

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

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
TUESDAY, 3 OCTOBER 2000**

**SESSION 2 OF 2 (PART A)**

**Members**

**Hon Ken Travers (Chairman)**

**Hon G.T. Giffard**

**Hon Ray Halligan**

**Hon Norm Kelly**

**BARR, MR BARRY****President, Mortgage Industry Association of Western Australia****38 Richardson Street,****West Perth, examined:**

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

**Mr Barr:** Certainly.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. To assist the committee and Hansard, please quote for the record the full title of any document to which you refer to during the course of this hearing. A transcript of the evidence will be provided to you. I remind you that your 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. Further, the committee may resolve, on its own motion, to take evidence in closed session. The taking of evidence in closed session may be relevant where, for example, the committee believes that the evidence may breach term of reference (3) of this inquiry, which states -

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

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

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

The committee has received an initial submission and some supplementary documentation from you. I invite you to make an opening statement to the committee.

**Mr Barr:** The Mortgage Industry Association thought it wise to make a submission to the Gunning inquiry because it had, through its acquisition of the Institute of Finance Brokers some two years ago, copies of all the correspondence between the institute and both the ministers and Ministry of Fair Trading dating back to 1984. In other words, it had correspondence from governments of both political persuasions. We made that submission and pointed out that our industry had been concerned, over a number of years, about the practices that were evolving. We endeavoured to have those practices stopped and we endeavoured to improve the penalties and requirements for finance brokers through a multitude of different sources, but without success. That matter was not brought to the forefront by the Gunning Inquiry, in fact there was no mention of our submission at all. We thought we should now come to this inquiry and once again stress the point that we had made a strenuous effort over a number of years to try to make sure that events of recent times did not occur. It was very disappointing to us that no action was taken. That is basically the intent of my being here today.

**The CHAIRMAN:** You indicated that you had concerns about practices that were evolving. Could you outline those practices that concerned you?

**Mr Barr:** It was concerning to us that there was no requirement for professional indemnity insurance. In our view, the \$50 000 bond was inadequate. There was also a need for fiduciary bonds. None of these matters received any attention from successive ministers or the bureaucracy. The other major issue we were concerned about was the obvious breaches of the Corporations Law - the prescribed interest section - when there was blatant advertising for investors' moneys, particularly in *The West Australian*. Every Friday morning, two or three of the finance brokers that have been involved in the Gunning Inquiry - Global, Grubb and Blackburne and Dixon - advertised, and nobody made any effort to stop these practices, which were clearly against the law at the time. We brought these to the attention of the authorities, but no action was taken.

**The CHAIRMAN:** Could you briefly outline what breaches of the Corporations Law you identified?

**Mr Barr:** The prescribed section of Corporations Law says that nobody can make a request for funds from the public, where there were more than 20 investors, without submission of a prospectus. This was never undertaken by anybody. No prospectuses were ever issued by the likes of Grubb, Global, Blackburne and Dixon and others, who were doing pooled mortgages with more than 20 investors. Simply stopping that would have stopped the whole thing.

**The CHAIRMAN:** The pooled mortgages that now have problems have less than 20 investors and involve less than \$5m, or I believe it is now \$7m.

**Mr Barr:** \$7.5m.

**The CHAIRMAN:** Those mortgages could still have occurred.

**Mr Barr:** Not if the people were seen to have been doing far more than 20 mortgages in a year.

**The CHAIRMAN:** Sorry, 20 mortgages in a year?

**Mr Barr:** With a combination of more than 20 investors in each of the mortgages. I have seen mortgages with up to 70 different mortgagees.

**The CHAIRMAN:** Did you raise that with the Australian Securities and Investments Commission at the time, or just with the Finance Brokers Supervisory Board?

**Mr Barr:** It was raised with both parties.

**The CHAIRMAN:** When was it first raised with ASIC?

**Mr Barr:** In about 1996. That was done by the Institute of Finance Brokers, not by the Mortgage Industry Association.

**The CHAIRMAN:** That was the same concern?

**Mr Barr:** Yes.

**The CHAIRMAN:** Do you have any correspondence on that?

**Mr Barr:** Only the correspondence which you have here.

**The CHAIRMAN:** That would not include the correspondence to ASIC?

**Mr Barr:** No. Although I could find out for you.

**The CHAIRMAN:** If you could provide that to us it would be useful.

**Mr Barr:** Do you mind if I make a note?

**The CHAIRMAN:** No, not at all. You will get a copy of *Hansard* in a couple of days, which will allow you to make corrections and you will be able to double-check against that transcript any documents that we have asked for. You can make a note for now as well.

You mentioned professional indemnity insurance and you also mentioned fiduciary bonds?

