

ECONOMICS AND INDUSTRY STANDING COMMITTEE

*Eleventh Report — “Inquiry into Ironbridge Holdings Pty Ltd and other matters
regarding residential land and property developments” — Tabling*

DR M.D. NAHAN (Riverton) [11.03 am]: I present for tabling the eleventh report of the Economics and Industry Standing Committee entitled “Inquiry into Ironbridge Holdings Pty Ltd and other matters regarding residential land and property developments” and submissions.

[See papers 4548 and 4549.]

Dr M.D. NAHAN: On 15 June 2011, the Legislative Assembly requested the Economics and Industry Standing Committee to determine its terms of reference for an inquiry into problems relating to the Tuarts estate, Dalyellup, and the wider implications of similar problems in Western Australia. The Assembly’s referral resulted from a motion moved by the member for Collie–Preston about numerous complaints concerning Ironbridge Holdings Pty Ltd and the failure of it to deliver fencing and landscaping packages included in contracts of sale at the Tuarts estate. The committee advised the Legislative Assembly of its terms of reference for the inquiry on 18 August 2011.

Land sales in residential subdivisions in WA normally include fencing and landscaping packages as part of the land sale. It is the normal practice; it is a win–win for both parties. Developers offer these incentives for a variety of reasons, including to control and expedite development of the overall amenity of the estate, to demonstrate the quality of the estate, and to attract people to it and subsequent subdivisions. Land purchasers widely take up these packages because developers can do the work at a lower cost and it can be completed more quickly. Many of these subdivisions include first home buyers who are a bit cash constrained when they move in. As I said, it is a win–win for developers and purchasers.

Over 10 000 subdivided blocks are sold in WA each year. Most purchasers have fencing and landscaping packages included. Historically, there have been very few complaints or evidence of failure by developers to provide fencing and landscaping packages on a timely basis. The global financial crisis significantly impacted on developers. It impacted on cash flow, asset and land values, access to credit, and tighter credit conditions. Despite the severe impacts of the GFC, most developers have delivered on their fencing and landscaping packages during the period up to today. However, a few failed to deliver after 2008. The most significant failure arose in the Tuarts estate, Dalyellup, developed by Ironbridge Holdings Pty Ltd. The Tuarts estate sold 253 lots in the first two stages, 207 of which qualified for incentive packages. As of 11 November 2011, 140 fences still required painting, 74 landscape packages were outstanding, and 16 reimbursements were awaiting payment. In addition to the Tuarts estate, the Department of Commerce’s Consumer Protection Division received 19 complaints related to blocks. There might have been more, but it received 19 complaints. These 19 complaints related to five developments other than the Tuarts estate.

The impact is serious. Many first home buyers who move into a house are cash constrained and reliant on developers to meet their contract to provide necessary facilities; and, if they do not have them, they often cannot provide them themselves because they do not have the cash or they have to forgo fittings in the house. It also decreases the land value. Particularly during the GFC, people bought houses and might have chosen to on-sell, but they could not do so because of the undervalued or poor amenities on not only their block, but also the adjacent ones. If there are no lawns, dirt is brought into the house, which particularly impacts young families. No fencing means the dog is not allowed out or, more importantly, the kids cannot play in the yard. It is a significant issue and is not to be undervalued.

Notwithstanding the serious impact on homeowners who did not have their contracts fulfilled, and despite the impact of the GFC, the problem is not widespread. Land sales in WA are mainly from large multi-estate corporations such as Satterley and Peet, to name two, who have a strong commercial incentive to maintain their reputation and deliver on contracts, and they have done so. Based on the evidence before the committee, it is the committee’s view that the late or non-delivery of incentive packages by land developers is not a systemic issue in Western Australia—it relates to only a few incidents. It appears the problem lies with third-tier developers, some of whom have questionable ethics. Recreation Estate in Eaton, north of Bunbury, which was developed by Recreation Drive Pty Ltd, had 50 lots, of which 40 failed to receive landscaping packages. Recreation Drive went into receivership and is insolvent. It did not deliver on its packages because of that. The proponents behind that development made it clear to us—which I personally accepted—that they sold their houses and farms, but they simply did not have enough cash behind them. They did the right thing. The wrong thing was to go bankrupt; but the right thing was to liquidate their own personal assets to meet investment obligations.

Ironbridge Holdings Pty Ltd, which had the largest number of complaints and failures to deliver, continues to operate. Accordingly, Ironbridge was the main focus of the inquiry. I will not say that I personally believe that

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

the Ironbridge proponents operated in an ethical and appropriate manner. Ironbridge, like other developers, ran into serious cash flow problems during the global financial crisis. It is clear to me that Ironbridge has been on the brink of insolvency since 2008. For example, Ironbridge did not lodge financial statements with the Australian Securities and Investments Commission by 31 October in 2009 and 2010. Ian Wallace, the director of Ironbridge, agreed that these delays were, in part, related to his inability—or, more precisely, his reluctance—as a director to sign a declaration of insolvency at the time. Ironbridge has been repeatedly brought before court over the past few years, and most recently this week, where its solvency was in question. Nonetheless, it remains solvent and in operation.

