

# CORRECTED VERSION

## LAW REFORM COMMITTEE

### **Inquiry into property investment**

Melbourne — 12 November 2007

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#### Witness

Ms M. Wakelin, co-founder, Wakelin Property Advisory.

**The CHAIR** — Welcome to the Committee, Ms Wakelin. I need to advise you, as we start off, that the proceedings of this hearing are subject to provisions of the Parliamentary Committees Act and that extends parliamentary privilege to anything you say in this hearing, but it is not extended to you outside the confines of this hearing. Hansard will be recording the proceedings, and you will be provided with a copy of the transcript of your evidence. As you saw before, we will give you some time, 10 minutes or whatever you need, to tell the Committee about the work of Wakelin Property Advisory in relation to the terms of reference of our inquiry, and then we will hop in and have a discussion and ask a few questions.

**Ms WAKELIN** — There are a couple of introductory remarks I would like to make, if I may. First of all I think the Committee's hearing into the property advisory industry is very timely. In creating the safety net for consumers it is in my view imperative that we address the following really crucial points. I think we need to create a very clear distinction between individuals and companies selling product and those not selling product but offering genuinely impartial independent advice on a very simple, straightforward fee-for-service basis. The second point I would like to highlight is the issue of transparency of association. In order for consumers to really make a well-informed decision on how to invest in properties it should be mandatory, in our view, for the adviser to disclose all third-party relationships.

Furthermore the adviser should disclose both the source and the quantum of all remuneration derived from sources other than the client and the quantum of any and all consideration paid to the third party associated with the transaction. Wakelin Property Advisory also advocates that any regulatory framework should be national. In creating that national regulatory framework it is equally important that any associated compliance is not onerous or costly.

When we have an extremely robust economy and one that is awash with money, as we have now, we frequently and virtually every time see the spruikers and the get-rich-quick merchants come back out of the woodwork. That is something that is happening now and it is of particular concern to us. Similarly the one-stop-shop syndrome and in recent years the loan-raising schemes masquerading as property investment strategies that have fallen over and have left many people seriously in debt and out of pocket would suggest that we do not seem to have learnt the lessons of the past, hence the timeliness of what we are all trying to do now.

Finally, I believe and we as a company believe it is equally important that direct property maintain its current status of basic and essential commodity and not be reclassified or redefined as a financial product, because property is shelter and therefore in our view it is a commodity. So those were some introductory points I thought were important to make right from the outset. Is it appropriate now that I tell you a little bit about Wakelin Property Advisory and how we have set ourselves up and why we have set ourselves up in a particular way?

**The CHAIR** — Yes.

**Ms WAKELIN** — Even before Wakelin Property Advisory was founded, my co-founder and co-director, who is sitting right behind me, Richard Wakelin, was very concerned that consumers were receiving property investment advice from parties whose interests lay effectively on the other side of the ledger — that is, those selling property.

At the time, back in 1995, this was usually traditional real estate agents and, to some extent, developers. We had seen generations of people being told what supposedly worked as a property investment by those who were either selling product or advising another party on the sale of a specific asset. So, of course, what would occur is that a would-be investor would go to an estate agent or a developer and say they wanted to invest in property and was XYZ that they were selling a good investment? Of course the answer was going to be yes. There was never going to be any such thing as, 'No, do not buy this property. It will not work for the following reasons'. This is effectively why we set up the company the way we have set it up, in a very simple, straightforward way. The client comes to us, they pay us a straight-up fee for service, they ask us what works, what does not work, we explain that in a very simple and straightforward way based on the simple principles of underlying demand and capital growth resulting from underlying demand that is perpetual, and then we simply go into the marketplace in a completely unrestricted way. So we have unrestricted access to the property market. We are not in league with any third party during the transactional selection or advisory process. We simply select a property using feet-on-the-ground exertion, sweat from the brow, literally, of scouring the marketplace, finding the right asset within the client's approved financial range and purchasing that asset on behalf of the client. That is effectively what we do, and that is all we do.

