

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

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
FRIDAY, 29 SEPTEMBER, 2000**

**SESSION 1 OF 2**

**Members**

**Hon Ken Travers (Chairman)**

**Hon G.T. Giffard**

**Hon Ray Halligan**

**Hon Greg Smith**

**Hon Norm Kelly**

**Committee met at 10.10 am**

**WEIR, Mr RAYMOND,**  
**Member, Finance Brokers Supervisory Board,**  
**Suite 5, 16 Main Street,**  
**Osborne Park, examined:**

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

**Mr Weir:** I have.

**The CHAIRMAN:** The proceedings are being recorded by Hansard. To assist the committee, Hansard, and for the record, could you please quote the full title of any document you refer to during the course of this hearing. A transcript of your evidence will be provided to you. I remind you that the transcript will become a matter for the 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. The committee may, of its own motion, resolve to take evidence in closed session. The taking of evidence in closed session may be relevant where, for example, the committee believes the evidence may breach term of reference No 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;
- (e) any prosecution.

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

If a member asks a question and you believe your response should be in closed session, please indicate that at the time. The committee will defer the question until the end of the public hearing when it will go into closed session.

**Mr Weir:** I understand.

**The CHAIRMAN:** I invite you to make some opening comments.

**Mr Weir:** I want to deal with and clarify two issues that have received some media coverage lately and that go to the heart of my credibility. An article in *The West Australian* of Wednesday, 27 September 2000 headed "Watchdog an ex-bankrupt" attributed some comments to Hon Doug Shave.

**The CHAIRMAN:** If you have spare copies could you give one to each member of the committee?

**Mr Weir:** There are a number of documents that I have collated. I will give out copies now. I also have copies of information that was attached to John Urquhart's letter of resignation. Some of the letters may be required by the committee and may have been sought from Mr Urquhart. I will provide copies. I will later refer to the closing submission of Richard Hooker, the counsel representing the Finance Brokers Supervisory Board at the Gunning inquiry. I suspect the committee already has copies of transcripts of the Gunning inquiry. I want to table a copy of the closing submission from Mr Hooker.

I quote from the article of Wednesday, 27 September -

Mr Shave said in a statement that he was not aware that Mr Weir had been bankrupt.

He said he did not have the power to prevent elected industry representatives becoming board members.

He would have preferred to have been told about the bankruptcy before Mr Weir was nominated as the industry's elected representative.

I also want to read the fax that I sent to the Minister for Fair Trading, which is dated today.

Dear Minister,

In the above newspaper report you were quoted as saying that "you are not aware" that I was a former bankrupt and that you "would have preferred to have been told about the bankruptcy" before I was appointed as an industry elected member of the Finance Brokers Supervisory Board in May 1999.

On February 24th 1997 I wrote to you seeking exception from the Act in terms of Section 5 (2). In that letter I stated that in February 1992 I declared myself bankrupt because of financial losses arising from a failed investment in a commercial property during the height of the economic recession and as a consequence I voluntarily resigned my position as an industry elected member of the Finance Brokers Supervisory Board. Ministry records will indicate I was first elected as a member in 1991. You wrote to me on May 14th 1997 to advise you had declined my application for exception.

Your failure to recall this correspondence has brought my credibility into question and I therefore seek an immediate apology from you and request that you cause such apology to be published in the West Australian newspaper without delay.

I sent that fax to the minister this morning.

The other matter relates to an article appearing in *The West Australian* of Saturday, 23 September 2000. It is headed "Broker row hushed up: ex staffer." A witness to this committee referred to comments I made -

Some months later she told then Finance Brokers' Supervisory Board deputy member Ray Weir of potential breaches of the Finance Brokers Control Act but he did not want to know the details, she said.

"He did say to me because of his position he didn't want to hear names . . . he didn't want to be compromised in me telling him things because he would have to act further," she said.

Ms Jones said Mr Weir referred her to the ministry where she offered investigator Gary Wallace detailed information about unauthorised withdrawals from investors' trust accounts.

I want to explore that allegation further and explain why, when a member or deputy member of the brokers' board receives such a complaint, people are not encouraged to go into detail and why they are referred to the ministry. It is a longstanding board policy based on legal advice given to the board. At my insistence, it has been confirmed in writing in more recent times that supervisory board members are not to have detailed knowledge of complaints received by the board's officers. Such officers are the registrar and investigators. Investigators are employees of the ministry but technically officers of the board. The reason is that board members, and sometimes deputies, will be required to sit in judgment on such matters. If board members have detailed knowledge of the complaints or of the preceding investigation the legal advice is that they must disqualify themselves from sitting at the hearing. It is board practice that if a party rings to say they have a complaint they should be directed to the registrar and the registrar can appoint an investigator to interview the person and take a statement. After I was appointed to the board for the second time, in May 1999, I was concerned that we would never find out anything unless we discerned what was the nature of the complaints. If the committee refers back to the annual reports of the brokers' board from earlier years it will see that a significant number of complaints were received each year. It may not seem significant in the scheme of things as boards go, but, on average, between 35 and 55 complaints are made each year. In 1998, 86 complaints were made against brokers. Very few of those were brought before the board for formal inquiry. The annual reports will indicate that one, two or three of the complaints were brought before the board. That indicates that the balance of those complaints were either continuing or, in the majority of cases, had been dismissed. They had been dismissed because either they were outside the jurisdiction of the board or the party making the complaint declined to provide sufficient evidence for the matter to be concluded. That has been one of the great problems against the board ever getting to know what is happening in the industry. Only those complaints that resulted in an inquiry because there was a perceived breach of the Act or code of conduct by the broker came before the board.

**Hon NORM KELLY:** Was the board unaware of the increasing number of complaints?

**Mr Weir:** The board was aware of an increasing number of complaints. Even prior to my being on the board I am aware that possibly for the past seven or 10 years a schedule was included in the agenda for each board meeting which listed the complaint number, the name of the party making the complaint, the broker about whom the complaint was being made, the date it was received and a brief outline of the complaint - for example, that a lender complained about a borrower not making interest payments on time. By seeing that brief description of what the complaint was about, the board knew that the complaint may not necessarily have involved a breach by the broker of the Act or the code of conduct. For that reason, one would expect that that matter may never come to the attention of the board.

When I joined the board, I felt it needed to see these complaint letters because they may have given a background about why the complaint came about. It is true that a broker is not necessarily responsible because, 18 months after a loan was arranged, the borrower ceased to pay interest to the lender, or the borrower failed to repay the principal on the due date. In looking at those complaints, a board member, and particularly an industry representative on the board, may see a pattern – a reason – for the complaints. If there was a pattern, the matters could have been taken to the industry via the associations. The board could have advised those associations that complaints had come to the board that did not involve a breach by the broker of the Act or code of conduct. Those complaints would not result in any hearing or disciplinary matters but would indicate that a practice appeared to be unsound and should have been rectified. I wrote to the registrar and said that in the future I wanted to see copies of all complaints that came in. I also wanted access to any complaints that had been dismissed or found to be outside the jurisdiction of the board in the past that did not result in any inquiry before the board. Although those complaints had been dismissed, they may have revealed a pattern in the industry that needed to be looked at.

**The CHAIRMAN:** When was this?

**Mr Weir:** I will refer the committee to one of the documents I have provided. It refers to the legal advice that came back concerning my memorandum. It may mention the date of my memorandum, which I have not brought with me.

**Hon NORM KELLY:** Is it from Elizabeth Needham?

**Mr Weir:** Yes. It is not a long memo, but it is crucial to the issue of complaints and why board members were not given access to them or given detailed information about them. Even if the complaints were dismissed, the board was not to have any knowledge of them.

The memorandum is from Elizabeth Needham, the Acting Principal Legal Officer at the Ministry of Fair Trading, to Gerry Milford, the Registrar of the Finance Brokers Supervisory Board. The subject was the right to information, and it is dated 29 February 2000. The memo states -

**Recommendation:**

**That the complaints etc not be provided to the Board except in the formal inquiry process.**

**Introduction**

Further to your memorandum dated 8 February 2000 -

That is the memorandum from Gerry Milford referring to my facsimile of 4 February -

- and our recent discussions I am instructed to respond to Mr Weir's request for all details regarding complaints to be provided to the board at its meetings.

There are several problems that such a request causes.

**To whom the complaint is made.**

I am instructed that complaints concerning finance brokers may come from a number of sources.

Complaints from the public or other bodies may be addressed to either the Ministry of Fair Trading or the Board. Those provided to the Ministry are covered by the *Consumer Affairs Act* until such time as the Fair Trading Officer decides to take action under the *Finance Brokers Control Act*, usually by way of Application for Inquiry. Thus the information is protected by other legislation prior to this decision being made.

Complaints to the Board will be dealt with below.

The Board may also initiate inquiries or investigations of its own motion (see section 13 of the Act). However, the Board member that raises the concern must, after raising the issue (ie the person to be investigated and the general nature of the breach complained of without reference to specific details), withdraw from any consideration of the matter (including deciding upon the Application or any resulting Inquiry).

In other words, if a broker becomes aware of any detailed information, he must then be excluded from any subsequent formal inquiries. To continue -

**Breaching the Rule against bias**

The old saying that 'justice must not only be done but must also be seen to be done' applies to this and the next concern I will raise if Mr Weir's request is met.

The Board as a disciplinary tribunal must not be both prosecutor and judge. This means that the Board must not be involved in the obtaining of evidence or the guiding or direction of any investigation. To do so would involve it in the merits of the case which is prohibited (see *R v Optical Board of Registration; ex parte Qurban* [1933] SASR 1 and *Ward v Bradford Corporation* (1971) 70 (Knight's) LGR 27).

Nor can the Board be seen to be biased by it obtaining information about specific cases.

### **Breach of natural justice.**

Often referred to as procedural fairness rule, it requires that a person who is alleged to have been guilty of misconduct be given an opportunity to answer those allegations in full and hear or know of precisely all that is placed before the disciplinary tribunal and be given the opportunity to respond.

If the cases and materials related to those cases are put before the Board prior to any inquiry hearing the Board may be said to have prejudged the respondent and not given them a fair opportunity to respond.

Potentially the same could be said for detailed reports of matters that do not result in an application for an inquiry. The details of such matters may be said to unfairly prejudice a respondent who subsequently comes before the Board on other unrelated matters.

Even if the other 98 per cent of complaints are dismissed, board members were not to see those either because that may have given them a bias which may interfere with some later inquiry on an unrelated matter. The memo continues -

### **Conclusion**

It is understandable that the Board wishes to ensure that all is being done to protect the public etc but reporting can be done without breaching any of the above rules by all reporting remaining free of the specific details and/or merits of the case.

However, breaches of procedural fairness and the rule against bias would result in an error of law that rendered any later decision by the Board void (see *Ridge v Baldwin* [1964] AC 40 and *Kioa v West* (1985) 159 CLR 550). This would leave the Board open to public criticism, appeal and subsequent costs on those appeals.

I therefore recommend that the information requested by Mr Weir not be supplied to the Board.

If you have any further questions please do not hesitate to contact me.

It is signed by Elizabeth Needham, Acting Principal Legal Officer. I will refer back to the matter before the committee last Friday. Julie Jones stated that she contacted me because I was the correspondence tutor in finance broking practice at one and two courses of Perth TAFE. She thought that I might have some knowledge to advise her about what to do. She rang me and expressed some concerns about some things that she witnessed when she was an employee of Blackburne and Dixon Pty Ltd.

**The CHAIRMAN:** When were you on the board, what was your position and what were the approximate dates?

**Mr Weir:** I commenced in finance broking in February 1984. I completed the certificate in finance broking course -

**The CHAIRMAN:** Just your time on the board will do.

**Mr Weir:** I am leading up to that. I obtained a licence in March or April 1986. Two months later I was appointed a deputy member of the board because it had a casual vacancy. I became a deputy member in 1986 and served in that capacity until 1990. In 1990 or 1991, I was appointed as an industry representative of the Finance Brokers Supervisory Board. I served as a board member, attending all of the meetings in 1991 until I declared myself bankrupt for the reasons previously stated, in February 1992.

**Mr Weir:** At that time, I advised the board that I did not want to continue as a member of the board while having that status. I also met with Allen Tenger, the head of Ministry of Fair Trading at the time, and Bob Rossi, the registrar, at Parvail House at 251 Hay Street East Perth. I advised the head of the Ministry of Fair Trading and the registrar that I was stepping down from the board because of my bankruptcy. That cut short my period as a full board member. I then served my three-year term as a bankrupt, which concluded in February 1995. Two months later, another election was held for members of the Finance Brokers Supervisory Board. I believed I still had a contribution to make to the industry, because of my experience. I stood for election as a board member, but was defeated. However, there had been no nominations for the position of deputies, so I was nominated for a deputy position in 1995 and was appointed in July 1995. As the second deputy elected, I became deputy for the second elected member, Mr John Bell. I served as a deputy until Mr Bell's term expired

in March 1999. I then stood again for election to the board. On that occasion, I was the first elected member. I have been a member since.

