

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
TUESDAY, 4 JULY 2000**

Members

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

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

Committee met at 10.10 am

**CONLAN, MR MARK ANTHONY,
Supervisor/Official Liquidator of
Rowena Nominees Pty Ltd previously trading as Graeme Grubb Finance Broker,
RSM Bird Cameron,
8 St Georges Terrace,
Perth, examined:**

Mr Conlan: I am the supervisor of the Graeme Grubb finance broking business, having been appointed by the Finance Brokers Supervisory Board. I am also the official liquidator of Rowena Nominees Pty Ltd, which formerly traded as Graeme Grubb Finance Broker.

CHAIR: You will have signed a document entitled information for witnesses. Have you read and understood that document?

Mr Conlan: Yes, I have.

CHAIR: These proceedings are being recorded by Hansard. To assist the committee and Hansard, 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. Even though 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 does decide to make your evidence public, we will first inform you of this determination. That is the standard outline, but the committee has further resolved that for the purposes of the meetings we are having at the moment, if we did want to use any evidence in our final report, we would call you back for a further hearing, just so you can feel confident that what we talk about today will remain private between yourself and the committee. You should not disclose your evidence to any other person. The purpose of asking you to come along to meet with us today is to address our third term of reference, and I believe a copy of that has been forwarded to you.

Mr Conlan: Yes, that is correct.

CHAIR: That requires us to avoid interfering with or obstructing any inquiry being conducted into related matters and in particular inquiries by - I guess the appropriate one for you is paragraph (b) - any liquidator or supervisor of any company. I hope that our meeting today will enable us to inform ourselves of your activities so we do not breach that standing order.

The committee has a number of questions, to try to discover what your company or inquiry is doing so we may avoid this breach. We are also interested in any ideas you may be able to offer in order to keep lines of communication open, so we do not breach the term of reference in future because of developments in your inquiries. To commence, perhaps you could give us a brief outline of the background to your becoming appointed as both the supervisor and liquidator, what the circumstances were, when you were appointed - those sorts of details.

Mr Conlan: I was appointed an independent accountant of Graham Grubb Finance Broker pursuant to an enforceable undertaking agreement entered into between the Australian Securities

and Investments Commission and the directors of Rowena Nominees, being Graeme and Margaret Grubb. My principal role there was to investigate the concerns ASIC had with regard to the present conduct of the finance broking activity. That appointment occurred in late April/early May 1999. I was in that role for approximately three weeks, whereupon ASIC successfully applied for the appointment of a provisional liquidator. I was appointed provisional liquidator of Rowena Nominees about 25 May 1999, after which I was appointed the official liquidator of Rowena Nominees in late July 1999. About the time of my appointment as the official liquidator of Rowena Nominees, I was also appointed as a supervisor by the Finance Brokers Supervisory Board pursuant to powers contained within the Finance Brokers Control Act 1975.

In my capacity as liquidator of Rowena Nominees I had no funding - or the funds that might have been available to me had passed to the possession of the receiver and manager of Rowena Nominees who was appointed by the charge holder shortly after my appointment as provisional liquidator. Under the role of supervisor, funding was provided to conduct activities designed to cease the Graham Grubb finance broking business activity and also facilitate the allocation of the various funds that might be recovered from mortgages to the mortgagees. That role has been extended since, in that further support has been provided to review the affairs of the auditors' conduct and also to now take forward possible proceedings against St George Bank and the auditors of the finance brokers trust account.

Throughout the last year and a bit numerous applications have been made to the court, hopefully to provide me with some directions on how to deal with the tasks I have. It has been found that the Finance Brokers Control Act is very limited with regard to provisions and guidance as to what I should be doing. Also, because of the manner in which the trust account has been maintained and the manner in which Rowena Nominees ran its finance broking business, a complexity of issues has arisen. We need to seek the directions of the court on how to resolve those issues which arise. It is not clear, based upon present law principles, as to how those matters should be dealt with.

CHAIR: What are the main areas you are working on at the current stage?

Mr Conlan: At this very minute, or last week, this week and next week, we are trying to comply with some orders of the Supreme Court to provide an enormous amount of data in respect of four loan agreements or loan folios so the court can hopefully provide some direction on how we should deal with those particular folios. Some of the decisions that arise from those cases may well give us guidance on how to deal with the many other folios with which we have problems. Those issues deal with the Land Titles Act, and the manner in which mortgagees obtained their interests in mortgages and where their funds were applied to obtain that interest. There are many investors who were promised mortgages and, for one reason or another, have not found themselves with mortgages. There are many investors in the one loan who were all promised the same type of security. Some of those investors have been placed on the mortgage and others have not been.

There are probably in the vicinity of 18 applications presently before the court on how we should deal with some of these matters. Therefore, the court has made a decision to try to push forward with four particular applications, in the hope that that will give us some guidance on how to deal with all the other matters.

We are continually facilitating the realisation of mortgages and either because of orders that have been issued by the court or through negotiations with the mortgagees, those funds are placed in some form of trust account under my control, or joint control with individual registered mortgagees, with a view that at some stage in the future there will be a direction from the court or an agreement between the parties based upon a decision by the court as to how those moneys should be directed.

That is our principal task at present, but there are also legal teams being briefed and matters have been put forward in respect of the St George proceedings, or moving towards obtaining legal advice as to the merits of proceedings against St George and the auditors. Those matters are also priority issues at this point in time. There are issues of merely settling mortgages or trying to facilitate settlement of mortgages. At the time of my appointment there were approximately 680 loan folios. It has been only recently that we have been able to proceed through all those loan folios, to the extent that at least every folio has had some sort of cursory review. The most complex loan folio has approximately 240 investors. The company is in liquidation, its principal asset has been sold for about \$5m. The total claims against that asset and other assets of the company might total about \$20m. There are proceedings before the court with regard to that matter and that is one of the test cases the court is trying to resolve.

