

THIRTY-EIGHTH PARLIAMENT

REPORT 13
STANDING COMMITTEE ON PUBLIC
ADMINISTRATION
REPORT IN RELATION TO THE INQUIRY INTO
WESTERN AUSTRALIAN STRATA MANAGERS

Presented by Hon Max Trenorden MLC (Chairman)

September 2011

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“7. Public Administration Committee

7.1 A *Public Administration Committee* is established.

7.2 The Committee consists of 5 members.

7.3 The functions of the Committee are to inquire into and report on -

- (a) the structure, efficiency, and effectiveness of the system of public administration;
- (b) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;
- (c) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;
- (d) any Bill or other matter relating to the foregoing functions referred by the House; and
- (e) to consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, and any person holding an office of a like character.

7.4 The Committee is not to make inquiry with respect to -

- (a) the constitution, functions or operations of the Executive Council;
- (b) the Governor’s establishment;
- (c) the constitution and administration of Parliament;
- (d) the judiciary;
- (e) a decision made by a person acting judicially;
- (f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or
- (g) the merits of a particular case or grievance that is not received as a petition.”

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

GLOSSARY

- **By-laws** - rules that must be complied with by lot proprietors and tenants. The *Strata Titles Act 1985* contains by-laws and sets out how those by-laws may be amended. As a result by-laws may vary between schemes.
- **Common Property** - the definition of common property varies depending on the nature of the scheme as follows:
 - i) in a strata scheme land or buildings that do not form part of a lot shown on the strata plan;
 - ii) in a strata-survey scheme any lot or lots designated on the strata plan as common property; and
 - iii) in either scheme, any leasehold interest acquired by the strata company to extend the common property of the scheme and
- **Conventional Title** - a title to freehold land that is not strata titled. The greatest estate that can be held by a person without being the absolute owner, which is the Crown. About 17.7 million hectares or 7% of the State is freehold land.¹
- **Lot** - in relation to a strata scheme means one or more cubic spaces which form part of the parcel of land to which the scheme relates.²
- **Lot** - in relation to a survey strata scheme means land shown as a lot on the plan.
- **Lot proprietor** - the registered title holder (owner) of a particular lot within a Strata Scheme or Survey-Strata scheme.
- **Parcel** - the whole of the land contained in a strata plan or survey strata plan.³
- **Strata Company** - the body corporate that comes into existence when a strata plan or survey strata plan is registered under s32 of the Act. The Australian Corporation's Law does not apply to a strata company. All lot proprietors are members of the strata company.
- **Strata Council** - the body made up of proprietors, elected or deemed elected under the by-laws. The strata council performs the functions of the strata company as they are set out in the *Strata Titles Act 1985*.
- **Strata Manager** - defined for the purposes of this report as a person who for fee or reward is engaged to provide management services to a strata company.
- **Strata property** refers to registered strata plans and registered survey strata plans.
- **Strata scheme** and **Survey strata scheme** - two different methods of subdivision set out in the *Strata Titles Act 1985* (the Act).

¹ <http://www.landgate.wa.gov.au/corporate.nsf/web/Glossary#S>, (viewed on 2 August 2011).

² Section 3 *Strata Titles Act 1985*.

³ Ibid.

- **Strata plan** - the mechanism for creating strata schemes and strata titles under the Strata Titles Act 1985 as Amended. Strata plans define the lots in a strata scheme (areas owned individually) and common property (areas owned jointly by all lot owners in the strata scheme). Strata lots are limited in height and depth (the stratum of the lot). Strata plans show a building on at least one lot of the strata plan and stratum of the lots is always linked to buildings shown on the plan.⁴
- **Survey-strata plan** - the mechanism for creating survey-strata schemes and survey-strata titles under the Strata Titles Act 1985 as Amended. Survey-strata plans define the lots in a survey-strata scheme, which are the areas in the scheme owned individually. Common property areas owned jointly by all lot owners may or may not exist in survey-strata schemes and are defined as "common property lots". Survey-strata lots may be limited in height and depth but generally are not. No buildings are shown on survey-strata plans.⁵
- **Tenants in common** - the holder of an estate known as a tenancy in common. Tenancy in common is a type of co-ownership where two or more persons own distinct interests in the same piece of property. The tenants in common hold undivided shares, possessing the property in common and without exclusive possession of any part of it. The shares may be in different proportions. Tenants in common may deal with their respective shares as they wish during their lifetime, and usually may devise them by will.⁶
- **Unit Entitlement** - the relative proportion of each owners share in the strata or survey-strata scheme and is set by a licensed valuer. Unit entitlements are relevant to the voting rights of a lot proprietor the share of each proprietor in the common property and the amounts to be contributed for expenses and judgment debts.⁷

⁴ <http://www.landgate.wa.gov.au/corporate.nsf/web/Glossary#S>, (viewed on 2 August 2011).

⁵ Ibid

⁶ *Encyclopaedic Australian Legal Dictionary*, viewed online 3 August 2011.

⁷ See for example sections 3C, 17(1), 33(2), 42B *Strata Titles Act 1985*.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

1 At the outset the Committee wishes to acknowledge the assistance provided to it by individual strata managers and the Strata Titles Institute of Western Australia (Inc.). The matters raised in this report are not intended as a criticism of all strata managers in Western Australia. Clearly however the practices of some strata managers are detrimental to their client's interests and significant assets of strata owners are currently at risk. The Committee notes that the strata management industry has recognised the risks of an unregulated industry and is calling for regulation and better education of strata managers.

Lack of statistical data

2 It is of great concern to the Committee that in a significant area of the property market there is a dearth of accurate information about a group of property administrators who have a significant role. That role includes the management of funds and preservation of assets of an unknown percentage of proprietors of 231,088 strata titled units.

Anecdotal evidence

3 The Committee has heard evidence of:

- significant payments made by a strata manager without the required authority;
- a failure of some strata managers to account for strata company funds;
- low levels of engagement in the internal governance of the Strata company; amongst lot proprietors;
- difficulties in finding volunteers to form strata councils; and
- cases where the strata manager is required to take an increasing role in the running of the strata company as treasurer and secretary for a Council that may not have an appointed chairman.

Role of strata manager - undefined and unregulated

4 The scenarios above arise in an environment where the role of strata manager is undefined in the Act.

5 The combination of:

- low levels of engagement amongst lot proprietors;
- in some cases poor understanding and lack of knowledge of the legislation by lot proprietors and managers;
- ongoing growth in the number of strata properties registered; and
- the consequent increase in funds held by strata companies;

leads to an ongoing and increased risk of inappropriate behaviour by strata managers. These problems coupled with a lack of clear financial information create an environment which in the Committee's view requires the regulation of Strata Managers.

6 The Committee's view was supported by the majority of witness' who appeared before the Committee or made submissions to the Committee.

7 The Committee makes the following recommendations:

RECOMMENDATIONS

8 Recommendations are grouped as they appear in the text at the page number indicated:

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Recommendation 1: The Committee recommends that strata managers should be regulated by a system of positive licensing. Eligibility requirements for the granting of a license should include at a minimum:

- **Educational qualifications.**
- **Demonstration that the applicant is a fit and proper person to hold a licence.**
- **An indication the applicant has sufficient financial and material resources available to enable them to meet financial and operational requirements.**
- **Current professional indemnity insurance.**

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Recommendation 2: The Committee recommends that a transition period should apply to the implementation of the recommended licensing scheme.

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Recommendation 3: The Committee recommends that a new section be introduced into Part IV of the *Strata Titles Act 1985* providing that:

- All assets held by strata managers on behalf of strata companies should be deposited in a trust account held by the strata manager at an authorised deposit-taking institution.
- Strata managers must open separate trust accounts for each strata company.
- Transactions undertaken by the strata manager on behalf of the strata company are to be conducted through the relevant trust accounts.
- Trust accounts, held by strata managers, can be subject to audit by the regulatory body on a random basis or following a complaint.

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Recommendation 4: The Committee recommends that section 50 of the *Strata Titles Act 1985* be amended to provide as follows:

- i) Appointment of a proxy is to be confined to one meeting.
- ii) The person entitled to vote at a general meeting must not appoint a strata manager of the scheme as a proxy.
- iii) A strata manager or an associate of the strata manager cannot act as the chairperson of the strata company for the purposes of a general meeting.
- iv) Recommendations 4(ii) and (iii) will apply in circumstances where the strata manager is also a lot proprietor of the scheme.
- v) A member of the strata council may not appoint a lot proprietor, or a person representing a corporation which is a lot proprietor, to act in their place at a strata council meeting if the lot proprietor or representative is the strata manager of the scheme.
- vi) A proxy is to be appointed using a form prescribed in regulations.
- vii) The prescribed form should include provision for the giving of:
 - specific voting instructions;
 - a general voting power; or
 - the power to abstain from voting on particular motions.

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Recommendation 5: The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a new section requiring a contract appointing a strata manager to be in the prescribed form.

The prescribed form should include as a minimum:

- A comprehensive list of functions that can be delegated to a strata manager by the strata company with the capacity to include or exclude functions as desired.
- Termination provisions.
- A requirement for the declaration of any commissions, payments or benefits payable to the strata manager other than those payable by the strata company under the terms of the contract.

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Recommendation 6: The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a section providing that, on the appointment of a strata manager, the manager shall provide to the lot proprietors a plain english statement containing the following information:

- Services they have agreed to provide.
- Services provided for an additional fee.
- Services they will not provide.
- Details of how an individual lot proprietor can raise concerns, seek information, approvals or have matters included on a general meeting agenda.

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Recommendation 7: The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a section providing that:

- i) A strata manager must disclose to the strata company all commissions or moneys payable to the strata manager in the course of the strata manager's term of engagement.
- ii) Failure to disclose a commission is an offence.
- iii) A strata company at all times retains the discretion to withhold its consent to the strata manager seeking or receiving a commission.

Recommendation 8: The Committee recommends that:

- **The Department of Commerce should be the lead agency for strata title matters.**
- **The current Act should be divided into two new Acts.**
- **Act 1 should provide for all matters in relation to creation, variation, termination and conversion of all strata schemes and be administered by Landgate.**
- **Landgate should maintain responsibility for the registration of strata titles.**
- **In the interim Landgate should be given power to prosecute offences under the *Strata Title Act 1985* and be funded accordingly.**
- **The Department of Commerce should administer Act 2 which should contain the strata manager licensing and conduct provisions along with strata company management provisions.**
- **The Department of Commerce should be funded to provide an information, conciliation and initial legal advice service for all strata title queries.**
- **The Department of Commerce be responsible for coordinating the provision by Landgate of advice in its area of expertise through the one stop service. This relationship should be formalised either through a memorandum of understanding or in another form.**
- **Landgate should be required to do all things necessary to facilitate the provision of its advice through the one stop service.**
- **Any legislation developed in relation to strata titles should contain an express power for prosecution of offences by the relevant government department.**

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Recommendation 9: The Committee recommends that:

(1) Landgate, in conjunction with Strata Community Australia (WA) Inc and consumer representatives, work with the strata title industry to develop a set of requirements for:

- **Keeping books of account.**
- **The content of financial statements of account including at a minimum:**
 - i) **a statement of cash flow;**
 - ii) **an income and expenditure statement;**
 - iii) **a balance sheet; and**
 - iv) **copies of the statements provided by the authorised deposit taking institution related to the trust accounts that the strata manager is required to operate in keeping with Recommendation 3.**

(2) The requirements in (1) above be prescribed in the *Strata Titles General Regulations 1996*.

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Recommendation 10: The Committee recommends that:

- **Landgate in conjunction with Strata Community Australia (WA) Inc, the strata title industry and consumer representatives, develop a list of operational reports to be presented to lot proprietors, at the annual general meeting and on one other occasion during the course of a year.**
- **The above requirements be prescribed in the *Strata Titles General Regulations 1996*.**

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Recommendation 11: The Committee recommends that:

- **Section 84 of the *Strata Titles Act 1985* is amended so the maximum monetary limit that the State Administrative Tribunal can award is equal to the Magistrates Court jurisdiction.**
- **Section 104 (2) of the *Strata Titles Act 1985* be amended to allow s79 of the *State Administrative Tribunal Act 2004* to apply.**

CHAPTER 1

INTRODUCTION

- 1.1 Historically, strata titles legislation was introduced in Western Australia to meet the growing demand for individual ownership of home units in an environment where consumers were looking for an alternative to traditional style housing.⁸ The original legislation, the *Strata Titles Act 1966* (1966 Act) made it possible for individuals to obtain a “**freehold title**” for part of a building.
- 1.2 The *Strata Titles Act 1985* (**Act**) provides for the creation of strata schemes through subdivision of a “**parcel**” of land into a number of “**lots**” and “**common property**”.⁹ A purchaser of a lot in a strata scheme obtains a freehold title for their lot which includes a share of the common property. A strata title can be transferred, leased, mortgaged or dealt with in the same manner as other land held under the *Transfer of Land Act 1893*.¹⁰
- 1.3 The Act creates two types of strata schemes, a “**strata scheme**” and a “**survey strata scheme**”. The use of the term strata schemes below is inclusive of both types of schemes.
- 1.4 A strata scheme is created when the “**strata plan**” or “**survey-strata plan**”, setting out the detail of the subdivision and the **unit entitlement** of each lot, is registered by the *Registrar of Titles*. On registration of the plan:
- the “**lot proprietors**” form a body corporate known as the “**strata company**” of that strata scheme;¹¹ and
 - the rights and obligations between the strata company and lot proprietors and other relevant parties such as mortgagees and tenants come into operation. These rights and obligations are set out in the Act and the strata company’s “**by-laws**”.
- 1.5 As can be seen from the above the strata scheme includes both the way in which the parcel is subdivided and the rules that govern the subsequent community of lot proprietors that is created. When referring to the 1966 Act, Landgate made the following comments which the Committee considers to be applicable to the current Act;

Because of the close nature of the living environment and the mutual dependence of one lot on another, the Act set up processes and

⁸ Law reform Commission Western Australia, Project 56, The Strata Titles Act 1966-1978, December 1982.

⁹ Not every strata scheme will contain common property.

¹⁰ *Strata Titles Act 1985* section 4(2)

¹¹ *Ibid*, section 32.

*structures to cope with that environment and to promote harmonious co-existence.*¹²

- 1.6 Common property is a significant feature of many strata schemes. Common property is owned by the lot proprietors as ‘**tenants in common**’ in shares proportional to the unit entitlements of their prospective lots.¹³ The strata title company is responsible for the maintenance and insurance of the common property.
- 1.7 Common property may include, for example, gardens, lifts, recreational facilities or part, or all, of the building structure in some cases. The co-ownership of the common property carries with it rights to use of that common property. The co-ownership may also give rise to liability for things that occur on the common property.
- 1.8 The Act provides for a system of governance by the owners themselves through the strata company. The Act sets out the duties of the strata company which include enforcing the by-laws, maintaining and insuring common property and establishing an administrative fund. The administrative fund is established to meet the costs associated with the common property, pay for required insurance and discharge any other obligations of the company.¹⁴ The administrative fund is raised by the levying of contributions on lot proprietors.
- 1.9 The Act provides for the functions of the strata company, to be performed by the “**strata council**”. That performance is subject to restrictions imposed by the Act and by directions of the strata company at a general meeting. The by-laws set out the method by which members of a strata council are nominated and elected.¹⁵
- 1.10 The Strata Council may engage a “**strata manager**” and delegate to that manager the performance of particular functions.

Liability of lot proprietors under the Act

- 1.11 Concerns were expressed to the Committee that lot proprietors were not aware of their potential legal exposure under the Act.
- 1.12 The Act stipulates that, where legal proceedings are commenced against the strata company in relation to the common property, a judgment given against a strata company in proceedings can be enforced against the strata company or against a lot proprietor individually. This means a situation could arise where a party who obtains a judgment in relation to common property may enforce that judgment against the strata company or could choose to enforce the judgment against an individual lot proprietor.¹⁶

¹² Landgate, *Strata Titles Practice Manual for Western Australia*, Government of Western Australia, WA, January 2008, p36.

¹³ Section 17 *Strata Titles Act 1985*.

¹⁴ *Ibid*, section 36.

¹⁵ *Ibid*, Schedule 1 clause 5.

¹⁶ *Ibid*, sect 3.

- 1.13 The State Solicitor's Office (SSO) advised the Committee that the normal course would be for a judgement debtor to enforce judgment against the strata company. In this case the strata company could, if required, levy each proprietor for a contribution in order to satisfy the debt. It remains open, however, to a judgment debtor to enforce a judgment referred to in paragraph 1.12 above against an individual lot proprietor. The Act sets out the proportion that lot proprietors would be required to contribute to the lot proprietor who paid the judgement debt.
- 1.14 SSO advised that where:
- a lot proprietor declined to pay their respective contribution the proprietor who satisfied the debt would still need to commence a separate claim against the proprietor or proprietors from whom a contribution was being sought.*¹⁷
- 1.15 The separate claim referred to above would be commenced in the Magistrates, District or Supreme Court depending on the amount being claimed.
- 1.16 Part IV, Division 4 of the Act sets out the strata company's duties in relation to insurance of strata schemes.
- 1.17 The Committee also became aware of the potential legal exposure of members of the strata council. It is concerned that again, in this instance, lot proprietors who act as members of the strata council may not be aware of the legal obligations of their role.
- 1.18 SSO advised the Committee that members of the strata council have a duty to act in the best interests of the lot proprietors.
- 1.19 SSO also noted that in relation to negligence a strata council member owes a duty of care to:
- lot proprietors;
 - other parties who may have a legal interest in the lots; and
 - depending on the situation, a third party for example a visitor who is injured on common property.¹⁸
- 1.20 SSO pointed out that, in their view, in most circumstances the strata company rather than the strata council members would be pursued for a claim in negligence, however depending on their conduct an individual office bearer could be sued.¹⁹
- 1.21 Failure to comply with the relevant requirements of the Act may potentially give rise to legal action against an office bearer of the strata council for breach of statutory duty.²⁰

¹⁷ Letter from Mr Tim Russell, Assistant State Solicitor, 25 July 2011, p2.

¹⁸ Ibid, p4.

¹⁹ Ibid.

²⁰ Ibid, p5.

- 1.22 The Committee took, from the information provided by its witnesses and the advice of SSO, the point that education of lot proprietors about their rights and obligations was very important. Similarly any strata manager that was advising a strata council or performing functions on its behalf would need a sound understanding of the potential exposure to legal liability faced by strata companies and individual lot proprietors.

Strata managers currently

- 1.23 Currently strata title managers are not defined in the Act and are not required to be licensed.
- 1.24 A strata manager is defined for the purposes of this report as a person who for fee or reward is engaged to provide management services to a strata company.

Previous reports

- 1.25 Two previous reports have been written about the strata title management industry in Western Australia.²¹ The reports were published in 2003 and 2007. These reports did not find evidence of market failure or a crisis in the strata title management industry. To date no legislative change in relation to strata title managers has occurred as a result of those reports. The reports will be discussed as part of the background to the inquiry.

