

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS

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

SESSION ONE

Members

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

Hearing commenced at 10.04 am**LAIRD, MR IAN****Strata Titles Consultant, sworn and examined:**

The CHAIRMAN: Welcome to the committee hearing. Before we begin, I need to ask you to take either an oath or affirmation.

[Witness took the oath.]

The CHAIRMAN: You have signed the document titled “Information for Witnesses”?

Mr Laird: Yes.

The CHAIRMAN: And you understood it?

Mr Laird: Yes, I did.

The CHAIRMAN: These proceedings are being recorded by Hansard. Your transcript of evidence will be provided to you. To assist the committee—you have brought in a briefcase—if you quote from any document, could you please give the title of the document, because Hansard will need to source it. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public or media will be excluded from the hearing, which will not take long as you can see. Until such time as the transcript of your public evidence is final, it should not be made public; you should keep the evidence to yourself until we finish our inquiry. I advise you that publication or disclosure of an uncorrected transcript of evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Whatever you say in here is subject to parliamentary privilege and you cannot be sued or prosecuted or whatever, but once you leave the room, that is a different matter.

Mr Laird: Thank you.

The CHAIRMAN: Normally, Mr Laird, we start by listening to your opening remarks. We have all read your submission. Would you mind talking to your submission for a while, your status and where you believe strata management is at?

Mr Laird: I have recently reread my submission, and I am embarrassed to say there are a couple of typographical errors in it. I do not in fact have anything new or additional to add to that. As to my background, I became involved in the strata titles industry in 1987 by my association with a real estate company. We were asked to manage a strata company, and we said yes we would, without having the faintest idea of what that involved because we had never done it before. We got a copy of the Strata Titles Act and we made some inquiries and thought it could not be that difficult; the legislation was there and if we acted in accordance with the legislation and advised people to do similarly, we could not go far wrong. That has been my guiding principle over the last 20 or so years. I developed a practice within that business of managing strata companies, and that led to giving advice to other strata managers. I became involved with the Strata Titles Institute and participated in education programs with them, and delivered some of those. I served on the community titles advisory committee as a representative of the Strata Titles Institute. I have consulted with the former referee and other industry people in looking at revisions and reform of the act itself. I have concentrated on this area only, for the last 20 or so years. Most recently, since 1997, I have been involved in providing independent, and hopefully objective, advice to strata title property owners, strata councils, strata companies and strata managers. That is my background.

When I saw the brief regarding this inquiry, I read it quite carefully, and I thought I had some comments and commentary to make about that, and that is the commentary I have provided.

The CHAIRMAN: We are interested in your commentary and that obviously is why you are in here. Just for your own information, the committee has gone east, to Victoria, which operates differently than we do, but we are also following with interest the federal legislation, which may or may not visit us as well. We are in a time of change, I suggest, for strata titles. The question is what sort of management regime do we put in here, or do we leave it alone. That is much of the area that we want to talk to you about.

Mr Laird: Leaving it alone is too easy, with respect. I do not think we should leave it alone.

The CHAIRMAN: We have too much evidence that says there is a problem with leaving it alone. We will be looking at coming to some conclusion about precisely what we should do. We have heard a lot of debate about licensing, and we are really interested in your view saying that registration is a better way to go. We will talk about those matters as the minutes tick by.

The first thing I would like to talk to you about is including a definition to the Strata Titles Act; you talk about that. What is your view?

Mr Laird: As to what a strata company manager is or what they may well do?

The CHAIRMAN: Just a general description. You say in your submission there is a clear misunderstanding or lack of knowledge about how things are meant to operate and how they do operate and we have had pretty clear evidence that some managers operate pretty loosely, to put it mildly.

Mr Laird: You could say that, yes, and I cannot disagree with that.

The CHAIRMAN: What do you think is necessary to define issues in the Strata Titles Act?

Mr Laird: The defining of the duties of a strata company manager is a very good first step, and that can be wide. In my submission I have referred to sections of the act which, in my experience, are not well understood by current strata managers—section 3, and you could throw in section 7, although I do not think that is a strata management issue, other than the calling of general meetings, and then go straight to section 35 and even coming back to section 32. I am running an education course presently for a group of strata managers, not one of whom could correctly give me the name of any strata company, because they simply have not read section 32. Those very fundamental things are unknown or misunderstood. Then go to section 35, which deals with the duties of strata companies. That is essentially why strata companies come to strata company managers—so they can be guided in the way they can comply with those duty statements which are contained in 35, 36 and so on, and insurance and some of the bylaws. The difficulty is that even if the strata company manager has all of those things defined—you could simply put them in as a schedule to the act if you wished—that does not necessarily mean that, A, the body corporate, the owners in the general meeting, will agree to those things being dealt with by the strata company manager. They would need to decide which of those, a few of those or more of those things they need to have done; and, B, whether the strata company manager is able to or willing to provide those sorts of services. With reference to that, I do not know whether you have had a copy of the Strata Title Institute's proposed management agreement that they have prepared. That sets out a schedule of agreed services. I myself do not use that schedule. I have developed a schedule which I think is more relevant and more precisely descriptive. But the schedule of what could typically be provided would be really easy to put together and the manager and their client strata company could decide, "We will cross that one out; we don't want you to do that." And they can say, "Okay, we will do it for a lesser price because we are not doing that service." That would be very easy to do.

