

# **ECONOMICS AND INDUSTRY STANDING COMMITTEE**

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

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
ON WEDNESDAY, 4 DECEMBER 2002**

### **Members**

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

**Committee met at 10.43 am.**

**KRONBERGER, MR ROBERT JOHN**

**Strata Titles Referee,  
examined:**

**The CHAIRMAN:** Welcome to the committee. The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed the "Details of Witness" form?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Did you understand the notes attached to it?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Did you receive and read an "Information for Witnesses" briefing sheet regarding giving evidence before parliamentary committees?

**Mr Kronberger:** Yes, I did.

**The CHAIRMAN:** Thank you very much for attending the committee hearing this morning. As you know - you have been part of the instigation of this inquiry - the committee is investigating the extent to which any regulation might be necessary in strata title management. We received some material from you earlier. Would you like to talk to that? I am sure we will have cause to ask some questions.

**Mr Kronberger:** Management of strata schemes is of some concern to me. The principal issue is that strata companies that employ managers rely on those managers as the primary source of all information relating to strata titles. Apart from the fact that many people who employ strata managers have never employed anyone in their lives and have no concept of what a management contract might contain or what the obligation might be, I think they have an expectation that there is a management contract, a standard form on management or that every one understands what a manager does. Often the source of information of what the manager does comes from the manager himself. They do not start with an independent assessment of their needs, the tasks or the limits. Some managing agents record very carefully a list of functions and tick off those that the strata company wants them to attend to; for example, some managers enter into agreement simply to chair the annual general meeting, to prepare the notice for it and take the minutes. That is the extent of their undertaking and they charge a set fee for that. Others take over the entire operation. They prepare notices of meetings and by-laws, attend every meeting, take proxies from proprietors and vote for them, do the banking, manage the finances, arrange borrowing if necessary and employ contractors. They manage according to a very broad brush. Some proprietors do not want to have anything to do with management and some want to be very involved in management. Sometimes the managers need to bear in mind that they are acting for all the proprietors, not necessarily those who are more active or have particular interests.

There is also a possibility of conflicts involving mixed uses in the strata scheme, for example, an inner-city scheme that has a row of shops on the ground floor and residential apartments above that. The manager may have a particular interest in the commercial side or in the residential side or it may be difficult to compromise.

Some of the managers are keen to save their strata company's money by saying that they do not need a lawyer to draft by-laws or they will suggest the name of a good contractor, painter or

plumber. People take that at face value and do not question it. Overall, strata managers can have a lot of influence on a group of proprietors, so some standards or levels of conduct need to be set.

**The CHAIRMAN:** When you say that you think there needs to be a benchmark for standards of behaviour and conduct, do you advocate a formal registration system?

**Mr Kronberger:** I think I do, yes.

**The CHAIRMAN:** Is that partly because experience tells us that self-regulation will not establish the quality of benchmarking.

**Mr Kronberger:** Self-regulation works well for people who want to be self-regulated. Certain groups of agents, of which the Strata Titles Institute has a number, impress me very much as trying to do the right thing. That does not necessarily represent everybody. I have attended numerous Strata Title Institute functions as a commentator, to present papers, or on a panel, and there is a wide range of capabilities and experience among those managing agents.

**The CHAIRMAN:** That is an interesting point. In the course of our inquiry it has been suggested by a number of players, both in Western Australia and in other States, that it might be necessary to have different classes of registration because it is clear, for example, that managing a strata title company comprising four, five or six-unit holders of roughly the same type of holding, is a far less complex task than that required to manage 30 or 40-unit holders with different holdings. You gave an example of commercial combined with private residential interests, and we have seen examples of a hotel being added to that and in the basement a car park that has both public and private bays involved. We are talking very complex ownerships and relationships as well as an obviously more complex building asset management task. Would it be fair to say that that is the case?

[10.52 am]

**Mr Kronberger:** That is a fair summary. However, there are some exceptions, as there always are. Some four or five-lot schemes may involve a complex property in a particular location. In one case involving riverfront properties, the people living in the front unit were preventing the people living in the rear units from having access to the river. It was only a small group of units but it needed to be delicately handled to satisfy everyone's needs. The people in the front property did not want the people from the rear unit coming past the front unit to get to the waterfront. Size is not necessarily an indication of the problems that can be associated with property management, although it is a fair indication.

**Mr J.J.M. BOWLER:** Generally, could we take duplexes out of the system?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Are you saying that three-unit dwellings should be taken out of the system?

**Mr Kronberger:** The management of two or three-unit dwellings is not a great issue for managing agents. I understand from the industry that generally it becomes economical to employ a property manager for a 10-unit scheme.

**The CHAIRMAN:** It has been suggested - I must be honest and say that it has also been countered by as many people as have suggested it - that maybe we need to do away with the notion of two-unit lots as being a strata title and that we must adopt a system akin to that which operates in New South Wales whereby two units that have been constructed side by side are semidetached with individual titles. If there is a need for access to the driveway, for example, an easement is placed onto one of the titles.

**Mr Kronberger:** Historically, there are plenty of those types of dwellings in Western Australia. Subiaco, East Perth and North Perth have always had semidetached houses and they have operated with party wall easements.

**Mr B.K. MASTERS:** Are you aware of any problems that has caused?

**Mr Kronberger:** No. They have lasted for 100 years around Perth.

**The CHAIRMAN:** That is right. However, that is typical of a particular model of urban development during the late nineteenth and early twentieth-centuries. In the latter part of the twentieth century, it appears that people preferred two-unit strata titles.

**Mr Kronberger:** Yes, in fact, a lot of old semidetached properties now have strata titles.

**The CHAIRMAN:** Is that right? Do you have an opinion about whether that trend has added a layer of complexity that is not useful and whether people's property interests and user rights could be better served by a new trend towards individual titles?

