

ECONOMICS AND INDUSTRY STANDING COMMITTEE

INQUIRY INTO THE WESTERN AUSTRALIAN STRATA MANAGEMENT INDUSTRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 13 NOVEMBER 2002**

SESSION 1

Members

Mr A.D. McRae (Chairman)
Mr J.H.D. Day (Deputy Chairman)
Mr J.J.M. Bowler
Mr B.K. Masters
Mr M.P. Murray

Committee met at 10.27 am**POPE, MR COLIN****Strata Property Owner,
examined:**

The CHAIRMAN: Welcome to this hearing of the Economics and Industry Standing Committee of the Legislative Assembly. It is intended to be a relatively informal inquiry but because we are sitting as a committee and taking submissions under the standing orders, there are some formalities that I must let you know about.

This is a committee of Parliament. It requires the respect that you would afford Parliament, but it is important to remind all people who present material to the committee and inquiry that misleading the committee is an offence that we would not look upon lightly. Having given that warning, we very much appreciate your willingness to make your submission to this inquiry on strata management and I welcome you here this morning.

You have already submitted written material to the committee and we thank you for that. In it you raised a number of issues including the licensing of strata managers, the minimum requirement within a code of practice of some form, regulations on breaches of compliance, the role of the strata referee, the authority to ensure compliance with directions and, ultimately, the role of the State in enforcing compliance and responsibility within the whole scheme. That is a quick summary, but perhaps you would like to talk about those issues and anything else that you want to raise.

Mr Pope: The main reason for my submission is my experience, as an owner, in having problems with the strata manager and trying to get something done to rectify the problems I was having, such as not having had a meeting for almost 10 years, the lack of provision of financial statements and, when writing to the strata manager, not receiving any response over a number of years. I lodged an application through the strata titles referee for some orders for the provision of records, information and items of interest such as insurance and owners' by-laws; the sorts of things to which, according to the Act, I should have free and available access. It is the most frustrating process that I have ever been through. I am not unfamiliar with certain processes. I chase up my own debtors through the courts. I appear on behalf of clients at administrative appeal tribunals. I am a justice of the peace, so I know the workings of the local court. However, I have never come across such an unhelpful and strange process as using the strata titles referee to get some sort of information or response.

My application was made in October 2001 and I finally received the order to hold a meeting in August/September 2002. In January 2002 it was confirmed by the strata titles referee that no meetings had been held since 1993. I had a 10-month wait to get a meeting for something that was obvious eight months prior. I found the process frustrating. The meeting that was ordered was never held. A meeting was held outside the orders, which further frustrated me because the Strata Titles Act gives you provision to hold meetings two ways; one way is by order and the other is by 25 per cent of the owners calling a meeting. Neither of those happened, so the annual meeting - as it was called; it was probably a 10-year meeting - had no legality because it was not called in the correct manner according to law. The problem we are now faced with is that a committee was elected at that meeting. That committee is now meeting next week to consider the strata manager's role. However, the strata manager would probably have a legal argument that we are not legally constituted. No matter what evidence is given to the strata titles referee, the strata titles referee just washes his hands of the whole matter once he has given an order. I find that quite strange. If he has given an order and it is not complied with, it should be up to him or someone of authority and

experience to prosecute. I have been advised that if I want to take the matter further, I can prosecute. I am not experienced in prosecution; I would not have a clue about it.

The CHAIRMAN: Do you know what jurisdiction it would be held in?

Mr Pope: I am told it would be the Court of Petty Sessions. I have spoken to the local court and it does not seem to know the process and neither does the Department of Land Administration. The strata title referee's office merely fobs me off to the courts. It is the referee's order and the referee has been shown contempt by the manager. There are provisions within the Act for penalties, but it seems to me that the penalties have never been applied. There is no precedent for what is to be done.

Mr J.H.D. DAY: Why is the manager not prepared to organise a meeting?

Mr Pope: I do not know. His argument is that he is busy. I understand that this manager manages about 30 properties across Perth. Unfortunately, he owns half the units in our strata plan. Therefore, at the general meeting, it was a matter of, "Do as I say or else" so to speak; we did not have an option. We could not out vote the party.

Mr J.H.D. DAY: I was going to ask why could you not change the manager, but I guess that is the answer.

Mr Pope: We may be able to change the manager once the committee has been elected because then the committee has one vote per member as opposed to the general meeting where each owner has one vote, allowing that particular party to hold 50 per cent of the vote. It is something that must be reviewed. If we decide to do that, we then have the problem of how to get the records of information from the owner. Our money is in a trust account for all the properties that this owner manages, according to the financial information given to the referee. Our account has been overdrawn for two years, which is pretty much the same as what happened in the finance brokers industry scandal - if you could call it that. The referee does nothing about it and just says that it is our job to prosecute.

