

# **ECONOMICS AND INDUSTRY STANDING COMMITTEE**

## **INQUIRY INTO THE WESTERN AUSTRALIAN STRATA MANAGEMENT INDUSTRY**

**TRANSCRIPT OF PUBLIC FORUM  
AT KALGOORLIE  
ON MONDAY, 9 DECEMBER 2002**

### **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 9.38 am****GILMORE, MR GAVIN:****PENDAL, MR ALLAN:****WALKER, MR WAYNE:****MURPHY, MS LINDSEY:****BOYDEN, MS MARGARET:**

**The CHAIRMAN:** Ladies and gentlemen, thank you for coming to this meeting of the Legislative Assembly Economics and Industry Standing Committee. As you know, we are conducting an inquiry on strata title management. Today is not a formal hearing and we will not receive evidence on oath; that is, as though you were appearing as part of a formal sitting of Parliament. However, it is a public forum of the standing committee. For that reason we have set up microphones so that the recording from today's hearing can be transcribed. The committee has visited Kalgoorlie today and will also go to Busselton so that we can get different perspectives on strata management from across the State. Again, welcome to this hearing and thank you for coming.

When the committee was considering non-metropolitan areas in which to conduct a further layer of inquiry into strata management, it was clear that we needed to come to a mining industry centre because of the particular profile of such a region. Kalgoorlie was the obvious choice because it is an older town that has a more mature market and has experienced much growth; it has experienced the swings and roundabouts of a regional centre. The committee will go to Busselton because the south west area has a different profile with regard to strata title, caravan parks and tourism issues. It has a different industry base, a different user profile and a different set of needs in relation to strata management. That is why we are here today.

[9.45 am]

Parliamentary committees are fairly new beasts for the Legislative Assembly. The Legislative Council has used standing committees for a long time, but they are relatively new beasts for the Legislative Assembly. As the PowerPoint presentation indicates, the committee is about scrutinising the processes, practices and conduct of government. It will look at legislation and performance indicators and outcomes of how agencies go about their business, and it will inquire into any law-making or administrative functions of the Executive. The Executive is the Government represented by Cabinet and the Governor. An example of the committee's work, which I am sure most of you are aware, is the inquiry into the toxic waste fire at the Bellevue facility in February last year. That caused a spectacular explosion, which everybody saw on the television. This committee conducted an inquiry into that incident over nearly 14 months. We presented two reports, with 25 recommendations, to Parliament. The Government, which, as I said, is represented by the Executive in the Parliament, has three months to respond to the parliamentary committee's recommendations. This inquiry will go through a similar process. We will conduct an inquiry, make a series of observations about the industry, note some of the difficulties we might have observed and then make a series of recommendations. Once we have tabled that report, it is up to the Government to respond to our recommendations.

The scope of this committee is fairly wide. It inquires into everything outside the education, health and justice portfolios.

**Mr J.J.M. BOWLER:** And Treasury.

**The CHAIRMAN:** And Treasury, which is still administered by the Public Accounts Committee. This committee can inquire into a very broad range of areas. Other areas of interest for the

committee include renewable energy and recycling. We are discussing recycling issues and considering what recommendations to make. One of the benefits of this committee is that it includes members from the Labor Party and the Liberal Party. Although John, Mick Murray, the member for Collie, and I are Labor members of Parliament, the Deputy Chairman, John Day, and Bernie Masters, the member for Vasse, are Liberal members of Parliament. The Government's members form the majority on this committee, as is its want.

I am sure that the Liberal members would say privately - as we do - that these parliamentary committees are good because they give us a chance to burrow into the work and get some bipartisan agreement on some issues. That tends to mean that we probably do not wrestle with direct political issues of the day. Committees such as this are perfect for trying to solve long-term problems. That is why we have asked people to attend this hearing today. In our view, the future direction of strata management requires better guidance. The committee has already formed the view that there are some gaps in the management of strata titles. We will present our views to you this morning and ask for your views about some of the gaps in the industry that are emerging in the city and ask whether they also apply to this regional centre. We will ask you what you consider to be the best approach to some of those difficulties.

We have already undertaken some preliminary assessments. We know the number of strata properties and where the regulations apply and where they do not. We are still trying to get a handle on the amount of money that is being held in trust and operating accounts. We have also analysed the potential risks posed to unit holders and indeed to the broader public and the Government that represents the public. For example - we will discuss this matter - it is clear that there are very few substantial sinking or reserve funds on large, poorly regulated strata properties. Some of those properties are coming towards the end of their good maintenance life. Some strata managers have suggested that as a result of having no reserve funds, the value of unit properties is declining; therefore, strata managers have even fewer resources to deal with the significant maintenance challenges those properties face. The committee travelled to Sydney and inquired into that matter. It is interesting that that matter is not an issue there because property prices of even old buildings are escalating. It does not matter if the maintenance of a property will result in a hefty bill because the capital gain on that property will cover whatever the property owner might be exposed to.

**Mr J.J.M. BOWLER:** Until six months ago.

**The CHAIRMAN:** That is right. Nobody else in Australia has experienced the sort of capital gain that would cover up the sins of the past mismanagement. Western Australia has to deal with the reality that, based on the credible evidence we have heard, there is a significant public risk emerging from a couple of properties in Perth. I am talking about millions and millions of dollars, not just a lick of paint. The rest of Australia, except for NSW, must deal with that too. Some buildings have had some serious faults, and nobody is around to pick up the tab. There is some risk with regard to reserve funds.

The first dot point of the PowerPoint presentation indicates that the committee is examining the risks posed by the absence of regulation. The second dot point shows that the committee is considering what type of regulation will need to be put in place, if there is a need for it. Any decent committee of inquiry will include the third dot point, "any other matters deemed relevant by the committee". Already the issue of reserve funds has emerged as part of that those other matters.

In Western Australia there are 40 000 strata title plans. Some 40 000 strata companies -

**Mr J.J.M. BOWLER:** The first of which was registered only 30 years ago.

**The CHAIRMAN:** That is right

**Mr J.J.M. BOWLER:** That is amazing growth.

**The CHAIRMAN:** Yes, and that growth is continuing. I am sure that growth is occurring in Kalgoorlie. I will be interested to hear what everyone here has to say about that. A demographic breakdown shows that Western Australia and South Australia have a very similar profile. The bulk of our strata titles involves small unit groups. In Western Australia, there are 50 000 individual two-lot plan units, more than 50 000 individual three to five-lot plans held by lot holders and 70 000 individual six-plus lot plan units, which are the larger plans. More than 180 000 people in this State are unit holders or shareholders of units. In economic terms this means that 30 000 strata properties totalling \$28.5 billion. Residential units comprise more than 80 per cent of all strata units.

**Mr J.J.M. BOWLER:** To give you an idea of the size of that, the state budget is \$11 billion.

**The CHAIRMAN:** We are talking about nearly three times the amount of the annual state budget. Residential property is also interesting. Again, I will be interested to hear what everyone here has to say about Kalgoorlie and the goldfields generally with regard to the breakdown of 80 per cent of strata properties being residential compared with industrial and commercial strata properties. A stunning statistic is that strata properties consist of nearly a quarter of all properties in Western Australia.