**Mr Kronberger:** That may have implications beyond the titling. When the 1966 Act was introduced and people owned a green-title quarter-acre lot on which they wanted to build their duplex, they could only build the duplex and then enter into deeds. They owned the whole property as tenants in common and had equal shares. They would enter into a deed and agree that one person would have exclusive use of one area and another person would have exclusive use of another area. When they applied for a loan to borrow money against it, the banks asked whether they were to secure an undivided interest in the whole lot and queried how they would auction the property if the owners defaulted. It became a financing question of being able to give a separate title to the bank or a lender and get security over it. The banks understood that a lot better and were happier lending on that basis.

**The CHAIRMAN:** I am not sure that I understand that. Are you talking about two separate titles whereby either one or both properties have an easement in relation to each other?

**Mr Kronberger:** No. I will use a 1000-square metre quarter-acre block as an example. A house could be built in two parts in the middle of the block but there could be only one owner. Tenants A and B would own the land together as tenants in common and would have equal shares. They could enter into a deed that allowed tenant A to occupy one side of the property and tenant B to occupy the other side. The ownership overall would still belong to both tenants. If tenant A asked a bank to lend him some money -

**Mr J.J.M. BOWLER:** The bank would consider him to be a joint owner.

**Mr Kronberger:** He would be a co-owner of the property and would have an undivided interest in the whole lot plus the deed. The lenders were not too keen on that idea. People must have something against which they can borrow.

**The CHAIRMAN:** From memory - I must go back through the records - you are the first person to suggest that three-unit lots need not be subject to some sort of registration. There is a fairly universal agreement about two-unit lots.

**Mr J.J.M. BOWLER:** Some people have said maybe three.

**Mr Kronberger:** Two or three. I have no problem with three-unit lots not being subject to registration if a particular physical arrangement was agreed to. One of the problems with the Act is that sections 36A and 36B take away some of the obligatory arrangements from very small two to five-lot schemes, which I think should be retained. It is unsafe to have a five-lot scheme in which a lot proprietor does not have to be provided. Nobody in the scheme would know who the other owners were and there would be no address to send bills for services to. There would be no need to keep any minutes or a building contract. All those things are fairly important.

**The CHAIRMAN:** Do you want those obligations to remain?

**Mr Kronberger:** Some obligations should remain. People have written to me and have said they have no idea who their neighbours are and that they do not want to know, but they want me to tell them to do this or that.

**The CHAIRMAN:** No policy scheme can deal with the idiosyncrasies of relations between neighbours.

**Mr J.J.M. BOWLER:** Unless regulations are built in.

**The CHAIRMAN:** Should there be an obligation for information sharing?

**Mr Kronberger:** Some basic information should be shared.

**The CHAIRMAN:** But not necessarily all the bells and whistles attached to the running of a company?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** That is an interesting gradient in the hierarchy, and I thank you for that.

[11.00 am]

**Mr B.K. MASTERS:** Are you suggesting that duplexes be removed from the Strata Titles Act 1985 or would that be a voluntary act on the part of the owners?

**Mr Kronberger:** Perhaps there could be a subset of the Strata Titles Act that applied only to those.

**The CHAIRMAN:** A hierarchy?

**Mr Kronberger:** They do not have to worry about four-fifths of the Act. They can deal with the part of the Act that deals with two, three and up to five-lot schemes.

**Mr B.K. MASTERS:** Why have owners of semidetached properties in Subiaco moved to strata?

**Mr Kronberger:** It was simply a commercial decision. People can sell off part of the property or break it up into two or three parts to sell or to borrow against.

**Mr B.K. MASTERS:** What was the ownership structure when the properties were semidetached?

**Mr Kronberger:** They each owned their part of the property but they shared a party wall easement. A party wall divided the properties and an easement allowed each owner to repair the wall.

**Mr J.J.M. BOWLER:** Who owned the wall? Did they both own it?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** It is a bit like a dividing fence.

**Mr J.J.M. BOWLER:** How would a strata title be divided?

**Mr Kronberger:** It could be done in one of two ways. It may go to the centre of the wall or it may go to the external boundaries of the wall with the wall being the common property.

**Mr B.K. MASTERS:** What was the advantage of moving from a common ownership of a wall to a strata?

**Mr Kronberger:** In trying to sell those units people do not understand the semidetached aspect. They are looking for a strata title. They understand what they are buying when they buy a strata title.

**Mr B.K. MASTERS:** They think they understand what a strata is even though they probably do not.

**Mr Kronberger:** They understand what a terrace house development is.

**The CHAIRMAN:** Part of the issue relates to people's level of understanding about what they are buying into. In the United Kingdom they are moving towards a "common hold". New South Wales and Queensland are considering the need to use the expression "community title". Will moving away from the use of "strata title", which is a complex legal expression, into a more commonly understood expression communicate something important?

**Mr Kronberger:** Yes, it does. The language used can be very helpful. For example, we use a “strata council” which is a council of owners. However, people get confused and think we are referring to a shire council or a city council. If it were called the “owners committee” it might be better understood. In New South Wales it is called the “executive committee”. Indeed, various labels are used by the States. A “council of owners” is more vague than “owners committee”.

**The CHAIRMAN:** I favour the move towards language that gives people immediate access to the meaning of the title. Many of the problems we have heard about seem to have arisen because people have not understood the process in which they are engaged.

**Mr J.H.D. DAY:** Would it be a major problem to move from the term “strata title”, which is widespread and fairly well recognised?

**Mr Kronberger:** If I had the choice I would retain “strata title”, because it is understood. It has taken 26 years for people to understand the strata title concept. If we were to change the name we would cause some confusion. However, “community title” clarifies some of the expressions.