**The CHAIR** — That is it?

**Ms WAKELIN** — That is it.

**The CHAIR** — Maybe I could just jump in first. Thank you for that. It was great.

**Ms WAKELIN** — It was a pleasure.

**The CHAIR** — In the introduction that you provided to the documentation you sent in you say that a regulatory regime may have no appreciable effect on the quality of advice. I was just wondering why not, because the conventional argument is that if you regulate, then you set up standards of some sort and you set up training around those standards that are met. So you set up a structure that makes people behave in a more professional way, which I think we always then associate with an improved quality of advice.

**Ms WAKELIN** — Absolutely.

**The CHAIR** — So I was a bit interested in why you take that — —

**Ms WAKELIN** — I am actually wondering myself where that came from.

**Mr FOLEY** — That was the Senate inquiry.

**Ms WAKELIN** — I do not actually have those papers with me.

**The CHAIR** — I thought as a start-up statement that was really — —

**Ms WAKELIN** — No, it is not. I would ask you to disregard that. I think the real issue is that it depends on the degree of regulation. I would strongly suggest that this whole property advisory industry does need to be regulated, and even more so I think the mortgage industry, particularly mortgage brokers, needs to be regulated, because you have in effect a double whammy here. People are being told they can borrow far more than they can comfortably repay, and in many instances they are sitting on negative equity from day one as a result of that lack of regulation of the mortgage industry.

The property advisory industry absolutely needs to be regulated, and that clear distinction between those people who are providing straight-up-and-down, impartial advice needs to be quite distinct from those selling product. So I would suggest that any kind of regulatory regime should not be too onerous, because then what you do is that you are redefining property and bringing it into much more of a financial product, but it does need to be regulated from the point of view that consumers need to be very, very clear about who it is that they are dealing with. ‘Is this person trying to sell me product, do they have developments to sell, have they got any other ancillary services that they are trying to sell or am I dealing with someone who will simply talk to me about the marketplace and what will suit my aims and objectives in a completely impartial and independent way?’. So yes, regulation is critically important, because it does provide a safety net.

**The CHAIR** — That is quite different.

**Ms WAKELIN** — Absolutely. I can imagine why you thought that was so strange.

**Mr BROOKS** — Just following on from that, my question is around what sort of regulatory framework you would see as working or being the best approach and the different lengths to which you could take this. We have heard different arguments from different witnesses. Are you suggesting maybe something similar to that that applies to the financial services area?

**Ms WAKELIN** — First of all I would suggest that self-regulation has not worked and would not work, so I think there is a strong case for some sort of government regulation, and I believe it should be on a national basis. At the moment anyone can hang up a shingle as a property adviser, and they will simply affiliate themselves with whatever peak body or organisational structure will most appropriately, from their point of view and not the consumer’s point of view, sit well with them. The primary goal of any government regulation, in my view, would be to create that all-important transparency.

Consumers are protected to some extent, as we know, under section 52 of the Trade Practices Act 1974, against those advisers who might engage in 'misleading or deceptive conduct'. The weakness in that legislation includes the fact that there is debate on what actually constitutes misleading and deceptive advice, and consumers might not always even recognise that they have been misled until they have incurred substantial losses as a result of a poor investment decision, and it might not be apparent from a property point of view until 5 to 10 years down the track.

So really I think that the legislation, whatever it might be, or the regulatory framework, should close a loophole that I could see potentially occurring where financial planners who come under the financial services banner should be bound in fact by the same regulatory conditions as those in the future who might be called independent accredited property advisers, for example, if they are advising on direct property, because if that does not occur you effectively have financial planners who could be promoting product but not required to disclose those third-party associations or the fact that they are selling product rather than giving impartial advice in precisely the same way. So I think there would need to be some consistency across the two sets of legislation, but I would not like to see property advisers have to acquire a financial services licence, because they are simply not dealing in any asset class other than direct property, and it is a different thing from the kinds of loan-raising schemes that we have seen in recent years, many of which, as we are all familiar with, have gone under and caused people a heck of a lot of pain.

I would see that the regulatory framework would have to be quite distinct and separate out those three or four different kinds of practitioners, so when the consumer asks themselves the question, 'Who in fact am I dealing with? Am I dealing with a loan-raising scheme like a Westpoint, am I dealing with a developer or third-party onseller selling a development, am I dealing with an accredited financial planner under the financial services banner or am I dealing with a properly accredited independent property adviser?'. That needs to be very, very clear. Does that answer the question adequately?

