

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 14 MARCH 2011**

SESSION TWO

Members

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

Hearing commenced at 11.25 am**JAMES, MR CRAIG****Representative, Law Society of Western Australia Inc, sworn and examined:****The CHAIRMAN:** Welcome to this hearing. I require from you either an oath or affirmation.

[Witness took the oath.]

The CHAIRMAN: Please advise the capacity in which you appear before the committee.**Mr James:** I am here representing the Law Society of Western Australia.**The CHAIRMAN:** Have you read the document “Information for Witnesses”, signed it and understood it?**Mr James:** I have, and yes.**The CHAIRMAN:** If you have not, we are all in trouble! These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard—I see you have not come armed, but if you do happen to drag out some documents—could you give the full title of the document. I remind you that your transcript will become a matter of public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that evidence be taken in closed session. If the committee grants your request, public and media in attendance will be excluded, which will not be difficult! Please note that until such time as your transcript of public evidence is finalised it should not be made public. I advise you that publication or disclosure of uncorrected transcript of evidence may constitute contempt of Parliament and may mean material published or disclosed is not subject to parliamentary privilege, which I presume you understand.

Thank you for attending. We are really interested in the Law Society’s point of view, particularly your part in it, because we have looked at your resume and see that you are well experienced. We have sent you our questions but would you like to talk about the whole issue before we ask questions?

Mr James: Thank you for the invitation. I must say it is encouraging to see that this matter is being considered by the Parliament again. You probably will have noticed from the papers that I appeared before the last inquiry into this subject in 2002. Fundamentally, I have got the same issues that existed then. Nothing eventuated from the last inquiry, so it is good to see that it is back on the drawing board for consideration.**Hon JIM CHOWN:** I am a relatively new member of this committee. In your opinion, why were that inquiry’s recommendations not carried forward?**Mr James:** I assumed there was no political will to do it. But I have no basis —**The CHAIRMAN:** That is a reasonable assumption, I would think.**Hon ED DERMER:** Does that suggest a too-hard basket?**Mr James:** No; not a high enough priority, I think. From reading the report there was recognition that there was an issue, but it did not have the priority. 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 that there is some form of regulation that will look after them if things go wrong. Some of these strata managers deal with large sums of money, and the risk of defalcation is there. To my knowledge there has not been any defalcation, but the reality is, if there was one and it was a significant one, a lot of people would get their fingers burnt. Some

people who have a strata manager who is registered under the real estate agents act will have the protection of the fidelity fund under that act, but others who are not regulated by the real estate agents act will not have that protection. Some people will be protected if the worst thing were to happen, but other people will not be. Given the nature of people who buy strata titles and the general complexities of that, they have no appreciation of their rights and risks. In big organisations where you have difficulty getting quorums at meetings, the risk of people not understanding where their money is going and who is controlling it is great. I think some legislative controls need to be put in place to protect people like that.

The CHAIRMAN: You will be pleased to hear that we have evidence of full spectrum. We have a professional person giving us evidence and they believe that some figures up to \$30 000 have just gone and other practices which, in most industries, would be considered extreme to say the least. We have got a letter from the police department very concerned about the capacity to prosecute people even in the area of fraud because of lack of legislation; lack of regulation. You will be pleased to hear all that.

Nevertheless can we just go to those forwarded questions. In terms of the remedies that we ask in question 1, do you think licensing is it or do you think there are other things we have to consider?

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.

Hon JIM CHOWN: No compensation?

Mr James: No compensation. That is the simple reality—defalcation and the absence of a fund to assist people in the event that the defalcator has spent all the money.

Hon ED DERMER: As a person with absolutely no legal training, and I pick up understandings of the definition of a word by context, which can be misleading, can you give me a definition of defalcation?

Mr James: Somebody breaching their duty of trust and faith to another person and converting their property to the use of themselves. I am sorry it is a complicated one. If I give you my money to look after and you go and spend it without my authority you have defalcated against that.

Hon ED DERMER: So I have stolen the money from somebody who trusted me to look after it for them?

Mr James: Yes; that is correct.

Hon ED DERMER: Thank you.