**The CHAIRMAN:** I am not sure what you are saying.

**Mr Kronberger:** People have an understanding of “strata title”; however, “community title” would also help. In changing the term there would have to be a re-education program to ensure that people understand that the new term refers to what they understood previously to be the definition of “strata title”.

**The CHAIRMAN:** “Community title” might provide a clearer understanding of the interrelationship of unit holders; however, you argue that the development of the expression and the development of the understanding of the expression “strata title” has taken so long that we should be cautious about changing it. It appears as though there is a high level of confusion about people’s interrelationship with other unit holders and with the holding company. Will a change in expression go some way towards a better understanding?

**Mr Kronberger:** I am a bit each way on this issue. I take your point that calling it a “community title” will give people some idea of their relationships with one another and that calling it a “strata title” scheme is fairly bland. However, they understand what it is.

**Mr J.H.D. DAY:** On balance would you retain the current term?

**Mr Kronberger:** On balance I would retain it.

**The CHAIRMAN:** For what purpose?

**Mr Kronberger:** In the future other schemes may come into being that are different from those we have now. For example, New South Wales has the broader acre-based schemes and community schemes and neighbourhood schemes. The new expressions could be saved -

**Mr J.J.M. BOWLER:** And utilised in the future.

**Mr Kronberger:** Yes, for newer developments.

**Mr B.K. MASTERS:** I have a problem with the word “community”, because it implies public ownership. Are there other uses for the word “common” in the land titles system?

**Mr Kronberger:** Yes, it is used in land law.

**Mr B.K. MASTERS:** What about “joint ownership” title?

**Mr Kronberger:** “Joint ownership” is a legal expression.

**Mr B.K. MASTERS:** What about “shared ownership” title?

**The CHAIRMAN:** The committee is exploring the idea that “strata title” poorly communicates the rights and responsibilities of unit holders. It has been suggested that that is a problem in not only Western Australia but also other jurisdictions. The breakdown in management, particularly in the

small to medium-sized strata title units, is also a part of the problem and people have not understood their rights and responsibilities in that type of arrangement. If that is part of the underlying cause for the failure of the administration of the system, there is an onus on us to determine whether a better option exists.

**Mr Kronberger:** One of the expressions in New South Wales is “neighbourhood title” or “neighbourhood schemes”, which has a connotation of sharing.

**The CHAIRMAN:** That does not deal with high rises.

**Mr Kronberger:** No. South Australia has two classifications; namely, “strata title” and “community title”. One relates to single-level residential schemes and the other relates to multistorey schemes.

**Mr J.J.M. BOWLER:** A single-level two-storey villa that falls under one ownership would go under one name. However, if there were two different ownerships of the floors, then it would come under another name.

**The CHAIRMAN:** I am advised that South Australia has moved to “community titles” for a particular class, although there is a cut-off period. If a person is part of a pre-1996 strata title scheme then he remains part of that strata title scheme. Those who are part of a new scheme are part of a “community title” scheme.

**Mr Kronberger:** Some of the confusion also comes from the Act itself. In 1995-96 single-tier strata schemes were introduced. A single-tier strata scheme is a most unfortunate name, because it could be 10 storeys high. It means a scheme in which no lot is above or below another. There could be a row of four-storey town houses which are deemed single-tier strata schemes, which confuses the public no end.

**Mr B.K. MASTERS:** To what State do you refer?

**Mr Kronberger:** Western Australia.

**Mr J.J.M. BOWLER:** How do you build one above the other if they are not above each other?

**Mr Kronberger:** There can be a row of terrace houses that are four-storeys high.

**The CHAIRMAN:** There are many examples in East Perth.

**Mr Kronberger:** There are many examples and variations. A balcony that extends over another lot is a permitted boundary deviation - as long as it does not go out more than three metres - and is still a single-tier strata scheme.

**The CHAIRMAN:** I refer to the point you raised about registration. Should there be a demonstrated competency-based registration process? A number of people have suggested, or, if prompted, have agreed, that following a competency-based registration, professional development must be demonstrated to maintain registration.

**Mr Kronberger:** Yes, continuing education. I agree with that.

**The CHAIRMAN:** Do you have any idea of the level at which the first competency threshold should be set and how professional development should be assessed?

**Mr Kronberger:** A course - probably conducted at the TAFE level - should involve a thorough understanding of the Act, the different types of schemes and by-laws and their effects. The handling of funds and the obligations of a trustee in a fiduciary relationship should also be included. A course should also include an explanation about conflicts of interest and limits on how far they can go in preparing documents. There are prohibitions under the Legal Practitioners Act 1893. I have been trying to sort out an arrangement prepared by a managing agent which involves a very complex set of strata company by-laws in a major viticultural, agricultural and horticultural deal that go way beyond what the by-laws were envisaged to cover. In fact, they involve the parties in a

complex business arrangement. It is badly drafted and way above the competency level of the party that prepared it.

**The CHAIRMAN:** An equivalent level four certificate course is operated by the Real Estate Institute Western Australia and sanctioned under the national competency framework of the Australian National Training Authority. It includes a significant component that many people identify as being appropriate for strata title managers. However, a number of people have said that requiring strata title managers to undertake the course is not a sufficient allocation of training money and resources. Do you have any knowledge about the course?

**Mr Kronberger:** I do not know the details of the course. The course was established by Peter Munday from REIWA, who is a competent and experienced operator. If he were setting the course standards, they would be set at a reasonable level.

**The CHAIRMAN:** I turn to one of the criticisms of the Western Australian system. People have a high regard for the role of your office but are deeply disappointed about the inability of the scheme to enforce your role. Will you make some observations about that? I will then ask you some questions about the New South Wales compulsory mediation and arbitration system.

