

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 23 FEBRUARY 2011**

SESSION TWO

Members

**Hon Max Trenorden (Chairman)
Hon Jon Ford (Deputy Chairman)
Hon Ken Baston
Hon Jim Chown
Hon Ed Dermer**

Hearing commenced at 11.12 am

ATKINSON, MR MARK

President, Strata Titles Institute of Western Australia (Inc), sworn and examined:

The CHAIRMAN: Welcome to the hearing. We need you to take either an oath or affirmation.

[Witness took the affirmation.]

The CHAIRMAN: Have you signed the document titled “Information for Witnesses”?

Mr Atkinson: I have, yes.

The CHAIRMAN: Have you understood it?

Mr Atkinson: Yes.

The CHAIRMAN: The proceedings are being recorded by Hansard. The transcript of evidence will be provided to you. If you quote from any documentation, will you please give the full title so that Hansard can source the document? I remind you that your transcript will become a matter for public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that evidence be taken in closed session. If the committee grants your request any public or media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute contempt of Parliament and may mean the material published or disclosed is not subject to parliamentary privilege. You are probably aware that whatever you do in here is covered by parliamentary privilege; it is just not outside. Thank you very much for coming in.

Mr Atkinson: It is my pleasure.

The CHAIRMAN: The committee is some way into looking at these matters and we are very pleased that your organisation, and you as president, are prepared to come in. We have your submission and a bit of other information from other activities that you have done in the past. Would you like to make an opening statement?

Mr Atkinson: No, I think straight into the questions; if the questions do not raise what I think needs to be said, then I will return to it.

The CHAIRMAN: Could you inform the committee how the Strata Titles Institute of Western Australia is currently funded? Where do you gather your revenue?

Mr Atkinson: Two principal sources: the prime source is membership subscriptions; the second source is sponsorship, and I guess a lesser source also is education and training, which is self-funding events.

The CHAIRMAN: How many members do you have?

Mr Atkinson: One hundred and eighty-two currently.

The CHAIRMAN: In this area of strata managers, do you have any idea whether you have all the managers?

Mr Atkinson: I know for certainty that we do not have all. We have approximately 142 out of that 182 of our membership who are strata managers. But a simple search of the *Yellow Pages* will reveal that there are businesses operating out there that are not members of STIWA that are operating as strata managers.

The CHAIRMAN: Do your managers cover the whole gambit—licensed, unlicensed, amateur?

Mr Atkinson: Intentionally it is a multidisciplinary institute, with someone like myself, who is a lawyer, in there and we have about 40 other disciplines. As I said, we have about 142 strata managers, and of those strata managers all are paid in the sense that we do not have volunteers. We do not get currently proprietors who self-manage to join as members of the institute. But I might say at this stage that we have plans afoot to change that to expand the membership base significantly to include strata schemes and proprietors.

Hon ED DERMER: Are those proprietors or voluntary managers precluded from joining you?

Mr Atkinson: No, they are not precluded from joining us if they have an interest in the profession—however that arises. But we have not marketed to them or put ourselves out there as being open to membership.

Hon ED DERMER: So none has joined?

Mr Atkinson: I think none of them has joined; I think that is correct. There certainly have been people who are proprietors in the schemes who are managers who have joined and who go on to become professional managers and do it for a fee. We have a few of those. But, as I say, we have plans afoot to expand the membership base significantly. We will put that to the current members later this year.

The CHAIRMAN: Do you have a standard contract?

Mr Atkinson: We do; it has just been revised. It is available to members on the website.

The CHAIRMAN: Is it available to us?

Mr Atkinson: I could provide the committee with a copy of the contract. It is a standard management contract. It is not a public document.

The CHAIRMAN: Do you want us to keep it private?

Mr Atkinson: If you could keep it private, yes. It is copyright to the institute and for use by members.

The CHAIRMAN: That is one of the questions that has been put to us: whether we should have a more prescribed method of reporting. We will get to that in a moment. We are running through these questions pretty quickly.

Hon JIM CHOWN: In regard to the professional indemnity insurance policy that STIWA are advocating for strata managers, under that policy I would assume that the insurance companies have very specific guidelines about how strata managers need to apply themselves, in case the policy needs to be invoked or claimed upon.

Mr Atkinson: Can I take you back a step initially. STIWA does not advocate a particular professional indemnity insurance policy. One of the sponsors, in fact, the platinum sponsor, is Corporate Home Unit Underwriting Agency, which is a division of QBE, and that is available for members and others a professional indemnity insurance policy. Now, I have not seen that policy in some years, but my understanding is that it is comprehensive. But it is certainly not compulsory for anybody in this state to have professional indemnity insurance in place. To be complete, can I also say that you need to be careful in separating out also the strata manager from the strata company, which is the artificial entity, because it is a decision for each strata company or body of proprietors, whether the strata council, the group of proprietors who are looking after the affairs, has a policy in place which covers any misdeeds or defalcation by any council.

Hon JIM CHOWN: So, regardless of who has the policy, the strata manager or the corporate body, if there is an indemnity policy in place, would I be correct in assuming that policy would stipulate that certain operations have to be undertaken by responsible bodies to exercise the policy, if necessary?

[11.20 am]

Mr Atkinson: I am not sure that I follow the question. My understanding is that the policy provides coverage and then has exclusions, so that if you fall within the coverage and do not fall within an exclusion, you will receive an indemnity under that policy. I am aware of a real estate agent, I think in the 1990s, who stole money from schemes and died shortly thereafter. My understanding from the evidence given to the inquiry in 2002 and from discussions with the CHU is that compensation was paid to those schemes under both the REIWA fund and also under a policy of insurance, so that the schemes received their money back. I am not aware of any other instances of defalcation since then.