The CHAIRMAN: Are you aware of what VCAT in Victoria puts out as part of their process? Have you seen their documents?

Mr Laird: I have seen their documents.

The CHAIRMAN: Do you have a view about their documents?

Mr Laird: No. I have a general view it is a great start. I do not think it is as specific as I would like it to be if I were the client.

The CHAIRMAN: I would say also that they say it is not as specific as they would like it to be. I guess it was a starting point, but it is something that this committee is considering; that is, whether we try to set down a standard format for managers and corporate bodies or corporate councils to follow and ensure that the matters on that format are actually met.

Mr Laird: It might be helpful to obtain a copy of the current Strata Titles Institute agreement. I am sure it can be made available

The CHAIRMAN: They are in straight after you.

Mr Laird: I am sure that it will be forthcoming. If you would like, as a supplement I could show you a copy of a schedule of agreed and additional services that I have prepared for a client. That may be some adjunct to the agreement.

The CHAIRMAN: We would like that. If you would supply that, it would be appreciated.

Mr Laird: I will just make a note of that. Those schedules are intended to be added to the STIWA agreement itself.

The CHAIRMAN: Do you mind if we make that document public?

Mr Laird: I would prefer not. It has been developed for a specific client.

The CHAIRMAN: We will mark it for our own use. Moving on to the next question, you talk about a more detailed level of skill. I must admit that is something this committee has heard a fair bit about—the skill and experience. You talk about real estate agents and relate them back to strata managers. Do you have a view you want to expand on what the skill level should be? Are you in favour of compulsory standards, or do you think that the current open process is necessary?

Mr Laird: The short answer is yes, although I have a general opposition to, even the thought of, compulsion. But I think in situations such as this, where there is an obvious fiduciary duty and people are held in a position of trust that there needs to be some statutory requirement to have a certain level of knowledge and skill and to be able to demonstrate, and to be able to demonstrate it on a routine basis. Once every two, three, four, five or whatever years, you need to come back and look at it, because things change, practices change and decisions of the courts and the tribunal might change the way in which things are done. You need to go back and test that so people and companies are keep up to date with that.

The CHAIRMAN: We have heard a lot of evidence about the keeping of accounts, and we have had some evidence of matters that are considered close to fraud. Do you have a comment on the question of how strata managers use funds? You say you think there is little chance for improper use or loss.

Mr Laird: I do not know that I am saying that there is no chance of improper use.

The CHAIRMAN: You did not say there was no chance; you said it is unlikely.

Mr Laird: It is unlikely, in my experience. But where it does happen, depending on the insurance policy that the strata company has, they are protected for up to \$100 000 for some monetary loss that has either been created by one of their own proprietors or by an employee being the strata company manager, for example. In my experience, I have not come across an issue. I have had people have come to me and say, “They are taking our money. They are stealing our money; there is fraud going on.” People make those emotive statements, but no evidence has come to my attention where I can say that. There may have been mistakes made and people have perhaps spent money

which was not properly authorised. But, if you think about it clearly, if there is a burst water pipe and it is going to cost \$5 000, even though it is not authorised, you cannot wait around for two weeks to get the proper authority, and commonsense needs to take effect. I do not know that I am overly concerned up to this point that people are going to steal money or defraud money, but I am aware of anecdotal evidence where money has been utilised for purposes that perhaps it was not intended to be used for and that strata companies and some strata managers make mistakes. That is, they say, "This must be a strata company expense, I will go and fix this person's roof." And later they find that is not the case and they have misunderstood.

Hon JON FORD: The evidence the committee heard was a strata manager was adding a fee for management and then charging the strata company for that.

The CHAIRMAN: That is getting a service done, say, fixing the water pipe.

Mr Laird: Calling a plumber and getting a \$50 bill and charging the strata company \$60?

The CHAIRMAN: No, a \$10 000 bill and adding \$3 000 to it. That type of process.

Mr Laird: I have heard that, but it has not in my experience been done.

The CHAIRMAN: We do not need to talk about individual cases here, but in your submission you talk about real estate agents and strata titles. If you are a real estate agent, you have to have a trust fund and a set formula for handling money. Whereas, if you are a strata manager, it can go into your own personal account or your business account; you can put all the people you manage into a single account. Is that appropriate?

Mr Laird: It may be, but my general feeling is that it should be put into an account that is styled as being a trust account, so that there is some clarity as to the intent of the use of those funds and that somebody can be held to account for that. I am not at all concerned about the aggregation or the pooling of various strata company funds provided that it is done with proper software that separates those. That is exactly how real estate agents separate their rental income and strata levies. The same software is available to strata managers, and most of the better managers would have custom-designed software that does exactly that. I do not know that is a concern I would have.

The CHAIRMAN: It is a concern from people who try to do audits. We have had evidence that it is very hard to audit some strata managers because the information available to sign off on a professional audit just is not there.

Mr Laird: That would cause me some concern as well.

The CHAIRMAN: We have a letter from a professional body indicating just that.

Mr Laird: The act requires the strata company to keep books of account and to prepare statements of account. Regrettably, books of account are not specified and that might be an area that could be better defined.

The CHAIRMAN: Also, the requirements of the auditor are specified as well, so an auditor has a set routine just like you that they have to follow to be able to sign off as being a fair audit.

Mr Laird: I understand that, but that is slightly outside the realms of the Strata Titles Act.

The CHAIRMAN: That is right, but some of them are saying they do not want to do these audits because it is too hard to sign that off and verify it as a true audit.