**Mr FOLEY** — Yes. Monique, if you took that through to a further extension — this is what I want to come down to — if there is a regulatory framework that picked up, for argument's sake, your independent property adviser classification, how would that relate to the whole raft of other people who, from evidence we have heard, tag along with property investment— financial advisers, accountants, valuers, real estate, loan raising schemes, developers and I do not know what to call them, for instance, under-the-radar clubs and other things we have bumped into? Would you see a role for financial advisers, or in some states real estate agents and valuers? If they have got their own comparable regulatory regime, they could be carved out and therefore stand alone, or would there need to be multiple accreditation? If there is, what does that do to regulation compliance costs and is that going to be prohibitive or counter-productive, even if it is just being passed on to the consumer at the end of the day? Failing that, your preferred position is for a national regulatory regime, which the Committee has to come to its own conclusions about but I would be surprised if it did not support that view ultimately. If there is no prospect of a meaningful Commonwealth regime that reflects the principles you have outlined, what would be the position of different states opportunities for regulation — failing that?

**Ms WAKELIN** — It is difficult, isn't it, because what would occur is that the people who are not actually operating under an impartial and independent framework could possibly move their headquartered business into particular states that were more sympathetic to the way they want to run their businesses. I really see the key to this, the key to making sure that the consumer and investor is protected, is for any kind of regulatory framework, be it on a state-by-state basis or a national basis, to be very clear that there are effectively two categories of property advisers. They are those who have got some kind of product to sell, whether that is one or all of a combination of loans, valuations, actual properties themselves et cetera; and those people who do not have any kind of third-party affiliations but whose job it is to say to the investor, 'Here is what we do; here is our fee and we have nothing to sell you other than what we have in our heads, other than our knowledge and our longstanding experience'. How that might play out on a state-by-state basis in terms of specific legislation is probably beyond my expertise, but I think as a matter of principle, unless we get that right we are only going to end up with more of the same. Effectively, if you are a financial planner or an accountant and you want to advise people on property, you have got to fit into this particular framework and be accredited under the framework irrespective of what else you might be doing.

**Mr FOLEY** — No matter what you hang out the front of your office?

**Ms WAKELIN** — Pretty much. I think there are two issues here. The consumer needs to be protected by legislation and by a substantial code of ethics and agreement across the board as to what it is we are all going to do and what we are not going to do. But the second thing is that there will always be the need for financial literacy and for consumers to learn how to protect themselves and to learn what questions they need to ask. This is one of the

problems; a lot of people do not know. By making the distinction very clear, in my view it would help the consumer know what questions to ask. Do you have this accreditation? Do you do this, or do you do that?

**Mr O'DONOHUE** — With the services you offer do you identify property? Do you complete a transaction on behalf of a client?

**Ms WAKELIN** — No. What we do, Edward, is that if you were to come to us and say, 'I have X amount of money to invest into the property market', we would have a fairly lengthy and detailed discussion with you about how we would best place those funds in the marketplace. Is it going to be this kind of an apartment? Is it going to be a house? Is it going to be in this kind of the area or that kind of area? We would then go into the marketplace specifically for you. So it is a dedicated search on a per-client basis. We would come up with one or at most two properties that would meet the brief as exactly as possible. We would then come to you and say we have found something we are very happy with that meets the criteria and brief you have given us. We would attend the auction on your behalf or negotiate privately on your behalf, and it is you that signs the contract of sale, not us.

**Mr O'DONOHUE** — So that in a sense is a buyer's advocate type role?

**Ms WAKELIN** — The buyer's advocate does something a little different. Most of them actually work for homebuyers rather than investors and most of them also will transact for a client at the end of the process in a similar way, attend the auction or undertake the negotiations. But a lot of the time the investor and/or homebuyer has actually identified the property themselves and they have not necessarily received the kind of independent strategic advice that Wakelin Property Advisory would give them. So in a sense, if I can blow our own horn here, the buyer's advocates that have popped up in the last several years had actually taken a small part of a model and replicated it.