**Hon G.T. GIFFARD:** Did you attend meetings between 1995 and 1999?

**Mr Weir:** No, I never deputised for John Bell. He attended all meetings, and I never had the opportunity to attend. After being appointed a deputy in 1995, I wanted to be on standby to fill in for my member if he was unable to attend. I wrote to the registrar and said that I would like to receive copies of the agendas and minutes of the previous monthly meetings so that I could remain abreast of what the board was doing and its policies, and could stand in if need be. That request was denied on the ground that a deputy member has no status until such time as he is officiating as a member. I was refused copies of agendas, minutes and another matters of board meetings. I was deprived of the opportunity to remain apprised of the board's work when I was deputy. I thought that was wrong, and I still do.

**Hon G.T. GIFFARD:** You have taken us through the advice from Elizabeth Needham. Is it fair to say that the process was one of the first issues that you raised as a board member?

**Mr Weir:** Yes. That memorandum was not written until February, and I attended my first meeting on 12 May. I would have verbally raised that with the chairman within the first one or two meetings.

**Hon G.T. GIFFARD:** You have also indicated that in other parts of your correspondence. In a letter to Doug Shave dated 7 November, you point out that the Gunning inquiry noted that you had vigorously pursued a belief that board members should take an active role in the complaint and investigation process.

**Mr Weir:** That was also reported on two or three pages in the Gunning report.

**Hon G.T. GIFFARD:** Was that your view when you became an industry member? Upon your arrival at the board, did you have a view that was contrary to the advice Ms Needham gave?

**Mr Weir:** Several months later. Yes.

**Hon G.T. GIFFARD:** Had that always been your view?

**Mr Weir:** No, not prior to that, because I had not been on the board and was not aware that these matters were not being looked at by board members.

**The CHAIRMAN:** Do you believe the board members should have been aware of those detailed complaints?

**Mr Weir:** Absolutely.

**Hon G.T. GIFFARD:** I am trying to get this clear in my mind. When you referred to the article in *The West Australian* of 23 September, your explanation was in line with the advice from Ms Needham.

**Mr Weir:** Correct.

**Hon G.T. GIFFARD:** That was written in 2000, and you said that you differed from that view anyway; in any event, you were a deputy member, not a board member.

**Mr Weir:** I will go over that.

**Hon G.T. GIFFARD:** Can you clarify that for me? That was your explanation, but it does not seem to gel with the fact that you did not have the view anyway.

**Mr Weir:** I was aware that board members were not to be involved in the process. I did not think it was right. It was about April 1997 when Julie Jones rang me and said she had a matter of concern and wanted it addressed. I told her that I was a deputy member of the board and could not be of much use to her. I told her to take the complaint to the registrar so that it could be properly dealt with. I told her that a board member would not want to hear the details of the evidence because that would preclude them from being able to sit in on any subsequent inquiry.

**Hon G.T. GIFFARD:** How were you aware of that in 1997?

**Mr Weir:** I had been a board member in 1991.

**Hon G.T. GIFFARD:** Was that the advice you were given then?

**Mr Weir:** Yes. I raised the matter with the chairman, John Urquhart, shortly after becoming a board member last year. Things were starting to surface then; in fact, problems had started to surface in 1998. I told Mr Urquhart that we needed to find out what was going on.

**The CHAIRMAN:** When in 1998?

**Mr Weir:** Only when articles started appearing in the newspaper about Grubb Finance, Global Finance and those types of matters. I became aware when it was brought into the public arena. I was not on the board before May 1999, so I could rely only what I read in the media.

**The CHAIRMAN:** Were you aware of any problems in the industry before they were reported in the media?

**Mr Weir:** No. I would hear that someone was in arrears on interest on a mortgage, but that would not mean that the broker was at fault. I would hear things, but it did not necessarily mean someone was acting illegally. I was told by the chairman shortly after joining the board that I should know the rules.

Mr Urquhart observed the law fairly stringently. I became increasingly concerned that it would never work. If board members did not understand the nature of the other complaints - particularly those that were dismissed - they would not know if there was a general trend in the industry, even if it did not involve illegal activities. We could not fix it.

**The CHAIRMAN:** Did you see the board as a supervisory board rather than a disciplinary tribunal?

**Mr Weir:** Looking back now, the system would have worked better if the disciplinary and investigatory process had been separated from the board, which the board recommended to the Gunning inquiry. In that way, board members, particularly industry representatives, could see what was giving rise to the complaints, even if they were dismissed. They could see whether there was a trend and find ways to do something about it. I wrote that memorandum in February because I did not accept the verbal assurances from the chairman that we could not hear those matters. I wanted to see it in writing. It had never been put to me in writing. I wanted to force that issue. I wrote the memorandum because I did not want to accept what other people were telling me verbally.

**Hon G.T. GIFFARD:** When Julie Jones raised the issue with you, were you clear that you could not step over that line?

**Mr Weir:** She said in her evidence that I told her not to give me any details because it might compromise me if I were required to sit in judgment of that matter as a deputy.

**The CHAIRMAN:** Will you outline when Julie Jones contacted you in early 1997?

**Mr Weir:** It was really a matter of her expressing whatever concerns she had about her former employer, Blackburne and Dixon. The board's experience is that many people made complaints but never followed through with them, although I did not know that at the time. People can make complaints, but they must follow them through and do something about it. They must make a statement and provide evidence and not just have a grizzle. It is similar to a person not being happy with a lawyer's bill and grizzling to the lawyers' board about it. It is being mischievous. I told her that if she had a complaint, and it sounded as though she did have complaint, she should take it to the registrar, who would appoint an investigator. It would be investigated and if there had been a breach of the ethical code of conduct, it would go before the board as an inquiry. Therefore, I could not hear any more detail about it, because if I were deputising for a member I would have to excuse myself from sitting in judgment of the issue.

**The CHAIRMAN:** What are your recollections of your conversation with Julie Jones? What did she tell you?

**Mr Weir:** I honestly do not recall what she said, other than that she believed there had been some breaches of the Act.

**The CHAIRMAN:** Do you remember her outlining the nature of the complaint?

**Mr Weir:** I can only say, having read in the newspaper the evidence she gave to this committee last week, that it related to a misappropriation of funds from a trust account. I am trying to recollect if I later asked John Bell, the person for whom I was a deputy on the board, if any matters regarding Blackburne and Dixon had come to the board's attention. I believe I asked him that question in his office and he said that a matter had come before the board, it had been investigated, gone to inquiry and a fine had been levied. I did not know what that related to. No details were given and none were sought. I drew a connection between that and the earlier telephone conversation I had with Julie Jones.

**The CHAIRMAN:** That fine was levied in January 1997.

**Mr Weir:** Is that when the fine was levied?

**The CHAIRMAN:** Yes, and it was for a completely separate matter.

**Mr Weir:** The matter John Bell mentioned to me obviously preceded the Julie Jones matter.

**The CHAIRMAN:** That is right, by at least two or three months.

**Mr Weir:** They were not related.

**The CHAIRMAN:** Julie Jones indicated to the committee that she did not mention the name of the company to you, but she believed that you would have known which it was because you knew where she had been working.

**Mr Weir:** That I should have known which one she was referring to, of the couple of hundred borrowers or lenders that Blackburne and Dixon had?

**The CHAIRMAN:** No, she said that she did not mention the name of the company about which she had concerns, but she thought that you would have known it because of who she had worked for.

**Mr Weir:** No, I think she specifically said it was Blackburne and Dixon, her former employer. I am certain she mentioned Blackburne and Dixon. She also mentioned where she was working at the time.

**The CHAIRMAN:** Do you recall her mentioning issues of money going overseas?

**Mr Weir:** No.

**The CHAIRMAN:** You told us that you contacted Mr Bell about it. Did it cause you alarm?

**Mr Weir:** No, I did not contact Mr Bell about it. I was in his office on other business and asked in passing whether Blackburne and Dixon had come to the attention of the board. He said it had, and that the matter had been dealt with. I thought no more about the matter.

**The CHAIRMAN:** I realise it is hard to remember the specifics of what she outlined. Did it cause you concern or alarm at the time?

**Mr Weir:** I probably received two complaints against a broker each year. Often not much detail is presented. I do not become alarmed but tell the person they have a good point, there may have been a breach of the Act or code of conduct, and they should take it to the registrar.

**The CHAIRMAN:** You strike me as someone who would like to defend the industry and maintain high standards within it. Were those two complaints each year from lenders?

**Mr Weir:** The majority of them would have been from borrowers complaining about what they had been charged, such as paying an up-front fee and not getting a loan or a refund.

**The CHAIRMAN:** I suggest that is different from someone who had been working in a finance broking office coming to you and saying that she had grave concerns about improper use of trust funds and money being misappropriated and sent overseas. That is a series of quite serious complaints. I take it from your nodding that you agree. Do you accept that such a person coming to you with complaints is different from someone saying they were ripped off by the amount charged by the finance broker.

**Mr Weir:** I agree with what you are saying. That is probably why I asked Mr Bell about it some time later. I wanted to find out if the matter regarding Blackburne and Dixon had been brought before the board to see if it had been followed through.

**Hon RAY HALLIGAN:** Did you know Miss Jones before the telephone call?

**Mr Weir:** I did not know of her as such, but I marked her papers when she did the finance broking practice 1 and 2 through TAFE by correspondence. She was one of 30 people whose papers I marked on a fortnightly or monthly basis. Other than that, I had never met or heard of her. I did not know her.

**Hon RAY HALLIGAN:** Having received information of that nature, what you would normally advise a caller?

**Mr Weir:** I would tell such a person that she must take the complaint to the registrar. I would also point out that she would be expected to put the complaint in writing, to provide any supporting documentary evidence and perhaps to sign a statutory declaration before the information would entered in evidence at an inquiry.

**Hon RAY HALLIGAN:** Did you make a general inquiry of John Bell about whether something had come forward, without mentioning any of the specifics provided by Ms Jones on the telephone?

**Mr Weir:** That is correct.

**Hon RAY HALLIGAN:** You have just agreed with the chairman that they were most serious issues, but you made only a general inquiry. Is there any reason for that?

**Mr Weir:** Yes. Mr Bell's answer that the matter had been dealt with satisfied me to make a connection between the two. From what has been said this morning, that connection between the matter before the board and Blackburne and Dixon predated Julie Jones's allegation. It is not something I have connected until now.

**Hon RAY HALLIGAN:** If this were so serious - it appears certain things were mentioned - surely it would take a little time to inquire into it?



**Mr Weir:** Absolutely. I had no idea at that time how long it took the ministry to investigate matters, but I assumed it would give it some priority.

**The CHAIRMAN:** Can you recollect when you spoke to Mr Bell?

**Mr Weir:** No.

**The CHAIRMAN:** Would it have been within a month of the telephone conversation?

**Mr Weir:** It would have been longer than that. It may have been many months later, but it was not immediately thereafter. I do not think it was 18 months or two years later.

**The CHAIRMAN:** Did you make any inquiries of the ministry about it? You referred Ms Jones to the ministry.

**Mr Weir:** No, I did not. Members should bear in mind that when complaints are made, we do not know whether they have any substance. There may have been other evidence to disprove the claim; that is, the broker may have done certain things, but with the authority of the client and without the knowledge of this other person. We do not know the evidence, so we cannot prejudge it. The allegation may have been dealt with.

I sent a fax to the registrar on Monday asking whether Julie Jones made a complaint as she alleged last Friday. It appears that if she had, it was dealt with by Gary Wallace. I asked how it had been dealt with and what was the outcome. Despite following up again yesterday and this morning, I have still not received any reply from the ministry. I understand that Mr Wallace gave evidence to the committee that he does not remember any formal investigation into that complaint.

**The CHAIRMAN:** There is certainly the commencement of an investigation.

**Mr Weir:** As I understand it, this committee has subpoenaed all complaint files going back for a long time. Has the committee been able to locate a copy of that complaint?

**The CHAIRMAN:** How do you understand that?

**Mr Weir:** I am a member of the Finance Brokers Supervisory Board, and the letter to the board advising what the committee is doing and providing the terms of reference also demanded that the board provide certain documentation. That letter was tabled at a board meeting, so I am aware that the committee has subpoenaed those documents.

**Hon G.T. GIFFARD:** Was there a subpoena?

**Mr Weir:** That is my terminology; it was a demand that all complaint files be forwarded to this committee. I would like to know from one source or another the outcome of that complaint and any investigation - whether it resulted in the complaint being dismissed or proceeded with. I do not know and I want to know. I have not been able to get that information from the ministry.

**The CHAIRMAN:** Why do you think it is important to know?

**Mr Weir:** The newspaper article contained an incorrect implication. It reported Ms Jones as saying -

... he didn't want to be compromised in me telling him things because he would have to act further  
...