The CHAIRMAN: As I said, we have evidence that has occurred and is occurring, so we are pretty keen to march on. Going back to the first question we asked about statutory, equitable and common law, we have a letter from the police department saying that it is very hard to pursue people who have come to their notice because of the lack of law to carry it on. Part of that is police practice, because much of the evidence is gathered by a third party and not by the police themselves, so they are not that comfortable with the evidence they have. They also rate their chances of prosecution as very low. Do you have any comment on the standing of the law?

Mr James: The only remedy available—we are talking about those strata managers who are not regulated by any means—is the common law: breach of trust, breach of contract. A person can be sued. They are civil matters in most cases, but they could amount to stealing and so on. I am surprised the police have trouble doing that. If there were statutory regulations in place I would have thought prosecution of people who breach those obligations would be a whole lot easier.

The CHAIRMAN: I move on to question 2. This comes out of the Victorian legislation: Section 122 of the Owners Corporations Act 2006. Any comment on that list?

Mr James: Yes. Both items 2 and 3, are statements of what is, effectively, the common law. By putting it out in legislation or in a code, it allows people who are in control of funds to be reminded of their obligations and responsibilities and, even more importantly, it raises with their customers the fact that certain obligations are owed to them and the rights that follow. Right now, the average strata title owner would have no idea of what their rights are. They are proceeding under the assumption that they are protected.

[11.35 am]

The CHAIRMAN: So you think that is a useful tool?

Mr James: Oh, yes, most definitely; it is a codification of the common law effectively, and I think it should be in there, yes.

The CHAIRMAN: Question 2.3, kickbacks, we got this out of your 2003 submission. Are you aware personally, or is the Law Society aware, of any matters since 2002?

Mr James: No, I have had no further evidence of that. I am not aware of whether the Law Society has or not. But you could imagine how easily the situation could occur.

The CHAIRMAN: We have had evidence to that nature. So we move to question 2.4.

Mr James: I am not aware of any complaints or litigation involving misuse of funds.

The CHAIRMAN: Okay, we move on again. We have spent a fair bit of time talking about trust accounts. As you are probably aware, there is no requirement. Unlicensed managers can keep one account—their own company account, their own personal account—and put all the funds into that same account, they can keep the interest, they can do a whole raft of things.

Mr James: I feel a chill.

The CHAIRMAN: Yes—do you have a comment?

Mr James: My comment is, yes, they should be required to keep trust accounts and, yes, they should be required to be audited. The level of auditing may have to reflect the size of the strata company. I think that is a relevant consideration in all of this because we range from two-lot strata companies to 300 or 400-lot strata companies, and the issues I think change over the range of those strata companies.

Hon ED DERMER: Do you have any thoughts on how you would achieve a low-cost auditing requirement?

Mr James: I think it should be somebody independent with some sort of accounting background. I do not think it needs to be a full-blown audit, particularly in the lower end, smaller sized ones, because cost is a factor. An audit is probably going to cost the same with a 10-unit development as for a 300-unit development, so I think you need to take into account the fact that somebody who is independent and who has got accounting qualifications probably would be adequate at the lower end.

Hon ED DERMER: Who would choose this bookkeeper, perhaps, who might do it for you?

Mr James: I think the strata company should be charged with that responsibility; after all, it is in their interests. I think they should be forced to recognise that they have got a responsibility; they are living in a community development and they should take some ownership and responsibility for those sorts of issues.

Hon JIM CHOWN: Craig, just as a matter of clarification, obviously, the Law Society has been involved in the issue of strata managers and corporate bodies since 2002. What is the Law Society's involvement with strata managers or corporate bodies, or do you just believe there is a vacuum within the regulation or legislation that needs to be addressed?

Mr James: Lawyers are involved with the industry in advising strata companies of compliance with the by-laws of the strata company, of assisting people who believe the by-laws are not being observed or enforced in their own interests, advising them as to whether or not they have rights. It is getting more and more complex and there is more and more work starting to come out of that industry as more and more strata plans are registered.

Hon JIM CHOWN: There are 10 000 a year.

Mr James: I know it is significant. I do not know how it has grown since 2002, but I think there were 30 000 or 40 000 at that stage, so I imagine it is quite significant.