Property managers are not licensed or registered, they do not keep a definitive record of funds and they do not need management experience. Initially, the Department of Land Administration and the Department of Consumer and Employment Protection provided the committee with a lot of data on this matter. The Strata Titles Institute of Western Australia - STIWA - has added to that information. STIWA is a bit like the Real Estate Institute of Western Australia, but it is very specialised. It provided the committee with a breakdown of the money about which we are talking.

As I said, the Hansard reporter is recording the committee. When we send the transcript to you, you will have a chance to correct anything; for example, if you think that you did not quite say what is in the transcript - even though it might have been recorded on the tape.

**Mr J.J.M. BOWLER:** You might say, "I did not mean to say it."

**The CHAIRMAN:** You might not have meant to say it that way, but meant to say something else.

**Mr Pandal:** You blokes do that, don't you?

**Mr J.J.M. BOWLER:** Your brother does that!

**The CHAIRMAN:** As this is not a formal hearing, our interest is in gathering the information you want to provide; not in having a verbatim record of what you did or did not say. John, do you want to give an introduction into this hearing?

**Mr J.J.M. BOWLER:** I suggested that the committee should conduct a hearing in Kalgoorlie for no reason other than I would not have to travel very far! It is good for the committee to visit Kalgoorlie because I know that many properties in regional towns in Western Australia are rental properties. Allen was talking about that issue when members of REIWA were here recently. I am not too sure about the percentage of rental properties that are strata properties, but I assumed they would make up a fair percentage. It is good to get a country perspective on the problem. We have heard from metropolitan managers and unit holders from all levels of the industry. It is good to get a country perspective on the matter. I thought that the goldfields would have the most involvement with strata titles. That is why we are here.

**The CHAIRMAN:** We will go around the table and get an idea of who you are, where you are from and what your key interest is.

**Mr Gilmore:** My name is Gavin Gilmore. I am a principal with Wades First National Real Estate. Currently we manage just under 50 strata properties, which is a reasonably high number for Kalgoorlie. My main interest is the fact that we have certain difficulties in relation to strata management.

**The CHAIRMAN:** Thanks Gavin.

**Mr Pental:** My name is Allen Pental. I am a partner in John Mathew and Sons real estate. We do not conduct any strata management in our office. If I can keep it that way for a lot longer, I will. I am interested in any changes that could be made to strata management. I also represent the great southern region for the Real Estate Institute of WA.

**The CHAIRMAN:** Thanks Allan.

**Mr Walker:** I am the principal of Goldfields Realty. Basically, we do not deal with strata management either; we are here to see what is going on.

**Ms Murphy:** I am Lindsay Murphy from Murphy Boyden Real Estate. I am a licensee. We also do not deal with any strata title management because of the unavailability of trained people in that area and the rate of turnover of staff in a town like Kalgoorlie, which puts the business in a tremendously risky position and therefore does not make it worth it. I send all our strata title management work to Gavin.

**Ms Boyden:** I am Margaret Boyden from Murphy Boyden Real Estate. I agree with what Lindsay said.

**The CHAIRMAN:** Are you from the same company?

**Ms Boyden:** Yes.

[10.00 am]

**Mr J.J.M. BOWLER:** Gavin, you mentioned that you face some problems. Is employing experienced staff to administer strata titles a problem?

**Mr Gilmore:** Initially I did strata titles myself. As I evolved one girl has come through with me, more or less. It has not been a major issue, although training is an issue. The Real Estate Institute of WA conducts a three-day course, which is very good. However, given the ongoing changes, it is difficult to get anything going with training.

**The CHAIRMAN:** Picking up on the issue of training and turnover, does training come first with the turnover a residual factor?

**Ms Murphy:** The turnover is my greatest worry. Most people who move into property and strata management are females, who often come to town with husbands and partners who work in the mining industry. They might be here for between six and 12 months and then they are gone. We then have to start again. While starting again - and running our business as a licensed business - we try to cover the whole of the business. It is very difficult to step back and handle one department until you have time to find someone who you think has the ability and training. From time to time REIWA has half-day or day courses. However, in sending people to those course one must consider not only the involved expenses but also the time spent away from the office. Unless one has a large portfolio it would not be financially worthwhile - like any portfolio.

**Mr Pental:** I think the other factor to take into account is that Kalgoorlie-Boulder was fairly slow in moving into residential stratas. When I say slow, I mean it was late. We have developed most of what we see here today over the past 10 years; that is, throughout the 1990s. Up until then everyone could have handled a strata management - if they wanted to - at the owner level. We have very little commercial or industrial strata management. There has been growth in that area only during the past 10 years.

**The CHAIRMAN:** Has that been caused by an increase in prices for individual residential units? Has there been a trend towards stratas to achieve higher densities?

**Mr Pental:** Yes. For a long time there were not many strata units in town and the ones we had were very small. It is only through our economic boom - not our real estate boom - throughout the 1990s that saw the demand for this type of residential living. That is the development we have experienced in the past 10 years.

**Mr J.J.M. BOWLER:** What percentage of your 50 properties would be duplexes or triplexes?

**Mr Gilmore:** Duplexes are basically non-existent because they are almost non-manageable. The cost I would have to charge for someone to do is throws it out the door. The same applies to triplexes - although to a lesser degree - but mostly only when there is an insurance problem. Triplexes that sit on a straight frontage and are insured separately do not require a strata manager. The majority of the stuff I deal with ranges between quadriplexes and 10-unit developments. The other interesting thing about Kalgoorlie is that although there has been a great increase, the majority of the developments have been four units or less. Therefore, although we have had a fairly major increase in strata properties, there is not a great deal of large strata-type properties, apart from the half a dozen on the Great Eastern Highway that have been developed over the past six or seven years. That is the other issue. Managing strata properties will not develop into a major industry. It will always be an incidental-type industry, because we are not large enough.

**Mr J.J.M. BOWLER:** There is the argument that if we go down the path of requiring people to be licensed to operate in the industry that there are different levels of licences. Further it has also been suggested that two, three, four and five-unit stratas be taken out of the equation so that a person would need a licence only if they managed upwards of five-unit properties. What are your thoughts on proposal?

**Mr Pental:** I am sure that the committee members know that under the Act an active strata company is not required if there are five or fewer units.

**Mr J.J.M. BOWLER:** Currently?

**Mr Pental:** Yes. That is the basis upon which one would be licensed. A person managing a strata company with two or three unit holders would require different skills than a manager who has 50 or 60 unit holders in Perth. That would have to be distinguished.

**Mr J.J.M. BOWLER:** Do you agree that if the industry is licensed there should be a cut-off point?

**Mr Gilmore:** We could probably get away with four or less units being managed. There should not have to be strata management, because, predominantly, the only issue that arises is insurance, and even though one is a strata manager quite often all they will do is manage an insurance policy. Given the Act as it currently stands, there are no maintenance issues, because usually the individual unit holder is responsible for the maintenance and upkeep of his or her own property, including external walls, roofs and gutters.

**Mr J.J.M. BOWLER:** It is common driveways -

**Mr Pental:** Common driveways are probably more of an insurance problem than a strata problem.

**Ms Murphy:** The issue is still not understood by the general public.

**The CHAIRMAN:** After reading the Act, it is my understanding - I do not have a copy with me - that the obligation to maintain a company exists in situations in which there are three or more unit holders. I will check that.