That suggests to the reader that I did not want to know something because if I did I might have to do something about it. That is not correct. The fact is that I might have had to act further in my capacity as a member of the board sitting in judgment in an inquiry about the matter and I did not want to be compromised by hearing any detail prior to a hearing. That inference cannot be drawn from this article. It is defamatory.

**Hon RAY HALLIGAN:** I would like to clarify a few things in that area. You mention that it was board policy that was later confirmed in writing.

**Mr Weir:** Yes.

**Hon RAY HALLIGAN:** I am referring to the timing. We are now talking about your making those statements in 1997. You have provided the committee with a copy of a memorandum from Elizabeth Needham to Gerry Milford in which mention is made of a memorandum - presumably from Milford to Needham - and a facsimile from you. Have you provided the committee with copies of your facsimile and do you have a copy of that memorandum?

**Mr Weir:** I would have a copy on my computer, even if I have trouble locating a hard copy.

**Hon RAY HALLIGAN:** It would help me to understand the total picture. The memorandum you have provided is dated 29 February 2000. Is this the first confirmation in writing of this board policy?

**Mr Weir:** That was the only confirmation of the board policy.

Did the chairman refer earlier to the copy of the facsimile I sent to Mr Shave asking for copies of complaints?

**The CHAIRMAN:** Hon Graham Giffard may have referred to it.

**Hon G.T. GIFFARD:** I referred to the original submission dated -

**Hon NORM KELLY:** It was dated 20 July.

**Hon G.T. GIFFARD:** Then I was referring to the 11 September letter to Mr Shave. Is that the facsimile in question?

**Mr Weir:** I cannot recall the content of that.

**Hon G.T. GIFFARD:** I was asking about what you would do if someone - as Ms Jones said she did - contacted you with a complaint and how you would deal with that. That was the context in which I referred to the Shave letter, which is in a bundle of documents attached to your submission.

**Mr Weir:** I will find the memorandum dated 4 February and provide a copy.

**Hon G.T. GIFFARD:** The response from Needham is attached.

**Mr Weir:** I will make two other comments as an opening statement. I will then be happy to address other issues and to answer questions.

A number of incorrect statements have been made, occasionally in Parliament, by the minister, the Premier, the opposition spokesperson and the Leader of the Opposition, and reported in the media. When I have seen the reports or have been made aware of them and I know that the statements are incorrect, I have written to the newspaper concerned and brought the truth to its attention. I have also sent copies of that correspondence to the parties making the incorrect statements. On one occasion, the opposition spokesperson said in Parliament that there were 450 brokers in the industry and that they were all scumbags. The *Government Gazette* published on 1 December 1999 stated that at that time there were 166 business certificate holders. There may be 450 licensees, but more than one may be attached to one business certificate, or some of them may be totally inactive. The actual number of business certificate holders is 166.

Other people have said that dozens of brokers are involved in this scandal. The Gunning report acknowledged that 20 brokers were involved in pooling and managing private mortgages; the rest of them are involved in dealing with banks and other credit providers - they have no involvement in the private mortgage industry. The Gunning report further acknowledged that 10 to 20 brokers within that small group dealing with private mortgages were identified as having problem loans. Of course, some of those have already ceased business, are facing fraud charges and so on. Therefore, to put this in context, as at December last year, there were only 166 business certificate holders, and only 20 of those appear to have been involved in the private mortgage business. So far, to my knowledge, only eight or nine have been identified as being directly involved in the finance broking scandal. I want it understood that 150 brokers have never been involved in this. That is 90 per cent of the industry, who have been maligned in Parliament and referred to as scumbags when they have been arranging loans through banks and other credit providers and acting in what I regard as a very professional manner.

It has been stated publicly that, between them, Graeme Grubb and Global Finance Group Pty Ltd had \$60m under management.

**The CHAIRMAN:** It was about \$60m each.

**Mr Weir:** That is correct. Kim Clifton has publicly stated that he was managing about \$120m to \$150m; people from Countrywide Credit have stated that it was managing \$30m; and Blackburne and Dixon may have been managing \$60m. Given that they are some of the bigger and smaller players, it appears that about \$500m is being managed in private mortgages. The average private mortgage runs for no more than two or three years; they are only one, two or three-year loans in the first place. That means that this pool of \$500m in mortgages was turning over every two years - that is \$1b every two years. Over 10 years, that is \$5b being turned over in the private mortgage market, if the market remains at that level. If we are now talking about Grubb losing \$22m as reported in the newspaper and a similar amount being collectively lost by other brokers who did not face the same problems of defalcation as Grubb faced, the losses could be anywhere between \$30m and \$50m. That is between \$30m and \$50m over 10 years when \$5b is turned over and lent in private mortgages. I want to put that in context, because a media outlet is dreaming up figures and throwing them around and alleging that another 30 brokers are yet to be named. That cannot be substantiated. It has also said that 7 000 investors have funds at risk and that \$200m could be lost. I have asked for substantiation from that party but I have not received it. It cannot be substantiated.

**The CHAIRMAN:** As an industry board member, what do you think the losses will be?

**Mr Weir:** Between \$30m and \$50m. That is based on general knowledge -

**The CHAIRMAN:** This committee has already heard evidence from the supervisors and liquidators of both Grubb and Global Finance that their combined estimated losses alone will be close to \$40m.

**Mr Weir:** My figure may be conservative. Time will tell.

**Hon G.T. GIFFARD:** That is the point. I appreciate your efforts to assist the committee. However, members will be looking at the best and most reliable evidence we can get. Your estimate is a conservative figure.

**Mr Weir:** It will probably take one or two years to tell because that is how long it takes to wind up faulty property transactions.

**The CHAIRMAN:** Obviously some brokers are not involved in pooled mortgages. As a member of the industry and someone who is active in the industry, who do you believe are the problem brokers at the moment?

**Mr Weir:** I believe they have all already been identified to the Gunning inquiry.

**The CHAIRMAN:** Are you referring to the list you went through earlier?

**Mr Weir:** I have not gone through a list yet.

**The CHAIRMAN:** You listed a number of companies that you surmised, in terms of losses -

**Mr Weir:** I identified some companies in terms of turnover, not in terms of being part of the scandal. The ones that are part of the scandal have already been identified. Two of them - Grubb and Global - have been placed into liquidation with a supervisor appointed by the board. Blackburne and Dixon has not surrendered its licence at this stage, but it has given an indication to the Australian Securities and Investments Commission, which as you know has now taken over control of the pooled private mortgage market. Blackburne and Dixon has given an undertaking to ASIC not to trade, even though it retains a current business certificate. First Charter Finance retains a current business certificate, but I understand it may be surrendering that after changing the name of the company. I do not know the status of Gamel Ward Pty Ltd. Peter Fermanis retains a licence at present, but the findings of an inquiry into a matter relating to him will be available within a week or two. MFA Finance, of which Ross Fisher, a member of the board until December, was a director, along with Russell Hawkins and Ken Court, is the other company that has surrendered its business certificate. They are the ones that are clearly involved. Some other brokers, who are generally quite reputable and cannot be regarded as part of the scandal, unfortunately have loans on which interest has fallen into arrears, or have loans that have not been repaid on the due date. They are getting some notoriety about that, but they are not involved in any crisis, nor are they part of the scandal.

Another area of concern is that a formal inquiry by the board was scheduled for today, as the result of an investigation into a broker. That matter had to be deferred, because the board could not raise a quorum. As per my original submission to this inquiry, the Ministry of Fair Trading has refused to act on the board's suggestion to replace retired or resigned board members. To this date the ministry has still done nothing about appointing replacements for Ross Fisher and the two deputies who have resigned. That matter is now outstanding some six months, and I suspect it has not been addressed because of political interference resulting from the Gunning inquiry. In other words, either the Ministry of Fair Trading or the minister is interfering with a direction of the board. We have been unable to appoint replacements for Ross Fisher, and my deputy. I was unable to attend the hearing that was due to start on Wednesday and conclude today - two days were set aside. The two government appointed board members were able to attend. Although one of them, Evelyn Broadley, is in Sydney at the moment, her deputy, Brian King, would have attended in her stead. I do not have a deputy, despite asking for one for months, and because I could not attend on Wednesday, that hearing had to be aborted. That hearing involved a serious issue concerning a broker involved in the scandal.

**Hon G.T. GIFFARD:** How can you justify your claim of political interference?

**Mr Weir:** I have already given you a copy of a memo dated 18 July, to Patrick Walker, I believe, complaining that nothing had been done about the board's request for new members to be appointed to avoid the risk of failing to reach a quorum. Mr Walker subsequently wrote back to me to the effect that the matter was being referred to some department that apparently is responsible for complying with the election regulations and preparing the notice in the *Government Gazette* so that nominations can be called for industry representatives and deputies. I have received a letter, which I will table, from Patrick Walker dated 21 September 2000 in response to a further more recent memo of mine. The letter states -

Thank you for your fax dated 20 September 2000 regarding the appointment of a deputy in respect of your position on the Finance Brokers Supervisory Board.

I had foreshadowed in my memo that inquiries might be deferred if they did not appoint a deputy quick smart, and I referred back to my initial request to the board in March. The letter continues -

This issue will be referred to the newly appointed Chairman of the Finance Brokers Supervisory Board, Mr Peter Jooste, for his early consideration.

That, to me, implies that nothing has been done. The minister made a public announcement a week or two ago that he intended to replace one of the industry representative positions on the board with a consumer representative, which would require amendment to the legislation. All I can surmise is that because the minister already had the idea in his mind that there would be only one industry representative on the board in future rather than two, he might have influenced the -

**Hon RAY HALLIGAN:** Excuse me, Mr Weir. I appreciate all this surmising, but this has nothing to do with our terms of reference. I have questions I wish to ask you.

**Hon G.T. GIFFARD:** I have asked the question, and he is answering it. I do not prevent your lines of inquiry.

**The CHAIRMAN:** Order, members. I believe this matter is related to the terms of reference of this inquiry, but I ask you to keep your comments brief.

**Mr Weir:** I do not wish to add anything further to that, other than to express the hope that once Mr Jooste returns from overseas, we will not run the risk of having to abort any more inquiries.

**Hon G.T. GIFFARD:** Do you have any experience of board members being replaced previous to this? Do you know how long it normally takes?

**Mr Weir:** I was first appointed to a casual vacancy as a deputy member in 1986. That was done so quickly that I do not recall if it was ever gazetted or published in the newspaper, and I do not recall any nominations being called. It is quite likely that my appointment as a deputy in 1986 was unconstitutional. I do not believe the normal practices were followed, because I was invited one month and I was there the next month.

**Hon G.T. GIFFARD:** Do you have any other experience apart from that? Can you tell us how long it normally takes?

**Mr Weir:** When I resigned as a member in 1992, I had a deputy, who immediately took over from me. So long as deputies are appointed, if a member cannot attend it is not difficult to replace him. However, if I, as a member, do not have a deputy, and I cannot attend and that means there is no quorum, there is a major problem.

**The CHAIRMAN:** I repeat the question asked by Hon Graham Giffard. Are you aware of any circumstances, at any time, when a new member has been appointed, and how long that took?

**Mr Weir:** I do not believe a new member has ever been appointed in the term of the board. All it requires is that a notice be published in the *Government Gazette* and the newspaper. I even offered to draft it myself and have my association pay the cost of having it published in the newspaper, if the ministry had not the time or the inclination to do it, but that offer was not taken up.

**Hon NORM KELLY:** Has your association been active in putting forward names of industry representatives for the board?

**Mr Weir:** No. Nominations are called, and only one finance broker is required to make a nomination. Candidates do not need to be sponsored or supported by an association.

**The CHAIRMAN:** As an industry representative, does it concern you that the board cannot get on and rid the industry of people who you believe should not be in it? Is that the reason you need to have a board?

**Mr Weir:** That has happened by default now anyway, because you cannot continue in that part of the industry unless you have an ASIC licence.

**The CHAIRMAN:** I understand ASIC licences only apply to amounts over \$5m and 20 or more investors.

**Mr Weir:** It was \$5m, but it has been increased to \$7.5m and 20 investors. If you fall under that category, there must be a small scheme supervisor, and ASIC has not appointed a small scheme supervisor in Western Australia.

**The CHAIRMAN:** If you fall below that category?

**Mr Weir:** If you fall below that category, you can operate without observing all of the ASIC requirements. You must still have prospectuses. You are not totally exempt from ASIC; you simply fit into a small scheme category, for which there must be a small scheme supervisor. However, there is no such supervisor, so although there is a category, you cannot actually do it. What you can do is arrange private mortgages, so long as you do not pool the money or manage it, or provide any services whatsoever to lenders. Once you start to act for lenders or investors and manage their funds, you may need an ASIC licence. If you simply facilitate a loan between a borrower and a single private lender and do not manage it or provide any advice or assistance to the lender, you are not regulated by ASIC, but you are still regulated by the state legislation.

**The CHAIRMAN:** You listed a number of the companies, and you mentioned that they had not surrendered their licence. Has the board, while you have been a member, ever considered whether any other companies might require a supervisor to be put into them?