CHAIR: Was the main asset property?

Mr Conlan: In this particular matter which involves a company called Sandgate Corporation Pty Ltd, which is in liquidation, its principal asset was a vineyard property worth \$5m. It is our belief that that company was partly owned by Graeme Grubb or Rowena. Due to lack of records, we have been unable to establish whether it was in his capacity personally or in Rowena's capacity. One might say that the finance broker had a financial interest in this company called Sandgate Corporation. The amount of funds that have gone to that company from the trust account approximate \$13m. There is security in support of those borrowings totalling about \$5m, and Sandgate itself might have assets to the value of \$6m or \$7m. Therefore, there is a significant shortfall to investors. There are some registered mortgages, there are mortgages that are valid but, for some reason, have not been registered. There are investors on the mortgages who have been paid out, yet Sandgate has never repaid any money. What that transcribes to is that funds were repaid from a trust account to satisfy the claims of some of the mortgagees, and therefore other investors' moneys have been applied to discharging some of Sandgate's debt.

The records of the trust account are deficient. They probably have not been reconciled for some years. They probably cannot be commercially reconciled or, in a practical sense, it is not commercially viable to reconcile them. I am sure it is possible to reconcile the trust account at some stage with a group of accountants working on it over a period of time. It is my personal view that it is not commercially viable to do that. These are just some of the matters the court is presently facing to try to progress my role as supervisor. My role as supervisor is to not take sides in the sense of not representing unregistered mortgagees or registered mortgagees; it is merely to gather the facts, and try to make a decision based upon the law as it may stand and upon the legal advice I have. However, where the law is unclear, because of the particularly unusual circumstances with which I am faced, an application is made to the court to ask the court what I should do. In my role as supervisor I do not take any particular side, it is just a matter of independently gathering the information. If I cannot make a decision which I believe to be

correct and based upon legal advice, then the matter is referred to the court.

There are not many loan folios where we can sit back and confidently make a decision that we believe is a correct one. Many matters have to be referred to the court, and therefore we are subject to the court processes. That leads to delays and considerable frustration for investors because they feel as though a government appointed person is taking sides. That is not the case. The fact is that we cannot answer some of the questions which come to our minds, and therefore they must be put to the court.

There are some investors who, because of the fact that they are registered on mortgages, have an advantage at law over investors who are not registered. To create some balance in that equation, there is a need for me at times to put forward arguments which might support the unregistered mortgagees, but it is merely putting some balance into the equation in trying to fairly lead to a distribution of the funds we realise from the mortgages back to the individual investors.

CHAIR: I guess the bottom line is that you cannot allow the distribution of funds until you are satisfied that they are going to the correct person.

Mr Conlan: That is correct.

CHAIR: You mentioned proceedings were being taken against St George Bank and the auditors. Is it your job to direct those proceedings, or who has the formal responsibility for that?

Mr Conlan: In my capacity as official liquidator of Rowena, or in the capacity as the official liquidator of any company, I have the right to commence proceedings for a variety of reasons. It is believed in this particular instance that it is more appropriate to commence proceedings in my role as liquidator, rather than in my role as supervisor, due to the limited nature of the control of finance brokers. We are presently gathering evidence and discussing with our respective legal teams the issues that arise, with the view of establishing whether there is a sound case or a sound argument on which to commence proceedings against St George and against the auditor of the trust account. We shall also consider the likelihood of success of those proceedings and the likelihood of any funds being recovered. A decision has been made to carry this matter forward but as to whether proceedings will actually be commenced or not - it is highly likely that they will - it is a matter for the legal team to draft a statement of claim that will stand up through court proceedings.

CHAIR: You are being funded at the moment by the State Government to carry that out as part of your activities.

Mr Conlan: That is correct.

CHAIR: Is there just one auditor or does it go back over a number of years and involve different auditing firms?

Mr Conlan: At present we are reviewing the activity of only one auditor, but we are presently obtaining some further information to establish who audited the trust account prior to 1995, and what was the status of the reports they provided to the finance brokers control board. We are seeking to gather any evidence that was in the audits prior to 1995. They may have been

deficient as well.

CHAIR: Returning to the committee's terms of reference, do you have any ongoing relationships with any of the other bodies outlined in term of reference (3), that is, the police, the Gunning inquiry, Australian Securities and Investments Commission or any prosecutions, and what sort of methods of communication do you have between you and those bodies to keep each other abreast of your inquiries?

Mr Conlan: We meet regularly with representatives of the WA Police Service's fraud squad division. We have referred matters to it for further investigation, or referred matters which we feel need to be investigated. Presently, we have a formalised fortnightly meeting with representatives of the fraud squad to coordinate or discuss what we have done, or what it may be doing and what information it may be looking for; or whether there are matters that we should refer to it; or what sort of information it may require to advance an investigation. Outside the formalised meetings, the police, at various stages, appear in our building to gather information on the present investigations. That may be at regular times - at particular times - or it might be intermittent. Since my appointment as liquidator-supervisor, we have had ongoing and regular contact with the squad, and it has been very helpful.

CHAIR: Do you have any suggestions or views about the best way for this committee to keep in touch with you, and keeping abreast of your inquiries, to ensure that we do not breach term of reference (3)?

Mr Conlan: You would need to talk to the police to determine which matters they are investigating. Some matters that we have referred to the police relate to individuals who I do not think have currently been charged. These relate to loan folios that go beyond Graeme Grubb and his individual entities. I suspect that some of the fraud squad's inquiries are a little sensitive at this time. Three of my staff and I were summonsed to appear before the Gunning inquiry. We provided about a day and a half of evidence in public and in camera. The purpose of that presentation was to give the Gunning inquiry a background to the means by which Graeme Grubb finance broker operated his finance broking activities. It was very much an overview of what we found leading up to our attendance at the inquiry, and also examining individual loan folios as examples of how loans were arranged, and the issues that arose out of those loans that probably led to issues such as misrepresentations to investors, possible frauds, or stealing money from a trust account. That has been the extent of our inquiries with the Gunning inquiry; we have no further contact with it. I do not know whether we will be called to appear again.