Mr Laird: Yes, and there are very few audits carried out, for very good reason I think. Most of the audits that I have seen have been so highly qualified as to have been an absolute waste of money. Where there is a concern for the security of the funds, it seems to me that one would employ a forensic auditor to look at every transaction. Whereas an auditor, even if they were given all the records, which you would hope, are only going to be doing test checks of what is there and that does not necessarily give you any great security in that scenario.

[10.25 am]

The CHAIRMAN: In terms of accounts, do you have a view on what a manager should be able to keep? Should the manager be able to keep the interest of the accumulated funds and commissions from insurance companies?

Mr Laird: Let me deal with one thing at a time. The interest on funds is, I think, adequately dealt with in the act. Clearly, the manager has no right to that interest. The interest that accrues on the fund of a strata company is to be applied to whatever those funds are, whether it is the administrative fund or the reserve fund. That is my understanding of the act. I absolutely do not agree.

The CHAIRMAN: Would you be surprised to hear that some strata managers are actually keeping the interest?

Mr Laird: Mr Chair, I am old, therefore, I am not surprised by many things that I hear. I am disappointed if that is the case. It has not happened in any of the matters that I have been involved in for over 20 years, but I am not surprised at anything these days.

The CHAIRMAN: What is in the mind of the committee is just how far we take a step. I can assure you that we will take a step. The question we have—we are pleased to have you in—is looking at what the federal government is bringing in; it is a very detailed, proscriptive process for strata managers. Looking at our circumstances where it is significantly open, it seems that there is, among some strata managers—probably a small number—a lack of skill in the administration and a lack of expertise in their offices in the manner in which they deal with some of these matters.

Mr Laird: I agree with that.

The CHAIRMAN: We have these options that you talked about. We saw a professional group in Victoria called the Owners Corporations Victoria. They were very strong on some of these issues, which will be similar, I guess, to the views of the next group that we will talk to when they come through the door. What we need to do is get a picture for ourselves of what we think the problem is. Our inquiry is not about reinventing strata title; it has been around for a long time. The intention of strata title was to allow people to do things themselves. We are receiving a fair bit of evidence saying that the volume of the business and the complexity of being a corporation is now making it very hard, or a bit risky, to do those things. In fact, we heard from Owners Corporations Victoria that they are concerned about lawsuits where people are doing what they consider to be normal practice without knowing that they may be putting themselves and their owners at risk.

Mr Laird: I agree with and understand that, and that would be my concern also. Can I go back one step to the interest on the funds in a strata company? There is no question in my mind that if it is not clearly laid out in the act, which I think it is, and if that needs to be reemphasised, let us do that. With regard to the retention of commissions paid by insurance companies, I see no difficulty in that, provided that it is disclosed.

The CHAIRMAN: But there is no requirement to disclose it, is there?

Mr Laird: I think there is, but other people may not. There is no doubt in my mind that it should be disclosed. I know that every client I deal with as a strata manager disclosed it.

Hon JIM CHOWN: Mr Laird, you have a great knowledge of the Strata Titles Act, obviously—more than probably every member here. In regard to the act that strata managers operate under and must comply to, what loopholes or necessary arrangements need to be put in place to ensure that strata managers can actually operate under the premises that have been discussed here today? You have indicated that the act is not perfect.

Mr Laird: Nor will any legislation be perfect. People spend a lot of time figuring out how not to do what the legislation intends.

Hon JIM CHOWN: I understand that, but it is becoming more and more obvious in these hearings that certain strata managers are not complying with the act and are taking advantage of corporate bodies, to their benefit. The act obviously needs some amendments made to it.

Mr Laird: I am not sure that I agree that that necessarily follows. What I do agree with, and I know that all the professional colleagues of mine who I have discussed this with over the years would agree, is that there needs to be some form of regulation of who can manage strata companies and under what circumstances they can do it, what level of skills they need to continue to be permitted to that, and what disclosures they may need to make and how they need to protect the funds of their clients.

Hon JIM CHOWN: That is fine. What would you like to see embedded in these regulations, as someone who has been operating in this industry for many, many years?

Mr Laird: As I outlined earlier, you could easily put a schedule into the act that sets out what are the duties of strata companies that can be properly delegated to a professional manager in exchange for a fee being paid. But I think also that the same stipulation needs to be made for people who do this without charging a fee because the exposure to the proprietors is joint and several liability. People simply do not understand that the exposure they have by having an amateur, either unpaid or paid, can be quite significant and will be a big surprise when the worst happens.

The CHAIRMAN: Do you think a form can be devised that every strata manager could follow at an annual general meeting that puts revenue in, revenue out and has a reasonable explanation of the exact figures of funds held in special accounts?

Mr Laird: In financial statements? Absolutely.

The CHAIRMAN: It is done in many other industries.

Mr Laird: It is so simple. The software that I am aware of that is used widely does exactly that at the press of a button. It could be done any day

The CHAIRMAN: Would that solve many of the disputes, do you think?

Mr Laird: What causes disputes is certainly the lack of financial information and the lack of the financial knowledge of the manager or the treasurer, or whoever. That is one aspect. Even where people are provided with detailed information—I was at a general meeting recently at which there was an obvious error. These are not unsophisticated people; this is high-end property. There was not one question other than mine, which was, “How could this be?” “Oh, that was a mistake. It should have been charged to a different company.” No matter how good the presentation is, it still relies on the owner showing enough interest and taking enough time to actually make a determination as to whether it is relevant to them.