This report

- 1.26 The Committee has in the course of this inquiry received evidence relating to ongoing concerns about the activities of some strata managers. The Committee considers a number of those concerns to be serious. Examples are set out later in this chapter.
- 1.27 **Chapter 2** provides information about the number and value of strata properties in Western Australia. Information about the likely impact of future planning policy is also provided.
- 1.28 **Chapter 3** considers the strata management industry. The chapter looks at who is performing the strata management role and the functions that comprise the role. The volume of assets managed by strata managers is investigated. Legislation that may relate to strata managers is also included here.
- 1.29 **Chapter 4** sets out the Committee's conclusions and recommendations on regulation of strata managers. Compliance, trust accounts, proxies, appointment of a strata manager and commissions are also discussed.
- 1.30 **Chapter 5** addresses the need for appointment of a lead agency and the creation of a one stop service for strata title advice.

²¹ Western Australia, Legislative Assembly, Economics and Industry Standing Committee, Report 5, *Inquiry Into The Western Australian Strata Management Industry*, 26 June 2003 and Stamfords Advisors and Consultants, *Department of Consumer and Employment Protection, Review of Proposed Licensing/Regulation of Strata Title Managers*, June 2007.

- 1.31 **Chapter 6** contains discussion and recommendations in relation to other relevant matters which have been brought to the Committee's attention through the course of the inquiry.
- 1.32 The Committee acknowledges this report is presented against the backdrop of the Intergovernmental Agreement for a National Licensing System for Specified Occupations and the introduction of the Occupational Licensing National Law Bill (WA) 2010. This report does not, however, aim to inform the Parliament in relation to the ` or the Intergovernmental Agreement.

BACKGROUND

- 1.33 The Committee became aware of concerns amongst strata title lot proprietors in relation to:
- difficulty in establishing how strata levies were being spent;
 - difficulties resolving concerns and disputes about the activities of strata managers; and
 - lack of regulation of strata managers.
- 1.34 The Committee commenced its own motion inquiry on 17 November 2009 with the following Terms of Reference.
- Noting a series of parliamentary and government inquiries that have touched on the issue of disputes between strata managers and their clients, the Public Administration Committee has resolved to commence an inquiry into the regulation of strata managers and, in particular:*
- (a) *the functions and responsibilities of strata managers;*
 - (b) *the education of strata managers;*
 - (c) *whether strata managers should be licensed; and*
 - (d) *any other relevant matter.*
- 1.35 The Committee advertised its inquiry in The West Australian newspaper on 28 November 2009 and called for submissions.
- 1.36 The Committee received twenty seven submissions from strata title lot proprietors, strata managers and consultants, property industry bodies and Landgate. Seventeen hearings were conducted. **(See Appendices 1 and 2).**
- 1.37 In February 2011 the Committee travelled to Victoria to examine the operation of the Victorian *Owner's Corporation Act 2006* which commenced on 31 December 2007. The *Owners Corporation Act 2006* introduced a scheme of registration for owners

corporation managers (the equivalent of strata managers in Western Australia).²² The Committee met with Consumer Affairs Victoria, the Victorian Civil Administrative Tribunal and the Owners Corporation Victoria²³.

- 1.38 The strata management industry was examined by the Western Australian Economics and Industry Standing Committee (EISC) which reported on the matter in 2003.²⁴
- 1.39 The EISC did not find evidence of crisis in the strata management industry. They did, however, find that:

*There is a potential risk for the misuse and/or mismanagement of strata company funds in the absence of regulation of the handling, recording and protection of funds.*²⁵

- 1.40 The EISC recommended that strata managers be licensed and that schemes of six to twenty lots and all multi storey schemes from two lots upward be required to appoint a licensed strata manager.²⁶ The EISC was of the view that:

*providing a regulatory framework will enhance the professional standing of the industry. This will in turn provide consumers of these services with a benchmarked standard of professionalism.*²⁷

- 1.41 In response to the recommendations of the EISC, the Western Australian Department of Consumer and Employment Protection engaged Stamfords Advisors and Consultants to “conduct a review in relation to the proposed licensing and/or regulation of strata managers.”²⁸
- 1.42 The Review of Proposed Licensing/Regulation of Strata Title Managers (**Stamford Report**) was published in 2007.
- 1.43 The Stamford report did not support licensing and noted:

The recommendations in this report do not include the licensing of strata title managers as, among other things, there was no evidence of any market failure. Also, if licensing was a consideration, there would be concern about the costs to establish such a regime, the costs of licences to strata title management companies and individuals, and the flow on burden of costs to lot proprietors.

²² Section 178 *Owners Corporation Act 2006* (Victoria). A person must not alone or in partnership, carry out any function as the manager of an owner’s corporation for fee or reward unless the person is registered under this part. Penalty: 60 units.

²³ Since the meeting the Owners Corporation Victoria has changed its name to Strata Community Australia (Vic).

²⁴ Western Australia, Legislative Assembly, Economics and Industry Standing Committee, Report 5, *Inquiry into Western Australian Strata Management Industry*, 26 June 2003.

²⁵ Ibid, p34.

²⁶ Ibid, p60.

²⁷ Ibid, p58.

²⁸ Stamfords Advisors and Consultants, *Department of Consumer and Employment Protection, Review of Proposed Licensing/Regulation of Strata Title Managers*, June 2007.

Other regulatory options were considered, but again, the absence of market failure did not warrant the level of regulation and the costs associated with introducing them.²⁹

- 1.44 The Government did not take steps to licence strata managers following the Stamford Report.
- 1.45 Further discussion of the Stamford Report can be found at paragraph 4.1

Backdrop of Legislative Reform

- 1.46 At the time of writing this report legislative proposals to amend the Act were being prepared by Landgate. The Committee was advised that recommendations for amendments to the Act arise from two complimentary reviews:
- the review conducted by the Tenure Committee³⁰ reviewing mainly tenure creation under the Act; (see paragraph 2.7) and
 - the review conducted by the Community Titles Advisory Committee (CTAC)³¹ looking mainly at the management aspect of strata titles.³²(see paragraph 6.13 and 6.41)
- 1.47 On the 17 November 2010 the Occupational Licensing National Law (WA) Bill was introduced into the Legislative Assembly. The introduction of the Bill follows the Intergovernmental Agreement for a National Licensing System for Specified Occupations which was made on 30 April 2009 and to which the State of Western Australia is a party. The enactment of the Bill would not automatically result in licensing of strata title managers in Western Australia. It would mean, however, that in the event a decision was made to license strata managers, eligibility requirements would be determined at a national level.
- 1.48 On 19 March 2011 the Minister for Commerce advised the Committee that he had requested the Department of Commerce “*undertake public consultation on whether the Western Australian Government should introduce legislation to implement the licensing of strata managing agents.*”³³
- 1.49 Public consultation by the Department of Commerce had not commenced at the date of finalisation of this report.

²⁹ Ibid, p7.

³⁰ A joint government and industry committee.

³¹ Comprised of strata lot proprietors, representatives of industry groups and Government Department and Agencies.

³² Letter from Mike Bradford, Chief Executive, Landgate, 9 March 2011, p2.

³³ Letter from Minister for Commerce, 10 March 2011.

EVIDENCE OF CONCERNS

- 1.50 Although the two previous reports in this area did not find evidence of a crisis in the strata title management industry or of market failure,³⁴ both identified the potential risks of misappropriation or mismanagement of strata company funds. The Committee has received evidence of significant concerns from consumers and service providers within the strata industry.
- 1.51 11 of the 27 submissions received by the Committee related to concerns about the process of management of strata company funds including:
- lack of provision of financial information;³⁵
 - resignation by a strata manager when confronted with accounting questions³⁶; and
 - a failure to get a satisfactory account for discrepancies of amounts between \$15,000 and \$32,000 in figures presented at a strata company annual general meeting.³⁷
- 1.52 The Committee heard from Mrs Eleanor Logiudice, a real estate agent who has specialised in strata management for the past 15 years and whose company manages 150 strata title management buildings. Mrs Logiudice, referring to her appearance before EISC in 2002 told the Committee:

Nothing came of that and I must admit at the time I said under evidence that I had not found any mismanagement of funds at that stage—a lot of mismanagement of bad management, running, you know, buildings and things for other people but at that stage no mismanagement of funds.

*Since then I have taken over a number of buildings that have had mismanagement of funds and clearly in a bigger way than I thought.*³⁸

³⁴ The regulatory impact assessment guidelines for Western Australia define market failure as follows:
Market failure occurs when the market alone does not efficiently organise production or allocate goods and services to customers stop in these circumstances, regulation or other government intervention is often beneficial and justified to correct market failure. Market failure should not be treated as a general concept subject to interpretation; instead it is an economic concept relevant to whether the government should intervene in the marketplace.

http://www.treasury.wa.gov.au/cms/uploadedFiles/Treasury/Economic_reform/Regulatory_Gatekeeping/ria_guidelines_july_2010.pdf (viewed on 2 August 2011)

Landgate defined market failure in the context of strata schemes to be:

a failure of the free market to protect the interests of strata lot proprietors and other interest holders.
Letter from Chief Executive, Landgate, 9 March 2011 p6.

³⁵ See for example Submission No 6 from Mrs I Ielati 18 January 2010, p3.

³⁶ Submission No 3 from Mr K Savell, 10 December 2009, p1.

³⁷ Submission No 24, Private submission.

³⁸ Mrs Eleanor Logiudice, Principal/director/ licensee of the Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p2.

- 1.53 Mrs Logiudice provided the committee with examples she had observed when her business took over the role of strata management from previous strata managers. Three examples are set out below:

Payments made without authority

- i) Mrs Logiudice raised queries on two invoices of \$10,000 and was advised that the previous strata manager had authorised the chairman to pay accounts on behalf of the strata company and charge an additional fee on top of the invoice amounts. These additional payments were not authorised by the strata council. In her submission Mrs Logiudice noted ;

*“a forensic auditor was engaged to check all invoices for the past 12 months of that year and the result was astounding. In one year alone there was a deficit of approximately \$30,000 that had been paid out without authority. One particular item that stood out was the payment of \$7000 to upgrade the gardens but there are no gardens in this complex”.*³⁹

Poor financial records preventing tracing of payments

- ii) *... several owners complained that they had not received their credits for the payment of their strata levies. ... the financial records of the strata company were in such a mess that we could not work out who had paid their levies and what date they were paid to. “The previous strata managers also rented out the office suites on behalf of the lot proprietors but did not account for the payment of levies.*

As the problems were with individual lot proprietors no action was taken by the strata company...

*... The owners engaged the services of a forensic auditor who found that the management of strata funds was in a total mess”.*⁴⁰

³⁹ Submission No 14 from Mrs Eleanor Logiudice, Principal, Logiudice Property Group, 28 January 2010, p1.

⁴⁰ Ibid, p2.

Inability to trace funds

- iii) A forensic audit was undertaken as financial records were not complete when received from the previous strata manager. Following transfer of ownership of the management firm funds were also transferred;

When they transferred the funds from one account, that money was missing for a week.

The auditor could not track what had happened between two dates.⁴¹

1.54 The following examples were also provided to the Committee.

\$15,000 missing

The Committee heard from several lot proprietors in the one strata scheme about a failure by a manager to account for funds in the vicinity of the \$15,000 dollars which they considered should have been in the strata company sinking fund.⁴²

Transferring of funds between strata companies

Two lot proprietors related a series of concerns which included a report of an instance where a strata manager managed four separate strata companies and transferred levy funds between those companies.⁴³ One of these submissions indicated the amount transferred from their strata company was approximately \$24,000. The submission stated that the bulk of the money was transferred back into the correct account before the movement was discovered however \$2000 of the total amount was not returned until the discrepancy was discovered.⁴⁴

⁴¹ Mrs Eleanor Logiudice, Principal/director/ licensee of the Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p6.

⁴² Submission No 12 Private submission, Submission No 13 Private submission.

⁴³ Submissions No 6, from Mrs M Ielati, 18 January 2010,p2, Submission No 5 from Mr RM Healy, 18 January 2010, p2.

⁴⁴ Submission No 5 from Mr RM Healy, p2.

Inadequate accounting for two amounts of \$15,600 and \$31,600

A lot proprietor raised concerns in relation to an auditors finding in 2007 that \$15,600 of the strata company funds was unaccounted for and a further discrepancy in the 2010 annual general meeting balance sheet which showed a discrepancy of \$31,600. Trial balances and bank reconciliations from the strata manager were requested but not provided, with the strata manager advising they were not available as:

- the money from the strata companies was not held in individual bank accounts; and
- those records did not form part of the reports provided for under the management agreement.⁴⁵

Observations of a forensic auditor

1.55 A submission was also received from a chartered accountant who had audited four strata companies in the previous two years and who detailed concerns that had arisen following those reviews including;

- i) *general lack of internal controls over payments and recording of payments by strata managers;*
- ii) *significant number of unauthorised and unsubstantiated payments by strata managers to creditors and employees of the strata companies;*
- iii) *payments to related parties;*
- iv) *numerous double payments to creditors and payments to creditors for work relating to other properties;*
- v) *several late payment penalties incurred by strata managers as a result of not paying accounts on time;*
- vi) *late lodgement of business activity statements and income tax returns on behalf of strata companies;*
- vii) *errors in calculation of PAYGW tax liabilities;*⁴⁶
- viii) *misallocation of receipts received from unit owners resulting in inaccurate arrears balances and disputes;*
- ix) *missing levies-cannot be traced to strata bank account or records; and*
- x) *lack of cash flow management and untimely recording and reporting.*⁴⁷

⁴⁵ Submission No 24 Private submission.

⁴⁶ PAYGW is an acronym for *Pay As You Go Withholding*.

⁴⁷ Submission No 22, Danae Coombs, Chartered Accountant 29 January 2010.

FURTHER CONCERNS REPORTED BY WITNESSES

1.56 Further concerns reported by witnesses included:

- dispute resolution, is not fast enough, and is too complicated;
- lack of penalty for wrongdoing;
- lack of control over bank accounts leading to problems with auditing;
- auditing is expensive;
- difficulties in initial criminal investigations arising out difficulties in obtaining meaningful financial records;
- a large group of consumers who don't understand the process dealing with someone who has control of information and money and an understanding of the system;
- lack of understanding of relationships between strata company, council and manager;
- strata managers using proxy votes to obtain outcomes they desire;
- accepting of insurance commissions;
- failure to obtain adequate insurance;
- breaches of confidentiality; and
- giving of incorrect legal advice.

Conclusion

1.57 Whilst it is not possible to quantify how frequently concerns arise in the community, lot proprietors and industry professionals have reported a range of concerns regarding strata management including reports of incompetent and inappropriate management of strata company funds.

REFORMS CALLED FOR BY WITNESSES

1.58 In summary the reforms called for by witnesses were:

- legislative definitions for terms such as sinking, administration fund, and proper books of account;
- auditing of accounts;
- regulation of strata managers;
- accounting skills for strata managers;
- imposition of a small levy so that a strata company had some funds to carry out an investigation if required;
- regulation of use of proxies;

- strata managers should not be permitted to hold proxies;
- appointment of an independent ombudsman who individual strata lot proprietors could go to for assistance; and
- higher penalties for non compliance with the Act.

CHAPTER 2

STRATA PROPERTIES IN WESTERN AUSTRALIA

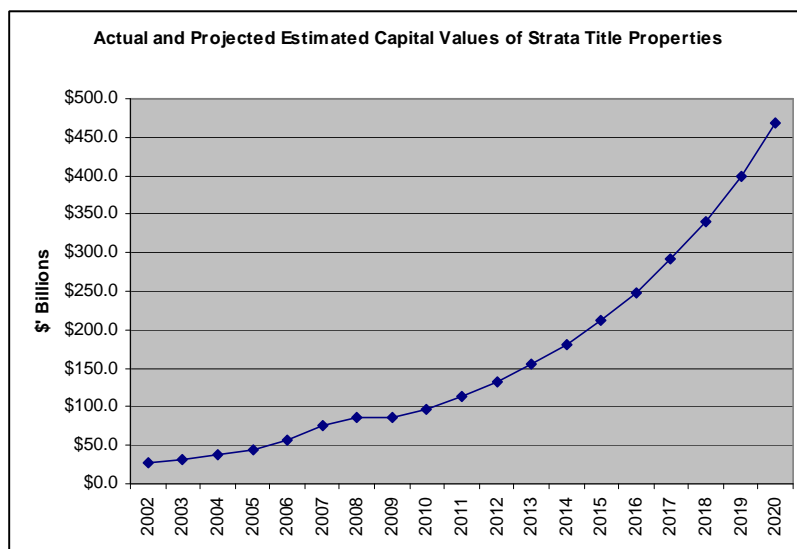
VALUATION

- 2.1 Landgate provided the Committee with a valuation of strata titled properties in Western Australia and further information on which the following chapter is based.⁴⁸ The valuation report, which includes information about the valuation methodology, is available on the Parliamentary website.⁴⁹
- 2.2 The EISC report into strata title management was tabled in 2003. The Committee has used 2002 as a baseline for the examination of the growth in strata title registration and capital value.

Capital growth

- 2.3 The estimated capital value of strata properties in:
- **2002 was \$27 billion (rounded).**
 - **2010 was \$96 billion (rounded).**⁵⁰
- 2.4 The projected estimated capital value in **2020 is \$467 billion (rounded).**⁵¹

Figure 1(a): Capital value of properties (estimated) 2002 to 2010. Projected capital values (estimated) 2011 to 2020.



⁴⁸ Letter from Mr Mike Bradford, Chief Executive, Landgate 25 February attaching, *Estimated Market Value of Strata Titled Properties in Western Australia*.

⁴⁹ Go to <http://www.parliament.wa.gov.au> click Committees, Current Committees, Public Administration Committee, scroll down and select the Reports tab, select Report 13, click on supporting documents.

⁵⁰ Ibid Attached Report at part 2.2.

⁵¹ Ibid Attached Report at part 3.

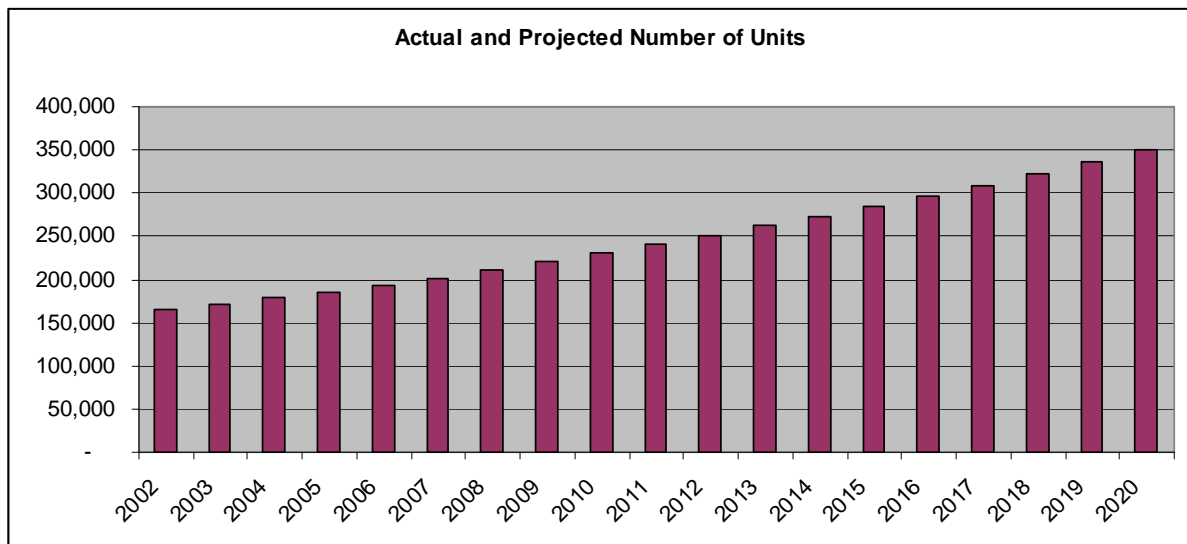
Number of strata properties in Western Australia

- In 2002 there were 39,957 strata properties.
- In 2010 there were 55,419 strata properties.
- The projected number of strata titled properties for 2020 is 83,414.⁵²

Number of strata units in strata properties in Western Australia

- In 2002 there were 165,815 units.
- In 2010 there were 231,088 units.
- The projected number of units in 2020 is 349,920.⁵³

Figure 1(b) Actual and projected number of units in strata properties registered from 2002 to 2010 inclusive.



