

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 17 JULY 2000**

SESSION 2 OF 3

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.**

WALKER, MR PATRICK,
Commissioner for Fair Trading, and
Chief Executive, Ministry of Fair Trading,
219 St Georges Terrace,
Perth, examined:

NEWCOMBE, MR GARY,
Director of Projects, Ministry of Fair Trading,
219 St Georges Terrace,
Perth, examined:

CHAIR: On behalf of the committee, welcome to today's meeting. You will have signed a document entitled "Information for Witnesses"; have you read and understood the document?

Mr Walker: Yes.

Mr Newcombe: Yes.

CHAIR: 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 hearing. A transcript of your evidence will be provided to you. Even though this is a private hearing, I advise that the committee may make your evidence public at the time of its report to the Legislative Council. If the committee decides to make your evidence public, we will first inform you of this determination. You should not disclose your evidence to any other person. The purpose of today's hearing is to get some documents we have asked you to provide. Would you like to make a general opening statement? The committee has some questions with respect to the letter you provided.

Mr Walker: It might be useful - it is contained in the letter - to mention that in general we retain or maintain our files back to 1992. Obviously, if we have access to something back to 1988, we are happy to provide it. Second, we would not normally provide some of the information which we will be happy to provide to the committee on the basis that it is confidential and applies to a third party. We make that comment in our communication. From our perspective, we would appreciate, to the extent possible, and the extent it does not impede the committee in its work, that the committee's actions keep third-party confidential information confidential as that would obviously be of assistance and welcomed by all concerned. It is a decision for the committee. Apart from that, we have brought most of the documents with us. Some matters covered in the letter require clarification so we can respond adequately to the request. An issue arises with question 6 regarding legal opinions, which we will come to in due course no doubt.

CHAIR: The committee accepts that if you have no documents prior to 1992, you cannot produce them. We accept and appreciate that point. With respect to the issue of confidentiality, do specific documents need to be kept private? If so, please identify them as we go through them.

Mr Newcombe: As a general comment, and the Gunning inquiry has run into the same matter,

people make complaints on the basis that the information is not normally made public. Some may be specifically confidential in a sense; however, as a general observation, information regarding people with whom the ministry deals is not normally made public, even under freedom of information, because of the general view that third parties are entitled to have their information kept confidential. That is a general view. Our files contain a lot of sensitive information about many people who would not expect their information to be made public.

CHAIR: I appreciate that. If there are specific files that you think it is imperative remain confidential, because to reveal them would impede investigation or cause some other problems, other than the general issue of confidentiality, the committee will need to determine that matter. If there is further information in respect of specific documents or files you are providing you would like kept confidential for various reasons, we would appreciate that being identified to us.

Mr Newcombe: That would certainly be the case with ongoing inquiries. It is an issue.

CHAIR: If you could do so with the documents provided.

Mr Newcombe: Yes.

CHAIR: I now go through the individual items in the letter provided to us. Most of the general comments will arise as we go through. You indicate you have given a numerical listing only for current investigations. We seek some explanation of why it is not appropriate to give the names of the person if they are taken as private documents for the committee.

Mr Newcombe: If that were the case, there would not be a significant difficulty. As they are the subject of ongoing inquiries, there is a concern. If the committee's view is that they would be treated as private, we would have no problem with the provision of that additional information.

CHAIR: We would have to seek a suppression order when we report. The House will make a final decision. For the purposes of the inquiry, are you happy to provide that information to us?

Mr Walker: We would not want to alert particular people about certain developments.

CHAIR: We appreciate that. That is our intention. Are you happy for the documents you are currently providing to be public? Those others are still to be provided.

Mr Newcombe: That is subject to the general view that they include the names of people who made complaints. In terms of your process, it is entirely up to the committee.

CHAIR: In item 2 you ask for clarification about what is meant by "not pursued", and also regarding complaints concerning lands valuers. It is a decision of the committee that obviously a crossover exists between some of the actions in respect of land valuers and the problems encountered in the finance broking industry. That is why we asked for information about land valuers. The simple answer is that the committee has determined that it comes within our area of investigation. In respect of the specific question about "not pursued", we were looking for - it follows from our previous meetings with you - any other documents which identify complaints raised with the ministry for which a formal file was not opened. It may be that no such document exists. Alternatively, do you have documents in which statistics are taken of people who ring

up? We understand that on occasions someone might make a complaint to the ministry but not formally put in a complaint; that is, a complaint file is not initiated. Are those documents held on any general complaint file, or is any relevant record or document held within the ministry? Are notebooks of investigators or general files held which record details of phone calls or inquiries or complaints received? Maybe they do not exist.

