



***ECONOMICS AND INDUSTRY
STANDING COMMITTEE***

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

Report No. 5

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Inquiry into the Western Australian Strata Management Industry

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Report No. 5

Presented by:

Mr A.D. McRae, MLA

Laid on the Table of the Legislative Assembly
on Thursday, 26 June 2003

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COMMITTEE'S FUNCTIONS AND POWERS

The functions of the Committee are to review and report to the Assembly on: -

- (a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- (b) annual reports of government departments laid on the Table of the House;
- (c) the adequacy of legislation and regulations within its jurisdiction; and
- (d) any matters referred to it by the assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual report of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

TERMS OF REFERENCE

Inquiry into the Western Australian Strata Management Industry

The Committee will examine, report and make recommendations relating to the strata management industry in Western Australia with regard to:

- the potential risks posed to consumers by the current absence of regulation of the strata management industry;
- the need for and most appropriate method of regulation (if deemed necessary) of the strata management industry; and
- any other matters deemed relevant by the Committee.

CHAIRPERSON'S FOREWORD

I am pleased to present for tabling the fifth report of the Economics and Industry Standing Committee. The report is the Committee's second and final report on its *Inquiry into the Western Australian Strata Management Industry*. The Committee's inquiry came about in response to matters put before the Committee by the Minister for Consumer and Employment Protection, Hon. John Kobelke. Minister Kobelke had been dealing with approaches from members of the industry and matters arising across government that revealed the emergence of potential management and capital risk issues.

There is a sense of timeliness in taking a precautionary approach to this industry. In the course of the Committee's inquiry, people have raised legitimate concerns about the need for reform, the need for targeted regulation, and a degree of better coordination of strata property management. The Committee is satisfied there is no evidence of crisis in the industry while also recognising the need for review and reform of governance arrangements. It is also true that the Committee believes that, in the absence of targeted reform, there is a likelihood of capital loss to individuals and potentially the State.

There has been widespread support for this inquiry from across the industry. The inquiry provided property owners and strata managers an opportunity to comment on the most appropriate reforms for strata property management in Western Australia. While the regulation of strata managers was the initial focus of the inquiry, it became apparent to the Committee that a broader issue existed, relating to strata property owners' understanding of their rights and responsibilities under the *Strata Titles Act 1985*. A further issue raised in this inquiry is that many strata properties in WA do not possess the necessary capital reserves for long-term maintenance matters.

The Committee recognises variables of size and complexity effect the degree to which regulation may be required and in this report proposes a system that categorises strata properties according to their size and structure.

This categorisation model establishes three tiers of management and governance for each category. Smaller schemes of up to five, single storey lots will have little or no additional regulatory requirements placed upon them. Larger schemes are considered to have more complex and substantial financial management and administrative issues and as a result, the Committee has proposed stronger financial reporting mechanisms, the establishment of reserve funds and the appointment of licensed strata managing agents for these schemes.

The regulatory framework developed by the Committee provides greater clarity of management of strata properties, the protection of scheme-managed funds and the provision of long-term maintenance funds.

The Committee has examined and made recommendations relating to the area of dispute resolution and the role of the Strata Titles Referee. The Committee recommends that the role of the Strata Titles Referee be strengthened and incorporated into the proposed State Administrative Tribunal. This will provide a timely, cost effective alternative to the current dispute management arrangements available to the industry.

There was strong support from industry in the conduct of the Committee's inquiry. I would like to record the Committee's appreciation of the contribution of the Strata Titles Institute of Western Australia and its President, Mark Atkinson. I am grateful to the contribution of members of the industry during the course of the Committee's regional hearings. In particular, Ms Eleanor Logiudice and Mr Jack O'Malley who gave valuable assistance in Busselton. In Kalgoorlie, acknowledgment is due to industry stakeholders and managers, including Mr Gavin Gilmore, Mr Wayne Walker, Ms Margaret Boyden, Mr Lindsay Murphy and Mr Allan Pental.

I would also like to acknowledge the support provided to the Committee by a number of individuals within the Western Australian Public Service, including Dr Catherine Bennett of the Department of Consumer and Employment Protection, Mr Bob Kronberger, the Strata Titles Referee, Mr Ross Lambert of the Valuer General's Office, and Mr Charlie Noble of the Department of Land Administration.

My thanks also to my fellow Committee members and to the Committee's staff - Principal Research Officer, Dr Ray Wills and Research Officers, Ms Liz Kerr and Ms Jovita Hogan. They are to be congratulated for their dedication and commitment to the work of this Committee.

I commend the report to the Parliament, industry and the community.

MR A.D. McRAE, MLA
CHAIRPERSON

ABBREVIATIONS AND ACRONYMS

“ADR”	Alternative Dispute Resolution
“C1”	Category 1
“C2”	Category 2
“C3”	Category 3
“DOCEP”	Department of Consumer and Employment Protection
“DOLA”	Department of Land Administration
“DPI”	Department of Planning and Infrastructure
“REBA”	Real Estate and Business Agents
“REIWA”	Real Estate Institute of Western Australia
“REM”	Real Estate Model
“STIWA”	Strata Titles Institute of Western Australia

GLOSSARY

Alternative Dispute Resolution	Alternative Dispute Resolution (ADR) is a label for a range of methods by which people involved in a dispute can be assisted to resolve the matter. Typically, ADR includes processes of mediation, conciliation and arbitration.
Arbitration	The settlement of a dispute by the decision of an independent third party.
By-laws	A set of rules that an owner (and tenants) in the strata scheme must follow. All by-laws are not the same and can be changed at a general meeting of a strata company.
Common Property	Land and buildings outside the boundaries of individual lots, but contained within the external boundaries of the original parcel as depicted on the strata plan.
Conciliation	Conciliation is similar to mediation. The conciliator will be someone with special knowledge.
Defalcation	Misappropriation of funds.
Lot	One or more cubic spaces forming part of the parcel to which a strata scheme relates. A separate title is issued in respect of each lot.
Mediation	A cooperative decision-making process in which qualified and impartial mediators help parties to effect an agreement or reconciliation.
Notifiable Information	A statutory requirement under section 65 of the <i>Strata Titles Act 1985</i> for potential buyers of strata properties to be provided with notifiable information relating to the strata/survey plan, by-laws and unit entitlements.
Proxy	A person appointed in writing by an owner or mortgagee to attend a strata company meeting and vote on that person's behalf.
Strata Company	A body corporate constituted under section 32 of the <i>Strata Titles Act 1985</i> . All lot proprietors are automatically members of the strata company.
Strata Council	A number of elected lot proprietors who carry out duties and responsibilities of the strata company.
Strata Manager	A person contracted by a strata company to assist in the management of the strata scheme.
Strata Scheme	The division of a parcel of land into lots under a strata plan.