We liaise with ASIC on a regular basis. It has access to records to which I do not have access, and through my position as an officer of the Finance Brokers Supervisory Board, and through the provisions of the Finance Brokers Control Act and the Australian Securities and Investments Commission Act, I can inspect records their records for the purpose of determining whether it can provide me information which might help with my ongoing investigations. It has been helpful, but there have certainly been some issues at a state and federal level that, either because of the Act under which ASIC operates or issues surrounding the fact that we might be dealing with a state or federal authority, it does at times put hurdles in front of us when trying to gather information from ASIC. I do not necessarily say it is deliberate; ASIC operates under an Act, and therefore it feels its interpretation of the Act makes it necessary for certain guidelines to be met before information can be released. That involves certain requests from the Ministry of Fair

Trading to ASIC and ASIC's correspondence to the ministry. I think there could be, at some stage in the future, a review of some of these provisions to make the flow of information between state and federal bodies far more conducive and easier.

I have some broad ideas on the issues into which ASIC is inquiring at the moment. However, the committee would need to talk to it about specific matters, specific folios or investigations. Again, because of the Act, and secrecy provisions and the like, it is a little circumspect about what it is doing. I have to respect and understand that. I do not have a lot of knowledge about some of the things which it is undertaking. Some things may be helpful to me, but I get an indication of that after it has completed its inquiries and the like.

CHAIR: Under the terms of reference, the committee is concerned that we do not interfere or obstruct any of the other inquiries that are going on. Therefore, in terms of the committee liaising with you, we want to ensure that we do not interfere or obstruct anything that you are doing. Are you the most appropriate person to contact?

Mr Conlan: Yes, I am. I have an in-depth knowledge of the all the matters which are being conducted in my office. There are many arms to it, and there are a few matters that are on the go.

We have always been helpful in providing investors with information. A number of investors have made requests to the ministry, or have written to the ministry direct, and if the ministry cannot answer those questions, it then forwards the questions, or requests information from us, and we try to give our view of what the folio involves. For reasons known only to themselves, some investors do not want to understand or do not have a grasp of the folio or loan that they are involved in, and therefore, in a few meetings that we have had with investors, Ministry of Fair Trading representatives have also been in attendance to try to indicate to investors that we are all telling that investor the same story about his folio, and also to explain the legal issues that are tying our hands behind our back on getting the money returned to the investors.

If the committee needs information about any loan folios, I will attend to it as promptly as I can assuming there is nothing barring me from providing information on those loans. We pass on requests to the ministry, so there is no reason not to give prompt attention to information that the committee might seek.

CHAIR: I appreciate that. We will certainly try to keep in touch with you about where we are going and make sure we do not interfere with or obstruct your inquiries. If at any time you feel we are doing something that may be detrimental to one of your inquiries, by all means feel free to contact me. At the moment we have not appointed an advisory research officer, but we hope to have one by the end of this week. I will make sure that person contacts you and gives you their details, so you can contact either them or me if, inadvertently, we start to do something that may be interfering with what you are doing.

Mr Conlan: Do you have any idea of the types of assistance you might need or the information you may need?

CHAIR: Probably not at this stage. We are presently meeting with all the groups listed under term of reference (3) to get an idea of the types of inquiries you are conducting and where you are going, and to establish a relationship. Then as a committee we will need to sit down and

plan. As you would be well aware, it is a fairly broad and wide-ranging issue to determine where to even start in an inquiry such as this. However, as we go down that path we will certainly let you know if there are things with which we would appreciate assistance.

With regard to the money going out of the trust account, are you doing the money trails? Is it part of your responsibilities to try to trace the money? Are there dead-ends where it seems to have disappeared?

Mr Conlan: I am not sure whether that question is from the point of view of whether money has been fraudulently removed from the trust account and travelled overseas or something, or whether you are talking about money validly coming out of the trust account to acquire interests in mortgages.

CHAIR: I guess money disappearing, be it overseas or wherever, either directly through Rowena Nominees or through other companies.

Mr Conlan: We are examining major transactions, or major examples of funds going out of the trust account. We have not identified any particular instance where funds have just been moved from the trust account and moved for no reason whatsoever. Moneys have been moved from the trust account to entities associated with Rowena Nominees and Graeme Grubb. In some instances those moneys appear to just be rectifying loans, overdrafts or whatever that those companies may owe or moneys those companies may owe of a trading nature. In other situations, money has gone out of the trust account and we lose the trail of it because we do not have the power to gather evidence on where those funds have gone. We suspect the movements of some funds out of the trust account are probably fraudulent in nature. We need to do more inquiries. However, in evidence before the Gunning inquiry I suggested the losses could total about \$22m. My view at this point in time is that most of those losses just relate to a finance broker conducting a loss-making business over many years, and conducting associated loss-making businesses. Those funds and investors have just been absorbed over a period of time to make good those losses.

By way of example, I referred to Sandgate Corporation earlier. Losses in that particular structure and an associated company called Ord River Land Corporation, could total in the vicinity of \$7m to \$10m. As to whether that materialised to that extent, I do not know; that will come out over time. Most of that money just went towards buying land that was maybe over-valued, and the land has now been sold at a far less value. It has gone towards developing vineyards and sandalwood projects. Those projects now have not been sold for the amount of money that has gone into them.

Money has gone to cover operating expenses of Sandgate and Ord River, and whilst some of those expenses need to be further examined, that is partially the responsibility of the liquidator of those two companies. I understand the Australian Securities and Investments Commission is making its own inquiries with regard to those companies. As regards overall loss, those moneys we might like to make further inquiries about are not significant. I believe that this particular finance broker has run his business over many years, there have been losses over many years and, as they say, all the chickens have come home to roost at the one time. I have seen no evidence yet that there has been outright rapping of the trust account and funds going all over the place which we have been unable to trace. We have a reasonable idea where most of the funds

have gone, but we need to undertake considerably more inquiries. Those inquiries will be highly dependent upon the funding available to us and the period of time that funding is there.

