was of the opinion that the continuing audit of accounts and investigation should proceed immediately. Following discussion with the Manager, Real Estate Branch, Will Morgan, who advised that the ministry may not be in a position to fund a further audit by Mr Trevor, it was resolved that the continuing audit be conducted by Frank Bull with the assistance of Gary Wallace, who would conduct the investigation. The board requested that Mr Wallace's investigation include valuations conducted by Blackburne and Dixon. Does that assist your memory at all?

Mr Urquhart: Yes, I remember that meeting. That ended up in an inquiry being held.

The CHAIRMAN: My reading of that, though, seems to suggest that the further investigation should have been done by a qualified accountant, Ferrier Hodgson.

Mr Urquhart: Once we were told that there was no funding, we wanted Mr Bull to do it. That was his section. Parallel with him would have been Gary Wallace, in case there were any breaches of code or the Act that could result in an inquiry.

The CHAIRMAN: Do you believe that the staff of the Ministry of Fair Trading were competent to conduct that sort of examination?

Mr Urquhart: I presumed Mr Bull was, yes.

The CHAIRMAN: Did it concern you at the time that funding could not be made available for a firm like Ferrier Hodgson to continue the investigation?

Mr Urquhart: We took the second best.

The CHAIRMAN: So it was the second best option?

Mr Urquhart: Yes. If we had our own funding we would have done it ourselves. It never occurred to me that I should be asking the ministry, or the minister for money. That did not seem to be our province. I would like you all to understand this in context, in view of all the hype that has gone on. In hindsight it is very easy to criticise us, and it hurts me and it hurt those other members of the board who were working hard all the time to try to do the best they could.

The CHAIRMAN: The challenge for us is to try and find out what were the impediments to it working well.

Hon RAY HALLIGAN: You will be aware that under our terms of reference, we are obliged to consider what has happened, as well as what might happen in the future. Even though the questions may hurt a little, there is certain information we require, and we believe that you may be able to provide that information. Did the board, under your chairmanship, ever formally review its role and develop a corporate or strategic plan?

Mr Urquhart: There was no specific plan as to how matters should proceed, or anything of that nature. On occasions the ministry did supply guidelines, if you like, in respect of various areas. One was in respect of the conduct of meetings and the other concerned annual reports. We had fairly set procedures as to how our meetings were conducted, and what had to be done to cover all the administrative work.

Hon RAY HALLIGAN: And had those procedures been in place for some time?

Mr Urquhart: Their origins were before my time.

Hon RAY HALLIGAN: Understood. Did the board ever review the level of resources available to it?

Mr Urquhart: Never.

Hon RAY HALLIGAN: So there was no formal review in that regard?

Mr Urquhart: Never as a board. Other individuals may have done so. I never did and nor did the board, as a board. The only reference we had was much the same as the chairman mentioned a moment ago, about not having enough resources to engage an auditor. That was the only time those sorts of things were mentioned, and then only in passing, if you like.

Hon RAY HALLIGAN: I am not denying that hindsight is an absolutely wonderful thing, but you would be aware that under section 12(1) of the Finance Brokers Control Act, "There shall be a Registrar of the Board, and there shall be such Deputy Registrars, Assistant Registrar, inspectors and other officers of the Board as are necessary for its proper functioning." With that in mind, did you believe that additional resources were required for you, as chair, to operate that board, and for that board to operate in the manner that the Act expected of it, and did you ask for those additional resources?

Mr Urquhart: We did not ask for them, other than indirectly, as I said earlier. We kept on complaining that things were not being done.

Hon RAY HALLIGAN: When legislation is brought before Parliament, we do not accept verbal amendments; we expect them to be in writing. You are a professional man, and it concerns me just a little – I will allow you to explain. If these concerns that things were not

being done manifested themselves over a number of years, why were they not followed up in writing?

Mr Urquhart: I do not know how else one does it. First of all, we have no resources. I cannot sit down at the Ministry of Fair Trading and dictate letters, and so on. None of those facilities was available.

Hon RAY HALLIGAN: But the Act does allow you those resources.

Mr Urquhart: None of that was available.

Hon RAY HALLIGAN: I am sorry, I see that a little differently.

Mr Urquhart: It was not made available to us. It was never offered. However, any time we met with ministers, these matters were raised. My annual reports, all of them, refer to these facts, until the last two. I do not know what else one can do. I know what is going to happen in the future. As I said earlier today, I will make sure that the new chairman knows how to have things done. I refer back to section 12(1) of the Act. It was never made clear to us by the ministry that we had staff. It was always a grey area. Quite often they would change the structure of the ministry, so that we came under another section. Quite often I did not know who was the manager in charge of the section that dealt with us. It changed; the names changed. This was fairly continual, and it was quite confusing. Only in the last two years has a document been presented to me to sign as chairman, to the effect that designated persons were now allocated to the board. It is only since the matters you have raised have come to the fore that we can say we have staff.

The CHAIRMAN: Did you actually sign a document saying that certain staff were allocated to the board?

Mr Urquhart: Yes. Previous to that there was no such document.

The CHAIRMAN: When was that introduced?

Mr Urquhart: I have done it twice

The CHAIRMAN: So 1998 would have been the first one?

Mr Urquhart: Maybe 1999, and again this year.

The CHAIRMAN: Do you know why that was introduced?

Mr Urquhart: Yes. Some notice was given, through the ministry, that it was a requirement under our Act.