The CHAIRMAN: Should everyone have professional indemnity insurance?

Mr Atkinson: As an institute, we have debated whether we would make it a membership condition. We decided not to on the grounds that it is better to have people in the tent and educate them than to exclude people who choose not to have PI insurance, for whatever reason. My own personal view is absolutely. I have insurance for my practice and I would not think of practising without it.

The CHAIRMAN: The Victorians use it for the counting of their registration, and they use the insurance as the registry model. That is how they know where people are. We will leave it at that. What about the standing of professional managers?

Mr Atkinson: We have certainly supported in our submission and previous submissions elsewhere that the standing of the strata management industry could be improved. I think that could largely be improved as a result of simply having greater visibility. People do not know what strata managers are. As a lawyer, in my professional practice, when I receive inquiries, quite commonly I spend a lot of time simply sorting out in people's minds that that is the strata company, that is the strata council and that is the strata manager. To proprietors, often the strata manager is the person who is responsible for managing their affairs. That is not the case, it is the council acting on behalf of all proprietors, and the manager is there to assist. Visibility would help improve their standing because people do not understand their role. There are many instances, for example, where strata managers are called upon to fix a light in an apartment. That is nothing to do with their role, but some tenants do not understand that.

The CHAIRMAN: We have heard fairly strong evidence that there is a strong differentiation between the best operator and the worst operator, which suggests to us that there is quite a difference in those. We are interested in looking at whether we should recommend matters that would close that competency or skill, or whatever adjective you want to use. Do you have a view on that?

Mr Atkinson: I am aware that there are large competency differences, yes. It is a small industry and the big businesses in it are small—usually one operator. The vast bulk of our members are single-operator businesses or they might have one or two employees. That is a feature of the industry. Size would help. Consolidation, in my experience, would help improve the standards. It is certainly something that we endeavour to do via our programs to educate all members, but, of course, we cannot force people to join our association, so we cannot educate all managers.

Hon ED DERMER: When you talk about improving standards, what do you see as the most urgent need for improvement?

Mr Atkinson: It is largely legislative driven by its absence. If you look at the Strata Titles Act, there is a glaring failure to proscribe in the legislation what financial reporting, for example, is required to be undertaken by anybody. If legislation was in place that prescribed the conduct of strata councils in reporting back to proprietors, that would fix a fair few of these problems. I have expressed the same view to people in other places, in particular now to the Department of Commerce. At the national level, they are working on—the fair trading ministers in other states and the Department for Communities here—developing consistent conduct requirements across the

board. I have urged them to put those conduct requirements into the Strata Titles Act so that regardless of whether you are managed by someone who is paid for their job or not, the council of the scheme has to report back to you and do all those things. That would improve standards.

Hon ED DERMER: Would you include a requirement for audited financial statements in that?

Mr Atkinson: That is not for me to decide; it is a political decision.

Hon ED DERMER: Do you have a view?

Mr Atkinson: I think it would be very expensive for smaller schemes, but it would be a very good idea for larger schemes.

Hon ED DERMER: You could have within that prescribed requirement a threshold?

Mr Atkinson: Yes, a tier system. Some schemes are operating with a budget of either nothing or a couple of hundred of dollars a year, and I am aware of schemes that have budgets of a few million dollars a year.

Hon ED DERMER: Would you care to venture where you would strike the threshold?

Mr Atkinson: The inquiry chaired by the Honourable Mr McRae suggested some thresholds. In response to that inquiry, we asked: why should we reinvent the wheel? There is a tier there already of a small scheme being less than five lots. Schemes that are less than five lots would probably cover 35 000 or 40 000 of the 57 000-odd schemes in Western Australia, and they would not need audited accounts. Schemes with just above five lots would mean that you would get much greater —

Hon ED DERMER: Where would we find that five lot-tier —

Mr Atkinson: The Strata Titles Act draws the distinction between what are called small schemes and, by definition, larger schemes.

Hon ED DERMER: Does the value of the lot or the turnover of the strata not come into account?

Mr Atkinson: No, it is currently defined as the number of lots.

Hon ED DERMER: Is that always appropriate? I imagine that you could have five expensive lots and around the corner you could have 65 very cheap ones.

Mr Atkinson: Of course, the people in those five very expensive lots could voluntarily decide to audit their accounts. It would be up to them. My concern about imposing a standard based on turnover is that it will vary significantly from year to year. There are all sorts of complexities there. The act itself is already a very complex act. As a former referee, my now consultant employee once remarked that the act is one of the acts in Western Australia that is more widely consulted than just about any other act, and therefore it should be easy to read, yet it is not.

The CHAIRMAN: Mr Atkinson, does your institute have a view about whether the state should take up the federal —

Mr Atkinson: Absolutely. Since it has come about result as a result of the COAG process we have been a strong supporter of it. That is why I mentioned at the outset that I am a councillor of the National Community Titles Institute. That body has a role on the national body that is looking into licensing.

The CHAIRMAN: Can I ask you: do you have a view on registration and/or licensing?

Mr Atkinson: We have been waiting so long that we will support just about anything that comes out on the principle that anything is better than nothing. I understand that the current preferred model is a corporate registration. The current model is akin to that which currently applies in real estate agencies, so you have a corporate registration with a licence that endures and you have a personal licence holder, who is obliged to renew triennially.