Mr J.H.D. DAY: Is the main concern the conflict of interest between the manager to fulfil his duties and the fact that he owns half the units in the overall property? Is that the crux of the problem?

Mr Pope: No, because it would be commonsense that if the manager owns half the properties, he would manage it correctly and not defraud himself.

Mr J.J.M. BOWLER: Is he charging himself half of the costs?

Mr Pope: Yes, he should be. That is what we are trying to ascertain.

Mr J.H.D. DAY: Is the concern that he might be managing more for himself and for his half of the property rather than managing for the total property?

Mr Pope: That is correct. I am not sure if my submission raised the matter, but repairs were done to the half of the units owned by the manager and not the half owned by the other private parties.

Mr B.K. MASTERS: And they were paid for by whom?

Mr Pope: By the body corporate. We only just found that out at this last meeting because it was done a couple of years ago and we have not been able to get the financials from -

Mr B.K. MASTERS: How old are the units or what sort of units are they?

Mr Pope: They are one and two bedroom units on four floors. There are 48 units in total. The building was probably built in the 1970s or 1960s.

Mr B.K. MASTERS: Clearly, maintenance would be a significant issue.

Mr Pope: Yes.

Mr B.K. MASTERS: Is money going from the owners of those 48 units into a trust fund? As an owner, do you regularly get letters -

Mr Pope: Yes, we do, in the form of quarterly accounts.

Mr B.K. MASTERS: Have you ever requested expenditure on your unit by the body corporate for justifiable reasons and had that refused?

Mr Pope: Never refused, just never replied to.

Mr M.P. MURRAY: Is the money going into a trust fund or a general maintenance fund?

Mr Pope: They tell me it is a trust fund; I cannot elaborate further. I want to find that out myself. At the annual general meeting I tried to pass a motion that we open our own account and operate it separately from the other trust accounts so that the owners can see where the funds are going and coming from. That was deferred to the council meeting. Everything that was raised at the general meeting was deferred to the council meeting, which I have given notice of this week, to be held next week, because the managers have not called it even though I have been asking them to.

Mr J.H.D. DAY: Are you on the council?

Mr Pope: Yes.

Mr J.H.D. DAY: Are you able to call a meeting?

Mr Pope: Yes.

The CHAIRMAN: Therefore, 25 per cent of members of the council are able to initiate -

Mr Pope: No, any member of council can initiate a meeting as long as seven days notice is given in writing. At the general meeting that was held, it was left that the managers would organise the minutes and call another meeting, which never eventuated.

The CHAIRMAN: Are those standard rules?

Mr Pope: They are in the by-laws; schedule 1 of the Act.

The CHAIRMAN: Therefore, they do not vary from that?

Mr Pope: No, well, that is another thing. Through the inquiry I have never found any other by-laws providing for that so I assume that schedule 1 is it.

Mr J.J.M. BOWLER: Are you saying that the strata titles referee is derelict or does he not have the authority to do what you really want him to do?

Mr Pope: I have never found anything in his authority that denies him the right to prosecute. I do not know if anyone here can inform me of that? In the Strata Titles Act, section 80 under investigations gives him the right to ensure that natural justice occurs and that he follows through the processes as he sees fit. However, I do not see how that denies him the right to prosecute when he knows his orders have not been fulfilled and that consumers or property owners are being denied their rights under the legislation. The normal process would involve going to the courthouse and filling out a form. However, there does not seem to be any form for this situation. Once the court gives an order and the order is not fulfilled by the due date, it must be taken back to the court where it is then processed. In this situation, there is no such thing. I now have to take it to another court and commence the proceedings myself. As much as I am confident in my abilities, I do not think I could sit in court and confidently prosecute a party that may have multimillion dollars worth of assets and would probably have lawyers and QCs available to them, and I would be sitting there on my own.

Mr B.K. MASTERS: There is another possible way to take this matter further. You have already written and asked for certain things to be done to your unit, with no reply. If you were to spend that money, and it was less than \$5 000, you could then take out a small debt action against the body

corporate and, presumably, it would be the strata company manager who would have to respond. No lawyers would be involved in that situation.

Mr Pope: Yes, I could do that through the small disputes division. Do I have a problem with liquidated debt in that instance?

Mr B.K. MASTERS: I am not sure what you mean by that.

Mr Pope: I am not sure either. It is just that I had a case thrown out of the small disputes division because the debt was not liquidated or known at the time it was occurring. Therefore, the magistrate held it was not liquidated.

Mr B.K. MASTERS: That is what I am saying. You would need to make an expenditure on your unit, have the receipts and then seek a refund for that expense.

The CHAIRMAN: That is right. That is one avenue to pursue. However, Mr Pope is arguing that that should not be the recourse that he must take.