[11.15 am]

**Mr Kronberger:** I should preface any remarks by saying that this week I delivered to the Attorney General a 150-page submission on changes I want made to the Act. Part of that deals with the enforcement of orders. The enforcement is difficult.

**The CHAIRMAN:** When you delivered that, was that on request, or was it -

**Mr Kronberger:** The Attorney asked me to deal with a number of topics earlier this year, and I have enlarged on that to bring in a number of things that are fairly basic, including headings and cross-references that are wrong and references to sections that do not exist - just basic drafting errors in the Act that put people out of line straight away. However, I have gone into more substantial things in management, and enforcement in particular, in risk areas for lot proprietors, which is an area that most people are not aware of.

**Mr J.H.D. DAY:** Do you operate under a specific Act?

**Mr Kronberger:** Yes, under the Strata Titles Act - particularly part 6 of the Act. The Act is administered under two ministers - under the Minister for Planning and Infrastructure as far as the Department of Land Administration registration section goes, and under the Attorney General and the ministry in relation to my appointment, powers and staffing.

**Mr J.J.M. BOWLER:** Who appoints you?

**Mr Kronberger:** The Government.

**Mr J.J.M. BOWLER:** What sort of staffing levels do you have?

**Mr Kronberger:** Miserable.

**Mr J.J.M. BOWLER:** What is miserable?

**Mr Kronberger:** I have one dedicated secretary who serves me and my delegate, who works a day or two a week as well. We have not had a full staff complement, I would have thought, for about 30 per cent of the year. We have had people on sick leave, temps, juniors and trainees. We got to a point of frustration, and the ministry has at least now got us linked to the Children's Court, which has typing capacity, and whenever we get an overload, we courier it across there and get it back. That has worked and has helped greatly.

**Mr J.J.M. BOWLER:** So you have one and a half staff?

**Mr Kronberger:** One, really. Our referee's office is also the registry for about six other offices; that is, the Commercial Tribunal, Gender Reassignment Board, Equal Opportunity Commission and



travel agents licensing - the whole lot. A registrar handles all those things - and retirement villages too. That is my other hat.

**Mr J.H.D. DAY:** You have a registrar, do you not?

**Mr Kronberger:** Yes, but he is the registrar for all of those, and he also carries out mediations under the Commercial Tenancy (Retail Shops) Agreements Act. He does hundreds of those.

**Mr J.H.D. DAY:** The part of the Act under which you operate is assigned to the Attorney General, is it?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Can you comment on how we might need to think about your role as a mediator and maybe as an arbitrator, and, finally, on what enforcement provisions there need to be beyond those two steps?

**Mr Kronberger:** I could not be both a mediator and the adjudicator. They must be separate roles.

**The CHAIRMAN:** They do that in New South Wales.

**Mr Kronberger:** Yes, they are separate roles.

**The CHAIRMAN:** No, as I recall, the same people are doing it in New South Wales.

**Mr Kronberger:** No, mediation is done under the Department of Fair Trading. Then it goes to an adjudicator, which is under the ACCC, I think it is called. All mediations come through fair trading, and then they go to a separate adjudication. However, the mediators are not the adjudicators. One or two of the mediators have been adjudicators in the past. I think one is employed in both capacities, but he does not adjudicate matters on which he mediates.

**The CHAIRMAN:** That is partly because New South Wales probably has, in the Australian context, a much more developed Australian dispute resolution scheme.

**Mr Kronberger:** Yes, but it is also that they are funded to the point that they can employ the mediators.

**The CHAIRMAN:** We will come to the funding in a minute. I think that is part of the key to this equation.

**Mr Kronberger:** I would like to make some suggestions on that.

**Mr J.H.D. DAY:** In practice, do you have a mediation role?

**Mr Kronberger:** No. As I said at the earlier hearing, I do a de facto mediation in some difficult cases, and that works when people make applications to me on what they think is a proper basis. Then when I get submissions in, I find that the parties on both sides are working under a misconception. Short of coming to a decision, I can set out the whole thing, saying, "These are the circumstances. These are my choices of decision. However, I haven't made a decision yet", and I invite further submissions. What has almost invariably happened in those cases is that the parties have withdrawn their applications. They then understand what the problem is and have sorted it out themselves. Therefore, I do not have to make an order, which suits me.

**Mr J.H.D. DAY:** As you said, that is a de facto mediation role.

**Mr Kronberger:** Yes. I did it in relation to one in which a three-storey house was built in front of another house and was blocking the view. However, the three-storey house had in fact been built into common property airspace, and a brawl was on. Once I explained what the limits and powers were, they entered into a deed. The top half of the house in front was removed, and they then asked me to confirm that as an order. They reached that agreement, neither of them having understood what the position was before then.

**The CHAIRMAN:** This was not in Fremantle?

**Mr Kronberger:** No.

**Mr J.H.D. DAY:** In summary, you would like to see a mediation facility set up.

**Mr Kronberger:** Yes.

**Mr B.K. MASTERS:** What proportion of the people who come to you would, in your view, benefit from a mediation role - a significant proportion?

**Mr Kronberger:** I think that a proportion would resolve their problems through mediation, and a proportion would have a much clearer understanding of what application they should make. They are two different things, as you will appreciate.

**Mr B.K. MASTERS:** But both those groups would be a significant proportion.

**Mr Kronberger:** I would think perhaps 20 per cent.

**Mr B.K. MASTERS:** In each category or -

**Mr Kronberger:** No, it would be altogether. I think it would be at least that. I understand that, apart from the mediation service, New South Wales also has a very effective telephone inquiry service, which takes some 40 000 inquiries a year, and it works very well.