**Ms Murphy:** It is my understanding that stratas of between three and five units must hold their first annual general meeting, and, at sometime, whether it is at that meeting or at a later meeting, they must have a -

**The CHAIRMAN:** An audit -

**Ms Murphy:** I forget the terminology. It can be lodged on the strata plan so that they no longer need to have annual general meetings.

**The CHAIRMAN:** As I understand the matter, they might not have annual general meetings but they are still required to produce an account which must be distributed to the shareholders. There is still a shell of an operation without a sense of being accountable to the shareholders.

**Ms Murphy:** In the past when I have set up strata companies and held the first AGM, owners do not want to contribute money for anything. Therefore, no money is held and accounts are not established. They want to deal with their own house.

**The CHAIRMAN:** Your reference points particularly concern free-standing dwellings. We are not talking about common walls or multistorey properties. That produces a different view of strata management altogether, because it is possible to define individual property rights and responsibilities and petition that off, except in situations in which there is common driveway or a common recreational area and the like.

That clarifies that matter. One of the issues that has emerged from our inquiry so far is that many people are not sure about what they are buying into when they buy a strata property. They are unclear about their rights or their responsibilities. I am particularly concerned about this matter. A threshold is emerging and whether it is two, three, four or five units, we still have to decide how to frame our views and recommendations. There is certainly a view emerging that we need to change the way we communicate the nature of the title so that people do not buy into it ignorant of the fact that a community interest might operate in and around their title. In situations in which a common interest is involved, New South Wales is moving to the expression "community title" rather than "strata management". Indeed, the UK is moving to "common hold title" to express the obligations and the dual flow of rights and responsibilities that flow from buying into a property under such circumstances. What do you think about that?

**Ms Murphy:** People do not understand what "strata" means at all. At the time of purchase we are obligated to give them the required forms, which outlines everything. However, in the emotion of purchasing, I am sure they are never read.

**The CHAIRMAN:** They look at the price and then they sign.

**Ms Murphy:** Exactly. And they love the inside and the way the French doors move out onto the patio. That is all they are worried about.

The disclosure statement outlines their financial liabilities, which are few in Kalgoorlie. There may be an insurance portion but otherwise I have not come across anything.

**Mr Gilmore:** A lot of the four-unit complexes may have minor garden or maintenance issues. One of the things I find interesting is that for whatever reason one person in the group will not bother to pay. One of the big issues is that there should be controls in which people in such positions are made aware of their responsibilities. At the present time, the only way to do that is to go to the courts. It can create major issues when three of the four-lot strata owners take on the other owner who is obviously not interested in the property and has no intention of paying, particularly when we are really only talking about insurance. Three of the owners pay for the fourth bloke's insurance -

**The CHAIRMAN:** Have you had experience with the strata referee in those circumstances?

**Mr Gilmore:** Not at this stage. Again, most of the owners are loath to proceed down that track. It is not such an issue when dealing with larger complexes, because usually there is an active committee. When dealing with smaller lots, the owners do not usually know too much about it - they want the manager to manage the property and expect that he or she will sort out a situation in which the fourth owner does not pay his money, and, if need be, biff him across the head.

**The CHAIRMAN:** So you become the manager, the mediator, the conciliator -

**Ms Murphy:** And the counsellor.

**Mr Gilmore:** AGMs are humorous because most of the time we sit around and talk to ourselves. Proxy votes are the only way we can get an AGM to take place. The owners do not want to know, especially in the smaller complexes.

**The CHAIRMAN:** Is that especially the case for two, three or four-lot units?

**Mr Gilmore:** Very much so.

**The CHAIRMAN:** Do you perceive a shift at a particular number; that is , five or six? Is there a magic number where you see that change?

**Mr Gilmore:** I manage an 11-unit complex and there is little interest from the owners. However, when 20-unit complexes are concerned, people tend to become involved. Kalgoorlie is different in that it has a large mix of investors. A lot of them are absentee owners. Those that are not treat their properties as an investment so they do not want to be actively involved in the maintenance and upkeep.

**The CHAIRMAN:** Lindsey, is that your experience also?

**Ms Murphy:** Yes.

**Mr J.J.M. BOWLER:** Could that attitude be overcome at the point of sale and purchase if it was indicated that not only will the owners have certain responsibilities but that the first payments must be made almost immediately - albeit very small - for the joint insurance, the joint garden -

**Ms Murphy:** That does happen -

**Mr J.J.M. BOWLER:** And the joint upkeep of the pool, but made separately?

**Ms Murphy:** At settlement, besides water and rates being adjusted - as would happen on any residential settlement - insurance is also adjusted.

**Mr J.J.M. BOWLER:** It is all consumed in the one account. As you say, the owners think they are buying and then six or 12 months later they are hit with the next lot. They say "What is this?" and then there is the resistance that Gavin was talking about. If the strata part of it were made a separate account they would know they are paying it.

**Mr Pendal:** It might be okay for the one unit. At the point of purchase funds may be collected from some unit holders while the money from others is still being chased up.

[10.15 am]

**Mr J.J.M. BOWLER:** However, I am saying that when you first buy it, if you are aware that you will be paying this amount by having to pay a separate account on the same day, you could just give them two accounts; one for the purchase and one for the strata title costs.

**Mr Pendal:** With multi-storey buildings in Perth the owners are told up front what their council rates, water rates and quarterly fees are, and they are billed accordingly.

**Ms Murphy:** Gavin, why do some people not want to pay?

**Mr Gilmore:** For varying reasons. Some owners know that there is no-one to force them to pay so they can put the bill aside. It is not like the electricity account where the power can be cut off. There is nothing to force someone to pay his account. One person whom I have a problem with does not like me as a strata manager and, therefore, he will not pay. Another person sold his property recently and had accrued \$2 000 in outstanding levies on a small complex over a four-year period. He did it because he could. Some people do not need a reason; they know they can get away with it so they do it.

**The CHAIRMAN:** I have a couple of questions resulting from that little exchange. The first relates to enforcement. Given that you are a referee, conciliator, arbitrator and counsellor, do you see some value in increasing the enforcement provisions within the strata title management Act?

**Mr Gilmore:** I do. Although I do not know how you can force people to pay if there is nothing there that can be taken away from them. They cannot be put in jail for not paying strata levies. There is nothing that I am aware of that would do it but if there is, it would be very beneficial. Even if the Strata Titles Referee gives an order today -

**The CHAIRMAN:** Would a lien on the title do it?



**Mr Gilmore:** The lien is already on the title. Under the Act, the owner cannot sell the property unless that levy is paid. Therefore, it does not affect people too much until they sell the property. Therefore, they can own the property -

**Mr J.J.M. BOWLER:** What about compounding penalties? Let us say that their bill comes to about \$1 000 and a 10 or 20 per cent penalty is placed on the bill that is annually compounding -

**Mr Gilmore:** That is applicable under the Act already. We can charge interest, and usually do -

**The CHAIRMAN:** The strata company can -

**Mr Gilmore:** The strata company charges interest on unpaid levies or levies in arrears. Again, it is not an enormous amount for most of the smaller property owners because they are paying only \$500 or \$600 a year anyway. Therefore, they do not see it as an issue and they just ignore it.