Mr Walker: My understanding is that if someone makes a complaint, a file is created. A term has been used which has received some publicity - "no further action" or "no action taken". That is a reference to no prosecution action being taken, not a reference to the fact that someone lodged a complaint and nothing at all was done.

Mr Newcombe: On the basis of the committee seeking information on complaints received for which no formal file was opened, I suspect we will not be able to provide you with much information. Some of the information may be telephone inquiries for which an answer was given orally - and that was the end of the matter. There may be some reference, but it will require an extensive search of some investigation files to see whether any notes were kept of telephone conversations which did not lead to matters which are the subject of a formal file. With that guidance that you seek information on complaints for which no formal file was opened, we will go back and have a look. I suspect that not a lot will be provided.

CHAIR: In the letter originally sent to you, we listed any records in whatever form kept by the ministry. It may be that you do not have many examples of that scenario. We are looking at the case in which someone rang up and spoke to an investigator who made records, but for which that person did not lodge a formal complaint and no file was opened. However, the original information retained by the investigator is still in the department.

Mr Newcombe: Part of the difficulty is that such process requires both the identification of the notes of the conversation, and a comparison against the complaints database to determine whether that person subsequently made a complaint. That may have been made to another person or in another jurisdiction. It may have been a conversation about finance brokers and ended up a land valuer complaint. A lot of work is involved in reaching the conclusion you seek. We can do it, but it will take some time to answer specifically that point. Some significant resources will be required.

I give one example: A person may have rung up and been put through to an investigator personally - maybe that person was referred to that person by someone else. The investigator may have spoken to that person and said, "Well it's not a finance broking matter, but you might have a complaint with someone else." This may be to the Commonwealth, the police or the Land Valuers Licensing Board. That may be the end of the matter as far as the investigator's note is concerned. We would then need to determine whether that person came back into the system as a complainant somewhere else.

CHAIR: Where would the original complaint be recorded?

Mr Newcombe: It would not be recorded as a complaint if it were an inquiry.

CHAIR: Where would the inquiry be recorded?

Mr Newcombe: It may or may not be recorded as a file note. It would depend upon the nature

of the conversation.

CHAIR: It would appear as a file of what document?

Mr Newcombe: If the person spoken to was an investigator, it may be on the personal running file. If it were an inquiry, it would not relate to an existing matter and would not necessarily have a home. It might be on general correspondence or on a general file. There are a range of places it could end up.

CHAIR: If there are files like that, which are general running files and the like, they may be of interest. At this stage, we ask for a list of what you have done. We are happy to look at whether the complaints file has been opened, if that makes sense. Could you provide a list of the complaint files and the complaints on the running files and the rest? That would be sufficient.

Mr Newcombe: In summary, the ministry will do its best and we will explain what it has done when we next appear before the committee.

CHAIR: I have explained the term "land valuers". The committee understands that the Ministry of Fair Trading would investigate people operating as unlicensed finance brokers. Is that correct? Does the Finance Brokers Supervisory Board only investigate licensed finance brokers?

Mr Newcombe: If they were required to be licensed, yes, that is true.

CHAIR: The original letter the committee sent you asked for a copy of any internal memorandums or correspondence relating to problems in the finance broking industry or land valuers industry with either a particular broker or investor, or general problems within those industries. "Named finance brokers" refers to item 5A of the original letter, which is a particular broker or investor. The second part of the summons relates to the interpretation, application or administration of any relevant written law relating to general problems within those industries. The committee has tried to convert the original letter request into a formal request seeking specific documents. In answer to your question about what is meant by the term "named finance brokers, land valuers or investors", the committee defines that as being a specific finance broker who is named as having problems with his or her financial operations. The committee will broadly define the term "investors"; obviously it means people who have lent money or who have had a financial relationship with finance brokers.

Mr Newcombe: That definition has an extremely wide application. "Problems" with a finance broker would cover all complaint files or all complaints received from 1988 onwards which relate to a finance broker or land valuer, and each and every investor the ministry has dealt with within a 12-year period. If the ministry considers "any memoranda" which relates to any documents, pretty much every document the ministry has for that period would need to be examined.

CHAIR: Does the ministry have files which contain documents of complaints that have been raised within the ministry, or which discuss problems about a particular broker?