EXECUTIVE SUMMARY

This is the final report of the Economics and Industry Standing Committee's *Inquiry into the Western Australian Strata Management Industry*.

Chapter 1 provides the context for which the inquiry was established. A summary of the issues related to strata title living is discussed, and concerns raised at the public forum that commenced the inquiry are introduced.

Chapter 2 discusses the current legislative arrangements applicable to strata title properties and provides an historical overview of strata titles in WA. This chapter presents a range of tables that demonstrate the size, complexity and distribution of strata properties within WA. The first of the Committee's findings are reported in this chapter.

Chapter 3 outlines the system of governance of strata properties in other Australian jurisdictions. It includes a statistical overview of strata schemes and management across the states and territories. Additional findings are reported in this Chapter.

The potential risks posed by the absence of regulation in the area of strata management are presented in Chapter 4. The chapter includes an analysis of the major issues, including fund management and dispute resolution. The chapter concludes with a discussion on some regulatory models in the related area of real estate and builders' registration. The remainder of the Committee's findings are reported in this Chapter.

The Committee's model for regulation of the strata industry is developed and explained in Chapter 5. The regulatory arrangements include the classification of strata schemes according to variables of management complexity, collective risk and governance obligations. The expansion/enhancement of the role of the office of the Strata Titles Referee is discussed. All of the Committee's 21 recommendations are presented in this Chapter.

FINDINGS

The Committee finds that:

Page 12

Finding 1

As of February 2003, there were more than 157,000 residential strata title units in Western Australia valued at more than \$25 billion.

Page 12

Finding 2

The number of strata title units in Western Australia increased by 9% in the period October 2002 to February 2003.

Page 17

Finding 3

There are more than 120 strata managers in Western Australia managing 4,000-5,000 schemes.

Page 23

Finding 4

The living arrangements of Australians are changing with a trend to increased occupancy in strata title residences and a commensurate increase in experience of strata community governance issues.

Page 31

Finding 5

Many strata property owners and managers are not fully aware of their rights and responsibilities under the *Strata Titles Act 1985*.

Page 32

Finding 6

The *Strata Titles Act 1985* is complex and difficult to interpret.

Page 32

Finding 7

The roles and responsibilities of strata managers are not defined, and strata managers are not licensed or regulated, under the Western Australian *Strata Titles Act 1985*.

Page 33

Finding 8

The content of the contract between strata property owners and an appointed strata manager is not subject to regulation under the *Strata Titles Act 1985*.

Page 34

Finding 9

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

Page 37

Finding 10

No uniform standard of reporting requirement exists for strata title schemes.

Page 37

Finding 11

The *Strata Titles Act 1985* does not require strata company funds to be deposited into a trust or bank account or for those funds to be audited.

Page 38

Finding 12

The *Strata Titles Act 1985* does not require long-term planning for major repairs and maintenance of strata title properties.

Page 39

Finding 13

Under the *Strata Titles Act 1985*, a strata company is not required to establish and maintain a reserve fund.

Page 40

Finding 14

There is a potential risk for minority owners to have little or no say in the running of a strata title company. This risk is higher where a single majority holding is able to exercise authority in an unconscionable manner.

Page 41

Finding 15

There is a potential risk for minority owners to veto essential works using provisions in the *Strata Titles Act 1985* requiring unanimous agreement.

Page 42

Finding 16

The Strata Titles Referee does not have enforcement powers for dispute resolution.

Page 43

Finding 17

The system for resolving internal strata property disputes is cumbersome, unclear, potentially costly and often ineffective.

RECOMMENDATIONS

The Committee recommends that:

Page 49

Recommendation 1

The *Strata Titles Act 1985* be amended to incorporate a classification system that represents strata schemes in the following manner:

- Category 1 (C1): single storey schemes of up to five lots;
- Category 2 (C2): schemes of six to 20 lots and all multi-storey schemes from two to 20 lots; and
- Category 3 (C3): all schemes of more than 20 lots.

Page 52

Recommendation 2

A general meeting of a strata company may resolve to apply to the Strata Titles Referee for re-classification to the next lowest category.

Page 53

Recommendation 3

The Strata Titles Referee be formally involved in the development and provision of information to strata property owners on their rights and responsibilities under the *Strata Titles Act 1985*.

Page 53

Recommendation 4

Section 65 of the *Strata Titles Act 1985* be amended to expand provisions relating to notifiable information. Information relating to owners' rights and responsibilities, current financial records (including operating accounts and reserve funds), the management plan and management contracts must be fully disclosed to potential purchasers in the offer for sale.

Page 54

Recommendation 5

Future revision of the *Strata Titles Act 1985* adopts the use of plain English language.

Page 55

Recommendation 6

The *Strata Titles Act 1985* be amended to require that strata company funds for Category 2 and Category 3 schemes be held in an account at a financial institution.

Page 55

Recommendation 7

The *Strata Titles Act 1985* be amended to require that each Category 2 and Category 3 strata company establish a reserve fund based on long term projections of future expenditure liabilities.