The CHAIRMAN: It is \$100 billion in capital.

Mr James: Wow, yes, that probably —

Hon JIM CHOWN: So you are saying your society members have put this up as an issue from a professional perspective?

Mr James: Yes; we are involved with strata companies and people who own properties in strata schemes. We are aware—I mean, I personally act for strata managers and groups within the strata industry, and a lot of them have raised with me their own concerns of the risks associated with an unregulated group.

Hon ED DERMER: Is that them seeking clarity by and large as to what they should be doing and what they should not be doing?

Mr James: Yes, that is correct—usually interpretation of by-laws or enforcement of by-laws, but generally assisting with management. There is some work in recovering unpaid strata levies and things like that, but the more significant is helping them with their governance.

The CHAIRMAN: Coming back to question 2.7, which is an area we have concentrated a bit of our time on, dispute resolution. We have had some reasonable amount of people coming to us very concerned about where do you go once you have a dispute with your strata manager. There is evidence that they bounce around between consumer affairs and Landgate and SAT, and feel very unresolved or incomplete after that process. There is always the question that you can get a solution out of SAT but to make it work you have got to go to court, which puts many of these people—in their argument—outside of the arm of the law. Do you have a comment about the current dispute resolution?

Mr James: Yes, look, to start with, I do not think Landgate has got a role at that level in mediation. I do not think SAT has got a role in mediation. I think the Department of Commerce does have a role in mediation. I think there is a need for somebody just to get between the two parties, try to identify the issues, and see if they can find some common ground. If common ground cannot be found, I think SAT is there; it has been established to resolve differences between members of a strata scheme. It does not quite extend to managers, so that is an issue. The SAT legislation would have to be amended to enable SAT to take account of the contract which exists between the strata company and the strata manager.

Hon ED DERMER: Interesting.

The CHAIRMAN: We heard a fair bit of evidence in Victoria at VCAT. Their argument was they are moving heavily to dispute resolution with a fair bit of confidence that will help, would you agree?

Mr James: Yes. In the absence of anything now, any move in that direction I think is a positive move and there is a need for it.

The CHAIRMAN: What about legal representation at SAT? Some of the people who have been to us say there should not be any lawyers at SAT. You can understand that in terms of some

individuals feel very overwhelmed by the process, but I am sure you are going to tell us that there is a legal requirement that needs to be met too. Does the Law Society have a view?

Mr James: I think the Law Society's view would be that people should be entitled to legal representation if they feel that they need it. There are certainly some circumstances where practitioners will say, "You don't need us there; you should go and do it yourself." The cost outweighs the benefit ultimately, and I think lawyers are cognisant of that issue—the people I mix with anyway are cognisant of that issue. So I do not think there should be any prohibition upon representation if a person feels the need for it, but I do appreciate that it can escalate a problem.

The CHAIRMAN: So I presume you have been in situations at SAT?

Mr James: Yes, I have appeared at SAT.

The CHAIRMAN: So do you think that SAT itself gives assistance enough to private individuals who have no legal training appearing before it?

Mr James: I have never been in the situation where someone has appeared without representation, but anecdotally I understand they are very, very supportive and helpful.

The CHAIRMAN: That is what we heard in Victoria. Question 2.8: your submission notes that there would need to be recognition of managers who provide their skills without reward, so that is part of consideration. If you look at the history of strata title, Mrs Jones in unit 4 was the person who was going to do all this work voluntarily because it was just a friendly thing amongst neighbours. As we have pointed out, it is going well beyond that. But you still you have situations, which I have to declare an interest in. I have got a unit with one neighbour. We get on very well and the most important thing in our meetings is a bottle of champagne, so you have got that level of management right through to many, many millions. There are those who are doing it without reward and those who are doing it at the bottom end of the spectrum. Do you have a comment about that?