The CHAIRMAN: This question about professional competency, obviously the institute has a high interest in that.

Mr Atkinson: Yes.

The CHAIRMAN: I would expect you to argue that you should hold the capacity to conduct that.

Mr Atkinson: Not necessarily. I think it would be inappropriate for government to prescribe a particular body as the certifying body, but certainly, as with the conveyancing industry, for example, there should be an open tender process available to compete for education funds. The institute would, of course, seek to tender for a slice of those funds to educate managers.

The CHAIRMAN: In a new world—presume that we do create a new world—what should be the institute's role?

Mr Atkinson: As a provider of education?

The CHAIRMAN: You are out there now. You have already said you would like to take in non-professional managers, and there is a question about who does training. What do you think your role should be?

Mr Atkinson: As I have expressed to our members, we would like to be “the” sector body that is consulted by government whenever any issues arise in the strata sector. Currently, as you can see from the membership numbers, we are largely a body of strata managers. Our constitution says that we should be the body that is the industry body, but the aim is to become the sector body so as to include those people who consume the services of strata managers. We would like to be that body. We think there is potential for growth there and for the improvement of standards.

Hon ED DERMER: Owners, for example, could apply to become members of your organisation?

Mr Atkinson: That is the plan. It has to be approved by members, but that certainly is what we are working towards.

The CHAIRMAN: Do you take complaints directly regarding your own members?

Mr Atkinson: We do.

The CHAIRMAN: How robust do you think your process is?

Mr Atkinson: It has limited funding because, of course, we rely on membership subscriptions and sponsorship to undertake all our activities. It would be nice if we could conduct hearings like this, for example, but we do not have the resources of transcription services et cetera to allow us to do that. It is a correspondence-based process, but it is rigorous in the sense that a decision is required to be reached. If suspension or expulsion is recommended, it goes to the council for a decision.

The CHAIRMAN: We have heard strong evidence about how we should deal with dispute resolution. Obviously when you have these types of inquiries, they are the first people through the door. Do you have a view about dispute resolution?

Mr Atkinson: It is always a vexed subject for member-based bodies, but I am firmly of the view that any member-based body needs to have an avenue where people can complain about its members. You have to have it. It would be nice to have more funding, but it is not going to happen in the next few months. Hopefully it will happen with greater membership.

The CHAIRMAN: If we were to look at making recommendations about strengthening the organisations, how do you think you should receive enough funding to be a professional body?

Mr Atkinson: Experience in other states shows that becoming a registered training organisation and making a profit from that is one way of strengthening organisations so that if there is a slice of funds available for the provision of education, that can assist that. Increasing the membership base is obviously another way of doing it. STIWA's ultimate sanction will only ever be expulsion from membership of the institute; it is not a policing body. The government has, as I said in my

submission, vacated its role in this area. There needs to be an independent service open to receive complaints about managers.

Hon ED DERMER: In addition to the role of your organisation?

Mr Atkinson: Yes, we are limited to membership sanctions, which obviously will not be enough sometimes. We do not have any power to do anything.

Hon ED DERMER: It would seem to me that if that was well known, and I wanted to hire a strata manager and I understood that you had a rigorous process for expelling people who did the wrong thing, that might lead me to prudently choose someone who was a member of your organisation rather than someone who was not.

Mr Atkinson: Indeed. We are endeavouring to go further than that by having already put in place an accreditation scheme so that of the 142 members who are strata managers, about 25 have gone on to become what we call “accredited managers”, which is a process whereby they are obliged to attend a certain number of events and have PI insurance. We are open so that anyone can join, but if you want to market yourself as different from the rest of us, you can do so and you are required to attend education and training events and have insurance. One of the questions that was asked of me in the list was about a quality practice scheme, which is an idea that has come about as a result of the work of the Law Society here in developing a voluntary quality practice standard. I see it working the same way for managers so that a strata management company, as distinct from the individuals within it, would be able to apply for certification to that standard, which would certify, much like any other standard, that they do things in a certain way.

The CHAIRMAN: Can I ask you a question about SAT? We have some people who have been before us who were very unhappy with the SAT process. One is that once you get there, if you have someone opposing you with a lawyer, it basically takes you out of the argument, and the inability of SAT to be able to compel a decision. Do you have a view?

Mr Atkinson: I do. I strongly disagree with both of those expressed views. As a lawyer who practices just about every week in the State Administrative Tribunal, my experience is that the people who represent themselves are given a very adequate hearing. I often am frustrated by the amount of time I spend listening to unrepresented people. My experience is that the processes in SAT are balanced and that unrepresented people get a fair chance. In relation to compelling a decision, I am not sure exactly what you are referring to, but if you are intending to mean they cannot enforce their own orders, that is a problem. You need to go to the Supreme Court, ultimately, if you if you want a bailiff to go out there and enforce something.

The CHAIRMAN: Do you think SAT should be able to do that?

Mr Atkinson: I think it is probably inappropriate that a tribunal enforces its own orders. The expertise lies with the sheriff’s department.

Hon ED DERMER: Some witnesses have suggested to us that a requirement for, they said “licensing”, but I think registration would probably have the same effect, may assist in the implementation of SAT’s orders by having an opportunity to have someone’s registration removed if they were demonstrated to have done the wrong thing.

Mr Atkinson: I think you are right. Ultimately, if there is a licensing system introduced, I expect that SAT would be the body that would determine licensing eligibility and renewable eligibility and would therefore have the knowledge about who the licence holders are when making their decisions about strata companies.