**Mr B.K. MASTERS:** You are clearly too understaffed and under-resourced to be able to provide -

**Mr Kronberger:** To that extent, yes.

**The CHAIRMAN:** You probably do not see that level of complaint in the first instance.

**Mr Kronberger:** No.

**The CHAIRMAN:** It is most likely to end up in the Department of Consumer and Employment Protection.

**Mr Kronberger:** No, DOLA.

**The CHAIRMAN:** The Department of Consumer and Employment Protection also says that it ends up with its fair share.

**Mr Kronberger:** Right. I know DOLA gets 40 or 50 calls a day.

**The CHAIRMAN:** In your view, would it be fair to say that the disputes that people need to have resolved, or their questions about the administration of their companies, are being sprayed across -

**Mr Kronberger:** Yes. They need a first point of call where they can get advice.

**The CHAIRMAN:** If we count you, DOCEP and DOLA, there are at least three agencies to which they are heading at the moment.

**Mr Kronberger:** Yes, or legal advice - Legal Aid WA.

**The CHAIRMAN:** That is right. It could be a legal advice centre or -

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Do you think that that spraying of complaints or inquiries is adding a level of confusion?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** And to some extent it is adding to the breakdown of the administration of some of the companies?

**Mr Kronberger:** Yes, I think it is. In the same strata company, two or three people might ring DOLA and put the problem, and only put what they want to put. DOLA will give an answer, and they will march off to the meeting -

**The CHAIRMAN:** Fully armed.

**Mr Kronberger:** - and the other two people have got the answer they wanted because of the questions they asked. Therefore, some confusion does come out of that.

**The CHAIRMAN:** Typically, would you say that that sort of failure would then end up back with you at some point to pick up?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** We will go to the question of fees and services. I am sure that one of the things of which you are aware in New South Wales and about which the committee was given information is the use of a government levy against the trust accounts.

**Mr Kronberger:** The interest on the trust accounts held by managing agents.

**The CHAIRMAN:** It is a minuscule amount but on a substantial amount of money, which produces sufficient resources to essentially fund the mediation and arbitration scheme and the inquiry service.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Do you think that there is a sufficient scale of resources in Western Australia to do a similar thing?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** So the same thing on a pro rata basis?

**Mr Kronberger:** A similar thing operates with solicitors' trust accounts. When they are not getting interest on the moneys, they must go into an interest-bearing account, and a percentage of the interest earned on those trust moneys, instead of going back to the client, goes to finance legal education, legal aid and various public funds. That has been working for 10 or 15 years.

**The CHAIRMAN:** We would be adding to the skimming that is already being done with that.

**Mr Kronberger:** But that deals only with solicitors' trust accounts. If you were dealing with managing agents' trust accounts or real estate agents' trust accounts that were touching on strata title schemes, it would be a finite area.

**The CHAIRMAN:** That would only be possible, firstly, if there were a registration process.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** So that the managers of the size that you said needed to be registered were in the scheme and known to the administrators.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** By virtue of registration, they would also be required to hold a trust account, which they are not required to do at the moment.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** Then you could apply a similar sort of levy against the interest received from those accounts.

**Mr Kronberger:** Yes. An alternative might be to add, at registration, a small charge on every lot that is registered at DOLA, but that would be a one-off thing rather than a recurring thing.

**The CHAIRMAN:** What about as each of the lots changes hands?

**Mr Kronberger:** Yes, you could do it on that basis too.

**The CHAIRMAN:** So on the sale of a lot?

**Mr Kronberger:** Yes.

**The CHAIRMAN:** So there are three alternatives.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** One is a levy on a trust account.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** The second would be on registration at DOLA of the proposed strata company.

**Mr Kronberger:** Yes, a fee on registration.

**The CHAIRMAN:** And a third would be at the point of sale.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** And the sale of each of the units within -

**Mr Kronberger:** Yes, just as stamp duty is payable on every transaction.

**The CHAIRMAN:** You started by talking about the first of those. Is there a reason that you mentioned that first? Do you have a preference for that?

**Mr Kronberger:** I just mentioned that as one that is working in New South Wales. One of the things I have recommended is that schemes also have a reserve fund. At the moment, not a lot of schemes have reserve funds. If you have compulsory reserve funds, then the amounts that the managing agents will be handling will increase substantially.

**The CHAIRMAN:** These are also known as sinking funds.

**Mr Kronberger:** Yes, sinking funds. Under section 36(1) of our Act, it is compulsory for every strata company to have an administrative fund to cover day-to-day operations. It is optional to have a reserve fund. I think we are now the only State that does not make reserve funds compulsory.

**Mr J.J.M. BOWLER:** The other States make reserve funds compulsory from the start of a brand new building that may not -

**Mr Kronberger:** Yes.

**Mr J.J.M. BOWLER:** Do those regulations stipulate the level of reserve that must be put into the fund?

**Mr Kronberger:** Queensland has the most detailed requirement, and a compulsory item at every annual general meeting is that an assessment must be made of the requirements for the next 10 years, and that must be budgeted for accordingly. They get in an expert, such as a painter, who says, "This building will need painting in 10 years. My estimate of the cost is \$10 000." The strata company must raise the money over that period on an amortised basis, so that when the time comes to meet that need, the fund is there. Each year the amount is reviewed.

**Mr M.P. MURRAY:** An audit is done each year for future -

**Mr Kronberger:** Each year, yes.

**The CHAIRMAN:** The most alarmist of propositions put to us is that in Western Australia we are looking at possible public risk - financial and maybe even in public health - for want of sinking funds in a number of large buildings where the unit holders will not have the capacity to do the necessary maintenance, and that will fall to either local government or state government.

[11.30 am]

**Mr Kronberger:** I do not consider that to be alarmist.

**The CHAIRMAN:** You do not? Do you think that it is a realistic proposition?

**Mr Kronberger:** Yes, I think it is realistic. There are many old blocks of flats that were old in 1966. They were strata titled after that and have not had a cent spent on them.