CHAIR: You have mentioned the associated entities. I understand that with some of the finance brokers there were key borrowers. There would be three or four people who did most of the borrowing from that group. Other than the associated entities, are there any particular key borrowers of Grubb Finance?

Mr Conlan: We indicated before the Gunning inquiry that probably about 50 per cent of the loans could be termed as being to related or associated persons, and those persons might crop up as directors or shareholders of particular companies. Those persons tend to be - I mentioned Sandgate and Ord River - either related to the auditor or related to Graeme Grubb, or related in some way to the other party in Sandgate, who is a gentleman by the name of Mr Baker.

CHAIR: Is Mr Baker just one of the borrowers?

Mr Conlan: No. He is an individual by the name of Arthur Baker, who has, we believe, a one-third interest in the Sandgate structure. He also has a financial interest in other projects that have been conducted by the finance broker.

There are borrowers who have been mentioned in other dispatches associated with other finance brokers. They are two gentlemen by the name of Manton and Ferris who, I read in the Press recently, have now been placed on fraud charges. They and their entities are borrowers of funds through Graham Grubb Finance Broker. They are not significant in the overall loan folio. They might add up to a few per cent of the overall loan folio. There are certainly borrowers who have more than one loan but I do not think any particular borrowers, other than possibly Manton and Ferris, stand out.

CHAIR: Other than the associated entities which include the auditor?

Mr Conlan: Yes, it includes the auditor - entities associated with the auditor who have borrowed funds from the trust account or brokered loans through Graham Grubb Finance Broker.

Hon RAY HALLIGAN: I think you have explained your role as supervisor and the like, and as liquidator in this particular instance - and you are talking about Grubb. Firstly, may I ask whether you are involved in any other investigations as far as the Finance Brokers Supervisory Board is concerned?

Mr Conlan: Outside the Rowena Nominees or the Graham Grubb Finance Broker - no. That is the only finance broker. One is enough.

Hon RAY HALLIGAN: In your role as supervisor or liquidator, at what stage would you report back to the board?

Mr Conlan: No reporting guidelines are set down in the Finance Brokers Control Act. We have intermittently reported to the board on particular issues and, from memory, have done one or two detailed reports on our progress. We report weekly on what our individual staff are doing and have done, so there is regular contact with the board.

Hon RAY HALLIGAN: That is of your own volition; there is not that expectation. You are saying there is nothing in the Act to insist that you report back?

Mr Conlan: No, there is nothing in the Act. The Act is very limited. Probably two or three sections dictate what I am to do. If it is seen that this provision or this particular role of supervisor should be retained in the Act, then there is certainly a need for the Act to be overhauled in that regard and possibly make reference to the Corporations Law with regard to the powers the supervisor might have. Arguments have been placed before the court that I am doing things which are outside my powers, and I may well be. We are doing things that we believe are correct and within those powers.

Hon RAY HALLIGAN: Is that in your role as supervisor or as official liquidator?

Mr Conlan: In my role as supervisor. Proceedings have been commenced in my role as supervisor. However, because those proceedings lead to questioning the entitlement of some registered mortgagees, various lawyers representing registered mortgagees have taken action, or have argued strongly in the court that I am doing things that are outside my role. It is to their advantage to argue that and to succeed with it, because it becomes a bit of a divide and conquer situation. If all the registered mortgagees are in a group and have the law on their side, and then there is an enormous number of unregistered investors scattered all around the place who are not organised in any fashion, there is no means by which their individual interests or their interests as a group can be represented. While I do not formally represent them - it is not my role to represent them individually - I do have to look at the various groups of people. I believe it is my job to make sure there is balance in any arguments put before the court.

Hon RAY HALLIGAN: This may seem to be a rhetorical question but I need you to answer it if you would. I know you are dealing only with Grubb, but when you have gone past a particular stage as far as your role particularly as supervisor is concerned, depending on information you may receive today, do you feel that there may be a need to go back and revisit something that you have done previously and possibly speak to people to whom you have previously spoken?

Mr Conlan: There would certainly be a need to revisit a lot of information we have gone through. There is an enormous amount of information and an enormous number of loan folios. Sometimes it is just a matter of fighting the bushfires that are raging this particular week or that particular week. There is a continual refocusing of priorities and we must ensure that we are dealing with priority issues at the time. However, there will come a stage when there are opportunities to revisit some issues and to undertake some more in-depth investigations. My principal activity at the moment is to try to get some guidance from the court as to how the interest in the various mortgages should be distributed to the investors. That is where a lot of the focus and time is at present. Once there is a bit of guidance there, then some procedure can be put in place to how to deal with that. Some staff can be directed on how to make decisions, and we can focus more on other issues. We will be continually reviewing issues. It is probably unlikely that any particular matter has been concluded at this point in time.

A number of properties have been sold. A receiver-manager of Rowena Nominees is in possession of assets. We would make claims that any assets held by Rowena Nominees are in fact assets held in trust for the investors - in fact, any entity in which Graeme Grubb might have had an interest. We want to place arguments before the court that those funds may well be held

in trust because of breaches of trust of which they were aware. Some of these matters are incredibly complex, and legal teams are trying to work on them. We could probably do with more on the legal teams side of things, but it is just a matter of trying to juggle the resources available and the priority issues.

Hon RAY HALLIGAN: Thank you.

Hon G.T. GIFFARD: Picking up the point about the complexity of some of these dealings, in relation to the observations you made about the Finance Brokers Control Act being very limited, you have already indicated that one of the areas in which the Act is deficient is in the powers of supervisors. Is there anything else you can tell us about what you see as the deficiencies of the Finance Brokers Control Act? Are you looking for some sort of legislative prescription for dealing with these matters? I am concerned that they are very complex and probably so varied that it would be very difficult to have some legal prescriptions. What sort of improvements in the legislative framework are you looking towards?