Hon ED DERMER: Effectively, someone that SAT had found to be doing the wrong thing could be prevented from continuing to practice?

Mr Atkinson: Ultimately, yes.

The CHAIRMAN: Can I change the questioning to a degree? There has been considerable discussion about what should and should not be declared as income from strata managers. Does your institute have a view on that?

[11.40 am]

Mr Atkinson: It certainly does. There is a practice around Australia, not just in WA, of strata company managers receiving a significant part, not the majority, of their income from commissions. Those commissions are required to be disclosed by virtue of an ASIC class order. My experience is that they are routinely disclosed. You see in the standard contract that STIWA has that we have a provision there for managers to disclose their commissions that they receive, who they receive them from and how much. My experience is that the dominant insurer here is very proactive in doing what it can to ensure that managers do disclose the fact that they are receiving a commission. My view is that it is entirely appropriate that strata company managers receive a commission. Insurance brokers receive a commission. They are acting effectively under the aegis of the insurer. The insurer is required to supervise them to some limited extent under the FSRA provisions. They are doing work on behalf of the scheme to the benefit of the scheme. If the commissions are not disclosed, then fiduciary law would tell you they are required to disgorge them. I think that occurred in a case in New South Wales, Alliance Strata Management, which had not disclosed the full extent of the commissions they were receiving and were threatened with losing, or maybe even lost, their licence. In relation to other contractors, I am not aware of strata managers receiving “kickbacks” from suppliers. It is not a practice that I have received any questions about in my legal work, nor as president of the institute.

The CHAIRMAN: But we have heard some of that.

Mr Atkinson: Mr Chairman, I am aware there was an article published in *The Sunday Times* in August 2008. As you would be aware, we asked you for details of that so we could investigate and take the appropriate action under our constitution.

The CHAIRMAN: We are currently doing that.

Mr Atkinson: If that is what this inquiry does, then great, because if there are managers out there who are receiving kickbacks that are not disclosed, my view is they will not be a member of the institute.

The CHAIRMAN: But you would not be surprised to hear that some people actually do operate like that.

Mr Atkinson: I would be very surprised to hear that, because, as I say, I have not seen any evidence of it. I have been in this industry now for 15 years and I have not seen any evidence of that.

The CHAIRMAN: Back to insurance. The question of disclosure is one thing. There is a question, though, that if you are an agent, obviously, of an insurance company, your responsibility is not to get the cheapest quote; you are actually acting for the insurance company. Do you think there is a question there?

Mr Atkinson: I think that is adequately covered by the FSRA legislation and fiduciary law, which requires you to put up to your client strata company the insurances that are, in your opinion, best for them. If you select an insurer because it pays more commission, there is no doubt that you have breached your fiduciary duty.

The CHAIRMAN: Yes, but that is not really the question. The question is if you select the insurance company because you are an agent of that insurance company because your agency gives you the legal protections. You understand?

Mr Atkinson: Yes.

The CHAIRMAN: If you are concerned about your legal standing, you may seek to get insurance only from insurance companies so they will give you an agency.

Mr Atkinson: My experience is that that is not the case. CHU operates—in fact, I gave a seminar about this not that long ago—through authorised representative status for strata company managers. They are the dominant insurer, but there are other insurers that are moving into the marketplace. Wesfarmers, for example, operates through distributorships. In both of those cases—I am referring to notes here—you have to give the strata company information about who you act for, you have to disclose the commission received and draw attention to the insurer's dispute resolution scheme. There is nothing to prevent a CHU—authorised representative from also being a distributor for, for example, Wesfarmers. My experience is that strata company managers are often authorised representatives for CHU and also distributors for another insurer, like Wesfarmers.

The CHAIRMAN: There is no question that that is legally an entitlement. I was really only asking: does that limit the pool of insurers?

Mr Atkinson: That is a consequence. Yes, it does, but that is a consequence of Australian government reforms enacted many years ago. You cannot distribute insurance unless you have some relationship to the insurer.

Hon KEN BASTON: Of that commission, what percentage would represent the income of a strata manager?

Mr Atkinson: On the way up here I thought you might ask me that. I do not have that information to hand. Macquarie Bank has conducted surveys in the past and may have information about percentages.

Hon KEN BASTON: But it is not readily known.

Mr Atkinson: It is not readily known to the institute.

The CHAIRMAN: The Owners Corporations Victoria said it was 20 per cent in Victoria.

Mr Atkinson: I suspect it is probably slightly less, but that is just a suspicion, not what I know.

The CHAIRMAN: Can we talk for a moment about how strata managers should handle their funds? Again, we have heard a fair bit of evidence about the practice out there. Does your institute have a view? You obviously do. So what is the view?

Mr Atkinson: Firstly, the institute has published some best practice guides, which I think were referred to in our submission.

The CHAIRMAN: Yes; we have copies.

Mr Atkinson: You may have copies of them. Secondly, the Strata Titles Act does not prescribe anything, and, absent that, it is very hard for strata managers, for example, to convince their clients that they should set up an elaborate account system and pay for that. Thirdly, my view as a lawyer is that it is inappropriate to intermingle personal funds with funds you hold on trust for other people. But STIWA does not have an express position about that. Certainly, in the work that we hope will come out of COAG, we would hope to see strong provisions about that very issue, so that managers are required to establish trust accounts and not mingle their money with their clients' money.

The CHAIRMAN: Is the interest on those accounts clearly the property of the —

Mr Atkinson: My consultation with proprietors on this issue informally over years suggests that they would be exceedingly unhappy if the government were to take a slice of that for licensing of strata title managers, for example. There is no doubt that the interest belongs to the people whose money it is.

