

# **ECONOMICS AND INDUSTRY STANDING COMMITTEE**

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

**TRANSCRIPT OF PUBLIC FORUM HELD  
IN PERTH  
FRIDAY, 8 NOVEMBER 2002**

### **Members**

**Mr A.D. McRae (Chairman)**  
**Mr J.H.D. Day (Deputy Chairman)**  
**Mr J.J.M. Bowler**  
**Mr B.K. Masters**  
**Mr M.P. Murray**

**The public forum commenced at 9.00 am**

**The CHAIRMAN:** Firstly, I would like to say welcome and thank you for your interest and attendance and, hopefully, at the end of today I will be able to say thank you for your contribution as well. I am Tony McRae, the member for Riverton and Chairperson of the Economics and Industry Standing Committee. The committee is a standing committee of the Legislative Assembly and all members will be here today. A couple of them had earlier engagements but with me at the moment are the member for Eyre, Mr John Bowler, and Mr Bernie Masters, the member for Vasse. Hon John Day, the member for Darling Range, is the deputy chairperson of this committee and Mr Mick Murray, the member for Collie, is the fifth member. A number of staff members are here and I know that many of you will have already made yourselves known to Ray Wills and Liz Kerr. I thank them in particular for their assistance in getting today organised.

By way of background, you might appreciate a quick snapshot of the role of parliamentary standing committees. Our primary role is to scrutinise the process and practice of government so, for those of you who like the theory of democracy, this is part of the separation of powers whereby Parliament has a means for scrutinising the functions of the Executive. The standing committee processes for the Legislative Assembly are relatively new. They were agreed to in the previous Parliament, but they were not instituted, so the process that we are now seeing is being put in place for the first time in the current Parliament. Therefore, it is a fairly new process, but this committee has, for example, already conducted the inquiry into the Bellevue toxic waste disaster in February of last year and reported with two volumes of reports to the Parliament on that issue.

Standing committees, therefore, make recommendations and findings. Part of the standing orders of the Parliament is that when this committee makes a recommendation or finding to the House, the Government - that is, the member holding executive responsibility, a minister - has responsibility for responding to the committee's recommendations or findings and detailing to the Parliament what responses the Executive of Government are going to make in relation to the parliamentary committee's work. So it is a check and balance. All committees have a broad portfolio responsibility and deal with annual reports, regulations, legislation and any other matters referred to them by the House. Broadly, our areas of responsibility cover everything except health, education and justice, which are dealt with by three separate standing committees. As I said, I am the chairperson of the committee, John Day is the deputy chair and the other members are John Bowler, Bernie Masters and Mick Murray who has just joined us.

The strata management inquiry came about in part as a result of a reference from the Minister for Consumer and Employment Protection, Hon John Kobelke. John had been approached by a number of members of the industry and had dealt with a couple of matters with his ministerial colleagues, and they identified some gaps that were potentially emerging in the strata property management industry. I think it is important to say at this stage that there is no sense of crisis; there is a sense of timeliness in taking a precautionary approach to this industry. So at the moment I have to say that nobody has come to us and said that there is an absolute crisis in this industry. People have raised legitimate concerns and talked about the need for reform and an examination of the need for potential regulation or at least some degree of better management coordination. I now welcome John Day, the deputy chairperson.

We have already carried out a preliminary assessment of some of the things that are governing this industry; that is, the number of strata properties, the absence of regulation in this State, the amount of money held by strata managers and the potential financial risks posed, in particular, to property owners. Our terms of reference as a result of that preliminary overview - these will be made available to everyone - are set out in these three green dot points: to assess the potential risks posed to consumers - that is, the owners of properties within a strata title property - by the current absence of regulation of the industry; the need for and most appropriate method of regulation, if deemed

necessary, of the strata management industry; and any other matters deemed relevant by the committee. Any decent committee will have that third term of reference which states that if something pops up that we did not know about when we set the terms of reference, then we will add it as we proceed. Indeed, it may be that you will be telling us things that we have not yet brought into vision, so it is a sensible additional point to have.

I would like to mention a couple of quick points about housekeeping before we kick off. As I understand it, you were supplied with a program as you came in. We are conducting sessions in pairs so we will have a couple of presenters and then a chance for a discussion. Hansard staff will be involved in this process and we hope to present the papers not as a Hansard record as you would read in Parliament but indeed much more like a record of conference proceedings. For this reason, the Hansard staff will need your assistance in being able to put that record together and I would ask that when you ask a question, you identify yourself. You will need to come up to the centre microphone, identify yourself, state your background, your organisation, your interest or your motive, and then proceed. Importantly, this is the first session of a public forum. The standing committees all have the power of the Parliament in conducting their hearings. In other words, if we were to go into formal session, you would have all the obligations upon you that would apply as though you were in a court of law or appearing before a formal parliamentary inquiry. We have not instituted that level of formality for this public forum. This is more about engagement and discussion but, nonetheless, there are some broader protocols that I would like you to observe. One protocol is, as I have just pointed out, to identify yourself, but also, in order to allow the process of information gathering to go on, if you find that there is something highly contentious presented or said in this forum today, I would ask that you do not immediately engage in a public barney about it, but see that as part of the layering of information that can be challenged quite legitimately by way of submission or approach to the committee in a later forum. If we use the forum more as a place for the gathering of information, and anything that is brought in is assessed, tested and critiqued during the process of our inquiry, that will facilitate the contribution from everybody.

I ask everyone to either turn off their mobile phones or set them on silent mode with the keypad locked as I have done. Morning tea will be served in the hearing room next door at 10.30 am so we will go for one and a half hours and then have a break. Please feel free to wander out and get a cup of water. As you can see, these rooms are actually set up for formal hearings. Please make use of the space in a way that makes you feel comfortable and allows you to engage.

I will give a quick introduction of the speakers in pairs. We have arranged for a number of keynote speakers from various areas of our inquiry subject matter to be present.

#### **NOBLE, MR CHARLES:**

**The CHAIRMAN:** Will you please welcome the first speaker, Mr Charles Noble. Mr Noble is a property lawyer who has worked in the strata title area since his re-qualification in Australia after leaving a jurisdiction that had no direct equivalent to strata titles. For more than a year Charlie has specialised in strata titles as part of the Department of Land Administration's current strata titles legislative review project.

**Mr Noble:** Good morning, ladies and gentlemen. As mentioned, my name is Charlie Noble. I work for the Department of Land Administration or, as it is more commonly called, DOLA. My job title there is Strata Titles Legislative Review Officer. I have been asked to talk to you today about strata titles. There are over 40 000 strata and survey-strata schemes in Western Australia and within those schemes there are over 170 000 lots, so there is a reasonable amount of stuff out there. I think my talk this morning is really just supposed to be an introduction to strata titles. Therefore, I want

to look at what a strata title is, what a strata scheme consists of and also I will touch briefly on some aspects of the internal management of schemes. I do not propose to look at professional or external management of a scheme. There are probably three main reasons for that. First, I will not have time to stray into that. There are also people here today who are far better placed to speak about that and I am sure they will do so. Also, I think it would be stretching the topic that has been assigned to me a bit too far. For the same reasons, I would not propose to look at whether regulation is needed or not. I think that is the purpose of the inquiry and, therefore, will obviously be looked at.

There are, however, several things that I want to cover today. I want to briefly look at what the Torrens system of title is. I want to also look briefly at what a conventional or green title is. I want to look at the interaction between strata titles and the Torrens system that we have in Western Australia. I want to provide a quick overview of what strata schemes are, a quick overview of what survey-strata schemes are and I also want to look at the responsibility for management of strata schemes and really emphasise the fact that it is lot proprietors who have the prime responsibility for doing that.

I want to quickly look at Torrens title. Sir Robert Torrens first introduced the land registration system in South Australia in the 1850s. We in Western Australia use one version of the Torrens system. In simple terms, the Torrens system provides a state guarantee of title to land. There are some exceptions to this guarantee, the main one being fraud, so it is not an absolute guarantee. Basically, the land register maintained by DOLA will state who the owner of the land is when you search that. As far as the title is concerned, there is no need to look at any extraneous documents other than those referred to on the register. In jurisdictions that do not have land registration, there are two main alternatives; that is, recording or title insurance. I have personal experience of both of these and I can confirm that they are a poor substitute for the Torrens registration system. The two main benefits that we derive from our system are speed and cost - it is faster and cheaper. The system allows speedy transfer of ownership at reasonable cost. In addition, securities granted over land can be given effect quickly and cheaply. Overall, the system is designed to be quick and simple.

I want to look very briefly at conventional title. There are forms of title other than conventional or strata title but I do not need to deal with those today. Conventional or green title is effectively land that is under operation of the Transfer of Land Act 1893. This is more commonly known as the TLA. Strata plans and survey-strata plans can only be lodged against land that is under the operation of the Transfer of Land Act and, therefore, strata schemes and survey-strata schemes will all have derived at some point in their history from conventional lots. It is perhaps easier to explain what conventional title consists of by reference to a diagram. Basically, with conventional title the plan that relates to the lot will show a cross-section of the relevant cubic space at ground level. Unless the title contains a height or depth limitation, and it can, then in theory the owner of the land at surface level should own everything below to the centre of the earth and everything above, up to the heavens.

[9.15 am]

What is on or under the area shown on the relevant plan - for example, buildings - is irrelevant for the purposes of the title. Some complex rules apply, but, in general, whatever becomes permanently affixed to the land is owned by the owner of the land. If there is a height or depth limitation on the conventional title, everything respectively above or below the limitation is crown land. Examples of this might be where a railway line passes underneath buildings or where perhaps a freeway flyover passes over a building. I am unaware of any privately owned land which is held with one conventional title over another.

I now want to look briefly at the relationship between strata titles and the registration system for conventional titles. Section 4(2) of the Strata Titles Act is relevant and is worthwhile repeating in full. It states -

Where a strata/survey-strata plan is registered under this Act, the lots comprised in the plan, or any one or more of them, may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as land held under the provisions of the *Transfer of Land Act 1893*.

Section 4(2) means that strata titles and survey-strata titles are deemed to be conventional titles for the purposes of registration of transfers or mortgages; in other words, the transfer or mortgage of strata titles is intended to be the same as, and equally as easy as, the transfer or the mortgage of a conventional lot. I will reiterate the point because it is important. Ownership of a lot in a strata scheme is different from ownership of a lot in a conventional title, because of the additional rights and obligations that are placed on the lot proprietors as a result of the Strata Titles Act. However, in respect of the title there should be no difference, because section 4(2) of the Strata Titles Act deems strata titles to be the same as conventional titles for the purposes of devolution, transfer, lease or mortgage.

I now want to move beyond the title. The thing to have at the back of your mind when looking at strata schemes is the notion of community. When you are dealing with a two-lot scheme or a 200-lot scheme the owners are in a community. That, I must say, is whether they like it or not. What is a strata scheme? The definition of "strata scheme" in the Strata Titles Act is divided into two parts. It reads -

- (a) the manner of division, from time to time, of a parcel into lots or into lots and common property under a strata plan and the manner of the allocation, from time to time, of unit entitlements among the lots;

This first part of the definition deals with the physical attributes of the strata plan that identifies the lots and common property. It also deals with the unit entitlement, which is fixed by a valuer, and is a number used to determine, among other things, the voting entitlements, the levy contributions and the ownership of the parcel on termination of the scheme. The second part of the definition reads -

- (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the strata company, as conferred or imposed by this Act or by anything done under the authority of this Act and as in force from time to time

The second part really deals with the relationships between the proprietors and other relevant parties, such as mortgagees, tenants and the strata company. This, for me, is the community part of the definition.

In summary, the main features of strata schemes are the strata company, the common property and the ability to have lots above each other. While the strata scheme must always have a strata company, it might not have common property or lots above each other. This is a diagram of one type of strata scheme. There is so much flexibility in the Strata Titles Act that it would be almost impossible to show all possible permutations of strata schemes. In this diagram the green area and everything above and below it is supposed to show the conventional title that has been subdivided by the strata plan. In this particular example the boxes numbered 1 to 5 are the lots, in this instance that comprise cubic space only, and everything else is common property.

I now want to look at what a survey-strata scheme is. The definition in the Strata Titles Act of a survey-strata scheme is almost identical to that given for a strata scheme. The only difference in the definition is a reference to a survey-strata plan rather than a strata plan. There are differences between the two types of scheme, but I do not think that it is relevant to go into those today. In

summary, the main features of a survey-strata scheme are the strata company, which again, in common with strata schemes, it must always have. It can have common property. A survey-strata scheme cannot have lots above each other. To reiterate, while the survey-strata scheme must always have a strata company, it need not have common property.

This is an example of a survey-strata plan. It is prepared to almost the same standard as a plan for a conventional title. The significant difference is the area marked CP4, which is common property. In this instance it is likely to be a driveway shared by all three lots in the scheme.

The most relevant feature of strata schemes and survey-strata schemes for our purposes today is the strata company. The strata company is defined in the Strata Titles Act as being a body corporate constituted under section 32 whether for a strata scheme or a survey-strata scheme. We should look at section 32 to see what it says. It reads -

Upon the registration of a strata/survey-strata plan, the proprietors from time to time shall constitute a strata company . . .

If someone is the original proprietor on registration of the strata plan or becomes a proprietor of a lot on a strata scheme by transfer, he or she is automatically a member of the strata company - again, like it or not. In other words, the proprietors of all the lots in the strata scheme collectively are the strata company. The strata company has obligations and powers, as specified under the Act. The obligations placed on the strata company are really obligations placed on the lot proprietors collectively.

I now want to look briefly at some other aspects of strata and survey-strata schemes. Not all of the following aspects may be relevant to the strata management industry. However, they are worth mentioning by way of background information. The first point I want to mention is common property. Not all schemes have common property, but most have. Common property is held by the proprietors as tenants in common in shares proportional to the unit entitlements of their respective lots. Lot owners in a scheme have to deal with the common property as tenants in common have to deal with any area of land. In short, tenants in common must unanimously agree to the manner in which land held in common is to be dealt with. It is not widely appreciated that, as a result of their ownership of the common property as tenants in common, lot proprietors are jointly and severally liable for the common property.

I want to mention briefly strata company funds. Two main funds are associated with strata schemes. The first is mandatory and is the fund for administrative expenses; the second fund is the reserve fund and is not mandatory. These funds are important because they are how the strata company gets money to operate effectively. I will not comment on these further, as I suspect that others will.

