



Procedure and Privileges Committee

Report on a Person Adversely Referred to in the Legislative Assembly — Mr Brett Gibbings

Report No. 8

October 2014

Legislative Assembly

Parliament of Western Australia

Committee Members

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Deputy Chairman	Hon Michelle Roberts, MLA Member for Midland
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Mr Brett Gibbings*

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Presented by

**Ms Wendy Duncan, MLA
Deputy Speaker of the Legislative Assembly**

Laid on the Table of the Legislative Assembly on 22 October 2014

Report

The Speaker of the Legislative Assembly referred to the Procedure and Privileges Committee a letter from Mr Brett Gibbings seeking to use Standing Order 114 to respond to statements made on 18 November 2010 by the Member for Wanneroo, Mr Paul Miles, MLA, and on 17 March 2011 by the Member for Scarborough, Hon Liza Harvey, MLA, in her then capacity as Parliamentary Secretary.

The Committee has agreed to recommend the incorporation in *Hansard* of the appended response by Mr Brett Gibbings.

In accordance with Standing Order 114, the Committee has not considered or judged the truth of any statements made in the Legislative Assembly or in the submission.

Recommendation

Your Committee recommends –

That a response by Mr Brett Gibbings, in the terms specified in the Appendix to this report, be incorporated in *Hansard*.



Hon Michael Sutherland, MLA
Chairman of the Committee
22 October 2014

Appendix One

Response by Mr Brett Gibbings

Agreed to by Mr Brett Gibbings and the Procedure and Privileges
Committee pursuant to Standing Order 114

Response Pursuant to Legislative Assembly Standing Order 114

On 18 November 2010, Mr Paul Miles MLA made statements in the Legislative Assembly which have adversely affected me in reputation, in respect to my dealings and associations with others, and which have injured me – and continue to injure me – in my occupation.

Subsequently, on 17 March 2011, Hon Liza Harvey MLA, in her then capacity as Parliamentary Secretary, made statements in the Legislative Assembly, which have adversely affected me in reputation, in respect of my dealings and associations with others, and which have injured me – and continue to injure me – in my occupation.

The adverse statements, and my responses to them, are as follows:

Mr Paul Miles MLA

“My grievance is addressed to the Minister for Commerce, Hon Bill Marmion, MLA. I am very concerned about the activities of a company known as DevGroup, which has been operating in my electorate of Wanneroo, although its activities also range much further afield. DevGroup builds ready-to-rent investment properties throughout Perth. The company has an office in Balcatta, and the director of the company is Mr Brett Gibbings”.

Response:

- I was not the only Director; there were in fact three other Directors all as responsible for the affairs of the group of companies. I believe only the Company should have been referred to and not any one individual as all the Directors had differing roles and responsibilities.

“I first became aware of DevGroup’s activities when a number of local families approached my office seeking assistance to recover moneys that they had put into DevGroup. DevGroup organised a community meeting at the local football club in Wanneroo to outline an investment opportunity. At the end of the evening, DevGroup had obtained commitments from 10 to 12 local families for deposits of up to \$200 000 to invest in projects by DevGroup’s real estate company. However, out of 12 projects, only two have been completed—one in Armadale, and one in Innaloo. At the project in Madeley, which is in my electorate, stages 1, 2 and 3 have been completed, but not the final stage. The company has another nine projects, two of which are in Wanneroo, at Pearsall and Sinagra; and its other projects, at Armadale, Joondanna, Doubleview and Innaloo, are yet be completed”.

Response:

- There were never 12 projects under way at any one time.
- All stages 1-3 were completed of the Madeley Projects. There was never a “final stage”. Stage 3 was the final stage, which was completed.
- I was not involved in the “community meeting”. This was conducted and organised by the Salesperson of DevGroup and her Mother with a group of their friends and associates at a lunch meeting held at the Wanneroo football club as I understand.

Neither I, nor any of the other Directors were privy to what was discussed at that lunch meeting.

- Inaccuracies of Mr Paul Miles' statements can be confirmed by way of example, where he stated that only two projects were completed then later states that three were completed at Madeley.

“One investor has told me that she believes that Mr Gibbings has used investors' moneys to give large \$40 000 to \$50 000 deposits to a particular builder, even before the land has been purchased. She also believes this builder to be Brett Gibbings' father-in-law. Mr Gibbings seems to be fleecing money by off-laying to family members these so-called deposits on these projects. The investors' deposits are non-refundable should the properties not be built, which is the scenario that is unfolding in my electorate. That means that if a project is not completed, investors have no avenue of compensation open to them”.

Response:

- Mr Paul Miles was offered on numerous occasions to discuss the matter with DevGroup openly and to view all documentation and to demonstrate DevGroup's compliance. The suggestion from Mr Miles that “Mr Gibbings seems to be fleecing money by off-laying to family members these so-called deposits on these projects...” is not factual.
- In the normal practice of a Building Contracts terms, deposits were provided to the Builder engaged for the building of the projects who was an independent Licensed Builder, Gary Richards trading as Westech Homes who went into Bankruptcy. Westech Homes completed 6 projects and left 5 projects incomplete causing the various project Lenders to withdraw funding.
- Norman Bryan Woolhouse, a Licensed Builder, was then forced due to the Westech Homes demise to attempt to recover from the position Westech Homes left the projects in. He was provided some deposit monies for two projects which was utilised as required on the projects and all funds were fully accounted for. Investors were provided an account breakdown of the project expenditures.
- Investors contributed their proportionate required capital (not actually a deposit) into the Managed Investment Scheme Project Bank Account. Monies would then be utilised as defined in the Product Disclosure Statement (PDS) and Development Agreements to develop the land for costs such as purchase of the land, design fees, shire fees, WaterCorp and Synergy etc. The builder would then manage these processes and as such, these costs were provided to the builder to pay on behalf of the Scheme.
- Investors took up an investment in scheme units, which is not dissimilar to Australian Securities Exchange shares. Investors could sell their investment (unit) if there is a willing buyer. All Investors had this option. It was the Responsible Entities (Trustee) duty to ensure full subscription was achieved before making existing Investors units available to others. It was not simply a matter of getting a “deposit” returned. This was all clearly detailed in the PDS of each Scheme.