The CHAIRMAN: Was that after the problems in the industry had begun to be made public?

Mr Urquhart: Yes, I would think it was after that.

Hon RAY HALLIGAN: On the issue of special audits, evidence was presented to the Gunning inquiry about a special audit of Grubb, which was done in December of 1998.

Mr Urquhart: It was decided on in November 1998.

Hon RAY HALLIGAN: One assumes that, because it was a special audit, there were some concerns either about the trust account, or about what had happened previously.

Mr Urquhart: More about what had happened previously, than about the trust account.

Hon RAY HALLIGAN: I want you to explain to me if you think that, as a special audit, it should have been undertaken by an independent auditor, or by the auditor who had normally been auditing the books.

Mr Urquhart: We preferred that it be an independent auditor, and that there be a list of questions or situations that had to be looked at. If I remember rightly, we gave the direction that it be the same as we had done in a previous case, I think that of Oliver Douglas.

Hon RAY HALLIGAN: Would this list of issues normally be developed by the board?

Mr Urquhart: No, it would be developed by the audit section of the ministry, and then approved by the board.

Hon RAY HALLIGAN: Is the appointment of the auditor outside the role of the board?

Mr Urquhart: No, the auditor must be appointed under the Act, in the public interest.

Hon RAY HALLIGAN: The special auditor?

Mr Urquhart: Yes.

Hon RAY HALLIGAN: Did you identify who you wanted as auditor?

Mr Urquhart: No. We would leave that to the ministry.

Hon RAY HALLIGAN: Would the board receive the report of the special audit, if you had instigated it?

Mr Urquhart: There may have been one occasion when we did not, but in general, yes we would.

Hon RAY HALLIGAN: Would that special audit be signed by the person who had conducted the audit?

Mr Urquhart: Yes.

Hon RAY HALLIGAN: If you found that the person signing the special audit was the auditor who had previously conducted the normal audits of that business, would that concern you?

Mr Urquhart: No.

Hon RAY HALLIGAN: Even though you would have preferred it to have been an independent auditor, it would not have worried you at all?

Mr Urquhart: No. Are you talking about Grubb, now?

Hon RAY HALLIGAN: Yes. What happened there?

Mr Urquhart: As I recollect, the financial side of it, as I have already described, could not come through quickly. We had all these complaints, and we were into the December meeting. Jack Willers, or someone else, said to us there were problems in getting the necessary finance. I think that was the problem. It would show in the minutes.

Hon RAY HALLIGAN: Is that the finance to pay for the special audit?

Mr Urquhart: Yes. There was some problem in getting someone to do the audit, but I do not know what it was. Willers said that the next audit was due at 31 December, and suggested that we write to the current auditor, and get that person to do the special audit at the same time as the regular audit required at the end of the year. I must stress that during the previous two years that auditor said the accounts were in order, but they were not. We did not know about that.

Hon RAY HALLIGAN: Are you referring to when that suggestion was made?

Mr Urquhart: Not only that but also in the new year we pressed to have an audit done, but Grubb kept on making excuses. Of course, the real reason Grubb did not want us to undertake a proper audit was because of what had been done previously.

Hon RAY HALLIGAN: Is that what you believe created the delay in receiving the special audit report?

Mr Urquhart: Yes.

Hon G.T. GIFFARD: You said that the Finance Brokers Supervisory Board was expressing frustration that things were not getting done. Are you referring to investigations into complaints over a number of years?

Mr Urquhart: It was only in the past few years that we received a volume of complaints. The annual reports show that probably in 1996-97 only 16 complaints or something of that nature were made. As I said in previous evidence, the committee was dealing with matters that could not necessarily come under the Act or code. They were working between mortgagor and mortgagee.

Hon G.T. GIFFARD: You said a few minutes ago that over a number of years there was frustration that things were not being done. What sort of things are you referring to?

Mr Urquhart: I am sorry if I misled you. I was referring to when a huge number of complaints were being made. Prior to that, things were being done.

Hon G.T. GIFFARD: Was it only in the past five years?

Mr Urquhart: It was less time than that. The ordinary things that had to be done on the administrative and investigatory side proceeded normally. However, there were exceptions that have been dealt with over two years or less.

Hon G.T. GIFFARD: If we restrict reference to the past few years, is that the period in which you were frustrated at things not being done?

Mr Urquhart: Yes.

Hon G.T. GIFFARD: Was it clear to you that you did not have the level of people on the ground to pursue what the board wanted to pursue?

Mr Urquhart: Yes. Not only that but also you must consider that in the back of our minds we knew that the individuals who came before us in the ministry were completely overworked. We did not want to cause a lot of fuss for them because they were trying to do their best. That is in the context of that time.

Hon G.T. GIFFARD: I am not asking you to exercise any hindsight.

Mr Urquhart: At that time we did not want to cause problems for the people who were doing the best they could.

Hon G.T. GIFFARD: Did you know at the time it was a problem and that they were not getting through the work load?

Mr Urquhart: The matters were not getting through the legal section.

Hon G.T. GIFFARD: Did you take up that matter with the ministry?

Mr Urquhart: Not in writing, but at every meeting we were putting pressure on people to get this matter through.

Hon G.T. GIFFARD: Who did you say that to, the registrar?

Mr Urquhart: It was usually Jack Willers, the investigator.

Hon G.T. GIFFARD: Were you dealing directly with the investigator?