Proprietors can, of course, seek professional assistance with the management of a scheme. A professional strata manager will generally assist the strata company and usually its strata council to manage the scheme. However, even where a professional strata manager is engaged, the responsibility for complying with the Strata Titles Act remains with each individual owner. Part IV of the Strata Titles Act, which is entitled "Management", relates to the internal management of a strata scheme by the proprietors. The management provisions of the Strata Titles Act do not relate to management by external strata managers. I really have nothing further to say on professional strata managers, because, on one view, they do not really relate to the operation of the Strata Titles Act as such but are simply providing a service to consumers. Certainly it is hoped that as part of that service they will have a reasonable understanding of the Strata Titles Act. I will leave any further comments to the other presenters

As a penultimate task I would like to recap on what has been covered. Hopefully, what has gone before has explained briefly what the Torrens system is and what its advantages are; explained what a green title obtained under our current system is; explained how strata titles are incorporated into

our Torrens system; provided an overview of what strata schemes are; and made it clear that the responsibility for the management of strata schemes and survey-strata schemes lies in the first instance with the lot proprietors.

I would like to take the short time that I have left to paraphrase some of the comments in the conclusion section of the written submission that the Department of Land Administration has made to the committee. First, the consideration of the potential risks posed to consumers in Western Australia by the current absence of regulation of the strata management industry is a worthwhile exercise. It has obviously been thought necessary in New South Wales to regulate such risks. The responsibility for management of strata schemes lies with each individual lot proprietor in a scheme. The strata management industry is engaged in the supply of services to a specific group of consumers. The groundswell of popular opinion is that the Strata Titles Act, as it stands, is a complex piece of legislation. With one minor exception, the Strata Titles Act does not really deal with external management. If the regulation of one particular type of service to consumers, namely that of professional strata management, is to take place, the Strata Titles Act is probably not the proper place to provide consumer protection in relation to the supply of strata management services to the public.

**The CHAIRMAN:** Thank you very much. That gives immediately a very good base-line introduction to some of the property law that we are dealing with and a quick 20-second bid for the submission to us.

#### **LAMBERT, MR ROSS:**

**The CHAIRMAN:** The next presenter, Mr Ross Lambert, is a senior research officer with the Valuer General's Office. He leads a small section of researchers undertaking complex data analyses and quality control of core valuation products. Ross is a valuer with 24 years experience in the marketplace, both in rating and taxing of valuations. He has postgraduate qualifications in business computing and has lectured at Curtin University of Technology on mass valuation, quality control, computer-aided valuation and property data analysis.

**Mr Lambert:** Thank you very much for that welcome.

I will give a quick background, just to give an indication of why I am here and how I see the Valuer General's Office possibly helping this committee. The Valuer General's Office core business is providing valuations for rating and taxing purpose in Western Australia. As a result of this, we maintain sale information, property information and valuation information on all properties in Western Australia. This provides a database of information. We will use this to meet the request of Dr Ray Wills to provide a value for all strata units in Western Australia, which is a fairly large task. Basically what I have been asked to do here is to assess the scale of strata properties.

[9.30 am]

The valuation of strata property is what I was asked about, so I will get straight to the point. The value of all strata property, as I have estimated, is \$28.5 billion. It is a fairly substantial value of property in Western Australia. To highlight the significance of what that value means, to which Charlie Noble has already alluded, there are over 40 000 strata properties, and our database shows that there are 180 000-plus units within those properties. Residential properties are a fairly substantial part of strata title properties, and they represent over 80 per cent of all units in the marketplace. As shown by another important scaling, 22.5 per cent of all rateable properties are strata titled. It is rather amazing that there are that many strata titled properties.

What does this value comprise? We have obviously used mass valuation techniques to value 180 000 properties in the past couple of weeks. That is not a normal valuation exercise. You need to understand mass valuations and that is where the expertise of the Valuer General's Office comes in. I looked at 16 000-odd sales of strata units and used that as the basis for valuing the portfolio. At the bottom line, how good was it? We were able to undertake some form of accuracy analysis to prove how good the quality of the final valuation was. It is probably worthwhile going into how accurate that value is and how we got there. In simple terms accuracy can be measured by comparing valuations with their actual sale price. This is known as a valued price ratio. For example, if I valued a property at \$90 000 and it sold for \$100 000, I would be 90 per cent off the market or 90 per cent accurate. We did that for all sales of all properties that we valued. This has been done to an international standard, which has been set by the International Association of Assessing Officers. That has been in force for a few years now. The Australian Property Institute has recently released a standard that mirrors the standard of the International Association of Assessing Officers. It is a standard that is accepted by local industry.

How did we make the valuation? I did two estimates of value. The first was the capitalising of rental estimated from existing gross rental values. Gross rental values are the valuations that we do as part of our core business. The second was the extrapolation of average sale prices. Basically, we take the sale price, work out how many properties there are within certain ranges and then apply that to the database of property. For capitalising rent, I estimated a rate of return from analysing sales information in a mass situation. I must thank the computer, because without it I would still be doing this next year. The rate of return was taken from the analysis of actual sales based on whether the properties are in the country and whether they are residential, commercial or various types of property, because return varies between property types. I broke that down as far as I possibly could. The rate of return was applied to each property in the database to give the total value. As I stated earlier, the total value was \$28.5 billion. Then an accuracy analysis of that was done, and it was possible because individual properties were valued. The accuracy level was 100.8 per cent. I am fairly confident in the final value of \$28.5 billion.

The second method was an extrapolation of average sale price. I took the 16 000-odd sales, calculated the average unit value within a local government area and the property type and then applied that to the database. That came up with \$32.2 billion - a little more than \$28.5 billion. However, I could not verify the accuracy because this was based on groups of properties, not individual properties. For accuracy, a valuation is measured against an actual sale price; it cannot be done with groups. The confidence in this valuation was not high. In the long run I feel that the value is somewhere between \$28.5 billion and \$32.2 billion. I feel more confident with \$28.5 billion.

I have supplied a report to the committee, which contains a great deal of detail on the statistics. Those results were sorted by various features, particularly ranges by unit numbers; that is, it was divided into two unit sites, three to five unit sites, six to 10 unit sites and 11 unit sites and over. That had to be calculated within the database. It was also divided into property use. The property use ranges are commercial, industrial, residential, miscellaneous and vacant land. There are some vacant land strata titles. It also moved into regions, which were basically the metropolitan area; Perth city; regional centres, which are Albany, Geraldton, Kalgoorlie and a couple of others on that scale; and other country areas. The final sorting was by local government area. It has been broken down to quite a level. Hopefully, that gives the committee some idea of what strata titles and strata title properties are about.

**The CHAIRMAN:** Thank you very much for giving us a sense of how big this pie is and the sort of profile it has within the State's property assets. Just before the morning tea break, we will have a 10-minute question and answer session of the presenters.



**BENNETT, DR CATHERINE:**

**The CHAIRMAN:** Dr Cathy Bennett is the next speaker. She is the senior policy officer with the Department of Consumer and Employment Protection. She works on a range of policy and legislation issues in the department's consumer protection division.

**Dr Bennett:** In this brief talk today the Department of Consumer and Employment Protection, known as DOCEP, has been asked to raise a number of public risk issues for discussion. These are the types of risks that strata title owners may be exposed to when dealing with a strata manager. In terms of public risk, DOCEP's central concern is that strata managers can collect and disperse large sums of money on behalf of their clients. A key question is whether this money is protected sufficiently from negligence, theft or fraud by a strata manager or his or her employee.

For those people who are not strata managers, I will provide some background about the role of a strata manager. Strata title schemes are established under the Strata Titles Act, as we have heard from Charlie. Under the Act, a strata company comes into existence automatically on the registration of the strata plan or survey-strata plan when the titles are issued. The owners of the strata title lots in a strata scheme are responsible for ensuring their strata company complies with the requirements of the Act. The Strata Titles Act places responsibility on the strata company to undertake a range of duties, such as collecting and dispersing strata company levies, arranging repairs on the common property, organising insurance for the common property, preparing the strata company's accounts, keeping records of meetings and enforcing the by-laws of the strata company. Some strata companies choose to undertake these tasks themselves. However, many strata companies choose to employ a strata manager to undertake these duties. The owners of strata title properties rely on a strata manager to act in their best interests. However, many owners are not experienced in strata title matters and an unscrupulous or negligent strata manager could take advantage of their inexperience.

Another factor to consider is that one of the owners of a strata title property or a third party could take on key strata management duties without being paid for these duties. I will refer to these people as unpaid strata managers. An important issue is that these unpaid strata managers still have access to a strata company's accounts and funds. Therefore, an element of public risk still attaches to these people. A starting point in analysing public risk issues is often to identify the numbers and types of complaints received on a particular issue. DOCEP receives relatively few complaints about strata managers. One of the central reasons for this is probably that people approach the Department of Land Administration, which is responsible for the Strata Titles Act, or the Strata Titles Referee if they have problems with the strata manager. Of the strata management complaints that DOCEP has received, it has most experience with those complaints that involve strata management services conducted by licensed real estate agents. This is because DOCEP's real estate branch provides investigations, conciliation and other services to the Real Estate and Business Agents Supervisory Board, the statutory authority responsible for licensing and disciplining real estate agents. We will hear from REBA's chairperson, Judy Eckert, about real estate issues a little later.

The complaints-based information that DOCEP can provide is therefore drawn from experience in dealing with strata managers who operate as part of a real estate agency. Please bear this in mind. Of the written complaints received, the types of issues that we have come across include a failure to maintain proper records, such as quotes for repairs and minutes of meetings; an increase in costs due to a burst water pipe not being fixed properly; negligence in repairs leading to water damage; unauthorised strata management fees and expenses; a strata manager refusing to provide records and funds to a new strata manager; disputes over responsibility for damage to common property; and a failure to convene annual general meetings. In the most serious complaint to date, a strata

manager unlawfully withdrew \$19 000 from a strata company's funds. Of that, \$10 000 was eventually repaid. Because the strata manager was a licensed real estate agent, a claim for the remaining \$10 000 could be made against the fidelity guarantee fund established under the Real Estate and Business Agents Act. The claim was successful and \$10 000 was provided to the strata company by the Real Estate and Business Agents Supervisory Board. This protection would not be available to a consumer whose strata manager was not a licensed real estate agent, and the disparity of protection in this area is a significant public protection issue.

It should be noted that an underlying problem in the complaints seems to be a lack of corporate knowledge within strata companies. In some strata companies a high turnover of owners or owners not devoting the necessary time to keep up to date with the affairs of the strata company can lead to problems. The thoroughness of the strata manager in recording quotes for repairs and minutes of meetings, for example, is therefore crucial to the ongoing effectiveness of the strata company. If clear records are not kept, disputes are more likely to arise between strata title owners and their strata managers or between owners. It is also fair to say that the lack of corporate knowledge and experience in dealing with strata title matters can make owners more vulnerable in their dealings with strata managers.

Another issue is a lack of understanding by some inexperienced strata managers, real estate agents and their clients of the division of responsibilities between the duties of a strata manager and those of a property manager. This can lead to disputes due to delays in repairs and additional costs arising from late repairs, such as water damage. Information from other sources would also be helpful in gaining a better understanding of the types of complaints that are out there. The submissions to the Economics and Industry Standing Committee may be able to assist in this area, along with information from the Office of the Strata Titles Referee and DOLA.

[9.45 am]

Further information is required about whether the management of commercial strata title property requires regulation. The potential mismanagement of commercial strata management properties could be of concern, and more information from business would be useful. Other interest groups with particular concerns are the more vulnerable consumers, such as the elderly living in retirement villages and those from non-English speaking backgrounds. Those consumers could be at a particular disadvantage in negotiating with strata managers, and it may be that general conciliation and advisory services are necessary to assist consumers generally.

Another issue of public risk is the amount of money held by strata managers. A recent review of trust accounts held by licensed real estate agents for strata management purposes indicated that, on average, monthly balances ranged from about \$10 000 to close to \$1 million. The average monthly balance of a sample of nine companies was \$440 000, and it was not unusual for it to be above \$800 000. These figures give some indication of the amounts that may be held by unlicensed strata managers. However, I acknowledge that other people here today could provide more information on that. Anecdotal evidence received by DOCEP indicates that large strata management companies that provide services for a number of strata title properties hold about \$500 000 to \$1 million on behalf of their clients, and the accounts of smaller companies can hold thousands of dollars. In DOCEP's view, the sorts of amounts held by strata managers are significant enough to merit regulation.

In considering issues of public risk, it is important to note that under the current legal framework, strata companies that obtain strata management services from licensed real estate agents have a greater degree of protection in the event that funds are stolen. In these cases, a claim can be made against the fidelity guarantee fund established under the Real Estate and Business Agents Act. This protection is not available to strata title owners who do not use a licensed real estate agent.

Another significant issue is that people who buy into large strata title schemes include the most vulnerable in the community, such as those on low incomes and the elderly. These groups may be

in a more vulnerable position when dealing with a strata manager. Given these issues and the fact that strata management continues to be a growth industry, DOCEP welcomes a thorough review of regulation of that industry.

DOCEP has identified a range of public risk issues for further consideration and analysis, and I will outline some of the areas that we have identified as potential areas of concern. One of the greatest concerns is theft of strata company funds. Strata managers hold money on behalf of the strata company for repairs and insurance. As I mentioned, the figures vary, but our information indicates that a larger company can hold up to \$1 million and a smaller company can hold thousands of dollars - even up to \$100 000. The risk is that these funds could be mismanaged or stolen by a strata manager or his employee.

Unlike funds for real estate transactions, which are paid out on a regular basis, funds for strata companies can remain unchecked for long periods. Therefore, they pose a higher risk. Strata management continues to be a growth industry, covering 22.5 per cent of all properties. The amounts of money held in trust are larger than when the Act was first introduced and are likely to continue to grow.

Investment is also an issue. Under the Strata Titles Act, a strata manager may invest the strata company's reserve fund on behalf of the strata company. As a result, there is a possibility that a strata manager could give inappropriate investment advice and not comply with the requirements under the Financial Services Reform Act.

Another issue of a general nature is generally poor accounting practices. A strata manager is not required by law to have any accounting training or expertise. Poor accounting and record-keeping practices that could potentially arise include money not being banked properly, the funds of a strata company not being accounted for and kept separate from the funds of other strata companies, records of transactions not being kept and receipts not being provided. These practices impose a real element of risk.

It is possible that the interests of the strata manager or the company they work for conflict with the interests of the strata company. For instance, the strata manager may contract a family member to conduct repairs for the strata company rather than obtain quotes to get the cheapest deal. The sorts of contracts that the strata manager signs could cost the strata company money. I am not saying that these problems are widespread, but they are issues for consideration.