**The CHAIRMAN:** The second issue that came out of that exchange was that it appears to be a relatively thin market. You are the specialist strata manager in this region - there might be others -

**Mr Gilmore:** There are two others.

**The CHAIRMAN:** You might even find that a couple of people are dabbling in smaller groups that are not even known about. However, in terms of a professional business profile, you are one of the major providers in a relatively thin market. This question is directed to Allan, Wayne, Lindsey and Margaret. What do you want the profile of a manager to be? As predominantly real estate agents and managers, what do you want in a strata manager in terms of his skill profile, registration, ability to enforce and so on? Have issues come out of it from your side of the industry? I will get responses from around the table if you do not mind.

**Mr Pental:** I would have to think about that. The market is so small here that it does not occupy much of my day. I guess we have been driven from the earlier comments about what licensing level should Gavin and his people get to. That sounds like the motivator for this. There is a big difference between small and large strata management. For us, the issues coming out of today's session will be completely different from what Peter Munday, who is recognised as an expert in the field, or the Blackburne and Joyce Property Group, which manages in excess of 5 000 properties, will experience. It is hard, without thinking, to say how tightly we would want licensing control to be.

**The CHAIRMAN:** Without necessarily saying precisely how tightly you want it controlled, do you think there is sufficient risk within the sector to warrant licensing or registration? Let us forget for a moment about where that threshold might be.

**Mr Pental:** What is the current requirement? There is not any is there -

**Mr J.J.M. BOWLER:** I could set up a business tomorrow

**The CHAIRMAN:** And operate a 50-unit or a five-unit property.

**Mr Pental:** Where are the issues? Are the issues at that level or are they with the strata owners, as Gavin was saying? Do we need to license people just for the sake of it?

**The CHAIRMAN:** It has been put to us for a couple of reasons. Let us take it as public risk and policy; we will divide the world into those two areas of thought. The State Government has the responsibility to see that where an industry operates, reasonable steps are taken to ensure that any consumer has a means of protecting himself against unconscionable behaviour. There is no doubt that some of our thinking is being driven by what happened with the mortgage brokers. There is no question about that. Some of the risk assessment we do in relation to strata management is held up against the experience of mortgage brokers and we are asking if similar things could happen in the area of strata management. The answer we seem to be getting at the moment is, in some cases, yes; it is possible for unconscionable behaviour on the part of strata company managers who can significantly defraud companies. The national experience is that that is not happening on a grand

scale. There is a risk; it is possible. The experience is that it is not happening on a grand scale, but a couple of significant indications show that a slice within the industry is doing it on a consistently low scale and, when the amounts are added up, it becomes quite significant. In Queensland, for example, one character is a well-known solicitor who was barred from working in New South Wales. He moved north of the border and set himself up as a strata manager. Both the police and insurance companies know that this fellow is pilfering about \$200 or \$250 per claim or expenditure from about 50 or 60 companies that he operates. When that is added up, this person is getting about a quarter of a million dollars a year. The amount is below a threshold at which either the insurance companies or the police can take action. Yet, when added up, it amounts to significant fraud, which is ongoing. If what we were told at a forum is accurate, there is no doubt in my mind that this is serious criminal behaviour. These types of people have worked out a way of staying underneath the radar and the level at which people will take action. Given the Western Australian industry profile, I suspect that we could probably find somebody doing similar things - perhaps not on the same scale. Given the laws of probability, we probably have a couple of people in this State who are either - through absolute incompetence - losing substantial amounts of money to commonhold companies or losing the money through criminal behaviour. My answer in relation to consumer risk - in answer to Mr Pendal's question - is that there is no great evidence of massive rip-offs but some possibility of sustained, small-scale losses.

**Mr J.J.M. BOWLER:** Apart from the corruption side of things, as you know society is becoming more litigious every day. We are following the American path. California is supposed to be the world capital for lawyers and people who sue. In California an action is being taken by a current unit owner of a strata title property. He is suing every former owner in the building because proper management did not take place. There was no sinking fund or reserves. It is now costing this person millions of dollars so he has taken everyone over the past 20 or 30 years -

**The CHAIRMAN:** In fact, he has succeeded.

**Mr J.J.M. BOWLER:** As soon as that happens over there, lawyers in Australia look at the case. There is no doubt that this problem will arise in Perth. Buildings facing us in the next decade -

**The CHAIRMAN:** Without being melodramatic about it, we will have buildings that might collapse and somebody will have to pick up the tab for it.

**Ms Murphy:** We do not have a strata management portfolio for that exact reason. I have heard second-hand about two cases in Perth already happening in which strata companies were never set up in the first place. Problems are now arising 10 years down the track.

**Mr J.J.M. BOWLER:** We are hearing suspicions of money disappearing here and there - nothing major at this stage. However, when the values involved are considered, people will take money. We are not so much worried about the corruption but about the element of bad management. Increasingly, pensioners and older people are moving into smaller strata title properties where they will live the last days of their lives. They could end up living a little longer than expected and, all of a sudden, find that they have no asset left after 20 years because of bad management.

**The CHAIRMAN:** Wayne, working our way around the table and continuing with our response to Allan's question, why would we? What is the rule against which this is being assessed? What is your view about the regulation of managers?

**Mr Walker:** The licensing side of it is a problem to us. We are a new agency and we have stayed out of property management because -

**The CHAIRMAN:** Do you refer that business on?

**Mr Walker:** Yes, most of the time. Strata management -

**Mr J.J.M. BOWLER:** You would sell the properties but then refer the people to Gavin or someone else?

**Mr Walker:** At this point we do, mainly because we are new and trying to get into the industry. Therefore, we do not want to have too many problems, and strata management is a problem.

**The CHAIRMAN:** Your risk assessment in business development is that without all the tools and the base, Gavin, or someone like him -

**Mr Gilmore:** Maybe I should be getting out of the business.

**Mr Walker:** That is where the training comes into it.

**The CHAIRMAN:** We will get back to that. In terms of your risk assessment of potential problems that can emerge from the management of company, you do not want that sort of business as a real estate agent at the moment and you see the importance of having a specialist in the area. What do you expect with their registration and their operation as a professional group?

**Mr Walker:** Having dealt with Gavin and others, I will probably continue to deal with Gavin mainly because a property manager can, all of a sudden, become a strata manager. We are all sitting at this table for a particular reason and it is not as simple as property management. That is the bottom line of where we are coming from as an agency and where I am coming from as a principal.

**The CHAIRMAN:** Do you see yourselves more as asset managers in a more complex system?

**Mr Walker:** As the property managers they are. If an investor wants to buy a strata property, that is fine; we are selling something. The ducks are in a line behind the fence.

**The CHAIRMAN:** That is a good point. If you are selling something, does that mean that being able to show that a property is part of a well-managed company becomes an important selling point?

**Mr Walker:** It also becomes our problem.

**The CHAIRMAN:** However, you can say to a buyer who is after a strata property, "We have five here for sale. Two are in small two or three-unit groups and we have a couple in larger groups. One of the nice things about this one and not the other is that this one is well managed as a strata company and that one is not." Would you say that at a point of sale?

[10.30 am]

**Mr Walker:** We can. If the investor is astute enough, he will make the decision himself. He would not go down that path.

**The CHAIRMAN:** Not without a good company manager.

**Mr Walker:** Not if he cannot get the relevant information.

**The CHAIRMAN:** Lindsey, what about you and Gavin and members of his ilk?

**Ms Murphy:** I refer my inquiries to Gavin because I know that he will look after them properly.

**The CHAIRMAN:** If Gavin is the perfect example and we made a cut out of him -

**Ms Murphy:** Gavin has bothered to read the Act and find out exactly what the requirements are. He does not just take on the work for the money, which, of course, he must do, without having the required knowledge.