Mr Urquhart: Yes. He and the registrar decide whether matters should go to the legal section to assess whether an inquiry should be undertaken. In latter months the registrar attended the whole of our meetings.

Hon G.T. GIFFARD: I think the 1996-97 annual report refers to fast-tracking. Did you have any concern about fast-tracking because things were being missed and it was too superficial.

Mr Urquhart: I cannot remember it being described to us.

Hon G.T. GIFFARD: Is it part of the ministry's report?

Mr Urquhart: There are two sections to the report. In those days I wrote a report and the other sections were written by the ministry.

Hon GREG SMITH: It is at page 2 of the 1996-97 report?

Hon G.T. GIFFARD: I am referring to page 13 of the 1996-97 annual report of the Finance Brokers Supervisory Board. Do you have a copy?

Mr Urquhart: No.

Hon G.T. GIFFARD: I believe it is part of your report.

Mr Urquhart: No it is not. The ministry prepared that part of the document.

Hon G.T. GIFFARD: Which part did it prepare and which part did you prepare? It is not clear to me; I assumed it was all yours.

Mr Urquhart: It is all the board's report. We see it before it is issued.

Hon GREG SMITH: Do you approve it, and sign off on it?

Mr Urquhart: Yes; there is no doubt about that.

Hon G.T. GIFFARD: Are you familiar with the content of page 13?

Mr Urquhart: The first four pages of this particular report were written by me and signed by me. That is my use of words. The rest is not mine at all. Reading it in this context, there is nothing wrong with fast-tracking as such. It is quite in order. It is normal for the simple things that can be conciliated to be fast-tracked.

Hon G.T. GIFFARD: Was fast-tracking achieving what it was supposed to achieve, or was it glossing over things and too superficial a process for matters that should not have been fast-tracked?

Mr Urquhart: I do not know the answer to that.

Hon G.T. GIFFARD: Did you not have any concerns at the time? Did anyone who attended board meetings with you raise concerns about fast-tracking?

Mr Urquhart: Not that I recall.

Hon G.T. GIFFARD: The final paragraph at page 1 of the report refers to inspections of annual audit reports. It indicates that the initiative was introduced to assist brokers to maintain their trust accounts in accordance with the requirements of the Act. Do you recall who would have been dedicated to carry out those inspections?

Mr Urquhart: It would have been Mr Bull.

Hon G.T. GIFFARD: Did you have concerns about his work load?

Mr Urquhart: Yes; he was assigned to not only the board, but also to other divisions.

Hon G.T. GIFFARD: Were you aware that Mr Bull had a heavy work load?

Mr Urquhart: Yes; I think I would have been aware of that.

Hon G.T. GIFFARD: Were you aware of that notwithstanding that you introduced a program of inspecting trust accounts to assist brokers?

Mr Urquhart: I made that decision in consultation with the ministry.

Hon G.T. GIFFARD: Would that have involved extra tasks and loaded up the inspector even more?

Mr Urquhart: Yes, but I reiterate that that decision would not have been made without consultation with the ministry.

Hon G.T. GIFFARD: Would it be fair to say it was something you considered necessary?

Mr Urquhart: It looks as though it was.

Hon G.T. GIFFARD: Given that you thought the staff had a fairly heavy work load, would you ask them to do that if you did not think it was important? Did you think there was merit in staff conducting inspections of trust accounts?

Mr Urquhart: Yes, we did think there was merit in it.

Hon G.T. GIFFARD: Did you have concerns about the general shape of trust accounts? Why did you think it was important?

Mr Urquhart: It was one of those ongoing things. I think it was when we were saying that, that Mr Bull would go around from time to time, not to try to catch them out, but to help them to properly conduct their trust accounts. That is how I think it originated. It was a matter of the supervision that I was asked about earlier.

Hon G.T. GIFFARD: Yes. It was not an ongoing task, but something you introduced a year before. In the context that you knew and understood inspectors were struggling with a work load, you introduced a program of inspecting and assisting brokers with the conduct of their trust accounts. That suggests to me that you perceived a problem existed with the conduct of the trust accounts.

Mr Urquhart: No I do not think there were problems at that time. This would have resulted from discussions with the industry members on the board with the aim, I suppose, of providing a service to licensees.

The CHAIRMAN: You said that your role was to assist brokers to keep their trust accounts correct. What was the role of the auditors of the trust accounts?

Mr Urquhart: I think the inspections were to ensure that at the end of the year they did not have problems with the auditors and that their trust accounts were conducted properly throughout the year. If my recollection is correct, that is my perception of the purpose at the time.

The CHAIRMAN: I could understand that being necessary for a new broker. Do the auditors not have to make sure trial balances are conducted at the end of every month?

Mr Urquhart: Yes, I think that is part of their duties.

The CHAIRMAN: I do not understand.

Mr Urquhart: I do not recollect having any specific problem with trust accounts at that time.

Hon GREG SMITH: Why was nothing done following the Cabinet decision of March 1999 at which four interim reforms were recommended?

Mr Urquhart: The letter says Cabinet was going to do it.

Hon GREG SMITH: Could not part of the recommendations have been implemented by the board?

Mr Urquhart: No, the other four recommendations in that letter were for the board to do, and we did them, except for professional indemnity insurance which is almost complete now. Cabinet did nothing.

Hon GREG SMITH: Six-monthly audits were supposed to be carried out.