Insurance is another factor. One of the responsibilities of a strata manager is to arrange insurance for the property. If the insurance is not valid and damage occurs to the property, there is a risk that strata title owners could experience significant financial loss. Those are some of the different public risk issues for further discussion.

In concluding, I will comment on the legal framework from a public risk perspective. Although general laws such as the Commonwealth's Trade Practices Act and Corporations Act and Western Australia's Fair Trading Act apply to strata managers, no specific regulatory requirements are placed on the strata management industry. As we heard from Charlie Noble, the Strata Titles Act is administered by the Department of Land Administration. In the late 1980s the Act established the preconditions for the development of a strata management industry by establishing a framework in which strata companies could be created and have various responsibilities under the Act. The Western Australian Strata Titles Act does not place any trust account or audit requirements on strata managers. In South Australia, the Strata Titles Act requires that all persons authorised to hold money on behalf of a body corporate place that money in a trust account. Accounting requirements apply and the trust account must be audited. I understand that the Queensland Government is finalising a mandatory code of conduct for strata managers that will be enacted under its strata titles legislation. The proposed code will form part of the conditions of the contract between the strata manager and the strata company. In this way, the strata company would have additional protection in its contract with the strata manager and could take civil action to enforce any breaches. In the

Northern Territory and New South Wales, strata managers are required to be licensed under the real estate legislation. This is another possible avenue for regulation. It is clear that in at least four States, the public risk is considered significant enough to merit regulation. It is DOCEP's view that WA should adopt some additional form of regulation for the strata management industry, with the key priority of protecting consumers against financial loss from theft or mismanagement of strata company funds by paid and unpaid strata managers and their employees. DOCEP also considers that an advisory and conciliation service to resolve general disputes between owners and strata managers could be appropriate.

It is anticipated that the submissions to the Economics and Industry Standing Committee will shed further light on the need for this type of service. Thank you.

**KRONBERGER, MR ROBERT:**

**The CHAIRMAN:** Mr Robert Kronberger is the Strata Titles Referee, who determines certain disputes relating to strata title properties. The referee is also empowered to make interim orders pending a final order about an application. Appeals against the orders of the referee are to the District Court. Mr Robert Kronberger.

**Mr Kronberger:** Good morning. Thank you for the opportunity to make some comments. We have had a very good introduction so far. Many people are not aware of the extent of the extension of strata titles into a broader area than just residential properties. Residential titles are complex enough, and can involve the simple corner duplex or a 25-storey luxury apartment. Strata titles are also used in the new developments around the city in which residential accommodation is combined with commercial accommodation. In these cases, there are clashes as different interests are involved. Strata titles also extend as far as blue gum plantations, orchards, resort hotels, marinas and vineyards. There is no end to the variety of uses to which the Strata Titles Act has been put. Strata titles can extend to pine plantations, and there have been arguments about the use of underground water. The range of things covered by the Act is vast. In many of the resort hotels in Busselton, each room is owned by a separate strata title proprietor and placed under a management agreement with a professional management firm, which leases them to a hotel operator. Strata titles are complex investment decisions, and need good management.

The opportunity to apply to a referee was established under the 1985 Act. I have held my position for nearly six years, and I never cease to be amazed at the variety of issues that arise. Most of those issues arise because people do not understand what they own. For each application we provide reasons for the decision, and I sometimes take three or four pages trying to spell out to the applicant and the others involved what it is they own. In some cases, there are 350 or more proprietors in one scheme, many of whom have no idea about how the property is managed, how to elect a council of owners or what the manager does. We prepare a set of reasons that spells out whether the particular scheme was incorporated under the 1966 Act or the 1985 Act, what its by-laws are and the boundaries of each lot. If people understood the boundaries of their lots, I might not have a job. There is a huge range of issues. Applications are made to me in writing, and almost invariably the decision is made on paper. An application for an interim order can be granted to, for example, stop somebody wrecking a building. I often cite the case in which somebody rang to complain that the floor of his upstairs unit was starting to sag and that he could hear noises below. He said that when he checked downstairs, he looked in a window and saw a man with a sledgehammer knocking out a supporting wall. That person asked us what he should do. I said, "I will make an interim order, and you call an engineer."

I have no specific powers over strata managers, but I have powers to terminate or shorten some service contracts in certain circumstances. There is no specific power in the Act to employ managers. That arises only in the schedule 1 by-laws, which give a council of owners the power to employ managers and agents. Provisions in the Act relate to voting on management contracts and imply that there can be a management contract, but nothing specifically says that a strata company can employ a manager.

I am worried about funds and the by-laws, and sometimes the two have links. As Charlie Noble said, under section 36(1) of the Act, an administrative fund must be established by every strata company - except in very small schemes; for example, under section 36A - to cover normal day-to-day expenses such as rates, taxes, outgoings, repairs and maintenance. Nothing in the Act gives a strata company the power to make improvements or additions to common property. Some people might think it is amazing that a company that owns a \$20 million property is not authorised by law to make any changes to that property, particularly when some of the older strata schemes are considered. Many of them apply to old blocks of flats that were originally covered under the 1966 Act and were converted to strata titles. I once saw a 10-storey building with concrete cancer. Water was coming out of the three-point power plugs on the ground floor because of a cracked roof. We found that the flashings on the windows were built inwards rather than outwards, causing water to pour down through the cavity. That scheme did not have one cent in a reserve fund. There was no obligation to establish a reserve fund. From memory, the scaffolding that the engineer wanted to erect to check the building cost \$75 000. The owners were mostly old people who had paid \$30 000 or \$40 000 for their units. They needed good management. Good management in that case would have been to establish a reserve fund. A reserve fund is compulsory in Queensland. It has been recommended in New South Wales since 1993. My personal view is there should be a reserve fund because when the crunch comes, the company needs money to pay for the repairs. It might be that the roof blows off and the insurance company will not meet the cost. If a reserve fund is required to be established - I would like it to be - it will increase the need for more control of those funds.

[10.00 am]

If you have only got administrative funds at the moment, you will have X number of dollars. If every strata company has a reserve fund, even if it is a strata company that has three, five, 10 lots or more, the amount of money involved will be considerably more.

There are two other matters. First, many schemes are managed not by professionals but by someone who has lived in the one of the units for five, six or eight years. Because the units have changed hands, there is only one person who knows where the books are, who the gardener is and so on. People are prepared to go along with that; however, they do so at some risk. Secondly, many professional managers I deal with do a great service for their clients. However, others extend themselves too much in offering services. Professional managers are the first point of contact when owners want to know what to do about a problem. A manager is regarded as an all-knowing, all-wise person and is frequently far more experienced than anyone else. However, in my experience they attempt to do more than they are qualified to do. That might extend to drafting by-laws that lead to interpretation problems that overlook the requirements of the law and, in some cases, they overlook registering them. I am aware of current proceedings in the Supreme Court against a managing agent who did not register a by-law within the compulsory three-month period. That makes a huge difference to the value of the property involved. I will leave it at that and answer any questions from members. Applications to me, as I said, are in writing. We can make an interim order without reference to anybody else to get things set in motion. In the normal course of events we send out a notice to the strata company and to every owner, inviting them to make submissions within, say, four weeks. We then deal with those submissions or make further inquiries and frequently inspect properties. Appeals from my decision are made to the District Court - there are not many of those - and the District Court tries to sort them out before they get to a hearing. The reasons we prepare are, in effect, pleadings because the applications we get are not in the form of

any kind of pleadings; they are sometimes just in a shoebox full of paper, sometimes going back eight to 10 years and in no particular order. The District Court hears a matter afresh. It is not an appeal against my decision, as such; it is a re-hearing, and the District Court does not make orders for costs against either party. That also means that in many cases parties are self-represented, which slows down a great deal the court process.

**The CHAIRMAN:** Thanks very much, Mr Kronberger. We are right on time and we will continue to be so. We will take questions after the next presenter.

**ECKERT, MS JUDY:**

**The CHAIRMAN:** Ms Judy Eckert is the Chairperson of the Real Estate and Business Agents Supervisory Board and I welcome her to the first acronym of today, other than DOCEP, the Department of Consumer and Employment Protection. REBA is now funded from the interest in real estate agents trust accounts, licence and certificate fees and interest paid on investments. Prior to joining REBA, Ms Eckert was a Senior Assistant Crown Solicitor, a former President of the Law Society of Western Australia, practices as a barrister in the Francis Burt Chambers and has previously served as a board member of REBA in addition to the Settlement Agents Supervisory Board. Thank you, Ms Eckert, and welcome.

**Ms Eckert:** Thank you for that welcome. Good morning. I am sorry that I do not have a disk. I was glad to see that Mr Kronberger had some paper like I have - we are old-fashioned people - so you just have me this morning.

Strata management is an activity within real estate. From our perspective, it is inside the real estate industry, but at the moment anyone can do it. Over the years I, as a lawyer, have been visited countless times by friends and neighbours who have knocked on my door for help because they have been conned into being the strata manager for their mother-in-law's property or the property in which they live and they are stuck and do not know what to do. One of my colleagues on the board, who is a licensed real estate agent and does quite a bit of strata management, told me he was in a taxi the other day and the driver told him how he had a burgeoning little side business as a strata manager. I must say that the board member nearly gasped and jumped out of the taxi! REBA - there is the acronym and we have had DOLA - believes that strata management should be regulated. We believe it is appropriate to ask why. On that basis REBA commends the Legislative Assembly and the Economics and Industry Standing Committee for tackling this issue head on and for facilitating this forum today.

The Real Estate and Business Agents Act 1978 - I will call it the REBA Act - establishes the scheme of licensing, registration, supervision and regulation, which is undertaken by REBA. We regulate the activities of real estate agents and sales representatives, property managers and people who sell businesses - business agents. There are currently 11 strata managers who are also licensed as real estate agents. That is not many in the scheme of things and that leaves at least, on our reckoning, 75 other strata managers who do it as a profit business but who are unregulated in any way.

The first issue that we need to think about is whether to license strata managers. The primary reasons for licensing are, we think, two-fold: first, training. If you are going to have a licensing scheme you should have trained, educated, competent people. As we all have heard, the Strata Titles Act - as most of you here today I am sure will know - is very complex legislation. It has always befuddled me to some extent, I must say. As Mr Kronberger pointed out, people do not understand it. Therefore, we must develop national training competency for strata managers and they need to be trained in the Strata Titles Act. Sitting down and reading it will not necessarily get

them there unless they are pretty smart. They also need to be trained in trust account management - in dealing with not their own money but other people's money.

Another reason that licensing serves a very good purpose is it acts as a filter. We do not guarantee that we will filter out all the unscrupulous, dishonest people, but we will filter out most of them in a licensing system. We regard that as a very important aspect of licensing. The real estate board believes that when people are in control of other people's money - which is what we have here - managing trust funds, it is essential that they are trained in all applicable legislation and that they are regulated. Regulation means that their activities are overseen to protect that money, not to inhibit them or to stop them doing certain things necessarily, but to protect that money. The main disadvantage that the board has heard of against licensing strata managers is that it will affect what Dr Bennet referred to as the unpaid strata managers. It is quite easy to put the thought in to develop a scheme so that these people are not excluded, but that we still require that they have some level of training so that they have an understanding of what they must do. I am sure they would say that was a blessed relief. However, we do not necessarily have to say to them, "Here are all these stringent licensing requirements you need to meet." Exemptions and exceptions can be built into the scheme and I think if we provide some structured training to them, I am sure that all the technical and further education centres would jump at the opportunity, with the development of national competency standards, to conduct courses and it would be a relief to them, not a burden.

The second issue of licensing strata managers is who should oversee it. I do not think anyone is jumping up to do this. The role of the real estate board is changing. There has been the machinery of government review of DOCEP's boards and committees and the development of the state administrative tribunal. The real estate board, as I said, licenses and regulates. We expect our licensing function will go into DOCEP and probably also our supervisory function. Our disciplinary function will certainly go into the new state administrative tribunal. That probably leaves, in our view, DOCEP as the obvious body to oversee it, but that is not something for us to say and the board certainly does not have a firm view on where it should go. DOCEP, however, has a fairly extensive system of property-based licensing that includes real estate agents, settlement agents, land valuers, plumbers, electricians and builders - many of the industries associated with and servicing real estate. Our board has developed an excellent comprehensive system for a licensing database. We have trained staff, people who are competent and capable in the area of licensing; therefore, it appears to be a fairly obvious place to put it.

The third issue is legislation. We have heard this morning that it should not go into the Strata Titles Act. Perhaps it is inappropriate to put consumer protection - because that is what we are talking about - into a Strata Titles Act. Perhaps it could be brought in under the Real Estate and Business Agents Act. Again, that appears to be a fairly obvious place for it. However, again, the board is willing to have it under our Act, but it is not something that we necessarily want. Heaven knows, we have enough to do. However, that Act does have a licensing structure. We can create a different class of licence, and you would need that for a strata manager. There is no necessity for a strata manager to go through all the strict education requirements that are required of real estate agents. Strata managers need different education about different types of things that they need to meet in licensing requirements. However, the so-called subjective elements of being fit and proper and being a person fit and proper for that industry would still apply. Therefore, education requirements could be tailored to meet the needs of the industry and of the consumers.

However, the pivotal issue in this and in the legislative structure from the board's perspective is trust account management. This is vital. It is no longer good enough to say that there has been no major loss to consumers. As the chairman pointed out at the beginning of the forum, there has been no crisis. However, there will be; it is inevitable. An effective trust account regulation is an absolute imperative. The REBA Act governs and has a fairly extensive system of trust account management and our staff are very skilled in this area. Real estate agents' trust account audits are due every year on 31 March and we move swiftly if we do not have them. We start prosecution

proceedings within a month if agents do not have an extension of time and we send people out to have a look at these agencies. We consider trust account management and regulation to be the real underpinning of what we do. In a hearing recently one counsel before us said it is like the canary in the coal mine. I think that means if the audit is late there might be other problems.

We therefore believe that we must protect people's money and that regulation must occur at the earliest stage of trust account management. We have a pro-active compliance program, which is part of our education program. Our staff go out into real estate agents' offices and assist them. It is a consensual program in which they look at their books, go through their systems and identify any problems. If something serious arises, a prosecution will result, but that does not happen often. It nips in the bud problems before they occur. Agents time and again tell us that this assists them and they are grateful for that help and support because they can talk to someone from outside.

Trust account regulation, in the board's view, is necessary for all people who handle other people's money. Sometimes the greatest risk with trust account funds is with those who do not charge for their services. If those people are not licensed in a future scheme, we would advocate that they should be subject to some level of trust account training and trust account audit. Again, I think they would find it on the whole a relief.