**The CHAIRMAN:** Will their market value not drive that reinvestment?

**Mr Kronberger:** No. The same problem occurred in New South Wales for a while, but land values have gone up so sharply there that it is better to pull down buildings and sell the land. People are happy to do that. We have not had that kind of boost. If you drive around some of the inner suburbs, you will see some of the big blocks of flats.

**Mr M.P. MURRAY:** Are you referring to any suburbs in particular?

**Mr Kronberger:** No. Anywhere that has the old red brick blocks of flats. Whether they are two-storey or 10-storey blocks of flats, they are decaying. If you go close to them, you will find mortar falling out of the brickwork, window frames askew and the gutters have gone.

**The CHAIRMAN:** The roofs are deteriorating.

**Mr Kronberger:** The roofs may be asbestos.

**The CHAIRMAN:** That is a good argument for considering reserve sinking funds. Is there another reason you would argue for that?

**Mr Kronberger:** That is the principal one. There is a resistance -

**Mr J.J.M. BOWLER:** Can I just ask a question on the sinking funds? As well as looking after long-term maintenance, could building replacement also be considered with sinking funds?

**Mr Kronberger:** No. The other side of the coin is that there is a resistance to reserve funds. People ask why they should put money into these funds when they are only going to live in a place for two years. They also ask whether they will get the money back when they leave. They will not, so they are not interested in it, and will vote against it.

**Mr J.J.M. BOWLER:** However, they contribute to wear and tear, which, within five, 10 or 15 years, will require some work to be done.

**Mr Kronberger:** I would like the public to be educated on buying units in schemes that have reserve funds rather than buying into schemes that do not have reserve funds. They get better value that way.

**The CHAIRMAN:** Mr Francesco Andreone, who is a solicitor and manager of some significant strata title companies in New South Wales, said that it is interesting that the impetus for compulsory sinking or reserve funds can be tracked from California to New South Wales. The west coast of the United States and the most populous State of Australia have some similar cultural behaviours, one of which is that New South Wales is a much more litigious society than the rest of Australia. He argued that the transfer of that sense of the need for reserve or sinking funds from California to New South Wales was triggered by a couple of class actions. In one of those actions, all prior owners for 30 years of strata title units in a company were traced and sued for their failure to make provision for their use and enjoyment of the building and its resultant deterioration. They were successfully sued.

**Mr Kronberger:** Yes.

**Mr J.J.M. BOWLER:** Please forgive my ignorance - coming from a place like Kalgoorlie, I do not see too many high-rise buildings. With all the best maintenance in the world, a building may eventually be demolished. What would happen to a person who owned a unit on the fifth floor of a 10-storey building?

**Mr Kronberger:** There is provision under the Act for the determination of schemes; proprietors can resolve to wind-up a scheme.

**Mr J.J.M. BOWLER:** What happens if an elderly couple on the fifth floor did not want to go?

**Mr Kronberger:** One of the papers being prepared for the Community Titles Advisory Committee is on how to improve the determination provisions of the Act. Charlie Noble reports to CTAC; I help him with those submissions.

**Mr J.J.M. BOWLER:** If there was no sinking fund for replacement, all of a sudden the elderly couple I referred to could be out of house and home. Their percentage of the land value would probably go no way to replace the facility that they had. This could perhaps happen to people late in life and provide them with no prospect of replacing that living arrangement.

**Mr Kronberger:** One of the great problems under our Act is that there is no power for strata companies to improve properties.

**Mr J.J.M. BOWLER:** They only maintain them.

**Mr Kronberger:** They can only repair and maintain a property, and, where necessary, replace certain things. It is a hopeless section. No other property owner in the world would accept legislation that said he was not allowed to improve his property. The Americans we talk to about this put their hands up in the air and say, "What, you can't improve a property?" That is the whole point of having a property.

**Mr J.H.D. DAY:** By agreement, they presumably could.

**Mr Kronberger:** No; a strata company has no power to effect improvements to a property. I have been allowing strata companies to add security gates, security systems and things like that, even though they are improvements, as part of the control and management of common property. As far as I am concerned, any home owner who wanted to improve his security would be acting reasonably in the present case. On my table at the moment I have a decision that relates to somebody who wants to spend \$550 000 on major improvements to a property, including new entry statements, new staircases, different landscaping and so on. I am having all sorts of trouble trying to decide what is an improvement and what is not, and whether it is a valid exercise of the power. What in fact happens, as I understand it, is that where the Act does not give co-owners that power, they go outside the Act and say that they are the co-owners and together decide to improve the common property. They can do it on that basis. That does not come under the Act, nor is it within the powers of strata companies.

**The CHAIRMAN:** Would that protect an elderly couple who lived on the fifth floor of a 10-storey strata title building? Unless they were otherwise protected by the Act, an influx of new owners could make a majority decision to undertake major refurbishment, beyond maintenance, and could change the nature, style and possibly the value of the property.

**Mr J.J.M. BOWLER:** But beyond their means.

**The CHAIRMAN:** Through that process, the couple could be forced out for no other reason than economic pressure.

**Mr Kronberger:** That would certainly arise.

**Mr J.J.M. BOWLER:** However, if there were a graduation of continual sinking funds, and they were made regulatory right from the start of a building, those problems would not arise.

**Mr Kronberger:** That is right.

**The CHAIRMAN:** They would be reduced. There is still the argument that Mr Kronberger has raised about what is refurbishment and what becomes -

**Mr Kronberger:** People have tried to use all sorts of expressions, such as regeneration or refurbishment, but the fact is that they are new works.

**The CHAIRMAN:** That is right. However, it could be changed from just maintenance to substantial changes to the nature of a building, such as putting in elevators or security gates. These are things that materially change the nature of a building, how it works and quite possibly the ability of people to remain living in them because of the fixed operating costs.