Page 56

Recommendation 8

Strata management companies for Category 2 and Category 3 schemes be required to prepare a ten-year management plan, reviewed every five years.

Page 57

Recommendation 9

The *Strata Titles Act 1985* be amended to require strata companies to adopt uniform financial reporting methods.

Page 57

Recommendation 10

The *Strata Titles Act 1985* be amended to require statutory funds of Category 2 and Category 3 schemes to be audited annually.

Page 57

Recommendation 11

Any revision of the *Strata Titles Act 1985* include consideration of the use of unconscionable conduct principles contained in the *Trade Practices Act 1974 (Cth)*.

Page 58

Recommendation 12

The *Strata Titles Act 1985* includes a definition of a strata manager, and provide for the establishment of key minimum competencies of a strata manager.

Page 60

Recommendation 13

Strata companies in Category 2 and Category 3 schemes be required to appoint a licensed strata manager.

Page 60

Recommendation 14

The proposed licensing body, in conjunction with other regulatory agencies and industry peak organisations, develop a system of training and accreditation for strata managers.

Page 61

Recommendation 15

The government works with industry to develop appropriate regulation for fidelity protection across the strata management industry.

Page 62

Recommendation 16

A two-tier system of licensing for strata managers, reflecting the levels of complexity associated with Category 2 and Category 3 strata title companies, be developed for the industry.

Page 63

Recommendation 17

The Government works with industry to establish a Code of Conduct for strata company managers.

Page 63

Recommendation 18

The *Strata Titles Act 1985* make provision for a management contract between a strata company and licensed strata manager to include an industry Code of Conduct as an enforceable instrument.

Page 64

Recommendation 19

The office of the Strata Titles Referee be given the responsibility to prepare, in conjunction with industry organisations, information for all stakeholders in the industry.

Page 65

Recommendation 20

The office of the Strata Titles Referee adopt a system of Alternative Dispute Resolution for the strata management industry.

Page 65

Recommendation 21

The office of the Strata Titles Referee be given enforcement powers for orders made under the *Strata Titles Act 1985*.

MINISTERIAL RESPONSE

Standing Order 277(1) of the Standing Orders of the Legislative Assembly states that:

A report may include a direction that a Minister in the Assembly is required within not more than three months, or at the earliest opportunity after that time if the Assembly is adjourned or in recess, to report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Accordingly, the Economics and Industry Standing Committee directs that the Attorney General, the Minister for Planning and Infrastructure and the Minister for Consumer and Employment Protection report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Economics and Industry Standing Committee.

The Committee notes that as the Minister for Consumer and Employment Protection raised the original reference of this matter, it may be appropriate for this Minister to coordinate the Government's response to the Assembly.

CHAPTER 1 INTRODUCTION

1.1 Background

Strata schemes cater for a range of uses, primarily grouped housing and industrial and commercial developments. Approximately three and a half million people live or work in strata title schemes in Australia.¹

The Valuer General's Office (VGO) database indicated that in October 2002 there were more than 40,000 strata properties containing more than 180,000 units across WA.²

A small proportion of strata companies employ strata managers to administer their affairs. It is estimated that in WA smaller strata management companies typically hold about \$100,000 and larger companies up to \$500,000 on behalf of their clients.³

In July 2002, the Minister for Consumer and Employment Protection, the Hon John Kobelke, requested that the Economics and Industry Standing Committee (the Committee) conduct an inquiry into the Strata Management Industry and related matters.

1.2 Inquiry Parameters

The inquiry reviews the existing arrangements for the management of strata properties in Western Australia, with a particular focus on the potential risks posed to consumers by the current absence of regulation in the strata management industry.

1.3 Conduct of the Inquiry

The Committee began the inquiry with a call for submissions, held a public forum to canvass a range of views from government, industry groups and owners, and held public hearings in Perth and two regional centres.

(a) Submissions

The Committee advertised the inquiry and called for submissions in the West Australian Newspaper on 28 September 2002, The Sunday Times Newspaper on 29

¹ National Community Titles Institute (http://www.ncti.org.au/ncti_ca.html, accessed October 2002)

² Mr Ross Lambert, Valuer Generals Office, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 11-14.

³ Hon John Kobelke, Minister for Consumer and Employment Protection, letter to the Committee dated 2 July 2002.

September 2002 and all Community Group and Independent Newspapers in the following week. In addition, the Committee identified and wrote to 128 interested persons and organisations, including strata management companies, industry groups, and owner interest groups, inviting submissions to the inquiry.

The Committee received 25 submissions from a range of stakeholders, including industry representatives, regulatory agencies, and strata property owners. A common theme within those submissions was that the *Strata Titles Act 1985* is an unclear and complex piece of legislation.

Given that there are potentially more than 180,000 residential, commercial and other strata property owners in WA (as at October 2002), and more than 120 strata managers, the response does not indicate widespread high level concern within the community. The majority of submissions represented industry views, while individual owners' submissions numbered nine. The Strata Titles Institute of Western Australia (STIWA) made a submission on behalf of their more than 160 members, and a further 12 industry representatives made individual submissions to the Committee.

(b) Public Forum

While awaiting submissions and prior to conducting formal hearings, the Committee held a public forum at the Legislative Assembly Committee Office in November 2002. The public forum was held to canvass a range of views in an environment conducive to the exchange of ideas. Speakers from government and industry were invited to provide a snapshot of the strata title industry and the potential pitfalls in the absence of industry regulation. All participants were then invited to discuss presentations, with a panel discussion concluding the forum. It may be the first time that a parliamentary inquiry has commenced its task in this fashion, and is an approach that will be used by the Committee in the future when appropriate as part of the process of collecting information for an inquiry.

In general, industry representatives considered the potential risks posed to consumers by the absence of regulation of the strata management industry warranted review and reform. Opinions on the degree to which the industry needs to be regulated were varied, although no contribution suggested a total removal of regulation.