[10.15 am]

A further issue is the protection raised by the fidelity fund. Cathy raised this issue. We have a substantial fidelity fund. If strata managers were to become involved they would need to find some way of contributing to the fund. It may be through the interest earned on the reserve funds and other funds kept on behalf of owners. As Cathy said, we have already had a claim of just under \$20 000, which was paid because it concerned a licensed real estate agent. If that sort of money is gone, and the person concerned is not a licensed real estate agent, no-one will pay it back. We also have the ability to appoint supervisors if, for example, the strata manager dies. We also do that with real estate agencies if a person becomes bankrupt or a problem arises with a trust account. We can put in skilled people to assist in the transition until someone new is found. Under section 23C of our Act, we have powers of conciliation. The need to settle disputes between strata managers and lot owners was mentioned earlier this morning. It could be done through conciliation. Again, our disciplinary function does this in an obtuse way. An agent might be prosecuted but, as part of the process, we will settle a dispute between someone and his real estate agent. We often have the power to award compensation. We may fine a real estate agent but we may also award compensation, particularly if there has been a direct monetary loss. We will generally give money back to a person. As I said, REBA is not really concerned about where the direction of licensing or regulation of strata managers goes. Nevertheless, we believe in the need for regulation. From our experience and perspective we have a strong belief that there is always one bad egg in any industry. We see it with lawyers and in other industries. Licensing and regulation will not stop it, but it can provide some surrounding protection. Consumers need that protection and they deserve protection from unskilled and dishonest people who might see the strata management industry as the last bastion of unregulated and unsupervised access to other people's money. That is what it is; in our view, it is out there waiting. It will be too late to remedy once the problem arises.

**The CHAIRMAN:** Thank you very much for that, and for finishing exactly on time. I was thinking about whether I should be as honest as you have been and say that bad eggs can be found everywhere. In my profession, people assume that. As I said earlier, because we are recording this session and we want to put together a collection of papers from this forum, we would appreciate it if all speakers moved to the centre console, identified themselves and their agency, and stated to whom their question is directed. That will give time for the respondents to prepare an answer. If we can do it in that order things will be terrific. We have 10 to 15 minutes available for a discussion on what we have achieved this morning.



**Mr J.J.M. BOWLER:** I am a member of the committee. Judy indicated that she sees the possibility that fund managers could be regulated under REBA as a sort of subclass. Can she explain further?

**Ms Eckert:** At the moment we hold real estate agent licences, which apply to individuals and corporations. Sales representatives are also registered. A business broker or property manager has to meet all the educational standards of a real estate agent or a sales representative, depending on whether a person requires a licence. In any event, we are moving to the view that we need to look at different classes of licence, which is the case in other States. People may need specific training in property management as well as the broader core issues that affect the entire industry. People could be licensed as property managers. Sometimes we license people who have come from the eastern States, where they have specific types of licences. We may tell them that they can only operate as, for example, a business broker because that is what the person is qualified to do. Alternatively, we may tell a person that he cannot manage a trust account. We could have different types of licences. We could have a licence for a strata manager. We think strata management is something that is inside the real estate industry. It is not something that is outside. We are not bringing in some other type of licence that would sit outside the real estate industry. It is part of the industry but people require specific training in strata titles. People also need broad training in trust accounts. People could obtain a real estate agent's licence limited to strata management or it could be a specific strata manager's licence that permits a person to do a lot of things that a real estate agent can do, but not all of them.

**Ms Mitchell:** I direct my question to Judy. My name is Merlyn Mitchell and I own several properties. Over a number of years I have had a number of complaints about a number of strata managers. I currently deal with four and I must say that I am happy only with one. If my strata manager is also a real estate agent, do the funds of whatever scheme I am in go into that person's trust account? Does my scheme receive the interest or does the licensed agent get the interest?

**Ms Eckert:** REBA gets the interest. It funds the fidelity fund and partly funds some of the operations of the board. I will confer with our director, Stuart Cowie. Generally, a real estate agent, if he is a strata manager, will not have a separate outside strata management fund. However, we have had the experience of one person doing that.

**Mr Cowie:** Unless the real estate agent has a separate company - that is, a strata management company that is separate to the real estate practice - it would be dealt with as a strata management company not under his licence. If it is part of the real estate practice, the interest would come through the trust account, which we would receive.

**Ms Eckert:** I think we have had an example recently in which the strata money was in a separate account because a separate business was being run and we were concerned that we could not audit it; we could not go into it and see what was happening with the trust account.

**Ms Mitchell:** To take that one step further: the fidelity guarantee fund does not cover a separate company?

**Ms Eckert:** No, because it would not be in the business of the licensee, which is required by the Act.

**Ms Mitchell:** So we could be dealing with a strata manager who is a licensee to a real estate agent and still not have that protection?

**Ms Eckert:** Only if he is running a separate company and a separate business.

**Ms Mitchell:** If he is doing that, is he obliged to disclose that to us or can a person just do it?

**Ms Eckert:** We would be concerned if a person went to you and said he was a licensed real estate agent who was offering to manage your property simply because he was a licensed real estate agent but then manages the property under a separate company. You could certainly come to us and

lodge a complaint if that happened. We view it that a person has an obligation to tell you because if he is holding out that he is doing this as a real estate agent, he should be doing it in the one business. That is the view we take.

**The CHAIRMAN:** Some twists and loops yet to be unwound. Any further questions or comments? It is appropriate for participants to add their own observations. As I mentioned earlier about protocol, do not get into a barney about particular policy views. If participants have a perspective they would like to put and have recorded we have a few minutes available to do that.

**Mr B.K. MASTERS:** I am a member of the committee. I have a question for Robert Kronberger. Can you give some indication of how many complaints are received each year, whether from ordinary people who might be members of a small strata company or whether we are talking about large businesses and corporations? Can we have some background?

**Mr Kronberger:** We receive, I estimate, about 150 applications for orders during a year. Each application is not necessarily for one order; sometimes they are for 10 or 12. It is very hard to say that one file equals one order. Very few of them deal directly with complaints against managers - almost none. When I deal with an application and the information coming in, I can see management problems that have preceded the application. Had the management had better communication with the other parties, the application would not have come to me. Sometimes, documents have been badly drafted by managers. At other times, a manager may have failed to comply with some of the statutory requirements about meeting notice periods. Clear notice of 14 days has to be given for a meeting. Sometimes it is 10 or 12 days. Other issues come up about accepting proxies. People do not often understand what a proxy is, who can appoint a proxy, how it is done and when it is done. Strata company meetings can be conducted by six married couples. They are all there: Mr and Mrs Brown, Mr and Mrs Smith - the whole lot. A manager will declare such a meeting open and say there is a quorum; however, the by-laws state that when there are co-proprietors, the proprietors must be represented by a proxy. As such, such a meeting has no validity. A complaint may not be that a manager has done something wrong; in fact, a meeting can be voided because there was no quorum. Any decisions made would be pointless.

**The CHAIRMAN:** And the real files were obviously in the other shoebox!

**Ms Peet:** My name is Heather Peet. I deal in personal strata services and run a business outside a real estate agency. I have a query for Judy. Reserve funds from which owners are currently receiving interest may be put towards the fidelity fund. My owners currently receive interest and are encouraged to have reserve funds of substance - even up to \$300 000. The interest they normally receive is put towards their expenses. I think they would be somewhat concerned or upset about the new arrangements.

**Ms Eckert:** Absolutely, it is something that needs to be managed, but it also must be looked at. I think I said that how strata managers would contribute to the fidelity fund needs to be examined. Sometimes, if one is part of an industry or group, and if the public uses the services of the group, there must be payment for using the services of the group as a whole. As a lawyer, I have to put in money for certain things or take out mandatory insurance when, hopefully, a claim will never be made against me. It is a protection for the benefit of the industry and consumers and, unfortunately, that always has a price. Perhaps it is a much smaller price than having a major crisis. I certainly agree it is something that needs to be looked at. It is something on which submissions need to be taken. People need to be heard on this issue. On the other hand, we cannot have real estate agents saying that all their money goes into something and that they paid out \$100 000 on strata management problems and that strata managers put nothing into the fund. It has to be managed.

**Ms Peet:** I appreciate that and I am sure people are prepared to fund that. They need to realise that fees and costs connected with running a strata company will also increase.

**Ms Eckert:** Yes, and I think it will increase with licensing. There are always advantages and disadvantages; there are always two sides. I acknowledge what you say.

**Mr B.K. MASTERS:** I do not know to whom to direct this question. Could someone - or several people - try to give an estimate of the total amount of funds held by strata companies - in whatever capacity - whether it is in trust accounts or other accounts? The committee believes the total amount could be very large. If those funds are accruing at, say, 5 per cent interest, and the figure is \$100 million, that is an awful lot of money that goes to REBA. Can anyone give an estimate of the amount of funds held?

**The CHAIRMAN:** Is anyone prepared to chance his arm?

**Ms Peet:** I have no idea how much others would hold, but I manage five strata companies and I hold well over \$1 million in accounts. The methods by which I run those businesses require monthly reports and the owners are made responsible for the management of those funds and the investing of those funds. I do not make sole decisions. If one looks at five buildings that are worth between \$1 million and \$1.5 million, that adds up to a substantial amount of money. It is probably not as much as was suggested earlier, but most properties would have between \$50 000 and \$500 000.

**The CHAIRMAN:** How many owners are connected to each of the companies you manage?

**Ms Peet:** Some have six, but those are luxury apartments. There is up to 70. They vary in what they hold. There are variations in projected reserve expenditures over the next five to 10 years. If painting is due next year there will be a considerable amount in reserve; if it has just been done, there will be little in reserve. It varies.

[10.30 am]

**The CHAIRMAN:** Thank you very much. That was an interesting snapshot. I was asking about the size of the companies because, if you think about the numbers that Ross provided, that might give us some numbers to work with in trying to extrapolate those funds. Mr Masters is on the money in some ways - excuse the pun - but it has been suggested to us that there is potentially more than hundreds of millions of dollars sloshing around in management funds. Whilst I am very clear about there being no immediate crisis, the committee's view is that there was sufficient risk presenting itself with such a large amount of money within the State and we needed to better understand how to manage that risk. It goes to that point which motivates this whole inquiry.

Do you have any other comments or questions?

**Ms Peet:** No.

**Ms Bellerby:** I am Joan Bellerby and I have an independent strata management company. I will follow up on what Heather has said about her reserve funds and interest. I do not think we would have a problem with the trust interest funding, because at the moment the only one that gets it is the National Bank; the owners do not get that because there is no interest on the trust account. As Heather has said, the owners have put that money aside for specific purposes and that is what they are aiming for.

**Ms Eckert:** Certainly, it is true when it is trust moneys. Under our Act, we have a quaint little thing where banks must pay REBA the money, because at the moment it goes directly back to the bank. Reserved funds are something that are very different. I would expect that if strata managers were licensed under the Real Estate and Business Agents Act, it would really look to the trust funds, because we have that affinity. That is what REBA would be regulating and overseeing. On the issues raised by Bob Kronberger, clearly the whole issue of reserve funds needs thinking about, anyway. I am sure there would be enough to fund the industry even in those trust accounts.

**The CHAIRMAN:** We are now going to take our scheduled break.

**Proceedings suspended from 10.35 to 10.55 am**

[10.45 am]

**The CHAIRMAN:** Some people have suggested that this would be too dry a subject to engage people in a lot of enthusiastic and direct discussion on different perspectives and ideas. In the last five minutes of the previous session, your efforts have proved those people wrong. It was a very enthusiastic engagement. Welcome back. This next session runs through until just after midday, and then we will have a panel session from presenters. This group of presenters is now focused on delivering perspectives from managers themselves. The next set of speakers all hold different positions as strata managers across the industry. They will give us a range of perspectives different from those of the first group, who were primarily policy makers, administrators and enforcers of the law. We will operate on the same basis, so for the next hour and 10 minutes, we will run through the presentations, and then break into a panel discussion.

**ANGUS, MR JOHN:**

**The CHAIRMAN:** I introduce Mr John Angus, a licensed real estate agent, licensed valuer, and sole proprietor of Strata Information Resources. John has a background in real estate spanning 30 years, including property development, valuation, sales, commercial property management and strata management. He was a member of the Department of Land Administration's strata titles review committee as a delegate from the Real Estate Institute of Western Australia. He is a fellow of the Real Estate Institute of Australia, a past services member of REIWA, an associate of the Australian Property Institute and a member of the Strata Titles Institute of Western Australia. For many years John has been a course presenter at REIWA, particularly in relation to strata. In June this year, John published the book *Understanding Strata Titles: A Guide to the Management and Administration of Strata Companies in Western Australia*. John, thank you very much and welcome.

**Mr Angus:** I should commence my little presentation by saying that while I am a member of three different professional institutes, these are my own views. Today's event is most timely. With the expansion of strata title, we need to look again at the role of strata managers and other people who are involved in strata titles. Charles Noble earlier mentioned that there are currently about 40 000 strata schemes in Western Australia, and the number is on the rise. Interestingly though, my understanding is that probably a little over half of those are small schemes - duplexes, triplexes, maybe up to five lots - and many of those would be self-managed or, probably more accurately, not managed at all; the owners would do their own thing. Therefore, a limited number of strata schemes would be managed by professional managers, whereas I also believe that the majority are still self-managed by the proprietors themselves. That is my understanding, and my views, as an introduction.

The greatest need for our industry is ongoing education. Hell's bells, we have picked up the Act, or spoken about the Act today, and many people have said it is a complex piece of legislation. That is an understatement. Any of us who are experienced in strata titles know that it is a tough piece of legislation to examine and get to the bottom of. That is why Bob Kronberger, the strata titles referee, is inundated with applications. There are so many things that are difficult to understand. That is the thrust of the future for strata managers, and I came to the conclusion in my submission that I did not believe it was necessary to go the whole hog and undertake a form of licensing and/or registration of strata managers. The majority of strata managers would be either members of the Strata Titles Institute of Western Australia, or members of firms that are members of the Real Estate Institute of Western Australia. Both those professional institutes engage in education and training. However, just because a strata manager is employed by a licensed real estate agent, it does not

mean that that strata manager knows all about strata management. I add the rider there that many real estate agents will not touch strata management because of its complexity. Our industry, through the two professional institutes, can become self-regulatory; it can prepare a protocol or charter for its strata manager members; and for at least a period of five years it can undertake a self-regulatory process with upgraded and more intense education for existing members, and the newer trainees that come on board. That is where I have come from in my presentation.