**Mr O'DONOHUE** — Sure. It was to clarify it in my own mind. Under that sort of model what sorts of regulations are you governed by?

**Ms WAKELIN** — We are governed by the Estate Agents Act and the company is accredited and licensed through the Real Estate Institute and the Business Licensing Authority.

**Mr O'DONOHUE** — Does that mean you have a real estate agent's licence?

**Ms WAKELIN** — We do.

**The CHAIR** — Monique, the submission you provided us with a copy of, which you had formerly sent to the Commonwealth Joint Committee, in that document you raised some doubts about whether requiring advisers to disclose downside risks would work in practice. What do you think advisers should be required to explain to clients about risk?

**Ms WAKELIN** — I really think that advisers should be required to explain to clients that no asset class including property has a continuous upward trajectory, that there is inherent risk in any kind of investment strategy. You can put your money under the mattress and there is risk associated with that. Within the parameters of investment cycles and economic cycles there will be times when the upward trajectory is much greater, there will be times when things level out, and if we go into a serious recession there will be a bit of a downside. That is critically important and we always say that to our clients. There are some instances when clients sit across the table from you and ask what the likelihood is that this could happen. It would be absolutely ridiculous for us to say, 'Oh, that just won't happen'. Of course it is going to at some point in time. But the reality is that if you know how to select assets properly based on a significant and perpetual underlying demand, whilst there will be some downside, the overall performance over 7 to 10 years should be strong. It would be pointless and just downright wrong not to draw a client's attention to the downside risk, and we do that with every single client. We say to them, 'Overall it will be wonderful because we know this area, we know this property, the growth is demonstrated over 25 years, 30 years. But at some point in time there will be a blip; get ready for it. Get into the market, stay put, don't trade. It costs too much to get in and get out. Get the asset selection right, get in, stay in, and be prepared to ride out a couple of ups and downs along the way, because they will happen'.

**Mr BROOKS** — A couple of the main arguments around a better framework have been about transparency, which you have spoken about at some length.

**Ms WAKELIN** — Yes.

**Mr BROOKS** — The other argument that people have put to us is that you get a better standard of property investment advice through the people who are captured under a proposed scheme being better trained. There has been some discussion around the better training of people who would be able to provide that advice. Can you comment on that and on what sort of training you would see as applicable to property investment advisers under a proposed scheme? And what are your thoughts on the costs that might flow from that?

**Ms WAKELIN** — The costs to the consumer or the costs to the practitioner?

**Mr BROOKS** — I would be interested to know whether you think they would be absorbed by the industry, whether they would be passed on to consumers, how reasonable you think they would be and what level of training you think would be required.

**Ms WAKELIN** — I think consumers should definitely have access to advisers who are well qualified, both formally and informally, to give impartial advice. I would suggest that there be some compulsory training units for people who wish to specialise in independent property advice, and that could be incorporated into the existing real estate agents courses. I think it is terribly important that if you are clear — this is where you want to specialise — there should be some very specific training units associated with that. Depending on how the regulatory framework is set up, there may be a completely separate stream for an independent property adviser, where they gain acknowledge that is a bit above and beyond. I know that the current real estate licensing courses do not have that kind of bias at all; they do not necessarily train people on economic cycles, investment cycles, and I think that is important. I think there should be some training on how you measure or how you would classify a successful investment, and what that actually means for the consumer, for the investor. I do not see that it should be a very costly thing either, to the practitioner or the consumer. I think that if we are going to get this right, let us try to keep it very reasonable, let us try to keep it very sensible, particularly from a compliance point of view. If we can look at the licensing requirements and add units or subtract other units that may not be relevant and tailor them to this particular area of expertise, I think that might be the most appropriate way to go.

**The CHAIR** — Monique, in these hearings we have also heard of the difficulty that property investors have in getting a fix on what a property might be worth because they do not know what the level of price is in a particular area. Do you have a view on that — I am sure you have — and do you think lenders should be required to disclose their valuations to buyers?