(i) Protection of Funds

The issue of the protection of strata company funds received the most attention by forum participants. From a consumer protection perspective, Department of Consumer and Employment Protection (DOCEP) expressed the view that WA needed to adopt some form of regulation for the strata management industry, with the key priority of protecting consumers against financial loss from potential theft or mismanagement of strata company funds by paid and unpaid strata managers.

A central concern in conducting this inquiry has been the issue of public risk in relation to the amount of money held by strata managers. A strata manager may invest a strata company's reserve fund (if it has one) on behalf of the company.

Strata titled properties generate a considerable amount of administrative funds. DOCEP noted that:

a recent review of trust accounts held by licensed real estate agents for strata management purposes indicated that on average, monthly balances ranged from about \$10,000 to around \$1 million. The average sample of nine companies was \$440,000, and it was not unusual for it to be above \$800,000.⁴

It is important to note that these figures do not include those strata managers who are not licensed real estate agents.

While it was acknowledged that there is no evidence of a crisis within the industry, a number of participants highlighted the benefits of establishing a fidelity fund. A fund of this nature would serve to compensate strata companies that had been financially deceived, and may be funded from a number of sources, including the interest earned on established trust accounts.

The Real Estate and Business Agents Supervisory Board (REBA) discussed the advantages of requiring people who handle other people's money to be subject to some level of trust account training and trust account audit. Combined with the requirement to use trust accounts, training and assistance in this area would facilitate greater protection and a cooperative relationship between the regulator and regulated.

(ii) *Licensing Strata Managers*

REBA expressed the view licensing strata managers would be advantageous for two reasons. Firstly to ensure that those persons operating within the industry are competent to carry out the sometimes complex tasks involved, and secondly to attempt to filter out any unscrupulous or dishonest operators.

REBA acknowledged a licensing system may disadvantage or exclude unpaid or voluntary strata managers. These are often volunteer lot proprietors within a scheme, if not friends or relatives offering to help out. In some cases managers will be asked to do no more than convene a meeting or pay an insurance policy once a year on behalf of the company.

The management of a strata scheme may become more complex, particularly where there are larger schemes, with a mixture of uses, for example commercial and residential. One seminar participant noted that management complexity increases in

⁴ Dr Catherine Bennett, Department of Consumer and Employment Protection, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, p. 17.

direct proportion to the number of lots in a scheme. It was suggested it was possible to develop a licensing scheme (with appropriate exemptions and exceptions) to include unpaid strata managers, in programs of structured training to facilitate an understanding of the powers and responsibilities commensurate with the position.

(iii) *Dispute Resolution*

The issue of dispute resolution arose during the forum, with the Strata Titles Referee acknowledging limited powers and opportunity for active resolution of disputes. The Referee does not have the authority to arbitrate on disputes between lot proprietors and strata managers with legal remedy for disputes limited to the District Court system. REBA discussed the conciliation provisions contained within the *Real Estate and Business Agents Act 1978* (REBA Act) and outlined the dispute settlement procedures available for real estate agents and their clients.

(iv) *Industry Self-Regulation*

The notion of industry self-regulation was also presented at the forum. It was argued that through the peak bodies, the strata management industry could become self-regulatory, by way of the preparation of a protocol or charter for members.

(v) *Education of Strata Managers*

Several forum participants endorsed the establishment of both educational and professional standards in the strata management industry. The industry currently has two peak bodies, the Strata Titles Institute of Western Australia (STIWA) and its real estate equivalent, the Real Estate Institute of Western Australia (REIWA), both of which currently engage in education and training for industry participants.

It was suggested that TAFE would be best placed to source and structure a course which parallels STIWA and REIWA courses for those not entitled to be members of those institutes and for members of the public.

(vi) *Complexity of the Act*

The complexity of the *Strata Titles Act 1985* was a common theme of discussion throughout the forum. There was broad agreement that the Act is complex and difficult to interpret and a number of comments on the need for a plain English version of the Act to alleviate problems faced by lot proprietors and strata managers alike.

The forum heard one proposal for the current Act to be separated into two distinct statutes - one dealing with the creation and termination of strata schemes, and a second dealing with the rules of internal management and other matters affecting day-to-day operation of strata schemes.

(vii) Public Perceptions

A further issue raised at the forum was the need for public education and the number of complaints and disputes arising from an apparent lack of corporate knowledge within strata companies. In some of the cases cited, there was a lack of understanding of responsibilities between the duties of a strata manager, those of a property manager and the strata company.

The Strata Titles Referee concurred with the view that most lot proprietors are not fully aware of their rights and responsibilities within the strata company. A number of speakers advocated better definition of the role of the strata manager and the management contract, with a particular focus on reducing problems associated with poor record keeping and related matters.

One participant advocated an extensive educational advertising campaign to inform strata property owners of the benefits of engaging experienced strata managers. Another participant suggested that the public is not aware that strata managers are not licensed or regulated, and that minimum steps need to be taken to alert the public to this fact.

(c) Public Hearings

The Committee held a total of eight public hearings. These included a series of public forums in Perth, Kalgoorlie and Busselton, involving industry representatives and other interested parties.

A number of regionally based industry representatives expressed concerns about an increase in the cost of providing strata management services through the imposition of license fees. These concerns focussed on the potential detrimental effect on businesses and their clients' ability to meet any additional costs. This concern is based on the smaller economies of scale achievable in regional WA.

The above matters are discussed and developed in later chapters of this report.

CHAPTER 2 STRATA TITLE IN WESTERN AUSTRALIA

2.1 Legislative Framework

The *Strata Titles Act 1985* (the Act) and associated regulations deal with the allocation of title across horizontal and vertical subdivisions of land. The legislation broadly applies to owners of strata properties, and includes the establishment of the rules and by-laws that facilitate the day to day functioning and management of strata properties. The Act falls under the current portfolios of two Government Ministers and is administered by two separate Government Departments.