**Mr Weir:** A couple of months ago, a fax was sent in response to a telephone query from Phil Pental, I believe, who has a relative with funds at risk, or at least under management, at Blackburne and Dixon, which had publicly announced that it was closing its doors and no longer managing any of the loans that it had previously been managing. Mr Pental asked who would now manage the loan, as the group of twelve investors would not know what to do. I at that stage wrote to the minister, and sent a copy to the chairman of the board, I think, and suggested that a supervisor be appointed to Blackburne and Dixon.

**The CHAIRMAN:** What was the response?

**Mr Weir:** I have not had a response. They may be drawing comfort from the fact that Blackburne and Dixon has given an undertaking to ASIC not to continue. The board cannot forcibly do anything until an inquiry comes before it.

**The CHAIRMAN:** Was there an inquiry for Grubb or Global before you appointed supervisors?

**Mr Weir:** Lawfully, an inquiry would have been necessary for the board to appoint a supervisor. I cannot recall, because this probably happened about the time I joined the board in the middle of last year. I think the supervisor was appointed in the month I began sitting, May 1999.

**The CHAIRMAN:** I cannot remember the exact date, but the appointment of the supervisor did not occur until later in the year, so you would already have been on the board.

**Mr Weir:** The decision to appoint a supervisor was made many months earlier. The problem in getting the supervisor in there to do the job was that the board had to go through the procedure of calling for tenders, because public money was being spent, and you just cannot go out and appoint a supervisor the next day. The formal contract that had to be entered into between the board and the supervisor had to be prepared, and I believe the ministry's legal officer took some time to prepare that. It would have been three to five months after the board had made the decision to appoint the supervisor that the supervisor would have been able to go in and take over - due process, I guess you would call it.

**The CHAIRMAN:** When did Mr Pental contact you?

**Mr Weir:** Earlier this year. I would need to find the memo I subsequently wrote, either to the chairman with a copy to the minister, or to the minister with a copy to the chairman, suggesting that a supervisor be appointed to Blackburne and Dixon, so that its clients, who would otherwise be left in the lurch, would have someone to take care of their loans.

**The CHAIRMAN:** But your view is that you would need to have an inquiry in order to appoint a supervisor?

**Mr Weir:** Yes. A number of investigations are reported to the board each month. These are current investigations, without detail, into a number of matters. Some of those investigations were concluded late last year and early this year - January and February. The February meeting involved people like Blackburne and Dixon. I will not speculate on the others. I would need to look at the agenda for that meeting. When an investigation is concluded, it goes to the legal officer, who must confirm that there has been a breach of the Act or the code of conduct before he or she can make an application for inquiry and give it to the board. Those matters are still outstanding in many cases. They were to be tabled at the March board meeting, and many have still not yet been tabled with the board for inquiry. This involves brokers involved in the scandal. The board cannot hear the detail, hold an inquiry or make a decision in respect of those brokers, because the legal department has not got its act together, and for a while there were no legal officers.

**The CHAIRMAN:** Is that still the case?

**Mr Weir:** Yes. Two matters have been brought before the board recently - Peter Fermanis, and First Charter Finance, which is the one I just mentioned. It was meant to be heard this week but it has been deferred, probably for a couple of weeks until a convenient date for all the parties. Another two matters are before the board right now to be signed off, which will come before our next meeting. An equal number, if not more, are still outstanding from March, and have not come to us yet. I understand that, due to inadequate legal resources in the Ministry of Fair Trading, some of those files have now been outsourced for a legal opinion to be given about whether there is a case to answer, and for the application for the inquiry to be done. Those cases have been outstanding since March, and at least half of them are complaints about serious breaches.

**The CHAIRMAN:** Can you outline briefly what Mr Pental's concerns were?

**Mr Weir:** I think he said that either a friend or a relative of his had money invested in a loan with Blackburne and Dixon that was pooled and managed. Blackburne and Dixon had closed their doors and the party who he

was speaking for asked who would manage his mortgages and what could be done. I said - I do not know whether I said it to him or whether I thought about it later - that the only thing that could be done to help would be to appoint a supervisor. That is when I wrote to the minister and the chairman to suggest that perhaps they should consider appointing a supervisor.

**The CHAIRMAN:** You did not suggest to him that he should contact the ministry?

**Mr Weir:** I may have done so. He may have already been in touch with the ministry. I do not recall.

**The CHAIRMAN:** If there was a need for an inquiry, does not that discussion fly in the face of the legal opinion from Elizabeth Needham?

**Mr Weir:** No, because it did not relate to a complaint from an investor or a borrower. It was someone observing that there was a problem - it did not even suggest that anything wrong had been done.

**The CHAIRMAN:** You just said that we need to have an inquiry to resolve it.

**Mr Weir:** Yes, you would need an inquiry. To take that matter further, for example, the chairman of the board would have had to direct that. For example, inquiries into Blackburne and Dixon were outstanding at that time anyway - I knew that. If those inquiries could be brought to fruition - and we still have not had an inquiry for Blackburne and Dixon - it could be brought for inquiry to the board. It is pending legal advice. In fact, last year the board appointed Dr Diana Newman to carry out a special audit of Blackburne and Dixon on 25 random files. That took place early last year. They were being investigated and were coming before the board, so I knew that matters concerning Blackburne and Dixon were coming forward. However, I suggested that they should consider appointing a supervisor now. If the response of the chairman or the ministry had been fine, and had they agreed to accelerate some of these inquiries or investigations, they could have got it before the board so the board could make a decision. I am not sure whether you need an inquiry to appoint a supervisor, and I am not sure whether there were inquiries into Grubb and Global before they did it. I do not know. I would have to check.

**The CHAIRMAN:** As a board member, do you believe there should be a supervisor in Blackburne and Dixon?

**Mr Weir:** It depends. I understand that a number of those lenders have taken their pooled mortgages to solicitors and the solicitors are now managing them, probably at a considerably greater cost than would have been the case if the broker had been able to continue to manage it for the normal, fairly modest fee that they charge for doing that - 0.35 per cent of the loan amount. On a 9.35 per cent mortgage, the broker would retain 0.35 per cent for himself for management, and 9 per cent net would go to the investors. A solicitor would probably charge considerably more than that, especially if there was a default notice and they decided to take legal action on behalf of the mortgagees. Those costs would have to be borne by the mortgagees if they ultimately could not recover it from the borrower.

**The CHAIRMAN:** You have requested that the issue of a supervisor in Blackburne and Dixon be looked into, but you have had no response whatsoever?

**Mr Weir:** No. I did suggest that but I have not had a response.

**Hon RAY HALLIGAN:** On that point, I will raise some issues that I raised with Mr Urquhart yesterday. You are aware of section 12(1) of the Finance Brokers Control Act?

**Mr Weir:** Just one moment. The registrar and other officers of the board?

**Hon RAY HALLIGAN:** Yes.

**Mr Weir:** That section states -

There shall be a Registrar of the Board and there may be such Deputy Registrar, Assistant Registrars, inspectors and other officers of the Board as are necessary for its proper functioning.

**Hon RAY HALLIGAN:** That is correct. Whose responsibility do you believe it is to cause that to happen? The board's?

**Mr Weir:** To appoint those officers?

**Hon RAY HALLIGAN:** Yes.

**Mr Weir:** Legally, the board should appoint the officers but it recently came to the board's attention that it had previously been done incorrectly. It has only recently been rectified. I do not know who was appointing them before. I suspect it was the ministry or somebody. I say that because at a meeting a couple of months ago we received a legal opinion from within the ministry saying, "Hang on a minute, we have been appointing investigators et cetera in such a way that is probably unlawful. They must be appointed by the board and we now require you to ratify the appointment of these dozen officers". Those officers were the registrar, assistant

registrar and probably about eight investigators, and they probably included all the investigators of all the boards in the ministry who could work for the board from time to time. We recently ratified the appointment of all those people in the correct manner. It may have inadvertently been done incorrectly in previous years. Who knows how long?

**Hon RAY HALLIGAN:** If the board was not doing it, would you suggest that the board was abrogating its responsibility under the Act?

**Mr Weir:** I cannot comment on that because I do not know how it was handled before, whether the board delegated that responsibility to the legal officers within the ministry, to advise them how these things should be done.

**Hon RAY HALLIGAN:** It is a board responsibility. It is in the Act. For the proper functioning of the board, you will have those resources that the board determines it requires. Under section 20, the powers of the board are considerable and give the board the authority for many things. You spoke about having supervisors available but you were relying on others.

**Mr Weir:** No. Let us just clarify that point. Whether the investigators, the registrar, or the assistant registrar, had been properly appointed or not, did not matter because the board would have acted in the same way, with or without that knowledge. In other words, they still would have carried out their responsibilities, believing that it had all been done lawfully. They would have been carrying out the job correctly and properly. The fact that they subsequently found that technically there was a defect did not matter. They were still doing that job. They were still directing investigations and that sort of thing.

**Hon RAY HALLIGAN:** You said only a short while ago, and correct me if I am wrong, that you had been waiting for the ministry to do certain things. That is not, to my mind, the board actually doing it.

**Mr Weir:** The board actually do not do it. The board directs investigators to carry out investigations on its behalf.

**Hon RAY HALLIGAN:** That is what I am saying. Were you directing those people or were you waiting for them to come to you?

**Mr Weir:** No. They were genuinely being directed in perpetuity because the direction was that if a complaint came to the registrar, it should be given to an investigator. That had probably been in vogue since the Act began. It was a board direction that if complaints came in, they would be dealt with by investigators.

**Hon RAY HALLIGAN:** Did the board follow that up?

**Mr Weir:** That is the way it happened for 25 years. There was no need to follow it up because it was happening.

**Hon RAY HALLIGAN:** There appear to be complaints that nothing was happening.

**Mr Weir:** No. What you might be getting confused with is that there were complaints and those investigations were taking a long time. There were complaints which fell outside the jurisdiction of the Act and therefore could not come before the board, and there were complaints where the complainants failed to furnish material to enable that complaint to proceed. There were these types of frustrations and that may be one of the reasons that within a year, only two or three complaints resulted in inquiries. The board, to my mind, has done its job in the past because it has directed that investigators do investigations. Investigations were taking place.

**Hon RAY HALLIGAN:** Are you saying that because of that authority you had under the Act, the board had all the resources it believed it needed?

**Mr Weir:** No. I do not believe the board had sufficient resources.

**Hon RAY HALLIGAN:** It had the power to obtain them?

**Mr Weir:** I can recall, during my 15 months on the board, John Urquhart saying to the registrar, probably half a dozen times, that we needed more resources. That happened particularly as these matters that were supposed to be brought forward - this even goes back to last year - were listed as continuing month after month after month, and legal matters and investigations had been concluded but had not been brought to inquiry. He probably expected the registrar to take that up with the head of fair trading who would take it up with the minister, to ask for more resources. Of course, more resources were allocated as a result of that request. A task force has been established and more investigators have been appointed.

**Hon G.T. GIFFARD:** Which request?

**Mr Weir:** Just the general request of the chairman to the registrar which must have filtered up. Gerald Milford, the registrar, used to report back that he had passed on John Urquhart's request for additional resources, because

he hammered it in probably every second month that these things were not happening fast enough, there were not enough investigators or legal people, and something had to be done to get more resources.

**Hon G.T. GIFFARD:** When were the further resources added?

**Mr Weir:** I think it may even have been earlier this year.

**Hon G.T. GIFFARD:** Earlier this year.

**Mr Weir:** Everyone at the ministry must know about that because instead of just one investigator - Jack Willers - they ran an advertisement in the paper calling for two more compliance officers. We knew something was happening. We were told that more resources had been allocated.

**Hon RAY HALLIGAN:** Do you believe that those requests were made in writing?

**Mr Weir:** No, I think that is one of John Urquhart's regrets. Even before I joined the board, he was unhappy about this. I believe Ted Brunton, the other industry-elected member of the board who retired the same time I joined, sent a handwritten memo dated November 1997 to the chairman pointing out things that were wrong at that stage and saying that the ministry was under-resourced. John Urquhart probably regrets that he never put that request in writing to the minister. What he did was probably follow what I would regard as the normal channel; that is, tell the registrar, who you expect to tell the head of fair trading, who you expect to tell the minister, that we needed more resources.

**Hon RAY HALLIGAN:** Do you believe in putting requests of that nature in writing?

**Mr Weir:** I do. I have written directly to the minister, Patrick Walker and the chairman on any matters that I have been concerned about, but not in respect of that matter. I believe in that policy.

**Hon RAY HALLIGAN:** Do you believe the chair should believe in that policy as well, or any board member for that matter?

**Mr Weir:** You could say that now, with the benefit of hindsight.

**Hon RAY HALLIGAN:** No. I am not talking about the benefit of hindsight. You are a professional man. You are a finance broker. Would you expect someone to provide moneys to you to on-lend to somebody else without any documentation?