**Mr Barr:** Yes. In the early days, the finance brokers called for a system of fiduciary bonds, where all the finance brokers would pay some money from each loan into a fund, which would be there to assist anybody who was aggrieved by a mortgage going bad. That received scant attention from the authorities. It might also be of interest to the committee to know that the Mortgage Industry Association's new code of practice has a requirement that brokers must all have professional indemnity insurance. However, worse than that, the professional indemnity insurers are now refusing to insure any broker in Western Australia

**The CHAIRMAN:** The difficulty of professional indemnity insurance is that it does not cover defalcation, so that is where fiduciary bonds would be -

**Mr Barr:** Of some use.

**The CHAIRMAN:** Yes. I am just trying to think of the other name.

**Mr Barr:** Fidelity funds.

**The CHAIRMAN:** Fidelity funds. When you are talking about fiduciary bonds you are talking about a fidelity fund? You had no concerns about the practices that were evolving other than the breaching of the Corporations Law - not that that is not a serious matter -

**Mr Barr:** We were concerned about the lack of professionalism of our peers, but that is not something that would have been of interest to the authorities. There were some that we refused to accept as members of our associations.

**The CHAIRMAN:** Which ones were they?

**Mr Barr:** Grubb, Global, Blackburne and Dixon and Fermanis.

**Hon NORM KELLY:** I thought you had accepted Grubb?

**Mr Barr:** That was in the Industry of Finance Brokers, but not in the Mortgage Industry Association, as I recall.

**Hon NORM KELLY:** I thought from my reading of the transcript of the Gunning inquiry that that was the case.

**Mr Barr:** I think he was a member of the Institute of Finance Brokers at one stage, but we would not have him in the Mortgage Industry Association.

**Hon NORM KELLY:** Grubb remained a member until that amalgamation occurred?

**Mr Barr:** We took everyone, except those three firms.

**The CHAIRMAN:** What year was that? You have provided us with correspondence dated 17 August 1998, which is a letter signed by you as state president of the Mortgage Industry Association of Australia, to Mr Graeme Grubb, in which you express some concern about an advertisement which had been published by him and state -

We have no objection to you using the logo provided that the information that you promulgate is legal in accordance with the Finance Brokers Control Act No 88 of 1975.

**Mr Barr:** Sorry; he had been accepted as a member. I retract what I said earlier. Grubb was a member of the MIAA. I had overlooked that.

**The CHAIRMAN:** What about the other two - Global and -

**Mr Barr:** Definitely not. They were members of the Institute of Finance Brokers, and when it merged with us, we would not accept their membership.

**Hon NORM KELLY:** When was the merger?

**Mr Barr:** December 1998. We were seen as running in parallel courses - the institute and the Mortgage Industry Association - but we were a national body and it was a state-based body, so it thought it would be sensible to amalgamate with us, which it did willingly.

**Hon NORM KELLY:** You said in your evidence before the Gunning inquiry that there was some disagreement about whether to accept Grubb.

**Mr Barr:** There was some thought that we could keep him under control if we had him or his firm as a member, whereas if he was excluded, we would have no control. I think in retrospect it was a bad move.

**The CHAIRMAN:** Referring back to that item of correspondence, you express some concerns about clause 45(3) of the Finance Brokers Control Act, which relates to advertising, and you indicate that you have also written to the Finance Brokers Control Board. Did you ever receive a response?

**Mr Barr:** No.

**The CHAIRMAN:** You also indicate on that letter that a copy was sent to Kim Clifton, Ross Fisher, Craig Anderson and Peter Beekink.

**Mr Barr:** The Mortgage Industry Association has various subcommittees, one of which is the finance brokers subcommittee; and it was directed to all members of that subcommittee.

**The CHAIRMAN:** That was sent to them to keep them informed of the correspondence that you had sent to the board?

**Mr Barr:** Yes, and to ASIC.

**The CHAIRMAN:** Most of this correspondence is dated mid-1998 onwards. Was there anything prior to that?

**Mr Barr:** There was also the correspondence that we gave to the Gunning inquiry emanating from the Institute of Finance Brokers. That is the thick document that we refer to as the Gunning inquiry document. That is the most important document that we have produced.

**Hon NORM KELLY:** You have outlined a history of inaction over the past 15-20 years. One of the recommendations in the 1998 reference group report was that the Act be repealed. Have you changed your mind from that time? I want to get an idea of where you think the industry should be heading now.

**Mr Barr:** That recommendation was basically the result of the eastern States-based inquiry - I cannot remember the name - about the freeing up of the Australian economy.

**Hon NORM KELLY:** The national competition policy review?

**Mr Barr:** Yes. That recommendation was heavily influenced by that inquiry. Since then, I have some doubts about that, although the current controls under the Managed Investments Act certainly make it a better environment in which to work.

**Hon NORM KELLY:** Is that a federal Act?

**Mr Barr:** Yes. In retrospect, we now have the view that there should be some controls, but we would prefer it to be a federal matter under the Managed Investments Act rather than a state matter.

**Hon NORM KELLY:** What has been your experience with ASIC as a regulatory body for finance brokers?

**Mr Barr:** In the past year and a half, it has been very strong indeed. It is very stuck in its ways and bloody-minded.