**The CHAIRMAN:** He knows the Act. You expect that from a strata manager. Is there something about the way he reports or his accountability? Have you been impressed with his involvement in mediation? Are there any other aspects of the manager's job that causes you to believe that he is a good operator?

**Ms Murphy:** I have not needed to experience much of that. However, when I was dealing with strata titles in another company I used to work for, I would often ring Gavin for advice and he

would always point me in the right direction. That is how I know he knows what he was talking about.

**The CHAIRMAN:** Margaret, did you want to add anything to that?

**Ms Boyden:** I have always worked in the area of property sales. In the past six months, 30 per cent of properties we have sold have been strata properties. Of those, only 10 per cent have been more than three units. We have sold mostly duplex halves, or one or two units of a three-unit property, of which the strata insurance and strata management falls back on the owners. They do not need strata company management.

**Ms Murphy:** Are they mostly owner-occupiers?

**Ms Boyden:** Yes.

**The CHAIRMAN:** Are they are mostly owner-occupiers who have very limited common-property issues, if any at all?

**Ms Boyden:** Yes.

**Mr J.J.M. BOWLER:** If the regulations were introduced, particularly above a certain threshold, would that mean would it be more or less likely to encourage people into the industry?

**Mr Pandal:** The situation would not change for me. Our business is only driven by the fact that there is not a big strata property management market. With regard to the issue of demand on human resources, if a company managed five buildings, it might be able to find someone to manage them. A company that managed 25 properties would need to devote someone's time to manage the properties. A company that managed 45 properties, would have to devote half a person to the task. A company that managed 80 properties would devote one person to deal with them.

**The CHAIRMAN:** Would the company need to have a significant volume -

**Mr Pandal:** Exactly.

**Mr J.J.M. BOWLER:** Would a change in the regulations not alter anyone's stance?

**Mr Walker:** It would depend on our office structure. However, as it currently is, it would not change our stance.

**Mr J.J.M. BOWLER:** Lindsey, would it make a difference to you?

**Ms Murphy:** No.

**Mr J.J.M. BOWLER:** Some concerns from the point of view of the goldfields relate to not only this issue, but also issues of providing the right training and employing the right people. Gavin, you have been lucky to date. However, if suddenly an employee had to meet certain standards so that you could keep your licence, which might involve extra costs such as sending the employee to Perth for training and so on -

**Mr Gilmore:** That would be less of an issue because I employ someone who I would direct to conduct that training. Nowadays, property managers must undertake a course to obtain a licence. We already face those issues. Every new sales person we employ must pass a sales course. We will always have to face those continuing issues. It is not very different whether it involves property or strata management. I do not see licensing per se as being the answer to everything because some very good people who would probably do well in the industry would not need to go through that hassle of getting a licence.

**Mr J.J.M. BOWLER:** I will stop you there. The regulations might stipulate that people who are not licensed could not operate.

**Mr Gilmore:** That is right. I have just taken over the management of a property that was run by a company in Perth. The owners of that property basically gave that company the flick. That was a

difficult decision to make; it is not easy to offload a strata manager. The owners came to me. I helped them through that and we went through the issues -

**Mr J.J.M. BOWLER:** Was the property in Kalgoorlie?

**Mr Gilmore:** It is a strata-managed property not too far from here. When I eventually got management of it, I discovered that a \$7 000 water account was outstanding. Under the Act, all documents relating to the property have to be handed over within a week. It has been about four or five months since I took over the management of that property, and I have not received anything. I have no idea about what levies have been left unpaid; it is a nightmare. The previous manager should not have been a strata manager.

**The CHAIRMAN:** I will go back to Allen's question about why we are conducting this inquiry. That example raises significant governance issues for that company, because it has failed to deal with even the immediate past exposure of operating expenses. I will guarantee that there will be a risk in terms of reserves or sinking funds with regard to that property.

**Mr Gilmore:** Very much so. The other issue it raises is that the people who purchase the property will automatically inherit a risk that is not theirs.

**The CHAIRMAN:** That is right. That is the point John made about the court case that triggered an understanding that there is a continuing obligation on every person who has had the right to use and enjoy a property over time to pay or set aside appropriate amounts to cover the good maintenance of the property.

**Mr Gilmore:** This was not an issue of good maintenance; these things should have been covered by the usual maintenance.

**The CHAIRMAN:** When I say "good maintenance", we know that after 20 years, properties will need substantial structural maintenance and remedial asset management, which will involve some expenses. The point John has made is that some case law has been dabbled with in New South Wales. When that becomes part of the common law or property law parameters of Australia, all strata property holders will expect to have to contribute to reserve funds.

I will use an example of larger properties that require a property manager. Hypothetically, we will assume that two or three-unit properties will not need any management. Units of four to 10 units will require a level of management about which we talked earlier in terms of their ability to set up an ongoing and light touch management system. However, the more expensive units will have to be managed as though they are operating companies and the managers will have to pay attention. What do you think of the idea of a form of trust account not unlike the real estate trust account? It could be a central account or it could be held by each licensed manager. I am open to suggestions and discussions on that matter. All the indemnity of the industry would be drawn from that fund and, possibly, some of the regulation and enforcement. For example, the Government of New South Wales skims 0.2 per cent of interest earned on those types of trust accounts to pay for regulation, mediation and arbitration services. What do you think of that scheme?

**Mr Gilmore:** That is probably where I would prefer the industry to go rather than impose a strict licensing code that would require property managers to pass certain educational qualifications. I would prefer to have a board not dissimilar to the Real Estate and Business Agents Supervisory Board whereby the board could immediately deal with and take control of issues that arose. If that resource were available to those owners of the property about which I referred, the issue would not have dragged on for two or three years. It would have been fixed quickly because the board would have quickly dealt with the matter.

**Mr J.J.M. BOWLER:** If there is no regulation, how could it be policed?

**Mr Gilmore:** I am not saying that we should not have regulation. I do not see a great need for strong educational standards to be met to gain the necessary licensing requirements.

**Mr J.J.M. BOWLER:** Real estate agents need licences.

**Mr Gilmore:** Yes.

**Mr J.J.M. BOWLER:** What is wrong with requiring strata title managers to have a similar licence?

**Mr Gilmore:** Accountants do not need to obtain a licence. We are one of the most strongly regulated industries. The issues that real estate agents have to go through in order to survive are far different from anyone else. I do not want that to occur. However, I see the added value of having a controlling body that can control the industry. Therefore, it would be in a position to sort out problems when they occur. By just adding regulation upon regulation to have this and that licence -

**Mr J.J.M. BOWLER:** What power would the regulatory body have if the property manager was not required to have a licence? What could the regulatory body do to that person?

**Mr Gilmore:** I am not saying that property managers should not be licensed; they should not have to meet certain educational requirements and other issues. Real estate agents have to pass a course and serve two years in the industry. I do not consider that to be a negative requirement. Real estate agents have to cope with other issues. We are required to sit in our front offices for five days a week. No other industry has that type of requirement. We cannot go on holidays for more than a month without getting permission.