We also know that the Strata Titles Act is being reviewed, and has been under some scrutiny for a couple of years, at least. Charles has been appointed full time to coordinate all that. Probably, within the next year or two there will be new legislation, which means it will be back to the drawing board for most of us here today as strata managers. I thought that would be an opportune time to bring in improved education courses, and not just through the real estate institute and the strata titles institute. We should re-engage TAFE for those who are not participating at a professional level, and for the public, if they are interested. There should be some section of a course at TAFE, in which people could come in, do the strata management course, and opt out without having to do the full real estate course.

There have been some very persuasive arguments this morning about registration licensing, mostly dwelling on the financial aspects; the fiduciary requirements of real estate agents, and perhaps us as strata managers. Maybe that will be an issue in the years to come. Because it has not been a major issue at this stage, I am saying we should move softly softly. By all means, we should improve our understanding of the Strata Titles Act and, most importantly, so that those who are involved in the final re-examination of the Act can produce a document that is user-friendly. Then I will not have to rewrite my book! An example is the recent re-publication and reformat by the real estate institute and the Law Society of the general conditions for the sale of land. That has been established as much more user-friendly. There is no reason that Western Australia could not lead other States in preparing a document that, step by step, explains everything in the Queen's English.

Another comment that did not come up in earlier discussion is the emphasis put on strata managers being responsible for all that happens within a strata scheme. That is a complete misunderstanding of the Act as it is structured at the moment, because the responsibility still lies with the strata company, and most particularly with the council of the strata company. It has been my goal to see strata councils, in particular, empowered with knowledge - that is part of the reason I wrote the book - so that they can become more attuned to what the Act says in the operations of their strata company, and this will make the life of the strata manager far easier. When you are dealing with people who are uncertain of what is required of them as council members, or members of a strata company, it makes a hard road for the strata manager. If they are educated, and we are educated, most of the problems would dissipate.

To wrap up, I will read the recommendations presented as part of my written submission, which emphasise some of this -

There is, in my opinion, a need to ensure that any person or company that promotes itself as a strata manager has a minimum of practical experience, education and training. While this can be ensured largely by a system of licensing or registration of practitioners or both, the implementation of any structural requirements may be non-cost-effective. To amend the current Real Estate and Business Agents Act 1978 so that the collection of levies and payments of accounts become a real estate transaction will isolate a large proportion of very competent and hard-working strata managers -

Many of whom are here today and doing an exceptional job -  
who are not licensed real estate persons or companies.

And, I could add, do not want to be.

My recommendation, as described further within this submission is that firstly, the strata management industry for an initial period of at least five years be self-regulatory.

It is a trial period.

Both the Real Estate Institute of Western Australia and the Strata Titles Institute of Western Australia be asked to upgrade their respective strata management courses or establish a joint course of study and ensure that members follow a revised protocol or charter whereby only those who have completed the recognised course are employed in the role of strata manager.

Those who have been in continued practice for a period of not less than three years to be exempted from the completion of the new study format.

However, as I said, if the Act changes we will all have to go back to base again. To continue -

It would be expected that some lead time is required and my view is that approved courses be established by July 2005, at which stage any further amendment to the Strata Titles Act would hopefully be known.

Subject to agreement by the minister responsible, TAFE be encouraged to source and structure a course which parallels REIWA and STIWA courses for those not entitled to be members of those institutes and for members of the public.

Members of the public to be informed by strong advertising over a period of time that it would be prudent to engage only experienced strata managers who have completed the appropriate course of study and who are members of the appropriate professional institute.

If that were to happen, we would iron out many of the self-styled strata managers who are ignorant of the duties of strata management and the Act itself. To continue -

Reviews of this self-regulatory process should be ongoing, but a report to the Minister for Consumer and Employment Protection by 2008 is appropriate.

That is the time line that I thought was practical for a revision of our self-regulatory process and a huge improvement in education and understanding of the Act. Thank you.

**The CHAIRMAN:** John, thank you very much indeed. When was your book published and released? It has 2002 on the fly leaf.

**Mr Angus:** In June this year.

**The CHAIRMAN:** That covers our agreement to give you a plug, does it not, John? That is the book, folks. This is the Parliamentary Library copy, but it is also available in good libraries, of course.

**GRIGO, MS BEVERLY:**

**The CHAIRMAN:** Already, I see this layering of perspectives happening this morning, and this will continue now, with Ms Beverly Grigo. She is the managing director of Strata Asset Services, a company that manages a portfolio of 50 strata properties, including residential, commercial, blue gum plantations and hotels.

[11.00 am]

Bev has more than 20 years senior management experience working for several of Perth's largest and well-known building companies as company accountant and administrator and in one of the larger companies as a member of the board of directors. Bev has focused on strata title consultancies and the management of strata companies for more than 10 years. She has also been

involved in assisting several strata companies with the organisation and supervision of major repair and refurbishment works as well as on negotiations with organisations such as Main Roads on land resumption.

Bev wrote the TAFE syllabus for the management and meetings component of the Certificate in Strata Management course and lectured students in the course until last year. She has conducted training seminars in strata management for the Department of Land Administration for the past two years and prepared the training manual for the course. Bev actively participates as a member of the Strata Titles Institute of WA. Thank you very much for your contribution, Bev.

**Ms Grigo:** Good morning. Thank you. I think I will have to rewrite my paper because John Angus has basically said what I was about to say, although somewhat better than I can. I thought I would tackle what it is like from my perspective as a strata manager coming into the industry and what we have had to deal with.

As members are aware, I am an accountant and an administrator and have been involved in major businesses that have had turnovers of more than \$30 million. I was asked to take on a portfolio of 98 strata companies and I had no idea what they were. If I had, I would never have done it. I think I would have stayed where I was. I had no training, I had never opened the Strata Titles Act and I had no idea what I was going through. Fortunately, I went to the Real Estate Institute of Western Australia where Michael Powell was running some very good courses in strata management, all of which I attended. I took every opportunity to attend training courses that the Strata Titles Institute of Western Australia presented and soaked up as much information as I could.

Before I became a strata manager I was living in a three-lot strata scheme. I took down an outside wall and put in a huge picture window, then I started attending the courses at DOLA. As I was sitting there I thought, my God, what have I done. I promptly called a strata council meeting of the three other owners and formalised what I had done with the common property.

As strata managers, on behalf of the strata council, we take on the functions of both the treasurer and the secretary. The function of a strata company is to administer the common property. It sounds easy until we pick up a copy of a strata plan and try to define exactly what in that plan is common property. The surveyors can now define on the plan the boundary of a lot. In some cases, under my management of multi-storey buildings, the external face of the building is part of the lot - the whole of the building has no common property. How can anyone possibly manage a multi-storey building without common external property walls. We cannot expect an individual owner to hire a crane to fix his windows. We have another strata on which the boundaries end up one-eighth of an inch to the external face of the boundary wall.

Apart from sitting down and looking at the complexities of common property and exactly what we are managing, strata companies now have the right to amend, repeal or add to their by-laws. Every strata company now has a different set of by-laws. The Strata Titles Act does not require that when the by-laws are repealed they be replaced. I believe that, in one instance, both the schedule 1 and schedule 2 by-laws have been repealed, which has eliminated guidelines on how we manage and run our meetings and how the strata council is elected. With the introduction of schedule 2A - the management statement - changes to the by-laws are allowed to include the appointment of the strata manager. Often a development company establishes its own company that takes on the management ad infinitum and there is no way of getting rid of that person.

I see our function as administrative, which involves looking after the books and records of a strata company and advising the strata council members at their meetings of what they can and cannot do. That requires an indepth knowledge of the Strata Titles Act. It also involves secretarial work; that is, correspondence, meetings and minutes. Minute taking is the bane of every strata manager. The worst part about the minutes in the strata company books, particularly with self-managed companies, is that they are personalised. They do not reflect the business or resolutions. They are about what Sam said or what Jean has been doing. Managers should be trained in minute taking,

and how to conduct meetings. People do not know how resolutions should be put or how motions are amended.

I refer to the financial aspects. As Bob pointed out, it is not compulsory in this State for a strata company to have a reserve fund and not many stratas that are not profit-making organisations want to contribute any more than they possibly have to. They often work on a shoe-string budget, without reserve funds. Strata companies that have a substantial reserve fund have the nous to make sure that they appoint an auditor to audit their trust. Our company has the trust fund that we operate audited annually, even though we are not required to do so. Individual stratas have their books audited. The audit of a strata company is different from the audit of an ordinary company because, as a general rule, they are auditing to establish that the strata council or strata manager is complying with the requirements of the Act and not spending funds outside their authority. Our auditors make a qualification to the strata council if it has overspent funds without the proper authority of the strata company. That audit is separate.

I refer now to changes to the strata schemes. Within our small portfolio we have residential and commercial stratas. As I said, the difficulties there are the different boundaries. We also have heritage walls so we must have some sort of understanding of the Heritage of Western Australia Act. We have multiple stratas on the one lot, such as Mounts Bay Village, where six stratas are all on the one complex with complicated cross-easements that allow each strata to use other stratas' facilities. It has two hotels, serviced apartments and owner occupiers. A variety of complexes are involved.

I refer to survey stratas. In one small part of a suburb, the only common property is the roads, the light poles and the facilities. The strata company must maintain them because the road is closed at either end and the buildings are on a survey strata. Management of the buildings is not required, only management of the facility. We manage three blue gum tree farms. Part of our role as the agent is to negotiate with the tree farm managers. We measure trees, negotiate with the neighbouring farmers to agist sheep, ensure firebreaks are in place and undertake fox baiting procedures to ensure the foxes do not outgrow the sheep being agisted on the property. Our function has changed considerably with the changing nature of stratas. It is not now purely a matter of managing a residential lot; it has become far more complicated. Schedule 2A of the Strata Titles Act now allows strata companies to operate businesses and to distribute the profits of those businesses. It is no longer just a matter of managing mum and dad's building and running their meetings once a year. It is becoming far more complex. The Act has allowed this to happen. I hope that a review of some of these situations will resolve the anomalies of the interpretation of the common property so that we know what the hell we are managing.

Part of my recommendation is that, under the Act, a regulation should provide for a document that clearly sets out in contract form the agreement between the owners and the strata company manager. That will then clearly define for the owners exactly what is the role of the strata manager. Even owners, once they have entered a contract, still get confused about what they are doing. They make some unreasonable demands and expect managers to be able to walk on water.

Regarding the changes in use, when we attended a national institute conference in Brisbane two years ago, the North American counterpart indicated that it had just established a 60 000-lot scheme which encompassed libraries, all facilities, schools, nurseries and roads. I understand from attending these conferences that in these property schemes Australia follows America. The strata schemes will get bigger and their management will become more complex. As John said, this is probably the right time to review the Act, but it needs much consultative work and we need to look at exactly what we are expected to manage and what skills are required. I agree that we need financial skills. As a consequence of the greater complexities expected in the future, a strata manager should have the skills in both monetary management, administration, minuting and people



skills. Most of what we do in a multi-storey building involves dealing with conflict; in fact, we deal mostly with conflict resolution. Conflict resolution skills are, therefore, an absolute must.

[11.15 am]

**ATKINSON, MR MARK:**

**Mr Atkinson:** Thank you for the opportunity to present here this morning. I represent the Strata Titles Institute of Western Australia. I was elected president about six weeks ago. I am learning a lot about what it means to be president of a largely voluntary association.

The Strata Titles Institute of Western Australia was incorporated in 1989, so it has been going for 13 years. It currently has more than 160 members. Those members cover a range of disciplines. There are lawyers, like me. There are many independent strata managers - not real estate agents - some of whom are present here today. There are strata managers who are licensed real estate agents, some of whom are also here today. There are also valuers, surveyors and developers. The Strata Titles Institute is composed of a very broad range of people. As I said, it is largely a volunteer organisation relying upon the contributions of its members to advance the interests of the industry. We have one part-time executive officer who handles the administrative tasks.

What STIWA does can be ascertained by looking at its committees. It has an education and training committee, which presents a very vigorous and well-attended training program. We have an accreditation committee. At a recent general meeting of STIWA, the council was directed to develop and promote an accreditation program for its members. It also has a conference committee. STIWA runs a biannual conference that is attended by not only strata managers but people from the industry in other States as well - developers and the like. STIWA also has a professional standards committee that acts on complaints received about members of STIWA.

I will briefly run through what STIWA has done in response to the inquiry. We received notice of the inquiry and have put in a preliminary submission. STIWA is holding a members' forum on 26 November. We have invited members of this committee to that forum and we anticipate presenting a detailed submission to you after that forum. It is likely that at that forum, because of the broad range of people who constitute the membership of STIWA, we will receive a broad range of views, therefore, the submission that STIWA presents will need to take account of the interests and views of all of its members.

I believe it is important to address the structure of the industry in Western Australia. It is significantly different from that in New South Wales and Queensland. Queensland, for example, has many high-rise apartment blocks, particularly in its south east. Many of those blocks are managed through what are called management rights schemes. Typically, the holder of a management rights contract will lease or purchase a lot within the scheme and they will provide not only strata management services as we know them in Western Australia but also rental services for the owners of the lots within the scheme. Western Australia does not have that sort of operation - at least, not on a large scale. There are some pockets of it, particularly up north in some of the tourist resorts and also down south. In contrast to the industry in Western Australia, the industry in New South Wales is much larger, obviously because of the greater population there. I believe that allows the strata managers to generate efficiencies of scale, which are very hard for managers in Western Australia to generate. It is also constructive to look at the managed investment side of the ledger, because in other States many strata developments are undertaken through managed investment schemes. That does not occur in Western Australia. Western Australian managed investment schemes are dominated by agribusiness-type schemes. As Beth has said, Western Australia has some strata schemes in the agribusiness field, but not many.

Let us look at the sort of people who call themselves, or who are, strata managers. Of course, we have the well-intentioned proprietors who undertake tasks on behalf of other proprietors within the scheme. The range of tasks that they undertake are typically not that complex. Often it is as simple as once a year paying the insurance premium on behalf of the other proprietors. The second group of people, of course, is made up of real estate agents who hold themselves out to be strata managers, some of whom are present here today. Also, we have sales representatives who do work in the strata management industry. It is my view - not a view of STIWA - that the skill sets that are necessary to effectively manage a strata scheme are different from the skill sets that are important to develop as a sales rep in particular, but also as a down-the-line property manager. We have what I call independent strata managers; that is, members of the Strata Titles Institute of Western Australia and also many people who are not members of STIWA. Sometimes they are disaffected proprietors; people who are perhaps upset with the actions of their strata managers and believe they can do a better job. They are currently entirely unregulated and are not under the aegis of any association or licensing authority of any description.