Mr Urquhart: Yes that has been looked at. Cabinet has done nothing. You are trying to say that the Finance Brokers Supervisory Board should have followed up Cabinet and told it what to do, when it made the recommendation. That is unfair.

Hon GREG SMITH: I thought they were recommendations by Cabinet to the board. I am reading the Gunning report.

Mr Urquhart: I do not have the attachments to my letter of resignation, but they are in there. He wrote to the mortgage brokers association informing it of four or five things the board had to do and four or five things Cabinet had to do.

Hon GREG SMITH: Is it correct that you had a meeting with Patrick Walker in July 1999, at which Mr Walker conveyed to you the minister's wish for the board to move as quickly as possible to implement Cabinet's decision regarding professional indemnity?

Mr Urquhart: Yes we went ahead straightaway.

Hon GREG SMITH: Is it correct that at that meeting you told Mr Walker that the board did not see professional indemnity as a particularly beneficial proposal and that the board was not aware of an instance of negligence by finance brokers?

Mr Urquhart: Yes.

Hon GREG SMITH: Is it true that you subsequently phoned Mr Walker about an article in *The West Australian* on 23 July 1999, which did in fact allege negligence by a finance broker and which, if proved, would support the need for professional indemnity insurance?

Mr Urquhart: I do not know the words I used when I spoke to him, but I remember telling him there was one occasion.

Hon GREG SMITH: Sitting here it seems extraordinary that the Finance Brokers Supervisory Board would not be aware of negligence within the industry; yet it was reported in *The West Australian*. I think both Global Finance and Graeme Grubb were going under then.

The CHAIRMAN: In your opinion what have been the causes of the other losses in the finance broking industry?

Mr Urquhart: Which ones are you talking about now?

The CHAIRMAN: The losses that are generally accepted now that occurred to investors.

Mr Urquhart: I do not know. Time will tell what they were caused by.

Hon GREG SMITH: Did anything ring alarm bells to the board in 1998 to indicate that all was not well or that there could be something wrong?

Mr Urquhart: Yes, there were a lot of complaints.

Hon GREG SMITH: I am trying to reconcile the time it took for things to happen. A complaint would be just that, I imagine, until it was proved under the innocent until proved guilty scenario?

Mr Urquhart: Yes, the damage had already been done.

Hon RAY HALLIGAN: Page 3 of the Gunning inquiry report expresses an opinion - I accept it as only an opinion, but it will give you the opportunity to refute it - that, because of

the narrowness of the board's thinking about its functions, the supervisory function and the monitoring of the investigative process were not undertaken in a manner in which they should have been undertaken.

Mr Urquhart: Yes, I read that.

Hon RAY HALLIGAN: Would you like to respond to that?

Mr Urquhart: No. My position is clear; I have made it clear over the years; and I made it clear in my evidence. I will not resile from the position I have taken: My view is that the Gunning inquiry is wrong.

Hon RAY HALLIGAN: In that case you have answered it. I do not want to harp on about the business of things in writing, although I am a great believer in it, but is it correct that you were asked about the professional indemnity insurance about which we have been talking? I understand your stance on it and the reason that you are taking that stance. However, I am led to believe you were asked by the minister, possibly on three occasions, to respond to a request about professional indemnity insurance and your retort to that request was, "Put it in writing."

Mr Urquhart: That he should put it in writing?

Hon RAY HALLIGAN: Yes, his request to you.

Mr Urquhart: No, I do not have a recollection of that.

Hon RAY HALLIGAN: Are you saying you received that request to respond to suggesting something about professional indemnity insurance?

Mr Urquhart: Yes, certainly.

Hon RAY HALLIGAN: Did you do so in writing after that verbal request?

Mr Urquhart: I am not quite following the questions and the point in time you are talking about. The letter that I had with my letter of resignation was dated April 1999. Soon after that we commenced what we were required to do by the minister, which included professional indemnity insurance. One board member was assigned to investigate that matter, and has been doing that constantly for 10 months or so. It is not an easy question. Only one insurance company appears to be in favour of offering the insurance that would be required. I still have my doubts about the situation, particularly because insurance companies can refuse to pay out if you have not done all the right things in your application and if you have not done this, that and the other. Which principal who has stolen money is going to report it straightaway to the insurance company? All these problems are going through my mind. A bond is there; you call on the bond and it is paid. We know what the bond system is; it is useless these days. The only other alternative for defalcation is what I have been harping on about for eight years - a fidelity fund.

Hon RAY HALLIGAN: I am suggesting that if a request is made of that nature and, for example, I do not totally understand the situation as you know it, I would be looking for a response to indicate my thinking is incorrect and to move me in a completely different direction along the lines you just explained. Did you respond in writing in that manner?

Mr Urquhart: Not that I recollect. Do you mean after April 1999? No, we just got on with the job. I do not think I wrote to the minister on that point.

The CHAIRMAN: On that point, are you able to advise the name of the board member who has been looking at that matter?

Mr Urquhart: Ray Weir.

The CHAIRMAN: The only reason I ask is that he has provided us with information that contains correspondence between the board and an insurer.

Mr Urquhart: Anon or a name like that?

The CHAIRMAN: Yes, something like that and I think it is doing it through Sun Alliance, but I wanted to check that.

Mr Urquhart: Yes, he was assigned to that matter because he, being an industry member, is familiar with bonds and all that sort of thing.

The CHAIRMAN: On my reading of that correspondence, you are still trying to negotiate and get legal advice on that issue?