[11.45 am]

Mr James: My view is that they should be permitted to do it as the Strata Titles Act anticipated that they would. The issues that this inquiry is considering come in when the group of proprietors think that their job is so large that they need a third party professional involved. If a strata company has the confidence to run its own affairs—let us face it, there are a lot of competent people out there who own strata properties—I do not think they should be compelled to go and get —

The CHAIRMAN: Yes. Sorry to butt in, Mr James. We have heard evidence that some of the wealthier ones do run them where there are only five or 10 of them, or whatever. Your argument—or the society's argument—would be that you bring in the regulation at the level where you buy in professional —

Mr James: Yes. That would be a logical point, rather than requiring people to take on a strata manager.

Hon ED DERMER: I can still imagine the situation arising when even Max and his neighbour start arguing over the last glass of champagne or whatever. When there are two people involved, I can imagine disputes still arising. I get constituents come in with many complex difficulties about localised wars with their neighbours.

Mr James: Yes. In those circumstances, they could go to the dispute resolution mechanism that is being proposed. My comments were in relation to whether a volunteer should be required to have some level of skill.

The CHAIRMAN: We are talking about national compliance, licensing and compulsory education.

Mr James: Yes, those things. A scheme with two, three, four or up to 10 lots. I think that if the owners —

Hon JIM CHOWN: Do you mean a tiered system?

Mr James: No; just the number of lots in the scheme. You would have to have a minimum of two and they can go up, as you know. I think you have to recognise a small group, a middle group and a large group. Different regulations could apply to those, having regard to the costs that have to be incurred by each proprietor.

The CHAIRMAN: The last question we have for you is: since the Law Society put in its evidence in 2002, there have been minor changes. Have any of those changes helped or assisted, or do you think it is just benign?

Mr James: I am not aware of the changes.

The CHAIRMAN: There were some minor changes.

Mr James: There were minor changes to the act, but not particularly to the issue. Since 2002, more schemes have been registered. I believe that the belief that the proprietors of schemes are protected in some way is more entrenched because another nine years has gone by and nothing has happened.

The CHAIRMAN: I will just reiterate what I said a little earlier. We have heard evidence from a small number of people saying it is difficult to prosecute, it is difficult to get the police interested and it is difficult to get a hook in law that you can hang your case on. Do you think the Law Society would agree with that, generally? Do your members find it difficult to prosecute if a client comes to them?

Mr James: Our efforts would be to recover under contract or breach of fiduciary obligation.

The CHAIRMAN: Is there much discussion inside your rooms about how hard it is if a client comes to one of your members and says, “I believe there is \$30 000 or \$50 000 missing out of an account”?

Mr James: There is not a large amount of discussion within the Law Society—the group I am from—in relation to that. The greatest concern is the fact that in this society there is a group of people who are not controlled but who should be.

The CHAIRMAN: Okay. Any further questions, members?

Hon KEN BASTON: I have one. You spoke of splitting it into three groups so that you have a structure. First of all, you would start at two. What would be the next maximum before you go into your next group? Have you thought that far?

Mr James: I have not thought that far.

Hon KEN BASTON: Would the two from that group be licensed, or would it be a person who is doing it for no reward but who is part of the group of a structure of five or something?

Mr James: It is my opinion—I have not canvassed this with the Law Society—that if the strata council—that is, the members of the council of owners—wants to manage their strata scheme, they should be able to do so, but if they employ somebody to take on that role, that person should be licensed.

Hon KEN BASTON: So that employment could be for a single dollar?

Mr James: Yes, once you start involving a third party.

Hon KEN BASTON: Thank you.

Hon ED DERMER: That would include if they employed one of their own, would it not?

Mr James: Yes. Once you start getting a contractual situation, the issues can escalate. Having said that, it is not to say that a strata council could not defalcate as well, but at least then you would have some confidence that they had a strata lot that could be available to recover against if necessary.

Hon JIM CHOWN: Under the current act, what responsibility do councillors have for any defalcation? Are they responsible if moneys are missing out of their own pockets?

Mr James: They have to account to the owners for the use of the money. If they cannot account for it, there would be a right of action against them.

The CHAIRMAN: We will not get into debating, but some of the problems we have are with proxy voting. We have heard that in some cases the president of the council will just say, “I have X amount of proxy votes and that is more than is in the room, so this matter will not be discussed.” We have to apply our minds to that as well. Everyone in a democracy has the right to vote, whether they are there or not. There seems to be some reasonable evidence that in some cases that is being used against people who wish to get information.