Ironbridge repeatedly made commitments to meet its fencing and landscaping obligations and repeatedly failed to meet these commitments in a timely manner. This has resulted in damage to homes from sand, caused anxiety over the security of unfenced yards, and created friction between residents over the general amenity of the estate and a potential decline in land values. It also generally undermined people's willingness and safety in buying houses and subdivisions. Ironbridge's outstanding fencing and landscaping obligations in the Tuarts are significant and remain significant. Ironbridge's poor communication and handling of complaints have been compounded by the company's unfulfilled commitments to residents and the Consumer Protection Division as to when works would be completed. Residents of the Tuarts expressed frustration with the costs, delays and complexities involved in seeking reimbursement. Ian Wallace, the principal of Ironbridge, claimed that the whole process was delayed because of the need and the demands on his cash flow to build a waste water pumping station. However, the committee did not accept this explanation. First, the waste water pumping station was always required. He chose to build it rather than wait for the Water Corporation to build it. He knew how much it was going to cost and he knew the time involved. In other words, he chose to build it, it was necessary and it should have been built into his plans. It was an excuse.

One thing that delayed the report was that while we were coming to a conclusion, we saw an article in *The Australian Financial Review* that said Ironbridge Holdings Pty Ltd had paid over \$1.6 million in dividends in 2009–10 to its shareholders. This was during a period when there were substantial outstanding liabilities on Ironbridge Holdings, not the least being to the people who had a right to fencing and landscaping. This was not disclosed to the committee in evidence before the article went to press. It was a material issue. We asked questions related to it and Mr Wallace chose not to disclose it. As it turns out, nearly \$1.8 million was paid in dividends to shareholders over 2009–10. The shareholders remain as Mr Wallace, his wife and undisclosed others; that is, entities owned for the benefit of Mr Wallace and his wife. The clear issue was that these dividend payments were made out of the retained earnings of Ironbridge Holdings. Mr Wallace claimed that they were used to defray the tax debt of him and his wife. He and his wife backed up Ironbridge Holdings and if they did not pay their tax debt, the whole house of cards would collapse. In addition to the dividends paid to Mr Wallace through various entities, Mr Wallace also confirmed that his daughter, Rachel Wallace, was a recipient of payments over two years totalling \$28 000 and she was not a guarantor or a shareholder of the firm or a guarantor of the loans to Ironbridge. In other words, it was a strong concern to us that the directors were taking money out of the firm to pay themselves to defray their own tax debt, unrelated to Ironbridge. At the same time they were choosing to take money for themselves rather than meet the obligations of the firm. We found that outrageous—not only the fact that it was done but that it was not disclosed to the committee in a forthright matter. The committee has concerns that the declaration of dividends by Ironbridge in the financial years 2009 and 2010 may have been in breach of sections 588G and 245T of the Corporations Act 2001. The committee also found out that Ironbridge declared another dividend of \$51 000 on 30 June 2011, which Mr Wallace advised was used to pay some of the living costs of the directors, who were not drawing a salary. In other words, even in 2011 they were taking money out for their own purposes rather than meeting the obligations of the firm. We found that rather outrageous.

The committee found Mr Wallace to be a very reticent witness. I am using the word carefully here. An example of this is his failure to disclose the declaration of dividends during his first appearance before the committee. When later asked why he neglected to mention this issue when discussing factors that impact on the company's cash flow, Mr Wallace replied —

There was no particular reason. I do not think I was asked and I am not sure that I would have remembered at the time anyway.

In other words, he would not have remembered authorising and receiving \$1.7 million in dividends. The committee found that hard to believe. Mr Wallace came to the hearings ill-prepared and apparently unable to answer questions about the operations of his company and his decisions as director. At the second hearing, which focused on dividend payments in 2009–10, Mr Wallace was unable to answer the majority of the questions and had to take them on notice. The committee noted that on numerous occasions Mr Wallace's answers during the hearing were different from his response to questions on notice. Mr Wallace displayed a seeming reluctance to communicate openly and honestly to the committee. The same attitude has been experienced with residents of

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

the Tuarts estate, who advised the committee that Mr Wallace and other employees of Ironbridge had communicated poorly with them and broken promises to complete fencing and landscaping. He was not a good witness. I think that is the essence of the problem if he operates with the people he sold land to in the way he did with us.