It is also important to point out the huge diversity of tasks and engagements within this industry. If you look at it on a time basis, strata managers will sometimes act for a strata company for many years - 10 years and more. However, some strata managers will be asked to do no more than simply convene and chair a one-off general meeting. It is important, obviously, when designing a licensing or regulatory system to take account of the range of time over which managers are engaged to assist strata companies. It is also worthwhile noting that the industry in Western Australia is characterised by what I call disaggregation. There are no large-scale strata management firms within Western Australia, such that might be found in New South Wales.

The industry in Western Australia is characterised by small-scale firms and also many people who work part time in the industry. We have heard about some of the potential risks that exist. The caution that I express there is that obviously the strata industry is already a body of significant size and it would seem that it will get larger given the current planning imperatives. It is important that any regulatory regime that is imposed does not act to chill the further development of the strata industry. It seems desirable that more people in Western Australia live in strata schemes. We cannot continue to expand ever outwards in Perth. If that is to be the case, it has to continue to be attractive to purchase a strata title block. If unreasonable fees or burdens are imposed upon proposed proprietors, it is my personal view that could chill the further development of the industry.

One of the areas of concern is that there are currently no formal channels for complaints. STIWA, the Real Estate Institute of Western Australia and also the Real Estate and Business Agents Supervisory Board receive complaints about members and agents. However, there is no statutory or industry body to receive and act on a proprietor's complaints if the strata manager is not a member of either STIWA or REIWA.

There are no barriers to entry or to practise in the industry. As I have said, STIWA runs a vigorous education campaign. As a relative newcomer to the industry - I have only been in it five or six years - and as recently-elected president, I am continually impressed by the enthusiasm that strata managers show for attending industry events. For example, I presented two privacy Act seminars for members of STIWA over the past couple of months at which we had close to 100 attendees. That is a very good rollcall from a membership base of 160, many of whom live or work outside Perth. I am continually impressed by the enthusiasm that strata managers show about learning more about how to do a good job.

We have heard the figures that have been presented today about the value of the strata lots within Western Australia. It is my view also that there is a dearth of evidence about the sorts of questions that the inquiry needs to answer. We do not know how much is held. It would be good if appropriate surveys and focus groups could be convened so that the inquiry could act on legitimately-obtained and sound information about the impacts of any regulatory regime.

One thing that perhaps has not been addressed so far is insurance. STIWA has asked in its submission whether the potential risks that we have heard about today, for example, the defalcation of funds, could be minimised by requiring broader scale insurance. Could the risk be minimised if there were a compulsion to have fidelity guarantee insurance cover? We have a representative of CHU Underwriting Agencies Pty Ltd in the forum today. What about having compulsory office bearers insurance involving the proprietors of self-managed schemes and could a requirement be instituted that there be compulsory professional indemnity insurance for those independent strata managers? I query whether the insurance would be available on reasonable terms, given the current insurance market. If the Strata Titles Act were amended to require that, of course, the pool over which to spread the risk would be that much larger.

Another aspect of the industry that strikes me is the lack of requirements within the Strata Titles Act for the council of owners to report back to owners in general about what has happened with their funds over the last year and what is to happen with their funds over the next year. There is mention of a budget in the Strata Titles Act. However, there is no clear understanding in the industry of what a budget actually is. In essence, very few financial requirements are contained within the Strata Titles Act. Could some of the risks that have been considered today be taken care of by amending the Act to have, for example, a mandatory requirement for a separate trust account, for more regular financial reporting and for budgets to be in a certain format? We have heard about education as well. Perhaps strata managers and proprietors need to be educated on financial issues.

I raise a point concerning the fidelity guarantee funds that are available to those proprietors whose strata company is managed by a real estate agent. As I understand it, they are an avenue of last resort. It is the case also that fidelity insurance is an insurance of last resort. Sometimes there can be a conflict between the fidelity guarantee fund saying it will hand over its money only if the proprietors cannot get it from someone else; that is, the readily available insurance.

As I said, STIWA has been directed to develop an accreditation program. REIWA also has a program for its members. I believe it is possible that such an accreditation program could be used as the basis for regulation of the industry in some way. It is also worthwhile noting that the National Community Titles Institute, of which STIWA is a member, is currently developing an Australian National Training Authority-based program.

I will express some personal views of what has been said so far today. My view is that the Strata Titles Act sets itself up for a fall here. If the position in the Strata Titles Act is contrasted with the position in a company, you will see how reporting and management responsibilities can be confused. A company has a line of authority from the employees through to the chief executive officer, who may or may not be on the board of directors, and each have well-defined roles. In contrast, the Strata Titles Act has the proprietors; a strata company that meets infrequently - in many strata schemes, not often at all; the council of owners, who often do not know they are members of the council of owners; and a strata manager, who is completely unrecognised by the Act, except in one or two minor areas.

[11.30 am]

It is that division of responsibilities between those groups of people that, in my view, creates the problems that often arise in strata schemes. The other side of that is that it allows for flexibility. We have heard about the diversity of the industry and it may be necessary to allow for those sorts of structures to continue to exist to allow the strata industry to be flexible. It is certainly worth examining. We have also heard about the problems experienced in the definition of what is a lot and what is common property. I find it astounding that a person who buys a lot in Western Australia does not know what is theirs and what is someone else's or what they share with someone else. Many people simply do not know that. As a lawyer, I have read the definition of a lot and common property many times and I still struggle over it. If I struggle over it, I suspect that many strata managers do also and if many strata managers struggle with it, I suspect that every lot

proprietor in Western Australia probably does too. Maybe that should be clarified. The Strata Titles Act 1985 must reflect the reality that managers exist and they need to be reflected in the Act that governs the industry.

**The CHAIRMAN:** Thank you for that. Radical propositions about introducing reality into the Act will take us some time to get our minds around.

**MUNDAY, MR PETER:**

**The CHAIRMAN:** The next person to present his case is Peter Munday. He is the manager of the strata management division of real estate agent Quin Ballard in Como. Peter is a specialist consultant in strata titles to the real estate industry and the general public. He is also a senior lecturer in strata titles at the Real Estate Institute of WA Inc and is the immediate past chairman of the education and training committee of the Strata Titles Institute of WA. In recent years Peter developed and presented a training course in strata titles management for many Department of Land Administration customer advice legal officers, assistant registrars and other officers via the professional development centre of REIWA. He represents REWIA on the Community Titles Advisory Committee and is a member of the special subcommittee of the Community Titles Advisory Committee that reviews the Strata Titles Act 1985. That subcommittee also includes the strata titles referee and the DOLA strata titles legislative review officer.

**Mr Munday:** Good morning ladies and gentlemen and Mr Chairman. It is great to see so many industry colleagues here today and so many agency members with whom I have mixed, and also members of the public that I have come into contact with. I am also a bit old fashioned - I do not have a special fancy presentation to give members - I will just read from my handwritten notes. Forgive my husky voice. I do not usually sound so sexy; I have been lecturing for a couple of days.

I have been directly involved as a hands-on manager of strata title properties in Western Australia since 1989. I obtained my certificate of proficiency in agent management in 1991 from the Real Estate Institute of WA Inc after I completed the three course programs. That program was developed and presented by a pioneer of strata management training in Western Australia, Mr Michael Powell. I studied the Act, its regulations and by-laws to further my strata management education and I continued to attend training courses offered by the Strata Titles Institute of WA and REWIA until approximately 1996. At that time I was requested by REWIA to develop and present a four-day, hands-on training program for strata managers. That course continues, with appropriate updates, to this day. I understand it is the only comprehensive and exclusive strata management course available in Western Australia. I mention this training background information only to provide the understanding that I am constantly in contact with strata managers from Esperance to Broome and from Perth to Kalgoorlie. In addition to my consultative services to the real estate industry and the general public, I receive public feedback on a wide range of issues relative to strata company management.

The main issues in this inquiry are that I have considered the potential risks posed to consumers by the current absence of regulation in the strata management industry and the need for the most appropriate method of regulation of the strata management industry. In order to give appropriate consideration to these matters, it is necessary to examine the target community of strata companies that may be effected. Today we have already heard a few statistics about the 40 000 schemes. As a member of the Community Titles Advisory Committee, I am privy to specific statistics, which I constantly nag the industry to give me - just joking. The statistics provided by the Department of Land Administration in July this year show that at that time there were, in round figures, 39 700 live strata schemes operating in Western Australia, of which 31 000 are two to five lots in size and 5 800

are six lots and above. Of the 31 000 two to five lot schemes, nearly 22 500 are two lots and approximately 8 700 are three to five size lots. In my opinion, based on my general experience, only a handful of the 23 000 two-lot schemes are managed either professionally or otherwise. By otherwise, I mean some form of self-management or non-management, as Mark alluded to, by the proprietorship. Of the 8 700 three to five lots, I estimate that a minority has professional or other management. Of the nearly 5 900 six-lot and above schemes, I estimate that a majority would have professional or other management. In summary, of the total 39 700 live schemes as at July, I estimate that a maximum number of 6 500 are managed either professionally or otherwise. Of those 6 500 managed schemes, I estimate that between 25 and 40 per cent have some form of self-management. Overall, I estimate that between 4 000 and 5 000 schemes are professionally managed in Western Australia.

Who is involved in professional management in Western Australia? Since the time that strata plan number 1 was registered in May 1968 - that is a two-lot scheme at Hopetoun Street in South Perth - there has been a miscellany of persons involved in what is loosely referred to as strata management in this State. It is interesting to note that there is no statutory designation of responsibilities or duties for anyone involved or employed as an agent manager or strata manager of strata companies. As industry colleagues have heard me say on various occasions, unless a strata manager is required to operate via a trust account, any person in Western Australia can manage any size strata company in cash out of the boot of his car. There is no requirement under the Strata Titles Act for any strata company to have a bank account or for an audit of the books of its account to be conducted. Indeed, there is no obligation to have an administrative fund. Section 36 of the Act states that a strata company shall establish a fund for administrative expenses, which in the opinion of the company is satisfactory. The company might be of the opinion that it has no need for a fund. The Strata Titles Act details the duties and obligations of a strata company under the standard of by-laws contained in schedule 1 to the Act, which empower the strata council to employ such agents as it thinks fit in connection with the exercise of its powers and duties. In the absence of any formal designation of the role of a strata manager, the extent or scope of services provided must be established between the strata company and the employed strata manager. A written agreement should be entered into to clearly identify the services to be provided by the strata company manager.

Today we have heard about what a strata manager should do. A strata manager should be a real estate agent for example. We are known by some strata companies as strata managers. They consider that all we do is send out notices of the meetings, attend the meetings, issue minutes of the meetings, go home and send people the bill; they love it. They do their own financial management, their own insurance, their own taxation; they have all the resources in-house to do that. They bankroll their own funds and have a couple of hundred thousand dollars in the till. They could shoot through with it. I am just a simple secretary for them, and they think that is fabulous.

The professional management of strata companies in Western Australia seems to fall into the following four groups. Firstly, real estate agents who have a number of full-time staff who specialise in strata management; secondly, real estate agents who have a property, rental or leasing manager who undertakes some strata management - generally begrudgingly - as an adjunct to property management; thirdly, strata management specialist firms that are not real estate agents and that employ a number of full-time staff who specialise in that strata management; fourthly, some strata managers operate as sole traders and specialise in strata management. Any person may be employed as a strata manager in any of the above categories and he is not obliged to have any specific education or training, certification or accreditation or any particular skills. It is interesting to note that in the eastern States of Australia, very few real estate agents are involved in strata company management. They think we are quite funny in Western Australia to do it. The key representative bodies in strata management in Western Australia are the Real Estate Institute of WA and the Strata Titles Institute of WA - STIWA. Members of REWIA who practice strata management have the obligatory benefit of their clients' funds being protected by the trust

accounting fidelity requirements where those funds are held in the trust account. We have heard about that today. However, we have not heard of strata companies which say, "We are not getting interest on the trust funds; we need \$10 000 to float along this year. Give us the other \$40 000 and we will put it in the bank account and we will be the signatories and get the interest." Who protects those funds? Who stops those council members from shooting through? REIWA has already instituted a form of self-regulation of standards by the implementation of an accreditation program, which embraces the category of strata company managers. I understand that STIWA is moving towards a form of accreditation for its strata manager members. With regard to risks posed to consumers by the absence of regulation, throughout my years of various contacts with consumers, I have not heard of any definitive fear expressed in respect of funds held by strata managers. I am aware of only one historical example of defalcation of funds by a strata manager. I understand that those funds were recovered by the effected strata companies via insurance claims.

Today we have heard about potential risks to funds. Bob alluded to this when speaking about reserves. Possibly a greater potential risk to consumers is the risk to their property values when there is inadequate or poor management of the duty of the strata company to maintain the common property building. One shortfall of the Act is the option for a strata company to not have to accumulate funds for future major works to the property. This has created the current position whereby too many buildings in Western Australia are in need of major maintenance works and the strata companies have little or no funds to undertake those works; they are falling to bits and the strata companies are flat broke. In my view, that places a greater risk to consumers than the risk of the funds that they do not have. If this inquiry into possible regulation is based purely on concerns for potential financial risks, it would appear to be born from bureaucratic scaremongering rather than action based on definitive evidence. Notwithstanding that comment, if regulation is seen as a means of raising the bar on overall professional standards in the strata management industry, I strongly endorse it.

Currently, there is zero education, training, standards or requirements for any person to legitimately classify himself as a strata manager. The position whereby such a person can be employed to fulfil the statutory obligations of a strata company seems absurd. Overall, REIWA believes that strata managers should be licensed because they have a fiduciary relationship with their clients. In the event that strata managers are regulated by a licence, it calls into question whether the practice of strata management is to be seen as a real estate transaction. Currently, the only direct reference in the Real Estate and Business Agents Act to strata management relates solely to the receipt by the agent of moneys received for strata contributions or levies.

[11.45 am]

It is a curiosity that prior to November 1998, when real estate fees were regulated, the gazetted scale of fees included details for home unit or purple title management, even though the practice was not defined as one of a real estate transaction. With the deregulation of real estate fees in November 1998, that curiosity passed into history.