The dispute resolution provisions of the Act, contained mainly in Part VI of the Act, are administered by the Department of Justice within the current portfolio arrangements for the Attorney General. The remainder of the Act is administered by the Department of Land Administration (DOLA) within the current portfolio arrangements of the Minister for Planning and Infrastructure.

DOLA's main functions in administering this Act are to provide a land information service, register strata plans, issue titles for strata lots, record by-laws created by strata schemes for their internal management and to provide searches and other information in relation to the preceding. DOLA does not have a specific mandate or expertise in the area of consumer protection.⁵

Part IV of the Act sets out the legal requirements and responsibilities placed on the strata company. The content of the contract between owners and their strata manager is not currently subject to regulation under this Act. The strata company may take legal action through the courts under common law if the strata manager does not fulfil his or her contractual obligations.

2.2 Historical Context of Strata Title in Western Australia

The *Strata Titles Act 1966* was the first law relating to strata titles established in WA. The first strata plan to be registered was a two-lot scheme at Hopetoun Street in South Perth in 1968.⁶

The Law Reform Commission of Western Australia reported on the operations of the Act in 1982 and new legislation was adopted in 1985 which:

- expanded provisions for strata company by-laws;

⁵ Department of Land Administration submission, dated 25 October 2002, p.6

⁶ Mr Peter Munday, REIWA, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, p.28.

- appointed a Strata Titles Referee; and
- introduced an ability for part lots to be created outside of the building structure.

In 1986 REIWA established an advisory Committee, which made further representation to government for additional changes to the Act. In 1989 DOLA, with collaboration from a number of industry and other organisations, published a series of recommendations.

The recommendations resulted in the establishment of a consultative and advisory committee of both government and industry experts under the auspices of DOLA, with a view to further amending and updating the 1985 legislation.⁷

The *Strata Titles Amendment Act 1995* was passed by both Houses of Parliament in 1996. Further amendments to the legislation, including provisions relating to insurance, were passed in 1997.

2.3 The Strata Properties

(a) Strata title demographics

There are currently more than 43,000 strata title plans registered with DOLA across more than 190,000 individual units in total over all plan types (Table 2.1, 2.2). Strata properties are important in both city and country areas (Table 2.3). More than 89% of schemes are residential in nature (Table 2.4). There are also caravan parks, factories, farms, vineyards, industrial land, industrial complexes, shopping centres and hotels held under strata title law. Retirement villages may also be considered as strata title properties, and it is not unusual for retirement villages to be some of the larger schemes (eg Table 2.5)

Very large schemes (more than 20 units per scheme) have an average of 44 units per scheme (Table 2.2). The largest scheme has 209 units (Table 2.5). However, the numbers of lots per scheme could be an underestimate as several independent schemes, which are physically proximate, might agree to share facilities under some form of overarching contractual cooperative agreement. The best example of this is in Perth city where four separate strata schemes share some facilities (such as swimming pool/tennis courts) by contractual arrangement.

⁷ John Angus, *Understanding Strata Titles, A guide to the Management and Administration of Strata Companies in Western Australia*, 2002, p.2.

Table 2.1. Size of Strata and Survey Strata Plans – October 2002.⁸

Size	Value of properties (\$ million)	No. of properties	No. of units	Average No. units per property	Average Value per unit (\$)
• 2 lot plans:	8 631.2	24 573	48 647	2	177
• 3 - 5 lot plans:	6 025.2	9 148	32 684	4	184
'medium' plans (6-10):	4 423.7	3 817	29 305	8	151
'large' plans (>10)	9 428.5	2 760	69 536	25	136
TOTAL	28 508.6	40 298	180 172	4	158

Table 2.2. Size of Strata and Survey Strata Plans – February 2003.⁹

Size	Value of properties (\$ million)	No. of properties	No. of units	Average No. units per property	Average Value per unit (\$)
• 2 lot plans:	9 108.2	26 798	53 131	2	171
• 3 - 5 lot plans:	6 252.0	9 870	35 304	4	177
'medium' plans (6-10):	4 571.9	4 055	31 084	8	147
'large' plans (11 -20)	3 896.4	1 834	26 603	15	146
'very large' plans (>20)	5 872.6	1 107	48 172	44	122
TOTAL	29 701.0	43 664	194 294	4	152

⁸ Mr Ross Lambert, Valuer Generals Office, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 11-14.

⁹ Mr Ross Lambert, Valuer General's Office, submission dated 19 June 2003.

Table 2.3. Distribution of Strata and Survey Strata Plans – February 2003.¹⁰

Region	Value of properties (\$ million)	No. of properties	No. of units	Average No. units per property	Average Value per unit (\$)
Metropolitan	24 870.4	37 244	154 511	4	161
City	1 774.0	448	11 181	25	159
Regional Centre	1 479.8	3 476	13 557	4	109
Country	1 576.8	2 496	15 045	7	105
TOTAL	29 701.0	43 664	194 294	4	152

Table 2.4. Category of Strata and Survey Strata Plans – February 2003.¹⁰

Category	Value of properties (\$ million)	No. of properties	No. of units	Average No. units per property	Average Value per unit (\$)
Residential	25 180.3	38 855	157 609	4	160
Commercial	2 701.4	1 630	19 371	12	139
Industrial	1 558.5	1 658	9 966	6	156
Vacant land	230.8	1 488	6 360	4	36
Miscellaneous	30.0	33	988	30	30
TOTAL	29 701.0	43 664	194 294	4	152

¹⁰ Mr Ross Lambert, Valuer General's Office, submission dated 19 June 2003.

Table 2.5. Largest Strata and Survey Strata Plans – October 2002.¹¹

Local Government	Development	Suburb	No. units
City of Bayswater	Ascot Park	Ascot Park	209
City of Stirling	Tranby On Swan	Maylands	206
Shire of Murray	Resort Strata Plan (unnamed)	Furnissdale	199
Town of Mosman Park	Manhattan West & Bel Air	Mosman Park	197
Shire of Busselton	Abbey Beach Resort	Broadwater	196
Shire of Broome	Broome Vacation Village	Cable Beach	193
City of Perth	Bey Apartments	East Perth	190
Shire of Gingin	Seabird Caravan Park	Seabird	180
City of Wanneroo	Seacrest Retirement Village	Sorrento	169
City of Stirling	Raimar Gardens	Glendalough	163

(b) Value of Strata Properties.