**The CHAIRMAN:** A lawyer from New South Wales, who is also a significant asset manager, made a proposition to the committee along similar lines. He is dealing with very large and complex strata companies. He described a building that contained a basement car park, part of which was comprised of public and private car parking. Retail stores occupy the first three floors of the building, a hotel occupies the next eight floors and above that are 10 floors of private units. Some of the units were owner-occupied, some were investments and some were held for corporate entities. That building is a single asset that has to manage all those different interests and perspectives about how the machine should operate. I gave that example to describe the level of complexity that the lawyer had to deal with. He argued that there should be a minimum level of regulation. He said that the failures in the industry are as much the result of fools as of criminal mismanagement. Governments cannot regulate against fools. I have some sympathy for that argument. How do we protect the consumer from the fool? Does giving a licence to a fool make him appear credible and then expose consumers to a risk, which, on the face of it, they might not have assessed because the fool was registered? Does registration give the impression of professionalism?

**Mr Gilmore:** That is a good question. I suppose the answer to that is that non-registration obviously has not fixed that problem.

**The CHAIRMAN:** That is right. People are still making judgments, but they are doing it on the basis of hearsay. We have already heard this morning that a number of people in the real estate industry would go to Gavin or to another strata manager that they know has some standing in the community, because they know those people maintain a high level of skill.

**Mr Gilmore:** The problem with that is that it is contained within the industry, which is fine; however, that would not necessarily occur outside the industry. The average person who owns a strata property would not know me if they fell over me. People might know me, but they would not necessarily know that I manage strata properties. Hearsay will only benefit the clients of the agents in this room because those agents send work in my direction.

[10.45 am]

**The CHAIRMAN:** What about the proposition - I am playing the devil's advocate - that you cannot protect people from fools? We can protect people from criminal behaviour by regulating against it, but we cannot regulate against foolishness.

**Ms Murphy:** How did this person define a “fool”?

**The CHAIRMAN:** A person who is incompetent.

**Ms Murphy:** Did they have the ability to pass the licence?

**The CHAIRMAN:** They passed a licence test of some form and appeared to maintain professional development, which is the requirement for ongoing registration. They must undertake one course a year and attendance is all that is required. In terms of managing a complex asset and machine, which is what a big building with complex interests becomes, they had no idea.

**Mr Gilmore:** The reality is that I would not be able to manage that property either.

**The CHAIRMAN:** You would not put your shingle out to do it.

**Mr Gilmore:** No, I would not consider it.

**Mr Pendal:** You cannot do much about it. Some guys who have a four-year university degree are absolutely incompetent.

**Ms Murphy:** All industries have their fools. What can be done? It is human nature.

**Mr Gilmore:** Surely that comes back to the fact that if we had a regulator who was able to act, to some degree he would solve the problems. Whether a person was licensed or not, at least a regulator would have the ability to move in -

**Mr J.J.M. BOWLER:** How could he act if there is no licence requirement?

**Mr Gilmore:** I am not saying that you would not have an Act of Parliament. An Act of Parliament would provide such a person with certain regulatory powers, similar to real estate agents.

**The CHAIRMAN:** The guy in Sydney who made the comment said that the saving grace for the New South Wales system is that the system is funded by skimming off the interest rates to fund mediation and arbitration. If somebody said they had a fool for a manager and had a problem with how the company was being run, they could request mediation. Under the New South Wales Act, it is compulsory that a person attend the mediation session or else they are in breach of the Act. If mediation fails they move to compulsory arbitration, which has the capacity to enforce participation. Failure to participate breaches the Act and puts a manager's licence process at risk.

**Mr J.J.M. BOWLER:** At the end of the day, what action can be taken against a person who does not have a licence?

**Mr Gilmore:** I am not saying that they have to have a licence. I am saying that we do not have to go through a protracted educational standard to achieve a licence. Obtaining a licence might be relatively easy, but presently there are no enforcement mechanisms.

**The CHAIRMAN:** Are you suggesting a lower-level licence threshold that contains clever intervention and enforcement strategies?

**Mr Gilmore:** That is correct.

**Mr J.J.M. BOWLER:** And different levels of licensing?

**Mr Gilmore:** There is no way I could walk into a 100-storey building and manage it. That is not logical. If we are talking about licensing strata companies in most of the regional centres, we would be similar. There are not many multistorey-type buildings - they are predominantly ground floor buildings - or more than 30-unit properties.

**Ms Murphy:** Would you also suggest different licences for commercial and residential properties?

**Mr Gilmore:** I manage five commercial properties. Again, they are only ground floor properties. Most of them are five or six-unit type developments. There are some maintenance issues. The

goods and services tax is the only applicable factor that differentiates between commercial and residential properties. There is more work involved in that regard.

**Mr J.J.M. BOWLER:** A town like Kalgoorlie is big enough to have someone like Gavin. I understand that Brown James and Associates also has a few. However, in a smaller town there are not enough of them for real estate agents to specialise in. Therefore, if the licence requirements are too onerous, some of the smaller towns would never be able to comply. That would create problems for the people selling properties. If no-one locally can look after the property you would have to go to Perth, which would involve extra costs and hassles. I take the point, which has been raised several times before, that if we proceed down the licensing road, different standards would require different levels of expertise.

**Mr Pental:** If a person has the registration to sell a property - it is not regarded as a licence - as a registered sales person, they can sell residential or commercial properties. Usually commonsense prevails in the industry. The majority of people sell residential properties, because there are more to sell. Very few become involved in commercial properties and seek the expertise from outside. That is how it would have to be done. For example, if Gavin and his person had to gain dual registration, it would be a pretty onerous task when he might be managing only a small number of commercial properties. There is no doubt that the driver is not in the complex changes in the type of development, but in its size. That must be the driver to determine the level, whether it is 10 or 20, nought to five, one to five, two to five and then six to 20 and over 20.

**Mr J.J.M. BOWLER:** Firstly, we do not have a regulation.

**Mr Pental:** Exactly. We are probably not in the best position to make a recommendation - Gavin would probably be able to answer this better - about whether it should be two to five, six to 20 or 20 plus. There would be far more experienced people in Perth who are better placed to answer that.

**Mr Gilmore:** I would have thought that as soon as you deal with multistoreys - I do not mean townhouses but four or five storeys and upwards - that that would probably require a separate -

**Mr J.J.M. BOWLER:** Even though it might only be 10 units. It starts to become complex when there are 10 three-storey units.

**The CHAIRMAN:** The roof on top becomes important to everybody.

**Mr Gilmore:** And the structure on the bottom becomes just as important to the bloke on the top as it does to the one down below. Such properties would require a greater level of expertise than 20 ground floor units. All one would really be worried about is the maintenance of the gardens.

**Mr Pental:** We started to talk about regulations, licences and boards. I am not sure that we need another board at the moment. There are more boards in this town than there are normally. That is being reviewed at the moment. If the Government were to take that direction and limit the number of boards - and gives them access to seek outside expertise for particular hearings - that is the way to go. I would have thought that what appears to work now with what the real estate board earns out of trust moneys to do its administration - I have spoken about this before - would be the logical way for strata management to go. The funds could be put into trust and the earnings would administer and manage over the top -

**Mr J.J.M. BOWLER:** Would you put it under another section of REIWA? That is, rather than create a whole new board, REIWA would handle it because it has the expertise in real estate, but it would have its own special section rather than a whole new structure.