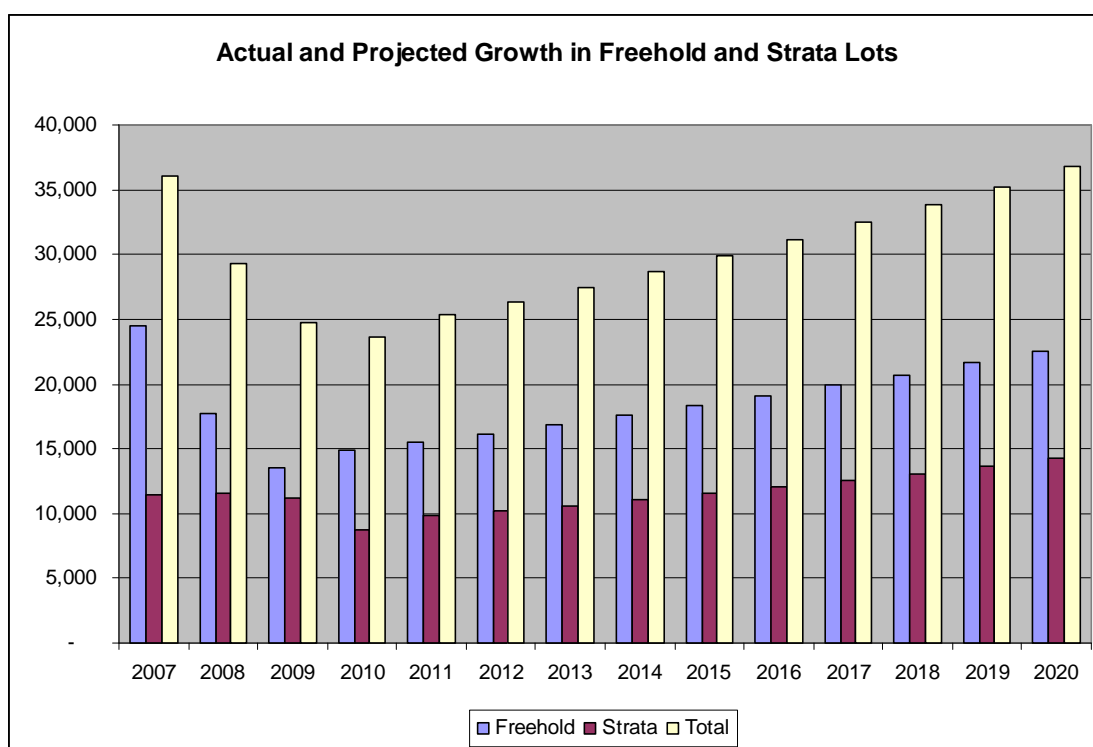
Rate of growth of strata as opposed to freehold title.

2.5 Landgate also provided the Committee with the number of freehold and strata lots registered between 2007 and 2010. Projected figures for titles to be registered in the years 2011 to 2020 were also provided. See Figure 2 below.

Figure 2: The actual and projected number of strata and freehold lots 2007- 2020.

⁵² The projections values were calculated on the “on the basis that the annual change in number of units, properties and capital Values from 2001 to 2010 will continue to 2020.” The annual change in strata properties registered between 2002 and 2010 was 4.17%.

⁵³ The projected values were calculated on the “on the basis that the annual change in number of units, properties and capital Values from 2001 to 2010 will continue to 2020.” The annual change in strata units between 2002 and 2010 was 4.24%.



2.6 Landgate advised that the projected rate of growth in strata titles registered (37% of total titles registered) may increase further due to reform proposals arising out of the tenure review (see paragraph 1.46).⁵⁴

2.7 The reform proposals arising out of the tenure legislation review :

...include the creation of strata schemes with a mix of uses and tenures (i.e. strata and survey strata lots) and leasehold strata schemes in which lot proprietors hold a leasehold interest in their lots (as opposed to a freehold interest).⁵⁵

2.8 Mr Bruce Roberts, Registrar of Titles, Landgate, noted:

So it may be that with the new developments—that is, the schemes within schemes—we will see a greater number of developments being developed under that proposal than we have seen previously. I suppose the jury is still out in terms of whether we are going to see an increasing number of strata lot developments beyond, say, 37 per cent.

The CHAIRMAN: *Arguably you must.*

Mr Roberts: *We will. I suppose the question is how much.⁵⁶*

⁵⁴ Mr Bruce Roberts, Registrar of Titles, Land, *Transcript of Evidence*, 14 March 2011, p12.

⁵⁵ Letter from Mr Mike Bradford, Chief Executive, Landgate, 9 March 2011, Attachment p2.

⁵⁶ Mr Bruce Roberts, Registrar of Titles, Land, *Transcript of Evidence*, 14 March 2011, p12.

Strata property use

2.9 As in 2002 the dominant property use for strata title in 2010 is residential with 78.5% of properties falling into that category.

Figure 3: Strata property use in 2010⁵⁷.

Year of Valuation: 2010

Property Use	Capital Value (Estimated)	Average Value per Unit	Number of Properties	Number of Units	Average Number of Units per Property
Commercial	\$7,017,122,875	\$576,213	1,131	12,178	11
Industrial	\$5,638,053,505	\$600,816	1,760	9,384	5
Miscellaneous	\$492,980,066	\$18,543	8,077	26,586	3
Residential	\$81,926,433,319	\$459,755	43,526	178,196	4
Vacant Land	\$1,300,306,909	\$274,095	925	4,744	5
Total	\$96,374,896,675	\$417,048 ⁵⁸	55,419	231,088	4 ⁵⁹

Distribution of units by group size

2.10 In 2010 the majority of units were found in the two to five unit range which was also the situation in 2002 (see Figure 4).⁶⁰ Both of the strata professionals who gave evidence to the committee pointed out that management of units within this group could be complex, involving multiple storeys and potentially high capital values.⁶¹

2.11 **Figure 4:** Distribution of units by group size in 2010.⁶²

Year of Valuation: 2010

Range	Capital Value (Estimated)	Average Value per Unit	Number of Properties	Number of Units	Average Number of Units per Property
2 Units in Group	\$28,935,066,384	\$418,706	34,553	69,106	2
3-5 Units in Group	\$19,280,581,446	\$414,886	13,196	46,472	4
6-10 Units in Group	\$13,535,120,985	\$398,866	4,458	33,934	8
More than 10 Units in Group	\$34,624,127,859	\$424,440	3,212	81,576	25
Total	\$96,374,896,675	\$417,048 ⁶³	55,419	231,088	4 ⁶⁴

⁵⁷ Letter from Mr Mike Bradford, Chief Executive, Landgate, 9 March 2011, Attachment p13.

⁵⁸ The average value per unit is the Capital Value (Estimated) divided by the number of units.

⁵⁹ The average number of units per property is calculated by dividing the number of units by the number of properties.

⁶⁰ Letter from Mr Mike Bradford, Chief Executive, Landgate, 25 February, *Estimated Market Value of Strata Titled Properties in Western Australia*, p8,10.

⁶¹ Mrs Eleanor Logiudice, Principal/director/ licensee of the Logiudice Property group, *Transcript of Evidence*, 16 February 2011, p10,11, Mr Ian Laird, Strata Titles Consultant, *Transcript of Evidence*, 23 February 2011, p14.

⁶² Letter from Mr Mike Bradford, Chief Executive, Landgate, 9 March 2011, Attachment p10.

⁶³ The average value per unit is the Capital Value (Estimated) divided by the number of units.

2.12 Landgate noted that recent growth had occurred in the range 'more than 10 units in group'. The growth has occurred particularly in:

... a number of higher density, multi-storey developments within Perth City, South Perth, Victoria Park as well several coastal suburbs. Examples include the Raffles at Canning Bridge, Burswood, Adelaide Terrace/Terrace Road and office tower conversions in the CBD.

The range 'more than 10 units in group' has also recorded at 174.09%, the highest % capital growth rate since 2002 as well as going from the lowest average unit price to the highest⁶⁵

Observations

2.13 The Committee makes the following observations in relation to the material provided by Landgate:

- Growth of strata title is expected to continue;
- The growth in the proportion of registered titles which are strata may increase beyond the forecasted proportion of 37%;
- The dominant property use for strata title remains residential; and
- There has been recent growth at the higher density, higher value end of the strata market where strata managers are more likely to be required.

Conclusion

2.14 Reliable strata management is very important for the many people who are lot proprietors. Due to the significant number of strata title properties today and the forecast growth of this property ownership the Committee concludes that regulation of this industry is imperative.

IMPACT OF PLANNING STRATEGIES

2.15 The Committee sought the advice of the Minister for Planning in relation to the impact of long term planning policy on strata title development in Western Australia.

2.16 The Minister drew the Committee's attention to the current State planning policy for metropolitan Perth and Peel and advised that *Directions 2031 and beyond (Directions 2031)* is the highest level strategic plan and will result in increasing numbers of strata titles in new urban areas.

2.17 The Committee was also advised that:

- the Draft Central Sub Regional Strategy includes 19 local government areas where, *as a consequence of the strategy these locations will be likely to have*

⁶⁴ The average number of units per property is calculated by dividing the number of units by the number of properties.

⁶⁵ Landgate Response to Preliminary Questions of Standing Committee on Public Administration. Tabled by Acting Valuer-General, Manager Property and Valuation Services Operations, 14 March 2011 p4.

increased number of strata title properties as local planning schemes will be required to apply higher densities.

- State Planning Policy 3.1 was amended in November 2010 to include the Multi Unit Code. *The provisions will remove barriers to multiple dwelling developments and potentially increase the number of strata properties.*

2.18 In conclusion the Minister for Planning noted:

Strategic planning policy is encouraging and introducing measures to facilitate higher density, infill and housing diversity. These policy measures will be expected to produce development outcomes that increase the number of strata titled properties, especially in the central sub region.

Conclusion

2.19 The Committee concluded that government planning policy is likely to promote an increase in strata title lot proprietorship and as a consequence the number of lot proprietors for whom reliable strata management is of importance will continue to increase.

CHAPTER 3

STRATA TITLE MANAGERS

THE INDUSTRY

- 3.1 There were 55, 419 strata companies in Western Australia in 2010.
- 3.2 Currently the number of strata managers is unknown.
- 3.3 Mr Mark Atkinson, President of the Strata Titles Institute of WA (STIWA)⁶⁶ advised the Committee that:
- STIWA has 182 members;
 - 142 of STIWA's members are strata managers;
 - 30 of the 142 strata managers are licensed real estate agents; and
 - not all strata managers are members of STIWA.⁶⁷
- 3.4 The Committee notes that STIWA is, since 26 July 2011 known as Strata Community Australia (WA) Inc.
- 3.5 The Real Estate Institute of Western Australia (REIWA) conducted an informal survey to ascertain how many of its members were strata managers. The response rate was low with 25 out of 1100 members confirming that they manage strata companies as part of their business. REIWA noted that response to their questionnaires is generally 15-20% and concluded that 'it may be possible to conclude that around 120 to 130 member companies are involved in strata.'⁶⁸
- 3.6 Mrs Logiudice estimated that there would be 800 real estate agents who actually manage strata companies.⁶⁹
- 3.7 The Committee asked Landgate if it could advise of the number of Western Australians who were currently exposed to strata managers. Landgate did not hold this information but asked STIWA to conduct a survey which included this question. STIWA received 23 responses to its survey which indicated that the average number of lots managed by the responding strata managers was 656 with the highest number managed by one agent being 2500 and the lowest number being 103.

⁶⁶ Described on their website as 'the peak industry body for people and organisations working in the strata titles profession and associated industries in WA'. <http://stiwa.com.au/> sighted 2 May 2011.

⁶⁷ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p1.

⁶⁸ Letter from Mrs Anne Arnold, Chief Executive, Real Estate Institute of Western Australia, 28 April 2011.

⁶⁹ Mrs Eleanor Logiudice, Principal/Director/Licensee of the Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p3.

- 3.8 Mr Ian Laird , a strata title consultant⁷⁰ who has been involved with the strata industry for the last 20 years advised the Committee that currently strata title management is undertaken by a variety of people:

At present the function and presumably the responsibilities of the management of the affairs of strata companies is undertaken by real estate agents, conveyancers, lawyers, accountants, individual lot proprietors and those who have set up businesses which have the main or sole purpose of performing that role.⁷¹

- 3.9 In relation to the size of strata management firms Mr Laird said:

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.⁷²

FUNCTIONS OF STRATA MANAGERS

- 3.10 The Act provides for the Strata Council to employ agents or employees *in connection with the control and management of the common property and the exercise and performance of the powers and duties of the strata company.*⁷³
- 3.11 The Committee was advised that the functions a strata manager performs will vary depending on the terms of the agreement between the Strata Council and the Strata Manager.
- 3.12 The size of a strata company along with its particular characteristics may influence the functions performed by the strata title manager.

The composition of strata schemes vary and as such the management can be fairly straightforward whilst others are more complex, requiring skills in financial reporting and town planning, as well as in-depth knowledge of legislative requirements. The amount of work involved depends on a number of factors including the number of lots the features of the property (e.g. single, multistorey or mixed residential/commercial use) and features of the common property (i.e. shared gardens, swimming pool).⁷⁴

- 3.13 STIWA advised that:

⁷⁰ Mr Laird has practised as a Strata title manager, has delivered education programs for the Strata Titles Institute of Western Australia, served on CTAC as a representative of the Strata Titles Institute, and been involved in consultations in relation to reform of the *Strata Titles Act 1985*. He is currently providing independent advice as a strata titles consultant.

⁷¹ Submission No 8 from Mr Ian Laird, 20 January 2010, p4.

⁷² Mr Ian Laird, Strata title consultant, *Transcript of Evidence*, 23 February 2011, p16.

⁷³ Section schedule 1 by-law 8(2)(b) *Strata Titles Act 1985*.

⁷⁴ Department of Consumer and Employment Protection, *Review of Proposed Licensing/Regulation of Strata Title Managers*, June 2007, p5.

It is common for the Strata Management Agreement to confer many of the functions and responsibilities of the Secretary and Treasurer as determined in the Act and Strata Company By-Laws to the Strata Manager.⁷⁵

3.14 STIWA has produced a Best Practice Series authored by Mr Laird. One of these guides *The Role of the Strata Company Manager*,⁷⁶ sets out a summary of the functions which may be wholly or partially delegated to a manager by the Strata Council. The publication indicates that the functions delegated to a strata title manager may be extensive. For example, in relation to financial management, one of the key functions that may be delegated to a Strata manager, 19 activities were listed including:

- maintaining proper books of accounts;
- establishing administrative funds and possibly reserve funds to meet contingent expenses; and
- recovering proprietor's debts to the company and preparing an annual statement of accounts.⁷⁷

3.15 The STIWA publication groups the types of functions which may be performed into seven main areas being:

- management;
- insurance;
- records;
- financial;
- meetings;
- the communications with the council; and
- communications with proprietors and others.⁷⁸

3.16 The Act sets out the types of insurances that must be taken by a strata company. This function may be delegated to the strata manager.

3.17 The Committee received evidence on several occasions that the role of a strata manager requires a more detailed level of skill and experience than a Real Estate Agent:

The strongest difference I see is that the financial reporting requirements and management requirements are far greater on strata

⁷⁵ Submission No 19 from Strata Titles Institute of Western Australia (Inc), 28 January 2010, p1.

⁷⁶ Laird, I., *The Role of the Strata Company Manager*, STIWA, 2008.

⁷⁷ *Ibid*, p6,7.

⁷⁸ *Ibid*, p10-12.

*managers than real estate agents. Property managers typically clear out the account at the end of the month, and that is it. Secondly, property managers are responsible to one client, the proprietor of a lot. Strata company managers on the other hand have to balance the often conflicting demands of up to hundreds of people, and that skill set of good communication and good conflict resolution skills is unique to strata managers.*⁷⁹

3.18 Mr Laird noted in relation to the functions of strata managers:

*There is no test or requirement of competency to perform this role which should be of the major concern of those charged with the task of consumer protection.*⁸⁰

Observations

3.19 The Committee observed that:

- **a strata manager may perform a wide range of functions which will vary depending on the size and nature of the strata property; and**
- **whilst real estate agents are a licensed profession, strata managers, who perform work which on occasion is of a more complex nature than that of a real estate agent are not licensed.**

FUNDS MANAGED BY STRATA MANAGERS

3.20 The Committee found it problematic to obtain an accurate and reliable estimate of the amount of strata funds generally or those managed by strata managers. The absence of any regulatory mechanism for strata managers means there is no central point of record in relation to information about funds managed by the industry.

3.21 Consequently, the Committee gathered evidence from a variety of sources within the property and strata management industry in order to understand the breadth of strata title assets and the level of exposure of strata managers to those assets.

Real Estate and Business Agents Supervisory Board

3.22 The Committee asked the Real Estate and Business Agents Supervisory Board (**REBA**) about the number of trust accounts held by licensed real estate agents for strata management purposes. The board identified 35 licensed real estate agents with 63 current trust accounts containing the word strata or lot proprietors in the title. They noted this was a very small proportion of the 3174 currently licensed real estate agents in Western Australia.

⁷⁹ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p15. See also on this point Mrs Anne Arnold, Chief Executive, Real Estate Institute of Western Australia, *Transcript of Evidence*, 23 March 2011, p3.

⁸⁰ Submission No 8 Mr Ian Laird 20 January 2010, p5.

- 3.23 REBA was concerned to point out to the Committee that the information it was providing may not be representative of the amount of funds being held for the purposes of strata management. In addition, the data itself does not indicate how many strata companies were involved in each trust account. For example, one trust account could hold funds from 10 strata companies.
- 3.24 The Committee accepts REBA's caveats on the information it provided. It has taken the information as providing a snapshot of some funds held by some strata managers. Figure 5 below summarises the data provided:

Figure 5

Total Amount held as at 30 June 2010	\$22,657,922
Number of accounts	63
Average amount held	\$359, 649
Highest balance held as at 30 June 2010	5,415,712
Lowest balance held as at 30 June 2010	0

Strata Managers

- 3.25 The Committee heard from Mrs Logiudice that the majority of strata buildings in Perth have budgets of up to \$100,000 with the newer buildings being over that amount. She further indicated that her firm manages 150 strata companies and had \$14m running through their trust account at any one time. See figure 6 below.

Figure 6

Total Amount held	\$14,000,000
Number of strata companies	150
Average amount held	\$93,333

Strata Titles Institute of WA

- 3.26 STIWA advised the Minister for Commerce that it estimates approximately \$325m is collected annually in strata company levies.⁸¹ The Committee notes this information was provided on 14 December 2010.