There is considerable variation in the size, range, types and values of strata schemes within WA, including a distribution across regional and metropolitan centres. Strata schemes accounted for 22.5% of all properties in the Valuer General's Office property database (as at October 2002 - Table 2.1).¹² The total capital value of all strata properties in WA in February 2003 is estimated at \$29.7 billion based on gross rental valuations (Table 2.2), although (using costings based on average sales) this figure could be as high as \$36.2 billion.¹³

Residential schemes have the highest average value of any scheme category (Table 2.3), and properties in schemes of 3-5 lot plans have the highest average per unit value.

¹¹ Mr Charles Noble, Department of Land Administration, submission dated 29 May 2003

¹² Mr Ross Lambert, Valuer Generals Office, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 11-14.

¹³ Mr Ross Lambert, Valuer General's Office, submission dated 19 June 2003.

(c) Growth in numbers of Strata Properties.

Figures provided by the Valuer General's Office indicate that over a period of five months between October 2002¹⁴ and February 2003¹⁵, the number of properties registered increased by over 8%, and the number of units by 9%. These numbers show that large schemes contributed more to growth of the number of units, and highlight that new developments of strata title schemes are increasing in size and complexity (Table 2.5).

The increase in the number of strata properties and units over this five month period suggests growth of almost 20% annually.

The Committee finds that:

Finding 1

As of February 2003, there were more than 157,000 residential strata title units in Western Australia valued at more than \$25 billion.

The Committee finds that:

Finding 2

The number of strata title units in Western Australia increased by 9% in the period October 2002 to February 2003.

2.4 The Strata Company

The strata company (formerly a body corporate) comes into existence automatically under section 32 of the *Strata Titles Act 1985* upon the registration of a strata plan lodged at the time of land title issue. All owners of lots within a strata plan are automatically members of the strata company.

(a) The Strata Council

The council of the strata company is constituted by and performs its functions in the manner provided by the by-laws of the strata scheme. It is generally comprised of a number of elected lot proprietors. The election of strata council members takes place

¹⁴ Mr Ross Lambert, Valuer General's Office, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 11-14.

¹⁵ Mr Ross Lambert, Valuer General's Office, submission dated 19 June 2003.

at an annual general meeting as determined under Schedule 1 section 4 of the Act. The administrative and other functions of a strata scheme are usually performed by the strata council on behalf of the strata company.

The duties and responsibilities of the strata company include:

- collecting levies, managing repairs, insurance and strata company transactions;
- preparing the strata company's accounts and keeping records of meetings;
- enforcing the by-laws of the strata company; and
- maintaining a register of lot owners.

While strata companies may elect to undertake these tasks directly, it is not uncommon, particularly for larger or more complex properties, for a strata manager to be engaged to undertake these duties.

(b) By-Laws

By-laws are the enforceable rules that set out the roles and responsibilities of lot proprietors within a strata scheme. The by-laws relate to general issues of behaviour and appearance of lots within a scheme and the corporate affairs of the strata company. Unless a management statement is lodged at the time of registration of the strata/survey-strata plan then the by-laws applying to the scheme as from the date of its commencement will be the default by-laws contained within Schedule 1 and Schedule 2 of the Act. Where a management statement is lodged in accordance with section 5C of the Act then that document sets out the by-laws applying to the scheme as from the date of its commencement. Section 42 of the Act sets out the main provisions relating to by-laws.

Both Schedule 1 and Schedule 2 by-laws may be repealed, amended or added to at a general meeting of the strata company. Schedule 1 by-laws are more difficult to amend, as a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) is required. Schedule 2 by-laws may be amended by a special resolution, supported by at least 50% (a simple majority) of lot proprietors, at a general meeting.

(i) *Schedule 1 By-Laws*

Some of the by-laws in Schedule 1 of the Act deal with duties of proprietors and occupiers. The majority of Schedule 1 by-laws deal with the requirements for the council of the strata company, the office bearers of the council and strata company and the calling and conduct of meetings of the council and strata company.

(ii) Schedule 2 By-Laws

Schedule 2 of the Act contains by-laws that deal with the behaviour of proprietors and occupiers, and addresses issues such as:

- obstruction of and damage to common property;
- garbage disposal; and
- general appearance of lots within the scheme.

(iii) Schedule 2A Matters that may be provided for in a Management Statement or By-Law.

Schedule 2A of the Act gives some examples of matters that may be provided for in the management statement or additional by-laws (whether by way of a management statement or not). Provision is made in section 42(1) of the Act for making additional by-laws, which must then be classified as either Schedule 1 or Schedule 2 by-laws.

Section 42(2b) of the Act prescribes that some additional by-laws, if adopted, must be classified as Schedule 1 by-laws and may only be made, amended or repealed by resolution without dissent (or unanimous resolution in the case of a 2-lot scheme). These matters are:

- the control or preservation of the essence or theme of the development under the scheme;
- plot ratio restrictions and open space requirements; and
- provisions relating to any proposed re-subdivision in a scheme.

The Act states that new or amended by-laws must be registered with DOLA within three months of the resolution creating or amending that by-law.

(iv) Breaches of By-laws

Breaches of by-laws must occur on more than one occasion to constitute an unlawful action or behaviour, which may be difficult to prove. This provision guards against vexatious complaints between lot holders, but also raises the threshold for proving breaches of by-laws. Breaches may only be claimed against lot proprietors, rather than tenants, lessees or other occupiers.

(c) Common Property

Strata schemes generally include areas of common property. Common property means all the land and buildings outside the specific boundaries of individual lots, and are contained within the external boundaries of the strata scheme.