The CHAIRMAN: So a strata manager should not be keeping the interest?

Mr Atkinson: That is my view anyway, unless that is otherwise provided for in the management agreement. The management agreement could say that, as part of their fee, they are going to collect the interest.

The CHAIRMAN: But that is a disclosure, as you say.

Mr Atkinson: Yes; that is right.

The CHAIRMAN: Also, do you have a view about the mingling of a strata manager's own personal operations with those of the funds?

Mr Atkinson: The act would currently permit it. I do not have information about how many people do it. My view as a lawyer is that it is inappropriate to do it. It is a recipe for disaster.

The CHAIRMAN: If you are looking to the future, what role do you think the institute should play in that, or should it just be a cut-and-dry legal situation?

Mr Atkinson: I think that the institute has a large role to play. We have been around for a while and we have a very large role to play, but we need backup from the act. We need conduct provisions in the act that allow the role of managers to be more widely understood.

The CHAIRMAN: The other vexed issue, and we have spent a fair bit of time on this, is the management of proxy votes. Do you have a view?

Mr Atkinson: I do. I have got the question in front of me about what happens in Victoria. I was not aware of that position of OCV. Separately, in relation to council meetings, the default by-laws currently in the Strata Titles Act allow a proxy only to someone who is on the council—a proprietor, in other words. So the default laws that apply, unless the scheme otherwise provides, say that, for example, the manager cannot vote on behalf of a proprietor at a council meeting. Secondly, in relation to general meetings, I think it is absolutely essential that strata managers and anyone else be able to hold a proxy and vote at a general meeting. The reality is not that proprietors are precluded from exercising the vote; the reality is that managers struggle every day to get people to take an interest in their scheme. Without proxy votes, the management of schemes would collapse; you would never get a quorum.

The CHAIRMAN: Obviously, proxy votes have a role in giving people a say. But the Victorians were very strong on saying that managers actually have a vested interest and should not be voting.

Mr Atkinson: Clearly, they have a vested interest in decisions on management contracts, for example. That is why section 50A of the act has proscriptions about voting as a proxy holder when it is a matter you have an interest in. My view is that the act, although it could be tidied up a little bit in this area, probably already provides sufficient protection for proprietors from strata managers exercising votes on their own management contracts.

Hon ED DERMER: I say this just from memory, but in evidence that we have heard from owners, as I recollect it, there is a concern to have managers using proxy votes to the point that perhaps the manager is suggesting a proposition to the general meeting that the majority of people there are not supporters of the proposition, but the manager has such a large number of proxy votes that they have close to a majority to be cast by themselves on the proposition.

Mr Atkinson: Yes, and they have that position only because of the conscious actions of the proprietors who wish to appoint the manager to exercise that vote on their behalf. It is not as though the strata manager is obtaining, in my view, a position of influence through unfair means. To be in the majority by holding proxies, proprietors in the majority have to have given you those proxies. If those proprietors who have given you those proxies are not happy with your decisions, then they themselves can turn up to the meeting and revoke the proxy at the meeting or deal with it after the meeting.

The CHAIRMAN: But in practice that is not what happens. The Victorians were concerned about the handling of proxy votes. They were saying that they were looking at having a prescribed proxy form, because many people submit their proxy forms just saying, "I'm happy to send it in." They do not know what the questions are and have not had a look at them. They are not in fact saying directly to the manager, "I want you to vote a particular way." They are just actually saying to the manager, "I give you my authority to vote." The Victorians do have a bit of a concern about that. They were talking about having a proxy form that actually had some questions on it and also dating a proxy form—that is, how long a proxy form is alive for.

Mr Atkinson: Can I address you on that? There are two things. The institute has recognised that the act is deficient in not stipulating a particular form of proxy. That is why we have developed for use by members a standard form of proxy that is dated; it refers to a specific general meeting. It is my experience that it is routinely used by members when sending out notices of general meetings. It may be that the experience in Western Australia is slightly different from that in Victoria. In regards to directed proxies, I think, from recollection, our proxy form allows proprietors to direct managers to vote in a particular way. One of the issues there, of course, is: what happens if a motion is amended at the meeting and how is the vote to occur then? But contract law picks that up adequately, I think. But there would be no problem with having a prescribed form of proxy. STIWA would not have a problem with that at all.

Hon ED DERMER: How about this as a problem just to get your response? When you have got the general meeting, the manager, in a sense, is the servant of the owners and they are reporting on what actions they have taken, hopefully in the interests of the owners.

Mr Atkinson: Yes.

Hon ED DERMER: As one of the owners, I am unhappy about some action that you have taken and I move a motion to direct the manager to stop doing that. The people who may have assigned their proxy votes to the manager are not there to hear the concern that I have raised or to be aware of the motion that I have moved. The manager then uses his proxy votes to defeat the motion that I have moved.

Mr Atkinson: That needs to be resolved in two ways, and the act goes halfway to fixing that problem. Firstly, proprietors should be able to place on the agenda items of business for consideration by the meeting, so that when the notice of the meeting goes out to all proprietors, everyone knows what is going to be discussed.

Hon ED DERMER: All the owners?

Mr Atkinson: All the owners know what is going to be discussed and can make a decision about that in advance about whether to appoint a proxy, given that notice of meeting. The default by-law is kind of a little iffy in this area and really could be improved in specifying that proprietors have an opportunity to submit items for the agenda. The notice goes out and everyone knows about it. Secondly, general meetings should deal only with items on that agenda. If there is an item that is serious, that proprietor who wishes to raise it can requisition, with support from others, an extraordinary general meeting to deal with it, for example.