Mr Urquhart: Yes.

The CHAIRMAN: I remember reading that if it is fraud, it is worthless.

Mr Urquhart: You have a problem.

The CHAIRMAN: How would you envisage a fidelity fund working? Is that something you have raised with ministers of the Crown?

Mr Urquhart: In one of my letters to the minister I set out how to set it up. I said that we should have a fidelity fund. He replied to me asking how to do it and I think I gave him four examples.

The CHAIRMAN: Which minister was that?

Mr Urquhart: The present minister.

The CHAIRMAN: Earlier you said you had been on about the idea of a fidelity fund for eight years; to whom were you on about it?

Mr Urquhart: The ministers.

The CHAIRMAN: For eight years?

Mr Urquhart: Yes, it is always mentioned in my reports and from time to time we met with ministers, and it is also in correspondence. Have a look at my letter to Hon Yvonne Henderson in 1992 just after I took over.

The CHAIRMAN: What was her response to that?

Mr Urquhart: "Get on to it."

The CHAIRMAN: When was that?

Mr Urquhart: The end of 1992. What happened in 1993? Another Government came in.

The CHAIRMAN: If I remember correctly, she gave a commitment to do something in the autumn?

Mr Urquhart: Yes, I think it was in October.

The CHAIRMAN: That was in relation to the fidelity fund?

Mr Urquhart: She was going to look into it.

The CHAIRMAN: I realise it is a long time ago, but on 11 December 1996 at the board meeting you considered an application of an Ian Hamilton to become a licensed finance broker.

Mr Urquhart: Yes, he was before us.

The CHAIRMAN: In going through the minutes, I notice the practice of the board at that time was to grant only conditional licences to finance brokers and that they provide finance

only through licensed credit providers and the like. Are you able to inform us why Mr Hamilton was given an unconditional licence at that stage when it appeared to be the practice of the board to grant only conditional licences?

Mr Urquhart: It depends. Sometimes they told us what they intended to do. It was put to the applicants that they therefore would not mind being restricted to dealing only with credit providers and that they did not want to deal with private funds. The applicants would say that that was what they wanted and "credit provider" would go on the licence automatically. As the committee probably realises, very few people deal with private funds; only 10 or 15 are left out of 100 or so business certificates. Mr Hamilton had experience in the R & I Bank, was a branch manager and a financial planner, and had worked at Perpetual Trustees. He was then with Clifton Partners Finance Pty Ltd and wished to remain there dealing in private mortgages and promised he would become a director in the future. All of that indicated to us that he had experience in private mortgages and, because he had been a bank manager and financial planner, we used our discretion to give him an open licence.

The CHAIRMAN: He had also been at Blackburne and Dixon. Do your notes show that at all?

Mr Urquhart: No, these are just my own notes.

The CHAIRMAN: The board minutes certainly show that.

Mr Urquhart: Therefore, he had the background.

The CHAIRMAN: Therefore there was never a policy at that time to give only conditional licences?

Mr Urquhart: No. I would be interested to know what has happened to Mr Hamilton since then. Why did you pick him out?

The CHAIRMAN: I was going through some of the old board minutes and I read that somewhere, although I have not been able to track it back.

Mr Urquhart: He has never been subject to a complaint since then, as far as I am aware.

The CHAIRMAN: No, I was not suggesting there was anything necessarily improper about it. I just want to establish what was the policy at that time.

Mr Urquhart: Each individual case is taken on its own merits. There is no policy; except that now, if somebody has not had hands-on experience in finance broking, we would require them to do finance broking 1 and 2. That policy was established in the past 12 months.

The CHAIRMAN: According to the minutes, member Eve Broadley excused herself from the meeting with Mr Hamilton and took no further part.

Mr Urquhart: She must have had connections with him. She is a share broker and may have been a client.

The CHAIRMAN: You do not have a record or make any notes of that?

Mr Urquhart: No, I did not make a note of that. My note is that he was interviewed by Mr Bell and she did not take any part in that interview either.

The CHAIRMAN: I also note in the minutes that deputy member Mr Lynn was selected as the acting chairman for the inquiry held on 29 April 1996 into Blackburne and Dixon. He was made the chair of that inquiry but was only a deputy member to Ms Linda Key.

Mr Urquhart: Yes.

The CHAIRMAN: I understand that Ms Key expressed concerns about the fact that a deputy member had been appointed to the inquiry rather than her as the full member.

Mr Urquhart: Yes, I have a vague recollection of that.

The CHAIRMAN: I believe she raised it at the meeting on 29 April.

Mr Urquhart: Yes. I personally do not see any problem with it.

The CHAIRMAN: Do you have any minutes in your notes about that?

Mr Urquhart: No, I do not think so. However, I expressed in my evidence that the Gunning inquiry suggested to me that some board members could be involved in investigations and others conduct the inquiry. I said I did not think that was proper or within the intention of the Finance Brokers Control Act that five deputies should sit on an inquiry. However, at that time, it did not occur to me that it was improper for Andrew Lynn to sit. The reason I was not on it is that I was on holidays; I remember that very well.

The CHAIRMAN: I do not know that it was necessarily improper for a deputy to sit. Ms Key's complaint was that it was preferable for board members to be in attendance at all times, if possible, and should an occasion arise when a member is unavailable, the deputy member would deputise.

Mr Urquhart: I think that might have been taken on board after that.

The CHAIRMAN: You do not have a recollection of why that decision was made?