CHU Underwriting Agencies Pty Ltd

- 3.27 The Committee contacted CHU Underwriting Agencies Pty Ltd (**CHU**), who specialise in the provision of strata and community title insurance, to see if they could provide an indication of strata funds held by reference to their exposure in relation to fidelity guarantee policies. CHU advised the Committee that in 2010 the aggregate sum insured by CHU for Western Australian strata companies was \$42.5b.⁸²
- 3.28 Fidelity Guarantee Insurance indemnifies strata companies for fraudulent misappropriation of funds. CHU advised the Committee that its current aggregate exposure for fidelity cover for strata companies in Western Australia is approximately

⁸¹ Letter from STIWA to the Hon Simon O'Brien MLC, Minister for Commerce, 14 December 2010, p1.

⁸² Letter from Ms Leonie Milonas, WA State Manager, CHU Underwriting Agencies Pty Ltd 17 June 2011, p4.

\$1.4b. It estimates that, if the remaining strata companies in the state were insured with a comparable product, the maximum aggregate total fidelity exposure could be as high as \$5.8b.

3.29 The Committee notes that Fidelity Guarantee Insurance is not compulsory under the Act.

3.30 CHU advised that fidelity cover for clients throughout Australia has increased from \$40,000 per policy to \$100,000. CHU noted that when a strata company required higher than \$100,000 fidelity cover they were required to insure through the general insurance market. CHU advised that:

the risk management requirements required to insure "Crime/Fidelity Covers" through the traditional general insurance market (non- strata market) are normally greater than most strata schemes currently maintain due to the particular nature of strata⁸³.

3.31 Consequently in some cases where a strata company may wish to obtain fidelity insurance for an amount over \$100,000 the option may not be available.

3.32 In relation to building maintenance works CHU noted the ageing nature of strata properties:

The ageing nature of Strata Properties will continue to become a greater concern for the industry and subsequently government. Many of the larger strata buildings in the inner suburbs of Perth, like South Perth, Nedlands, Crawley, Maylands, Scarborough and Fremantle are ageing.

Issues such as concrete cancer, increased water ingress, non compliance to current BCA standards like window glass, fire equipment, balustrading and balconies to name a few (in addition non-compliance is often discovered in new developments).

a) We have seen particularly in the last three years, an increase in requests for building maintenance and more recently a greater increased activity in 2010. ...

b) it is not unusual to see contract works proposed to the value of over \$500,000 and above \$1,000,000 etc where much of the levy raising started 2-3 years ago. Many maintenance plans are arranged progressively over a 1-2 year period in line with raising money.⁸⁴

3.33 CHU noted that the increased maintenance activity meant that:

- it is not uncommon for strata schemes to maintain funds well in excess of current limits of Insurers Fidelity Limits;

⁸³ Ibid, p5.

⁸⁴ Ibid.

- the trend for maintenance requirements is increasing; and
- *there is a huge potential risk of maintenance requirements failing if financial planning towards these strategies is jeopardised because of a lack of good financial management of these growing sinking funds.*⁸⁵

Conclusion

3.34 The lack of consistent and reliable statistical information heightens the Committee’s concerns regarding the lack of regulation for the industry.

3.35 The data provided to the Committee indicates that, on the balance of probabilities, the funds managed by strata managers on behalf of strata companies are sufficiently significant to represent a serious risk to lot proprietors if misappropriated or incompetently managed.

3.36 The evidence of CHU highlights a multifaceted financial risk to lot proprietors where funds are set aside for essential maintenance as required under the Act. These risks include:

- **the risk that property maintenance sinking funds are inadequate to meet maintenance requirements;**
- **the risk that “*lack of good financial management*” would jeopardise a sinking fund, interfering with a strata company’s capacity to maintain its asset; and**
- **the risk that some strata funds may be inadequately insured.**

CURRENT LEGISLATION IN RELATION TO STRATA MANAGERS

3.37 Currently there is no legislative regulation of strata managers. Mr Atkinson gave an example to the Committee:

*... at the moment, a lawyer, for example, convicted of stealing money from a trust account and coming out of jail after serving their time could the very next day set up as a strata company manager and gain even more money under their own control ...*⁸⁶

3.38 Mr Craig James representing the Law Society of Western Australia, raised concerns about public misconception in relation to licensing of strata managers:

*My concern continues to be the same: in this highly regulated society that we live in , the majority of people who engage strata managers to undertake work for them probably assume there is some form of regulation that will look after them if things go wrong.*⁸⁷

⁸⁵ Ibid, p6.

⁸⁶ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p11.

⁸⁷ Mr Craig James, Representative, Law Society of Western Australia, *Transcript of Evidence*, 14 March 2011, p1.

The Strata Titles Act 1985

- 3.39 The term Strata Manager is not defined in the *Strata Titles Act 1985*(the Act). The functions of the Strata Manager are not set out in the Act or the Regulations.
- 3.40 The by-laws found in Schedule 1 of the Act provide for the Strata Council to employ agents and employees in connection with the:
- management of the common property; and
 - the exercise and performance of the powers and duties of the strata company.⁸⁸
- 3.41 The Act also provides for:
- the functions of the Strata Company to be performed by the Strata Council in the manner provided for by the by-laws;⁸⁹ and
 - the State Administrative Tribunal to make an order terminating or shortening a Strata Manager’s service contract in specified circumstances.⁹⁰

Consumer Protection Legislation

- 3.42 In some cases consumer protection legislation may apply to contracts between strata companies and strata managers. Prior to 2011 the *Trade Practices Act 1974* and the *Fair Trading Act 1987* applied to strata managers in defined circumstances. The nationally uniform Australian Consumer Law commenced throughout Australia on 1 January 2011.
- 3.43 The Department of Commerce has advised the Committee that, where a dispute arises between a strata company and a strata manager, it can offer advice and conciliation on the premise “*that a strata company comprises a number of consumers*. There is a question over any legislative capacity of the Department to take action against a strata manager.⁹¹
- 3.44 The Committee was advised that the Department of Commerce has not commenced any prosecutions against strata managers under the previous or current consumer protection legislation.⁹²

⁸⁸ *Strata Titles Act 1985*, Schedule 1, By-law 8.

⁸⁹ *Ibid*, section 44 *Strata Titles Act 1985*.

⁹⁰ *Ibid*, section 103 E, applies to specified agreements where the agreement is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots of the scheme; or is for an excessively long term.

⁹¹ Ms Anne Driscoll, Commissioner for Consumer Protection, Department of Commerce, *Transcript of Evidence*, 14 March, p10.

⁹² Letter from Ms Anne Driscoll, Commissioner for Consumer Protection, Department of Commerce 28 March 2011.

The Real Estate and Business Agents Act 1978

3.45 The *Real Estate and Business Agents Act 1978* creates a licensing scheme for real estate and business agents. It is an offence to practise as a real estate or business agent without the relevant licence. The Act:

- requires agents to maintain trust accounts and sets out matters which must be complied with in relation to those accounts;⁹³
- establishes the Real Estate and Business Agents Fidelity Guarantee Account Fund against which a person can, in certain circumstances, claim if they lose money or property as a result of criminal or fraudulent conduct by a licensed agent, the agents employees, or business partner;⁹⁴ and
- empowers the Commissioner for Consumer Protection to investigate complaints about licensed real estate agents.⁹⁵

3.46 Mr Tim Banfield, Board Director, REBA advised the Committee that the *Real Estate and Business Agents Act 1978*:

*...provides limited provision for regulation of the activities of strata title managers. Only strata title managers who are licensed real estate agents, and who operate their strata management activities through real estate agencies, are regulated with respect to the definition in section 4 (3A) of the Act.*⁹⁶

3.47 Mr Banfield acknowledged that it would be wise for a strata company employing a manager who is a licensed real estate agent to check whether the agent's strata management business is regulated under the *Real Estate and Business Agents Act 1978*.⁹⁷

3.48 The Committee notes that as of 1 July 2011 the Real Estate and Business Agents Supervisory Board was abolished and its licensing and regulatory functions have been transferred to the Commissioner for Consumer Protection and the Department of Commerce. The Fidelity Guarantee Account is now administered by the Consumer Protection division of the Department of Commerce.

⁹³ Part V1 *Real Estate Agents and Business Agents Act 1978*.

⁹⁴ Section 107 *Real Estate Agents and Business Agents Act 1978*. See also Department of Commerce, Fidelity Guarantee Account, Information Bulletin No1, effective 1 July 2011 at http://www.commerce.wa.gov.au/consumerprotection/PDF/Real_Estate_industry/Fidelity_Guarantee_A/FidelityAccountInfo.pdf (viewed on 16 August 2012).

⁹⁵ Section 22 *Real Estate Agents and Business Agents Act 1978*.

⁹⁶ Letter from Mr Tim Banfield, Board Director, Real Estate and Business Agents Supervisory Board, 5 April 2011. See also section 4(3)(a) *Real Estate Agents and Business Agents Act 1978* "For the purposes of this Act monies collected by an agent for on the half of the Strata Company are deemed to be money collected by the agent in respect of a real estate transaction."

⁹⁷ Mr Timothy Banfield, Director, Real Estate and Business Agents Supervisory Board, *Transcript of Evidence*, 18 May 2011, p13.

3.49 The Committee noted REBA's advice that some strata companies who engage a licensed real estate agent are protected under the *Real Estate and Business Agents Act 1978* while others are not. In the Committee's view Mr James' concerns about public misconceptions, set out at paragraph 3.38, are exacerbated by the existence of differing levels of protection provided to strata companies who may well be unaware of the disparities.

Criminal Code

3.50 It is open to strata companies to make a complaint to the WA Police in instances where they believe a strata manager has behaved fraudulently. The Committee heard evidence from lot proprietors that efforts to provide the Police with information supporting allegations of fraud were hampered by:

- mixing of multiple strata company funds in one account without accurate accounting for individual funds;⁹⁸
- difficulty in obtaining relevant information and records;
- poorly kept records; and
- cost of forensic audits particularly where financial records were inadequate.⁹⁹

3.51 The Committee heard evidence that accountants may be reluctant to undertake forensic audits of strata title properties:

*... many accountants and auditors we saw flatly refused to conduct the audit particularly as the funds were in a trust account and were difficult to audit. One accountant vowed never to undertake another strata company audit ever again because all the funds are too hard to trace within a trust account and he had difficulty obtaining information from the strata manager.*¹⁰⁰

3.52 The Committee wrote to the Major Fraud Squad inquiring about the evidence it received. Detective Superintendent Dale Bell of the Commercial Crime Division advised that in 2008 to 2010 the major fraud squad had conducted 7 investigations into a complaints involving strata title management. He advised the Committee that it was possible other investigations had been conducted at a local level but he did not have data to verify that.¹⁰¹

3.53 Detective Superintendent Bell further advised:

in relation to the financial complexity of strata accounts and the cost of forensic audits, these are acknowledged as two issues that impact on investigations. The fact that strata managers are largely

⁹⁸ Submission No 24, Private submission.

⁹⁹ Submission No 13, Private submission.

¹⁰⁰ Ibid.

¹⁰¹ Letter from Detective Superintendent Dale Bell, Commercial Crime Division, WA Police, 22 December 2010, p1.

unregulated and are not licensed, with no government body to provide governance and control, is of concern to investigators and can severely hamper investigations.

... It is the view of experienced investigators in this office that's some form of regulation of strata managers would reduce the likelihood of offending, reduce the cost and complexity of investigations and provide the general public with a measure of reassurance dealing with persons in this industry.¹⁰²

3.54 Detective Superintendent Bell also expressed the view that:

... that the low numbers of investigations reflected the low level of control around strata management activities. Without adequate control mechanisms it becomes difficult to establish sufficient criminality to commence an investigation, as there are no reporting mechanisms that would provide avenues to identify misappropriation.¹⁰³

Other remedies

3.55 In some circumstances strata companies will have the basis for legal action against a strata manager for breach of contract. These claims would be commenced in the appropriate court. Legal advice and representation may be required and the strata company must, like any litigant, weigh the risks of losing and thus having costs awarded against them. Other legal claims may also arise under the common law which again would be commenced in the courts. The Committee notes the comments of Mr James:

The remedies that are there are reliant upon the prosecuted party having the funds in their control if they are ever caught. In the absence of insurance or a fund to dip into, a person might be prosecuted for breaching their fiduciary duties but they may have no funds to access.¹⁰⁴

3.56 The by-laws found in Schedule 1 of the Act require a simple majority to pass a resolution at a general meeting to commence legal proceedings.¹⁰⁵ This situation means that even if an individual lot proprietor or group of proprietors receives advice that legal action against a strata manager is likely to be successful, no action can be taken without a majority resolution.

¹⁰² Ibid.

¹⁰³ Ibid, p2.

¹⁰⁴ Mr Craig James, Representative, Law Society of Western Australia, *Transcript of Evidence*, 14 March 2011, p2.

¹⁰⁵ Schedule 1 By-law 12(6). If the by-laws have been amended the relevant by-law will apply. See also Letter from Mr Mike Bradford, Chief Executive Officer, Landgate, Attachment p3,4.

*Conclusion***3.57 The Committee concluded that:**

- **there is a question over the Department of Commerce’s capacity to take legal action against strata managers ;**
- **currently not all lot proprietors have access to protections provided by the *Real Estate and Business Agents Act 1978* and this may cause confusion in the community;**
- **investigation of the activities of strata managers is hampered by lack of regulation in relation to bank accounts and financial record keeping; and**
- **a decision to pursue legal action is made collectively by the strata company. Arguably this diminishes the likelihood of legal action proceeding, potentially shielding strata managers from the likelihood of being pursued legally for their actions.**

Strata Titles Institute of Western Australia Accreditation

3.58 STIWA has implemented an accreditation program and provided the following information :

*STIWA has implemented an accreditation program which requires a minimum attendance at training events and evidence that the professional indemnity insurance policy is in place. These requirements have been designed to ensure that an accredited Strata manager has been educated in strata title matters and has insurance cover, in addition to any covers the strata company may hold, to protect the lot proprietors of the property should a loss occur as a result of a Strata managers actions.*¹⁰⁶

3.59 STIWA also has a mechanism in place for dealing with complaints made about members. Mr Atkinson advised:

It is a correspondence-based process, but it is rigorous in the sense that a decision is required to be reached. If suspension or expulsion is recommended, it goes to the council for a decision...

*...STIWA’s ultimate sanction will only ever be expulsion from membership of the institute; it is not a policing body. The government has, as I said in my submission, vacated its role in this area. There needs to be an independent service open to receive complaints about managers.*¹⁰⁷

¹⁰⁶ Submission No 19 from STIWA, 28 January 2010, p3.

¹⁰⁷ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p5.

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- 3.60 The Committee considered that expulsion from STIWA may act as a deterrent to those considering employment of the expelled strata manger if they were aware. It noted, however, that the sanction only applies to STIWA members and the comments of Mr Atkinson's that STIWA's role is a limited one and does not replace the opportunity for an aggrieved person to complain to a government body.

CHAPTER 4

REGULATION OF STRATA MANAGERS

THE STAMFORD REPORT

- 4.1 As discussed at paragraph 1.43 the Stamford report did not support the introduction of licensing or other form of regulation for strata title managers on the basis that it found that there was no evidence of market failure.¹⁰⁸
- 4.2 The report identified the following potential primary risks posed to strata companies by strata managers:
- *Misappropriation of funds;*
 - *Incompetent management of funds;*
 - *Poor advice; and*
 - *Lack of accountability and/or recourse.*¹⁰⁹
- 4.3 The Report noted that many of the risks arose from a lack of knowledge leading to an imbalance in the relationship between the strata company and the strata manager “*such that the strata manager may be in a position to establish a working arrangement with the strata company that best suits their needs.*”¹¹⁰
- 4.4 In relation to the identified risks the Stamford report concluded:
- Nevertheless, although there were a number of risks identified, the Consultant found no evidence to suggest that these risks materialise on a significant enough or regular basis to justify significant government intervention.*¹¹¹
- 4.5 A key part of the Stamford report review was consultation with stakeholders. Consultation was undertaken with key industry organisations and with strata companies and strata title managers. Consultation with strata companies consisted of a distribution of a questionnaire. The questionnaire was forwarded to 100 strata companies with 13 responses being provided.¹¹²

¹⁰⁸ Stamfords Advisors and Consultants, *Department of Consumer and Employment Protection, Review of Proposed Licensing/Regulation of Strata Title Managers*, June 2007 p7.

¹⁰⁹ Ibid p6.

¹¹⁰ Ibid.

¹¹¹ Stamfords Advisors and Consultants, *Department of Consumer and Employment Protection, Review of Proposed Licensing/Regulation of Strata Title Managers*, June 2007 p7.

¹¹² Ibid p27.

- 4.6 In relation to strata managers, questionnaires were distributed through REIWA and STIWA and thought to reach approximately 1200 REIWA members and 160 STIWA members. 40 completed questionnaires were received.¹¹³
- 4.7 The Committee noted the low rate of response by strata managers and strata companies to the consultation and asked the Department of Commerce for comment on this.
- 4.8 The Department of Commerce acknowledged that it would have preferred a higher response rate to the surveys and noted:
- a) *Stamfords was of the view that both response rates, while small were probably average for this form of consultation;*
 - b) *the Strata Titles Institute of Western Australia itself thought the response rate from strata managers was better than expected;*
 - c) *there were inherent difficulties in obtaining information when it was not possible to identify all relevant persons operating in the marketplace; and*
 - d) *the consultation processes undertaken by Stamford's were consistent with the budget allocated to this process.¹¹⁴*

Observations

4.9 The Committee observes that the Stamford's consultants:

- **identified potential significant risks to consumers of strata management services;**
- **identified a knowledge imbalance between strata managers and strata companies;**
- **used consultation tools that were “consistent with the budget allocated to the process”¹¹⁵;and**
- **in relation to consultation with strata title managers and strata title companies received very low responses to the consultation tool.**

¹¹³ Ibid p28.

¹¹⁴ Letter from Department of Commerce, 9 March 2011, p12.

¹¹⁵ Ibid, p12.

REGULATION OF STRATA MANAGERS

- 4.10 The Committee has heard evidence of significant flaws in the operation of the strata titles industry. In particular, evidence was provided of the failure of the market to safeguard lot proprietors from inadequate management and inappropriate use of strata company funds. The Committee was also told that when the market fails there is no assigned department or body for a lot proprietor to approach when help is required and furthermore no easy way to investigate or resolve these problems.¹¹⁶
- 4.11 Property industry bodies and consumer agencies including STIWA, REBA along with the Law Society are very clear in their views that regulation of the strata title management industry must occur.¹¹⁷ These views were mirrored in submissions and evidence provided by strata professionals and lot proprietors.¹¹⁸ The Committee did not receive a submission suggesting regulation should not occur.
- 4.12 Regulatory schemes are currently in place for other property professions who hold money on trust for their clients. The Department of Commerce advised that it currently has in its portfolio regulation of real estate agents, settlement agents and land valuers.¹¹⁹ As mentioned previously, the Committee heard that in some circumstances the role of the strata managers may involve a higher level of complexity than that of real estate agents who are currently subject to regulation. See paragraph 3.17.
- 4.13 Other States and Territories have adopted varying approaches to the regulation of strata management. New South Wales, the Northern Territory and the Australian Capital Territory have licensing schemes in place for strata managers. Victoria has a system of registration. Strata Managers in Queensland are not licensed but they are subject to a legislative code of conduct. South Australia does not have a licensing scheme in place however the Statutes Amendment Community and Strata Titles Bill 2011 was introduced into the South Australian House of Assembly in April 2011. The Bill contains a number of provisions pertaining to the contracts for strata management and duties of the strata manager.
- 4.14 Witnesses have demonstrated a loss of consumer confidence which would be exacerbated by continued market failure. Landgate highlighted the risks inherent in this situation:

Information provided to the Committee by Landgate shows the significance of strata developments in terms of lot creation and

¹¹⁶ See for example Submission No 3 from Mr K Savell, 10 December 2009, p1.