The CHAIRMAN: Should that process be assisted by better information?

Mr Laird: There needs to be a balance sheet that gives us a snapshot of what is happening on the balance date and tells us what the financial health of the company is. Many times I have received financial statements that do not tell what the creditors and debtors are, what the arrears are and what the cash balances are. They simply say that this was the profit for the year. People have no understanding of how these incorporated associations actually work. They do not have any understanding of what is required.

The CHAIRMAN: We have heard evidence that a good percentage of these people are actually elderly. Is that your experience?

Mr Laird: The managers?

The CHAIRMAN: No, the owners.

Mr Laird: There probably is a good percentage. I do not know what the percentage is.

The CHAIRMAN: No-one has put a figure on it.

Mr Laird: I have never looked at a person's age as being either a good or a bad thing. My experience is that whether you are young or old, you either know what you are talking about, or you do not.

The CHAIRMAN: That is a fair comment.

Hon ED DERMER: Mr Laird, we have heard that some owners believe that they cannot get a straight answer about where their money is being spent, and they believe that the money is not being spent to the benefit of the owners by the people who take responsibility for the management. When I heard this evidence, it concerned me. I am aware that quite small not-for-profit incorporated associations—it might be a European stamp club or something or other—have, as one of the conditions of incorporation, a requirement to produce audited financial statements on an annual basis. People have been giving us evidence that there is a large amount of money and properties of significant value concerned but they are not getting financial statements.

Mr Laird: I am sure that that is the case.

Hon ED DERMER: As a layman, it would seem logical to ask whether we need to make it a requirement of the act to say that audited financial statements are essential.

Mr Laird: If I did not say it earlier, let me say now that the books of account is not defined, and nor are statements of account. They are not defined in the act, and they could easily be.

Hon ED DERMER: Would that be a significant improvement if they were?

Mr Laird: Absolutely.

Hon ED DERMER: What about the issue of auditing?

Mr Laird: It would be significantly costly to carry out a forensic audit. Unless there is reason to believe, or if the proprietors have reason to believe there is something untoward or they are not satisfied, I would hesitate to suggest that an audit should be a compulsory matter.

Hon ED DERMER: You have talked about the cost of a forensic audit. My layperson's understanding of a forensic audit is that is when you actually go into a situation that is under question and you are investigating to see whether misbehaviour has occurred, whereas a routine audit is one where you see whether the expenditure that has been made is in keeping with the authority given to the manager to make those expenditures and whether they are being reported back to the owners about how they are being made.

Mr Laird: That is true, but it is always only done on a test basis of maybe one in 10 transactions, so it will not catch all those things. Over time, that might not be the case.

Hon ED DERMER: When I look at the audit of my football club, I see that the auditors say that they cannot be sure because part of what they do for fundraising is sell raffle tickets and receipts are not issued when you sell raffle tickets, so there is that limitation. But if the auditor states the limitation on the audit, at least everyone knows that there is that limitation on the audited statement.

Mr Laird: Yes, that is true.

Hon ED DERMER: Is that type of routine audit prohibitively expensive, in your view?

Mr Laird: It would depend on how it related as a percentage of overall management costs. In my experience, it is difficult to get owners at a general meeting to agree to budget \$2 000 or whatever it might be—professional fees—for that or some other purpose. They simply do not want to spend that kind of money. There is an unfortunate culture, if you like, in people, who say, "We don't want to spend that money because we don't see anything wrong." It will be a simple majority. If only one person believes there is something wrong in a 50-lot strata scheme, there is no way you could get a

resolution to raise the money to fund that. If you make it compulsory, they may vote it down and say that they have no money to do it.

Hon ED DERMER: If it was a requirement of the act, you would spend the money on that before you spent the money on something else, I suppose.

Mr Laird: I cannot tell you how they would spend their money, but when the money has run out, it has run out.

Hon ED DERMER: Was I correct in understanding that you made reference to different strata managements pooling resources to achieve certain ends?

Mr Laird: No. What I am saying is that the strata managers would pool the funds of various strata companies into one bank account, but their software would separate those funds out. They would be held as separate accounts within their software.

Hon ED DERMER: Although it is in one bank account, you would know through the software which amount belonged to which particular —

Mr Laird: Yes. Owners are able to inspect those records. Going back on something that Mr Trenorden said, I can understand that some strata managers—I probably know some of them—who might say, “No, you can’t look at this; they are my records on my computer and you are not looking at them.” That is just outrageous.

Hon ED DERMER: Because the owner’s money is part of that record.

Mr Laird: It is the owner’s money and the owner’s record. They choose to keep that record in some electronic form; that is a choice they make.

Hon ED DERMER: There is a basic dilemma of requiring managers to divulge information to owners about where their money is and where it has gone. In a reliable form, it is independently managed, which normally means an auditor. Can you see an answer to the dilemma of achieving that when the cost may be prohibitively expensive, if the overall scale of the project is small but the cost is expensive?

[10.40 am]

Mr Laird: No. No, I cannot. I think it is open to the strata company now to appoint an auditor, if they have those concerns. And it is open to any individual owner to come and inspect the records and make a judgement. Usually, and in my experience, when there is a concern about where the money lies or where it has gone or where it is coming from, an owner can come in and inspect the records, and usually they are satisfied once they see how it is actually dealt with and how the invoices are raised and how they are approved and paid. Usually.