Mr Urquhart: No.

The CHAIRMAN: I got an indication that Ms Key was prepared to serve on that inquiry, but for some reason someone made a decision that she would not. Do you know who made that decision?

Mr Urquhart: The board would have. It is possible that she did not attend the previous meeting when the constitution of the board was decided.

Hon GREG SMITH: I have had a fairly fast read of both the 1996-97 and the 1997-98 annual reports. You said earlier that you had urged the establishment of a fidelity fund.

Mr Urquhart: Yes.

Hon GREG SMITH: There is no mention of it as something talked about or a requirement in the annual reports. I know it is easy to be wise in hindsight.

Mr Urquhart: You should go back and look at the other reports. You will find it in each and every one, prior to the ones that you are reading. Not only that, I have also written to the minister about it. How often do we have to ask for things? I am sorry gentlemen, but neither political persuasion in this State has done anything. It is only now, because this absolute disaster has happened, that something will occur.

Hon GREG SMITH: That mainly happened through criminal activity.

Mr Urquhart: Yes. However, some of it - but not all of it - could have been avoided. When I came onto the board, two people had stolen from trust accounts, and nothing was done then either. You would have thought that would have triggered things off, but it did not.

Hon GREG SMITH: When you say there were two people when you came in -

Mr Urquhart: There were two persons who, just before I came on the board, had defalcated. One was Jacka who committed suicide and the other was a person by the name of Trewenack. Those people were referred to in my letter to Yvonne Henderson.

Hon GREG SMITH: No action was taken?

Mr Urquhart: No. She promised action but none was taken.

The CHAIRMAN: I take it she was removed fairly soon after that.

Mr Urquhart: I will not comment on that.

Hon G.T. GIFFARD: What was the date of the letter?

Mr Urquhart: She replied in October. My letter was pretty close to when I took over in May or thereabouts.

Hon G.T. GIFFARD: In 1992?

Mr Urquhart: Yes.

The CHAIRMAN: There will be some interesting questions to ask the ministry about advice they may have provided to the incoming minister.

Mr Urquhart: We are not privy to that. Some of the documents you have given me today are surprising.

The CHAIRMAN: In what way?

Mr Urquhart: Just the content of them. I was surprised.

The CHAIRMAN: Surprised in what way?

Mr Urquhart: I have never seen - what are they called, ministerials or something -

Hon G.T. GIFFARD: Briefing notes.

Mr Urquhart: I have never seen one before.

The CHAIRMAN: The level of detail in them surprises you?

Mr Urquhart: Just doing the best to protect the minister I think. That was my thought on it when I read it quickly.

Hon GREG SMITH: Mr Urquhart, there were two industry representatives who were elected onto the board by the industry.

Mr Urquhart: Yes.

Hon GREG SMITH: I think two of those industry representatives are now in a bit of trouble because of their own activities.

Mr Urquhart: As you said before, alleged.

Hon GREG SMITH: Yes. I am just trying to work out whether the board saw itself as a board that was looking after the finance broking industry as an industry or whether it thought its role was to look after investors and borrowers.

Mr Urquhart: The Act does not go that far about protecting investors in that manner. That is the whole point. If the legislation wants us to protect investors, then we need something in the legislation, such as the Australian Securities and Investments Commission has, so that we can do that. However, that is not fair. Our main objective under the Act is to supervise the industry members. That is in the preamble of the Act. Is that right?

Hon GREG SMITH: We do not have a copy of the Act.

Mr Urquhart: The preamble states -

... to make provision with respect to the licensing, regulation, and supervision of finance brokers, and for related purposes.

Hon RAY HALLIGAN: Is "for related purposes" all encompassing.

Mr Urquhart: Yes, but it is only within those provisions which are in the Act.

The CHAIRMAN: When the problems in the finance broking industry were first raised in Parliament in November 1998, was that when the board became aware of those problems?

Mr Urquhart: We had nine or 10 complaints against Grubb at that time, and I think one complaint involved Global. I cannot remember the details. There were only one or two complaints about Global.

The CHAIRMAN: Did the ministry, at any time, contact the board to say that it appeared there was a problem and something needed to be done about it?

Mr Urquhart: Certainly with Grubb. Jack Willers in November.

The CHAIRMAN: He contacted the board?

Mr Urquhart: He came to the meeting.

The CHAIRMAN: Right. What about some of the other brokers that have been mentioned - Global Finance, Blackburne and Dixon?

Mr Urquhart: There were two complaints against Global. I do not think there were any against Blackburne and Dixon at that stage. That came later.

The CHAIRMAN: Right. So there were no meetings between the ministry and the board to respond to what was an emerging crisis or anything like that at that stage?

Mr Urquhart: It depends what you mean by crisis. The fact that there were about 10 complaints against Grubb had to be considered seriously. However, I repeat, at that point in time we had no idea that his trust account had been in debit for two years.

The CHAIRMAN: What about Global and Blackburne and Dixon?

Mr Urquhart: I do not think there was any defalcation in Global as far as I am aware. I think the complaints against Blackburne and Dixon came later.

The CHAIRMAN: Penny Searle indicated to this inquiry that she had sought meetings with the board, gone to the ministry, and I think had spoken to you personally about her concerns.

Mr Urquhart: Yes she did.

The CHAIRMAN: That did not raise alarm bells?