Mr Conlan: There are issues such as controlling mortgages. Our Torrens title law system has been developed over many years of common law and legislation. There is the issue that once a person gets their name on a title, either as the owner or as the holder of a mortgage against that property, then a number of assumptions at law are made. One assumption is that the interest has been obtained validly and in the proper process. There are only a few exceptional situations in which that interest can be overturned. If a finance broker properly maintains his trust accounts and runs his business in an orderly fashion and, let us say, he has one or two aberrations, there is not a major problem. There will be a major problem for that particular loan folio and a few arguments. In this situation a finance broker has run a business over many years and he has not run it in a regulated fashion; he has run it more like a banking institution. He has dealt with the funds as though they were his funds and, therefore, in my role as supervisor I do not have powers that would make my task easier.

In trying to herd all these problems into a central area I had to go to the court to obtain injunctive relief. When I obtained that injunction it was challenged. Then the injunction was lifted because of issues such as the indefeasibility of title. That means if a person's name is on the title, it is on the title.

The court said that it will deal with it only on a case by case basis. Our workload is probably 10 or 20-fold greater than what it could have been if there was a far stronger Finance Brokers Control Act. It may be that, if some new legislation is drafted and the legal people become involved, they may say it is impossible to do it and that we have to stick with the process being used presently. We have problems of guidance with respect to what powers we have. There is no linkage into the Corporations Law, which has a large history of insolvencies, administrators and individuals being independent of the trustee-type of role. There is a huge amount of common law that has been developed around the Corporations Law. The Finance Brokers Control Act needs to be linked into that. It is not uncommon for Acts to link into the Corporations Law. I think the Aboriginal Councils and Associations Act, which deals with Aboriginal corporations, links into the Corporations Law, and other Acts do the same; for example, the co-operatives Act, which deals with the winding of co-operatives. It may be established that the Act cannot be strengthened anymore than what it is. However, there certainly should be more provisions in there about the role of the supervisor that are more

specific about what he should be doing. As far as strengthening the supervisor's ability to deal with some of the problems relating to common law, land titles and the Torrens title system, we are not able to make changes.

One of the biggest problems has been that there is no opportunity to put a peg in the sand to let everyone take time out to address the situation. The individual investors who are registered on a title merely said to the company, "You're no longer my agent. Give me back my records and I'm going to go away and realise my mortgage", and I was completely powerless to do anything. We have seen many situations in which it is not possible for that investor's money to have been paid to the borrower. That is clearly someone else's money through the trust account. There have been situations in which where people were not even offered that security as security. Yet, they are on the title and they are claiming that, because at some stage they gave money to Grubb and he said he would get a first mortgage, they grabbed onto that and they took it. From a layman's point of view, that is unfair; from the legal point of view, it may be unfair, but it is allowable. If another finance broker takes up activities similar to Grubb, there needs to be a supervisor that can go in there and put a peg in the sand and his time should not be taken up going to court on every single matter. The supervisor should be given the opportunity to take time out and review the situation. He should be able to put the shutters up and say to the various mortgagees, "I'll come back in a short time - a week, three weeks, a month - and I'll tell you where we're going and what we're doing." However, in relation to many of the activities, we have had to dance to the tune of the mortgagees. We have had to make applications to the court to put some balance into the situation in order to give the unregistered mortgagees an opportunity for their position to be put forward to the court. Had we not taken action like that, a lot of moneys would have been redistributed back to mortgagees. These mortgagees may well have been advised to dissipate their assets amongst their family members and friends. Some of the elderly mortgagees may have died and the deceased's estate would have distributed the money. I am not a lawyer; I do not know how to strengthen the Act.

Hon G.T. GIFFARD: From your experience, is it the area in the Act relating to the power of supervisors that is deficient?

Mr Conlan: It certainly is. At the time the Act was formulated many years ago it was probably never envisaged that the role of supervisor would take the form of my role in relation to the Grubb matter or that of the supervisor dealing with Global. It was plainly not envisaged that there would be situations like these, and the only way to deal with them is with a supervisor.

CHAIR: I suspect that what was envisaged was that the current situation would never arise because it would have been picked up by the Act prior to its occurring.

Mr Conlan: That is right. Perhaps there was the belief that other checks and balances would not allow us to get to this point. However, those checks and balances - whatever they are - failed for various reasons. Personally I do not believe there is any one reason; there is a combination of issues over a long period that has led to the present situation. It is diabolical the way Grubb was allowed to run his finance broking business. I was involved in the Robin Greenburg situation some years ago. Again, an individual was allowed to deal with people's money as if that money was her own. The trust account is the key to all this. If this trust account had been properly maintained and properly audited, and if the auditor had been capable of doing a proper audit of trust accounts, a lot of the complex legal land title-type issues would not have arisen. This whole

thing would have been found out years ago. We cannot even find a reliable reconciliation of the trust account. The trust account was supposed to be reconciled monthly but there is no evidence of it ever having been reconciled monthly.

Hon G.T. GIFFARD: Is this Grubb's trust account?

Mr Conlan: Yes.

Hon G.T. GIFFARD: In relation to the \$5m farm that you had difficulties identifying which interests have a hold over that, Grubb himself or Rowena. Is that because of poor maintenance of the trust account records? Was it generally poor record keeping?

Mr Conlan: In this example, approximately \$13m was paid out of the trust account over an 18-month period. We cannot establish a proper audit trail that identifies whose money was supposedly coming out of the trust account at the time this money was paid over. A trust account is all about saying that if there is \$10 or \$100 in there, it is known exactly whose money is in there at any point in time. You come in in the morning and you turn the computer system on, you press a button, and it should tell you exactly whose money is in there. That is what it is all about. Therefore, when you make a payment out of the trust account or you make a payment into the trust account, your records have to be spot-on as to whose money is going in and whose money is going out.