**Mr Pental:** It might not be there in 12 months time.

**Mr J.J.M. BOWLER:** Why?

**Mr Pental:** Whatever you blokes decide.

**Mr J.J.M. BOWLER:** Something.



**Mr Pental:** That is right. If it goes to what has been suggested, it will follow that, certainly. Given the way our board stands today, I would not create another board. I would give that board access to the expertise to help administer and regulate it.

**Mr J.J.M. BOWLER:** Would there be a conflict of interest?

**Mr Pental:** I do not think so. I might have to think about that; however, none is apparent.

**The CHAIRMAN:** None that could not be covered with a declaration.

**Mr Pental:** That is right. It seems to me that the number one issue - now that we are over 30 years into it - is the issue of maintenance. That is the driver. It does not matter whether a pensioner buys a property or whether a newly married couple buys a property. There is no difference. We have to protect them from some of the enormous costs that have been incurred by previous owners.

**Mr J.J.M. BOWLER:** Eventually, there will be building replacement. Pensions might buy a unit thinking it will be there for the rest of their lives, but the rest of the unit holders, particularly those on the ground floor, might feel the need to redevelop and have a different view about the local real estate scene. If they want to demolish the building and redevelop the building, the pensioners must go along with it. There are no other funds to buy the new building. Their share of the land value would go nowhere near buying them a new unit anywhere else.

**The CHAIRMAN:** Alan, in some ways you have put your finger on the second motive for the inquiry. Everybody has acknowledged, and understands, the consumer risk aspect of it; that is, with mortgage brokers we all understand that poor or criminal management allows for people to be ripped off and to lose their money. The other issue is public exposure, because ultimately that is what it becomes. The total value of the assets is \$28 million. Even if 0.1 per cent was at risk, it is significant public exposure. Some people have suggested that the exposure is higher than that. I started thinking that we should have no regulation. I am now of the view that we must achieve a long-term protection of assets and individuals. It is not only public health but also public moneys that is being exposed. Gavin, do you have any comments to make about the reserve fund? Are there difficulties in establishing and maintaining them? In one case you talked about unit holders owing \$2 000 after four years. I imagine that reserve funds would probably be slightly less than that, but probably something in that order. Over time you could end up with some unit holders seriously exposed and refusing to pay.

**Mr Gilmore:** The interesting thing with Kalgoorlie is that we use evaporative air conditioning. Some of the roofs are rusting out because individual unit holders are not maintaining their air conditioners, which has created a problem. If in a complex of 10, three people have not done the right thing and the other seven have, we would have to say to the other seven "That is tough mate, you will have to pay for Huey's new roof". That is what is required under the Act. In just about all of my strata properties, there are no reserve levies, partly because we are a transient town and people do not hold them long term. They all have short-term views about where they are going and they will only own a building for between four and five years at the most.

**Mr J.J.M. BOWLER:** Someone somewhere down the track will be loaded with the whole lot.

**Mr Gilmore:** Yes.

**The CHAIRMAN:** I again refer to the court case in California, the legal principles of which are flowing to the New South Wales court system and ultimately to the rest of the country. Do you see a need for enforcing reserve funds?

**Mr Gilmore:** I would prefer them to be compulsory. However, if they are made compulsory, how do we stipulate how much? It is fine to have a compulsory reserve fund of \$50 a year, but nothing would be achieved. I do not know how it would be enforced. The other issue is that five-lot unit owners are responsible for their own maintenance. The law stipulates that they cannot have those type of maintenance issues.

**Mr J.J.M. BOWLER:** Five-lot units on the ground floor.

[11.00 am]

**The CHAIRMAN:** It is not uncommon to have a four-unit block in the metropolitan area in which two units are upstairs and two are downstairs.

**Mr Gilmore:** It is uncommon here. Most of the two-storey units occupy the ground floor and upstairs in one dwelling. Even though the building may have two storeys, it may be owned by only one individual. Again, those things will change over time.

**The CHAIRMAN:** Absolutely. Is there continuing pressure for increasing the densities in Kalgoorlie?

**Mr Gilmore:** Over the past four years, because we have had a downturn in the industry, there has been no pressure on building at all. However, prior to that there certainly was pressure, with many one and two-bedroom complexes being built. Again, the majority were ground-floor properties with up to about eight units except for the six complexes built along the Great Eastern Highway, which contain about 20 or 30 units.

**The CHAIRMAN:** Were they built quite recently?

**Mr Gilmore:** Yes.

**Mr J.J.M. BOWLER:** Who manages the ones with the pools and the compounds?

**Mr Gilmore:** Brown James manages the three with the pools. I manage the older one across lot 3, which is the one that has the problem and which I have taken over. That is the complex on the same side as the Caltex service station. As you are driving out it is on the left-hand side. The Sandalwood Corporation Pty Ltd built that complex. The strata manager looking after that property had a relationship with Pav Linovich, which is where all the issues have arisen from.

**Mr J.J.M. BOWLER:** A developer may retain an interest in a strata titled complex but sells off a minority of the units. The people who buy those units are then subjugated by the original owner who might have kept 60 per cent of them or have an interest in more than half and want to do something that the rest of the owners do not. The minority owners are then railroaded into what the developer wants to do, are they not?

**Mr Gilmore:** They are and they are not. Disclosure statements must spell that out. It is at that point that an owner becomes aware if there is an issue with the property. You can fill out a disclosure statement, but most people do not read them anyway.

**Mr Pandal:** That must be trading without dissent then?

**Ms Boyden:** They do not read the disclosure statement.

**Mr Gilmore:** They only want to know how much it is for the property.

**Mr Pandal:** We have had that situation, as you know, with the industrial or commercial property here. It has in the order of 35 factory units or whatever. The issue was that the developer maintained ownership of most of the units most of the time. I do not know about today. However, his non-performance was an issue to other owners. It is now at the stage where the other owners have lost significant sums of money. The ones who have not lost money have done so only because they have not sold their property yet. Their asset values have decreased by half, in some cases more.

**Mr J.J.M. BOWLER:** How can that be overcome?

**Mr Pandal:** With difficulty. We have operated under the Act and, in some respects, we have got by to date with a fair bit of luck.

**Mr J.J.M. BOWLER:** That is the general consensus.

**Mr Pental:** People have got together and said that the roof or the gutters have needed painting and eventually they have raised the money to get the job done. My father sits in on one of these meetings at which he listens to people arguing over what colour paint will be used and the threat that one person will use a certain colour. I am sure that goes on in every second strata meeting for those 20 and 30-unit developments. Generally, they are worked out by luck. Many of those decisions are made around the table by consensus and saying that "this is the best thing to be done". There is nothing to enforce them to do it. It will not be an easy to deal with that issue because strata developments are so different.

**Mr J.J.M. BOWLER:** The luck will run out. The strata title industry is so new in Western Australia that the buildings involved are relatively new. However, over the next 10 or 20 years many of these buildings will come to the end of their life and that is when the proverbial will hit the fan.

**Mr Pental:** Market conditions and forces will control it to some degree. If you buy a house that is 60, 70 or 80 years old and you think the life of that house is not terribly long, you will then buy accordingly.

**Mr J.J.M. BOWLER:** However, in the case of a block of units or a major develop, one person's view on the life span of a building might be different from the view of the majority.