Mr Newcombe: The list of complaint files and the licensing files which the committee has been provided with contain most of that information; however if the committee indicates that it wants

any memoranda which might be in existence anywhere in the ministry over that 12-year period - bearing in mind that an "investor", as a person who lent money, is an exceedingly wide definition; it is not necessarily restricted to finance broking per se - the ministry would struggle to answer that completely and openly because it would require not just an examination of each of the files which I have already identified -

CHAIR: The committee is also inquiring into whether any files contain discussions about the operations of the ministry and how its structure has responded over that period, or whether there is a problem with the Finance Brokers Supervisory Board's ability to administer the Act. Does the ministry have any general files on the structure of how the ministry operates? Individual complaints have been raised and will be dealt with by the board as an individual complaint; however, does a general file exist which indicates, for example, that Graham Grubb finance is a real problem and that the ministry must conduct a more detailed investigation or monitor this operator in greater detail? Does the ministry have internal briefing notes to the board about overriding problems within the industry? Are there documents which explain how those issues are addressed, either to the board, yourself or even to the minister? If a complaint file contains written documentation, for example, that this matter about Mr Grubb should be investigated further, obviously that is picked up within those files, and the committee would be happy with that. The committee is asking for any other documents which indicate discussions about either a specific broker or within the industry generally, which raise concerns or suggestions for better ways in which to operate.

Mr Walker: I understand what you mean, Mr Chairman. There might be a review of compliance that impinges on the way in which investigations are conducted. That information has been identified and provided to Judge Gunning. Bearing in mind the significant changes in the ministry - there are many new faces - we have learnt a lot about the ministry's corporate information and how well or otherwise it has been retained, and the manner in which people have used different files - I do not say that in a disparaging way. A corporate matter could be on a number of files. We have a range of information. As the new CEO in the organisation, I tried to get a picture of the place. There would not be one consistent file that deals with matters directly relating to the board or the ministry, although in a formal sense, those documents could be discovered. If, for example, there was discussion some years ago between two managers, and a memo was sent between one manager and another, whether it was about investigations practices or resourcing, it would require an extensive search of all of the ministry's information. Mr Newcombe has been closely involved with the project. I suspect we have discovered everything the ministry has that will be of significance to the Gunning inquiry. We could provide what the committee has asked for, but it would mean trawling through a great range of files and approaching the then managers and investigators in case they recollect anything. Some things have been produced by witnesses at the Gunning committee of inquiry that were not easily located, if at all, on the ministry's corporate files.

Mr Newcombe: In terms of administration, we will have to come back to the committee and explain what we have done and provided. I agree with Mr Walker that no individual file will contain those documents the committee seeks. A range of files exist on matters such as policy, briefing and so on, many of which - relating to finance brokers - are identified in the lists that have been provided to the committee, because it includes a list of general administration files in relation to finance broking.

CHAIR: The committee is asking for the actual documents rather than the files.

Mr Newcombe: I appreciate that. That will require some extensive examination of the files. We will take the committee's advice as to what it wants, and we will go away, do the work and explain to the committee what we have provided.

CHAIR: And what you have done.

Mr Newcombe: In what time frame?

CHAIR: The committee will have a general discussion with you at the end of today's hearing and it will take on board the comments about how much time is needed to complete the task. The committee would like copies of any internal memos to senior staff and that type of thing, in which people are complaining about overwork and not having the necessary resources.

That has covered most of the points under item 5, except for the last two paragraphs. We have already discussed the matters under investigation and that has been resolved. Why should the request for the legal opinion be addressed to the Minister for Fair Trading?

Mr Walker: My instruction is that requests for any legal opinion should be directed to the minister. It is an issue of legal professional privilege that resides within the Crown. My instructions are that the request from the committee should be directed to the minister.

CHAIR: Have you received that instruction from the minister?

Mr Walker: Yes, from the minister's office. That is correct.

CHAIR: You are entitled to refuse to answer questions or provide information that relates to policy; however, I would not have thought that a legal opinion was a policy document.

Mr Walker: Perhaps the instruction I have is a policy of the minister.

Hon G.T. GIFFARD: It may well be. Is it an issue of protocol?

Mr Walker: I am not sure. I was advised that requests for the legal opinion should be directed to the minister. In that sense it is a policy issue.

Hon G.T. GIFFARD: I am sure you understand that it was a summons to you and you are saying that you will not provide that information to the committee. Do you have a legal basis for saying that, or is it a matter of protocol? As you can appreciate, they are two different things.

Mr Walker: All I can provide the committee with is the instructions I have been given that the committee should request those legal opinions from the Minister for Fair Trading.

CHAIR: Is it because of that instruction from the minister that you will not provide them to the committee?

Mr Walker: That is correct.

Hon G.T. GIFFARD: Who seeks the legal opinions? Do you, Mr Walker, as the CEO, seek legal opinions?

Mr Walker: I do, as do officers from the ministry, that is correct.

Hon G.T. GIFFARD: Are those legal opinions then addressed back to you or to the officers who sought them?

Mr Walker: That is correct. Most legal opinions would be requested by the ministry's principal legal officer.

Hon G.T. GIFFARD: Would it be fair to say that those legal opinions are in your possession and under your control when they are received?

Mr Walker: Yes, that is an accurate statement. We do have access to the legal opinions.