“Most of the families who have invested with DevGroup borrowed their deposits from a bank or lending institution and consequently are paying ever-increasing interest rates. In the meantime, DevGroup is continuing to deceive investors by not completing the promised projects. It is also refusing to provide investors with any information about why nothing has been happening in the past two years. One local family that I know of has paid \$30 000 in interest charges alone, while the promised development has not yet commenced, yet the family was told by DevGroup when it signed up that the project would be finished by September 2008. Mr Gibbings has now advised this family that the finance that his company had originally amassed has run out and he is having problems finding an alternative source of finance to complete the development. The investors I have met believe that DevGroup is in breach of its legal responsibilities and obligations. These include the company’s refusal to provide these investors with information on all relevant financial and operational matters. I am appalled by the actions of Mr Gibbings, who has offered no plausible explanation for where the initial investment moneys have gone. Worse still, he has attempted to blame investors for his failed operations in these projects. One family, having already outlaid \$200 000, was then painted as the villains by Mr Gibbings and DevGroup for pulling out of a sale. In fact, Mr Gibbings must take the blame for the collapse of this sale, as he had already blown the investors’ original deposit. He then had the cheek to ask for a further \$20 000 from this family”.

Response:

- At no time was any Investor deceived, full disclosure was provided by way of PDS, Development Agreements and monthly updates.
- DevGroup at all times adhered to its responsibilities and obligations as required by the Australian Securities and Investments Commission (ASIC).
- The company sent regular updates to Investors of which copies were provided to ASIC for verification purposes.
- There was never a “sale” to an Investor. The Investors took part in a Managed Investment Scheme and invested in “Scheme Units”. On successful completion the Investors would have first right of refusal to take a completed residential property and as it was an Illiquid Fund as defined in the PDS, there was never an opportunity to exit the scheme until either completion or if a replacement Investor was available.
- A number of Investors did not pay their full investment amount and were requested to do so in accordance to the agreements made with each Investor. They were not requested to pay more than what was detailed in the PDS.
- Mr Miles comments are unverified. DevGroup worked with ASIC regularly to ensure that it was compliant under the Australia Financial Services Licence and the Corporations Act. DevGroup also had its own compliance team made up of external members not related to the company to also oversee compliance. In addition, other Government Departments investigated and found no case to answer.

“These investors thought they were putting their retirement funds into a safe investment. They believed that they would see a return on their outlay within 12 months, as specified in DevGroup’s product disclosure statement. Instead, it very much looks as though they will never see their investment again. This is causing much distress and hardship to these investors, many of whom are approaching retirement age and may never recover financially and emotionally from the loss of these moneys.

I would welcome any assistance that the minister can provide to expose this company's dodgy dealings and ensure that DevGroup, or any similar operators, cannot continue to fleece people of their hard-earned money in such a callous and calculated manner".

Response

- At no time did DevGroup engage in "dodgy dealings" or "fleece people": it was at all times compliant and provided full disclosure to Investors.

Hon Liza Harvey MLA

"The member for Wanneroo brought to this house a number of times the activities of another group, DevGroup, and the notorious director of that organisation, Mr Brett Gibbings. Some rogue builders can irresponsibly go about their business with impunity. They rely on the inadequacies of the existing regime to deny and basically abscond from their responsibilities when they cause damage to people's properties or when they fail to complete construction, as I believe was the case with DevGroup".

Response:

- I have never been a builder nor I have I been engaged as a builder. Hon Liza Harvey refers to me as being "notorious" and implies that I am a "rogue builder" who has gone irresponsibly about my business with "impunity", and have "absconded" from my responsibilities. These statements are incorrect.
- DevGroup Pty Ltd and DevGroup Funds Management Ltd were never builders. A check with the Builders Registration Board will verify this. Both entities acted as Trustees and/or Responsible entities for the Managed Investment Schemes or Property Syndicates. Both companies suffered adversely by the Hon Liza Harvey's commentary.
- Norman Bryan Woolhouse had registered a company by the name of DevGroup Constructions Pty Ltd which was not engaged in building activities. It did however operate as a Project Manager. This was a separate company which I had no ownership, control or held any office for.
- The Builder engaged for the building of the projects was an Independent Builder Gary Richards trading as Westech Homes who went into Bankruptcy. Westech Homes completed 6 projects and left 5 projects incomplete causing the various project Lenders to withdraw funding.
- Norman Bryan Woolhouse, a Licensed Builder, was forced due to the Westech Homes demise to attempt to recover the position Westech Homes left the projects in. He registered the Business name DevGroup Constructions (Norman Bryan Woolhouse trading as) in order to attempt to finalise the projects at Builders cost, however the Lenders ultimately did not allow this to occur, given they had withdrawn funding.

Brett Gibbings

Appendix Two

Committee's Functions and Powers

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee —

Procedure and Privileges Committee

- 284.** (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to —
- (a) examine and report on the procedures of the Assembly; and
 - (b) examine and report on issues of privilege; and
 - (c) wherever necessary, confer with a similar committee of the Council.
- (2) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (4) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.