**Mr Kronberger:** In my report to the Attorney General, I quoted from legislation from other jurisdictions that do allow improvements and set some limits on them, so that they improve security, enhance the stability of buildings or preserve their structure.

**Mr J.J.M. BOWLER:** But not to the point of?

**Mr Kronberger:** Of replacing or rebuilding them.

**The CHAIRMAN:** Did you inform the Attorney General of this inquiry?

**Mr Kronberger:** I informed him in a covering letter to my report to him.

**The CHAIRMAN:** I will undertake to write to the Attorney General and ask for a copy of those comments.

**Mr J.H.D. DAY:** You earlier said that you had a second reason for recommending the establishment of reserve funds. Can you tell us what that is?

**Mr Kronberger:** One reason is that it may save Governments from getting claims for repair of buildings.

**Mr J.J.M. BOWLER:** What about existing buildings? You mentioned buildings built in the late 1960s that still do not have sinking funds linked to them. It may be a bit too late, but it is never too late to start introducing that. New legislation would pick up new buildings and could take in old ones, so that they would have to start paying it anyway. Those funds may never cover the total costs down the track, but at least they would cushion the burden if those costs did arise.

**Mr Kronberger:** Yes. If people put money into a fund, they will give some thought as to how it should be spent. If someone put \$1 000 towards a reserve fund and the front of the building was falling down, he would question why it was not being repaired. It gives an incentive to encourage the improvement of a building.

**Mr J.H.D. DAY:** What criteria do you think should apply to the licensing or registration of strata title company managers?

**Mr Kronberger:** I will start with a negative. I do not think that having a real estate agent's licence is necessary evidence of competency in strata titles work. In some cases, those people do have the skills, but it is not an automatic thing. There are examples of agents who believe that they know more than they do. I will not put it higher than that. Some unlicensed managing agents know a great deal more than licensed managing agents. It should not be an automatic thing that would allow a person who had a real estate agent's licence to manage strata properties without needing any other qualifications.

**Mr J.J.M. BOWLER:** Are you saying that even if the managing agent were a real estate agent, he should have to obtain another degree of training and competency as well?

**Mr Kronberger:** They may be credited for some aspects of their existing qualifications - they would be familiar with handling trust accounts and audits.

**Mr J.J.M. BOWLER:** Who would decide whether someone had that competency? Would it be another government department?

**Mr Kronberger:** I do not know. It could be a branch of the Real Estate and Business Agents Supervisory Board. Again, whoever was undertaking the licensing would need to have an understanding of what was required.

**Mr J.H.D. DAY:** You obviously think that there should be appropriate training. Would police probity checks be necessary?

**Mr Kronberger:** Yes, I think so. We are dealing with employed managing agents. We have not touched on the 90 per cent or so of schemes that are managed by lot proprietors themselves. I do

not know how we would control that, but a course could possibly be held for anybody who wanted to know about or understand the management of strata schemes.

**Mr J.H.D. DAY:** Is much printed information available through your office or otherwise in Western Australia at the moment?

**Mr Kronberger:** There is some printed information, but it tends to be grabbed when the occasion arises, rather than being used as background material to understand a problem before it arises. There is a difference between grabbing a book when something has happened to work out what to do, and knowing that something will happen and what should be done in that instance.

**The CHAIRMAN:** I will take up that point before I pass to Bernie. The hierarchy of registration that we spoke about earlier might in fact give us a lead to deal with that.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** At the moment the broad categories that people talk about are two, then three to five, then six and above. With a bit of reshaping of those numbers and thinking through why certain size strata titles might warrant different levels of registration, it might lead us to understand the kind of information that needs to be supplied to those companies as a direct service. Would you suggest that in addition to paying for the sort of service you are delivering and those spread across the other agencies that are involved with this issue, any levies against the interest earned on trust accounts should also go to the provision of information at the point of sale? Should that be a target?

[11.45 am]

**Mr Kronberger:** Yes, an education component.

**Mr B.K. MASTERS:** We referred to the under-resourcing of your office. Did we discuss to your satisfaction whether your office is lacking legislative powers?

**Mr Kronberger:** No, we did not, but I am glad you raised that, because I feel it would simplify the process a great deal. Two areas of simplification appeal to me. The first does not involve me at all, or not directly and that is where a strata company can give a notice to a proprietor of a breach of the by-laws. It is done very successfully in Queensland and New South Wales. It is done on a summons or a blue form saying that they are in breach of the by-laws, and unless they remedy that breach within 14 days -

**Mr B.K. MASTERS:** And it is not used vindictively?

**Mr Kronberger:** No. It is an offence not to comply with that notice.

**The CHAIRMAN:** Not to comply with -

**Mr Kronberger:** Not to comply with that notice. The strata company can then go along to a magistrate or a referee and say, "Here is a notice that was served; it has not been complied with; impose a penalty."

**The CHAIRMAN:** That is an important point. You have just mentioned that you can go to the court or a referee for the imposition of the penalty. If I remember the material correctly, the referee still cannot enforce?

**Mr Kronberger:** No, but he can impose a penalty. I think it is a magistrate in New South Wales and I am not sure about Queensland.

**The CHAIRMAN:** Petty Sessions?

**Mr Kronberger:** Yes; a justice of the peace or a magistrate. The offence is not complying with the notice issued by the strata company for breach of the by-laws. It is a fairly simple procedure.

**Mr J.J.M. BOWLER:** So the person is deemed to be guilty without having a chance to defend himself?



**Mr Kronberger:** The strata company must swear by affidavit that there has been an offence, that the notice was served and so on.