Hon ED DERMER: But those experiences are probably your owners coming to you when you have managed the strata accounts.

Mr Laird: No. I have made inspections on behalf of owners and gone and looked at the records. I have not seen any evidence of people adding 15 or 20 or 30 per cent. I would be appalled to see that and I certainly would not be happy about that. Coming back to the commission, if there is disclosure, I do not see any problem with it. There is no difference between that and a strata manager charging a \$5 fee for preparing a separate invoice for sub-metered electricity, because there is some time and effort involved in that. As long as they disclose it and show it as part of their fee, I do not see that as being a particular difficulty.

Hon ED DERMER: I do not think that is the concern. Our role in this is to look at the whole of the fees.

Mr Laird: Yes, of course.

Hon ED DERMER: Where we see it as appropriate to make recommendations to the Parliament, the Parliament may or may not change legislation on keeping the records. I suppose I am asking you to imagine, in a sense, that you are a member of the Parliament and you are deciding on whether to support a proposal. If the proposal was to compel a level of auditing on financial statements, would you support that?

Mr Laird: Probably not. I would be more inclined to start at having a compulsion for the proper presentation of a statement of accounts, which includes a balance sheet and has appropriate notes that detail what the debtors are, what the creditors are, and those records would be available.

Hon ED DERMER: And the reason for probably not supporting the proposal for compulsory auditing relates to the costs?

Mr Laird: Partly. There is not any evidence in my experience that it would achieve anything; that is, there is not enough evidence to suggest that if you audited the 63 000 or 64 000 strata companies that exist in this state, one thing would change.

The CHAIRMAN: Just associated with that question, we have heard some evidence about the use of proxies. Do you have a view about the use of proxies?

Mr Laird: By whom?

The CHAIRMAN: There are cases; we have heard evidence that the manager is taking proxies. We have heard pretty clearly in Victoria that they consider that a conflict of interest—the manager holding proxies. There is a question of enabling an owner to have a say in a process, but also another question of someone gathering a heap of proxies and stopping any debate in a meeting, which I actually physically saw one day. We have got to wrestle with the idea that, as a manager, you must have some say. But we have heard in Victoria and here that there is a fair difference between an owner who rents it and wants costs at a minimum and an owner-occupier who wants services. Do you have a suggestion about how we should manage that?

Mr Laird: The proxies that were, shall I say, traditionally used prior to 1995 for the continuation of management regimes have been effectively dealt with by section 50A. That was my major concern in those days. I think it should be left open to an individual to appoint a proxy of their choice. If they have a degree of trust in the manager and they name that manager personally, I cannot see any difficulty with that. I think the manager may have some fiduciary difficulties in determining whether or not there is a conflict of interest in voting on a particular matter.

The CHAIRMAN: We heard in Victoria that there can be a situation whereby if there is a question over some issue with the manager and the manager holding proxies, they clearly said that they thought that was a conflict of interest.

Mr Laird: That seems clear to me. I would have thought that under those circumstances the manager properly should say, “Well, I’m not going to exercise them.” For example, I routinely act as chairman of strata company meetings for whatever reason. I take it literally to mean that I am the chairman of the strata company for the purposes of that meeting. I am no longer a consultant. I am no longer acting for Ms Wells. I am acting as the chairman of the strata company, so I have a duty to all the proprietors. If there are proxies that have been in favour of the chairman, I will tell the owners before we start, “I’ve got seven proxies here in favour of the chairman. It is my intention to vote in favour of all the motions that have been proposed by your council and I won’t vote on the other matters.”

The CHAIRMAN: So another question relating to proxies is: should they be dated? The Victorians have a one-year maximum on proxies, although I understand—the staff will correct me—in Victoria you can still put in a permit one if it is very detailed and your intentions are clear. But, generally, the legislation says one year. It would be, in my mind, that if there is a special meeting, the proxy should be only for the special meeting.

Mr Laird: I think that should be left to the appointer. They could make it for a specific purpose, a specific meeting, or for an enduring proxy to be revoked at any time and would be overridden by their own presence in any event.

The CHAIRMAN: I saw some presentations last week, I think, from your own organisation saying that maybe proxy forms should have a bit more detail on them. There are a few questions on it. We would be saying either leave them open or answer?

Mr Laird: They could put something on the back of the page, but you are dealing with ordinary people here. They get a bundle of papers: “Here is the notice of the annual general meeting”. It is 10 pages, and there are five pages of financial information, there is a notice on how you can vote, how you can become a council member, and two different types of proxy. As a manager, I have tried to devise letters of information: “Here is what you need to read”, and it makes no difference. They come to the meeting and they do not understand that they have to have their wife sign the proxy: “We’re both here. Why do we need a proxy?” I do not know that that would make the slightest bit of difference. I am not opposing it, but it may be worth a shot.

Hon ED DERMER: So it may or may not work?

Mr Laird: It may or may not work. People tend not to read those forms.

Hon ED DERMER: What concerns me in this way is that—I have never actually sat on a commercial board—I understand that the chief executive officer is a servant of the board and reports back to the board about what he has done on behalf of the company. When a strata manager comes to a strata council, he is working on behalf of the owners and he reports back to the strata council on what he has done in terms of maintaining the building and making sure the bills are paid et cetera. Given that the manager is reporting to the council, he also has a significant number of votes in his hand by way of proxy. That would concern me if I thought that a person going to a council and reporting on his performance had votes in his hand that he could then use as part of an assessment as to whether he is adequately performing his duties.