**Hon NORM KELLY:** To the advantage of investors?

**Mr Barr:** One would hope so, but I have some doubts, because all ASIC is concerned about is that there be full disclosure to investors. Full disclosure is all very well and good, and one hopes that will result in greater safeguards, but investors will and can always be fooled by unscrupulous people. Full disclosure does not necessarily mean safety, and that is the nature of the Managed Investments Act.

**Hon RAY HALLIGAN:** How can we protect those investors?

**Mr Barr:** If we refer back to the other debacles over the years - Cambridge Credit, Teachers Credit, Rothwells - there will always be unscrupulous people, and we can only hope that the current environment will protect investors in the future through the Managed Investments Act. Those of us who are licensed in this industry now have some problems with that Act because of the fact that there are still brokers who are capable of writing individual loans without the same measure of control that we have.

**Hon NORM KELLY:** Because they fall under that benchmark?

**Mr Barr:** Correct. We have paid awful lots of money and have very strict controls to make sure everything is tickety-boo, whereas others have not. While I am here, I want to put in a plug for the Mortgage Industry Association's endeavours to get back some of the money that we have spent on educating our members. That is supposed to be for the benefit of our investors, but because the State Government did not have the resources to write the syllabus for the finance broking course at TAFE, the Mortgage Industry Association did that of its own volition, and we have made many efforts to try to get recompense from the State Government, without success. We have spent over \$10 000, which we would like to put back into our industry, but we are being shunned by the current minister.

**Hon NORM KELLY:** What is the relationship between the Mortgage Industry Association and the other industry group that covers finance brokers and mortgage originators?

**Mr Barr:** Its president is Mr Ray Weir. We think it will eventually want to join us, so we are just sitting back and waiting for that to occur. There are not enough of them and they do not have enough clout, funds or input to survive, in our view, so we think they will probably join us.

**Hon NORM KELLY:** How many brokers engage in the pooled mortgages that have been the subject of the current issue with regard to Grubb and Global?

**Mr Barr:** That is a difficult question. I think all the leading players have been named in the newspapers. There are now only five who are licensed by ASIC, one of which has closed its doors, and one of which is so inconsequential that we are surprised it even got a licence. Only three are practising. The remainder are doing it through places like La Trobe Home Loans of Australia, which is in Victoria.

**Hon NORM KELLY:** You are the principal of one of those three brokers?

**Mr Barr:** Yes. Our company is called BBA Mortgage Corporation Limited. The other two are Knightsbridge, which was previously Clifton; and Anderson, who is the principal of what I think is called Mortgage and Investment Services. I believe Country Wide has closed its doors, and Beneficial Finance is very small. It is a small industry now in Western Australia.

**Hon NORM KELLY:** Would all the other 140 brokers with certificates be covered by the federal legislation?

**Mr Barr:** No; state legislation only. Most of those are what we refer to as mortgage originators, where they write housing loans for institutions rather than utilise private people's money.

**The CHAIRMAN:** Can you explain what you said about La Trobe in Victoria?

**Mr Barr:** La Trobe acts exactly like us. It is licensed by ASIC, and these brokers act as agents for La Trobe.

**The CHAIRMAN:** In terms of brokering the loans or obtaining -

**Mr Barr:** They get the private investors together as a pool but then submit the whole information to La Trobe, which then approves and manages the loans; so it is just another version of what we are doing. They could have come to us, but they chose to go the La Trobe route. They still collect groups of people together in a pooled mortgage.

**The CHAIRMAN:** Who is doing that?

**Mr Barr:** One I heard about this morning is John Gray from Bunbury.

**The CHAIRMAN:** Are there many of them?

**Mr Barr:** I have no idea.

**The CHAIRMAN:** Do they also try to identify borrowers, or do they purely get all the funds together and let La Trobe identify the borrowers?

**Mr Barr:** If a borrower comes to them for funds, they go out and get the investors, as we do, and pool them together, but they then direct all the investors to La Trobe for La Trobe to handle their affairs. We do the same. If a broker comes to us with a borrower, and we believe it is a sound investment, we go out and find the investors, through our licence, and we manage the loan on behalf of our investors.

**The CHAIRMAN:** Do you issue a prospectus?

**Mr Barr:** Yes.

**The CHAIRMAN:** Do you find the borrowers first or do you issue the prospectus first?

**Mr Barr:** We find the borrowers first. Under the Managed Investments Act, there is a two-part prospectus. There is a prospectus which is lodged with ASIC and is approved by ASIC. There is also a loan proposal, which becomes a generic prospectus in itself as a loan proposal, with all the backup material such as valuations, reports, financial documents, etc. That then goes out to our investors, with a copy of the prime prospectus, so the investors get full information and disclosure. We do not act like a prospectus generally, where we go to the public and get a pooling of funds and then lend. We go the other way around, and all our investors' names are placed on the title and the mortgage.

**Hon NORM KELLY:** How do you seek investors?

**Mr Barr:** They come to us. In 20 years, we have never advertised. They come to us from a variety of sources - financial planners, accountants, lawyers, word of mouth, past clients. We do not advertise for investors. We advertise for borrowers.