Mr James: I can imagine that situation happening. 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.

The CHAIRMAN: Do you have a view on proxies?

Mr James: I have not turned my mind to proxies.

The CHAIRMAN: It is an area of some interest to us. Getting back to the matters you have talked about in terms of the council, the council does play an important role in this. As you say, the council represents all the owners and tenants but is not necessarily a harmonious group, as you have just pointed out.

Mr James: The council is the group appointed by the strata company. They look after the day-to-day management, but it is when you come to the strata company where your proxies are used for voting.

The CHAIRMAN: They are actually used strangely. Sometimes it is the strata managers who hold the proxies.

Mr James: Yes, they are invited to.

The CHAIRMAN: In Victoria, they say that that should not be allowed because it can be an enormous conflict of interest, but here that does happen in places.

Mr James: It could happen here because there is nothing in the act that says it cannot.

Hon ED DERMER: Do you have a view on whether it should be?

Mr James: For the reasons given by the chairman, I think that it should be frowned upon.

Hon ED DERMER: I am more familiar with other bodies rather than boards for properties, although I have had some experience with one strata council. Normally, an officer who is elected by a group of people has certain duties. The officer reports back to the meeting of the group of people and says, “I have done this, I have not done that and I have been trying to do this but there has been a problem”. There is a role for the body of people to either accept or decline accepting the report in terms of whether the officer on their behalf has fulfilled his duties properly. I found it very strange that a manager reporting to a strata council can say he is giving a report and that the people at the meeting could say that it is not a very satisfactory one but the manager uses his proxies to say that it is a perfectly good report and actually assesses his own report. If you were one member of the body, you might have one vote in assessing the report, which is reasonable, but the idea of having a majority vote holder adjudicating on his own work seems interesting to me.

Mr James: It is a clear conflict to use your power of voting to vote in favour of something you have created yourself. You should declare the interest and not vote.

Hon JIM CHOWN: That brings me to my next question, Craig. The responsibility of the body corporate, as a body, is to act on behalf of all owners, and a strata manager should be employed by the body corporate. It does not work the other way around. Is that correct?

Mr James: That is correct.

Hon JIM CHOWN: In reality, it does on many occasions, and that is where we fall into a hole.

Mr James: Are you saying that the strata company is dictated to by the strata manager?

Hon JIM CHOWN: That is some of the evidence that we have received in the past few weeks. It is done through a lack of interest and the lack of powers of the body corporate. What powers does the body corporate actually have under the act?

Mr James: Before I answer that, can I just make an observation on the point you made about the lack of interest? I think that is a big issue. You often do not get quorums because people are not interested enough to attend the meetings.

Hon JIM CHOWN: That is why my previous question was whether the body corporate is judicially responsible for any shortfalls in finances et cetera, because that would certainly engender a lack of interest in those parties.

Mr James: Once again, the structure is that the strata council is appointed by the strata company. The strata company's obligations are to ensure that the by-laws are enforced and to ensure that the common property is managed in the best interests of all proprietors. In the course of doing that, they raise funds to meet the costs of managing the common property. They are fairly simple obligations.

The CHAIRMAN: But it could have dire consequences could it not? We have heard evidence in Victoria that most people do not understand the risk that might be out there.

Mr James: They have no idea. The proprietors have no idea of the risk.

The CHAIRMAN: Sorry to cut in on you.

Mr James: That is all right. Your question, Mr Chown, was whether the regulations or duties spelt out in the Strata Titles Act are broad enough. Given that the two I have mentioned are the only two in the act—there are other powers, but they are the broad duties—I cannot imagine why expanding them is going to impose any greater obligation on the strata company.

Hon ED DERMER: Because the two are simple at one level, but all encompassing on another, are they not?

Mr James: Yes; it is the raising of the funds and the management of the meetings. They are the two areas where the strata manager has a lot of control. Most people hand over to a strata manager because they do not know the provisions of the legislation, but the strata managers do and the people rely upon the strata managers to guide them. Most strata managers do a good job with that.