Mr Laird: Unless he is an owner, he would not have a proxy to attend or vote at a council meeting.

Hon ED DERMER: But, as I understand it from evidence we have received, the manager has been given proxies in some instances by owners who are not there. That is what the proxy is all about.

Mr Laird: But only at general meetings, not at council meetings. Councillors can only be proprietors. By definition, he is not a proprietor.

Hon ED DERMER: Let us stick to the same principle. You also, as a manager, are responsible to the general meeting of owners, are you not?

Mr Laird: I am not sure that I agree with that in principle.

The CHAIRMAN: But we are hearing evidence that that is actually happening more and more. Is that your experience?

Mr Laird: That the managers are taking —

The CHAIRMAN: That the council process is breaking down.

Mr Laird: It is very difficult to get volunteers to put in their time and do it for free and then take all the flak. I do not know that it is more difficult; it is just as difficult as it ever was.

Let us go back to the general meeting and I am the manager and I have got 20 proxies. If I were the chairman of the meeting, I would not be voting in respect of the election of the council. I would not be casting my votes. I do not think that is the function of the —

The CHAIRMAN: Yes, but I think this is the whole point, and also much to the point of your own submission, Mr Laird. There seems to be quite a different range of skills in strata managers in Western Australia.

Mr Laird: Exactly.

The CHAIRMAN: When we were in Victoria, we heard evidence saying that it is the same over there. So the question is: how do you bring those managers who are probably not fraudulent but unskilled to a better level?

Mr Laird: I think you have some form of regulation—whether it is called licensing, I do not have a particular view about that—and a definite skill requirement that is tested.

Hon KEN BASTON: Even for a volunteer strata manager, such as if you have got a small group of stratas and there are only five?

Mr Laird: I do not know that I want to hold volunteers as accountable as I do the professionals who are taking a fee for it.

Hon ED DERMER: Mr Laird, I just want to persist with this.

Mr Laird: Go ahead.

Hon ED DERMER: I do not want to distract from what the chairman and Mr Baston are raising. So a strata manager is before the full meeting of the owners.

Mr Laird: A general meeting, yes.

Hon ED DERMER: A general meeting. A matter arises about the performance of the strata manager.

Mr Laird: Yes, which it does occasionally; yes.

Hon ED DERMER: I think, under the current act, there is nothing to stop the strata manager using proxies that they hold to vote in support of their own position and against the motion that may have been moved by an owner who is critical of the strata manager's performance of their duties.

Mr Laird: That is possible; of course that is possible.

The CHAIRMAN: I have actually seen it happen.

Mr Laird: Yes.

Hon ED DERMER: Again, if you are a member of the Legislative Council wondering about what to do with the legislation, what would you suggest that we do with that?

Mr Laird: I would perhaps extend the provisions of section 50A to deal with that very situation: a proxy who is also receiving—I do not know how you would word it—a fee from the strata company for providing services is precluded from voting in a matter that has anything to do with their remuneration or their appointment.

Hon ED DERMER: Or their performance of their duties?

Mr Laird: Yes, probably. Who actually cares whether they vote or not? If their performance is poor, and those present think it is poor, then they are going to express that opinion.

Hon ED DERMER: What I am getting at is a situation in which their performance is questioned—someone has moved a motion critical of part of their performance. The motion would normally be decided on the majority of the votes cast one way or the other, and the majority of people at the meeting think they have done badly but they use the proxies that they hold to declare that they have done well.

Mr Laird: Yes, that could happen.

Hon ED DERMER: What can we do about that?

Mr Laird: Maybe there is another way of dealing with this. If you look at the default by-laws, schedule 1 by-law 8(2)(b), which is the by-law that allows the council to appoint and employ others, and if you precluded—I do not think that is quite the case now—the possibility of professional

managers being appointed by the general meeting, you could overcome that problem to some extent; that is, that it was always going to be in the province of the council to make that decision. Then you could preclude a proxy who has a financial or beneficial interest in that voting in respect of either directing the council to reappoint himself or herself —

The CHAIRMAN: And that is regular in many other organisations.

Mr Laird: Yes.

Hon ED DERMER: Because the proxies are exercisable at the general meeting, not the council.

Mr Laird: Yes.

Hon KEN BASTON: It could also easily be said that the owners who gave proxies also have that right of course to be represented at the meeting.

The CHAIRMAN: Correct.

Mr Laird: They do and they may not be dissatisfied.

Hon KEN BASTON: Absolutely.

Mr Laird: There are many occasions when you have a vocal minority, single or multiple, that can cause great disruption for whatever reason. They may have got a letter last week saying their cat was making a noise. Who knows why people do what they do. I have always been of the view that if people are given the opportunity to participate in their proceedings either personally or by proxy to take away the right—they may instruct the manager to vote in a particular way verbally and he may be bound to vote that way —

The CHAIRMAN: And that is why maybe there should be something on a proxy form to give that clear direction.

Mr Laird: Yes.

The CHAIRMAN: When we were in Victoria, Owners Corporations Victoria has taken the position that proxies should not be available at a committee meeting that are in the council unless they are assigned to another committee member. That is their position. Do you have a view on that? Their view is that because committee members are elected, the democratic process should be that only committee members should hold proxies.

