

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 3 JULY 2000**

SESSION 1 OF 5

Members

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

Committee met at 9.00 am

CHANEY, MR JOHN,
Counsel assisting the Gunning Inquiry,
9th floor, London House,
216 St George's Terrace,
Perth, examined:

CHAIR: On behalf of the committee I welcome you to today's hearing.

You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Chaney: Yes.

CHAIR: These proceedings are being recorded by Hansard? To assist the committee and Hansard, for the record, please quote the full title of any document to which you refer during this hearing. A transcript of your evidence will be provided to you. Even though this is a private hearing, the committee may make your evidence public at the time of its report to the Legislative Council. If the committee decides to make your evidence public, we will first inform you of this determination. You should not disclose your evidence to any other person. As I said earlier, that is the formal way of proceeding, but we have resolved not to use any of the evidence in our final report. However, we will call you back to give further evidence if a matter arises that we want to report. I believe a copy of the committee's terms of reference has been forwarded to you.

Mr Chaney: Yes.

CHAIR: It is hoped that today's meeting will help the committee avoid breaching term of reference No 3; that is, that the committee and its proceedings avoid interfering with or obstructing any inquiry being conducted into related matters and, in particular, inquiries by the Gunning inquiry. This select committee has a number of questions to try to discover what your inquiry is doing so that it may avoid such a breach. It is also interested in any ideas you may be able to offer to keep lines of communication open so that, due to developments of your inquiries, we will ensure any breach is avoided.

How long has the Gunning committee been inquiring into the financial broking industry of Western Australia? What were the circumstances that prompted the inquiry?

Mr Chaney: It was commenced in March, but I do not have the precise date in front of me. It arose under the Public Sector Management Act at the behest of the Premier due to concerns over the operations of the various boards and committees under the jurisdiction of the Ministry of Fair Trading, in particular obviously in relation to the considerable publicity surrounding the finance brokers' issues.

CHAIR: Into which aspects of the finance broking industry are you inquiring? I guess that covers a number of the boards into which you are inquiring in Western Australia. Which aspects have you inquired into so far, and which aspects do you envisaged inquiring into in the future?

Mr Chaney: The starting point is the Gunning committee's terms of reference entitled "Terms of Reference - Special Inquiry - Ministry of Fair Trading Boards and Committee". That requires us to review and report on the effectiveness and efficiency of the functions, power, structure, procedures, resourcing and operational costs of a number of boards and committees. One of those is the Finance Brokers Supervisory Board. The primary focus of the terms of reference is the operations of that board and its effectiveness and efficiency. The view taken by the Gunning committee is that, in order to understand whether the board - broadly speaking the Ministry of Fair Trading - has acted effectively and efficiently, the committee must understand what was occurring in the finance broking industry so that assessments can be made of what was done and what should have been done, when and so on. That has involved us in looking reasonably closely at that issue.

To specifically answer your question, we have looked at a range of activities within the industry which have created problems and which have attracted a great deal of publicity. It has been a fairly broad-ranging examination, which is continuing. We initially called a significant number of investors, and received submissions from a significant further number whom we don't feel the need to call, who explained how they became investors, what prompted them to choose investment through finance brokers, the disclosures made to them in forming their decision to invest, their relationship with brokers and what has transpired in respect of their investments. That has identified a range of deficient practices of brokers.

We have also called the supervisors and liquidators of Grubb Finance and Global Finance to find out what they have discovered in the way of problems. Some of that evidence has been taken in-camera because it would impact potentially on recovery actions, police investigations and so on. We have heard evidence from the Police Service in relation to its investigations. Again, that was delivered to us in-camera because we are being sensitive to the need to avoid jeopardising its operations. That is the stage we have reached to date.

The committee has recently decided to go a step further and call brokers, valuers and borrowers to get the other side of the story and to paint a picture of the scenario in the industry. That is part of the purpose of calling them.

The other part is that if allegations have been made about various people and an adverse finding or inference is likely to be drawn in the report of the committee, to preserve natural justice and to give people the right to respond, we have written to the people who have been mentioned and invited them to give evidence. The brokers, valuers and borrowers categories will, in part, be determined by those who wish to come in and say something and then, in part, by those from whom we would particularly like to hear, such as more major players.

That is what we have done to date and what we are intending to do. It is against that background that the Gunning committee will look at what the Finance Brokers Supervisory Board was doing.

CHAIR: You said that you will invite some of the people against whom adverse comments were made to come before you. Can you make findings against individuals outside the ministry in that regard?

Mr Chaney: We probably cannot make express findings about events. However, for the committee to say the board should have done this or that and make a finding about appropriate

action, it will necessarily involve a conclusion that the board should have addressed a particular issue. That has the capacity to at least cast aspersions on people's reputations. In those circumstances, they should be extended the right to be heard.

Whether the Gunning committee makes express findings about the conduct of a particular investment will not change the need to call those people.

CHAIR: Will it be more a general comment that there were problems in the industry such as over-valuations, which were not addressed by the board?

Mr Chaney: Yes. I refer to Grubb Finance Consultancy as a celebrated case. Allegations have been made that the board and ministry officers should have recognised problems, that certain practices were occurring and that the board should have been aware of them and done something about them. They may be right or they may be wrong; however, to examine the issue we must first identify whether those practices were occurring. In that a sense, there is a finding.

CHAIR: I guess it is a finding of the committee, but not a published finding.

Mr Chaney: I think it would necessarily arise out of the context of the report and, in that sense, it would be public. However, it is a tricky area and, in light of the problems encountered by the Anti-Corruption Commission in the past as to the extent to which findings can be made, perhaps we may be limited to saying that reasonable grounds were found to cause us to believe that certain activity should be investigated. The formulation of it is not an easy matter.