Hon G.T. GIFFARD: This is a black hole is it?

Mr Conlan: The records are not being maintained in a fashion in which where you can go back one month, five months, 12 months, and work out what has occurred; whose money has gone in; whose money has gone out. On a lot of occasions, we know whose money has gone in.

Hon G.T. GIFFARD: You can verify that because of external records anyway.

Mr Conlan: We have bank deposit slips and the like, so we can work out whose money has gone in. There may be an investor who says his money was lent to Sandgate and Graham Grubb has told him his money was lent to Sandgate. That investor may have placed his money in a trust account 10 years ago and that money has been continually washed through various loan folios over a long period. Through those transactions in previous years, that investor's money may have been lost. For instance, that investor may have had a financial interest in a loan folio two or three folios back, or three or four years back, and when that borrower repaid that money, that money might have gone into an overdraft. Therefore, from that point forward, the investor's money could never be in the trust account.

Hon G.T. GIFFARD: You said there are about 680 loan folios within Grubb Finance Consultancy?

Mr Conlan: There are between 680 and 685 loan folios.

Hon G.T. GIFFARD: Do all those folios have the same common problem; the lack of knowing whose money has gone in and whose money has gone out?

Mr Conlan: Yes, to varying degrees.

Hon G.T. GIFFARD: Do they all have this reconciliation problem?

Mr Conlan: Yes, from a purely accounting view. I am not a lawyer and I believe the lawyers have some different views on this. However, from a purely accounting point of view, immediately the trust account becomes deficient, they are all tainted. Every time you put a further transaction on the trust account, there is further tainting of the moneys in there.

Hon G.T. GIFFARD: What about that reconciliation issue; that is, the investment in properties and then not being able to get back the money that you have paid out within a particular loan folio? Is that something that is common to all of these folios?

Mr Conlan: Are you talking about the poor lending; the fact they cannot recover the money?

Hon G.T. GIFFARD: Yes. You said earlier in your evidence that Grubb was not getting back the money that he had laid out; that he would buy something and sell it for something less. Is that something which is common to 680-odd loan folios?

Mr Conlan: There might be a number of folios there that have not paid interest for two, three or four years. However, through his arrangement with investors, Grubb has continued to pay them interest. He has advanced interest to the investor even though the borrower has not paid any interest in the trust account, which leads to further mixing of funds. As these loan folios are being concluded at the moment, shortfalls are arising. Therefore, you cannot recover principal and you cannot recover all the interest that Grubb may have paid out of the trust account.

Hon G.T. GIFFARD: I understand that. It seems to me that you were saying that this was endemic in the way Grubb did business and, therefore, that it would always fail; he was spending more than he was getting back. Could you look at any of these folios and say on the basis of incoming and outgoings that it was a viable project or a viable investment?

Mr Conlan: Some were viable, and some moneys have been paid back to investors in full.

Hon G.T. GIFFARD: Are you able to establish a proportion of that? Are we talking about 600 folios that were just never viable? What sort of figure out of the 680 are we talking about?

Mr Conlan: Perhaps 20 to 25 per cent might be reasonably okay in the sense that, on balance, the lawyers say that we should not challenge this interest.

CHAIR: What is the total value of those 680 loan folios?

Mr Conlan: We believe that the borrowers owe approximately \$63m.

CHAIR: And you are expecting about a third of that to be losses, based on what you were saying?

Mr Conlan: That is right. Overall, some investors have received a 100 per cent return on some

of their investments, and some investors who put \$200 000 to \$400 000 will not lose it all, but they are not presently on a mortgage.

CHAIR: Some may lose the full amount and some may get all their money back? That is part of the argument you are going to have with the courts about whether you give the money back to someone on the mortgage or whether you pro rata against everybody.

Mr Conlan: That is right. There will come a situation when there is some money left in the trust account and we will have to seek some directions from the court on how it is distributed.

Hon G.T. GIFFARD: Mr Grubb has been charged. Is my understanding correct that that was in relation to only four or five of these loan folios? There are a significant number of charges, but I thought they only related to a small number of loan folios.

Mr Conlan: No. There are quite a few. I have a listing of all the individual investors.

Hon G.T. GIFFARD: There are 33 charges.

Mr Conlan: Yes, 33 charges. I have been provided with a summary of the charges and the investors but they probably relate to about 10 folios. They are not by any stretch of the imagination the full extent of what you could establish against him. How far do you go? If the police had unlimited resources and wanted to apply considerable time to this, they could probably find \$50m of charges against him.

CHAIR: Then the police have to make the judgment on whether that would increase the sentence against him.

CHAIR: That is right. Also, how far they go and who they have to talk to to get the statements.

CHAIR: They have to weigh up the cost against the end benefits.

Mr Conlan: There are many situations in which money has gone out of the trust account with no regard for the company's responsibilities to maintain a trust account. I made the statement before: It comes back to this trust account. I do not know Graham Grubb that well; I have only met him once or twice. I was asked to help him out when ASIC got involved. As a result of the character of the individual, the manner in which he dealt with people who presented difficult questions to him, and the type of investors he dealt with, he was able to dupe them over a long period. If that sort of person can go out and select his own auditor and dictate some of these issues, then you will be able to control this trust account. Issues of the quality of the audit and the quality of the individual appointed to do the audit could be such that there is a need for the regulation to be increased, although then the arguments come forward on how far do you regulate. On the one hand, an auditor in St Georges Terrace spends all day, every day of the year as an auditor. On the other hand, someone in the back blocks of a suburb of Perth does one or two audits a year but is still an auditor. Clearly a person's skills, reputation and his business relies upon his being a quality auditor and a quality auditor will not put up with the rubbish that Graham Grubb might have thrown at his suburban auditor. Then there is the question relating to the audit of the trust account; it raises the issue about the quality of the audit. Where does it go to from there and how do you act upon that information? And do the people who get the

information have the skills and competency to act upon it. It is a whole combination of events which occur over a period that led to the investors finding out where they are. It is unbelievable that this guy was not stopped five years ago.