Mr Pope: No, if I make an application and the evidence shows that there has been a breach of the Act, it is not my responsibility, as a consumer under the Act, to prosecute. Under what other Act does the consumer have to prosecute? If I break a law, for example, I am speeding in my car, a policeman - the referee - must decide whether to give me a ticket or a warning. Once that has happened, I then pay the fine. If I do not pay the fine, it does not mean that the public must prosecute me. The police just say that if I have not paid up, I must then go to court and pay a heavier fine.

The CHAIRMAN: The parallel might not be with civil matters but more akin to company shareholdings and the pursuit of compliance with the rules of the company by a shareholder and not with someone who is committing a civil offence like speeding.

Mr Pope: A company has publicly available information such as the constitution or the memorandum and articles and that sort of thing. In this instance, I have no idea what the by-laws are until I get an order; that is where the problem lies. I had a problem that the orders given were not met until I asked the referee what was going on. He then amended the orders to provide further time. The amending of the orders not only gave further time, but also an extension of time. Initially the manager was given seven days to call a meeting and 14 days to hold it. That was extended to 21 days notice to call a meeting and a month in which to hold it. That is changing the orders and not just an extension of time. It was odd that the order was given to the person that I am complaining about and who is not fulfilling their obligations. It would have been logical for the referee to either appoint an administrator or someone to that position and hold a meeting, or to instruct me to do it since I am the applicant.

Mr B.K. MASTERS: I am not sure if the referee has those powers. This committee will have to examine that in more detail.

Mr Pope: Why does the referee not have that power? Where does it say that that power is denied?

Mr B.K. MASTERS: The contrary argument is where is he specifically given the power to do that by a piece of legislation?

Mr Pope: In this case the referee is giving an order to someone to hold a meeting.

Mr B.K. MASTERS: If there is no legislation saying that the failure to follow up on that order must then be followed by action by the referee, then it is very much in the bailiwick of the referee to decide whether to take further action.

Mr Pope: With due respect, you get to a point where the referee must know what he must do. He is not ill-informed; he knows what his responsibilities are. His responsibilities do not just stop when he knows there are breaches of several laws.

The CHAIRMAN: Are you arguing that the referee should take responsibility for ensuring compliance with his own orders?

Mr Pope: Yes. If the referee makes an order and knows that the order has not been complied with, who better than the referee to take that action? Where is it denied that he can do that?

Mr J.J.M. BOWLER: It is not so much where is it denied as where is it shown that he has the power to do so, as Mr Masters was saying.

Mr Pope: Has the referee ever tried to do so and been denied that, for example, by the magistrate in the Court of Petty Sessions?

Mr J.J.M. BOWLER: That is for the committee to find out.

Mr Pope: If that has happened, then I stand corrected. I do not believe that it has happened and to be told that it is my responsibility - where is it written that it is my responsibility? The same rule must apply to me as applies to the referee.

Mr J.H.D. DAY: Have you had legal advice on all of these aspects?

Mr Pope: No.

Mr J.H.D. DAY: You referred to the State as the body that should take action against the strata manager. I can understand that if you are seeking punitive action in some way. However, if you are seeking action to make the annual general meeting occur and for the manager to produce a council and so on, it is a civil matter and usually the sort of thing that you would get legal advice on and then take some action with the assistance of a lawyer.

Mr Pope: My process, as advised by the Department of Consumer and Employment Protection, was to go to the strata titles referee for that information. Are you saying that once that fails I should go elsewhere? I should not have to go to such an extent to get something that is basically in black and white and a requirement by law.

Mr B.K. MASTERS: It is not quite as simple as you are making out. Under the Environmental Protection Act, for example, police officers can be given the power to enforce noise protection regulations. However, that power must be transferred to them via local government. If the local government body does not do its part, then the police are restricted in their abilities as well. There are questions of law here and we are starting to go around in circles -

Mr Pope: Yes, it may not be as simple as I am making out, but it is not all that difficult a problem to rectify.

Mr B.K. MASTERS: Potentially there could be quite a simple resolution, but until we find out what exactly are the powers and abilities of the referee, we could be here for a while.

Mr Pope: My experience was that I received no assistance whatsoever from the referee's office or from the registrar. The registrar, to my knowledge, never once returned any of my calls; one of his staff did. When I asked his staff about what was happening with the file they said that they could not comment and that they had just been asked to call me and respond. When the referee amended the orders, I was advised by a staff member that the orders were amended as a result of a phone call by the manager. I subsequently thought that it was a bit rude that I had to write to the registrar to get any response, yet the manager could get an order amended by a phone call. I asked for a copy, in writing, of the request by the manager for the amendment, which has not been forthcoming. I can only assume the information I received was correct. I find that really frustrating.

The CHAIRMAN: When did you make that request?