CHAIR: Obviously some areas covering the behaviour of lawyers and auditors and the like are relevant. If you find evidence that they were not carrying out their duties properly would you refer that to the appropriate people?

Mr Chaney: Under our terms of reference, if we find any allegation of criminal, corrupt or improper conduct, we are obliged to refer them to the appropriate authorities. We are systematically working through that process. We have not yet referred anything, although we are in constant contact with the police.

CHAIR: What relationship, if any, do you have with the other bodies listed in term of reference No 3?

Mr Chaney: Well, working through them, we have met with the police on a number of occasions and they have given evidence in private. We have regular contact with them and they have provided assistance to us in locating people. As I indicated, we have called evidence from liquidators and supervisors of both Grubb and Global. In each case they made presentations to the committee that were full and very helpful. However, having heard their evidence we have no basis for further contact, although issues may arise from time to time prompting some contact. Likewise, the Australian Securities and Investments Commission has assisted us by providing a submission to the inquiry and giving oral evidence. It has been of assistance in providing us with information from time to time in relation to its ongoing investigations. We have no particular involvement with prosecutions other than being aware of what prosecutions are occurring. We are also liaising with the police to avoid any compromise to them.

CHAIR: What mode of communication do you use to keep each other abreast of inquiries?

Mr Chaney: It is informal generally, although on occasions we make formal, written requests for information from ASIC or the police, for instance, because of statutory or other limitations on their ability to disclose information. In that case, we have to use a more formal method, so there are two methods.

CHAIR: If something is covered by the privacy Act do you formally request information as evidence?

Mr Chaney: Yes.

CHAIR: Can you suggest any mode of communication for keeping the committee abreast of inquiries to ensure we do not breach term of reference No 3?

Mr Chaney: Yes. The executive officer of our inquiry, one of the lawyers assisting me, Melissa Travers, keeps abreast of everything we do and helps in formulating our program. If an informal line of communication could be established, she would be the appropriate person to liaise with somebody at your end. We would be happy to let your committee know what we are doing and would like to know whether anything your committee is doing is likely to impact on our operation.

CHAIR: We are in the process of appointing an advisory research officer. Once that is finalised I will ensure that person contacts Melissa who, to the best of my knowledge, is not related to me.

Mr Chaney: She knows many people called Travers, but none of those I mentioned.

CHAIR: I met her once at a law reform conference and at that point we decided we were not related. I will make sure the new ARO gets in touch with her to keep abreast of issues.

I understand the Gunning committee is providing transcripts to the Parliamentary Library so we should be able to access them. How far ahead do you schedule witnesses and know the direction of your future inquiries? Is it possible to be informed of that planning?

Mr Chaney: We do not plan as far ahead as we would like. Programming tends to be necessarily somewhat on the run. However, we have a program which is at least a couple of weeks ahead. Due to the timing of our requirement to report, I would like to see us finish evidence on finance brokers in perhaps another three weeks of hearings, including this week. That will depend substantially on the response we get to correspondence we have just sent out to the people I have described, to see who wants to come in and who else we need to see. Apart from that, all that remains is for the Gunning committee to see probably three or four witnesses from the Ministry of Fair Trading and the Finance Brokers Supervisory Board. It will take some time to wrap up everything we have gathered, such as background material. To the extent it is possible, we would be happy to give you our program.

CHAIR: I appreciate that. I take it from what you have said that it is not your intention to compel anyone to come before the Gunning committee at this stage?

Mr Chaney: We may well compel people, although we would prefer people to come voluntarily. To date, I think we have compelled two people. However, as I say, subject to the response we get from people who say they would like to come in, there may be others from whom the committee particularly wants to hear and we will then compel them.

Hon RAY HALLIGAN: As you mentioned, some of the evidence gathered is somewhat piecemeal and I understand that, considering the number of investors. Have you found at any stage that you have had to recall previous witnesses in the light of further evidence have you received?

Mr Chaney: That is an issue the Gunning committee needs to address. A couple of issues have arisen in relation to the evidence of previous witnesses. Some may well be recalled to explore those issues further. It is difficult because it is not like a trial at which everybody's evidence is available before a hearing, so there may be a need to recall some people. I hope that will be reasonably minimal, but it is certainly a possibility.

CHAIR: The Gunning committee is also inquiring into the Land Valuers Licensing Board. Is it your intention to follow on to that, because the two have a strong linkage?

Mr Chaney: The timetable is to do the Real Estate and Business Agents Supervisory Board next, and then the Land Valuers Licensing Board. There is an overlap of all three. We may call some valuers as part of the finance brokers inquiry. At this stage I think it is third on the list.

CHAIR: Is there anything else you want to say?

Mr Chaney: In the light of your third term of reference, I gave consideration to what way this select committee might interfere with or obstruct the Gunning inquiry. No doubt, to a large extent the two inquiries will run in tandem. We have been putting significant demand on the time and personnel of the Ministry of Fair Trading which is being entirely cooperative and helpful. If I saw room for a problem, it would be if this select committee diverted the ministry's resources so that we were slowed down when calling for documents, as we do now, and getting it to assist our inquiry. That is perhaps the greatest risk of all. No doubt we could communicate to you if we felt that were happening.

CHAIR: We will also be meeting with the Ministry of Fair Trading so I will take it on board and get it to let us know if the demands of the two inquiries are placing it in an intolerable position.

We will make sure our new ARO and Melissa Travers establish a relationship. I hope we can have a reasonably informal relationship which will enable each committee to be informed of issues. If you feel areas arise - although they may be limited - that you can identify as being suitable for us to examine we would appreciate your advice. Thank very much for your time.