CHAIR: Has legal advice been sought as to whether you are required to provide them? Are you relying on any public sector instructions for the basis on which you will not provide them to the committee?

Mr Walker: I am aware that under the Public Sector Management Act I am required to abide by lawful directions and instructions from the minister.

CHAIR: Are you satisfied that his direction is lawful if a committee of Parliament is requesting a document?

Mr Newcombe: Mr Walker has not received specific legal advice on that point at this time.

CHAIR: We will not discuss that issue further. In relation to item 7, are you advising the committee that those documents are not in your possession at the moment and that they are with the Gunning inquiry?

Mr Walker: That is correct. We are happy to provide the committee with copies of our copies, that is not in issue. Obviously due diligence was applied in taking whatever copies we have, but we are saying that we cannot certify them as correct because we do not have the originals to do that. We are, however, happy to provide this committee of inquiry -

CHAIR: Would you be happy if we requested the Gunning inquiry to provide them to this committee?

Mr Walker: Yes.

CHAIR: Do you have any objections to that?

Mr Walker: No.

CHAIR: You are happy to provide the committee with a copy of your copies, but we will also proceed to request them from the Gunning inquiry as certified copies. You have indicated that you will provide the committee with information relating to items 8 and 9.

Mr Walker: Yes.

CHAIR: The other issue that has been raised is the question of who the committee provides summonses to. I understand you have indicated to the committee staff that you would prefer the committee to issue any summonses for documents to Mr Newcombe.

Mr Newcombe: Or the registrars.

CHAIR: Or the registrars. The committee is concerned about whether Mr Newcombe has the authority to access all documents within the department that the committee requests, and it would like a formal commitment that that is the case.

Mr Newcombe: We could provide the committee with documents to show that service on myself is adequate service on Mr Walker so that the summons could still be addressed to Mr Walker, but it deals with the service problem. In relation to the boards, however, it would be preferable if the summonses were - and we can provide the committee with a letter that service on myself is also adequate for that - to the registrars, given that the chairs are part time and do not have possession. To clarify, we will provide the committee with a letter that indicates that service on myself is adequate service and in relation to the boards, the summonses should be in the name of the registrars of those boards.

CHAIR: Under the procedures of the committee, if it issues a summons, it has only the power to issue a summons for a particular person to appear before it and to produce documents. Today it was important that you were both here, but there may be times when, if there is no contention about the provision of the documents, it is not the committee's intention to have you present to produce the documents. A problem has been created because you have clearly indicated that the only way you will provide documents is by way of summons.

Mr Newcombe: Yes. We are restricted by the secrecy provisions.

CHAIR: The committee will have no alternative but to continue to issue the summons to Mr Walker but serve it on Mr Newcombe.

Mr Walker: Yes. It is a procedural arrangement.

CHAIR: I am happy with that.

Hon G.T. GIFFARD: I refer to the letter at page 3, point 6. Has the committee been provided today with any of the instructions requesting legal opinions; that is, your own documents?

Mr Walker: I do not believe so.

Mr Newcombe: No.

Mr Walker: Mr Newcombe has confirmed no.

Hon G.T. GIFFARD: Why has the committee not been provided with those instructions?

Mr Walker: The instructions were that requests for legal opinions should be directed to the minister.

Hon G.T. GIFFARD: I am not asking for legal opinions in this instance, I am asking for your instructions for legal opinions; that is, the originating documents.

Mr Walker: On the face of it I do not know whether it would be an issue to provide the committee with our instructions. I would need to take advice on that. Personally it was not a conscious decision to separate the two in a practical sense. We could follow up with that. It might well be that we could promptly provide that information.

Hon G.T. GIFFARD: That is an issue for the committee's consideration. When would that information be provided to the committee?

Mr Walker: Later today.

CHAIR: That leaves us with the issue Mr Newcombe raised earlier about the time lines. How long would it take to provide that information now that some of the matters have been clarified?

Mr Newcombe: Based on the current staff I have to assist me, my view is that it will take at least until the end of this week and probably sometime into next weekend. My preference would be to the end of next week if that is possible.

CHAIR: Are you happy to provide the information to the committee as it is gathered?

Mr Newcombe: Yes.

CHAIR: The committee would appreciate it if the documents could be provided when they are found. A commitment to do so would assist the committee to set a time line for when it might next call you before the committee. It is the view of the committee that the summons has not been fully met and therefore, it still stands. For the time being the committee will release you from the need to attend the committee. The committee will advise you when it expects you next to appear before it with respect to that summons.

Mr Newcombe: It is the same process that has been adopted by the Gunning committee. I am happy to provide the committee with the documents as we find them.

CHAIR: The committee will be in touch. It may set a date for next week, and if the work is still not completed you can advise us before that date.