Mr Laird: I am ambivalent about that. But, on balance, if I have a chance to think about that for a moment, I suspect that I would come down on the side of a councillor, properly elected, being unable to appoint another proprietor, not necessarily a councillor, to represent them, because there may be some personality clashes. They may not want to give a proxy to somebody else and therefore they would be eventually disenfranchised as a representative of the owners generally. But if that is a real issue —

The CHAIRMAN: I think, as you have already indicated to us, a lot of these issues are on the margins.

Mr Laird: Very much so, yes.

The CHAIRMAN: So we need to make a decision as a group where we draw the line. Can I move away from proxies?

Mr Laird: The other thing about councils is that if you have XYZ Corporation Pty Ltd, they can appoint anybody they like—another proprietor or anybody. I think it just clouds that particular issue.

The CHAIRMAN: Can we move away from proxies, because time is marching on, and talk about this dispute resolution process? What is your view on SAT and the process between yourself, owners, councillors and SAT?

Mr Laird: Broadly speaking, I think SAT has been a very successful jurisdiction. I am very concerned about how costly it can be for individuals and for strata companies to either make an application or defend themselves.

The CHAIRMAN: Should it be a lawyer-free zone?

Mr Laird: No, I do not think it should be lawyer free. I think that perhaps SAT could be more helpful and act in a more advisory capacity than they are currently able to, when a layperson comes before them and simply gets it wrong because they do not know the difference between section 83 and section 93. Those things are pretty fundamental.

The CHAIRMAN: We have heard some evidence that if you are an owner and you go before SAT and someone turns up with a very competent lawyer, you really have got no chance of progressing unless you go and arm yourself similarly. Then, of course, your fee goes from tens of dollars to tens of thousands of dollars.

Mr Laird: Yes. I am involved in a matter right now where a strata company of which I am an owner has decided not to allocate \$30 000 to defend an action. It just was not affordable.

The CHAIRMAN: So, really, the question is: does there need to be an affordable dispute process?

Mr Laird: Of course. The answer to that is an obvious yes, of course.

The CHAIRMAN: That gets down to —

Mr Laird: How would you do it?

The CHAIRMAN: — how do you do it? How important is legal representation in your experience?

Mr Laird: Very; very.

Hon ED DERMER: Once it is important, the party which can afford the most experienced and effective lawyer has the advantage, and the only way that you can counter that is by buying similarly effective legal personnel to back you up.

Mr Laird: I do not know whether they have the advantage, but I think there is a tipping of the balance, because the skill of the lawyer is in interpreting the law and in presenting arguments much better than a layperson could.

Hon ED DERMER: So the way you can achieve, hopefully, a fair decision, because both sides are equally represented by legal skill and, without having that expense, I am sure I cannot see how you would achieve that. I do not know whether you could suggest something, Mr Laird.

Mr Laird: I do not know that you can achieve that, but I think you could perhaps change the balance to some extent by making it possible for SAT to have wider powers of awarding costs against either a losing or a vexatious or frivolous application or opposition. That is one thing that occurs to me.

Hon ED DERMER: So once you are found to have been in the right, then you do not meet the cost.

Mr Laird: Yes, and that would, hopefully, get both sides of the legal profession saying, “Hang on; we may not win this. This is not as strong a case as I thought it would be.”

The CHAIRMAN: VCAT is hanging their hat on dispute resolution and is currently reviewing their process to give stronger emphasis to dispute resolution. There may be some consideration of the person who is doing the arbitration having some say in what the outcome should be. Have you been involved in dispute resolution?

Mr Laird: Yes, I have.

The CHAIRMAN: Is it a better process?

Mr Laird: It is when it works, but the problem is that, once you get into any sort of formal discussion process, people tend to allow their positions to be cast in concrete and they tend not to move. If it is not going their way, they do not want to move and they will not listen to anything.

The CHAIRMAN: VCAT is saying they experience that as well and they send them straight off to a legal situation. But they say that a skilful negotiator has got a reasonable success rate, in their view.

[11.00 am]

Mr Laird: I have been involved in some resolution in mediation situations in my own practice. If you get an opportunity to peel back all of the issues and get people to explain what the real problem is—because all of us in life spend so much time trying to solve problems that are not real because we want to avoid the real issue—and once you can get people to approach the real issue, it is not that difficult for them to compromise, and say, “Yes, we can do that.” That does happen. But getting them to agree to peel back what is the hidden objection or hidden reason is difficult, and skilful negotiators—that may not be me—may well be able to do that as a first step. I do not see any reason why it could not be a function of SAT to do that.

The CHAIRMAN: It is a function of VCAT. There are lots of questions that I have not asked you. I will get back to another general question. There seems to be a real tussle in the federal legislation and in the Victorian jurisdiction about where to draw the line. We talked earlier about my own circumstance in which I have a two-unit strata title. There are some circumstance in which there is 10 in it, but the value of the property is very substantial; or there is the circumstance in which there are 30 in it and they are pretty cheap. Do you have a view about regulation and drawing lines? The Victorians pick a figure of \$200 000. What do we do?

Mr Laird: \$200 000 as being the insured value of the building?

The CHAIRMAN: The turnover of the strata manager, which is pretty small.

Mr Laird: No, that is pretty high.

The CHAIRMAN: Really?