**Mr Pental:** Those people will sell and that buyer might decide not to own the property in 10 years time. Attitudes will control that. It will have its own difficulties because a number of people share the same problem. The first issue is every day maintenance, although that can be overcome. I know of a 34-unit strata development in Perth that does not put money aside for any maintenance reserves. It has external painting to do that will cost about \$45 000. I am looking at buying one of the units and the agent told me that I could be up for a \$1 200 or \$1 300 special levy to do the painting. I accept that that is part of the deal if I decide to buy the property.

**Mr J.J.M. BOWLER:** You accept it but what about the man who refuses to pay the levy? What happens if 10 of the neighbours refuse to pay up and you are up for another \$50?. What do you say then?

**Mr Pental:** It must be foolproof. The only way to do it is to legislate for a reserve fund. I do not know how they could not have a reserve fund.

**The CHAIRMAN:** Plenty of them do not.

**Mr J.J.M. BOWLER:** Gavin agrees that there is a need for a sinking reserve, but at what level is that imposed? From the sales point of view, people should know about that, even if it is for the protection of the sales person. If buyers thinks you have an adviser, they might come back 10 years later and say that you never really told us this and they will get you for this because they have been got -

**Mr Gilmore:** The amount is the issue.

**Mr J.J.M. BOWLER:** We have already received suggestions on how that can be overcome.

**Mr Pental:** Let us create another industry and knock another one per cent off the unemployment rate. We will have a specialist team that goes around and makes that assessment.

**Mr J.J.M. BOWLER:** Only in Kalgoorlie!

**Mr Pental:** It will happen. If they are forced -

**The CHAIRMAN:** Can that be put in writing to the committee? I think that is brilliant!

**Mr Pental:** If people are forced to put away a certain amount of funds and they do not have the expertise, they will get some independent person to do it; that is what will happen.

**The CHAIRMAN:** Does anybody else have anything they want to raise with us in finishing off?

**Ms Boyden:** If we are talking about trying to cover pensioners and young people, at what price will the sinking fund be set? Will it be \$1 000 a year? Those people might say that they cannot afford it. Where will the pensioners come from? Will the kids of those pensioners have to pay the cost? If those people buy an individual property that is 40 years old with wiring that is not that flash and guttering that is falling off, they can live with that. Maybe it will get to the point where they do not buy a strata property and prefer to buy their own home where they can let the guttering fall off. When Sanderson came to town, he said people will tend to buy strata rather than individually titled properties because a governing body of strata companies will keep those 10 or 20 units looking nice on the street and they will be a good asset to sell later. However, will it be too expensive and -

**Mr J.J.M. BOWLER:** It will depend on the age and style of the building. If a person buys a brand new strata property, after so many years the percentage of whatever - the rates or the value of the building - may increase slightly.

**Ms Boyden:** Therefore, if a new buyer comes in and the building is already 10 years old, the next minute he might have to put \$5 000 into the fund \$5 000 annually. Does the house get rebuilt when it is 70 years old? The owner who buys it when it is 70 years old must do major renovations or have bought it for block value and decided to knock it down.

**The CHAIRMAN:** That is right. If it is not a single unit, people end up with serious difficulties.

**Mr Gilmore:** Obviously, if a reserve fund levy is in place from day one, it is not such an issue.

**Mr J.J.M. BOWLER:** A fund should be started at the beginning, even though not much will be have to paid then. Interest will accrue and build up. After 30 years an owner will not be hit with a lot to pay because of the reserve sinking fund. However, if the fund has not been there and, all of a sudden, a property is bought after 30 years, people must start paying into a sinking fund or they do the "Allan Pandal" thing and pay up front in one lump sum, which could amount to a lot of money. If everyone else has been paying over the life of that building, then the individual payments, if they are one-off, or the payments into a sinking fund should not be as great.

**Ms Murphy:** Are there restrictions on what the reserve fund moneys can be used for? Can the money be frittered away by pulling out the front garden and put in a nice rose bed?

**Mr Gilmore:** From the owner's perspective there are no real controls. The money is supposed to be used for the long-term maintenance of the building. However, the Act does not really -

**Mr J.J.M. BOWLER:** Some people have been using those funds to improve the building, but the funds are not designed to do that. No-one really cares too much about that. However, if the building is substantially changed and millions of dollars are spent rebuilding it, that could be questioned. If the building is just remodelled to give it a 1990s look, people do not mind.

**The CHAIRMAN:** There is the prospect of that happening. We were given one example in which the body corporate decided to spend some of its reserve fund on putting in lifts, renovating a facade and changing the aesthetic of the buildings and landscaping at the front. All that would have served to increase the asset value of the current holders. However, using funds that had been sunk by previous owners to deal with serious maintenance over the 15 or 20-year such as replacing the roof and so on -

**Ms Murphy:** That was my concern. How is the money spent and is there any regulation on that?

**The CHAIRMAN:** It was possible that the present owners had robbed future owners of that which previous owners had contributed to the building.

**Mr J.J.M. BOWLER:** Going back to Allan's question about whether there is a need; there does not seem to be a need but in 10 to 40 years time there will be a need and people then will look back and ask why was it not dealt with, because it will be too late by then.

**Mr Pandal:** Are you talking about the need to review the whole Act?

**Mr J.J.M. BOWLER:** Yes, and to plan for the future of the strata title buildings.

**Mr Pental:** The review of the Real Estate and Business Agents Act should be conducted simultaneously because poor parts to that Act have not been addressed. For example, if one of our staff is involved in defalcation, we go to jail.

[11.15 am]

If I were a bank manager and a teller pinched money, I would not go to jail. As Gavin stated, we have to be in the office. That does not make it any better. The thing that is most effective when you are not in the office is the business and not the trust account. Money can still be pinched from the trust account whether or not we sit in the office. This would be a great opportunity for someone to review our Act and to straighten out some of the problems at the same time. I have a few other issues, but I will not bore members with them at this meeting.

**Mr J.J.M. BOWLER:** Go and see your brother!

**Mr Pental:** He does not know which side he is on.

**The CHAIRMAN:** He seems to know most of the time.

The committee resolved that this would be a forum with the same privilege that applies to a hearing. A resolution was passed giving witnesses protection; therefore, my earlier comment about the mumble does not matter.

**Mr Gilmore:** I thought I had seen it, that is why I was not worried.

**The CHAIRMAN:** It is covered by privilege. I have been pleasantly surprised by the conduct of this inquiry. I thought we would be discussing the driest subject in the world that anybody has ever discussed. However, there are many human and economic issues running in and around this area. We cannot deal with real estate and people's lives - I am sure you know this because of your profession - without being drawn into the fact that we are dealing with the very essence of people's values and aspirations for daily life. I will ask the local member to formally close this meeting. Thank you all very much.

**Mr J.J.M. BOWLER:** Thank you all for coming. When I first discovered that we were conducting this inquiry, I shared Alan's opinion and wondered whether it was needed. Half an hour into the hearing, I realised it was needed. As Alan says, up until now we have been lucky in Western Australia. However, that luck will not continue. If we do not do something about it now, it will affect a lot of people, particularly Chubby, Alan and Margaret Boyden, who do not administer the strata title industry but who sell properties in it. They do not want people coming back to bite them on the bum needlessly sometime in the future. Thank you for coming. I am sure that your evidence will help make the industry better in the long run.

**Committee adjourned at 11.18 am.**