¹¹⁷ Submission No 19, from STIWA, 28 January 2010, p2, Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc); Submission No 15 from Real Estate Institute of Western Australia, January 2010, p5; Submission No 20 from The Australian Institute of Conveyancers WA Division Inc, 29 January 2010 at, p4; Letter from Director Real Estate and Business Agents Supervisory Board, 27 October 2009, p2; Submission No to 2 from the Law Society of Western Australia, 8 December 2009, p 1 and Submission No 27, Consumer's Association of WA Inc, 17 January, 2011.

¹¹⁸ See for example Submission No 1, Mr A.D Ikin, 2 December 2009; Submission No 3, Mr Ken Savill, 10 December 2009 and Submission No 21, MagiXstrata, 28 January 2010.

¹¹⁹ Mr Gary Newcombe, Director, Strategic Policy and Development, Department of Commerce, *Transcript of Evidence*, 14 March, 2011, p11.

*property value. Such developments have other important benefits (including business investment and employment generation) and any loss of consumer confidence in this form of development could have significant adverse consequences.*¹²⁰

4.15 Lot proprietors are potentially exposed to significant risks including:

- incompetent management or misappropriation of funds leading to financial loss;
- inadequate maintenance leading to devaluation of the assets and breach of requirements set out in the Act¹²¹;
- failure to maintain adequate insurance exposing them to potential financial risk including that of being pursued individually for a judgment debt in a matter arising from the common property;
- potential for strata company decisions to be declared invalid if meeting and voting procedures do not comply with the Act or by-laws; and
- incorrect advice leading to breaches of the Act and other legislation which could result in the strata company incurring penalties which must be paid for collectively by the lot proprietors.

4.16 Examples of *incompetent or inappropriate financial management* have already been discussed. The exposure to liability in relation to common property has been commented on by several witnesses and is seen as a fundamental reason for protecting strata companies from inadequate advice and a failure to comply with insurance requirements under the Act.¹²² The Committee received evidence of underinsuring of buildings and common property.¹²³

4.17 The Committee has learnt that:

- the number of strata title properties in Western Australia has grown at a significant rate since 2007 when the Stamford report was published;
- the rate of strata properties is expected to continue to increase over the next 10 years;
- the Government's long term planning policy is expected to result in an increase in the volume of strata titled properties;
- inattention amongst strata lot proprietors and in some cases reluctance on the part of lot proprietors to sit on the strata council results in strata managers

¹²⁰ Letter from Mr Mike Bradford, Chief Executive, Landgate 9 March 2011, p6.

¹²¹ Section 35(2) *Strata Titles Act 1985*.

¹²² Mr Ian Laird, Strata Title Consultant, *Transcript of Evidence, 23 February, 2011*, p6. Mr Graham Glasson, President, Australian Institute of Conveyancers Western Australia, *Transcript of Evidence, 16 February, 2011*, p3.

¹²³ Submissions No 6, from Mrs M Ielati, 18 January 2010, p2; Submission No 5 from Mr RM Healy, 18 January 2010, p2 and Submission No 18, Private submission.

being required to take an increasing role, in many cases as treasurer and secretary, for a Council that may not have an appointed chairman;¹²⁴ and

- strata council members may be exposed to legal action in the event that their action or failure to act causes financial loss or injury to lot proprietors or third parties.

4.18 Proposed tenure review reforms may increase the number of strata units available on the market and potentially increase the level of complexity of strata management tasks. Mrs Anne Arnold, Chief Executive of REIWA, commenting on the complexity of a strata manager's role noted:

... So there are a number of complexities, and I understand government is seriously entertaining a proposal to introduce layered strata schemes. They are drafting a bill, and it will contemplate and entertain leasehold strata. If we are talking complicated now, we are going to be talking seriously complicated when that comes into play. I think to have unprofessional, unaudited, unregulated people managing complex mixtures of commercial and residential property in a layered strata scheme would be something of a concern.¹²⁵

Conclusion

4.19 The Committee has concluded that the strata management industry is characterised by the:

- i) **absence of information about its size;**
- ii) **absence of information about the number of strata companies professionally managed;**
- iii) **absence of information about the quantum of strata company funds it manages;**
- iv) **absence of legislative rigour in relation to financial reporting and other requirements; and**
- v) **absence of legislative accountability of strata managers to consumers of their services.**

4.20 Having found itself confronted with a lack of information and an environment where:

- **there is an increasing volume of strata titled properties and strata title funds;**
- **there are reports of significant incompetent or inappropriate fund management;**

¹²⁴ Submission No 8 from Mr Ian Laird, Strata Titles Consultant 20 January 2010 p2.

¹²⁵ Mrs Anne Arnold, Chief Executive, Real Estate Institute of Western Australia, *Transcript of Evidence*, 23 March 2011, p3.

- **a growing reluctance of lot proprietors to sit on the strata council imposes further responsibility on strata managers; and**
- **there are significant ramifications for community confidence in strata titles in the face of further incompetent or inappropriate management of funds.**

the Committee has concluded that the case for regulation is overwhelming.

LICENSING OF STRATA MANAGERS

4.21 Having concluded that regulation is imperative the Committee sets out below:

- its recommendations in relation to the type of regulation that should be imposed; and
- aspects of regulatory conduct provisions it considers the Government should consider when responding to this report.

4.22 At the time of finalisation of this report the Occupational Licensing National Law (WA) Bill 2010 (the Bill) is awaiting consideration by the Legislative Council. The recommendations that follow are provided with acknowledgment that:

- in the event that the Bill is passed;
- and a decision is made to license strata managers;

eligibility requirements for a license would be determined at a national level.

4.23 The Committee took into account the matters set out below when reaching its conclusions.

Educational qualifications required

4.24 The Committee noted:

- Strata managers hold a position of trust and strata companies and strata councils are reliant on the quality of advice they provide.
- Witnesses expressed concerns about inadequate insurance and the provision of incorrect legal advice.¹²⁶
- A number of submissions highlighted the requirement for strata managers to have adequate knowledge of the Act along with other legislative requirements that may impact on the management of strata properties.¹²⁷
- Lot proprietors may be exposed to significant liability if the strata company's legal and financial obligations are not met.¹²⁸

¹²⁶ Submission No 5 from Mr RM Healy, 18 January 2010; Submission No 6 from Mrs M Ielati, 18 January 2010 and Submission No 25 from Mr W.K O'Brien, 16 December 2009.

¹²⁷ See for example Submission No 8 Mr Ian Laird, Submission No 2, Law Society of Western Australia.

- Although exact quantification of funds managed by strata managers is not possible at this point, indications are that the amounts may be substantial.
- Repeated evidence that some strata managers lack financial management skills.
- Concerns have been raised about devaluation of the lot proprietors' asset if the need for maintenance and repair is not attended to appropriately.¹²⁹
- Legislative requirements for maintenance exist.
- CHU's observation that:
*The ageing nature of strata properties will continue to become a greater concern for the industry and subsequently government.*¹³⁰
- CHU cited concrete cancer, increased water ingress and non compliance with building standards as some of the building management issues arising.¹³¹

Conclusion

4.25 The Committee concluded that strata managers should attain, at a minimum, appropriate levels of education in relation to:

- **the Act and other relevant legislation;**
- **their legal and ethical obligations;**
- **accounting principles and management of financial records generally;**
and
- **building management.**

The strata manager should be fit and proper person

4.26 The Committee has had brought to its attention:

- the imbalance in knowledge which may exist between the strata company and the strata manager;
- the vulnerability of some strata companies to exploitation; and
- the position of trust held by strata managers.

4.27 The Consumer Association of Western Australia submitted:

Many strata companies/councils barely manage to conduct AGM's, let alone understand what their strata manager should be doing for

¹²⁸ Mr Ian Laird, Strata Title Consultant, *Transcript of Evidence*, 23 February ,2011, p6; Mr Graham Glasson, President, Australian Institute of Conveyancers Western Australia, *Transcript of Evidence*,16 February,2011,p3 and see also Letter from Mr Tim Russell, Assistant Sate Solicitor, 25 July 2011.

¹²⁹ Letter from WA State Manager, CHU Underwriting Agencies Pty Ltd 17 June 2011, p6.

¹³⁰ Ibid, p5.

¹³¹ Ibid.

then in return for payment of ever-increasing fees. Many lot proprietors are too scared to change an under performing manager or do not know how to go about it.¹³²

Conclusion

4.28 The Committee concluded that consumers of strata management services should be confident that they are engaging a fit and proper person to occupy the role.

Sufficient financial and operational resources

4.29 The Committee believes that the strata manager should have the resources to meet financial and operational requirements. For example, a strata manager should:

- have sufficient material and financial resources to comply with any legislative requirements imposed;
- be able to acquire adequate insurance; and
- be able to fund training requirements for the manager and management staff.

Conclusion

4.30 The Committee concluded that a strata management company must have sufficient financial and material resources to meet financial and operational requirements.

4.31 The Committee also considered that a strata title manger should be required to hold professional indemnity insurance and the currency of that insurance should be demonstrated on a regular basis.

Type of regulation required

4.32 The Committee noted that various levels of regulation could be imposed including:

- a negative licensing system where parties seeking to enter an industry are not subject to any initial screening and are only prohibited from operating if problems with their conduct are brought to the attention of the administrator;¹³³
- a system of registration which provides a public record of information about industry participants. Registration may require administrative requirements to be met but will normally be automatic on the meeting of those requirements. No assessment of whether a party is fit to practice as a strata manger would be undertaken;¹³⁴

¹³² Submissions No 27, Consumer's Association of WA.

¹³³ L Skelton, 'The Role of Organizational Licensing in Healthcare', *Perspectives in Public Health*, Volume 28, Issue 6 2008, p299. Department of Consumer and Employment Protection, Government of Western Australia, *Review of the Auction Sales Act 1973 Final Report*, July 2007, p30.

¹³⁴ Department of Consumer and Employment Protection, Government of Western Australia, *Review of the Auction Sales Act 1973 Final Report*, July 2007, p30.

- imposition of conduct requirements accompanied by penalties for failure to comply;¹³⁵ or
- positive licensing which requires assessment of the applicant before a licence is granted with the goal of excluding unsuitable or incompetent parties before consumers are exposed to them.¹³⁶

Conclusion

4.33 After considering various forms of regulation and the matters raised above the Committee concluded that consumers of strata management services require a high level of consumer protection. The required level of protection is best provided, in the Committee's view by a system of positive licensing. The Committee considers that the licensing regime should be supported by proactive enforcement of conduct provisions, a complaints management system and continuing education requirements.

Recommendation 1: The Committee recommends that strata managers should be regulated by a system of positive licensing. Eligibility requirements for the granting of a license should include at a minimum:

- **Educational qualifications.**
- **Demonstration that the applicant is a fit and proper person to hold a licence.**
- **An indication the applicant has sufficient financial and material resources available to enable them to meet financial and operational requirements.**
- **Current professional indemnity insurance.**

COSTS OF A LICENSING SCHEME

4.34 The Committee has not conducted a cost benefit analysis of the introduction of a licensing scheme and does not intend to draw a conclusion on the manner in which a licensing scheme would best be funded. It notes that the Department of Commerce now has within its portfolio regulation of estate agents, settlement agents and land valuers, each of which is subject to a positive licensing regime.

4.35 Ms Driscoll, Commissioner for Consumer affairs, Department of Commerce noted that while it would be cost effective to build licensing of strata managers into the real estate licensing system expenses were also involved in supporting the community:

¹³⁵ Ibid

¹³⁶ L Skelton, 'The Role of Organizational Licensing in Healthcare', *Perspectives in Public Health*, Volume 28, Issue 6 2008, p299.

*There is a proactive process to periodically over several years visit agents to make sure that they are doing the right things in terms of reporting to clients et cetera, and then there is, of course, the complaints management system and the education program. So it is quite an expensive arrangement in terms of supporting the community so that people will understand their rights and are able to reinforce those with the licensees.*¹³⁷

4.36 Mr Banfield of REBA also commented on this point, noting that relying on existing infrastructure would be likely to be less costly than creating a new regulatory agency.

4.37 One suggestion made to the Committee was that a levy, imposed at the time a strata title was registered, could go toward funding a licensing system. Mr Roberts of Landgate and Mr Glasson, Australian Institute of Conveyancers,¹³⁸ both raised this possibility:

*Mr Roberts: Yes, it could. I have been thinking a little bit about this. Given the number of plans, you may find that the levy is unacceptably high. I then thought that maybe there could be a levy on the number of lots created, because we create about 10 000 to 12 000 a year, on average. That still means that when the plan is registered, even though—you would just be separating the nature of the fee, so the fee would be applied either to the plan or the number of lots. Effectively, you would still have a fee that would be created or that would be seen to be part of a plan registration fee.*¹³⁹

4.38 The Committee acknowledges that there will be a cost involved in the imposition of a positive licensing regime for strata managers. As already noted, however, current and potential market failure could also result in significant costs to the community both directly and indirectly.

TRANSITION PERIOD

4.39 Mr Newcombe noted that the issue of transitional arrangements would need to be considered. He notes one proposition was to introduce a state licensing scheme prior to the introduction of a national system. Managers meeting the relevant criteria could then be rolled in to the new national system.¹⁴⁰

4.40 The Committee notes that the introduction of a licensing scheme at a State or Federal level would require a transition period.

¹³⁷ Ms Anne Driscoll, Commissioner for Consumer Protection, Department of Commerce, *Transcript of Evidence*, 14 March, 2011, p13.

¹³⁸ Mr Graham Glasson, President, Australian Institute of Conveyancers Western Australia *Transcript of Evidence*, 16 February 2011, p6.

¹³⁹ Mr Bruce Roberts, Registrar of Titles, General Manager Operations, Landgate, *Transcript of Evidence*, 14 March, 2011, p10.

¹⁴⁰ Mr Gary Newcombe, Director, Strategic Policy and Development, Department of Commerce, *Transcript of Evidence*, 14 March, 2011, p15.

Recommendation 2: The Committee recommends that a transition period should apply to the implementation of the recommended licensing scheme.

COMPLIANCE

- 4.41 The Committee notes the advice of Ms Anne Driscoll, Commissioner for Consumer Protection, Department of Commerce when discussing the national licensing scheme, that ‘*conduct requirements will be mandated through state legislation*’.
- 4.42 The Committee gave consideration to the conduct provisions that strata managers, once licensed, should be required to comply with. Whilst not intending to cover the field the Committee discusses below matters of conduct which have come to its attention and which it considers should be included in legislation governing strata managers.

Trust Accounts

- 4.43 Currently there are no legislative requirements for strata managers in relation to the banking of strata company funds. The Committee has received a range of evidence in relation to the manner in which strata manager’s bank strata company funds. These include the pooling of funds of more than one strata company into a single bank account. In one case the Committee heard that funds from 35 companies were pooled in the one account:

Basically, the strata companies have no right to access the bank statements to verify accounts. Unless our strata manager has a separate bank account for our strata company—separate to the 34 other strata companies—it is impossible to verify the accounts as presented by the strata manager, as income and expenditure cannot be verified back to our individual accounts or a bank statement....

... In order to preserve the integrity of accountability of strata funds, we need strata managers to open a bank account solely in the name of the strata company, and all transactions of the strata company to be conducted through this bank account, with bank statements being available to the council of lot proprietors to verify receipts and expenses. As our current strata manager is servicing some 34 other strata companies with, say, a conservative average of 15 proprietors to each strata company, this would represent over 500 proprietors paying their levies into the one common trust account.¹⁴¹

- 4.44 The pooling of funds in one account without an adequate system for accounting for each company separately can lead to confusion and difficulties in conducting an audit and detecting any incompetent or inappropriate management of funds.

¹⁴¹ Private evidence. 25 May 2011.

... It is not to say that the money is missing, it just cannot be equated to. In 2010, the statements presented did not balance by \$31 600... and it was at that point I rang the fraud squad and spoke to them. They said, "Well, we won't do exploratory work on this; unless you can produce the bank statements, we won't investigate, but we'll talk to our boss and we'll come back to you." The next day they did, they came back and said, "No, without bank statements to verify this, we're not prepared to investigate." I can understand that, they are busy people and they have not got time to do that, and the money may not be missing—it is not accounted for, it cannot be verified at this point.¹⁴²

- 4.45 The Committee heard from lot proprietors that where funds from more than one property was pooled in a single account it became difficult to calculate the interest payable to each company. An example was provided by one strata company of interest not appearing on the financial statements:

They just pool all the money into one account. I remember one year they did not put our interest onto our—when we had our accounts presented, there was no interest on there, so one of the lot proprietors raised the issue that there was no interest on our accounts, and they said, "Oh, we forgot about it." ... But my concern is we have now got our own bank account with Macquarie, and our interest payments have been in excess of \$500, \$600 or \$700. I think in the previous year we had about \$600 or \$700 in interest alone. We have never had that amount of interest ever in our account, and it makes it very difficult, when you have got millions of dollars stuck in one account, to work out your daily balance on what you had for your company to work out what your interest is going to be on that account, or your interest earnings.¹⁴³

- 4.46 The Committee heard a report in one case that a strata manager was retaining interest for herself.¹⁴⁴

- 4.47 As discussed by Detective Superintendent Bell at paragraph 3.53 the pooling of funds creates complexities when attempting to investigate complaints in relation to the management of strata company funds:

With no oversight unscrupulous managers are able to determine their own environment. This is highlighted by the fact that there is no requirement to strata managers to use Trust Accounts for the management of funds. This often means that monies received by them

¹⁴² Ibid.

¹⁴³ Private evidence. 24 November 2011.

¹⁴⁴ Mrs Eleanor Logiudice, Principal/Director/Licensee of the Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p8.

*are placed into normal business or even private banking accounts, which gives rise to the complexity and cost of unravelling such account when investigations are commenced.*¹⁴⁵

4.48 Mr Laird was not concerned about the pooling of funds in one account provided the account was a trust account and that adequate software was in place to identify and separate the funds.¹⁴⁶

4.49 Mr Banfield of REBA advised that trust accounts were paramount in an industry where moneys were collected and held on behalf of other people. He further noted that based on his experience with defalcation in the real estate industry:

- Even sophisticated software is only as good as the person who uses it; and
- Separate trust accounts makes it easier to account for moneys going in and out particularly when trying to unravel what has gone wrong.¹⁴⁷

4.50 Mrs Michelle Shafizadeh, Acting Assistant Auditor General, Standards and Quality Division considered that it would be best practice for a strata management company to open a separate trust account for each property it managed. Mrs Shafizadeh did not consider that this requirement would be an expensive one for lot proprietors.¹⁴⁸

Conclusion

4.51 The Committee has, after considering the evidence and looking at requirements placed on other property professions, reached the conclusion that:

- **the strata manager holds the strata companies assets on trust on behalf of the company;**
- **all assets held by strata managers on behalf of strata companies should be held separate and distinct from the assets of the strata manager;**
- **all assets held by strata managers on behalf of strata companies should be deposited in trust accounts held by the strata manager at an authorised deposit-taking institution;**¹⁴⁹
- **strata managers must open separate trust accounts for each strata company;**
- **transactions undertaken by the strata manager on behalf of the strata company are to be conducted through the relevant trust account; and**

¹⁴⁵ Letter from Detective Superintendent Dale Bell, Commercial Crime Division, WA Police, 22 December 2010, p1.