The residents of the Tuarts estate felt let down by what they saw of the impetus of consumer protection and achieving outcomes. They sought assistance. In their view, consumer protection did not do very much. One of the reasons it was an incentive for all parties to keep Ironbridge solvent and out of bankruptcy was so it could keep operating and meet its obligations. It was in the interests of everyone—consumer protection, the purchasers of the land and I guess Mr Wallace—to keep the thing whole and solvent. In our view, consumer protection worked diligently to try to get Ironbridge to accept and meet obligations in a timely and effective manner. It was struggling.

Just like in a previous report of this committee, we found that the powers of consumer protection were limited but they have been substantially improved with the passing of Australian Consumer Law, which came into effect on 1 January 2010. Consumer protection will now be able to seek to have undertakings made at conciliation enforceable in courts. It cannot do so now. This should lead to improvements in future outcomes. One of the recommendations is that the Consumer Protection Division of the Department of Commerce should actively monitor the ongoing operations of Ironbridge Holdings. Should similar complaints emerge against the company for contracts signed after 1 January 2011, the Commissioner for Consumer Protection should act swiftly, using her expanded powers to seek and enforce undertakings from Ironbridge Holdings to instigate group action for failing to supply contracted items within a reasonable period.

At the hearings on 31 January 2012, Mr Wallace gave an undertaking that Ironbridge Holdings Pty Ltd would pay all outstanding reimbursements within a week and a half, and would complete all outstanding fencing installations and painting and landscaping within six months. He said that to do that, he went out and got money off a bank based on his assets. We were a little leery of those commitments; therefore, we recommended that if there is any evidence by the end of March 2012 that Ironbridge Holdings failed to meet the undertakings it gave to the committee on 31 January 2012 or failed to pay outstanding judgements from the Magistrates Courts, the Consumer Protection Division of the Department of Commerce should consider pursuing civil action on behalf of the affected residents against Ironbridge Holdings for breach of contract.

Given the evidence that has come to light during this inquiry, the committee had concerns that Ironbridge Holdings Pty Ltd's failure to disclose potential delays to residents who had entered into or settled contracts at the Tuarts estate may represent a breach of section 21(b) of the Fair Trading Act 1987. The committee refrained from recommending that the commissioner take action against that; however, under Australian Consumer Law, the powers applicable to land sales conducted after 1 January 2011 have been substantially improved and allow consumer protection to enforce civil pecuniary penalties, which allow damages to be sought as an alternative to additional fines. In other words, the ACL has improved the powers of the Department of Commerce in this case.

A couple of issues came up, including whether we should require all developers to take and keep bonds to meet their future liabilities relating to these obligations. Since there is a very small incidence of failure and the keeping of bonds would entail costs of indeterminate amounts, we thought it was probably not necessary. The Urban Development Institute of Australia, which represents most of the large developers around Western Australia, has a voluntary code of conduct and Ironbridge's actions would have violated that code of conduct. Membership of the UDIA would have helped enforce that code; the trouble is that Ironbridge is no longer a member of the UDIA and operates under no such code of conduct. Therefore, the committee recommended that the Minister for Commerce consider the implementation of the code of conduct for the land and property development industry under the Fair Trading Act 2010. That is a recommendation. Generally our land development industry is well behaved, and very tightly regulated I might add. The committee also thought that the Department of Commerce should propose an amendment to the Real Estate and Business Agents Act 1978 to ensure that the identities of the owners and directors of land and property development companies are lodged with the Commissioner for Consumer Protection and, following this, that the department conduct bi-annual searches of its registers to determine whether any former failed developers have re-entered the market under a different business name.

I am happy to say that the failure to meet additional contracts in land development is not wide scale, and that consumer laws have improved. It seemed to be a rogue developer, and he was not a good witness.

MR W.J. JOHNSTON (Cannington) [11.23 am]: I rise to speak to this report as well. I want to start by thanking our very professional committee staff who did another excellent job with this report. I would also like to thank the members of the committee, including the chair, the member for Riverton, for their efforts. I think that I speak for everybody when I say that this report became much more complex than we ever expected, and

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

the fact that we needed to call back the witness, Mr Wallace, three times, as outlined by the chairman in his address, demonstrates the added complexity to this decision.

I also want to thank the consumer witnesses who gave evidence to the committee; they gave us a great context. We were very pleased to go to Bunbury, close to where they live, to hear them so they could put their views; and they were very strong. If members want to get a sense of the problems of the people in the Tuarts estate, they can read through the transcript of our Bunbury hearing; it will be well worth the effort.