**Mr Weir:** Why would you think that if you never knew that that was happening?

**Hon RAY HALLIGAN:** It was a general question Mr Weir. I am asking whether you believe, in your professional capacity, that certain requests and other matters, backwards and forwards, should be dealt with in writing.

**Mr Weir:** That is my policy and I have written 38 items of correspondence in the 15 months that I have been a member, to the chairman, to Patrick Walker and to the minister.

**Hon RAY HALLIGAN:** As a board member, do you believe the board should follow that policy as well?

**Mr Weir:** I believe all those requests really should emanate from the chairman. The chairman should take them up with whoever he thinks is appropriate, be that the registrar, head of fair trading, head of the finance industry branch, or the minister. The chairman did report these matters relating to a lack of resources in the annual report of the Finance Brokers Supervisory Board, which was tabled in Parliament. No members of Parliament can claim that they were not aware that there was a need to amend the Act and there was a need for more resources.

**Hon RAY HALLIGAN:** Thank you for that advice but I never read the reports.

**Mr Weir:** It was tabled in Parliament.

**Hon RAY HALLIGAN:** As you know, they are tabled in Parliament but we do not necessarily receive a copy of them. You are making a statement that every member of Parliament should have been aware.

**Mr Weir:** No. I am saying that every member of Parliament had the opportunity to be aware. Whether they made themselves aware or not is their own individual matter. Those matters were reported to Parliament. That is a fairly high level on which to report the complaints.

**Hon RAY HALLIGAN:** If that is the case, I have some difficulties that board members, with the board's effectiveness and the fact that it had the power, did not accept the responsibility that it was provided with under the Act. I will go no further.

**Hon NORM KELLY:** On the point that the board had received legal advice that it should ratify the appointment of registrars and inspectors and the like: Did the board receive that advice or individual members of the board?



**Mr Weir:** No, the board. I do not ever recall individual members receiving it.

**Hon NORM KELLY:** Was that legal advice sought by the board?

**Mr Weir:** I think it was discovered accidentally within the ministry, presumably by the board officers, the acting registrar, or the legal officers. Someone discovered, probably as a result of matters that have been looked at in more detail in the past 12 months, that the appointment of officers should be in writing by the board. You would have to look at any advice. It had not been done technically correctly in the past. It did not affect the functioning of the board, things still happened the way they were meant to happen. They may not have been reported the correct way.

**Hon NORM KELLY:** Did the legal opinion, saying that the board should ratify those appointments to correct that situation, give any indication as to the ramifications for the previous actions of those people as a result of their not being appointed correctly?

**Mr Weir:** No, I do not think it referred to that but I remember that going through my mind at the time. I thought there was some legislation that said if it was subsequently proved that certain legislation had a technical defect, that would not undo the spirit of the law. A law can have a technical defect, but it does not mean that you cannot use the law.

**The CHAIRMAN:** I think I know what you are referring to.

**Mr Weir:** The fact that it had been wrong did not mean that it was retrospectively wrong and would therefore be unlawful. All the decisions made by the shire council are not wrong just because they were made without proper motions, or whatever.

**Hon NORM KELLY:** It may be specific within the various Acts. In the proof of documents you tabled this morning there is a fax of today's date to the minister regarding bankruptcy and the like. You refer to section 5(2) of the Act.

**Mr Weir:** I did in 1997.

**Hon NORM KELLY:** Can you provide the committee with a copy of that letter and also the minister's response of 14 May?

**Mr Weir:** I will endeavour to locate those documents.

**Hon NORM KELLY:** What were your reasons for seeking that exemption?

**Mr Weir:** Because there is a requirement under the Act to have a bond. To obtain a bond from the bank, for example, you need to provide security by way of equity in a property that can be mortgaged, or a cash term deposit. Due to my earlier bankruptcy I did not have sufficient assets to obtain a bond in that fashion. Because I was not dealing in the private mortgage market and handling funds, I did not believe that brokers who were dealing with banks and credit providers were ever intended to be caught by the Act. I thought the intention of the Act was to control brokers involved in handling private mortgages, particularly when you read the first and second readings of the legislation in Parliament in 1974-75. Therefore, I argued that on the grounds that I would be dealing only with credit providers and banks and would not be dealing with other parties, I should be exempted from the Act, the way other parties were exempted from the Act. For example, Mortgage Choice had been exempted from the Act prior to me. A number of other people in previous years had been exempted from the Act because they were dealing only with banks and credit providers. I wanted such an exemption, and I would have needed to obtain a bond.

**Hon NORM KELLY:** Had you requested that exemption from previous ministers?

**Mr Weir:** No.

**Hon NORM KELLY:** Can you give us an indication of the minister's response?

**Mr Weir:** My application was declined because it did not meet the parameters of section 5(2), but it was not specific as to why it had been declined, even though I was only intending to operate on an identical basis to people who had been approved previously. I am trying to recall if someone suggested to me that it was probably declined because they did not want to show favouritism to me as a deputy member of the board, which is what I was in 1997. Someone suggested that perhaps it had been declined because it could open the floodgates and be seen as favouritism towards a deputy member.

**Hon G.T. GIFFARD:** Who suggested that?

**Mr Weir:** I do not recall; probably a personal friend.

**The CHAIRMAN:** So you were a board member when you were not a finance broker?

**Mr Weir:** No. I have always held a finance brokers licence.

**Hon NORM KELLY:** But if that exemption had not been approved, you would have resigned from the board because you would not have been eligible?

**Mr Weir:** No; because although I would have been exempted from the Act to carry on a business as a broker, I still would have retained a licence. I would not have had a business certificate to trade.

**The CHAIRMAN:** It was the exemption for the business certificate that you did not have?

**Mr Weir:** It was an exemption from the Act in its entirety. Probably 200 or 300 inactive licences are out there now. Those people are not engaged in finance broking and do not hold a business certificate, but they can be nominated and stand for election to the board. To be clear: You can hold a licence but you cannot trade until you get the business certificate.

**Hon NORM KELLY:** The definition of "finance broker" in the Act refers to someone who, in the course of business, negotiates or arranges -

**Mr Weir:** You do not become a broker until you have a brokers licence, but then you cannot trade the next day because you do not have a business certificate. I held a brokers licence right throughout the period of my bankruptcy, but I did not trade. I was working as an employee for a finance broker at that stage, so it was not my licence that was being used; it was somebody else's licence, bond and business certificate. I was working for them, and I wanted to discontinue having partners for that reason and to trade on my own. I thought if that was not possible I would apply for exemption from the Act, the way Mortgage Choice did, because I was dealing only with banks anyway. I was prepared to be limited to dealing with banks in future.

**Hon RAY HALLIGAN:** I note that you are president of the Finance Brokers and Mortgage Originators Association Incorporated.

**Mr Weir:** Correct.

**Hon RAY HALLIGAN:** Can you explain the difference between finance brokers and mortgage originators?

**Mr Weir:** They are all finance brokers and are licensed under the Act. "Mortgage originator" is simply a generic term for someone such as a lease broker. Generally, the term refers to a broker who originates loans as an agent for a bank and receives a fee from the bank but generally does not charge a fee to the borrower; in other words, they are agents, spotters or introducers for banks. Banks will deny that and say, "You are not our agent, but we will pay you regardless." They do not want that legal implication of a formal principal-agency relationship. They are generally people who originate housing loans, because that is all banks will pay fees on, and they receive fees from banks, but they must have a finance brokers licence because they are acting as agents for someone in respect of arranging a loan.

**Hon RAY HALLIGAN:** As an analogy, would it be correct to say they are in a similar vein to insurance brokers, where they look around for the best deal and receive a commission from the insurance company?

**Mr Weir:** That is a good analogy. The client is the person who is receiving the benefit of the service but not necessarily the person who is paying. Earlier this morning I tabled a copy of the immediate past chairman's resignation letter, and the attachments included two items that you might have requested from him yesterday, one being a letter from the minister to me as president of the association dated 29 April 1999. That letter has now been tabled, and I think Mr Urquhart wanted to draw the committee's attention to the second paragraph of that letter, which states -

In the longer term, Cabinet endorsed recommendations for legislative change which will strengthen controls. These include: . . .

Mr Urquhart wanted to make the point that it is now some 15 or 16 months later and still nothing has been done about those changes. I guess that when the minister said "in the longer term" he really meant the longer term. It was either that, or he deferred it while the Gunning inquiry considered the matters that were before it, just as it would appear that Cheryl Edwardes deferred consideration of the amendments put to her in July 1997 by the board at that time because an industry reference group was in train. It is just too bad for everybody that the industry reference group took two years.

**The CHAIRMAN:** April 1999 is just short of a year before the Gunning inquiry was established.

**Mr Weir:** When was the Gunning inquiry established?

**The CHAIRMAN:** February of this year.

**Mr Weir:** In April the previous year the minister undertook to implement the recommendations of the industry reference group. I had a meeting with Patrick Walker, together with my vice president of the association, in respect of this letter. I do not know the date, but it was earlier this year, and my vice president of the association also happened to be Ross Fisher's deputy on the Finance Brokers Supervisory Board, Hans Beyer. Ross Fisher

resigned in December, and a month or two later Hans Beyer was called upon to deputise. We both asked ourselves, "Where is all this legislative change?" and we called a meeting with Patrick Walker to discuss the matter. We said, "What is the hold-up?" He said, "The hold-up is that this new mandatory code of practice will be promulgated under the Fair Trading Act 1987; but before we do that we must broaden the definition of the word 'consumer' in that Act to include financial services." The ministry wanted to get 20-odd items of legislation through Parliament this year, and it was a matter of prioritising those matters. Patrick Walker believed it would get only about five of the 20 items of legislation before Parliament in that time, and he was not sure whether the legislation to change the definition of "consumer" in the Fair Trading Act would make it to the top of the list; therefore, those in the ministry would not do anything further about implementing Cabinet policy until that took place. Patrick Walker and another officer, David Hillyard, were present at that meeting as well, and when we suggested that it could be another two years before anything like that happened, they did not disagree.

**Hon G.T. GIFFARD:** When was that meeting?

**Mr Weir:** It would have been between February and April this year. In other words, we were told not to expect these matters to be implemented for another two years. First, they had to do a minor change to the definition within the Fair Trading Act; then they had to prepare the mandatory code of practice; then it had to go to the parliamentary drafts people; and then it would go on to the list to get into the Parliament; and that process could take two years.

**Hon NORM KELLY:** This letter of 29 April from the minister to yourself also mentions that the reforms are to be "implemented quickly" and include "more frequent audits of trust accounts". How much more frequently do these now occur?

**Mr Weir:** They now occur twice yearly, as requested by the minister.

**Hon NORM KELLY:** Twice yearly for all accounts?

**Mr Weir:** Twice yearly for brokers who have unconditional licences; in other words, the brokers who are able to - if they choose - deal with private lenders regardless of any asset legislation. The requirement for twice-yearly audit reports applies to everyone - conditional and unconditional licences.

**The CHAIRMAN:** Surely it applies only to those who have trust accounts?

**Mr Weir:** The reason it is easier to make it apply to everyone is that if you do not deal with private lenders and do not use your trust account, you can simply lodge a statutory declaration twice a year to say you do not use it, under section 66.

**The CHAIRMAN:** That is right. You can declare that you do not have a trust account.

**Mr Weir:** Sorry, you must have a trust account, but you can declare that you do not use it. Everyone must have a trust account. That has now been implemented, but we had to seek legal advice as to the implementation, and that is why it took quite a few months. We had to decide whether we could arbitrarily apply it to everyone, and we could not, because the Act does not permit us to do that; we can apply it only to a new licence holder or when an existing licence comes up for renewal. While the board has made the decision that two-yearly audit reports are now required, it cannot be implemented, because it will need to be implemented as a condition of a licence, and that can be done only at renewal time.

**Hon NORM KELLY:** I thought the board was able to initiate random audits and the like.

**Mr Weir:** This area is obviously of interest, and I know the decision has been made to do it. I suspect it takes place only at renewal times. The best I can do is try to get the information as to when it is to be brought in and why. I do not want to rely on my memory.

**Hon NORM KELLY:** Do you believe the board is adequately resourced to carry out that extra auditing function?

**Mr Weir:** The board does not carry out the audit. The board ensures that the audits are received, which is the other area of concern. I should not digress, but - and I only know this from looking back at the records - in 1996 and 1997 when Grubb's trust account was regularly overdrawn, there were two unqualified audit reports. The board had no warning that there were problems in the trust account.

**Hon NORM KELLY:** Now that we are talking about audits, in your experience as a board member is it a regular occurrence for a broker to request a change of auditor?

**Mr Weir:** No, it is a very infrequent request. On this occasion I had been on the board for only 15 months, but I would suggest - this is a complete guess - there would be two requests a year from brokers wishing to change auditor. I appreciate you are probably referring to Grubb, who, after he was pulled up several years ago, simply

changed his auditor. It was subsequently found that the auditor's partner had business dealings with Grubb and was borrowing money, via Sandgate Holdings, from Grubb; so the auditor's partner was intimately involved in dealings with Grubb.