**Ms WAKELIN** — Yes, I do. I think lenders should be required to disclose their valuations to buyers. First of all, I have long held the view that if the consumer is doing the paying, the consumer has the right to the information. If a borrower or a prospective investor is paying either directly or indirectly through a lender for a valuation to take place, they have an immediate right of access to that information as far as I am concerned. I think this would go some way to creating that all-important transparency in what somebody might be asking as an asking price for a property, particularly on the private sale market or through developers or through associated entities that effectively develop property and onsell them. I think that would help. I think that has to be a completely independent third party, because one of the problems is that a lot of the one-stop shop concepts employ valuers who of course have a vested interest in aligning their valuation with the asking price of the property. I think that is fundamentally wrong. Now I have lost track of the original question. Having said that, have I answered it?

**The CHAIR** — That is fine; I think you have covered that. Any further questions?

**Mr FOLEY** — Following on from what Colin was saying, if that model of regulation and the transparency that you talk about were to not happen nationally, do you take a view as to whether any one state or combination of states should proceed independently of the Commonwealth? If nothing is going to change federally, is there a role for the state to move?

**Ms WAKELIN** — I think there is. Do you mean for Victoria specifically?

**Mr FOLEY** — Yes.

**Ms WAKELIN** — Yes, I do. If it did not happen nationally then I think Victoria could very happily be a trailblazer in this regard and might set the tone for everybody else to come on stream.

**Mr FOLEY** — Do you think that would have a competitive disadvantage in any way for Victoria?

**Ms WAKELIN** — No, I do not. I think consumers would embrace it and I think a lot of it has to do with how carefully and how well the regulatory framework and legislation is drafted, how well informed the people who are actually responsible for writing the legislation are and how in touch they are with the realities of the different marketplaces in Victoria. That has occurred in the past, which we have a wonderful opportunity to avoid this time. Those who write the legislation can really understand how the marketplace operates, how segmented it is and how fragmented it is in many ways. They can write legislation that can happily encompass that and protect consumers, no matter what areas of the market, whether it is regional Victoria, inner city Melbourne, the inner suburbs or the middle suburbs and whether it is established property or brand new properties. All of these different markets to some extent operate somewhat independently of each other.

As long as it is kept relatively straightforward and is not overcomplicated, I believe it can be done. I would not see it in any way as being disadvantageous to either the state or the consumer. I think it is a wonderful opportunity for the state to take the lead and get it right. I think if anything it will really be a demonstration to Victorians that government is serious about this.

**The CHAIR** — We are just about out of time but I want to ask just one more thing. There has been mention in the media of interstate investors, especially from Western Australia, coming to Victoria. To what extent is that a problem? Do you have a view?

**Ms WAKELIN** — Yes, it is a problem. We have seen quite a bit of it this year. What has concerned us enormously in the company is that we have seen companies based in Victoria tramping over to WA and getting WA investors almost to buy sight unseen. That to me is an enormous concern. Again, it is because there is a lack of transparency, a lack of regulation, a lack of legislation around this and the consumer just does not know what questions to ask. They think they are receiving advice. They are not receiving advice. They are being sold to. There is nothing wrong with being sold to, as long as I know I am being sold to. The problem arises when it is camouflaged as an education seminar or a wealth creation seminar — that is the problem. When you have a lot of money — and many Western Australians are very cashed up — people are actually quite desperate to place those funds somewhere. I think that a number of these organisations are playing on exactly that, to the disadvantage of the consumer. So it is not just Victorians who are not being protected here; it is Australians. Even though they may be coming from interstate, they are trading and the trading environment is under Victorian jurisdiction and it is a problem. Yes, we have seen a lot of it and we are very concerned about it.

**Mr FOLEY** — I was in Hong Kong recently and on the television popped up real estate ads and loan ads for property in Queensland and New South Wales.

**Ms WAKELIN** — Absolutely. It is no different from being flown up to the Gold Coast and being told, ‘We’ll fly you up for free’. Come on!

**The CHAIR** — We are out of time. Thanks very much, Monique. That has been very valuable. As I said, you will receive a copy of the transcript and I am sure Kerry and Susan will have occasion to give you a call to follow up on any further information you might have.

**Ms WAKELIN** — You are very, very welcome to do that. If there is anything else that we can contribute in a constructive way, we would be more than delighted to do that. Thank you so much for your time.

**Witness withdrew.**