I would like to say that sometimes things go wrong, and we did find a number of people like the guy who ran Recreation Drive Pty Ltd, where they just got things wrong and they thought things would work out in a particular way and they did not. That is very unfortunate for the residents who purchased property in the Recreation Drive estate because they have a major problem. Sadly, this report does not give them any relief, and so it is with Olympic Holdings Pty Ltd in the eastern suburbs and a couple of other issues that we found around the place. However, as the chairman explained, this is not a systemic problem in the property development industry. We need to separate out those issues where people simply messed up from Ironbridge Holdings. I am not here to say that Mr Wallace is a criminal, but I am clearly saying he is a crook. When Mr Wallace owed \$1.5 million to his customers, he took \$1.68 million in cash out of the company to look after his own personal interests. Then, for two years, Mr Wallace refused to sign the declaration that is required by company law because he was afraid that the company was no longer solvent. When members read through the transcript of evidence, they will see that is exactly what happened. This man is not a person I would lend money to. He does not appear to be the sort of person who should be involved in polite society. Members should remember that this is not just somebody in the periphery of the Western Australian community; he is a former president of the Weld Club and a former president of the Shire of Peppermint Grove. I draw members' attention to pages 12 and 13 of the transcript of evidence taken on 8 December 2011, in which I went through in detail with Mr Wallace his knowledge of company law and his ability to make decisions as a director of the company. At long length, Mr Wallace explained that he is a complete expert in these matters; he had all the advice and professional assistance he needed to run a company and he had a detailed understanding of the laws that sit around running a company. At the same time, in the transcript of evidence of 26 October 2011, Mr Wallace was asked, "Did you draw directors' fees?", and his answer was no. What he failed to say was, "No, I did not draw directors' fees but I took \$1.68 million out as a dividend." Mr Wallace was a completely unreliable witness.

I also make a point about some comments Mr Wallace made to the committee on 8 December when the chairman asked him to comment on an article that appeared in the *Australian Financial Review*, which the chairman referred to in his address. Mr Wallace replied —

It states that \$1.64 million was paid out of Ironbridge and distributed as a dividend to myself, members of my family or entities that I control, implying that these funds were somehow being diverted away from Ironbridge's creditors—

Then he goes on to say —

The entire sum of the dividend was distributed to me and my associate entities for the specific purpose of paying ATO tax liabilities.

There are two points about that. This evidence is simply not true; it is not factual. I do not know whether it was a deliberate fabrication, but it was clearly completely untrue because all of the dividend was not used for the specific purpose of paying tax liabilities; it was used for a range of other purposes. But, not only that, this is a man who says he has a detailed understanding of company law, yet he is confusing the entity Ironbridge Holdings Pty Ltd and he and his family as individuals. There is no relationship between the Wallace family's taxation affairs and Ironbridge Holdings. That is the entire purpose of having a proprietary limited company—to separate out the company's affairs from personal affairs. The failure of Mr Wallace to understand that very, very simple issue is at the heart of the problem in the Dalyellup housing estate. It may well be that he properly understands that issue but if he had come to terms with it, the residents of Dalyellup would have been much better off.

I will read out a question to Mr Wallace from the chairman and part of his answer on 26 October. The chairman asked —

Can you list the court proceedings that your company is currently subject to?

Mr Wallace replied —

The only one that we are subject to is one with the ATO—the Deputy Commissioner of Taxation.

That was simply completely false. At page 61 of the report are details of the dozens of court cases in which Mr Wallace and Ironbridge Holdings are involved. The fact that he was not truthful in any respect in his evidence is a major issue. Of course, as a witness to the inquiry, he was not under oath, so I am not saying that he is guilty of

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

any crime. But clearly there is a great expectation that witnesses attending our inquiries treat us with respect and tell us the truth. Mr Wallace neither treated the committee with respect nor provided truthful evidence.

One of the committee's recommendations is that the Consumer Protection Division of the Department of Commerce consider referring all the issues that we have discovered and all the evidence that we have gathered to the Australian Securities and Investments Commission to see whether there is any opportunity for ASIC to take action. I encourage the department to do that. When ASIC receives that information, I will be very interested to see what it does.

In my last couple of minutes I will move away from the problems that Mr Wallace caused and refer to the question of consumers. I particularly draw members' attention to two tables at page 63 of the report, which show the actual cost of enforcing a debt through the Small Claims Tribunal, because the procedures are much more complex than the Consumer Protection Division acknowledges in the information it provides to consumers. There is no doubt that the new Australian Consumer Law significantly improves the powers of both the department and the processes that are used to try to resolve consumer disputes, but they are still not simple, particularly for people who are quite likely to have serious problems dealing with a dishonest person like Mr Wallace. The tables on page 63 show that the actual cost of recovering a debt from a person such as Mr Wallace or from his companies, even without engaging a lawyer, is between \$500 and \$670. The committee received a lot of evidence about the difficulties of enforcing judgements, and I encourage members to look at that evidence. I hope that the suggestions we have made about changing the manner in which the department deals with these matters will be of assistance to future consumers. I have to say to the people in The Tuarts estate that it may be cold comfort to them, but at least we have learnt some lessons and we can deal with them if these sorts of issues come up in the future.