Common property is not owned by the strata company per se, but rather by all the proprietors together, as tenants-in-common in proportion to their respective unit entitlement. The maintenance and upkeep of common property is thereby the responsibility of all proprietors.

The 1985 legislative amendments provided owners with an interest over some parts of what otherwise would have remained common property, for example car parking pays or carports, courtyards and balconies.¹⁶

(d) Strata Company Funds

(i) Administrative Funds

All WA strata property schemes are required by section 36(1) of the Act to establish and maintain a fund for administrative purposes.¹⁷ The administrative fund is for general administrative expenses and general maintenance.

(ii) Reserve Funds

Reserve funds are sometimes referred to as sinking funds. Reserve funds are not mandatory but may be collected for the purposes of major capital works on the strata scheme. Reserve funds are intended to provide for the long-term maintenance of common property, including painting of the building, replacement of roofing, guttering and fences, and the building itself in some cases.

(iii) Amount of funds held by strata councils.

The amount of funds, if any, held by a strata company in its fund for administrative expenses or its reserve fund (if it has one) is an internal matter for the strata company concerned. As indicated by DOCEP, there is no central record of this information. However, it is possible to estimate that there is potentially more than \$90 million held by strata councils (conservatively assuming an average of \$500 held per unit in strata fees).

2.5 Voting Rights in Strata Schemes

The Act requires strata companies to hold annual general meetings. It is at these meetings that decisions on expenditure are made and general business such as maintenance and insurance is discussed. Each property within a strata scheme is entitled to one vote at annual or extraordinary general meetings. Where there are joint owners, the standard by-laws require that a proxy must be signed giving one of the

¹⁶ Mr John Angus, *Understanding Strata Titles, A guide to the Management and Administration of Strata Companies in Western Australia*, 2002, p.1.

¹⁷ With the exception of 2 lot schemes and some 3-5 lot schemes, which may be exempt under Sections 36(a) and 36(b) of the Act.

joint owners voting rights. If a lot owner has not paid their fees for that period (or is not financial) they are not entitled to vote at that meeting.

(a) Proxy Voting

A proxy is a notice or letter from an owner addressed to the strata company naming and authorising another person to attend the general meeting and vote on behalf of that owner. A proxy may contain limited powers of discretion or may dictate how the proxy holder is to vote.

The Act protects owners of strata properties from managers voting on decisions relating to their own contract by banning a person who has a financial interest in the management contract from making a proxy vote for an owner.¹⁸

2.6 Strata Titles Referee

The Strata Titles Referee (the Referee) is empowered under Part VI of the Act to handle disputes that relate to strata titled properties. The opportunity to apply to a referee was established under the 1985 Act, which superseded the 1966 Act.

Mechanisms such as by-laws, the DOLA Strata Advisory Service and the Strata Titles Referee (the Referee) exist to assist the reconciliation of internal scheme disputes. The Referee may assist with disputes involving lot proprietors, but may not assist with disputes between lot proprietors and their strata manager.

The Referee does not have jurisdiction in the area of disputes between a strata company and its strata manager. The Referee's role is limited to resolving some disputes between lot owners. However, the Referee does have powers to terminate or shorten some service contracts in certain circumstances.

2.7 The Strata Management Industry

The strata management industry is generally accepted to mean the industry that provides external consultancy services to assist in the management of strata schemes. There are around 1,500 strata title managers in Australia¹⁹, and more than 120 strata managers in Western Australia. Many strata managers are not licensed real estate agents and are therefore unregulated.

Strata property management is a diverse and potentially complex task. In some schemes, management may be relatively straightforward, while in others it may

¹⁸ Refer Section 50A *Strata Titles Act 1985*

¹⁹ National Community Titles Institute (http://www.ncti.org.au/ncti_ca.html, accessed 17 October 2002.)

require highly developed competencies in financial reporting, investments, marketing, town planning and development issues.²⁰

2.8 Professional Strata Property Management

The management of strata schemes is the responsibility of all lot proprietors and is provided for under Part IV of the Act. Strata companies may choose to manage their own affairs or appoint a strata manager, who acts as the agent of the strata company and usually takes instructions from the strata council.

(a) Number of Strata Management Companies

Since strata management companies are not currently licensed, registered or regulated, there is no definitive record of numbers of managers. DOCEP's figures provided to the Committee suggested there were 86 strata management companies, including 11 licensed real estate agents.²¹

The Strata Titles Institute of WA (STIWA) has 160 members, including 102 members identified as strata managers (the remaining membership included valuers, surveyors, and settlement agents). Based on available records, the Committee identified 121 strata management companies in Western Australia as at October 2002. The Committee notes that strata managers in Western Australia are managing 4,000-5,000 schemes²².

The Committee finds that:

Finding 3

There are more than 120 strata managers in Western Australia managing 4,000-5,000 schemes.

2.9 Related Legislation

(a) Real Estate and Business Agents Act 1978

The *Real Estate and Business Agents Act 1978* (REBA Act) establishes the scheme of licensing, registration, supervision and regulation, which is undertaken by the Real Estate and Business Agents Supervisory Board.

²⁰ Strata Titles Institute of WA, submission dated 25 October 2002, p.2.

²¹ Based on the yellow pages businesses under the 'Strata Title Management' category

²² Mr Peter Munday, REIWA, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 44-48.

Strata managers are not licensed under the *Strata Titles Act 1985*. They are therefore not legally obliged to have any particular qualifications or experience and are not subject to financial accountability requirements. Conversely, licensed real estate agents are placed under significant regulatory requirements under the REBA Act, including those conducting strata management services as part of their business.²³

Under the REBA Act, the following framework of regulatory protection is in place:

- Licensing requirements, including educational qualifications to national competency standard;
- requirements to pay client funds into a trust account and to comply with accounting requirements, including annual audits reviewed by the REBA Board;
- enforceable general character and conduct requirements in the Act and Code of Conduct;
- conciliation services;
- pro-active education for the industry; and
- a Fidelity Guarantee Fund, which can reimburse a consumer in the event of pecuniary loss due to criminal activities of the agent or an employee.²⁴

In the case of real estate agents, REBA assesses and makes decisions on claims made by consumers against real estate and/or settlement agents. As a result of these requirements, strata managers operating within a real estate agency business have a relatively high level of regulation.