Mr Laird: Why would you not use \$150 000, which is the threshold for GST registration? That might be a logical basis. I do not like the idea of having a set financial amount, because you could have very small four-lot mixed residential commercial schemes that have a minute turnover, maybe \$40 000 or \$50 000, and there are very complex issues that need to be managed. Are you saying this is the threshold for having compulsory professional management?

The CHAIRMAN: They have registration in Victoria. That is the level of registration.

Mr Laird: Of the strata company?

The CHAIRMAN: I might be getting that confused. Clearly you do not have a fixed formula.

Mr Laird: No, because there are so many variables, but I think that the present exclusions for two-lot schemes and the optional exclusions for three-lot schemes might well be extended, both in scope and in size. You may want to go to a 10-lot scheme instead of a five-lot scheme and they can exclude certain things. What happens in a two-lot scheme, they are excluded from having general meetings et cetera, but there is a whole lot of other stuff they have to do. My experience is they say, “We don’t have to do anything. 36A says we don’t have to do this.”

The CHAIRMAN: You indicated earlier in your evidence that maybe it would be better for us if you are charging and you are a manager, then you are caught by the regulations.

Mr Laird: That would be my considered view, yes.

The CHAIRMAN: You say in your submission that you have a view about regulation and licensing. Would you like to talk about why you have that view?

Mr Laird: I think licensing is simply you are going to pay a fee and get a licence. I think regulation, in my mind and my construction of it, is that regulation indicates that there is going to be some continual requirements to maintain your registration; that is, you are going to have to be tested every two or three years, somebody is going to come in and look at your business, your account keeping and whether or not you are dealing with people's money properly, which possibly overcomes the need for compulsory audits.

Hon ED DERMER: I am familiar with the concept of registering a nurse or a medical practitioner, and if the registration is taken away your profession is taken away. Is that the type of thing you have in mind when you use the term of "registration"?

Mr Laird: I think registration is your carrying on the business for a fee of the management of the affairs of strata companies.

Hon ED DERMER: And if you were seen to have not performed your duties properly, you could have that registration removed and also your ability to continue?

Mr Laird: Yes.

Hon ED DERMER: The evidence we are getting from owners is their concern that even if SAT provides a ruling that that ruling is quite often not enforced.

Mr Laird: Certainly not by SAT.

Hon ED DERMER: One of the reasons why people have suggested licensing to us is based on the idea that in order to be able to act as a strata manager, you need to be licensed, and if you do it badly you can have your licence taken away, so that is a very good incentive for managers to do their job well.

Mr Laird: I am not opposed to what it is called. It is how it is done.

Hon ED DERMER: You can achieve the same with registration, and you are suggesting that registration would be a more appropriate way of doing that than licensing; is that the case?

Mr Laird: I think so, and I think in my submission I have suggested that the regulatory authority could consist of not only industry but other wider, interested parties that would have business acumen and skill and be able to produce or accredit perhaps education programs that are run by outside sources and make sure that people are compliant.

Hon ED DERMER: In addition to that fundamental decision as to whether this person should be registered?

Mr Laird: Yes, and a fit and proper person with a police clearance and some references of some kind.

The CHAIRMAN: In your submission, you make an interesting point about identifying those who are engaged in the capacity. We heard some evidence yesterday about that. If you are licensed, you might be the licence operator and you might have to comply with a million things, but you might have 10 staff members who are not compelled to do anything at all and who actually do the work. Is that what you mean when you say that it is your view that some registration is necessary for who is actually acting in the capacity of strata title manager as defined in the act, as being the first step, and identifying those who are actually engaged in the capacity?

Mr Laird: That would be my first step, yes.

The CHAIRMAN: Do you think it is important for those people who watch the industry to know who is in there, not just who owns the strata management company but actually who is engaged in there?

Mr Laird: No. I am talking about those firms that are doing it or those individuals who are doing it on their own. But if they have staff, as in other licensing jurisdictions or regulatory jurisdictions, it

would be up to the registered party to make sure that their staff are up to scratch. It is their business and they should be required to make sure that their staff do what they are required to do.

Hon ED DERMER: If the staff make an error that error is on the head of the registered party?

Mr Laird: How else could it work? That's how life works.

The CHAIRMAN: True, but we have heard some evidence that it is important to gather points as the owner or registered manager of the firm, but you are not actually the person carrying out any of the functions in a large firm.

Mr Laird: That may be the case. And you may want to extend that to have people who are in direct control or managing what I refer to as a portfolio of strata companies on behalf of a firm and they may need to be sub-registered or registered in their own right.

The CHAIRMAN: In the average firms—the firms that you know—how many people are involved? Is it an individual or an individual and a secretary?

Mr Laird: It runs from one person working out of their garage to 40-some people working in a sophisticated office environment

The CHAIRMAN: Where do you think the bulk is? How many one or two-people administrations are there out there?

Mr Laird: If you take into account real estate agents who might be managing 10 or 15 strata companies, where they might have somebody doing it as well as doing something else, the vast majority are one or two-man operations.

The CHAIRMAN: We have run out of time. Do you have any view that you want to put, having heard what we have been asking you?

Mr Laird: No, I do not think so. The questioning has been quite comprehensive and I thank you for the opportunity.

The CHAIRMAN: We are concerned about it, so we are seeking further evidence, as you will see when you go out. If you have anything that comes to mind and you wish to give it to us, feel free to do so. Thank you very much for your attendance.

Mr Laird: Thank you.

Hearing concluded at 11.10 am