**Hon NORM KELLY:** Basically because you have an oversubscription by investors.

**Mr Barr:** We always have lots of investors waiting to invest with us. It is a credit to the industry that, despite the bad publicity, we currently have more investors than borrowers.

**Hon NORM KELLY:** What sort of interest rates would they be getting these days?

**Mr Barr:** They would be getting 8 or 8.5 per cent fixed for three years.

**Hon NORM KELLY:** What would be the nearest equivalent from a bank?

**Mr Barr:** A bank's term deposit would be for 6 or 6.25 per cent for three years.

**The CHAIRMAN:** We have been told that higher interest rates mean higher risk. What higher risk would be involved in your mortgages that would require that higher interest rate?

**Mr Barr:** We made a policy 20 years ago - I wish the others had done the same - that we would never use private moneys for development purposes. If a borrower was doing a block of flats or units, it always went to an institution for approval, such as a home building society, a government insurance office, a bank or whatever was most appropriate for the case. We always believed that, although we had expertise, it was not fair on our investors to put them at risk, because there is always risk with a building being developed - the builder might go broke, the market might turn or some such thing could occur. An institution could handle that risk but private investors could not, so we never did a development.

**The CHAIRMAN:** We have been told by people - you may or may not agree with the statement - that a higher interest rate indicates a higher risk.

**Mr Barr:** Absolutely.

**The CHAIRMAN:** What is the higher risk with your deals or mortgages that would require a higher interest rate than people would obtain from a bank?

**Mr Barr:** I see your point. I was taking it to the extremity when there is a real risk.

**The CHAIRMAN:** I appreciate those comments.

**Mr Barr:** The market generally seeks funds at about 2 per cent above the cost of a three-year instrument, such as what is called a swap or a term deposit. Subsequently, about 8 per cent is the current mark. That is why it is fixed at 8 or 8.25 per cent.

**The CHAIRMAN:** Are people who invest through your company taking a higher risk than they would be if they put the money into a bank?

**Mr Barr:** Yes, they are. We are lending to a maximum of 70 per cent of a property value, but who knows what will happen to the property value in time to come? There is no doubt that putting one's money into a bank is much safer because a bank has a huge capital base behind it. The capital base of a mortgage is purely the value of the property and, to some extent, the personal covenants of the borrower. In the case of companies, we always take guarantees and the like, but who is to say that those guarantees will be worth anything? There is certainly a risk involved in a mortgage, to an extent. It depends on one's record. We have never made a loss in 20 years, but we are a lot more conservative than some of the others.

**The CHAIRMAN:** I am not having a go at your company. It is a comment that has often been made to us; that is, people who lost money through the finance broking industry were taking a risk to get a higher interest rate return.

**Mr Barr:** If one were borrowing from a bank or a like institution for a commercial property, for example, one would pay 2 to 2.25 per cent above the same benchmark to which I just referred. In other words, the same rate is applicable from a bank as it is from us.

**The CHAIRMAN:** At what rate is the money lent out?

**Mr Barr:** At between 8.5 and 9 per cent.

**The CHAIRMAN:** It is a bit higher than the rate people would pay from a bank at the moment.



**Mr Barr:** Not really. It depends on what the property is. For good commercial property in the eastern States, for example, they are charging between 2 and 2.5 per cent above cost. In Western Australia normally it is between 1.5 and 2 per cent. We have an advantage over here because of stronger competition, probably generated by people like us. The risk factor is obvious. A commonwealth bond is the safest investment, followed by a bank TD, followed by a mortgage. However, one could buy shares and receive the dividends and still be at risk. It is a complex industry.

**Hon NORM KELLY:** Do you take your commission simply from the borrowers?

**Mr Barr:** We have two companies: One is a finance broking company under my name - Barry Barr & Associates - which charges a fee to the borrower and that is disclosed to both borrower and lender. Then we manage the loans through BBA Mortgage Corporation Pty Ltd, which is licensed by the Australian Securities and Investments Commission, and that charges a management fee that is normally 0.5 per cent plus GST - now 0.55 per cent. That is for the role of managing the loans, collecting interest, disbursing interest to all parties concerned, making sure insurances are right and, if there is a default, following up that matter. Under the ASIC requirements we must disclose those fees to both borrower and lender.

**The CHAIRMAN:** Going back to the concerns that your industry has raised over many years - you mentioned the fiduciary bonds, professional indemnity insurance and higher penalties - are there any other changes that could have avoided what is happening now?

**Mr Barr:** No, I do not think so. It was a disaster waiting to happen. As I explained in a recent speech on the matter, I think that a convergence of things happening in the Australian economy at the time caused this to happen, and it would have happened regardless of other controls. A lot of people in the industry had come out of banks or finance companies. We had low interest rates, and pensioners and others were not getting the return to which they had become accustomed. We had the demise of Teachers Credit Society and Rothwells Ltd, so there was no longer an avenue for those types of developers to get the funds, and it all just happened at one time. It was coincidental.

**The CHAIRMAN:** Are you saying that even if changes had been made to the Finance Brokers Control Act over the years, what is occurring now still would have occurred?