The evolution of the strata management industry in Western Australia has seen an insidious form of prostitution develop. The former real estate scale of fees for strata management was widely misunderstood, as was the practice of the provision of an informed and professional strata management service. To give some credit, there were a few exceptions to that general rule. The real estate scale of fees, in addition to being poorly described, remained static for 13 years from 1978 onwards. Recognition of that error took place when that scale was reviewed upwards by some 100 per cent in 1991. However, the damage was done. Non real estate agents who offered strata management services quoted the same ridiculously low fees to compete in the industry. The original scale of fees was so poorly embraced by real estate agents that their strata management was seen as a general loss or break-even service rather than a profitable one. However, the spin-off benefits of sales or rentals from strata clients caused strata management, although misunderstood

and a darned nuisance, to be continued by real estate agents. Independent non real estate strata managers offered the same rates to be competitive without the fall back benefits of sales or rentals. That non viable position resulted in a range of services, and often over servicing, even if only to retain the business. That led to - viola - a diversity of services being provided and generally misunderstood by a consuming public that had no knowledge or understanding of strata titles administration. The absence of compulsory disclosure on every sale ensured a technically ignorant public for a period of nearly three decades until April 1996 when compulsory disclosure on every sale was introduced.

In summary, I strongly endorse the establishment of both professional and educational standards for strata managers. I personally remain unconvinced that a significant financial risk is posed to strata owners by the absence of regulation if the strata entity effects appropriate insurance cover. REIWA believes strata managers should be licensed, because they have a fiduciary relationship with their clients.

### **JAMES, MR CRAIG:**

**The CHAIRMAN:** Thank you. The last speaker for this morning's session is Mr Craig James, a partner in the law firm Gibson and Gibson and a practising conveyancer for the past 27 years. Mr James is a member of the Law Society of Western Australia property law committee, has considerable involvement in the Strata Titles Act and is a deputy board member of the Real Estate Institute of Western Australia.

**Mr James:** Thank you for that introduction, Mr Chairman, and for giving me the opportunity to talk this morning on behalf of the Law Society of Western Australia. The danger of being the last speaker on an occasion like this is that it has all been said. There is not much in my paper that will be different from what has already been said this morning, but perhaps it can act as a summary. Recently I had occasion to ask a strata company manager to provide copies of resolutions made by the strata company since it was formed; it was an old strata company. The response I got back was that there is no strata company; it has not had its first annual general meeting. I found it a bit alarming to receive that advice, because of the implications of the lack of knowledge that the strata manager had. Having said that, I have a very high regard for the professionalism of most of the strata managers with whom I deal. I believe it is an industry that is currently well self-regulated. However, I have some concerns that a disaster may be about to occur from the unscrupulous people who may want to get involved in the industry.

Strata titling is an accepted process to develop land, whether for residential, commercial, agricultural or industrial use. Land law that has evolved through the common law and has been created by the Transfer of Land Act and other legislation applies to strata title lots and common property to the extent that it has not been varied by the strata titles legislation. The Strata Titles Act was first passed into law in 1966, was substantially revamped in 1995, and has been modified by a number of significant legislative changes since that time. The Strata Titles Act is once again being reviewed for its relevance and the requirements of modern users. As has been said this morning, the view exists that the current Act is too complicated. One suggestion to improve the Act and to assist those who consult it is to separate the provisions within the current Act into two distinct statutes - one dealing with the creation and termination of strata schemes, and a second dealing with the rules of internal management and other matters affecting the day-to-day operation of the strata scheme. If that was achieved, at least some of the complications that we all have in understanding the Act might be simplified.

Every strata scheme has a strata company with by-laws to govern the operation of the company, use of lots and common property. Most strata schemes have common property. Plans to develop or alter lots must be referred to the owners in the scheme for approval. Considerations such as these and constraints such as these do not concern the owners or occupiers of land that has not been brought under the operation of the Transfer of Land Act. The only community-based legislation that relates to TLA land is the Dividing Fences Act, local government building by-laws and town planning schemes. The internal management of strata schemes is about the management of community living in a democratic fashion - management that is affected by the personalities of the owners and occupiers, their age, personal expectations and means; put simply, the capacity and will to give and take to others with whom they live closely.

The management of strata schemes can be complex. The complexity increases in direct proportion to the number of lots in the scheme. The councils of strata companies comprise owners' representatives. It is rare that a council will possess the knowledge of the legislation and the business acumen to effectively operate the strata company in accordance with the Act and the best interests of the proprietors. Therefore, persons equipped with the knowledge and experience of strata title managers are best suited to look after the day-to-day management of strata schemes on behalf of the council and have emerged as providers of essential services to this sector in our community.

The functions of a strata company manager are similar to, but more complex than, those of a real estate property manager. The activities of a strata company manager do not fall within the definition of a real estate transaction under the Real Estate and Business Agents Act. The activities of strata company managers are not regulated in any way. The scope and size of strata schemes is wide, ranging from two-lot schemes to schemes with hundreds of lots. The role of a strata company manager is to collect and disburse significant sums of money on behalf of the proprietors of the strata scheme and to conduct the affairs of the strata company in accordance with the Strata Titles Act. Non regulated strata company managers are not required to audit their books - an audit of the type referred to by Beverly - nor are they required to maintain any form of professional indemnity insurance. By a quirk of the Real Estate and Business Agents Act, strata schemes managed by licensed real estate agents can have access to the fidelity fund established under that Act, whereas schemes managed by non regulated managers are exposed. It is unlikely that the proprietors of strata schemes are aware that the activities of their strata company managers may not be regulated. The public perception is that all strata company managers are required to be licensed. The public assumes that its interests are protected by legislation and regulation. Those owners of lots in strata schemes who cannot rely on the safety net of the fidelity fund established under the REBA Act are at a distinct disadvantage, compounded by the fact that the proprietors may not be aware of the exposure that they face. At a minimum, steps need to be taken to alert the public to the fact that it may not be dealing with a person or entity whose services are regulated. Preferably, there should be a change in the law to require strata company managers who seek and are rewarded for their services to be licensed and regulated.

Strata company managers in other States of Australia are licensed. In New South Wales, there is a regime of differential licensing under the Property, Stock and Business Agents Act, including strata managing agents licences and community managing agents licences. Queensland is in a process of amending its Property Agents and Motor Dealers Act to licence strata company managers. As Cathy advised earlier, the Northern Territory and South Australia also have provisions to protect the consumer. The Real Estate and Business Agents Act licenses agents and real estate agent representatives to undertake real estate transactions. Only people licensed under the Act can undertake real estate transactions for a fee. Only a licensed real estate agent can operate a business that services real estate transactions. The typical activities of a strata company manager requires a different level of skill and experience than is required of a real estate agent, as a detailed knowledge of the Strata Titles Act and regulations is essential. A similar level of regulation of strata company



managers is justified. In society's opinion, scope exists for a new category of licence to be created under either the Real Estate and Business Agents Act or the Strata Titles Act to regulate the conduct of strata company managers.

Some of the duties undertaken by strata company managers include, in the accounting sphere, collection and disbursement of strata company levies; maintenance of a sinking fund; preparation of annual budgets and periodic financial reports for presentation to the strata company council and the strata company; submission of books of account for audit; liaison with the Australian Taxation Office, for example on the issue of the goods and services tax; and the completion and submission of business activity statement returns if required. Strata company managers convene and attend meetings of the strata company and the strata council. They are often required to advise the strata company and the strata council on the proper conduct of its affairs and the regulation of the conduct of the proprietors, and to take and publish minutes of those meetings. If required, strata company managers may be asked to look after the day-to-day management of the scheme and its improvements on behalf of the proprietors, to effect and maintain insurances, and to apply for approvals required for the purposes of the Strata Titles Act on behalf of the proprietors. Strata title managers are also required to have a detailed knowledge of the Strata Titles Act and regulations and be able to advise the council and owners with regard to that Act. I think Beverly made the point that they also need to have an understanding of conflict resolution and the skills required for that.

A regulatory regime could ensure that strata company managers have the requisite knowledge and skill to enable them to provide these services to the public in a safe and secure fashion. Although proposing the regulation of strata company managers who either seek or are paid reward, the society does not advocate an across-the-board regulation of all strata company managers.

[12 noon]

Obviously, there are many small strata schemes that are honestly and adequately managed by diligent persons, without any reward or recompense. There would need to be some recognition of this, such as there is already in the Strata Titles Act, which recognises, in section 36A, a less onerous regime for two-lot schemes than would otherwise apply.

The need for education of strata company managers and the public in relation to the Strata Titles Act is also supported. The concept that Beverly suggested of a standard contract put into the regulations may serve to alert members of the public to the sorts of services that may be available or could be expected from the strata company manager. I think Peter made the comment that sometimes strata companies do not need the full range of services. Perhaps that standard form of contract could be adjusted to recognise which services can be chosen by the strata company. Peter made the point that some people are quite happy looking after their funds and do not need anyone to look after them for them. However, there is always the risk that someone in the council or two people in the council who have control of the chequebook may do the wrong thing. If we do not go down the regulation path that has been proposed by many people here today, perhaps those sorts of moneys could be held in a bond system similar to that which exists under the Residential Tenancies Act at present. Of course, that will create a lot of extra work within that department. Ladies and gentlemen, thank you for your attention.

**The CHAIRMAN:** Craig, thank you very much indeed. That is the last of the speakers. I also thank one of my colleagues, John Bowler, who is now leaving to catch a plane. As we prepare for the next question-and-answer session, I will ask each of the presenters who spoke in this second session to sit at the top table here, and we will talk to them as a panel.

While we are attending to that logistics change, could I take this moment to remark that it is very clear that everybody who has come here today has started thinking through this process of risk assessment, which is what indeed has motivated the committee to undertake this inquiry. The level of risk, as we have heard, is not necessarily an agreed set of odds. Some people see greater risk to individual and collective property rights than do others. Others see that a varying degree of

personal responsibility needs to be included. Indeed, it is that mix of perspectives and risk analysis that motivated us to undertake this inquiry. As I pointed out earlier, under our terms of reference, we are very much open to all the propositions that have been put here this morning; that is, the risk can be dealt with in a number of different ways. What might be characterised as activist intervention in a very serious way is one legitimate argument, and so too is a system of industry licensing and standard setting - a self-regulation model that also passes a great deal of responsibility back to the individual owners of property. There we have it.

We will now open up the question-and-answer session with the presenters as assembled. It is the same deal as before. Would you come to the centre console, identify yourself and to whom you are directing your attention, and the panel will pick that up as they go. At this point, I also invite any member of the public or industry who wants to make a comment or observation, having not been a listed speaker, to do so. If you have the capacity to make a statement inside about a minute or so, you are welcome to do that at the centre console.

**Ms Mitchell:** Being the consumer you are trying to protect, I would like to agree with the last person. I am sorry, I had to duck out and feed my meter, so I missed out on a few of his comments. I own a number of properties, and I am absolutely astonished at the lack of information and wrong information I get from strata managers. Yes, I do agree that, to start with, I had this feeling that they knew it all. They do not. Bloody amazing! All this money is going in, and I think they do their best, to give them credit. I think most of them try to do their best. Therefore, let us not take anything away from them. They do try to do their best, but a lot of them are failing badly. I think we need some standards. I have run a business for most of my life, and I have set standards for myself that have been exceptional standards. Even if we have mediocre standards, at least we will have some standards. We have none. Why do we not complain? We do not know whom to go to.

I was going to ask Mr Kronberger a question about how long it takes for an application to be processed. I am sure there is a backlog that is unbelievable. One of the things you also need to know is that when you do complain to someone, you will get some sort of reaction - the person who is dealing with your complaint has teeth and has some sort of legislative powers to deal with that complaint. From what I have heard today, there is bugger-all; there really is. So why complain in the first place, you ask yourself; where am I going to go with this in the second place; it is best to get rid of the strata manager in the third place. Quite often you do not want to get rid of the strata manager; you want to deal with him. Conflict resolution - what a wonderful idea! I think it is great. A lot of them do not know what to do with us when we have a situation of conflict - "Ignore here; she'll go away." It does not happen with me, unfortunately, but there you are.

**The CHAIRMAN:** Thank you very much indeed. Craig, you might like to start.

**Mr James:** I think we have gone down the path a long way since the Act was established in 1966. As everyone has said, the current Act does not recognise the existence of strata company managers, and maybe does not have to. However, I think that the community must recognise that strata managers do play an important and pivotal role in our community now, and in the management of community living. I make that point again. We are talking about community living, and a whole lot of different pressures are involved in community living that the average Transfer of Land Act lot occupier does not have to live with. I think it is time for us to review this part of the real estate industry to take account of the new pressures and the expectations. I think the expectations have grown without people realising and without the regulations being in place to manage them.

**The CHAIRMAN:** Does anybody else want to make a contribution?

**Mr Atkinson:** One of the points made was the length of time that it may take for the strata titles referee to deal with a complaint. There are two points to be made there. The first is that if it is something urgent, in my experience as a consumer of the services of the referee, the referee will provide an order urgently. The second point to be made concerning a referee is that I am sure he would say that he could always do with more resources. It does take some time for decisions to

come back. That is a reflection of the resources he has and the number of complaints that are made. The position may change somewhat with the establishment of an administrative review tribunal of some form. A caution I have, as a lawyer, concerning that is that it is proposed, as I understand it, to abolish the right of appeal from the tribunal, as you currently have with a referee, and to replace that with the need to apply for special leave to appeal to the Supreme Court, which would operate as a greater restriction upon the ability of proprietors or anyone else to appeal a decision. I would say that perhaps that is an unwarranted restriction.

**The CHAIRMAN:** Does anybody else want to pick up that theme?

**Mr Angus:** Not the theme of the strata titles referee but just to follow on the line of the questioner. I have found from my experience - and I am sure strata managers would echo this - that many of the complaints of strata managers come about because of a lack of understanding of what the duties of the strata manager are. As Bev said, they should be in writing, and often - certainly with those who are inexperienced - they are not. The expectations of a proprietor are such that he believes the strata manager is going to do the whole shebang, whereas the strata manager is not. It is instructed to do specific tasks, and those only, for the fee. Quite often I have found that this is the misunderstanding, through ignorance, I guess, of many proprietors who do not have an understanding of the Act. Really, it comes back again - always, in my view - to the fact that education is paramount.

**Mr Atkinson:** Perhaps I can just follow that up. As a lawyer, the local Law Society of WA introduced a compulsory professional indemnity fund for lawyers in Western Australia. Part of its operation requires all lawyers to attend an annual seminar on risk management issues. One of the key issues that is addressed just about every year in those seminars is the issue of managing clients' expectations. Therefore, it may be that if there were to be a requirement for professional indemnity insurance, for example, as part of that the insurer would require that strata managers attend compulsory risk management seminars where they could receive instruction, training and background on how to manage clients' expectations properly.