Mr Pope: In September.

The CHAIRMAN: Do you have a copy of that letter?

Mr Pope: Yes, I do.

The CHAIRMAN: Can you provide that to the committee as it would be very useful?

Mr Pope: Yes.

The CHAIRMAN: Can you identify each of those items you have submitted to the committee?

Mr Pope: Item D is my letter of 10 September in which I raised the issue that the meeting had not been called in accordance with the law and had no legal authority. In the second paragraph, I asked for a copy of the request for the amendment.

The CHAIRMAN: Item A is the certificate relating to your -

Mr Pope: Item A is the certificate on which I first made the application. Even that created a song and dance because, when I made the application, the strata titles referee asked me, bearing in mind that I could not get copies of by-laws or any information from the managers, to certify that there were no relevant provisions in the by-laws or that there were provision in the by-laws. I could not comment because I could not get the by-laws. Therefore, I inserted "and/or" onto the certificate and initialled it. The referee's office would not accept my application in that form and amended it. That was incredible! How could I make a certification when I could not get access to the documents that I wanted. At the time I thought that was a bit absurd. In the letter I wrote that I was unable to obtain a copy of the by-laws and that my certificate was accurate.

The CHAIRMAN: What is item B?

Mr Pope: Item B is the registrar's opinion of what the referee can do. The last sentence of that document basically says that once the referee's order has been made, subject to the above comments, the referee has no further role or function in relation to the application. Perhaps the referee may not have a role in relation to the application because the application has been processed, but he should then have some role in the orders.

Mr J.H.D. DAY: Would you like to see the referee have greater powers to enforce his orders?

Mr Pope: Yes.

Mr J.H.D. DAY: Do you think that having a regulatory board or something of that nature in relation to strata title managers would be of assistance?

Mr Pope: I own rental properties and under the Residential Tenancies Act standard forms must be filled out. The Department of Consumer and Employment Protection has a landlords handbook for landlords and a book for tenants. If I have an issue, I refer to those books and find out what forms I must fill out and do what I have to do and follow that process. In the area of strata management there is no such handbook. The properties that come under strata management are probably equivalent to rental properties and some similar sort of product may help.

[10.52 am]

Mr J.J.M. BOWLER: What about protection for minority owners, particularly in your case because the strata manager owns half of the units? Is there a need for change?

Mr Pope: I would think so, yes. I am yet to jump that hurdle. I might have a problem with that yet.

Mr J.J.M. BOWLER: Is there a system or a process that would give minority owners protection?

Mr Pope: No, perhaps just an application to the relevant authority.

Item C refers to the financials. One set of financials was given to the Strata Titles Referee and a separate set was given to the members at the annual meeting. The document that includes the overdrawn figure of \$7 693 was given to the referee and the document showing an overdrawn figure of \$8 334 was given to the owners at the annual meeting. There was a difference between the information being provided to the referee and the owners. I thought it was amazing that the referee

did not examine whether that money was through a trust account and whether they were breaching other laws, particularly given that it is fairly topical.

Item D is the letter I wrote on 10 September outlining my frustration about the process and what had taken place. I also asked for a copy of the request to amend the order and stated my view about having no legal authority at the meeting.

The CHAIRMAN: Have you had a response?

Mr Pope: Yes, but I do not have a copy with me.

The CHAIRMAN: Will you forward a copy to the committee?

Mr Pope: Certainly.

The CHAIRMAN: Is that the end of the correspondence chain?

Mr Pope: That is the end of it. To be honest, I feel as though I would be wasting my time if I made any further correspondence. As I said, the whole matter is frustrating because it takes so long to resolve what is an obvious matter.

Mr M.P. MURRAY: With respect to structural repairs and the like, is it worth contributing a levy into a fund? Currently, there is a general fund for general maintenance. However, some people buy a unit that is 25-years-old and there is no back-up when all of a sudden \$20 000 is needed because of a fault in the footings and the like. Should a trust fund be established for each of the strata units for major maintenance or major capital works?

Mr Pope: I think some people refer to it as a sinking fund. Some strata managers operate sinking funds in which they provide for capital expenditure, which is a good idea. That is our exact problem; namely, we have little money in our bank account and the property now requires maintenance. Yes, it is a good idea.

The CHAIRMAN: Mr Pope, would you like to say anything further to the committee?

Mr Pope: Thank you for the opportunity to be here today.

The CHAIRMAN: On behalf of the committee, thank you for an interesting presentation. You are the first witness to provide a submission. The committee will send you a copy of the *Hansard* transcript in its draft form - it must not be released or quoted - to provide you with the opportunity to correct anything that has been misheard or misreported, after which time the transcript will become formal and official. As soon as we have gone through that process it will also be posted on the Internet. Thank very much for your time and contribution.