Mr Urquhart: That matter was referred straightaway to an investigator. I think that will come out in the evidence I gave to the Gunning inquiry. It is all there. I think her main concern in the end - I do not know what it was along the way because I did not want to discuss it with her because of the policy that I had - was that the ministry decided to put only four of her six matters before the board.

Hon GREG SMITH: You did not want to discuss it with her because of the policy you had?

Mr Urquhart: Yes.

Hon GREG SMITH: What was your policy?

Mr Urquhart: That investigations should be done by the ministry. That if board members became involved in the investigation there would be a denial of natural justice. In other words, there could be a perception of bias against the licensed person.

Hon GREG SMITH: From the board?

Mr Urquhart: Yes.

Hon GREG SMITH: What was the general flow of information for a complaint? When complaints came in, would they come to the Ministry of Fair Trading and then to you and to an investigator, or would they also come directly to you for you to pass them on?

Mr Urquhart: I think it is best that you find out the actual nuts and bolts of that from the ministry. A complaint can be made to the ministry and it can be made to the board. A board

member may have something of the nature of a complaint. In all three instances, the matter is referred to the ministry for investigation.

Hon GREG SMITH: What happens after the investigation?

Mr Urquhart: After the investigation, at each meeting a list is given to us providing the name of the licensee, the date on which the complaint was made, the section of the Act or the code that the investigator thinks has been, or could be, breached, and a short description. That could be "complainant interviewed, further interview with another witness" or words to that effect. There is very little more than that. That is all I ever wanted. That list is added to at each monthly meeting, or at the more frequent meetings we have had in the past. There was no question about how old they were, by virtue of that original date I referred to.

Hon GREG SMITH: What would happen with that complaint? If fraud may be involved in a case, would it be referred to the police?

Mr Urquhart: Yes.

Hon GREG SMITH: If it was a minor breach of the Act, would you issue a fine against the broker?

Mr Urquhart: I will describe what happens. If there is any question of fraud, it is the decision of the ministry to refer the matter to the police. Matters of persons acting without a licence are also referred to the police because that does not come within our jurisdiction. We have jurisdiction over only licensed persons. If anybody breached section 26, then the matter would go to the police and be heard in the Court of Petty Sessions. After the investigation is completed, the investigator will discuss it with the registrar and a decision will be made about whether to refer it to the legal section to see whether there is a prima facie case to take to the board for inquiry. After legal opinion is sought - this is all within the ministry - if there is a prima facie case, then the particulars are set out in a statutory declaration which is given to the board. In all cases in my experience the board accepts that there is a prima facie case and the matter goes to an inquiry. That is in an ordinary, confined meeting if you like. The next meeting we have will go into an open court situation and that matter will be brought on for mention only. We find out from the licensed person whether he or she wishes to plead guilty to it or whether he or she will defend it. If that person decides to defend it, we set a date.

Hon GREG SMITH: When a complaint was made - for example someone had not been paid interest or was having trouble getting their money back - would that generally be settled by the fast track system? Would you ring the broker and say that the person had not received their interest and they should get straight onto it?

Mr Urquhart: Yes, we get straight onto it or have a mortgagee-mortgagor fight over the terms of the mortgage or whatever.

Hon GREG SMITH: The cheque is in the mail.

Mr Urquhart: However, it is just as well that those matters are referred to the ministry because there may be something in those facts which comes within the provisions of the Act or a code. A lot of them would be, as you just said, a conciliation type thing or would be handled in the civil court.

The CHAIRMAN: Mr Urquhart, did any of the industry members on the board ever raise with the board any concerns about what was happening in the industry?

Mr Urquhart: Yes. Complaints would be reported to the investigator.

The CHAIRMAN: Did the issues they raised relate to the issues we now see in trust accounts, overvaluations and so on?

Mr Urquhart: Not that I can recollect. Not those two issues.

The CHAIRMAN: Right. In his evidence, Mr Wallace said that when he spoke with the board about the problems with the Gamel Ward matters and the overvaluations in Collie, Mr Bell indicated quite clearly that the board knew about Mr Ron O'Connor and his valuations. Do you recollect any conversations like that occurring at board meetings?

Mr Urquhart: I have a vague recollection of that.

The CHAIRMAN: Do you recollect the board ever doing anything about that?

Mr Urquhart: The overvaluations? Yes, we warned a licensed person in the newsletter, through the ministry, that they should watch that.

The CHAIRMAN: Is that a bit like warning the foxes to keep an eye out for people stealing chickens? I mean that in all seriousness. If the brokers are involved in the overvaluations, what is the point of warning them?

Mr Urquhart: You say the brokers were involved in the overvaluations; I do not. Nor do the brokers. Valuers are separately licensed. They have their own professional standards to upkeep.

The CHAIRMAN: Right. So your view -

Mr Urquhart: I cannot see any reason why a broker should not take a valuation on face value, just the same as we took audits on face value.

The CHAIRMAN: Have you had a chance to look at the Gunning committee recommendations?

Mr Urquhart: Yes.

The CHAIRMAN: Do you have any comments about those?

Mr Urquhart: No comments other than those I have already made in my letter of resignation.

The CHAIRMAN: Recommendation 8 deals with people who should be precluded from being a finance broker, and states that the Act be amended to preclude a person who -

- has been convicted of an offence of dishonesty;
- has been suspended or disqualified from carrying on an occupation in any other State or Territory or the Commonwealth; or
- is an undischarged bankrupt or subject to a composition or deed of arrangement or assignment with or for the benefit of creditors which has not been finalised; or
- has within the last 5 years been a director of a corporation which within that period has been the subject of any form of insolvency administration,
from carrying on business as a finance broker.