**Mr Barr:** I think the malpractices would have occurred.

**The CHAIRMAN:** Do you believe there was any way to have avoided that? Do you believe that greater supervision by the Ministry of Fair Trading or the Finance Brokers Supervisory Board would have prevented it?

**Mr Barr:** It should have been better controlled. If they had been proactive and observed the practices that were occurring - they were quite obvious to everybody in the industry - or even taken note of what we had written -

**The CHAIRMAN:** Can you outline the practices?

**Mr Barr:** The major practice was for a developer with little capital but high on ideas to approach a broker and obtain, ostensibly, 60 per cent of the value of the property. However, in reality, it was 100 per cent-plus of the cost of that property and, hopefully, everybody would start thinking that if a project were completed, it would revert to 60 or 70 per cent of the value; in other words, a profit would have made the loan safe. It was not to be, of course. They were borrowing in excess of the value and the cost of the properties. In our view, that practice was poor. If one went to a finance company or a bank, it would lend perhaps 60 or 70 per cent of the hard cost of the development, not the project end valuation. These brokers, with the help of some valuers, were doing it the other way around.

**Hon G.T. GIFFARD:** How far back does that practice go?

**Mr Barr:** Clearly back to the early 1990s.

**Hon G.T. GIFFARD:** Is that when you say it began as a trend?

**Mr Barr:** Yes.

**Hon G.T. GIFFARD:** It has grown throughout the 1990s.

**Mr Barr:** Yes. It was followed on from when Rothwells and Teachers Credit failed.

**Hon G.T. GIFFARD:** In your submission you refer to the mid 1980s. Are you talking about the same disturbing trends emerging in the mid 1980s? Essentially, around the early 1990s, these sorts of things gave birth to this disaster. If you were close to the industry in the early 1990s, there were signs that that was beginning to happen that you could have seen in hindsight.

**Mr Barr:** I think that is correct.

**Hon NORM KELLY:** The concerns in the 1980s were related more to making changes to the Act.

**Mr Barr:** That is correct.

**Hon NORM KELLY:** When it came to those borrowers who would come to you with valuations based on profit and the like, seeking funds, you would just show them the door. You mentioned in your hearing with Gunning that you knew that they would be looking for that money elsewhere. That must have raised concerns in your mind that they would be able to find other brokers to give them that money and that investors would be investing in those dubious projects, and at the same time taking away your share of potential clients. Did you, either as a business or in a representative capacity for the association, take those complaints to the Ministry of Fair Trading?

**Mr Barr:** No. We were regarded as too conservative in the industry for the other people to come to us, so from our point of view we were not fully aware of what was going on. The Mortgage Industry Association of Australia was more concerned with its impact with the mortgage origination business rather than with brokers. It was not until we joined with the brokers and when the executive of the Institute of Finance Brokers of Western Australia was able to update us on what was going on that the full extent of what was going on became clearer.

**Hon NORM KELLY:** At the moment you say that you are offering 8 or 8.5 per cent to investors. How would that compare with other finance brokers in the same sort of business?

**Mr Barr:** Much the same.

**The CHAIRMAN:** You mentioned the practices that were unhealthy and which you believe led to the problems. From your answer to Hon Norm Kelly, was that not common knowledge in the industry until the amalgamation of the two organisations, or was it reasonably common knowledge that that was going on in the industry prior to the amalgamation?

**Mr Barr:** Someone else would be better equipped to answer that question, but I think one would find that the Institute of Finance Brokers certainly knew what was going on, rather than the Mortgage Industry Association. Our people were more concerned with doing housing loans and the like, rather than development loans and using private people's moneys for that purpose.

**The CHAIRMAN:** From where you were sitting in the industry, were you aware of those practices?

**Mr Barr:** No, not completely.

**The CHAIRMAN:** If not completely, what practices were you aware of?

**Mr Barr:** Some of my clients referred to various brokers with disdain and believed that they were ripping them off with high fees and that sort of thing.

**The CHAIRMAN:** What about the use of overvaluations?

**Mr Barr:** It was not obvious to us in the Mortgage Industry Association. Once again, I think it was more obvious to the Institute of Finance Brokers.

**The CHAIRMAN:** We have spoken to people from the institute and I do not think we have had that response. Can you provide us with the names of any people? You do not need to do it now; you can do so after the hearing.

**Mr Barr:** I can certainly name those people who would have been aware of that.

**The CHAIRMAN:** Are you happy to name them now?

**Mr Barr:** Yes. They tried very hard to stop those practices through the various correspondence we are talking about. John Bell, Don MacBean, Ross Fisher and Peter Hart readily come to mind. They were all concerned about our industry and where it seemed to be headed.

**The CHAIRMAN:** I have not seen any of that in the correspondence. Can you provide documents?

**Mr Barr:** It is only anecdotal. It was just in conversations.

**The CHAIRMAN:** They did not write to the Finance Brokers Supervisory Board, although Mr Bell and Mr Fisher were both members of that board.