MR M.P. MURRAY (Collie–Preston) [11.33 am]: I, too, wish to speak to the report on this inquiry titled "Inquiry into Ironbridge Holdings Pty Ltd and other matters regarding residential land and property developments". Firstly, I thank the staff, Tim and Kristy, for their help, which has been tremendous. I also thank the rest of my parliamentary colleagues. I am sure when we first started the inquiry that my parliamentary colleagues thought the matter was a bit of a political beat-up, but the further we delved into it, the more we could see there were major problems and that first home owners were getting hurt along the line. The report itself highlights some of the problems but, as the Chair has already said, we did not find those problems on a widespread scale. Certainly there are some good developers around and we needed only to look at their estates to prove which ones are good. The estate at Dalyellup may have been tidied up a bit; however, unfortunately, the fencing and landscaping not having been completed has certainly devalued that estate and left it quite untidy, to say the least.

As we moved along, one of the issues I noted was that some of these people at the Dalyellup estate are first home buyers. To me that was the saddest estate we saw where a dream had been shattered. These people took Mr Wallace at face value. They had paid their deposit, built their home but did not get the end result they had paid for. It meant that young children were not allowed outside to play because there were no fences, and some people showed us a lot of sand that blew into their homes because there was no lawn or landscaping around the front and no windbreaks either. It was heartbreaking to see brand-new carpets in a brand-new house full of sand. Those sorts of things are not measurable in actual dollar terms. I can imagine some of the needless arguments that have been caused between people with those sorts of issues confronting them when they are just starting out in life and trying to get themselves and their families together. As members would know, dollars are quite tight in those early days of building a house. People have paid their deposit, they are trying to get little things done and trying to put in a bit of furniture, and here we have a developer who will not help them finish off the next part.

It is a difficult time for some people. A number of people—about 70, which surprised me—came out to a public meeting I held down there. After that, some people who did not know about the public meeting rang in and kept us informed of what was going on. About 90 per cent of people at The Tuarts estate were kept informed. However, one of the galling aspects is that Mr Wallace himself personally put out emails saying, "I'll fix it tomorrow". As time went on and it got to the finalisation date, he was still saying, "I'll fix it tomorrow" and "I'll fix it next week". It just dragged on and on and gave the people who owned houses there a sense of uncertainty. That continued on into the inquiry itself when Mr Wallace came and talked to the committee. I believe he was deceptive in what he was saying—"selective" might be a better word—in that he did not commit himself in any way and did not put anything out there. If he had been more truthful to the homeowners as well as to the committee, I believe things could have moved on and people would have said, "Okay, we're having some problems here, let's sort it out." But his deception has caused some of his own problems. Some of that deception to the committee itself showed that he did not give a damn about what he said, where he said it or who he misled; so that is the type of person we were dealing with. It is very sad to think that that came from a person of his stature who has been in the business for 30-odd years. I can only think about what he has done over those

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

30 years to other people. We found out about taxation bills being paid when he knew other bills were coming up. That is so very wrong and no way to run a business.

That is why we needed to conduct the inquiry. The inquiry was worthwhile because we have exposed what some people do and, hopefully, the consumer affairs group will make some further rulings to tighten up those things in future so that people cannot take money like that out of their business, or at least must pay their bills before they take a dividend themselves. What a big surprise it was towards the end of Mr Wallace's evidence when he said, "No, I have no more bills. I've mortgaged my house. I've done this. I've refinanced the whole lot", only to find out that another person from APH Contractors was claiming over \$2 million worth of earthworks that had not been paid for. We found that out after Mr Wallace gave evidence to the committee a couple of times. That to me, although other members have been kinder about him, is absolutely straight-out telling lies to the committee. That is a contempt of the parliamentary system. Would members buy a car off this man? I certainly would not do that. It annoys me to think that he probably goes off to the Weld Club, of which he is a member, leans on the bar there and has a few beers with his colleagues without even blinking, yet down there at Dalyellup we have young people who are really hurting. Good, young families who are making their way are really hurting while Mr Wallace is telling fibs around the place.

Another thing is that earlier in the piece, when I first sent out my letters, a threat was made that he would have me in court. It was not a written threat to me, only a verbal one, but he denied it. I can tell members that as soon as he did that, my hackles went up, my heels dug in a bit deeper than they normally do, and I thought that there was something wrong here if people were complaining and he was also threatening me. He suffers from delusions of grandeur because he believes he is a great, front-edge developer when, in real terms, he has been struggling. He was stretched to the max financially. Understandably, when the market dropped his margins would have changed. I could talk for quite some time about his failure to meet his financial obligations. However, I will refer to a few other issues in the short time I have available.