Hon RAY HALLIGAN: Mr Conlan, if I may say so, the accounting profession would not be too happy hearing you talk in this manner about auditors, would it?

Mr Conlan: It may not.

CHAIR: It is all right, it will not.

Mr Conlan: There are supposedly the accounting professions; the bodies of the Australian Certified Practising Accountants and the Institute of Chartered Accountants have their own disciplinary committees. If complaints are lodged, then they hear those complaints and take action. However, the deregistration of an auditor is a matter for the Australian Securities and Investments Commission. I have asked a representative of ASIC to undertake inquiries with regard to the conduct of this audit and the ability of the auditor. I do not know whether it is doing that or not - it probably is - but, as I mentioned earlier, it undertakes activities without necessarily letting me know. I understand why it does that. I am not saying its officers should tell me they are taking that action. The registration of liquidators and auditors is a matter for ASIC, and the deregistration of liquidators and auditors is a matter for ASIC.

The conduct of a small number of auditors - be they the auditors of the other finance brokers, this one, or certainly Grubb - has not come up to scratch. I am a liquidator, I know my job, I do my job, I think I do it well. I am also a registered auditor. I would not dare try to audit anything, because I do not have the skills to do it. I am a registered tax agent. I do my own tax return but I would not dare do another individual's tax return. People obtain registrations and then they use them, but they do not necessarily have the skills to do the job. It is a matter for there to be some control - either people do not get the registrations or there is much tighter control over the extent to which those registrations run.

Hon RAY HALLIGAN: Are you suggesting there should be some more legislative control, rather than allowing the professional bodies to do what they have been doing for quite a number of years? I am thinking of the accounting profession, the legal profession and the medical profession. Are you suggesting there should be more legislative control over all those professions?

Mr Conlan: I can speak only for the accounting area, but I think there does need to be greater regulation. If there is more regulation, then there are cries that there is too much regulation and the like. There should be self-regulation in a professional body in a professional area. Yet it seems that at various times problems occur and people say, "It would not have occurred if this or that had happened." All I am saying, so far as auditors are concerned and the auditors of trust accounts and finance broking activities, is that once that trust account is not capable of being reconciled, or once it becomes deficient or even in this case when the bank goes into overdraft, there are ramifications that go right through all the moneys involved in that trust account. If an individual is undertaking the audit or has responsibility for auditing the trust account, and that person does not have the skills, then the issues are far reaching. The auditor of this particular trust account may have had a professional indemnity cover of \$250 000, or as a partnership they

might have \$500 000 professional indemnity cover. It is starting to become a drop in the ocean of the cost of rectifying this issue and the losses for the investors.

If ASIC said to me, "Conlan, you have not signed off on an audit report for five years; we are cancelling your registration as an auditor", I would have to say, "Fair call." But does it do that? When it does it, the odd person stands up and says, "You are taking away my livelihood." Someone then has to stand up and be powerful enough to say, "How can it be your livelihood if you have generated only \$2 000 of fees on that certificate over the past year? You obviously have other activities."

We could go through a lot of registrations, including a trustee in bankruptcy, which I am and which I do not do a lot of. Maybe a call could be made there. There is a tax agent's registration. I have heard in the past that the idea was to limit who could do a tax return. It takes only the bodies responsible for these areas to be a little bit more diligent in pulling away these registrations when they are no longer contributing to that individual's activity.

We have talked a lot about the auditor and the trust account; it is central. However, I think it is a bit unfair to put all the blame on the auditor because there are other activities, such as the individual and the way he ran the business, and there is the bank which has allowed the trust account to go into overdraft. The bank may have had other reasons for fostering this relationship with the business and not ringing the alarm bells. There are a lot of other contributors to this issue and it is not just the auditors. We have to run through the whole field of things - the auditors, the individual, the bank, and the Finance Brokers Supervisory Board. You run through it all. No one individual can take all the blame for it.

CHAIR: From what you are saying about the trust account, it seems that if anyone, such as an investigator from the Finance Brokers Supervisory Board, had looked at the trust account, it was in such a state that it should have rung alarm bells for someone with even a basic knowledge of accounting?

Mr Conlan: When I became involved, I was told certain things by Graeme Grubb about the problems he had. Based upon those discussions, we then had discussions with ASIC and had a meeting. An enforceable undertaking agreement was formulated on the basis that essentially that was the extent of the problem; that is, it was a minor problem that should be able to be rectified, and would sort itself out fairly quickly. Then I and my audit partner, who is a full-time auditor, stepped into Grubb's offices for a couple of days. Everywhere we looked, we could not find what we were looking for - in the sense that it should have been there but it was not there. After a couple of days of looking, you think, "This is not right. Our heads are spinning." There were questions going off in our minds all the time. You sit back and think about it and then you say, "Let us just focus on one or two issues that will give us the answers." That is what we did.

During one day of unfettered access to the records and the information that was there, due to Grubb's absence from the office, we just said, "Money has gone left, right and centre here; the deficiency will be far greater than has been indicated to us; there are no reconciliations; there is money going out of the trust account of which there is no record." I am a liquidator and my partner is an audit partner. You find it. You start wondering whether you are missing something but after a while you sit back and think about it for an hour or two, have a chat about it and then you focus on a particular area and realise what is happening.

I can recall years ago discovering a fraud associated with Robin Greenburg. It was just not all jelling, there were things happening, alarm bells were going. We sat down and thought about it, and then we just went back and had a look at the bank statements. It was as clear as the noses on our faces that money was going out left, right and centre.

CHAIR: If an investigator had come from the Finance Brokers Supervisory Board and had even a fairly limited, cursory, look and asked some questions -

Mr Conlan: It comes back to the quality of the individual and their skills.