**Hon NORM KELLY:** What process does the board undertake when it considers a change of auditor?

**Mr Weir:** Simply that it be a registered auditor within the State of Western Australia. If a public company had a licence and wanted to appoint its normal auditor from Sydney or Melbourne, the board would say no; if its finance brokers licence was registered here and the trust account was here, it might be lawful to nominate an auditor, but it would be asked to nominate a local auditor.

**Hon RAY HALLIGAN:** You said that they are audited twice a year at the instruction of the minister.

**Mr Weir:** I might be confused by the compulsory professional indemnity insurance, which is compulsory for unconditional licence holders. It might be that it has been introduced to apply at the next renewal date. Perhaps the twice-yearly audit report will be introduced immediately under another section of the Act. Compulsory professional indemnity insurance for unconditional licence holders is board policy. The consumer information brochure was prepared last year. Twice-yearly audit reports are in, but I will need to check whether it is at the next renewal date or immediately. The code of conduct was amended twice in the past 12 months, and I was on the board on both of the occasions those matters were considered. Another request has been made to look at the code of conduct because of the recommendations of the valuers board.

**Hon RAY HALLIGAN:** I refer you to section 68 of the Act.

**Mr Weir:** That sounds familiar.

**Hon RAY HALLIGAN:** It relates to the power of the board to order an audit of the trust account and states -

Without prejudice to the operation of the foregoing provisions of this Division, where the Board is of the opinion that it is in the public interest to do so, it may, at any time, cause the trust accounts of a finance broker to be audited by an auditor nominated in writing by the Board for that purpose.

**Mr Weir:** I am quite certain that is the provision used to implement that matter. Having read that section, it was probably used to implement it forthwith; that is, from today forward you now lodge your auditor reports for the period -

**Hon RAY HALLIGAN:** Forthwith? It has applied since 1975. The board has had the authority to do that for considerable time.

**Mr Weir:** There had been no previous reason to do it.

**Hon NORM KELLY:** As there is a change of policy to have more frequent auditing of trust accounts, has the board addressed the cost of those audits? If all of a sudden we have twice-yearly audits, the board must bear some of the cost of those audits. Section 70 of the Act states that the cost -

... shall be as agreed between the Board and the auditor and paid as the Board in writing directs, either by the Board or by the finance broker . . .

Has the board addressed the issue of who should bear the cost of the additional audits?

**Mr Weir:** The board expects that the finance broker will bear that cost. The board will generally only bear the cost of a special, one-off audit, such as that in respect of Blackburne and Dixon last year.

**The CHAIRMAN:** Was that audit conducted at the request of the board?

**Mr Weir:** It has to be. There is no other way to direct a special audit to take place; it must come from the board.

**The CHAIRMAN:** Who paid for it?

**Mr Weir:** The board has the right to recover the cost of the audit from the broker. If it did not happen in that case, the board would recover the cost of the audit. I believe it did.

**The CHAIRMAN:** Was a copy of the special audit into Blackburne and Dixon provided to the board?

**Mr Weir:** I believe it was. It stated that from the 20 files checked at random, 12 were in default. The board subsequently directed that all those files be investigated. I believe those investigations are concluded and are gathering dust, pending legal opinion as to whether they should go before the board as a formal inquiry. I believe the auditor may have also suggested that the trust account appears to be in order.

**The CHAIRMAN:** Was any other action taken as a result of that, other than your directing that inquiries be made? Those 20 files were only a random sample.

**Mr Weir:** Correct.

**The CHAIRMAN:** Therefore, 12 out of 20 files had problems. Did you request that all of the Blackburne and Dixon files be investigated, or only the 12 the auditor identified?

**Mr Weir:** It was only the 12. However, other complaints against Blackburne and Dixon were still outstanding which did not involve the 20 files in the sample.

**The CHAIRMAN:** Do you understand why I feel incredulity that nothing seems to have happened? I am not necessarily saying it was the board's fault. You are telling us that you have a report that 12 out of 20 files have problems. You required that the files be investigated, yet numerous other files were not investigated. No further development has occurred on the appointment of a supervisor, or anything like that. Do you understand why I sit here feeling incredulity? Who is at fault?

**Mr Weir:** I will tell you the incredulity the board feels about that matter. It is possible that some of the files investigated revealed breaches of the Act or the code of conduct. It is possible that those matters will be recommended by the legal people to come before the board for disciplinary action, and it is possible that that action will result in the cancellation of that broker's personal licence and the company's licence. One needs only one file to succeed in that regard, not 500 files. One successful prosecution is necessary to have a broker stop trading. If one of those 12 cases cannot be brought to a hearing stage because one cannot get past the legal hurdle, why burden the investigators with another 300 to 500 files?

**The CHAIRMAN:** From your point of view, who is at fault?

**Mr Weir:** The system is not designed to cope with this kind of problem. We do not have the resources. The Australian Securities and Investments Commission has those resources. If you lodge a complaint with ASIC, two ASIC officers and an ASIC lawyer are on the doorstep the next day, probably with a taxi truck to take away the files. ASIC operates that way because it has a proper legislative framework, and it seems to have unlimited funding, of which the Finance Brokers Supervisory Board is very envious: The board operates under very defective legislation, and within a system with grossly inadequate resources, as reported in previous annual reports.

**The CHAIRMAN:** Who is responsible for fixing that problem?

**Mr Weir:** The problem has been fixed by ASIC. The Federal Government introduced legislation to govern the part of the industry dealing with that area.

**The CHAIRMAN:** Why do we have a board then? Why are we wasting money on inquiries regarding Blackburne and Dixon? Are you saying the ministry is correct in not getting the legal advice on those files?

**Mr Weir:** The legal advice is automatically required. It cannot go to an inquiry unless the legal officers prepare it.

**The CHAIRMAN:** Who is at fault for that not proceeding?

**Mr Weir:** This committee - possibly the Gunning committee as well - is looking retrospectively at the reasons for the problem occurring. You are doing that in an environment in which new legislation has already been enacted by the Federal Government to regulate that problem part of the industry into the future. Perhaps you need not be too concerned about how the industry will be regulated in the future. It has already been addressed by Gunning.

**The CHAIRMAN:** It is certainly one of our terms of reference.

**Mr Weir:** You would take into account the fact it has already been addressed by ASIC. One of the first Gunning inquiry recommendation is that any broker who is licensed by ASIC will be exempt from the state Act. Any broker who is a mortgage originator and only deals with banks and credit providers will be exempt from the state Act. There will go 90 per cent of the brokers who are currently regulated by the Act. This will include me, as no Act will regulate me in the future. The five brokers with an ASIC licence will be exempt from the state Act as well, according to the Gunning recommendations adopted by Cabinet. Who will be left to be regulated by the state Act? It will be the brokers who do one-on-one private mortgages which they do not manage, and for which no loss or defalcation on the loans has occurred. One broker at 5 Mill St, Perth, does not manage or pool mortgages. He is completely exempt from all aspects of the federal legislation. He and perhaps two or three other brokers will be involved. If the recommendations of the Gunning inquiry are adopted, the state Act will regulate five or six brokers only. All the others will be exempt because of the first five recommendations of the Gunning inquiry.

**The CHAIRMAN:** I return to the Blackburne and Dixon issue. Do you suggest that it is unnecessary for an inquiry to be held into the problems raised in the past?

**Mr Weir:** The board operates as though there is no ASIC legislation and the supervisory board is still solely responsible for those people. We switch off.

**The CHAIRMAN:** Is there still a need to investigate those matters?

**Mr Weir:** Yes. If serious breaches have occurred and it is necessary to remove brokers' licences, they must be taken off them permanently.

**The CHAIRMAN:** Whose fault is it that they are not being inquired into?

**Mr Weir:** They are being inquired into. There is a delay in bringing them before the board. The ministry does not have the legal resources to do it quickly.

**The CHAIRMAN:** Is the ministry at fault?

**Mr Weir:** I guess the Government is at fault for not providing the necessary resources for the ministry to do its job. The chairman of the board has complained to the registrar: "Why are the complaints not coming forward - you bring them forward every month?" It has been given more resources as it has outsourced some of these inquiries, but I still have not seen them as a board member. I do not know whether the party to whom it has outsourced will take six days or six months to deal with them. As at the last board meeting, a number of completed investigations had not been brought before the board since we were promised to see them in March 2000.

**The CHAIRMAN:** The special audit came back to you in late 1999.

**Mr Weir:** Not the special audit.

**The CHAIRMAN:** Let us stick to the Blackburne and Dixon matter for a while.

**Mr Weir:** The special audit resulted in investigations that were completed. They are now with the legal people, who will recommend that a breach occurred and that they must go before the board. They will go before the board for an inquiry, and we will have an inquiry. That will take days or weeks in an ideal world. In this environment, as we have found out, it unfortunately takes six to 12 months, or longer. Other people will decide whom you can blame for that.

**Hon G.T. GIFFARD:** You referred to outsourcing. What has been outsourced?

**Mr Weir:** There are legal officers within the ministry to whom the investigations go. The legal officers say there has been a breach, and they prepare the application for inquiry to be signed by the chairman of the board. There are not enough legal officers, or they do not have enough time to do that work. They have given it to outside lawyers. I do not know whether it is Crown Law or solicitors down the road. They are subcontracting.

**Hon G.T. GIFFARD:** Is it only looking at the file and establishing whether there is a case, and putting that case together?

**Mr Weir:** Yes. The investigator puts the case together and identifies the breaches. The legal department confirms legally whether there has been a breach, and prepares the application for inquiry.

**Hon G.T. GIFFARD:** The board does not need to authorise those officers, as they are not conducting an inquiry.

**Mr Weir:** They do not conduct an inquiry; they give legal advice. The board asks for legal advice, and how the ministry gets that advice is up to the ministry.

The other document I tabled - coincidentally perhaps another one that Mr Urquhart was required to produce - is a memorandum of a meeting between certain members of the board and the minister. I am sorry; this document is from 15 October 1996 when the minister was Cheryl Edwardes; it is not the one Mr Urquhart wanted to present to the committee. I believe Mr Urquhart is looking for a copy of the minutes of a meeting between the board and Minister Shave in August or October 1997. The board wrote and raised a number of matters with the minister. I believe there is a concluding paragraph in which the minister directed the ministry to give a high priority to addressing amendments to the Act in late 1997.

**The CHAIRMAN:** Would the amendments discussed at that time have helped to avoid the circumstances we now face?

**Mr Weir:** Possibly not. If we take the matters involving Grubb, for example - the defalcation of a trust account - you can legislate against fraud, but you cannot prevent it. If Grubb had been licensed by the Australian Securities and Investments Commission under its new regime, which requires prospectuses, it would have made it a bit harder for him, but it would not have stopped him defalcating.

**The CHAIRMAN:** Apart from Mr Grubb, what about the other problems we have seen in the industry? Would the changes that were recommended in 1997 have avoided those problems or potentially assisted in avoiding the circumstances in which we now find ourselves?

**Mr Weir:** Possibly not. The changes that were recommended in 1979 were promoted with every minister subsequent to that. The code of conduct under which the board operated in the past probably was not sufficient to deal with the problems that have now surfaced in the industry, because the problems that have occurred were not previously contemplated. In other words, there is an expression that someone must get killed at a crossroad before the Government will install traffic lights. My personal opinion is that a crisis like this occurs, you then investigate it fairly thoroughly - which is now happening - you find out why it happened and you amend action and codes of conduct to deal with it and prevent its happening in the future. However, you would have needed a good crystal ball to see all these things 25 years ago. Those amendments may have enabled things to be investigated more thoroughly, such as whether investors are clients.

**The CHAIRMAN:** When do you think people should have realised what was happening in the industry? When do you think it became generally accepted that the problems we are now seeing in the industry were occurring and people should have started to take action?

**Mr Weir:** When the liquidators were appointed to Grubb and Global.

**The CHAIRMAN:** Not before that?

**Mr Weir:** Prior to that there had been very few or no formal inquiries before the board that indicated -

**The CHAIRMAN:** I am not talking about just the board; I am talking in general terms.

**Mr Weir:** These problems can find expression only through investigation through the board. In 1998, 86 complaints were received, but there were only two inquiries. A lot of those other complaints either were not perceived to involve a breach of the Act or code of conduct by the broker and were knocked out -

**The CHAIRMAN:** Under the client ruling.

**Mr Weir:** It is not necessarily the client ruling. Even if it had not been knocked out because of the client ruling, a lot of those complaints may have revealed that the borrower was not paying interest on time to the lender. That does not necessarily involve a breach of the Act or code of conduct by the broker who arranged the loan 18 months earlier. Even if the client had not been used, and all those complaints had been investigated, they probably would have been dismissed, because a broker does not breach the Act if the borrower does not pay the lender interest 12 months later.