**Mr Barr:** Yes.

**The CHAIRMAN:** Have they ever indicated to you that they raised those practices at the board level?

**Mr Barr:** I am not aware of it.

**The CHAIRMAN:** When did the amalgamation occur?

**Mr Barr:** From memory, it was December 1998, or it might have been December 1997. It was in that time, but I can confirm it.

**Hon NORM KELLY:** You sent correspondence to Graeme Grubb in August 1998. Would that mean that the amalgamation probably occurred in December 1997?

**Mr Barr:** I think so, but I would need to check my records.

**Hon NORM KELLY:** How would you assess a valuation if a developer or borrower came to you seeking funds and he brought his own valuation?

**Mr Barr:** We would not accept any valuation given to us by a borrower. The valuation must be one that we asked for or commissioned a valuer to do. Once we received a valuation from our valuer we would assess the application. We always look at completed properties. If we were to submit a loan proposal to an institution for a development we would look at what the hard costs of the development were: The cost of the land, buildings, engineering costs, architect's and surveyor's fees, and so on. We would assess the costs and lend against the costs. We will also look at what the valuer believes the end valuation would be. We would ensure that there was still plenty of margin. We would only lend to a maximum of 70 per cent of the hard costs, excluding interest. Interest has to be paid by the borrower or the developer. When the progress payments are made there are instructions to the valuer to give us

confirmation that the work has been done. We always determine if there is enough money left in the loan to complete the building at the determined price.

**Hon NORM KELLY:** The valuer has an ongoing role during the progress of the development?

**Mr Barr:** Yes. Absolutely. One would find that any institution would insist on that.

**Hon NORM KELLY:** Does the independent valuation go out with the prospectus to potential investors?

**Mr Barr:** It would do if we were doing one. We have only lent on completed properties. All the private investors get a copy of the valuation report. It is a responsibility to the investors, not us.

**Hon NORM KELLY:** Do you undertake any pooled mortgages which do not fall within the ambit of the Australian Securities and Investments Commission?

**Mr Barr:** No.

**Hon NORM KELLY:** Is that because of the type of business you undertake or is it a conscious decision?

**Mr Barr:** It is not possible under the Act. It would be illegal and we would lose our licence if we did.

**Hon NORM KELLY:** Can you explain to me why? I understand that there cannot be more than 20 people and \$7.5m in a pooled mortgage.

**Mr Barr:** Our entire practice is built around conforming to the Managed Investments Act. We cannot operate outside the Act.

**Hon RAY HALLIGAN:** You have mentioned prospectuses and the Companies Act. From your side of things, what sort of differences do you see between the two?

**Mr Barr:** A prospectus clearly outlines to the reader what a mortgage is; how the loan proposal will be considered; and what it will contain. It will address the legal and insurance issues. It will not discuss a particular mortgage. It is a document that is registered with the Australian Securities and Investments Commission.

**Hon RAY HALLIGAN:** It is generic.

**Mr Barr:** Yes. It discusses in broad terms what a mortgage is; what our practices are; how we manage loans on behalf of investors; what our compliance and complaints procedures are; and all information that investors need to know. When a loan proposal is presented by me to an investor or group of investors there will be a second, and specific, prospectus. It will outline the details of the property, the names of the borrowers, a copy of the valuation and will include copies of credit reports from credit reporting agencies. It will contain the financial statements of the borrower - the assets and liabilities and trading statements. It will also include an analysis prepared by us. It is all designed to make it easier for the investor to understand what the documents mean.

**Hon RAY HALLIGAN:** Are the borrower's trading statements attested by anybody?

**Mr Barr:** They are always provided to us by the borrower's accountant. They are often on the accountant's letterhead. They are not necessarily attested specifically to us.

**Hon RAY HALLIGAN:** They are usually received from the accountant?

**Mr Barr:** Yes. It is a clear disclosure of all items and matters relating to a mortgage.

**Hon RAY HALLIGAN:** Does it also include all assets and liabilities of the borrower?

**Mr Barr:** Yes. We always use a disclaimer to the effect that the information has been provided to us by the borrower and that there is no way we could possibly check as to whether all the assets and liabilities listed are correct. It could well be that some assets are overseas or are antiques hanging on a wall. Who is to say that the borrower's idea of value is correct? As such, we have to use a disclaimer.

**Hon NORM KELLY:** It is possible that the statement has been used a number of times to obtain information from various institutions.

**Mr Barr:** That could well be. The major thing in the industry is to make sure that the valuations are correct and to provide safety for the investors. After all, it is their primary security. We hope not to rely on the personal assurance of the borrower.

**Hon RAY HALLIGAN:** As you mentioned, the borrowers for a company also provide a personal guarantee.

**Mr Barr:** Always.

**Hon RAY HALLIGAN:** We have heard in the past about interest being included in the amount being borrowed so that the funds the investors receive are their own. Are you aware of the practice?

**Mr Barr:** Yes. We have sometimes done it ourselves if there is a specific reason.

**Hon RAY HALLIGAN:** Could you explain to the committee what such a reason might be?

**Mr Barr:** It may be that there is a property to be sold in one year's time and there is a need for interest to be borrowed. It may be as simple as that.