I refer to page 16 of the transcript of the Economics and Industry Standing Committee hearing from Wednesday, 26 October. I asked Mr Wallace whether people walk away and forfeit their deposit if they are not happy with what is going on. The transcript reads —

Mr Ian Wallace: Nobody would forfeit their deposit.

Mr M.P. MURRAY: But if they do not honour their contract to buy those untitled blocks—this is my understanding —

Mr Ian Wallace: We have to deliver the block. Nobody would forfeit their deposit. We have released half a dozen people from their contracts—people who are buying those blocks—if they have asked to. In fact, we did one this morning.

Mr Nicholas Wallace: We did two this morning.

Mr M.P. MURRAY: So, if someone wants to walk away from there, they can come and see you and you will deal them out.

Mr Ian Wallace: Yes.

Mr M.P. MURRAY: Is that what you are saying?

Mr Ian Wallace: Yes.

Even as I sit here today, a schoolteacher from Carey Park is trying to get release from a block he bought from Mr Wallace and Ironbridge because he does not have a title. He has been in that situation for more than 12 months. Mr Wallace is threatening court action against him. That shows the lengths that that man will go to and the level of his deception. He said that he would honour his commitments, but he has not. Michael Taylor has kept us very well informed about what is happening to him. For more than six months he has been promised a payment or for work to be done on his fence, but nothing has happened. On 28 February he wrote that he had still not received payment. According to my notes, he said —

Hi, still no payment. Payment is the sum \$7 000 in respect of our contract on Lot 527, Tuarts, Dalyellup, or I will take legal action to recover money in the courts.

He has heard it all before. He does not take it seriously. People need to find \$7 000 to have the job finished.

I thank Carolynn Hill, who was once a staff member of Parliament House. She brought many issues to our attention. Her concerns were not so much about her little fenced area; rather, she was more worried about other people in that community. I commend Carolynn for the work she did, especially in the early part.

A group of people in Dalyellup organised a Facebook page called "Gang of people in Dalyellup waiting for a fence". They kept us informed about what was going on and allowed us to use their Facebook page to inform

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

people about what the committee was doing. There was much toing and froing on that page. Many people are very disillusioned about what Mr Ian Wallace has done to them. It is sad for those who are starting out in life and trying to get a move on. Mr Wallace's integrity is in tatters.

MS A.R. MITCHELL (Kingsley) [11.44 am]: I, too, rise to speak to the Economics and Industry Standing Committee report. I thank our staff, Tim and Kristy, my committee members and the Chairman, Dr Nahan. This inquiry was very interesting because it started out with what we thought would be a simple focus. However, over time we had greater involvement in many areas. A lot of people were emotional about this issue—there is no question about that. The consumers' sense of frustration and disappointment came through strongly and it highlighted the areas that need to be addressed. From that point of view, it is important that we achieved some outcomes from this inquiry. A lot of work had a buyer-beware focus, as did much of the business and its operations that my colleagues spoke about previously. It also reinforced that Western Australia is part of the world economy. Even though this is a small area in the south west of Western Australia, it was impacted on by the global financial crisis.

I intend not to go back over what other members have said but to focus on aspects involving the consumers and their difficulties in resolving their concerns. Let me say from the outset that I have never built a house, but I have certainly learnt a lot from this inquiry. I have to say that I probably would never enter into such a contract after having listened to what others have been through. As I have said, I have learnt a lot from this inquiry, but a lot of people did not have the benefit of that hindsight, and even if they did, we all know what people are like—a lot of emotion is involved when people make decisions about a first home or building a house, and the background checking and homework just do not get done. It was very demoralising to see people so disappointed with the process they were going through to get an incentive package, which was basically standard—they had seen it occur in other estates and developments that were right next door. The incentive package, in a funny sort of way, is only a small part of this. They made huge decisions prior to that. They had to get finance, decide on a block and decide on the design of their house. They had gone through all that and were now stuck trying to get an incentive package. It has already been mentioned, but it is interesting to note, that the number of blocks of land sold annually in Western Australia is very large. This is not a large problem, which is great. It is certainly not a systemic problem, but for those involved it is a serious problem. We do not diminish what those people have been through, but we were very pleased to find that it was not a systemic problem. Once again, this is of little comfort to these people, but we still hope that we can get something through for them.

This situation was impacted upon by the global financial crisis. That is how a lot of developments work, particularly the middle-tier developments rather than the big-tier developments. Companies like Recreation Drive Pty Ltd, Olympic Holdings Pty Ltd and Ironbridge Holdings Pty Ltd got caught up in that, but that does not give the developers an out; it is a recognition of that. This situation often occurs in real estate. It is a cyclical thing; there are ups and downs. We rely on the developers being able to get through the downs as well as making the most of the ups.