The CHAIRMAN: But proxies could be used to stop that as well.

Mr Atkinson: The default by-laws currently specify 25 per cent support is necessary to requisition an extraordinary general meeting or a decision of the strata council to call it—either of those.

The CHAIRMAN: Is there a question about deteriorating interest in the council? We have heard a little bit of evidence from you, and some from people preceding you, that it is hard to get people involved and it is hard to get people to be present and it is hard to get people to serve.

Mr Atkinson: Over my 15 or 16 years, I would say, yes, it probably has got slightly worse in terms of what has been reported to me in convincing people to turn up to meetings. For example, when a

manager wishes to schedule a meeting at four o'clock or five o'clock in the afternoon, people say, "I've got work to go to" and the manager says, "This is my work." Often meetings are scheduled at seven o'clock at night or on Saturdays or Sundays. Quite frankly, I would not want to be a strata company manager. As I say, the solution is to give greater visibility to the role of strata managers so everyone can understand that.

The CHAIRMAN: And better reporting of their —

Mr Atkinson: And conduct provisions, so there is better reporting to proprietors of what the strata manager has been doing with their money.

The CHAIRMAN: You have already indicated that you have not got a strong process of dealing with complaints and you would like it to be stronger. That is fair.

Mr Atkinson: Yes. We would like to have more money to make it stronger.

The CHAIRMAN: What would you actually do if you had the funds? What would be your ideal process?

Mr Atkinson: Firstly, we would have a look around and see what other bodies are doing as best practice, but I imagine that would include the ability to have hearings. I see that as the major impediment at the moment. In my experience, hearings are the best way of getting accurate evidence out. We do not have the resources to do that at the moment.

The CHAIRMAN: Back to the question. We have heard a fair bit of evidence about a substantial difference in the professional skills of managers. Could we just go back over that ground, because I think this is probably the fundamental here? What do we do about those who either are small and do not have the resources or are small and are not quite competent in some of the skills? What do we do about lifting them over a medium?

Mr Atkinson: Firstly and primarily, you would make sure that they are licensed. I just stress to members that I think this is important, because, at the moment, a lawyer, for example, convicted of stealing money from a trust account and coming out of jail after serving their time could the very next day set up as a strata company manager and gain even more money under their own control, which seems absurd to me. By the way, I am not aware of any members of STIWA who are in that position.

[12.00 noon]

The CHAIRMAN: But still, you can put up a shingle tomorrow morning and be a strata title manager?

Mr Atkinson: I could. I am not a convicted person, I have no convictions, but I am saying anyone, for example —

The CHAIRMAN: Yes, that is the point.

Mr Atkinson: There are no barriers to entry.

The CHAIRMAN: You could walk out of any particular industry—I could retire tomorrow as a politician and go and hang up a shingle and say —

Mr Atkinson: You could walk out of jail tomorrow and set up as a strata company.

Hon ED DERMER: There is no character test?

Mr Atkinson: Nothing, there is nothing there at all. That is the primary response in terms of lifting standards. The second has to be improving the conduct provisions so that councils, through strata managers, are required to provide better information to their proprietors. You are probably going to get the best return from those two items. Thirdly, however, the industry clearly needs to support that by, for example, accreditation programs and a quality practice standards that I talked about. But it is

very hard to do those things properly when you do not in the first instance have any licensing requirements or any conduct stipulations—very hard.

The CHAIRMAN: Exactly. So just looking at the mood, reading New South Wales, being in Victoria, listening to people here, there seems to be a mood that says that the prevailing or the default system, as you said earlier, is that we want to put up a simple system where people can run their own processes quite simply, but we hear a lot of people coming into us saying that is failing. Do you have a —

Mr Atkinson: You can process it in a couple of ways. If you simply look at the legislation that has already been enacted in the different states, you will get an idea of the approach of the legislators in those states. If you look at Western Australia, it probably has the most laissez-faire provisions, I guess, across the board. Contrast to that at the other extreme would be a state like Queensland that has the most proscriptive approach where the level of detail in Queensland about notices of meetings and the like is just beyond belief. My personal view is that the correct approach lies somewhere in between.

Hon ED DERMER: Are you tempted to suggest a jurisdiction?

Mr Atkinson: No, I am not. I do not think any jurisdiction has nailed it. I have looked at this, but I do not think any jurisdiction has actually nailed it. I think I was asked that question by the Department of Commerce previously. I think the best chance of getting a best system is through a national approach and that would seem to be making progress. But clearly there is still a role for industry, by the way. I mean, industry has to improve its processes in education —

The CHAIRMAN: That was going to be my next question then. So those reporting requirements, should they be constructed by you and your institute or should they be, like VCAT is attempting to do in Victoria, prescribed out of legislation or something?

Mr Atkinson: I think the reality is that government will not cede the ground here, and I do not think they should. I think it should be done by government, but certainly with the systems and input from industry. Currently, I am on, I think, across the board, about 12 or 15 different committees and most of them are looking at reforms in some way. We are sitting on the tenure reform project working group, which is looking at some things. I am on the property industry advisory committee, which is being administered by the Department of Commerce and I am supported by some excellent work from other volunteers. So the industry is not shirking from its responsibilities here, but the reality is the government needs to lead the way.