**The CHAIRMAN:** Gunning has already looked at that. When you suddenly get a sharp increase in the number of complaints, it is a sign -

**Mr Weir:** It started to occur in 1998 and into 1999. We would have liked it to become obvious the day the first few complaints came in, but it was not obvious because a lot of those complaints did not involve breaches of the Act or code of conduct and we did not look beyond that. How could we look beyond it when we now know that the ministry would not give the complaint files to the industry representatives on the board so we could ask, "What is the trend here? What is happening? Why does Grubb have 20 loans?" As soon as a complaint was made about Grubb that a loan had not been repaid on the due date or that interest was in arrears, the people would withdraw their complaints. Why? Because Grubb drew a cheque and paid out the mortgage. Where did the money come from? No-one knows, but it was probably a defalcation of other clients' funds. A number of Grubb complaints were being withdrawn by the complainants because they had been satisfied.

**The CHAIRMAN:** Is the industry fairly close-knit?

**Mr Weir:** No, it is fragmented because there are different areas of speciality. There are the mortgage brokers like Blackburne and Dixon, Grubb and Global, which were doing pooled and managed private mortgages; the small operators who do private mortgages, but do not pool or manage; the mortgage originators, who are the biggest in the industry by far and who employ hundreds and thousands of representatives who, collectively, are doing \$1b a month in housing loans; the lease and equipment financiers, like Hans Beyer, the former deputy member of the board, who does leasing finance and chattel finance on motor cars, trucks and fishing boats; and brokers such as I, who do commercial mortgages through banks. About 80 per cent of my business would be business and investment-related loans on residential and commercial property done through banks, credit societies and insurance companies. I do not know what are the current trends in the leasing market, the pooled mortgage management market or the mortgage origination market, because we have all gone off into areas of speciality, just like estate agents do residential sales and others do land sales, etc.

**The CHAIRMAN:** Was there ever any general talk in the industry of problems? Was it general knowledge among people that some valuers would give you the valuation that you wanted and things like that?

**Mr Weir:** No. The subject of valuation is misunderstood, and I am not sure whether the Gunning inquiry had a full appreciation of it. There have been allegations of overvaluations that have led to problems. There is no doubt that there have been some overvaluations. However, in other cases an inappropriate valuation was used, or either the broker or the investor did not look at the conditions and the assumptions in the valuation and realise that it was not an appropriate valuation for that loan. In a case like that, a legal action against the valuer probably would not succeed because he would say, "I said that the caravan park in Busselton would be worth \$3.3m if it were strata titled and sold to 78 different owners. That assumed development did not occur; therefore, it is worth a lesser figure." If it is owned by one owner and he wanted to sell it, the strata titles would not add a value.

**The CHAIRMAN:** Obviously, that is something the finance brokers should have picked up.

**Mr Weir:** How would I as a finance broker know what was the basis of all the assumptions in Global or Grubb valuations?

**The CHAIRMAN:** The valuer has given you a valuation. Are you saying that the valuer would have included assumptions without listing that in the valuation?

**Mr Weir:** No, they are always listed in the valuation.

**The CHAIRMAN:** Is that how the finance broker would be able to tell what were the assumptions?

**Mr Weir:** He would, but did he bring them to the attention of the investors? Probably not. Some of the assumptions may be that the property is worth this, provided it is leased out and earns \$100 000 a year in rental income. In a situation where the broker gave that valuation to the investors - many times the broker did not give them copies - and the investors said, "\$100 000 a year in rental income will service the \$80 000 a year interest on the loan, so we will go ahead with the loan" and the loan settles, but at the time of settlement those leases are not in place, should the broker have pointed that out to the investors to give them the opportunity to pull out of the deal? Of course he should have. Did he do that? Time may prove that he did not.

**Hon NORM KELLY:** The board's 1997 or 1998 newsletter pointed out the problems of overvaluation. Obviously the board was well aware of the practice of overvaluing. Surely that included overvaluing on the basis of anticipated value subject to development and the like?

**Mr Weir:** That may not be an overvaluation; it simply may be people using a hypothetical, on-completion valuation to inflate the value of a block of land instead of lending on its current, as-is value.

**Hon NORM KELLY:** The board was saying that this is what was happening, this is what brokers need -

**Mr Weir:** The board would have known that from feedback from investors, but the individual members of the industry would not have known that until they saw that memorandum from the board. After reading it, you might say, "I know that overvaluations are not a problem in my practice. I wonder which brokers are doing that?" How would you know which brokers were using overvaluations? You would not know who was doing it.

**Hon NORM KELLY:** Are you aware of any follow-up by the board to see whether brokers were still carrying out that practice?

**Mr Weir:** In Ted Brunton's handwritten memorandum to the chairman of the board in November 1997, he highlighted the fact that there should be continual proactive compliance audits of brokers and that enough resources should be provided by the Government to enable the ministry to do exactly that. However, you would have to ask the former chairman and Ted Brunton what they did about obtaining those resources and reporting that to the ministry. They will probably tell you that they told the registrar and they were told that they could not get additional funds to do it. You would have to investigate that separately from me.

**The CHAIRMAN:** Do you accept that a finance broker should have been able to read a valuation?

**Mr Weir:** They should be able to, but with hindsight I now believe that they do not. I understand a valuation because I spent 10 years in a finance company that provided development funding. I know the difference between a hypothetical, on-completion valuation and an as-is valuation. I know that you must look very carefully at the conditions and assumptions that a valuer puts in his valuation. Graeme Grubb never worked in a bank or finance company and probably never got that training.

**The CHAIRMAN:** What about the training? You are involved with training. Does that include valuations?

**Mr Weir:** The full certificate course in finance broking requires a broker to complete what used to be real estate valuation 1 and real estate valuation 2. I think it is now called commercial property appraisal and residential property appraisal, which are taken out of the real estate course. One of the subjects in the finance broking course has a topic devoted entirely to valuations, but it would not have been comprehensive enough to highlight the problems that we have now identified in the industry.



**The CHAIRMAN:** What did the course do?

**Mr Weir:** It would have referred to methods of valuation and the need for a valuer to be licensed. I am not sure exactly -

**The CHAIRMAN:** You have been involved over some time in developing the TAFE course.

**Mr Weir:** I have reviewed it on a couple of occasions, but I do not think great amendments have ever been made to the section about valuations.

**The CHAIRMAN:** If there is a course on understanding valuations, a fairly basic part of it should be how to read and understand a valuation.

**Mr Weir:** Whether that topic contains a paragraph to say that people must very carefully study the conditions and assumptions or whether it just refers to a normal house valuation for a private mortgage - that is where the industry originated in 1975 - and the house is worth \$200 000 because of the comparable evidence and there are no conditions or assumptions in it -

**The CHAIRMAN:** Surely you could get a valuation on a house block that has assumptions; for example, if it is subdivided or if it is rezoned through the local council to make it a five star hotel.

**Mr Weir:** I do not think the text goes into that much detail about the intricacies of valuations as related to development funding or subdivision. I think it just relates to the fact that a valuation contains this much information, it should be addressed to the lender so that he has the ability to sue the valuer if he has been negligent, it is advisable to obtain a valuation in all instances, and the valuer should be given copies of any leases so he can take account of the leases in determining the value of the property. Those kinds of things are mentioned. It has been about two or three years since I last lectured or marked correspondence papers on it, but I do not believe it goes into the more complex areas of development funding.

**The CHAIRMAN:** You have sent us some correspondence about the ongoing problems in negotiating professional indemnity insurance. What is the approximate cost of that policy? Have the problems that you outlined - you do not need to go through the problems because members have already read them - been concluded, or is that still ongoing?

**Mr Weir:** There are a couple of aspects to it. The brokers with conditional licences who deal only with credit providers have been concerned that there has been a significant reduction in the number of banks or insurance companies from which they can obtain an unsecured bond. As at today, only one company in Australia will provide an unsecured bond to a finance broker, which is a significant issue. The last one that was providing most of them, GIO Australia, has now pulled out completely. We have only a local insurance company, Lionheart Insurance Pty Ltd in Nedlands, the director of which, as I recall, is James Miorada. It is the only company providing unsecured bonds, but it has a requirement in its clause that it can take security at any time if it wants to. Really, there are no unsecured bonds available anywhere. A person must have \$50 000 cash deposit or a house to mortgage to a bank. These other brokers who do not even put money through a trust account do not want a bond. We have asked, "Can we be relieved of the necessity to hold a bond?" The answer from the board, quite correctly, in accordance with the Act, is, "No, you must have a bond. The Act says you must have a bond." However, the board has the discretion to dictate the amount of the bond. The part of the industry that does not want bonds, because it is not handling clients' funds, suggested that it could have a professional indemnity insurance policy instead, because the minister wants to introduce professional indemnity insurance even though it does not cover defalcation by the principal. Bonds are a cost burden that has gone up significantly, apart from the fact that almost no-one is providing them now. I took that suggestion to the board. The chairman, Mr Urquhart, said that he would only contemplate reducing the bond down to a nominal amount if the fidelity extension in the professional indemnity policy included fraud by the broker himself - the principal.

**The CHAIRMAN:** I think we have all read the correspondence. Have those discussions been concluded, or are they ongoing?

**Mr Weir:** The board itself has resolved that brokers with an unconditional licence should have professional indemnity insurance, full stop - no talk about the fidelity extension because they already must have a bond anyway. The issue of some other type of PI policy or the same PI policy that will reduce the necessity to have a bond for the remaining industry, has not been resolved and has been carried over to discuss with the new chairman.

**The CHAIRMAN:** What is the cost of the -

**Mr Weir:** The cost of a PI policy is relative to the amount of fee income a broker earns. If one broker is earning \$100 000-worth of fee income a year, he might have to pay \$2 000 a year PI premium. Some of the people who are doing the housing loans - the originators with the banks - are earning \$1m a year in fee income,

because they have a cast of thousands writing business for them. Their premium can be very expensive - \$5 000 to \$30 000.

**The CHAIRMAN:** Finally, do you have any comments about the recommendations of the Gunning inquiry?

**Mr Weir:** I would like to make a comment. I certainly support all the recommendations of the Gunning inquiry. Many of them are similar to what the industry and the board have been pursuing with successive Governments for some time. It is just a question of where we go from here. Some of the recommendations can be implemented forthwith, without the need for legislative change, simply by a change to the board policy, where it has discretion, or to the code of conduct. Others cannot be implemented without legislation. My concern now is that another committee has been established, headed by a Mr Mews, I think it is, the former accountant from PricewaterhouseCoopers who is now retired, to look into the recommendations with a view to implementing them. Two other people have been appointed to that committee, and neither of them is an industry representative or has any experience in the industry. Presumably, they will liaise with the board and with the Ministry of Fair Trading about implementing the recommendations, but who will represent the industry in dealing with some of the practical issues? There is a problem with implementing, legislatively or otherwise, one of these issues; that is, one of the recommendations is that a broker regulated by this Act - there will not be too many of them - must ensure that a borrower's asset and liability statement is certified by an independent accountant. An independent accountant will not do that. His professional indemnity insurers will not allow him to express an opinion about the value of the five properties that the borrower owns or about the amount of liabilities he has disclosed. What if the borrower did not disclose all his liabilities on his asset and liability statement? How will the independent accountant ever know? The only way that can be resolved is, for example, by requiring the borrower to attest to his statement of assets and liabilities by a statutory declaration. That would be the input of the industry to that particular recommendation, because otherwise it is practically unworkable.

**The CHAIRMAN:** Surely, this latest inquiry will consult with the industry association.

**Mr Weir:** I look forward to that happening, and I will promote that view.

**The CHAIRMAN:** It is not my decision, but that is normally the way government committees like to work. As you indicated to us earlier, it is almost impossible to find an industry representative who understands all the different aspects of the industry.

**Mr Weir:** Yes.

**The CHAIRMAN:** You outlined earlier that there is a range of players in the industry. They are all very different and they do not know what each other is doing.

**Mr Weir:** That is correct. It is also pretty difficult to expect an industry person to be a party to those proceedings for less than \$25 an hour, which is what I am paid for being involved on the board. The Gunning inquiry also made a recommendation about that at the back - it was not one of the specific recommendations. Collectively, the board members received \$5 500 in fees in 1999 for an enormous amount of time spent not just at meetings, but in research and other matters. The Gunning inquiry has said that the Government should increase substantially the fees paid to board members - not this \$25 an hour. I shall have to resign from the board in the future if I am required to attend hearings, further inquiries and negotiations with other committees about recommendations. How can I do that for \$25 an hour and meet the overheads of my office at the same time? That will be an issue; otherwise no industry representatives will be available to serve on anything.

**Hon RAY HALLIGAN:** It is interesting that you go down this path for a number of reasons, not the least of which is that we have already had industry representatives on the board, and things have still gone wrong. I take your point about being able to provide some practical aspects to this, but I suggest that it is not necessary to have a finance broker to do that in every instance. You spoke about the asset and liability statement being certified by an accountant. Accountants and auditors certify company accounts and individual balance sheets every day of the year, and they do so under their own code on the basis that the figures being presented are fair and reasonable.