**Hon RAY HALLIGAN:** Could you explain to me what you mean when you say "the need"? I cannot see the need for it at all.

**Mr Barr:** I am trying to think of a good example. One does not come readily to mind. There are cases where the borrower is not able to meet the interest over a 6 months or one-year period, and with the consent of the lender, will capitalise the interest and repay it when the loan is repaid. The borrower may be waiting for the proceeds of a will or the sale of another property. A lump sum of money may be coming to the borrower that will repay the lender in full.

**Hon RAY HALLIGAN:** It appears to me a circumstance where the interest payments are deferred until the total capital amount is repaid. That is more than reasonable. There have been instances where lenders have received monthly repayments of interest that have been their own money. The money has been included in the amount that they lent through the finance broker. The broker has set it aside, it is included in the documentation, and it has been returned 1/12<sup>th</sup> at a time over a 12 month borrowing. Are you aware of those practices?

**Mr Barr:** We have done it in the past with the consent of both parties. There are always specific reasons as to why it is done. One reason could be, for tax reasons, that the investor does not want the interest in one financial year. He might want the interest over a period of time. There are lots of different reasons. We used to be able to do that but we cannot do that any more because the Managed Investments Act does not allow us to hold moneys in our trust account for more than three months. We cannot hold moneys on behalf of either the borrower or the lender. After three months the money must be returned. It is another safeguard.

**Hon NORM KELLY:** In cases where a borrower may have reason to capitalise the interest, for whatever reason, do you at all times take out a guarantee over the other assets?

**Mr Barr:** Money used to be held in our trust account and there was a charge over it so nobody could touch it except us. That was the case when we used to do it.

**Hon NORM KELLY:** I refer to cases where the initial interest payments are being borrowed. Is it dependent upon the value of the property that has the mortgage, or would you seek guarantees over other properties or whatever else is the basis for the interest arrangement?

**Mr Barr:** It is dependent upon whether there was sufficient margin in the security to cover the principal plus interest. It would never exceed 70 per cent of the value. That is our policy.

**Hon NORM KELLY:** With respect to trust accounts, does Barry Barr and Associates have one trust account for all its files? How does it operate?

**Mr Barr:** We have two distinct sets of accounts: One for Barry Barr and Associates, which has its own trust account; and one for BBA Mortgage Corporation Ltd. The funds come into the trust accounts and are first disbursed to the lenders. Our fee is deducted afterwards. It goes out through our general account. All transactions pass through our trust accounts, the one for the broking business and the one for the management business.

**Hon NORM KELLY:** Each of the trust account disbursements would be itemised to the various folios?

**Mr Barr:** Yes. It is all done by computer. Within each trust account there is a sub account for each investment.

**Hon NORM KELLY:** Would there ever be a reason that any of the sub accounts would be in debit?

**Mr Barr:** No; 99.9 per cent of the time they would not be. We had one case where a borrower had lodged his own funds on deposit with us to pay his interest. The loan matured but the payments continued. We kept paying the interest. There was no interest left in the sub account. As soon as we found out we reported it to ASIC and the Finance Brokers Supervisory Board. We had our auditors come in straight away and we reimbursed the trust account with our own funds while we waited for the funds to be returned from the borrower. We deserved, and got, a rap over the knuckles. Mr Willers from the Ministry of Fair Trading investigated the matter and gave us a clean bill of health.

**Hon NORM KELLY:** That is the only case where you are aware it has occurred?

**Mr Barr:** Yes; only once in 20 years. I think that is not bad going.

**The CHAIRMAN:** When did it occur?

**Mr Barr:** Last year.

**The CHAIRMAN:** Mr Willers investigated it?

**Mr Barr:** He and one other. I cannot recall the other person's name. They checked our trust account to make sure that our auditor's statements were correct.

**The CHAIRMAN:** You paid out money that should not have been paid?

**Mr Barr:** It was paid to the Home Building Society. It was not a private mortgage, but the principle is the same. I used it as an example to illustrate the circumstances.

**Hon NORM KELLY:** It has been put to the committee by auditors that a trust account has remained in credit over a time but within the trust account there have been various sub accounts that have been in debit.

**Mr Barr:** It should not occur.

**Hon RAY HALLIGAN:** Were the interest payments being paid by periodic debit?

**Mr Barr:** Always.

**Hon RAY HALLIGAN:** That is how it occurred? Had you been drawing cheques it would not have happened.

**Mr Barr:** It would not have happened. It was done automatically by the computer and the girls in the office overlooked the fact that the sub account was being overdrawn. One would not want to see it as a matter of course.