**The CHAIRMAN:** There was a material breach of the by-laws.

**Mr Kronberger:** Yes. Otherwise they have to make an application to me saying that so and so is breaching the by-laws. I get the application; I invite submissions from anyone who wants to make submissions; I wait a month for those, and by that time the noise that was happening or the vehicle that was parked in the wrong place or the brawling that was going on has gone; it is two months down the track. The impact has gone. People receive these things and say they will stop it. It becomes an immediate solution. I think the committee should be asking how it is working in Queensland and New South Wales, because my information is that it is working very successfully. It cuts out a heck of a lot of the application work.

**Mr J.J.M. BOWLER:** You do not get a group of vindictive neighbours ganging up on someone?

**Mr Kronberger:** You get that anyway. There is nothing to stop them bringing an application to me and getting much more complex work. That is a simplification.

**Mr B.K. MASTERS:** Then there is the council notice?

**Mr Kronberger:** The other one is if I make an order against you to remove a structure and you fail to remove it, then I have to go to the Court of Petty Sessions on a private prosecution to prove that the order was made, to satisfy a magistrate beyond reasonable doubt that you have breached the order and hope that they will prosecute and impose a penalty for breach of the order. Then if you want to get the work done you come back to me, the referee, for an order to allow you to carry out the work, and you go and remove the building at your cost. Then you come back to me for an order for payment.

**The CHAIRMAN:** This is the same logic. It is interesting. This is the same scheme as that used in the Dividing Fences Act.

**Mr Kronberger:** Yes.

**The CHAIRMAN:** The dividing fence being common property and things can be caused to be done to maintain the fence in its original order. They must go and initiate everything themselves.

**Mr Kronberger:** Yes.

**Mr B.K. MASTERS:** What is your solution?

**Mr Kronberger:** The solution is to be able to enforce an order and impose a penalty for breach.

**Mr B.K. MASTERS:** You mean your office is able to do that?

**Mr Kronberger:** Yes.

**Mr J.J.M. BOWLER:** Would there not be a right of appeal somewhere?

**Mr Kronberger:** There is always a right of appeal against a decision. There is an automatic right of appeal to a District Court against any decision that I make. They have 21 days to make that application. There is no cost order involved in the District Court.

**Mr J.J.M. BOWLER:** You have overcome three or four processes by just doing that.

**Mr Kronberger:** Yes.

**Mr J.H.D. DAY:** What were you going to say?

**Mr Kronberger:** There has been a reluctance in the past to give the referee's office the power to impose fines.

**Mr B.K. MASTERS:** They have not trusted the referee?

**Mr Kronberger:** I do not know what the political background was. The other problem is the limit on my jurisdiction. I can order anyone to make payments up to \$1 000. I can order payment of an amount of no more than \$1 000. If the same applicant came to me from the same strata scheme and it happened to be a retirement village, the Retirement Villages Act says that there are no upper limits. Various other parts of the Act say I can order costs in particular circumstances, or payments in certain circumstances, but it does not refer back to that \$1 000 limit. I do not know whether that overall limit applies or not.

**Mr B.K. MASTERS:** You have increased powers under the Retirement Villages Act. I am not aware of any criticism that has been levelled against you because you have exceeded your powers.

**Mr Kronberger:** I have no power to exceed that limit.

**Mr B.K. MASTERS:** But there has been no criticism that I am aware of that you have been unreasonable in the use of those powers.

**Mr Kronberger:** Yes. I would hope so. I recently had one where somebody had paid out an insurance premium that the strata company should have paid. The half share was \$1 230, but I was restricted to awarding them an order of \$1 000, which is crazy. That amount has not changed for 17 years.

**Mr B.K. MASTERS:** Why would the strata company in that instance not take out the insurance policy?

**Mr Kronberger:** That is up to the individual. Some individuals take out their own and do not cooperate when a neighbour says they already have a policy.

**The CHAIRMAN:** Thank you. Is there anything else you want to tell the committee that is not in your submission, or anything else you might like to draw to our attention?

**Mr Kronberger:** No, I think it has been pretty well covered. I will speak to the Attorney General and raise some of those other issues that are not directly within your area of inquiry, but they are things which are near and dear to me. The biggest one is the joint several liability of lot proprietors, so if there is a claim in tort against the strata company for negligence everybody is jointly and severally liable. Any one of the co-proprietors can be sued. People buy into these lots and have no idea that they have that hanging liability. The Act has a compulsory third party insurance cover limit of \$5 million minimum, which is way out of kilter with the requirements, particularly in larger schemes. There are schemes around with claims well in excess of \$10 million against strata companies and proprietors. If I were a plaintiff I could pick on any one or two of those proprietors and sue them individually, or take action and execute proceedings against them individually. They can turn around to their co-proprietors for contributions in accordance with the unit entitlements, but if the co-proprietors do not have any money there is no recourse. The three things are having adequate insurance cover, maintaining the property so there are no damaged pathways or broken balconies or whatever that might cause damage; secondly, from the plaintiff's point of view, they should be able to sue the co-owners the same as if they walked onto an ordinary property and there were three co-owners. They should be able to sue them jointly and severally, so that protects the plaintiffs, but in a large building, to face the risk of a massive claim against them individually is a bit unfair from a lot proprietor's point of view. In my report to the Attorney General I have quoted the situation in some of the other States. In New Zealand it is limited to a proportion, the same proportion as their unit entitlement. It is a matter of balancing all of those things.

**The CHAIRMAN:** This has been very useful. We are layering knowledge as we go, and I guess you could hear from some of our questions that we are pursuing some target areas. We may get back to you in the New Year.

**Mr Kronberger:** I would be happy to come back on any particular area, because this is a T-model Act that we are working under, and it is very near and dear to my heart to try to bring it into the twenty-first century.

**The CHAIRMAN:** Thank you for your time.

**Committee adjourned at 11.56 am**