¹⁴⁶ Mr Ian Laird, Strata Titles Consultant, *Transcript of Evidence*, 23 February 2011 p8.

¹⁴⁷ Mr Timothy Banfield, Director, Real Estate and Business Agents Supervisory Board, *Transcript of Evidence*, 18 May 2011, p6.

¹⁴⁸ Mrs Michelle Shafizadeh, Office of the Auditor General, *Transcript of Evidence*, 23 March 2011, p4.

¹⁴⁹ As defined in section 5 of the *Banking Act 1959*

- **provision should be made for the regulatory body to audit strata managers' trust accounts on a random basis or following a complaint.**

Recommendation 3: The Committee recommends that a new section be introduced into Part IV of the *Strata Titles Act 1985* providing that:

- **All assets held by strata managers on behalf of strata companies should be deposited in a trust account held by the strata manager at an authorised deposit-taking institution.¹⁵⁰**
- **Strata managers must open separate trust accounts for each strata company.**
- **Transactions undertaken by the strata manager on behalf of the strata company are to be conducted through the relevant trust accounts.**
- **Trust accounts, held by strata managers, can be subject to audit by the regulatory body on a random basis or following a complaint.**

Proxies

4.52 A proxy is a person authorised to do something for someone else.¹⁵¹

4.53 Currently the by-laws in Schedule 1 of the Act provide for:

- lot proprietors to appoint a proxy to act on their behalf at a general meeting; and
- for the appointment to be in writing.

4.54 By-law 8(3)¹⁵² provides that a member of the strata council may appoint a proprietor or an individual, authorised by a corporation to be their representative, to act in their place as a member of the strata council.

4.55 There is no time limit for the appointment of a proxy under the Act.

4.56 The Act prohibits a person from voting as a proxy on a motion relating to a management contract or arrangement with the strata company, if that person has a financial interest in the contract or arrangement.¹⁵³ This prohibition will not apply if :

¹⁵⁰ Ibid.

¹⁵¹ *Encyclopaedic Australian Legal Dictionary*, (viewed online 12 August 2011).

¹⁵² *Strata Titles Act 1985*, Schedule 1.

¹⁵³ Section 50A(4)

A financial interest in a contract or arrangement is if the proxy or his or her spouse or de facto partner
(a) owns shares (whether beneficially or otherwise) in a company;
(b) is a member of a firm; or
(c) is a director or employee of a company or of a firm,
that benefits or will benefit directly from the contract or arrangement to which the motion relates.

- the notice of meeting contained notice of the motion to appoint or renew a manager, the name of the person, duration of the contract and remuneration payable ; or
 - the proxy authorisation specifically authorises a vote for or against.
- 4.57 Evidence has been provided to the Committee in relation to strata managers having the capacity to act as a proxy for a lot proprietor at general meetings.
- 4.58 Mr Atkinson of STIWA considered the capacity to appoint strata managers and other parties as a proxy for a general meeting was essential to the management of strata schemes. It was his view that without proxies a quorum would not be obtained.¹⁵⁴
- 4.59 The Act currently does not prevent the strata manager from exercising proxies to vote against motions of the strata council or individual lot proprietors. This creates the potential, in the Committee's view, for strata managers and strata councils to use proxies to defeat lot proprietors who are seeking greater transparency from them. For example a motion for an audit of strata company accounts could be defeated by a manager exercising proxy votes. The Committee heard evidence to this effect.¹⁵⁵
- 4.60 The Committee heard that problems can be exacerbated when lot proprietors do not reside at the strata property and assign their proxies to the strata manager.¹⁵⁶
- 4.61 The Committee also heard that the situation can arise where the strata manger and the strata council hold the majority of votes at a meeting. Mr James of the Law Society noted:
- I am aware of a number of schemes where there is infighting and where proxies are used to defeat each other or to control each other.*¹⁵⁷
- 4.62 The Committee also heard that conflicts of interest could arise when a strata manager held a proxy:
- 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.*¹⁵⁸
- 4.63 The Strata Title manager may also act as Chairman at a general meeting, further, facilitating the manager's control over proceedings.

¹⁵⁴ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p9.

¹⁵⁵ Private evidence, 17 November 2010.

¹⁵⁶ Ibid.

¹⁵⁷ Mr Craig James, Representative of the Law Society, *Transcript of Evidence*, 14 March 2011 p7. See also Submission No 1 from Mr A.D Ikin, 2 December 2009, p2.

¹⁵⁸ Mr Ian Laird, Strata Titles Consultant, *Transcript of Evidence*, 23 February 2011 p10.

- 4.64 The Act currently will not prevent a situation arising where the manager can use proxies which they hold to vote down motions that are moved by lot proprietors.
- 4.65 The removal of a strata manager can be a difficult task as a result of an inappropriate power balance between the lot proprietors and the manager. The Committee heard evidence of a strata manager's contract being renewed even though significant discrepancies in accounts had been identified in the managers previous term.¹⁵⁹
- 4.66 There is currently no prescribed form for appointing a proxy in Western Australia although it is required by the by-laws to be in writing and may be either general or for a particular meeting.¹⁶⁰
- 4.67 Both Queensland and New South Wales have prescribed proxy forms while the Australian Capital Territory and the Northern Territory provide for their equivalent of the strata council to approve a form of proxy.
- 4.68 The Committee heard from Mr Atkinson that STIWA recognises that the Act is deficient in its failure to provide for a prescribed form for the appointment of a proxy.¹⁶¹ STIWA has developed a standard form for its members and the Committee heard other agents have developed their own document.¹⁶²
- 4.69 The use of proxies in strata management is a widespread practise throughout the country.
- 4.70 The Committee noted that some states place similar restrictions to Western Australia on the use of proxies by strata managers in relation to management arrangements and financial interests. In some cases legislation limits the number of proxies that may be held by one person¹⁶³ and the Australian Capital Territory legislation does not permit a manager to be appointed as a proxy.
- 4.71 The Committee heard that enduring proxies may be provided to strata managers.¹⁶⁴ Differing views were expressed to the Committee in relation to the length of time the appointment of a proxy should remain active for.¹⁶⁵ Time limits apply to the appointment of a proxy in other states and the Australian Capital Territory.¹⁶⁶

¹⁵⁹ Private evidence 25 May 2011.

¹⁶⁰ Schedule 1, By-law 14(4).

¹⁶¹ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p10.

¹⁶² Mrs Eleanor Logiudice, Principal/Director/ Licensee of the Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p9.

¹⁶³ Regulation 107(4) *Body Corporate and Community Management* (Standard Module) Regulation 2008 (Queensland).

¹⁶⁴ Mrs Eleanor Logiudice, Principal/Director/ Licensee of the Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p9.

¹⁶⁵ Mr Ian Laird, Strata Titles Consultant, *Transcript of Evidence*, 23 February 2011 p9, letter from Mr Craig James, Representative of the Law Society, Western Australia, 30 March 2011.

¹⁶⁶ See for example Regulation 108(e) *Body Corporate and Community Management* (Standard Module) Regulation 2008 (Queensland), Section 115(3)(a) Unit Titles Act 2001 (Australian Capital Territory).

- 4.72 The Committee acknowledges the importance of lot proprietors having the capacity to vote at general meetings in order to participate in the management of the strata company.
- 4.73 The Committee remains concerned that the lack of engagement of resident and absentee lot proprietors, and in some cases lack of understanding of the strata company structure may result in a strata manager being able to exert inappropriate influence, through proxy votes, over the proceedings of a general meeting.
- 4.74 The Committee notes that a lot proprietor may be engaged by the strata company as the strata manager for the scheme.
- 4.75 In the majority of cases an Act of Parliament can only be amended or repealed by a further amendment passed by the Parliament. The Committee notes that the Act provides for by-laws in Schedule 1 and 2 of the Act to be amended or repealed by the strata company or in a management statement.¹⁶⁷

Conclusion

- 4.76 Potentially strata title managers can exercise inappropriate influence over proceedings of a strata company. The Committee does not consider such an outcome was intended by the Act. As previously discussed, the Act makes mention of strata managers only with reference to employment of a strata manager or terminating or shortening a service contract. See paragraph 3.41.**
- 4.77 Where a lot proprietor is appointed as a strata manager for the scheme the concerns outlined above would apply.**
- 4.78 A conflict of interest could arise where a strata manager was appointed under by-law 8(3) to act as a strata council member.**
- 4.79 Lot proprietors should be required to turn their attention to the appointment of a proxy for each general or extraordinary general meeting.**
- 4.80 Use of a prescribed form of appointment would assist those appointing a proxy to ensure all relevant information is provided. Standard forms are already used by some strata managers.**
- 4.81 Recommended amendments should be to a section of the Act that can only be amended or repealed by the Parliament.**

¹⁶⁷ See sections 5 and 42(2) *Strata Titles Act 1985*.

Recommendation 4: The Committee recommends that section 50 of the *Strata Titles Act 1985* be amended to provide as follows:

- i) Appointment of a proxy is to be confined to one meeting.**
- ii) The person entitled to vote at a general meeting must not appoint a strata manager of the scheme as a proxy.**
- iii) A strata manager or an associate of the strata manager cannot act as the chairperson of the strata company for the purposes of a general meeting.**
- iv) Recommendations 4(ii) and (iii) will apply in circumstances where the strata manager is also a lot proprietor of the scheme.**
- v) A member of the strata council may not appoint a lot proprietor, or a person representing a corporation which is a lot proprietor, to act in their place at a strata council meeting if the lot proprietor or representative is the strata manager of the scheme.**
- vi) A proxy is to be appointed using a form prescribed in regulations.**
- vii) The prescribed form should include provision for the giving of:**
 - specific voting instructions;**
 - a general voting power; or**
 - the power to abstain from voting on particular motions.**

APPOINTMENT OF A STRATA MANAGER

Standard contract

4.82 The Committee notes that standard contracts of appointment are already in use by some strata managers and that STIWA makes a standard contract available to its members.¹⁶⁸

4.83 The Committee received a submission indicating that disputes can arise out of a misunderstanding by a lot proprietor or strata council member in relation to what functions the strata manager is required to perform.¹⁶⁹ It was suggested to the Committee that a schedule of agreed services which could be amended to meet the requirements of individual strata companies would also be useful.¹⁷⁰ A further submission proposed that the Act be amended to require a strata management contract to be in writing and to list clauses that must be included.¹⁷¹

¹⁶⁸ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p2.

¹⁶⁹ Submission No 8 from Mr I Laird, 20 January 2010, p1,2.

¹⁷⁰ Mr Ian Laird, Strata Titles Consultant, *Transcript of Evidence*, 23 February 2011 p2.

¹⁷¹ Submission No 1 from Mr A.D Ikin, 2 December 2009 Attachment 1, p2.

4.84 In Victoria legislation requires that an instrument or contract of appointment must be in the approved form.¹⁷² A recently introduced South Australian Bill requires that a contract between a body corporate manager and a strata corporation must comply with conditions set out in the Act.¹⁷³

4.85 The Committee notes the capacity of a strata company to negotiate a contract of engagement with a strata manager will be variable. The New South Wales Better Regulation Office in reviewing the New South Wales licensing provisions noted:

*Consumers are infrequent purchasers of strata management services and would be unlikely to have the same level of knowledge and information as industry professionals.*¹⁷⁴

Conclusion

4.86 In relation to the appointment of a strata manager the Committee concludes that:

- **the appointment must be in writing; and**
- **a standard form of contract of appointment should apply.**

4.87 The Committee has formed the view that:

- **a standard form contract of appointment should be developed by the Department of Commerce in conjunction with STIWA and consumer representatives; and**
- **the standard form should be prescribed in regulations.**

4.88 The Committee considers that a standard form contract should include:

- **a comprehensive list of functions that can be delegated to a strata manager by the strata company with the capacity to include or exclude functions as desired;**
- **termination provisions; and**
- **a requirement for the declaration of any commissions, payments or benefits payable to the strata manager other than those payable by the strata company under the terms of the contract.**

¹⁷² Section 19(3) *Owners Corporation Act 2006* (Victoria).

¹⁷³ Clause 78B Statutes Amendment Community and Strata Titles Bill 2011.

¹⁷⁴ New South Wales Government Better Regulation Office, *Better Regulation Office Report Licensing of Selected Occupations*, April 2009, p38.

Recommendation 5: The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a new section requiring a contract appointing a strata manager to be in the prescribed form.

The prescribed form should include as a minimum:

- **A comprehensive list of functions that can be delegated to a strata manager by the strata company with the capacity to include or exclude functions as desired.**
- **Termination provisions.**
- **A requirement for the declaration of any commissions, payments or benefits payable to the strata manager other than those payable by the strata company under the terms of the contract.**

Management statement

4.89 The Committee received evidence that there can be confusion amongst lot proprietors about the role of the strata manager in particular, who the manager is obliged to report to and who instructs the manager.

4.90 It was suggested to the Committee by Mr Laird that confusion about the managers role could be clarified if, on appointment of a new strata manager, a plain english management statement was provided to lot proprietors setting out:

- Services they have agreed to provide;
- Services provided for an additional fee;
- Services they will not provide; and
- *“a clearly stated process of how individual lot proprietor can raise concerns, seek information, approval or have matters included on a general meeting agenda.”*¹⁷⁵

Conclusion

4.91 The Committee agreed that clarification of the manager’s role and advice to lot proprietors about their rights in relation to information and meetings would be beneficial.

¹⁷⁵ Submission No 8 from Mr Ian Laird, 20 January 2010, p3.

Recommendation 6: The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a section providing that, on the appointment of a strata manger, the manager shall provide to the lot proprietors a plain english statement containing the following information:

- **Services they have agreed to provide.**
- **Services provided for an additional fee.**
- **Services they will not provide.**
- **Details of how an individual lot proprietor can raise concerns, seek information, approvals or have matters included on a general meeting agenda.**

COMMISSIONS

4.92 The Committee has been advised that strata managers accept commissions from parties whom they engage to provide a service to the strata company. Mr Atkinson of STIWA told the Committee:

There is a practice around Australia, not just in WA, of strata company managers receiving a significant part, not the majority, of their income from commissions.

Those commissions are required to be disclosed by virtue of an ASIC class order. My experience is that they are routinely disclosed. You see in the standard contract that STIWA has that we have a provision there for managers to disclose their commissions that they receive, who they receive them from and how much. My experience is that the dominant insurer here is very proactive in doing what it can to ensure that managers do disclose the fact that they are receiving a commission. My view is that it is entirely appropriate that strata company managers receive a commission. Insurance brokers receive a commission. They are acting effectively under the aegis of the insurer. The insurer is required to supervise them to some limited extent under the FSRA provisions. They are doing work on behalf of the scheme to the benefit of the scheme.¹⁷⁶

4.93 The Committee notes also the comments of the Strata Community Australia (Vic);

SCA(Vic) believe the practice of managers receiving insurance commissions is legitimate and in the best interests of the owners corporation. There should be no change to the current practice. If

¹⁷⁶ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p7.

government moves to outlaw this practice then at least one year's transitional lead time is required before implementation in order for managers to be able to adjust management fees commensurately. ...

... Management fees are already currently subsidised by insurance commissions [by about 20%]. In the absence of insurance commissions, management fees would increase commensurately to compensate.

According to strata industry benchmarking study reports, insurance commissions make up about 14% of an owners corporation management business' income. Only two sources rank higher-managements fees and disbursements.¹⁷⁷

- 4.94 The Committee received evidence from lot proprietors that insurance commissions were payable to strata managers at 10% or 20% of the premiums collected.¹⁷⁸ The Committee heard that the annual insurance premium paid by one strata company for a scheme comprising of approximately 60 units was over \$30,000.¹⁷⁹
- 4.95 In relation to the accepting of commissions by strata managers, the Committee acknowledges that a strata manager's contract of engagement may make provision for the declaring and accepting of commissions. The practice of taking a commission appears to be common where a strata manager is an Authorised Representative of an insurance company.
- 4.96 The Committee received anecdotal evidence of commissions being paid to strata managers in the process of engaging services other than insurance.¹⁸⁰
- 4.97 Evidence of concerns about the receipt of undeclared commissions by strata managers was also provided to the Committee.¹⁸¹
- 4.98 The view was also expressed to the Committee that the taking of commissions by strata managers should be prohibited.¹⁸²
- 4.99 The Committee has noted in the strata management contracts it has viewed clauses which:
- acknowledge that a strata manager may be offered commissions in the course of providing services as directed by the strata company;
 - set out that a strata manager must declare any commission offered, in writing, to the Council; and

¹⁷⁷ Email from Mr Rob Beck, General Manage, Strata Community Australia Vic. 28 July 2011.

¹⁷⁸ Submission No 24, Private submission, Submission No 3 from Mr K Savell, 10 December 2009.

¹⁷⁹ Submission No 3 from Mr K Savell, 10 December 2009, p2, Submission No 24 Private.

¹⁸⁰ Submission No 24 Private submission, Submission No 25 from Mr WK O'Brien JP FCPA, 16 December 2009.

¹⁸¹ Submission No 3 Mr K Savell, 10 December 2009, p2, Submission No 5 from Mr RM Healy, 18 January 2020, Submission No 6 from Mrs M Ielati, 18 January 2010.

¹⁸² Submission No 3 Mr K Savell, 10 December 2009, Submission No 24 Private.

- agree that the strata company will not unreasonably withhold its consent to the strata manager retaining a commission.

4.100 The Committee has the following concerns in relation to the taking of commissions by strata managers:

- Firstly, it should, in the Committee's view be clear to the strata company what the true cost of the service provided is. The Committee's concern is that the practice of accepting commissions is not transparent or helpful and the taking of commissions can hide and distort the true cost of the provision of a service.
- Secondly, if a strata manager will receive a commission in the event that a certain service provider obtains a contract the capacity for the strata company to know that it is receiving the best value for money is, on the face of it, compromised. The Strata company rightly expects the strata manager to act in its best interests. The Committee considers this relationship could be seen as compromised when the strata manager receives a commission, even when the commission is declared, from a particular service provider.
- Thirdly, commissions received by the strata manager when performing the role could be seen as part of the financial reward received by them for the performance of the management role. The strata council may wish to take into account those amounts when negotiating its contract of engagement with the strata manager.