**The CHAIRMAN:** Did any of the cheques ever bounce?

**Mr Barr:** No, because they were our cheques. Our computer was transferring money from our trust account.

**The CHAIRMAN:** There were sufficient funds in the trust account?

**Mr Barr:** The trust account had ample funds.

**The CHAIRMAN:** Did you report it to the ministry yourself? It was not identified by anybody else?

**Mr Barr:** No, we reported it.

**Hon NORM KELLY:** Did you then have to pay back other sub accounts that had been drawn on?

**Mr Barr:** All the other sub accounts were still showing the true balances. The total balance was lower than it should have been. We drew a cheque from our general account to reimburse the trust account.

**The CHAIRMAN:** You have previously outlined practices related to overvaluation and you mentioned that there are three brokers in Western Australia about whom you have concerns. Have there been any other brokers who have engaged in those practices?

**Mr Barr:** There were a couple of others.

**The CHAIRMAN:** Can you identify them to the committee?

**Mr Barr:** Only anecdotally. I have no evidence. I would prefer to have it off the record. I have already had one death threat and I do not want another one.

**The CHAIRMAN:** Was that in regard to this matter?

**Mr Barr:** Yes. I received a death threat after I gave evidence to the Gunning inquiry. Like you, Mr Chairman, the judge asked me to name people, and I got a phone call the next day. My family had police protection for a while.

**The CHAIRMAN:** We will discuss that in private session. Was the Finance Brokers Supervisory Board a suitable watchdog, and should it maintain that role? What would need to occur to make it effective?

**Mr Barr:** It would have been effective if it had been more proactive and if it not adopted such a narrow interpretation of the Act. I was called up before it once because a broker accused me of false advertising. I was terrified. That should have been its role.

**The CHAIRMAN:** Do you have any views about why it could not fulfil that role - was it the fault of the board members or the ministry?

**Mr Barr:** It is typical of government organisations that are reactive rather than proactive.

**Hon NORM KELLY:** How significant was the narrow interpretation of "client"?

**Mr Barr:** It was extremely significant. The board should not have taken that view. Its role should have been to protect the investors and it should have taken a proactive approach to achieve that. It was the only organisation at the time authorised to do so.

**Hon NORM KELLY:** Do you know why it adopted that narrow definition?

**Mr Barr:** They are lawyers.

**Hon NORM KELLY:** Lawyers will always give you something else if you want it.

**The CHAIRMAN:** The board also had two industry representatives who, as you said, should have protected the investors. However, there were no consumer representatives. Do you accept that there could be a conflict of interest in having industry representatives? If there were good industry members, that would be fine. You have indicated that some industry members engaging in those practices caused you concern.

**Mr Barr:** They were good industry representatives. All those who served were honest and reliable. It must have been difficult to stand up to lawyers giving opinions. These people were laymen, and it is difficult to argue against a qualified lawyer. It might also be difficult to speak about one's peers in the industry. Perhaps the board membership should have been broader - it could have included consumers and others. I have no idea who should have been included.

I was asked to give expert advice on some valuations done by a couple of the valuers named in the inquiry. They were dreadful valuations; they should never have been allowed.

**The CHAIRMAN:** Who asked you to give expert advice?

**Mr Barr:** One lending institution asked me to give advice because it was under pressure about a bad loan it had organised using a valuation done by Mr O'Connor. I read the valuation and said what I thought of it and the institution settled with the lenders.

**The CHAIRMAN:** Are you also a licensed valuer?

**Mr Barr:** No. The institution asked for my opinion because I have 40 years' experience.

**Hon RAY HALLIGAN:** What were the deficiencies in the valuation?

**Mr Barr:** The valuation was done for the vendor, not the borrower or the lender. It related to 10 strata title motel rooms at Mt Newman and it used comparisons with Kalbarri, Esperance and Dunsborough. It was supposed to be under management but it was not; and it was supposed to have a permanent residence and airconditioning but it did not. The valuation was for \$1.65m. One did not have to be a rocket scientist to know that it was worth about one-tenth of that.

**Hon NORM KELLY:** Was the issue taken any further?

**Mr Barr:** The lawyer rang back and asked whether I stood by the view given in writing, and I said I did. He then said he would settle. Another case involved the valuation of a luxury unit on the Gold Coast done by a Western Australian valuer. I doubt whether the valuer went to the Gold Coast to do the valuation. If he did, one would have to question why he would go to that expense and whether he was licensed to do the valuation in Queensland.

**The CHAIRMAN:** Did that involve borrowers or lenders from Western Australia?

**Mr Barr:** A borrower in Western Australia was using the Queensland property as security.

**The CHAIRMAN:** Was the deal done through Western Australian finance brokers?

**Mr Barr:** I have no idea, but that is the most likely scenario. It was not done by our company. We were asked, but we obviously refused. There were some bad practices.

**Hon NORM KELLY:** How long ago was the Mt Newman case?

**Mr Barr:** It was about two years ago.

**Hon NORM KELLY:** Which broker was involved?



**Mr Barr:** I would prefer to provide that information later. It was not a broker as such.

**The CHAIRMAN:** Unless you have any final comments you would like to make in public, we will go into private session and pursue some other issues.

**Mr Barr:** That covers what I wanted to say in public.

**[The committee took evidence in private]**

**Committee adjourned at 12.18 pm**