Do you believe that is a better way of defining "good character"?

Mr Urquhart: We deal with all those things from the applications, but it is not mandatory. The committee wants to make it mandatory.

The CHAIRMAN: As a starting point, do you think those four issues would preclude someone from being a finance broker?

Mr Urquhart: As I said earlier, each individual case would have to be taken on its merits. From memory, we have given a licence to one person who was convicted of an offence. I suppose one should not admit that, but I will tell you what it was. He admitted to stealing a

bike at Rottnest to go and get a loaf of bread. To me that is quite inconsequential, and he got his licence.

The CHAIRMAN: Was that recently or when he was a kid?

Mr Urquhart: When he was a kid; he was 18 or something. I think the board said, "Well, doesn't everybody?"

The CHAIRMAN: What test would you have applied as a board member to determine good character?

Mr Urquhart: Three character references were given and they were not to be from their proposed auditor, for argument's sake. We made sure they were independent; we had their statement of assets and liabilities and we had the police record. They must say that they have no tax liability, and there are other matters in the documentation. Then we ask them questions to gauge their situation. Quite often the industry members on the board know the people who are making applications, and that helps.

The CHAIRMAN: What sort of test would you apply to remove a licence from someone? Would you apply the balance of probabilities or beyond reasonable doubt?

Mr Urquhart: It would have to be in-between for a tribunal of this nature, because we are dealing with somebody's livelihood. I think there is some reference to this in the papers of the Gunning inquiry - that the onus of proof is somewhere in-between.

The CHAIRMAN: If, for instance, a tribunal or a royal commission had found someone had acted improperly, do you believe that would be cause to remove them as a finance broker?

Mr Urquhart: It would depend what the improper conduct was.

The CHAIRMAN: Making a corrupt payment, for instance?

Mr Urquhart: I think so, yes.

The CHAIRMAN: Were you ever aware that Mr Fermanis was listed by the Wanneroo royal commission as having made a corrupt payment, and was a licensed broker?

Mr Urquhart: No, I have never been advised of that.

The CHAIRMAN: Do you think that, when those sorts of issues are raised, there should be some mechanism to bring their attention to boards such as yours? I am looking at how you may prevent that happening in the future.

Mr Urquhart: I would think so, yes. Getting back to whether someone is a fit and proper person, we have not had any inquiries in that regard and if you look at my evidence you will see the reasons that I gave. I got some heart out of the Barker QC opinion that we could proceed along those lines.

The CHAIRMAN: I think it was reported in the Press that Mr Weir was a board member and had previously been bankrupt. Is that correct?

Mr Urquhart: He was under a part X, or some sort of administration.

The CHAIRMAN: Do you think that should preclude someone from being a finance broker?

Mr Urquhart: No, I do not. The recommendation refers to being an undischarged bankrupt.

The CHAIRMAN: Or "subject to a composition or deed of arrangement or assignment" or "has within the last 5 years been a director of a corporation which within that period has been the subject of any form of insolvency administration".

Mr Urquhart: You looked a bit surprised when I said, “No, I could not see any problem with that.” I will explain why. Under the Legal Practitioners Act a practitioner can be in bankruptcy and still have a practice certificate, under the supervision of the board.

The CHAIRMAN: Do you suggest that that should be the case with finance brokers?

Mr Urquhart: Yes. I cannot see why you should take away his right to earn a living, as long as he is under supervision.

The CHAIRMAN: What about when he is part of the board? Does that not get more complicated?

Mr Urquhart: He resigned at the time he went into composition, or whatever it was, and when he came out of bankruptcy he applied to come back on the board and was elected.

The CHAIRMAN: That does not concern you?

Mr Urquhart: No. The Act would have to say that he cannot apply.

The CHAIRMAN: I believe Mr Blackburne was a member of the board at some stage?

Mr Urquhart: Not in my time. I did not know him. He may have been a deputy at my beginning, but I do not think I ever met him.

The CHAIRMAN: Do you have a copy of your resignation letter? I think most members have received a copy of that letter personally, but could you provide a copy to the committee for the official records?

Mr Urquhart: Yes. I said I would provide one other document to the committee. I have forgotten.

Hon GREG SMITH: The transcript of evidence from the Gunning inquiry?

Mr Urquhart: No. You have that. It was my statement. The copy of my resignation that I have does not have the attachments to it.

Hon G.T. GIFFARD: Could you forward those attachments to the committee?

Mr Urquhart: No, I do not think I can. I would have to get them from the ministry or from another member of the board. I do not know where they are now.

The CHAIRMAN: Has anything come of the granting of exemptions and the concerns that were raised with the minister, or is that still an outstanding matter?

Mr Urquhart: Yes. I think the minister complied with what we wanted. He is still granting exemptions, but at least he is referring them to us before he does it and giving us the opportunity to include whatever stipulations we require. Some of those exemptions are quite onerous and the conditions that are put on those persons are probably sufficient protection for the public.

Hon GREG SMITH: Was it mainly for the mortgage originators?

Mr Urquhart: It was mainly for them, yes. I think there is now sufficient protection. As I said earlier, there is no ongoing review as to what they do.

The CHAIRMAN: Thank you for coming in this afternoon, Mr Urquhart.

Committee adjourned at 3.55 pm