Conclusion

4.101 **In an environment where the information available to the strata manager may far outweigh the information available to the strata company transparency of transactions is vital.**

4.102 **The Committee considers that the strata company should at all times:**

- **be made aware of any commissions which are payable to the strata manager; and**
- **retain the discretion to withhold consent to the seeking or receiving of a commission or commissions by a strata manager.**

Recommendation 7: The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a section providing that:

- i) A strata manager must disclose to the strata company all commissions or moneys payable to the strata manager in the course of the strata manager's term of engagement.**
- ii) Failure to disclose a commission is an offence.**
- iii) A strata company at all times retains the discretion to withhold its consent to the strata manager seeking or receiving a commission.**

CHAPTER 5

LEAD AGENCY

- 5.1 The Committee has heard concerns of lot proprietors in their individual capacity and in some cases as members of strata councils that they have no recourse to advice and assistance when attempting to resolve disputes with strata managers.
- 5.2 A positive licensing system accompanied by a series of conduct requirements will, in the Committee's view, substantially assist with the resolution of concerns it has heard. There are concerns that remain outstanding in relation to the capacity of lot proprietors to seek advice or information. In the Committee's view difficulty in accessing impartial and accurate information or advice can lead to an escalation of disputes which might otherwise be resolved. Similarly facilitating preliminary negotiations and conciliation may also assist with resolving disputes at an early stage.
- 5.3 What has become apparent to the Committee is that currently advice and information services provided to lot proprietors and strata councils are fragmented resulting in a situation where a lot proprietor or strata council may have to contact several agencies before obtaining an answer to their question. In some cases no assistance is available and frustration with that final answer is compounded by the series of inquiries that preceded it.
- 5.4 This fragmentation is acknowledged by both Landgate and the Department of Commerce.¹⁸³
- 5.5 Mr Bruce Roberts, Registrar of Titles, General Manager of Operations, Landgate noted that there was no clear accountability in the Western Australian Legislation in relation to providing advice about strata managers. He noted that the accountability for advising on strata managers had been "chopped up" with organisations taking on the responsibility of certain parts of the industry in an endeavour to address the 'legislative vacuum' created in this area.

*Mr Roberts: I guess that you are in that wicked problem of government that crosses both areas in this area, because you are going to have an element of title advice, so someone has got to be able to read a strata plan and understand it, and you are also going to have an element that is really around consumer affairs and the issues that happen in disputes between parties.*¹⁸⁴

¹⁸³ Mr David Hillyard, Director, Industry and Consumer Services, Department of Commerce, *Transcript of Evidence*, 14 March, p9. Ms Anne Driscoll, Commissioner for Consumer Protection, Department of Commerce, *Transcript of Evidence*, 14 March, p10.

¹⁸⁴ Mr Bruce Roberts, Registrar of Titles, Landgate, *Transcript of Evidence*, 14 March 2011, p5.

- 5.6 Landgate is the Department which administers the Act. Landgate views itself primarily as a land registry with expertise in relation to registration of strata plans and boundaries.¹⁸⁵ Landgate produces a publication that provides information on a range of other issues in the Act. In relation to the giving of advice Landgate informed the Committee:

*As our advisory staff are not legally trained or expert in the operation and management of strata or advice and assistance is necessarily limited in relation to matters outside of Landgate's functions. We do not for example offer legal interpretations. Nor do we assist in the resolution of disputes between strata lot proprietors and strata companies or strata managers. However, wherever possible, we do try to provide guidance on where appropriate assistance may be obtained.*¹⁸⁶

- 5.7 Landgate advised that they refer matters to the State Administrative Tribunal however there is no memorandum of understanding in relation to those referrals.¹⁸⁷

- 5.8 Of further interest to the Committee was the question of who enforced penalties under the Act. The Committee wrote to Landgate with its enquiry and received the following advice:

Where jurisdiction is conferred on SAT ... the provisions usually spell out who can make the application and who SAT's orders may be directed to.

In the other sections to which you refer to is not clear who may prosecute the action as the sections do not deal with the issue and the STA contains no general provision regarding prosecution action. Landgate understands from discussion with Parliamentary Counsel and the State Solicitor's office that as the agency responsible for administration of the STA Landgate could commence a prosecution action. However Landgate is not resourced currently to undertake such action...

*... Land gate has not commenced a prosecution action under any of the sections of the Act referred to in question nine and is not aware of any other person commencing such a prosecution*¹⁸⁸.

- 5.9 Mr Gary Newcombe, Director, Strategic Policy and Development, Department of Commerce noted that he saw Landgate as the lead agency because it has the technical expertise in land titles.

¹⁸⁵ Ibid, p3.

¹⁸⁶ Letter from Mr Mike Bradford, Chief Executive, Landgate, 9 March 2011, Attachment, p7.

¹⁸⁷ Mr Bruce Roberts, Registrar of Titles, Land, *Transcript of Evidence*, 14 March 2011, p9.

¹⁸⁸ Letter from Mr Mike Bradford, Chief Executive, Landgate, 18 April 2011, p2.

So what I would suggest from my perspective would be one of those two things: either Landgate, as the senior agency, with the responsibility for the titles structure, or some form of integrated service delivery under which the customer does not have to go to one or two different places; they go to one place, but the agencies work together to try to deliver it.¹⁸⁹

- 5.10 Mr Newcombe's view would alter, however, in the event that licensing of strata managers were to be introduced

***Mr Newcombe:** If licensing were introduced, then we would expect those sorts of issues about strata managers to be core business for us. They would be about the licensing obligations, information/education. But it comes back to that whole thing as well as what is funded, because there is potentially a significant build-up of interest and demand, and it could not just be layered on top of the organisation without the funding for it. But certainly if licensing was introduced, if we come back to that point, and that is the anchor on which conduct is regulated, then you would be looking at that function to be with us, if we were the licensing entity.¹⁹⁰*

- 5.11 Mr Newcombe was of the view that introduction of licensing for strata managers would not necessarily have to be accommodated in the Act:

***Mr Newcombe:** Not necessarily. That would in fact keep the Strata Titles Act to more than the technical issues about strata titles to Landgate, which is where it belongs. But if you were introducing licensing and conduct provisions, we would need a new act or amendments for conduct, and that could be stand-alone and not connected to strata titles existing property laws." So you might bring those together.¹⁹¹*

- 5.12 Mr Newcombe noted that the Department already had within its portfolio "... real estate agents, settlement agents and, to a lesser extent but still, land valuers. There are three property industry occupations that are subject to a positive licensing regime with conduct controls".¹⁹²

Conclusion

- 5.13 The Committee has concluded that there is a clear need for the Western Australian Government to establish which agency is responsible for the requirement to:**

¹⁸⁹ Mr Gary Newcombe, Director, Strategic Policy and Development, Department of Commerce, *Transcript of Evidence*, 14 March, 2011, p4.

¹⁹⁰ Ibid, p10.

¹⁹¹ Ibid p10.

¹⁹² Ibid p11.

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- provide legal advice, assisted negotiation and conciliation in order to attempt to resolve disputes arising out of owning and residing in a strata title property at the earliest possible stage;
 - provide appropriate referrals to SAT, licensing bodies and for other avenues as required;
 - provide education and resources to strata title lot proprietors and councils;
 - facilitate collation of information about the volume and nature of inquiries in order to accurately inform policy development and to facilitate initiatives to address problems at a global rather than individual level;
 - provide advice on enforcement of orders made by SAT; and
 - provide the above services by way of a one stop service so an individual's advice and information requirements can be met at the one location.
- 5.14 In the Committee's view the Department of Commerce is best placed to oversee the development of a one stop service given its experience in regulation of property industry, consumer protection and conciliation of disputes, and should be funded accordingly.
- 5.15 It is of great concern to the Committee that the Act creates offences and yet there is not a Department who takes responsibility for prosecuting those offences. In the Committee's view this matter needs addressing as a matter of priority as protections built in to the legislation are not being enforced.
- 5.16 The Committee acknowledges that there are inherent complexities in a single department providing a one stop service namely the need :
- to contend with conflicts arising when both parties to a dispute contact the service for advice;
 - to create a system that counters the situation arising where an agency is advising an individual as to whether they had breached the act when that agency also has an enforcement role in relation to the Act;
 - to liaise effectively with Landgate to insure their expertise is harnessed in delivering advice in relation to Title issues. This arrangement should be formalized through legislation or a memorandum of understanding; and
 - for all agencies to understand the issues and cooperate in the development of practical solutions.
- 5.17 The Committee further acknowledges the need for legislative amendment to empower the relevant agency to provide conciliation and to enforce penalties.
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5.18 The Committee is of the view that legislative amendment is required to divide the Act into two targeted Acts. One targeted Act should provide for all matters in relation to creation, variation, termination and conversion of all strata schemes and be administered by Landgate. The other targeted Act should contain the strata manager licensing and conduct provisions along with strata company management provisions and be administered by the Department of Commerce.

Recommendation 8: The Committee recommends that:

- The Department of Commerce should be the lead agency for strata title matters.
- The current Act should be divided into two new Acts.
- Act 1 should provide for all matters in relation to creation, variation, termination and conversion of all strata schemes and be administered by Landgate.
- Landgate should maintain responsibility for the registration of strata titles.
- In the interim Landgate should be given power to prosecute offences under the *Strata Title Act 1985* and be funded accordingly.
- The Department of Commerce should administer Act 2 which should contain the strata manager licensing and conduct provisions along with strata company management provisions.
- The Department of Commerce should be funded to provide an information, conciliation and initial legal advice service for all strata title queries.
- The Department of Commerce be responsible for coordinating the provision by Landgate of advice in its area of expertise through the one stop service. This relationship should be formalised either through a memorandum of understanding or in another form.
- Landgate should be required to do all things necessary to facilitate the provision of its advice through the one stop service.
- Any legislation developed in relation to strata titles should contain an express power for prosecution of offences by the relevant government department.

CHAPTER 6

FURTHER MATTERS

AUDIT OF STRATA COMPANY'S FINANCIAL STATEMENTS

6.1 The Committee gave consideration to the question of whether the Act should impose a requirement for a compulsory audit of a strata company's annual statement of accounts. The Committee was seeking to determine whether such an audit would reduce the instance of misuse of funds and improve the standard of record keeping and inadequate statements of account.

6.2 The Committee heard competing views on the subject of imposing a compulsory audit.

6.3 Mr Atkinson, considered that auditing would be a good idea for larger schemes noting that:

*Some schemes are operating with a budget of either nothing or a couple of hundred of dollars a year, and I am aware of schemes that have budgets of a few million dollars a year.*¹⁹³

6.4 The Committee also heard that Mrs Logiudice was supportive of a legislative requirement that strata company's financial statements be audited. She advised the Committee that in her experience the audit cost about \$3000 and some of the smaller strata companies did not want to proceed on that basis. Mrs Logiudice noted in her evidence to the Committee that a five lot scheme may be a five story building and problems may arise in small schemes:

*Mrs Logiudice: Do not draw any lines because if you have got, say, five-lot schemes like in Scarborough, you know, all the little villas—five to 10-lot schemes—you can milk a lot of money out of them as much as anything over a long period of time. I do not think you should draw a line anywhere.*¹⁹⁴

6.5 Mr Laird indicated that he would probably not support a compulsory requirement to audit financial statements but would be more inclined to enforce proper presentation of accounts. He noted:

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

¹⁹³ Mr Mark Atkinson, President, Strata Titles Institute of Western Australia (Inc), *Transcript of Evidence*, 23 February 2011, p4.

¹⁹⁴ Mrs Eleanor Logiudice, Principal/Director/Licensee, Logiudice Property Group, *Transcript of Evidence*, 16 February 2011, p11.

*audited the 63 000 or 64 000 strata companies that exist in this state, one thing would change.*¹⁹⁵

- 6.6 Mr Craig James representing the Law Society of WA was of the view that a strata company should have a choice as to whether its financial statements were audited or not.¹⁹⁶
- 6.7 The Committee also heard from Mr Glenn Clarke, Deputy Auditor General, and Mrs Michelle Shafizadeh, Acting Assistant Auditor General, Standards and Quality Division on the subject of audits.
- 6.8 In response to a question about whether an audit was of more value if it was accompanied by a requirement to lodge it with a regulatory agency Mr Clarke noted:

There is certainly more value in lodging a report with a regulatory agency. The reason why is that it just strengthens the government's framework...

*... our concern if it is not being lodged with a regulatory agency is most likely that strata companies are either complacent about an audit being done and so it will not get done or they simply do not see the value in it being done so it will not get done. If you are going to go down that route, if you were not going to require the auditor's report to be lodged, there should probably at least be capacity for the regulatory body to undertake random checks to see whether the audits are being done.*¹⁹⁷

- 6.9 The Committee notes that there is not currently provision for a regulatory body to oversee the activities of strata companies.

Conclusion

- 6.10 The Committee concluded that imposition of a legislative requirement to audit strata companies would impose costs which would outweigh potential benefits of the process.**
- 6.11 In reaching its conclusion the Committee took into account:**
- **its recommendation that strata managers be licensed;**¹⁹⁸
 - **to achieve maximum effect from a compulsory audit a regulatory body would need to be operating; and**
 - **its recommendations in relation to financial reporting requirements.**¹⁹⁹

¹⁹⁵ Mr Ian Laird, Strata Titles Consultant, *Transcript of Evidence*, 23 February 2011 p9.

¹⁹⁶ Letter from Mr Craig James, Representative of the Law Society, Western Australia, 30 March 2011.

¹⁹⁷ Mr Glen Clarke, Deputy Auditor General, Office of the Auditor General, *Transcript of Evidence*, 23 March 2011, p6.

¹⁹⁸ See Recommendation 1, p47.

¹⁹⁹ See Recommendation 9, p74.

REPORTING TO THE STRATA COMPANY

- 6.12 It has become apparent to the Committee that access to adequate information would allow lot proprietors to monitor the activities of the company and assist in averting or resolving disputes. These concerns are relevant in circumstances where a strata manager is appointed but also where the strata council performs the strata company's functions whether the function is performed by the strata council or delegated to a strata manager.
- 6.13 The Committee has considered the reporting requirements under the Act and those of other states. It also notes that CTAC²⁰⁰ have proposed amendments which will facilitate lot proprietors obtaining information from strata managers on request.²⁰¹ The Committee supports the amendments proposed by CTAC and has made further recommendations in relation to provision of information to lot proprietors as set out below.

Financial reporting requirements

- 6.14 The Act currently requires strata companies to keep "proper books of account" and to prepare from those books an annual 'statement of accounts'. The Act does not contain a definition of either of these terms.²⁰²
- 6.15 The strata company is required to establish a fund for administrative expenses that is in its opinion sufficient for the control and management of the common property, payment of insurance premiums and discharge of any other obligations.²⁰³
- 6.16 A strata company may establish a reserve fund for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the strata company likely to arise in the future.²⁰⁴
- 6.17 The strata council may delegate the above functions to a strata manager.
- 6.18 Books of account and financial statements may be prepared by the strata council or by a strata manger. The discussion below applies to this topic generally and is not limited to situations where a strata manger has been engaged.
- 6.19 Throughout this report reference has been made to the impact of inadequate financial records on strata companies. Lot proprietors, auditors and police have complained about the way in which inadequate records compromise attempts to ascertain the history and appropriateness of the management of a strata company.
- 6.20 Mr Laird noted the lack of understanding of what is required in financial statements;

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

²⁰⁰ Community Titles Advisory Committee.

²⁰¹ Letter from Mr Mike Bradford, Chief Executive, Landgate, 9 March 2011, Attachment, p1.

²⁰² *Strata Titles Act 1985* ss35(f), 35(1)(g).

²⁰³ *Ibid* s36(1).

²⁰⁴ *Ibid* s36(2).

*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.*²⁰⁵

- 6.21 The Committee received evidence from lot proprietors in relation to their concerns about accounts presented to them by strata managers:

When we first signed up the strata manager, we believed we were going to get accounts. When the first lot came through, it raised great concern and she gave an undertaking, and I have got that documented, to upgrade her financial package, which never happened....

*... The proprietors and the council of lot proprietors are being asked to rely on constructed ledger figures which in the case of our strata manager are a mishmash of cash and accrual system mixed, which do not comply with any Australian standards of accounting practice whatsoever.*²⁰⁶

- 6.22 The Committee considers that the requirement to maintain and present accurate and correctly presented financial records is vital to the successful administration of a strata company. The requirement is important whether the function is performed by the strata council or delegated to a strata manager.
- 6.23 The Committee examined methods of insuring an appropriate and uniform standard in relation to annual statements of accounts presented to strata companies.

Australian Accounting Standards

- 6.24 The Committee considered the question of whether the Act should be amended to apply an external standard to the financial statements presented to a strata company.
- 6.25 The Committee explored this option with the Australian Accounting Standards Board (Board).
- 6.26 The Board advised that Australian Accounting Standards (Standards) apply to entities that are required to prepare general purpose financial statements.

*These Standards are comprehensive and are designed to deal with a wide range of circumstances that might, for example, be encountered in fairly large entities.*²⁰⁷

²⁰⁵ Mr Ian Laird, Strata title consultant, *Transcript of Evidence*, 23 February 2011, p6.

²⁰⁶ Private evidence 25 May 2011.

²⁰⁷ Letter from Mr KM Stevenson, Chairman and CEO, Australian Accounting Standards Board, 21 July 2011, p1.

- 6.27 The Board noted that there were two tiers of Standards. Tier 1 applied to entities such as those listed on the stock exchange, insurance companies and banks and similar entities referred to as “publicly accountable” entities. Tier 2 was for entities that were not in Tier 1 but who prepared general purpose statements.²⁰⁸
- 6.28 The Board advised the Committee that in the event that a regulator decided that only some of the Standards applied to strata companies then the financial statements created in keeping with the identified Standards would be known as special purpose financial statements.²⁰⁹
- 6.29 The Board advised that a number of factors needed to be considered in relation to a requirement to comply with Australian Accounting Standards. These factors included:
- a decision about whether a general purpose or a special purpose financial statement was required based on an assessment of users and their needs;
 - a decision about whether separate reporting requirements for different classes of users would be required; and
 - whether the costs of preparing general purpose statements was warranted in the circumstances.²¹⁰
- 6.30 The Board also noted that accountants had certain duties under codes of ethics and auditing standards with which they must comply. It noted that regulators would also need to consider whether it was necessary to specify which individuals would be permitted to prepare or audit the financial statements.²¹¹
- 6.31 The Board also brought to the Committee’s attention the point that situations exist where standards have been imposed where they are not required.²¹²

Current provisions

- 6.32 The Committee considered the current provisions in relation to books and statements of account (see paragraph 6.14). On consideration of the evidence it received in relation to problems with financial statements it appeared to the Committee that more detailed legislative requirements would assist in providing uniformity and in some circumstances an improved quality of financial statements.
- 6.33 The Committee raised with Mr Laird the concept of developing a form which set out matters which should be included in a financial statement presented at an annual general meeting. Mr Laird received the proposal positively noting that the devising of such a form would be a simple matter.²¹³

²⁰⁸ Ibid, p1.

²⁰⁹ Ibid,p2.

²¹⁰ Ibid.

²¹¹ Ibid, p3.

²¹² Ibid, p2.

²¹³ Mr Ian Laird, Strata title consultant, *Transcript of Evidence*, 23 February 2011, p6.

- 6.34 As has been noted previously there is a wide range in the level of financial knowledge amongst lot proprietors and strata managers.
- 6.35 Section 106 of the *New South Wales Strata Schemes Management Act 1966* sets out in detail requirements for financial statements prepared by an owners corporation (See **Appendix 3**). The Committee considered that detailed provisions of this nature could be used by lot proprietors to ensure they have received the appropriate documentation. It also provides for:
- a level of comparability; and
 - minimisation of the disparities between financial information received by different strata companies.