Hon ED DERMER: If we go back to that point about the general meeting and the manager holding the proxy form and the suggestion that a concerned owner could place the motion on notice, which would then be circulated. What if the concern arose from a report by the manager at the meeting or any other information? Presumably the financial statement, you are suggesting, should be circulated prior to the meeting, so if I had a concern arising from that I could then put a motion on notice about that?

Mr Atkinson: It is a good point you raise. No, the financial information is typically only circulated to the wider body of proprietors, stapled to the back of the notice of the meeting but there is nothing to prevent proprietors asking questions about that at the meeting. If those questions do not get satisfactory answers at the meeting or if a vote is held and proxy votes are used to vote down that concern, then ultimately that proprietor has, as I say, the course of calling an extraordinary general meeting or, which I did not say before, also going to the State Administrative Tribunal. Section 83 gives the tribunal the broadest of jurisdictions to inquire into disputes.

The CHAIRMAN: Would it be reasonable to ask you to provide—you will not have it with you—the number of complaints you received as an institute?

Mr Atkinson: I do not have the exact number. I thought we had provided some information about that in our submission. It is less than 20 a year.

The CHAIRMAN: We would just like to have the general category of what they fall under, the people who are approaching you—what areas they are actually complaining about.

Mr Atkinson: I am no longer on the committee that deals with complaints and I do not have access to recent information. My information from years past—up to two years ago—is that most of the complaints concern financial information and most of the complaints come from people who are not on the strata council but are in the wider body of proprietors and most of them concern, I guess, information or breakdown in communication about information and the like. So, for example, financial statements that are provided are not understood by the proprietor or are not adequate—that sort of thing would be the majority of the complaints that occurred when I was on the committee.

The CHAIRMAN: What do you think the default situation should be? Do you think the general public should complain to you or to the department of consumer affairs?

Mr Atkinson: It should be both. People are able to complain about our members and also, more importantly, being able to complain to a government body. There is no advisory service at the moment. Landgate does its best but its expertise is in obviously title matters.

The CHAIRMAN: We have heard strong evidence—because VCAT concentrates on arbitration.

Mr Atkinson: I think the reality is you need to set up a filtering mechanism first, which would usually be something like the Department of Commerce and if they investigate and the complaint is serious enough to justify, for example, licensing action, that would go to the tribunal.

The CHAIRMAN: There has also been concern expressed to us that strata managers provide advice under the Strata Titles Act and regulations and sometimes incorrect advice that puts companies at risk. Are you aware of that?

Mr Atkinson: It is near and dear to my heart, being a lawyer, to preserve what I have worked so hard for, and that is a message that is conveyed to managers routinely at education and training events. I do not know about managers who are not members of the institute but certainly at education and training events, there are regular reminders of the requirements of what used to be the legal practitioners act and legal profession act which is now the legal practice act, I think, and the restrictions that it imposes. If members are giving legal advice, they may well be going beyond the bounds of their own PI insurance and putting themselves at risk as well as, of course, the people to whom they are giving advice.

The CHAIRMAN: And most often the problem stems from lack of skill or more?

Mr Atkinson: My experience is that managers are in this industry generally because they want to help and sometimes problems arise when they don't know when to pull back. They feel like lawyers are expensive, engineers, lawyers, whatever, accountants, are expensive and they do not want to have their schemes incur those costs and so they kind of step into that arena.

The CHAIRMAN: We have heard some evidence also that the act should define the roles of the parties involved. Do you agree with that or is that just —

Mr Atkinson: I think it should but it is going to be hard because strata management responsibilities vary widely. The previous witness, Ian Laird—I think any definition would probably catch some of the work that he does but he would not call himself a strata manager. I have raised that issue with the Department of Commerce that they are going to have issues at the margins. Yes, I think it should be defined, but it is going to take some good drafting work.

[12.10 pm]

The CHAIRMAN: Mr Atkinson, you have today given some extra information over and above your submission. Would it be possible to get you to look at those areas you have talked about? So when you get the transcript, you could look at that; would it be possible for you to just drop us a line on some of those issues?

Mr Atkinson: Sure, yes.

The CHAIRMAN: Particularly the conduct provisions you talked about. We do take the institute's view seriously, obviously, but we are getting to the end of the inquiry, so we want to do that balance. If you could do that, it would assist us. As we are getting to the close of our process, we would like that, if that you could, by 3 March, is that possible?

Mr Atkinson: It depends on when I get transcript, really.

The CHAIRMAN: You will get the transcript quickly.

Mr Atkinson: The third of March may push it.

The CHAIRMAN: We are certainly not giving you direction, but it is to assist us. It is just that we have a process that we would like to complete, and we have taken a lot of evidence and it is time to start deliberating.

Mr Atkinson: I will endeavour to do that as quickly as I can, certainly by 10 March, but I am just not sure by 3 March.

The CHAIRMAN: Would you mind touching down with the office just to see what you can do there? We have got your evidence obviously, but it would be useful to learn more.

We have ranged over a large range of issues. Is there anything else you would like to add to what you said?

Mr Atkinson: Perhaps if I can just check back; I made some notes before I arrived. I would also like to give evidence to the effect that the body to which I referred to earlier, the National Community Titles Institute, for your information, is currently itself in a reform process, and it is likely—not guaranteed—that that will result in a single multidisciplinary body around Australia, which would also allow us to improve our services to members and members of the public. Strata Community Australia is the putative name of that body and with the work that myself and many others are doing, we are hoping to have it up and running by 1 July this year. It may be that STIWA changes its name and becomes Strata Community Australia WA.

Hon ED DERMER: Given the important role of the extraordinary general meeting, as the mechanism by which an owner can bring a matter to the attention of his or her fellow owners who are going to be at that meeting, what would you say to the proposition of reducing the 25 per cent requirement?