**Mr Weir:** They only do that when they have had a hands-on approach to preparing the figures themselves. They do not do it for a set of figures just lumped in front of them by a stranger.

**Hon RAY HALLIGAN:** I am not suggesting they do. However, one thing to which they can go is that individual's last income tax return. If that person is in business, he will have to provide a set of accounts which will invariably include a balance sheet.

**Mr Weir:** No, the tax figures would not include all liabilities - only tax deductible liabilities.

**Hon RAY HALLIGAN:** What do you mean "No"? If there is a balance sheet, it will include them. Be assured of it.

**Mr Weir:** Of a company?

**Hon RAY HALLIGAN:** Even an individual, if he is a sole trader.

**Mr Weir:** But that will not list his housing loan or his credit card debt. It will only list it if it is in the tax return because it is tax deductible.

**Hon RAY HALLIGAN:** We are concerned about the business that individual is in. You were talking about different assets he holds and the values therefor.

**Mr Weir:** No, you misunderstand, because a person borrowing money from a broker need not be running a business.

**Hon RAY HALLIGAN:** I am not denying that. I am saying if he is running a business -

**Mr Weir:** If he is, his tax deductible liabilities will be mentioned in the balance sheet.

**Hon RAY HALLIGAN:** If the people are not running a business and they have only a house, which they say is worth \$10m, one would expect to see something of that value. If they say it is worth only a quarter of a million dollars, I suggest it will not necessarily make a great deal of difference to the decisions being made by the lender because those people are not in business; they are just starting in business.

**Mr Weir:** I believe the requirement should be that the party provide a statutory declaration, the cost for the breach of which is a criminal offence, and that would be sufficient. People would have to think twice before signing a false statutory declaration about their assets and liabilities, because the consequences of that are very serious. I believe that could be dealt with adequately in that way. All I am saying is that I hope the industry gets the opportunity to have input into this, and in such a way that an industry member can do it, be rewarded for it, and not be required to spend two days a week trying to assist in this regard for no -

**Hon RAY HALLIGAN:** We will certainly take your thoughts into consideration when we are developing our recommendations about what should happen. I am sure that we will look at any number of professional bodies which can provide advice in this area. I have a couple of final questions, and I want to place you in a position to be able to respond. Do you know a Mr Philip Lewis?

**Mr Weir:** I do.

**Hon RAY HALLIGAN:** Did Mr Lewis go to jail?

**Mr Weir:** He did.

**Hon RAY HALLIGAN:** Are you able to tell us for what reason?

**Mr Weir:** It was for fraud charges relating to a period when he was employed at Custom Credit Corporation Ltd.

**Hon RAY HALLIGAN:** Had you had any business dealings with Mr Lewis?

**Mr Weir:** Mr Lewis occupied space in the building in West Perth of which I was a part owner some two to three years before he was actually charged.

**Hon RAY HALLIGAN:** You were his landlord; he was a tenant of yours?

**Mr Weir:** Correct.

**Hon RAY HALLIGAN:** That was the only relationship?

**Mr Weir:** He was commencing practice as a finance broker, and we would - what is the expression - conjunct on proposals. That was up until the time that he obtained his own finance brokers licence and conducted his business on his own account. These things occurred prior to his ever being charged with fraud.

**Hon G.T. GIFFARD:** Was he charged for activities relating to subsequently getting his own licence and conducting his own business?

**Mr Weir:** No, definitely not.

**Hon G.T. GIFFARD:** To what did the charges relate?

**Mr Weir:** His charges related to matters that occurred during his employment with Custom Credit, and were brought about by a fraud squad investigation into things that were happening at Custom Credit. As I recall, he was dismissed from Custom Credit in October 1989. Charges were brought against him in June 1993. He was convicted in May 1997. I might add that while he was at his trial, he had a retired finance broker by the name of Lindsay Timms manning his office, just ensuring that the phone was answered and that matters were happening. Mr Lewis was not managing any private mortgages. He was arranging loans of various kinds, and he had Mr Timms in his office for the month that he was on trial.

Mr Lewis was convicted, and I do not think he expected to be convicted because he thought certain evidence of his superiors at Custom Credit would have resulted in no conviction. However, his solicitor did not call those people to witness, which resulted in Mr Lewis' subsequent appeal, and an appeal is still outstanding. After he was convicted, he was obviously jailed forthwith. Mr Timms was still in his office and had no prospect after that of getting paid for doing anything further. Basically, no-one was there to run the business. I think Gary Wallace from the Finance Brokers Supervisor Board had rung Mr Timms and said, "I want to come out to look at the activities of Mr Lewis in his broking business." Mr Timms, who knew me, rang me and said, "Look, Gary Wallace wants to come out. I can't hang around here any longer and not get paid. What will we do about it?" I said that I would go down, because I knew that Mr Lewis was sourcing some of his funds from the same lenders as me, so I thought that I might be able to be of some assistance. Therefore, I attended Mr Lewis' office at the same time as the investigator from the board. He asked me what was happening there. I knew from my conversations with Mr Timms that there were no loans under management and no funds were held in a trust account; there were simply two filing cabinets full of past files and current loans. I said to Gary Wallace, "If you want, I will take these files back to my office and I'll look after them, so that if a borrower rings up in a year and wants to discharge a mortgage, someone has the file. There are probably not enough files there to warrant the appointment of a supervisor. There is no trust account and no mortgage management. It is just a box of files that people may want to relate to." I understand that Mr Wallace took that back to the board, and the board had no objection to my collecting these files from Mr Lewis' office.

I spoke to Mr Lewis' wife, who said that Mr Lewis had no objection to my taking the files to my office to look after his old clients if they wanted to pay out loans and they needed access to material in the file. I then did that and tried to transfer his telephone service in his office in South Perth to my office at Warwick. His trading name was Private Mortgage Managers of Australia. Telstra asked me who I was. I said that I was taking over the files. Telstra said, "You are not the owner of this trading name, are you?" I said that I was not. Telstra said, "We can't take any directions from you. Get Mr Lewis to ring us, and then we'll transfer the phone service to you." Mr Lewis could not do that. Therefore, to get around that, through Mrs Lewis we arranged for the trading name, Private Mortgage Managers of Australia, to be transferred to my company - or was it to me individually? It might have been my to company. In that way, I could ring Telstra and say, "I am the owner of the trading name Private Mortgage Managers of Australia. Please cancel the telephone service in South Perth and relist it on a different number in Warwick." We were able to do that. I maintained the files for the 22 months that Mr Lewis was subsequently in jail. When he got out of jail he thanked me for looking after the files and he asked me what had happened. I told him that about a dozen people had telephoned during that time. I told him that the business registration name, Private Mortgage Managers of Australia, was up for renewal and that I was not going to renew it. I had let the listing in the phone book lapse as two and half years had passed. I had no interest in maintaining it. I did not conduct business. I simply got the trading name to transfer the telephone number and maintained the files for the benefit of some clients in order to provide them with some help. It was not to help Mr Lewis. Mr Lewis told me that he had an appeal pending to the High Court against his conviction and that if it were successful he would recommence as a finance broker; which he would have been fully entitled to do. He asked me to mail to him the notice of the lapsed business trading name so he could transfer it back to his name. He subsequently did that.

An inference was drawn by a newspaper report that I had run Mr Lewis's business for him and during the time he was in jail I was having business dealings with him and that I had warehoused his business for him. The inference was that I looked after the business of Mr Lewis - a convicted fraudster - and gave it back to him after he got out of jail. It was not like that at all. The circumstances I have just explained are the same as I told the media reporter four days before the defamatory article appeared in the newspaper in February. I put my explanation in writing because I could tell from the reporter's line of questioning that he was trying to draw some improper inferences from what had happened. He still ignored my explanation of why I had to transfer the trading name and why I transferred it back to Mr Lewis: Mr Lewis intended to recommence business should the High Court appeal be successful. The reporter only printed the reasons that caused maximum damage to my credibility. Mr Lewis never recommenced business as a finance broker as his High Court Appeal did not succeed. He has another appeal, based on some other grounds, which is still pending. I do not understand, and I do not care about, the reasons for the second appeal. The reporter realised that my company owned the trading name for a period and assumed that I had taken over Mr Lewis's business. That is not what happened.

**The CHAIRMAN:** Did you receive any remuneration or commissions in respect of any of Mr Lewis's clients?

**Mr Weir:** Yes. Some of the people who had rung up wanted to discharge a mortgage. A broker arranging a discharge of a mortgage is entitled to charge a finalisation fee of \$110. It might have been \$100 back then. When I was asked to handle a discharge of a mortgage I was entitled to charge a fee of \$110. It was paid by the borrower. I had between half a dozen and a dozen such cases. Some of the loans that Mr Lewis had arranged that came up for maturity required refinancing by the lenders. I offered my services under my own name - quite separate from Mr Lewis. I helped borrowers refinance their loans elsewhere. I would tell borrowers that their

loans had to be refinanced and that I could help them do it through the XYZ bank. If they gave me authority I would act for them. I did not act for Private Mortgage Managers of Australia - I acted under my own business. I charged a brokerage fee to the borrowers for the service. I received some flow-on business from looking after Mr Lewis's files which amounted to about three or four loans. Many people knew that Mr Lewis was in jail, so when they wanted to discharge a mortgage they knew there was no point in trying to contact him. Many people went directly to the solicitor who prepared the initial documentation and arranged discharge of the mortgages through the solicitor. Some of the borrowers and lenders may have contacted each other directly. For the amount of effort I put in there was very little reward.

**The CHAIRMAN:** What happened when Mr Lewis came out of jail and the business name was transferred back to him?

**Mr Weir:** He did not take any files back as he did not want them back. I still have all the files.

**The CHAIRMAN:** Did his clients go back to him?

**Mr Weir:** As I understand it, he is no longer in the business. He is now running an Internet business.

**The CHAIRMAN:** When did all this happen? Referring to Hon Ray Halligan's earlier question : When was he renting property from you?

**Mr Weir:** I think he was convicted in May 1997 and he got out of jail in 1998. I think he was in jail for 22 months. It was 1990-91 when I knew him and when we rented the same premises and we did some deals together.

**The CHAIRMAN:** That is when you shared the offices? When you were answering Hon Ray Halligan's question you said the only relationship you had with him was when he had previously been your tenant.

**Mr Weir:** And when we had done some conjunctural broking deals. That was from about February 1990 to 1991; possibly 1992. I cannot remember when the relationship ceased. It was certainly not current when he was charged in May 1993.

**The CHAIRMAN:** How were you able to transfer the business name if he was not able to organise the transfer of his phone?

**Mr Weir:** He signed it across.

**The CHAIRMAN:** Why could he not sign over the phone?

**Mr Weir:** He would have had to contact Telstra himself.

**The CHAIRMAN:** Who signed over the business name?

**Mr Weir:** He did - from prison.

**The CHAIRMAN:** Why could he not have had the phone transferred from prison?

**Mr Weir:** I cannot remember why it was done in that way. It would have meant he would have somehow had to contact Telstra. I do not know whether that could have been done. If a telephone service is in a registered business name the person who owns the business may be able to transfer the phone. What happens if you want to transfer the telephone six months later? The best solution was to transfer the business name.

**The CHAIRMAN:** That still creates a relationship between you and Mr Lewis.

**Mr Weir:** It means that he transferred the business name and I was the transferee, but there was no consideration. There was no goodwill.

**Hon NORM KELLY:** Did you not say that you subsequently received some commissions for some work for his clients?

**Mr Weir:** That was because when people were due to repay a loan they would appoint me to arrange a new loan.

**Hon NORM KELLY:** By being the owner of the business name?

**Mr Weir:** I did not do it through that business name. That business name did not have a broker's licence. The licence and the business certificate were surrendered in May 1997. Private Mortgage Managers of Australia could not trade without a current licence or business certificate. I could not derive any benefit. If a client needed help to refinance an old loan I could do it through a new entity and arrange a new loan to pay off the old loan. I could charge a fee for that. That happened a few times.

**The CHAIRMAN:** You definitely got some benefit but you are saying that Mr Lewis did not?

**Mr Weir:** Definitely not. He would not have known what went on because he was in jail and he has not subsequently inquired. He was not interested in re-entering the business.

**The CHAIRMAN:** He would have known that the business name was transferred to you?

**Mr Weir:** He signed the transfer papers. He knew why it was to be signed and he knew that I was to look after the files. When he got out of jail he rang me and thanked me for looking after the files and his former clients. He did not know whether I had done anything or nothing. That is when I told him that the business name had lapsed and that I did not intend to renew it. I told him that I had not looked at the files for six months. He asked me to send him the renewal notice because if his appeal were successful he would renew it and get his broker's licence back again.

**The CHAIRMAN:** Where did the files end up?

**Mr Weir:** I still have them. They are in an archive. I have not referred to them for two or three years.

**The CHAIRMAN:** Unless there is any final comment that you wish to make or there is something that we have not covered I will suspend the hearing. Thank you for attending.

**Proceedings suspended from 12.39 to 1.18 pm**