Conclusion

- 6.36 The Committee has concluded that the current requirements in relation to books of account and financial reporting are inadequate.**

Recommendation 9: The Committee recommends that:

(1) Landgate, in conjunction with Strata Community Australia (WA) Inc and consumer representatives, work with the strata title industry to develop a set of requirements for:

- **Keeping books of account.**
- **The content of financial statements of account including at a minimum:**
 - i) a statement of cash flow;**
 - ii) an income and expenditure statement;**
 - iii) a balance sheet; and**
 - iv) copies of the statements provided by the authorised deposit taking institution related to the trust accounts that the strata manager is required to operate in keeping with Recommendation 3.**

(2) The requirements in (1) above be prescribed in the *Strata Titles General Regulations 1996*.

Annual Report on Operations

- 6.37 The Committee heard evidence from lot proprietors who were frustrated by unsuccessful attempts to obtain information from strata managers and in some cases the strata council. On occasions, requests made of strata managers would have been more appropriately made to the council but lot proprietors may not have been aware of this. The Committee considers this situation will be assisted by the provision of a management statement see paragraph 4.90.

- 6.38 The provision of more detailed information about the operations of the strata managers would assist in informing lot proprietors and potentially in avoiding disputes.
- 6.39 The Committee noted the requirements of clause 62 of the *Queensland Body Corporate and Community Management (Standard Module) Regulation 2008* to provide quarterly reports to the body corporate. (See **Appendix 4**). The Committee considered the type of information required under that legislation would provide lot proprietors with access to a range of material about the strata manager' and councils activities.
- 6.40 The Committee notes that a quarterly reporting requirement as required in the Queensland regulation may be onerous for some strata councils.

Recommendation 10: The Committee recommends that:

- **Landgate in conjunction with Strata Community Australia (WA) Inc, the strata title industry and consumer representatives, develop a list of operational reports to be presented to lot proprietors, at the annual general meeting and on one other occasion during the course of a year.**
- **The above requirements be prescribed in the *Strata Titles General Regulations 1996*.**

DEFINITION OF STRATA MANAGER

- 6.41 The Committee notes the CTAC has proposed that the Act be amended to include a definition of strata manager as:

*a person who for fee or reward is engaged to provide management services to a strata company.*²¹⁴

- 6.42 The Committee notes that the CTAC proposal is that a chairman, secretary or treasurer of a strata company performing their statutory duties be classified as voluntary strata managers even if they receive an honorarium.²¹⁵
- 6.43 The Committee supports the inclusion of a definition of strata manager in the Act.

ROLE OF VOLUNTEER STRATA MANAGER AND OFFICE HOLDERS

- 6.44 Whilst the Committee has not pursued the question of whether volunteer strata managers should be subject to any form of regulation the matter was raised in evidence.
- 6.45 Mr Laird in suggesting that the Act set out what duties could be delegated to a strata manager made the following comment:

²¹⁴ Letter from Mr Mike Bradford, Chief Executive, Landgate, 25 March 2011, Attachment, p1.

²¹⁵ Ibid.

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.²¹⁶

6.46 Landgate in response to a question on this matter from the Committee said:

The regulation of volunteer strata managers is a complex issue. Regulation would require that a strata manager be trained and adhere to strong management practices. This additional workload and responsibility may discourage volunteers from providing their services to members of a strata scheme and may affect smaller schemes where volunteers generally operate.²¹⁷

6.47 As indicated by Mr Laird, risks faced by lot proprietors are the same whether that manager is engaged for reward or is a volunteer.

6.48 The lack of skill and probity requirements for volunteer managers who may or may not be strata council members exposes not only the lot proprietor to potential legal action but also the volunteer. The Committee is concerned that both the volunteer and the lot proprietor may be put at risk by the current situation.

6.49 Whilst this matter has come to the Committee's attention, it has not heard sufficient evidence to draw any conclusions. It does, however, take this opportunity to bring this matter to the attention of the Minister for Lands.

STATE ADMINISTRATION TRIBUNAL

6.50 The Act authorises State Administrative Tribunal (SAT) to hear disputes arising under the legislation.

6.51 The Committee notes that current recommendations of the CTAC in relation to strata managers and the SAT:

- allow strata councils to refer disputes with strata managers to SAT; and
- empower SAT to order a person who has possession or control of records, books of account, keys or property of the strata company to be returned to the strata company.

²¹⁶ Mr Ian Laird, Strata title consultant, *Transcript of Evidence*, 23 February 2011, p6.

²¹⁷ Letter from Mr Mike Bradford, Chief Executive, Landgate, 9 March 2011, Attachment, p8.

- 6.52 The Committee supports the above proposals. The capacity for SAT to hear disputes between strata councils and strata managers is, in the Committee's view, a positive step in resolving disputes between strata councils and their managers.
- 6.53 The Committee heard from Mr Clive Raymond, Senior Member, SAT, who advised the Committee that SAT supports the concept of licensing strata managers.²¹⁸ Mr Raymond was also supportive of a lead agency, noting advice provided by such a body would be "extremely beneficial". Mr Raymond pointed out that, whilst reality testing could occur in mediation, SAT could not advise parties. He noted that previous attempts to set up a voluntary advice system for SAT had been unsuccessful and SAT would welcome the establishment of an agency to which they could refer parties for legal advice.²¹⁹
- 6.54 SAT does not enforce the orders that it makes in relation to the Act. If for example a person receives an order for the payment of money and the payment is not forthcoming that person must lodge (file) that order at the appropriate court along with an affidavit. Once lodged the order is treated as an order of the court. The order can then be enforced through the court's processes. Where an order is for a party to do or refrain from doing something the order may be enforced through the Supreme Court.
- 6.55 It is possible for SAT to make an order that failure to comply with a SAT order is a criminal offence for which a penalty can be imposed under s95 of the *State Administrative Tribunal Act 2004*.
- 6.56 The Committee heard evidence that difficulties could arise in relation to the enforcement of SAT orders.²²⁰
- 6.57 The Committee raised with Mr Raymond the point that people who receive an order in their favour may not be aware that they could return to the court to seek an order under section 95 if the other party failed to comply with the order. Mr Raymond noted the Committee's concerns and advised;

*I have made a note of this issue. We will adapt our processes to ensure that parties are given information specifically about enforcement, and I think that that can be reinforced by providing a copy of the pamphlet at the same time.*²²¹

- 6.58 Mr Raymond advised the Committee that SAT had recommended that section 84 of the Act be amended to increase the maximum monetary limit that SAT could award in a strata title matter from \$1000 to equate with the maximum limit in the Magistrates Court jurisdiction (currently \$75,000):

²¹⁸ Mr Clive Raymond, Senior Member, State Administrative Tribunal of Western Australia *Transcript of Evidence*, 23 March 2011, p8.

²¹⁹ Ibid, p10.

²²⁰ Mrs Norma Parker, Private Citizen, *Transcript of Evidence*, Wednesday, 17 November 2010. Submission No 12, Private submission.

²²¹ Mr Clive Raymond, Senior Member, State Administrative Tribunal of Western Australia *Transcript of Evidence*, 23 March 2011, p8.

At the moment we have a maximum monetary limit of \$1 000, which is clearly wholly inadequate. In fact, it is very rare that anyone brings a money claim before the tribunal because it is just not worth it; you might as well go to the court....

...Our recommendation is that that level should be increased to the equivalent of the Magistrates Court and be framed in a way that there is an automatic uplift whenever the Magistrates Court jurisdiction increases. That jurisdiction is currently \$75 000. If that amendment is granted, for instance, then there might be a whole raft of new claims that we have not seen to date. I have made the point that you could have claims against strata managers where they have breached their duties in some way and that has resulted in loss. Conversely, depending on how the legislation is framed, you might also have claims by strata managers for payment of fees.²²²

- 6.59 The Committee asked Hon Justice John Chaney, President, SAT if there were any recurrent issues in relation to the Act that it would like to bring to the Committee's attention. On this point Mr Raymond advised that section 104 (2) of the Act requires that any order of the tribunal be accompanied by a statement setting out the reasons of the tribunal. Mr Raymond noted that this requirement seems to be a carry over from the earlier regime where the Strata Titles Referee decided all applications on the documents provided even in urgent situations. He pointed out that SAT can deal with urgent applications far more quickly than the referee would. In some cases a matter could be heard on the same day. The requirement for written reasons creates practical difficulties which could be resolved with an amendment to the Act so that the normal SAT regime under section 79 of the *State Administrative Tribunal Act 2004* applied.²²³ Section 79 is as follows:

79. Written decision or reasons using transcript

A written transcript of the part of the proceeding in which a decision is given orally or reasons are given orally is sufficient for a provision of this Act that requires the decision or reasons to be in writing.

Conclusion

- 6.60 The Committee concluded that the amendments sought by SAT in relation to monetary orders was necessary if SAT were to provide a realistic alternative for disputes involving strata managers where an order for payment of money is sought.**

²²² Ibid, p11.

²²³ Ibid, p13. See also Briefing note tabled by Mr Clive Raymond. Senior Member, State Administrative Tribunal of Western Australia 23 March 2011.

6.61 The Committee also considered that SAT’s capacity to respond to an urgent application should be facilitated and on this basis supports SAT’s view that the amendment discussed at paragraph 6.59 above should occur.

Recommendation 11: The Committee recommends that:

- **Section 84 of the *Strata Titles Act 1985* is amended so the maximum monetary limit that the State Administrative Tribunal can award is equal to the Magistrates Court jurisdiction.**
- **Section 104 (2) of the *Strata Titles Act 1985* be amended to allow s79 of the *State Administrative Tribunal Act 2004* to apply.**

RESERVE FUNDS

- 6.62 The Act provides for the creation of a reserve fund to be established by a strata company. Creation of a reserve fund is not compulsory. The reserve fund is established for the purposes of meeting non routine contingent expenses and major expenses of the strata company that are likely to arise in the future.²²⁴
- 6.63 The Act empowers the strata company to invest any moneys in its administrative or reserve fund.
- 6.64 The Committee has become aware that funds held in reserve funds may be significant. It again notes the comments of CHU in relation to potential risks posed to future maintenance requirements if funds set aside for those maintenance requirements are jeopardised by “*lack of good financial management of the funds*”.²²⁵
- 6.65 Reserve funds are the responsibility of the strata company and are likely to be managed by the strata council or possibly a strata manger.
- 6.66 As noted previously there is no legislative requirement for Fidelity Guarantee insurance. In any event the Committee heard that Fidelity Guarantee insurance may only cover part of the reserve fund depending on the circumstances.²²⁶
- 6.67 The Committee has not examined the question of whether the provisions of the Act provide adequate safeguards for reserve funds in relation to misappropriation or incompetent investment. The Committee draws this matter to the attention of the Minister for Lands as a matter that may warrant further consideration.

RETIREMENT VILLAGES AND STRATA TITLE

- 6.68 The Committee was made aware of the capacity for disputes to arise in retirement villages in relation to the correct application of the requirements of the Act.²²⁷ The

²²⁴ Section 36(2) *Strata Titles Act 1985*.

²²⁵ Letter from Ms Leonie Milonas, WA State manager, CHU Underwriting Agencies Pty Ltd 17 June 2011, p6.

²²⁶ Ibid, p5.

confusion can arise for example over whether expenditure on certain items should be sourced from strata company funds or from another source of village funds. The mixing of strata company funds with those from the retirement village is another issue which has arisen.²²⁸

- 6.69 The Department of Commerce has identified concerns in this area in its review of retirement villages legislation;

*Concerns related to strata title arrangement have arisen since the commencement of the review. Retirement village residents who hold a strata title are bound by both the provisions of the Strata Titles Act, as well as the Retirement Villages Act. This can cause some confusion because there are some areas where the Acts overlap and this can lead to uncertainty about rights and responsibilities under the legislation.*²²⁹

- 6.70 The *Retirement Villages Act 1992* is beyond the scope of the Committee's inquiry. Whilst it has not had an opportunity to examine the situation in any depth it is of concern to the Committee that an overlap of legislation creates uncertainty for an elderly population in their place of residence. The Committee strongly suggests that the Minister for Commerce prioritise resolution of the uncertainties discussed above.



Hon Max Trenorden MLC
Chairman

1 September 2011

²²⁷ Mrs Norma Parker, Private Citizen, *Transcript of Evidence*, Wednesday, 17 November 2010.

²²⁸ Parker and the Owners Of Timberside Villas-Strata Plan 27426 & ANOR [2006] WASAT 253 p18-23.

²²⁹ Government of Western Australia, Department of Commerce, *Statutory Review of Retirement Villages Legislation, Final Report*, November 2010, p136.

APPENDIX 1
LIST OF SUBMISSIONS RECEIVED

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LIST OF SUBMISSIONS RECEIVED

No.	Submission	Date
1.	Mr Anthony David Ikin, Private Citizen	02/12/09
2.	Mr Dudley Stow, President, Law Society of Western Australia	08/12/09
3.	Mr Kevin Savell, Private Citizen	10/12/09
4.	Mr Kenneth Leslie, Private Citizen	12/01/10
5.	Mr Mike Healy, Private Citizen	18/01/10
6.	Mrs Immacolata (Maria) Ielati, Private Citizen	18/01/10
7.	Mrs Norma Parker, Private Citizen	15/01/10
8.	Mr Ian Liard, Strata Titles Consultant	20/01/10
9.	Mr Bill Jeffrey, Private Citizen	21/01/10
10.	Ms Marcia Morgan, Private Citizen	25/01/10
11.	Mr John Dunsmore, Private Citizen	25/01/10
12.	Private	15/01/10
13.	Private	26/01/10
14.	Mrs Eleanor Logiudice, Principal, Director, Licensee, Logiudice Property Group	28/01/10
15.	Mr Craig Bradley, Director Agency Practice, Real Estate Institute of Western Australia	29/01/10
16.	Private	28/01/10
17.	Mr Mike Bradford, Chief Executive, Landgate	28/01/10
18.	Private	29/01/10
19.	Mr Mark Atkinson, President, Strata Titles Institute of Western Australia	28/01/10
20.	Mr Ciaran Westland, Executive Officer, Australian Institute of Conveyancers (WA Division)	29/01/10
21.	MagiXstrata	01/02/10

No.	Submission	Date
22.	Danae Coombs, Chartered Accountant	29/01/10
23.	Private	08/02/10
24.	Private	22/02/10
25.	Mr William Kent O'Brien, Private Citizen	16/12/09
26.	Mr D.R. Peiris, Private Citizen	29/07/10
27.	Ms Genette Keating, President, Consumers Association of Western Australia	12/07/11

APPENDIX 2
LIST OF WITNESSES

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LIST OF WITNESSES

Witness	Date
Mrs Norma Parker Private Citizen	17/11/10
Private	17/11/10
Private	17/11/10
Private	24/11/10
Private	24/11/10
Mrs Eleanor Logiudice Principal/ Director/Licensee Logiudice Property Group	16/02/11
Mr Graham Glasson President Australian Institute of Conveyancers Western Australia	16/02/11
Mr Ian Laird Strata Titles Consultant	23/02/11
Mr Mark Atkinson President Strata Titles Institute of Western Australia (Inc)	23/02/11
Ms Anne Driscoll Commissioner Consumer Protection Department of Commerce	14/03/11
Mr David Hillyard Director, Industry and Consumer Services Department of Commerce	14/03/11
Mr Gary Newcombe Director, Strategic Policy and Development Department of Commerce	14/03/11

Witness	Date
Mr Andrew Lee Manager, Strategic Policy Department of Commerce	14/03/11
Mr Craig James Representative Law Society of Western Australia Inc	14/03/11
Mr Bruce Roberts Registrar of Titles, General Manager Operations Landgate	14/03/11
Mr Graham Jeffery Acting Valuer-General, Manager Property and Valuation Services Landgate	14/03/11
Mr Duncan Watson Principal Policy Officer, Strategic Policy Landgate	14/03/11
Mr Clive Raymond Senior Member State Administrative Tribunal of Western Australia	23/03/11
Mr Glen Clarke Deputy Auditor General Office of the Auditor General	23/03/11
Ms Michelle Shafizadeh Acting Assistant Auditor General, Standards and Quality Office of the Auditor General	23/03/11
Mrs Anne Arnold Chief Executive Officer Real Estate Institute of Western Australia	23/03/11
Mr Tim Banfield Director Real Estate and Business Agents Supervisory Board	18/05/11
Private	25/05/11

APPENDIX 3

NEW SOUTH WALES STRATA SCHEMES MANAGEMENT ACT 1966

APPENDIX 3

NEW SOUTH WALES STRATA SCHEMES MANAGEMENT ACT 1966

106 Owners corporation must prepare financial statements

(1) An owners corporation must cause to be prepared financial statements for:

(a) the period that commences on the date of registration of the strata plan and ends on a date that is not earlier than 2 months before the date of the first annual general meeting, and

(b) each period that commences on the date up to which those statements were last prepared under this paragraph and ends on a date that is not earlier than 2 months before the next succeeding annual general meeting.

(2) The financial statements are to comprise only the following matters:

(a) a statement of income and expenditure for the administrative fund,

(b) a statement of income and expenditure for the sinking fund.

(3) Each financial statement must specify the fund, and the period, for which it is prepared.

(4) If the period is a period referred to in subsection (1), the financial statement for a fund must also specify the following:

(a) the balance carried forward in the fund from the previous period,

(b) the particulars and amount of each item of income of the fund received during the current period,

(c) the particulars and amount of each item of expenditure from the fund during the current period,

(d) the amount of the contribution to the fund determined for each person liable to make such a contribution,

(e) the balance outstanding for each such contribution,

(f) the cash in the fund at the end of the current period,

(g) the balance of the fund,

(h) in respect of each liability to contribute to the fund—any unpaid arrears and any balance outstanding,

(i) the extent to which, at the end of the current period, the fund is in debit or credit.

APPENDIX 4

***QUEENSLAND BODY CORPORATE AND COMMUNITY MANAGEMENT
(STANDARD MODULE) REGULATION 2008***

APPENDIX 4
QUEENSLAND BODY CORPORATE AND COMMUNITY
MANAGEMENT (STANDARD MODULE) REGULATION 2008

62 Body corporate manager's reports to body corporate

(1) A body corporate manager engaged under this part must give to each member of the body corporate a written report about the administration of the community titles scheme.

(2) The report must include details of each of the following—

(a) repairs and maintenance to the common property and body corporate assets proposed to be carried out in the 3 months following the date of the report;

(b) any matters—

(i) known to the body corporate manager about the condition of the common property or the body corporate assets; and

(ii) that the body corporate manager reasonably considers to be relevant to future performance of the body corporate's duty to maintain common property and body corporate assets;

Note—

See sections 159 (Duties of body corporate about common property—Act, s 152) and 165 (Duties of body corporate about body corporate assets—Act, s 152).

(c) the balance, on the date of the report, of the administrative fund and sinking fund and a reconciliation statement for each fund;

(d) the body corporate's expenses, including repair and maintenance costs, for the 3 months immediately preceding the date of the report.

(3) For subsection (2)(d), the report must state, for each expense, the following—

(a) the payee;

(b) the amount;

(c) the date the expense was incurred;

(d) the reason the expense was incurred.

(4) *The report must also include, as briefly as possible, a list of decisions made by the body corporate manager under the engagement.*

(5) *The report must be given within 21 days after the end of each 3 months for which the person is engaged as a body corporate manager under this part.*

(6) *Also, if asked by at least one-half of the members of the body corporate, the body corporate manager must give all the members of the body corporate a report containing the details mentioned in subsections (2) to (4).*

(7) *A request under subsection (6)—*

(a) must be written; and

(b) must not be made more than once every 3 months.

(8) *The body corporate manager must give the report to the members within 21 days after receiving the request.*