The CHAIRMAN: We are not arguing against that.

Hon ED DERMER: If a strata council member found himself responsible for money that was stolen by a strata manager, I can imagine that would compound the apathy by having no-one wanting to be on the strata council. You would have the fear compounding the apathy.

Mr James: Yes. It would be unfair to ask a proprietor, who is a member of council, to underwrite a third party's obligations. That would be unfair at law and commercially. For commercial reasons, no-one would put up their hand to be a member of the strata council.

The CHAIRMAN: Here and in Victoria we have heard a fair bit of evidence that they know the exact numbers. One of the problems is that many of the units are owned by absentee people who have an absolute desire to keep the costs at a bare minimum, and you have owner-tenants or tenants in a building who want to make sure that the swimming pool operates or the gate locks or the lights come on. There seems to be a natural conflict between those who live in the unit and those who own the unit but who do not necessarily have any interest in it other than as an investor.

Mr James: In my experience, that is an issue. The owner-occupier has a greater interest in maintaining the property that they are living in than does the absentee landowner.

The CHAIRMAN: There are issues—we heard this again in Victoria—about discounting the proxy votes, even down to one in 10, so that the proxy votes are held at 10 per cent of the collective number.

[12 noon]

Mr James: Again, I have not turned my mind to that, but the circumstance of a person who, because of illness, cannot make it at the last minute, their voice will not be heard or given the same value. The situation exists in company meetings.

The CHAIRMAN: Exactly the same.

Mr James: It may be a price we have to accept for community living.

The CHAIRMAN: We have come to the end of the questions, but I will just put a last one about proxies. There is an argument that you should have a proxy that describes what you voted for, so when you hand it in, it has a description of what it is for. There are questions put forward to us saying that a proxy should be dated and that it is only for the special meeting or the annual general meeting. Some say that those proxies should be only for a 12-month period, but under the current regulations, you can put in a permanent proxy. Do you have any views on any of those?

Mr James: I was not aware that you could put in a permanent proxy under the current legislation.

The CHAIRMAN: We know that people are putting in permanent proxies.

Mr James: I think a proxy should be put in for every meeting, and I think your suggestion of specific resolutions—how do I want to vote in favour of—would address the control which the blanket proxy donee has all the control that person would have over a meeting. In effect, you are saying that you can vote by proxy by indicating how you want to vote—yes or no—without appointing somebody to carry that vote for you.

Hon ED DERMER: What would you think of a requirement that a proxy could only be given to a person who is also an owner in the same stratified property? I would have thought that, intrinsically, if I am the owner of this unit and Max is the owner of the unit next door, we would have more common interest than Ken might have if he is the manager without being an owner.

Mr James: I guess that would fall down if you are not friendly with anyone and you are trying to put something up that they are not going to support, and you cannot get to the meeting!

Hon ED DERMER: I was going to say, maybe you would then need to attend the meeting!

Mr James: Yes; but not if you are on your deathbed somewhere! I think there are situations there.

Hon ED DERMER: The fundamental issue of proxies is that a proxy represents a person who is not there; therefore, they cannot be listening to the deliberations that may attend a point at issue that is being voted on.

Mr James: Yes.

Hon ED DERMER: Electronically, that might be overcome within the next few years.

Mr James: You mean that they cannot participate in the discussion? That is right.

Hon ED DERMER: Yes. For example, if you are getting a report to say, “This is what I’ve done,” and your vote has been cast, possibly by the person delivering the report, you cannot read the report and make an assessment about whether it is a reasonable one or not.

Mr James: No, and is it fair to ask somebody to indicate how to vote one way or another if they have not been apprised of all the facts? I think that is dangerous. You are aware of the process, I am sure, of resolutions that have to be passed by certain majorities under the Strata Titles Act and how people can have up to 28 days if they are not there and voting to vote against or vote in favour of a resolution. That is in situations where you need special or unanimous resolutions, or resolutions

without dissent. They are usually on much weightier issues, like changes to bylaws and dealings with common property.

Hon ED DERMER: At least by then you would know what the point was that you were voting on, which is not the case if you have someone acting as a proxy for someone else.