What I hope is achieved from this inquiry is an improvement for people who enter into contracts for the building of houses and any incentives or packages that go with those contracts. I must say that the people who have been caught up in this situation are very good people. They have good jobs. They have done all the right things, except probably finding information, which I must admit would have been very difficult to find at the time. They have gone into contracts in good faith. They probably would not have known how to investigate the company behind the sales and they did not know how to get a good resolution for their problems.

I could identify with many of these people. I could well have found myself in the same situation. I am therefore focusing my statements on the latter findings and recommendations of the report, basically from chapter 7. The first part is about choosing a company. I am not going to name companies, but I believe, firstly, that advice should be readily available to potential purchasers about companies and their history in the business of property development. Secondly, we can say that purchasers should only go with recognised and proven companies, but we all know that this is not always possible and that we have got to be prepared for that. Thirdly, I emphasise that the investigation of a company is more important than the branding or marketing of a development. There is no doubt that marketing goes down well. It is not the director of the company who is marketed but a theme or whatever. The Tuarts estate had a lot of emotional branding; it sounds good and it is next to another development that is looking good, so emotional branding was there. That is a sales pitch; that is what they do. Purchasers are always told to take any emotion out of any financial decision, but we all know that that is easier said than done. However, I hope that the Consumer Protection Division of the Department of Commerce can take a much greater role in assisting purchasers before they make any decisions on choosing a company. The same applies to further advice and assistance for purchasers. That is always a problem in business.

We have a good government department that can do many things, and I would like to mention other forms of assistance. There certainly needs to be more assistance for people when they need it. That has come out. As the

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

member for Cannington has mentioned, the small claims process is not efficient and not effective. A lot of people were given not glib, but quick, advice about how to go through this process without getting full information about what is required and how long it might take or without being asked for specific information. It is no good receiving that sort of advice when one is in the middle of a difficult situation. That needs to be done a lot better. It appeared that the Commissioner for Consumer Protection had limited powers to intervene and cause positive actions.

At the same time I acknowledge that the committee realised that it was better for particularly Ironbridge itself not to be wound up, because while it remained “viable”, the residents had a chance of receiving their incentive packages. That balancing approach was always taken by everyone. I will say that I am pleased that amendments to the Fair Trading Act 1987 now provide for steep civil penalties that allow damages to be sought, in addition to existing fines being imposed.

I certainly believe that a code of conduct for the land and property development industry would be of great value in reducing problems in this area. I certainly hope that the residents concerned receive the value of their incentive packages and that this sort of situation is minimised in the future.

MR I.C. BLAYNEY (Geraldton) [11.50 am]: I wish to speak briefly about the Economic and Industry Standing Committee’s report on Ironbridge Holdings. Firstly, I thank our staff, Tim Hughes and Kristy Bryden, for their work through what, in some ways, was a difficult process that involved the examination of accounts, quite complex hearings and travelling to Bunbury to look at the sites.

On re-reading parts of the report, I was reminded of an old saying in farming: the decisions we make in good times are usually the ones that destroy us in the hard times. The ambitions of developers were planned and actioned during buoyant times for selling land, but the global financial crisis meant that lenders were not so keen to later lend money so generously. Prices dropped and sales become slower when the properties were coming onto the market. People who were highly geared suddenly had a problem meeting commitments. I am reminded of another couple of old farming sayings: one is that a bank manager who is keen to lend us money is not necessarily our best friend, and another is that people in the business of lending money are usually most keen to lend it to people who do not really need it. Of course, the situation is not helped by the structures in place these days that remunerate staff on the basis of how much money they lend.

My initial reaction to the failure of Ironbridge Holdings to produce the promised fences and landscaping was to wonder whether that practice should simply be banned. However, it was pointed out to me that the practice has its advantages. It ensures that a new estate has a uniform, tidy appearance that makes it a lot easier to sell a property if need be. In nearly all cases, a house is the biggest purchase of people’s lives. This is an important consideration. The developer is also able to negotiate a better deal with contractors and suppliers. It also means that the cost of these extras is built into the purchaser’s housing loan and does not end up on a credit card or as a personal loan at a much higher rate of interest with a shorter repayment term.

Likewise, I think a strong case was made for not introducing a system of trust accounts because it would be onerous for most developers, involve costs and protect only the small number of cases with this problem, which, in the context of the number of blocks sold in Australia every year, is very small. I hope and expect that the Australian Consumer Law, which came into effect on 1 January 2011, and the Fair Trading Act 2010 will provide easier remedies for people caught in this sort of situation.