Mr Atkinson: I would support it. I think that 25 per cent is too high.

Hon ED DERMER: Would you like to—

Mr Atkinson: Ten per cent.

The CHAIRMAN: We have heard that figure before.

Mr Atkinson: It is too high, and in a large scheme, having tried that exercise on behalf of my clients, it is administratively expensive to seek to lobby support, so 10 per cent.

Hon ED DERMER: I think we were thinking along similar lines, from your response; thank you.

The CHAIRMAN: There is one question that we would like to get you to help us with if we could, and you are the only one who can do it. You have said that there are 142 members—

Mr Atkinson: One hundred and eighty-two members and 142 of those are strata managers.

The CHAIRMAN: Could someone just go through your listing and just give us an indication, so we can actually use it in the report, how many of those people are real estate agents? How many of them are our licensed and how many are unlicensed? Do you know that information?

Mr Atkinson: I do not know that information offhand.

Hon JIM CHOWN: I thought all real estate agents were licensed.

Mr Atkinson: Yes, all real estate agents are licensed, but I am not sure, of our membership, how many of them are real estate agents. We have some members who are real estate agents.

The CHAIRMAN: Is that difficult for you to do?

Mr Atkinson: No, it is not. The transcript will act as a prompt for me to provide you with the information. It is not many.

The CHAIRMAN: It is useful for the preamble of our report obviously; you would understand that.

Mr Atkinson: We have not captured many real estate agents, as our members, probably only five or less. And can I say that there is a large number of real estate agents out there practising as strata managers, typically as an adjunct to their property management division, and that would need to change when licensing is introduced.

The CHAIRMAN: My last question, just on that point, do you think that, other than wearing your hat in the institute, there should be a compulsion to be a member of a body?

Mr Atkinson: No, I think as an institute that would be counterproductive. You want people who are willing to pay the money to make that decision about the value we provide and supply services worthwhile to them.

The CHAIRMAN: Should the state actually know how many people are operating out there? Because, when we ask, they do not know. And should the state actually know around about the volume of the business?

Mr Atkinson: You would think that with the benefit of, now, two inquiries and our review, someone would have that number.

The CHAIRMAN: They have it?

Mr Atkinson: Yes, they should.

Hon ED DERMER: Registration or licensing would then give you the number, actually?

Mr Atkinson: Yes, absolutely.

The CHAIRMAN: One further question, does a strata manager have a different skill set than a real estate operative? So, the rules and regulations of being a real estate agent, does that actually—

Mr Atkinson: You have touched on a subject that has been the subject of intense debate, and real estate agents nationwide have said that there are no differences. Those that are strata managers that are not real estate agents would vehemently disagree with that. The strongest difference I see is that the financial reporting requirements and management requirements are far greater on strata managers than real estate agents. Property managers typically clear out the account at the end of the month, and that is it. Secondly, property managers are responsible to one client, the proprietor of a lot. Strata company managers on the other hand have to balance the often conflicting demands of up to hundreds of people, and that skill set of good communication and good conflict resolution skills is unique to strata managers.

Hon JIM CHOWN: I would suggest that that their professional relationship is an entirely different towards their client base.

Mr Atkinson: Yes. That, I think, is reflected in courses that are now available. It has been recognised by the relevant national skills body that it is appropriate to have courses that focus on strata management and that has been developed through the good work, if I might say also, of the National Community Titles Institute over 15 years. So, there are now courses available out there for strata managers.

The CHAIRMAN: Should their aim be to get a certificate or to get a diploma?

Mr Atkinson: I am not sure what their branding is in terms of certificates and diplomas. What I know it as is certificate level III and level IV. As I understand it, the current thinking of the national

body is that principals—licence holders—would be required to have certificate IV, which might be equivalent to a diploma.

Hon JIM CHOWN: Certificate IV in what?

Mr Atkinson: In strata management effectively.

The CHAIRMAN: But not in real estate activity?

Mr Atkinson: They are completely separate. As I understand it, you propose, and I support this, that you are a real estate agent or a strata company manager or perhaps both, but you have to have separate licences.

Hon JIM CHOWN: So, what you are arguing is that there should not be any dilution in regard to completion of these certificates that are allocated for—

Mr Atkinson: No. If the government recognises that strata managers ought to be licensed, then whoever is acting as a strata manager ought to have the skills sets in order to be licensed, whatever else they call themselves.

The CHAIRMAN: When we put the question to the Victorians, we were asking questions about being involved in the federal model, they were unsure whether there was going to be a grandfather clause or not. Do you have a view?

Mr Atkinson: That detail has not been decided in WA. Certainly, there are people who will leave the industry if there is not, because they are at the stage in their careers where they will not want to —

The CHAIRMAN: But, that is not really our concern. Our concern is the quality of management.

Mr Atkinson: My view is that you need to have the skills; you need to be able to demonstrate that you have those skills.

The CHAIRMAN: I would agree with you a hundred per cent, because we have heard evidence that there are some fairly unskilled operators out there, and the best way to weed them out is to put them under the light.

Mr Atkinson: Sure.

The CHAIRMAN: Okay. Any other questions, members?

Well, thank you very much, Mr Atkinson. It has been very good. As I said, we are drawing to the end, if you could look at those couple of requests we have got, we would appreciate it. Hopefully you will read about this some time in the not-too-distant future.

Mr Atkinson: Thank you very much for the opportunity today.

Hearing concluded at 12.20 pm