CHAIR: If they had any basic understanding, they should have been -

Mr Conlan: And what is their job description; is it their responsibility to get involved in something difficult or black or whatever else? Maybe that is being a bit unfair, but in some situations some people who might not have the skills may present themselves to someone, get some answers and walk away saying, "I have dealt with that; I have got the answers." Other people may get the same answers but then start cross-checking those answers in their minds to arrive at other answers until they find out. Those people know what they are looking for; they know where they have to get to. They know, because of their experience, where they should be getting to.

An investigator under the Finance Brokers Supervisory Board could have gone in, alarm bells could have gone off in their head, they could have asked all these questions and they could well have found the answers to the questions. Equally someone else might not have. This sort of thing cannot be done unless someone has the skills and the ability to know where to look, and to know what they are looking for. However, any half-decent auditor could have gone into Grubb two or three years ago and seen there were problems, because of the manner in which the trust account has been maintained - it was in such a diabolical state.

CHAIR: Is the general correspondence of Grubb Finance under your control at the moment - not just the accounting records but other correspondence?

Mr Conlan: All the records which were in the business premises were taken under our control, or substantially all of them - those which we felt were relevant to the activities. They cover other entities - other companies he controls or may have been associated with. If you are talking about general correspondence to investors, we have most of that information.

CHAIR: I am also interested in general correspondence. One of the things I am interested in is whether anyone has gone through that correspondence to have a look at the nature of it, and if there is any evidence of Grubb working with other finance brokers. We are only just starting, but from my limited knowledge I get the impression that there were certain instances of projects being transferred from one broker to another, or from one developer to another, and the valuations increasing each time. I wonder whether there is anything within the correspondence that may not be illegal, but would certainly be unusual or improper.

Mr Conlan: A few occasions have arisen where, because of the review process, it is apparent that refinancing of a loan has been arranged by another finance broker. However, it is not

apparent that there has been regular transfer of loans between various finance brokers, or a loan being paid out by money being raised with another finance broker. That does not seem to us to be a regular occurrence. It is certainly obvious that in some situations there has been refinancing of the loans - from looking at the titles and mainly seeing "Blackburne and Dixon". That seems to be more apparent than Global, although I think there is an odd occasion where one or two loans might have been either paid out, or the other way around, between the two brokers. It is not readily apparent.

CHAIR: Have you gone through all the general correspondence or just the accounting records, to see if any other issues arise?

Mr Conlan: We have gone through all the loan folios - the staff have reviewed those. If there is correspondence relevant to those loan folios which makes reference to Blackburne and Dixon or whatever, it would be in those loan folios. I do not think there was regular correspondence between them. It appears that some of them may well have followed similar sorts of activities in the sense of how they operated their trust accounts, but that will probably come out as further inquiries take place and we learn how they deal with the auditing of the trust account in Global and how we deal with ours. There will at least be further investigations.

CHAIR: Was there anything else? We have had a fairly broad-ranging discussion but with respect to term of reference (3), is there anything you would be concerned about this committee engaging in that may interfere with or obstruct the work you are doing that you would like to draw to our attention?

Mr Conlan: My work is centred around trying to resolve the loan folios, and also trying to recover as many funds as possible for the investors. If we identify something that should be investigated, that goes to the police or to ASIC. It is not for me to become any more involved in the Gunning inquiry than we have been. Much of our work is behind the scenes. You may want to seek information from us with regard to certain folios and the like which may interfere a bit in the day-to-day work flow, but as long as there is a turn-around time frame or an understanding that we may not be able to give that for 24 or 48 hours, that is fine. We should be able to deal with that. As long as we are not inundated with requests for information, we should be able to deal with it. I cannot envisage an area where you could really interfere with our activity, other than seeking information on particular matters like that. We should be able to readily provide information. My role as supervisor is to independently gather data and present it to whoever needs it or is entitled to have it.

If the relationship between the state body, being the Ministry of Fair Trading, and the federal body, being ASIC, had been better, both in terms of the current Acts and also some of the dealings, then our job would have been made a little bit easier. I do not say that it has been a huge hindrance but there have been situations when, again because of the provisions under the Finance Brokers Control Act under which I am appointed, with ASIC running under its own Act, to some extent I am possibly seen as someone dealing with a state issue rather than an issue that comes under the Corporations Law. There is room for improvement in the legislation and the cooperation between the state and federal levels - just in the sense of gathering information and a free flow of information.

In this matter there is the police, us and ASIC. All three bodies need to be working as one, I

suppose, because we all have separate roles. I have a role as an investigator to try to put information forward to recover more from a civil point of view - to recover money, to pay money back to investors. The police have their role from a criminal investigation point of view and ASIC has its role from a regulatory point of view. We all go on different courses because of our different roles, but at times there is a need for us to come together and to work very freely. Present legislation and the like in some regards prevents that. There is information the police obtain which would be helpful, but hurdles are placed in front of us when we try to get it. Maybe those hurdles cannot be overcome - and it is the same with ASIC.

There is scope for the whole three areas to work far more closely together. Normally as a liquidator, there is myself, ASIC and the police. I am operating under a federal Act and work very closely with ASIC. As a supervisor, I work under a state Act, ASIC is carrying out its own role and the police, again are a state body. There has certainly been cooperation. It is not as though there has not been cooperation, but in some areas it could be far better or more efficient. That is an area which has caused some concern.

The other principal area for improvement is to have a much stronger Finance Brokers Control Act with regard to what the supervisor should be doing. In a year from now we will all be far better informed and more knowledgeable about what the supervisor should be doing. There was very little information a year back as to what role this would be. That was not because the Act is deficient, but I certainly lacked guidance and information as to what the supervisor could do.

CHAIR: Thank you very much for your time this morning; it has certainly been very interesting. If we need any further information we will be in touch.

Committee adjourned at 11.40 am