Finally, I thank the Parliament for allowing us to bring in specialist advice, which helped us understand several things in Ironbridge’s accounts. There are some things in the accounts that the committee has recommended be taken further with the relevant authorities. The committee, as a body, intends to keep an eye on Ironbridge Holdings and we may ask to revisit this issue. Thank you, Mr Acting Speaker.

DR G.G. JACOBS (Eyre) [11.55 am] — by leave: I commend the report and the work that has been done, and it brings to mind the whole issue of the bad behaviour of some—only some—developers in Western Australia over the past few years. I cannot define it in legal terms, but in this case the developer has obviously exhibited bad behaviour. This case reminds me of a case some years ago, when a developer who had signed up about 50 equity owners to buy off the plan was slow in the development, but encouraged the equity owners to hang in there. In that case the developer pulled the contracts on the equity owners just before Christmas 2008. The developer would deny this, but when I asked him about the contracts that were signed with these people, he said, “What really upsets me is that the equity owners are onselling their blocks at a much higher rate and making a killing.” Essentially, he was pulling back their contracts and reselling the land.

The nub of my comments is that when I went to the Commissioner for Consumer Protection and said, “Look, you need to act for these people because they have been done over”, he referred to the act, the department did its work and investigated the cases, and then said, “Essentially, we are frustrated by the Fair Trading Act 1987 and

Dr Mike Nahan; Mr Bill Johnston; Mr Mick Murray; Ms Andrea Mitchell; Mr Ian Blayney; Dr Graham Jacobs

we cannot act for these people.” The only other way for these people to get redress was to commence a class action in the Supreme Court, and just to open the doors of the Supreme Court would have cost them around about \$200 000.

Finding 29 of the “Inquiry into Ironbridge Holdings Pty Ltd and other matters regarding residential land and property developments”—a very good inquiry—states —

Given the evidence that has come to light during this Inquiry, the Committee has concerns that Ironbridge Holdings Pty Ltd’s failure to disclose potential delays to residents who entered into or settled on contracts at The Tuarts in the first half 2009 may represent a breach of section 21(b) of the *Fair Trading Act 1987*.

In years past I knew of a developer whose bad behaviour potentially breached the Fair Trading Act, but do members think that the commissioner would step up and help these people? I make my comments today because I was a little disappointed that the committee has refrained from recommending that the Commissioner for Consumer Protection consider a prosecution. As has been explained to me by the Chairman of the committee, a prosecution will not help redress the problem these people have—that is, that the landscape has not been developed, and they have not been provided with a fence—but still and all this developer has not conducted himself well and could be in breach, and a message needs to be sent that this bad behaviour will be punished. As I have said to the commissioner in the past, he or she has only to take on one case to send a message to the rest of the industry. There are just a few bad apples in the barrel, but we need to send the message. The commissioner needs to step up in these cases to send that message, because this is just another case of bad behaviour by a developer who is preying on vulnerable people and causing disadvantage and pain. I have heard that this has affected many young people who are starting out in life and establishing a title to build a house. We really need to encourage the commissioner and staff in the department to step up. That, I believe, is part of their job. Taxpayers support this agency so that it will stand up in these situations. We have to have someone to stand up for those individuals, whether they are equity owners or people who are buying land and not having their incentives looked after, because it is very difficult and very expensive for them to take on these issues. One might say that the small claims tribunal could look after them, and that is fine if it is a small claim, but in my experience, when it is an issue to do with land, values are very much over the \$40 000 threshold, putting it out of the reach of average mums and dads to take on this bad behaviour.

Twelfth Report — “Clarification of Issue from Committee Report No. 10” — Tabling

DR M.D. NAHAN (Riverton) [12.01 pm]: I present for tabling the twelfth report of the Economics and Industry Standing Committee entitled, “Clarification of Issue from Committee Report No. 10”.

[See paper 4550.]

Dr M.D. NAHAN: Madam Acting Speaker, I anticipate this being the shortest committee chairman’s speech on record—at least for this sitting of Parliament!

Mr R.H. Cook: Go on; stretch it out!

Dr M.D. NAHAN: I could; the Deputy Leader of the Opposition complained about, let us say, the blandness of the title, but it is what it is. In response to the committee’s response to the tenth report, “Response to House: Matter of Park Home Residents”, the committee received correspondence from the Commissioner for Consumer Protection on 22 November 2011 advising of an error at paragraph 79 in relation to the reporting of amendments made to the Residential Parks (Long-stay Tenants) Act 2006. The committee considered this correspondence over the end-of-year recess, and on Monday, 20 February 2012 resolved to table the attached relevant extract from the commissioner’s correspondence as a report in order to clarify this matter. The commissioner, as we want her to be, is a stickler for detail—not only in respect of consumers and businesses, but also with Parliament—so we responded in the appropriate manner. In anticipation of this report being a bestseller, we have printed four copies; it is a limited number of copies, so members will have to get in line!