**The CHAIRMAN:** Do any of the earlier presenters want to comment on those issues?

**Mr Munday:** I want to acknowledge some of the comments that Ms Mitchell made, because I endorse much of what she said. I had the privilege of being an independent chairman. You may remember, Merlyn, that we met when I chaired -

**Ms Mitchell:** A conflict situation, was it not?

**Mr Munday:** There was certainly a conflict situation in the strata company, and I was asked, as an independent chairman, to go along and chair the annual general meeting to avoid bloodshed between the proprietors and the existing strata managers, I think. On the night, notwithstanding a few raised voices and a bit of bad language, there was a bit of laughing as well. I just wish - I sincerely wish - that there were more members of the public who give a damn in the way that Merlyn does and pays attention to her investments. I sincerely wish that, because I deal with thousands of members of the public, and I deal with hundreds of strata managers who deal with thousands more of the general public, and I can tell you that the general consensus is that the majority of owners are apathetic about wanting any knowledge of what is happening in their strata schemes. There is no end to the amount of time they will spend examining the ins and outs of a second-hand car they are going to buy, but they do not bother examining what they are buying in the way of real estate or what is needed for them to participate to protect their investment. They think that the magical third person plural - they, them out there - will look after it!

Now, some strata managers might see that owners such as Ms Mitchell who voice their concerns are a darn nuisance. Frankly, the first thing I do is make them an offer to get on the council and help run the company, which is the object of the exercise. The Act contemplates that the strata council run the company like a board of directors from AGM to AGM, and employ lawn mowers,

gardeners, strata managers and others to help them as a backup service. All too often, the consuming public buys a strata title property, steps back and says, "You look after it." Often, it is left to the strata manager to make the decisions, which it does not have the right to make in almost all cases. It does not have any right under the Act to expend any moneys. Only the strata council can do that, or delegate that by authority to the strata manager.

[12.15 pm]

Few strata managers actually have a properly delegated power to expend, yet the majority of owners think their strata managers will spend their money, and then they complain bitterly when they do. I recommended to the Community Titles Advisory Committee when it was instituted by the Minister for Lands in November 1996 that top priority should be given to a public education facility, because at the moment no proactive public education is provided in this State to the consuming public. The Department of Land Administration provides a reactive help service, which is staffed by people who, with all the goodwill in the world, have no practical strata management experience. To give them their due, they do their best; they seek education. You will have heard how I have helped with that. However, there is still no avenue that the consuming public can go down for proactive education in strata titles. I would join a committee with Merlyn to go to Eyre to advertise that if there was one.

**Ms Mitchell:** Please let us know where we can get this training. I had two copies of the Strata Titles Act. I kept one copy in my bedroom, because I get lots of calls. I would like this forum to generate some public interest. I found out only yesterday, and quite by accident, that this forum was to be held. I wondered why everybody did not know about it. Please let us know about these things when they are to happen. Put a big advertisement in the newspapers. Please educate us. We want to be educated as much as the strata managers, so that we can help them, deal with them, and keep the buggers honest.

**The CHAIRMAN:** I will make some brief comments on a couple of points. Firstly, having done our preliminary assessment, received a number of submissions and heard this morning's presentations, it struck me that we are dealing with a re-emerging commons - a sort of twenty-first century version in human society of a commons. We are now, in a contemporary way, dealing with tension between a private interest and the collective interest. I do not think, especially after hearing some of the comments from both our presenters and participants, that the role individuals have as shareholders and interest holders in the commons is yet well understood. That great Australian tradition of "they oughta" almost applies here - they oughta do this and they oughta do that; somebody else is looking after this matter without a sense of personal engagement or responsibility. That is not to say that we do not have some work to do in framing the law or coming up with a better system of administration, information or education, but it suggests to me - my colleagues may wish to comment later - that there is a complex set of interactions between the commons and private interests.

The other point is that the committee advertised the forum. Yesterday and again today we put out press releases. People can see by the lack of cameras at the back or representatives from the ABC or *The West Australian* - there is no-one here from *The West Australian*, is there - that it is difficult to get the media to understand the scope and level of interest and engagement in this issue. Perhaps if some of the numbers we have been presented with this morning were at the forum today, we might have been able to spark a little more interest. However, we will attempt to get the media to understand the scope of this sector and how many people are engaged in it as a matter of direct personal interest by using some of the information that has been presented today. I can tell you that it has not been for want of trying.

**Mr Kronberger:** Peter raised the point that people buy their lots without taking an interest in what it is they are actually buying. People buy not only a lot but also an interest in the common property. If I were buying a building in St Georges Terrace, I would have a complete due diligence done on

that entire building. If I were buying a part of that building, even one room, I would do the same due diligence, because I am equally responsible for that entire building. That is not generally understood. The second point is that I often see an area of conflict between managers employed by a strata company, usually by the council, and the members of the strata company. Sometimes managers lose view of the fact that they act for the strata company. Sometimes a situation arises where there is a team of the council and the manager against the rest. That produces conflict. Sometimes managers do not recognise that that conflict exists.

On the point of the time it takes for me to deal with applications, I point out that at the moment, I have 52 applications before me and no typing staff. I have to send stuff out to the District or Children's Court to be typed by spare typists while my secretaries are away on leave. I apologise for any delay.

**The CHAIRMAN:** Thank you, Bob.

**Mr Atkinson:** I will also take up the point about the information made available to the media. It is not for want of trying by the media either. John Angus has been on talkback radio. I am going on talkback radio next week and hope to produce, as a representative of the Strata Titles Institute of Western Australia, a regular segment on living in a strata scheme.

**The CHAIRMAN:** Which station will you be on?

**Mr Atkinson:** I will be on the 720 ABC lunchtime program at 12.25 pm. The industry is taking steps to educate the public as best it can. Bear in mind that this is something we do in our spare time, away from our own practices. The industry is taking steps to try to educate people about these sorts of issues.

**The CHAIRMAN:** Thank you. Are there any other submissions, comments, questions or challenges?

**Mr B.K. MASTERS:** I am not sure whether this is *The Weakest Link* or *Who Wants to be a Millionaire?*, but do not call me Eddie McGuire. Do retirement villages need to be treated separately from other types of strata company arrangements? Craig spoke about the fact that two-lot stratas do not need the same level of government involvement or regulation as others. Does the panel think that retirement villages require special treatment because the owners tend to be older and are perhaps more susceptible to bad practice by someone - I will not say who?

**The CHAIRMAN:** Are there any volunteers?

**Mr Atkinson:** I will give some indication of the scope of the issue. It is going to be a huge issue in the next 20 years. I attended a National Community Titles Institute conference in Melbourne earlier this year at which Bernard Salt made a presentation. He is the author of a book on this issue. The statistics show the incredible influx that there will be into retirement villages and those sorts of communities in the next 20 years. That issue needs to be addressed; there is no doubt about that. My personal view is that it is an industry that needs further and closer examination. There is, of course, a separate Act that deals with that industry. It could be worthwhile looking in the future at how that Act relates to the Strata Titles Act. Perhaps Bob Kronberger would also like to comment on that industry, because I understand that he is involved with that.

**Mr Kronberger:** My other hat is as the retirement villages referee. There are complex arrangements. I am currently dealing with one situation that has seven separate strata schemes all linked under one management scheme. All facilities shared by the proprietors of those lots are paid for and maintained by those proprietors on land that is not part of any of those schemes; that land is owned by the developer. That is not an uncommon situation. Others perhaps involve one huge scheme, but all owners pay a fee to a manager and virtually have no strata involvement at all. They get totally confused about whether they are having a meeting of residents or a meeting of the strata company, and the funding and management becomes blurred. The Department of Consumer and Employment Protection is looking into that. We are rewriting the code of conduct for retirement

villages and trying to tighten up the information. A full information booklet is now provided. There is a cooling off period at least, but there is a long way to go.

**Ms Griggs:** I am from Blackburne and Joyce Real Estate. I also sit on committees for the Strata Titles Institute of Western Australia and the Real Estate Institute of Western Australia. We manage quite a few retirement villages. They do not come under the Retirement Villages Act; they are just strata companies that happen to have an age restriction. I have been unable to get councils of owners for two of the strata companies that I manage because the age of the owners is increasing and they are not competent or feel they are not competent to be on the council. This situation will get worse. There is a major problem with this issue.

**The CHAIRMAN:** Do you make use of proxies in that situation?

**Ms Griggs:** We have struggled with one strata company. We now have three owners left on the council. Unfortunately, they seem to fall off the perch. That is a dreadful thing to say, but those people are getting so old. We have been able to get three owners on the council only because two owners are the grandchildren or children of residents, and they sit on the council as the owners. They manage the affairs of that council but they are not residents or do not have any real interest in the property. These two villages are a major concern because we do not have enough people who are young enough to feel competent to handle the affairs of the strata company. They are vulnerable. If a manager does not do the right thing, he could take advantage of those people. I know of managers who have virtually bullied owners to the extent that the owners are too scared to stand up and say anything.

**The CHAIRMAN:** Thank you. We are probably coming to the last comment or question.

**Mr Munday:** I deal with many members of the public. It is worth noting that there is no proactive education facility in this State from which anyone can obtain any education on strata titles. Bob Kronberger and I have discussed this issue when reviewing the Act and at numerous other times. Bob has given me feedback on what happens in the eastern States. A form of mediation service is provided. People can have their disputes heard before it goes to a formal referee for consideration. Approximately 70 per cent of disputes are resolved that way. That is a fabulous number. Unfortunately there is no such service in this State. I have been bashing my chops at the Community Titles Advisory Committee since 1996 suggesting that that would be a good thing to have here. Of course, it all comes back to funding and structure. Perhaps that relates to the third point of the committee's terms of reference - other matters deemed relevant by this committee. The committee might give that some consideration.

**Mr Atkinson:** I wholeheartedly endorse that point. The courts in this State have developed mediation services, but the office of the referee does not have the funding to establish that service. It is an anomaly.

**The CHAIRMAN:** Who provides that service in the eastern States?

**Mr Munday:** Bob would be in the best position to answer that; he has a buddy system around the world.

**The CHAIRMAN:** Why not come and sit up here, Bob!

**Mr Kronberger:** In New South Wales, people must attempt mediation before they can go to an adjudicator. Professional, well-trained mediators are provided through the New South Wales Department of Fair Trading. People make an application to the department, which has pamphlets in 18 languages that set out relevant information.

**The CHAIRMAN:** Do they draw on LEADR-trained people?

**Mr Kronberger:** I do not think so. They are competent people who know the Act intimately and can work out whether the problem is with the Act or the people. I have been very impressed with those with whom I have had dealings.

**The CHAIRMAN:** The practice of alternative dispute resolution is something that has not been picked up as much in the west as it has in the eastern States, particularly in New South Wales. That is in part because of that State's environmental and land laws; it has had a much tighter system of regulation generally. To avoid everybody having to find their way through the courts, they have been forced into also considering alternative dispute resolution mechanisms. That is something that we will look at and I will comment about.

[12.30 pm]

**Mr Kronberger:** The nearest I have come to it, on some half a dozen very, very difficult ones, is to take all the information, set it out as though it were a set of reasons without coming to a decision, make a preliminary observation and send it out to the parties and five out of those six people have rung up and said, "Thanks very much. We now know where we're at -

**The CHAIRMAN:** What we have got in front of us.

**Mr Kronberger:** "then I don't have to make a decision."

**The CHAIRMAN:** Thanks a lot. Judy Eckert?

**Ms Eckert:** Thank you. If I could just make a comment on what Bob was saying, in respect of the proposed State Administrative Tribunal which will absorb the functions of the strata titles referee and the retirement villages, it is proposed in that structure, as I understand it, that the SAT, as it will be called, will have the power to require conciliation conferences, mediation, all the pre-hearing things that we now see in our courts and it is envisaged, particularly in Bob's jurisdictions, I think, that there will be a structure provided within the State Administrative Tribunal for that to occur. It is not, though, that first step of going to the department, making the complaint and having department-provided mediators, and perhaps that is a better first step. Certainly it is one that Bob has advocated but there will be, as I understand it, provision for that to occur in the State Administrative Tribunal.

**The CHAIRMAN:** Thank you, Judy. Folks, unless there is a great burning desire to make one last comment, I am going to draw this morning's proceedings to a close. There are a couple of things I need to let you know in respect of what we are doing. We have scheduled future hearings. They will be slightly more formal; we will actually sit up there during the hearing processes and take evidence. The Hansard staff who have assisted us this morning - and thank you - will be here but recording the proceedings as formal evidence being presented to the inquiry. Those future hearings are scheduled for Wednesday, 13 November, Wednesday, 27 November and Wednesday, 4 December. They are all morning sessions and generally will run for about two hours from about 9.30 am until 11.30 am. They are parliamentary sitting days so at 11.30 you will see us getting very agitated and rushing off to the Chamber because Parliament starts its proceedings. That is the current schedule of hearings for the balance of this year. We are looking to also conduct a hearing in Kalgoorlie, tentatively scheduled for Monday, 9 December. We wanted to examine what the strata industry looks like in a regional centre which has a mining and central administration base such as Kalgoorlie. We are also now looking to go to Busselton to see what the strata industry looks like in a regional centre with a tourism industry base and examine how the issues differ from the metropolitan region's perspective on this industry. We expect that, given the current schedule, the Busselton hearing will probably not occur until late January. The *Hansard* record of all the hearings will be posted on the Web so if you are looking for the transcript of evidence, you will see that it will be the same sort of record that you get for the proceedings of Parliament.

The other thing I need to let you know about is how you can make submissions. The advertisements and notices that went out set a closing date. That closing date has passed but because of the level of interest and because we have already had a number of people send us notes saying they are going to make submissions but they have their industry forum, for example - [inaudible] is meeting on 26 November and that industry group will not be able to present its

collective position until after it has been through that process - we have no difficulty in receiving submissions up until about the middle of December. I have got on the screen here 12 December. I think we can probably fudge it for another few days beyond that, but after that it gets very, very difficult to incorporate the thinking into the inquiry process, so at some point the committee will resolve to accept no more. At our meeting last week we resolved to continue to accept submissions put to us and we will attempt to be as flexible as possible and allow as many people as possible to make their contributions.

If you want more information, Ray Wills and Liz Kerr are the direct committee staff. We do have some additional staff on loan to us and they may form part of this inquiry, but for the moment Ray and Liz are the key contacts. Please make a note of their names. The Parliament House switchboard number is 9222 7222.

I need to give particular thanks to the contributors, not only the ones you see up here on the panel, but the ones who were presenters before this morning's break. I would like you to join with me in thanking them.

[Applause.]

The last thank you must go to you. Thank you very much for participating. I look forward to your contributions over the coming months. Thank you very much.

**Public forum adjourned at 12.37 pm**