The CHAIRMAN: Nearly all the evidence we have is related to the accounts.

Mr James: Yes.

The CHAIRMAN: The ability to be able to read them and understand them and have concerns about whether funds are missing or not—not even missing or not, but having been mismanaged—those sorts of questions. Can I go back to question 2.6? Does the Law Society have the view that strata titles should be required by legislation to have the company accounts audited annually? I thought you said that that was the case.

Mr James: Yes, I did.

The CHAIRMAN: You said it should not necessarily be a qualified auditor.

Mr James: I think that there is a role for unqualified auditors in certain levels. You might look at turnover, you might look at the number of lots.

The CHAIRMAN: Some of the auditors that I have spoken to privately, not within the hearing, do not like to do it because when they turn up, not all the information is there. They then have to qualify the audit and it becomes a bit of a nonsense.

Mr James: Yes.

Hon ED DERMER: You stressed independence as a criteria, did you not, for a person, rather than being qualified.

Mr James: Yes; someone who is not on the committee and someone who does not have control of the purse strings. There might be someone qualified within the scheme who could do it, as long as they are not on the committee.

Hon ED DERMER: So you would not necessarily see an owner as being disqualified by virtue of their interest?

Mr James: No; in fact, they are probably going to be more analytical, or they would have a vested interest in being analytical. I think a person on the council should be precluded, because they are the people authorising the spending of the money.

Hon ED DERMER: So, a non-council member owner who might have some experience in bookkeeping could be the type of person we are looking for?

Mr James: Yes.

Hon ED DERMER: In an exchange with my colleague Hon Ken Baston, you talked about levels at which requirements would come into play for audited financial statements. You made a very clear definition that the first level would be one where the owners do not believe there is a requirement for them to engage a manager for money. I understand that that is a distinction between the lowest level requirement and the next level, but I think you suggested that there may actually be a second line of demarcation that would then separate a second level from a third level. I wonder whether you could expand a little on that.

Mr James: I think the point I was proposing was that maybe, after a certain level, you may want a qualified auditor to look at the books, when the business got so big that —

Hon ED DERMER: How would you measure that?

Hon JIM CHOWN: By money.

Mr James: Turnover, probably; the amount of money that goes through an organisation.

Hon ED DERMER: Okay; so it is shifting from the bookkeeper, who is independent, to a qualified auditor who is independent.

Mr James: Yes.

The CHAIRMAN: I looked at this earlier, but at the bottom level, you are not required to have counsel; in fact, it would be very informal.

Mr James: Yes.

The CHAIRMAN: The level is 10—is that right?

Mr James: It is three. It is called a small strata scheme, and I think it is only up to three lots.

The CHAIRMAN: Yes, I did read that at the beginning of our inquiry, but it does not matter. That information is around. We have a situation in which, as I described, my neighbour and I who have an annual conversation about how much we insure the building for; that is the only conversation we have. Then there is the next level, where a grouping is put together, but the grouping might be of 10, but might wish to run their own affairs and have enough skill amongst them to be confident that they can run their own affairs. The next level would be when you buy someone in; that would be the third level.

Hon ED DERMER: I am just interested in the definition Mr James suggested, I think very clearly.

The CHAIRMAN: I think that is a good, clear definition. I had not quite thought of it that way. Are there any other questions for Mr James?

Your evidence has been very useful, and I really appreciate it. I will say congratulations on persevering! All we can do is write a report and send it to the house, but I can assure you that we have evidence of some of the things of concern in your submission in 2002.

Mr James: That is good. This is a timely inquiry, having regard to the national licensing regulations or regimes that are coming into the country. It may be that that is going to help us achieve the same end.

The CHAIRMAN: Not quite; we will always have to have compliance in Western Australia.

Mr James: Yes.

Hon ED DERMER: It might be the right time to raise compliance components.

Mr James: Yes; I think that is the point I was trying to make.

Hon ED DERMER: Is it the psychological moment, to use the football parlance?

The CHAIRMAN: Thank you very much for your evidence; it has been very useful.

Mr James: Thank you for your invitation, and good luck.

Hearing concluded at 12.08 pm