(b) Consumer Affairs Act 1971

The *Consumer Affairs Act 1971* provides the Commissioner for Fair Trading and Consumer Protection with various functions and powers. The principal objective of this Act is to provide added protection for consumers from traders who fail to meet their contractual obligations in the provision of goods and services.

(c) Fair Trading Act 1987

The *Fair Trading Act 1987* was enacted following agreement by State and Commonwealth Ministers for Consumer Affairs that there be uniform consumer protection legislation throughout Australia. This Act contains provisions relating to misleading and deceptive conduct, false representation and bait advertising and is

²³ Department of Consumer and Employment Protection, Submission dated 25 October 2002, p.5

²⁴ The real estate regulatory system is funded from the interest on real estate agents' trust accounts, license and certificate fees and interest paid on investments.

modelled on consumer protection provisions contained within the Commonwealth *Trade Practices Act 1974 (Cth)*. Mandatory codes of practice may also be enacted under the regulations of the *Fair Trading Act 1987* to address concerns in specific industries.

(d) Retirement Villages Act 1992

The *Retirement Villages Act 1992* provides for compulsory internal disputes committees and a Retirement Villages Referee to resolve general retirement village disputes and strata title disputes.

Retirement villages can also be strata title properties. The Committee heard evidence to suggest that some retirement villages are standard strata title properties with an age restriction.²⁵ The *Retirement Villages Act 1992* governs the functioning of retirement villages and provides for compulsory internal disputes committees and a Referee to resolve general disputes and strata title disputes.

The Committee is of the view that any changes incorporated into the *Strata Titles Act 1985* as a result of this inquiry, should be adequately reflected in the *Retirement Villages Act 1992* where appropriate, to ensure consistency.

²⁵ Mr Robert Kronberger, Strata Titles Referee, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 59-60.

CHAPTER 3 OTHER JURISDICTIONS

3.1 Introduction

Currently only New South Wales and the Northern Territory have a formal system in place for regulation of the strata management industry. The state government in Queensland has recently reviewed regulation of the strata management industry.

(a) Australian Capital Territory

In the ACT, strata property schemes are administered under the *Community Title Act 2001*. The Department of Justice and Community Safety administer the Act. Management is not regulated and there is no registration procedure for strata managers in the ACT.

There is apparently no local body of strata managers in the ACT.

(b) New South Wales

In NSW, the *Property, Stock & Business Agents Act 2002*, the *Strata Schemes Management Act 1996* and the *Community Land Management Act 1989*, administered by the NSW Department of Fair Trading govern activities of strata title managers.

Strata managers must be licensed under the NSW *Property, Stock and Business Agents Act 2002*. The NSW legislation clearly defines the responsibilities and accountability measures (including penalties) for strata management within the NSW *Strata Schemes Management Act 1996*.

Prior to obtaining a license, strata managers must complete a number of educational programs, including the Certification of Registration Course for Strata Managers and Accreditation Seminars for those companies who supply services to the strata management area. The Certificate of Registration Course is recognised by the Department of Fair Trading as the prerequisite for gaining a Certificate to operate as a registered strata managing agent.

The main body of strata managers in New South Wales is the Institute of Strata Title Management Ltd.

(c) Northern Territory

In the Northern Territory, the activities and conduct of strata title managers are governed by the *Agents Licensing Act 2001* and the *Unit Titles Act 2002*, administered by the Northern Territory Attorney-General's Department and the Department of Industries and Business. Strata managers can be issued with a real estate agent's

licence with a restricted condition that limits them to strata management activities only.

There is apparently no local body of strata managers in Northern Territory, and the National Community Titles Institute appears to take on this role.

(d) Queensland

In Queensland, the *Body Corporate and Community Management Act 1997*, administered by the Queensland Department of Natural Resources governs activities of strata title properties.

Under the Act the body corporate (strata council) has the power to delegate all or any of its powers, authorities, duties and functions to a body corporate manager, except for certain restricted matters.

The Queensland government has recently passed amendments to their legislation and has incorporated a Code of Conduct that applies to body corporate managers. The new legislation falls short of actually licensing body corporate managers. However the Code is enforceable by virtue of it becoming part of the agreement between the body corporate and the appointed manager.²⁶

The main body of strata managers in Queensland is the Community Titles Institute - Queensland Limited.

(e) South Australia

In South Australia, the *Strata Titles Act 1988* and the *Community Titles Act 1996*, administered by the Departments of the Attorney General, Justice and Consumer Affairs govern activities of strata title managers.

The main body of strata managers in South Australia is the Community and Strata Corporations Institute of South Australia.

(f) Tasmania

In Tasmania, strata schemes are governed by the *Strata Titles Act 1998* and are administered by the Department of Environment and Land Management. Tasmania does not regulate strata managers and, at this point in time, has no plans to do so.

There is apparently no local body of strata managers in Tasmania.

²⁶ See section 3.6 & 5.7 (d) of this report for further discussion in this area.

(g) Victoria

In Victoria, the *Subdivision Act 1988* and the *Subdivision Act (Body Corporate) Regulations 1989*, administered by the Department of Infrastructure govern strata schemes. Regulation of strata managers is limited to insurance requirements. Disputes between a body corporate and contracted managers are a private matter.

Where a body corporate (strata title) manager accepts a fee for service, there is a regulatory requirement that the person must hold professional indemnity insurance to a level of \$2 million for each year.²⁷ The main body of strata managers in Victoria is the Institute of Body Corporate Managers (Victoria) Inc.

3.2 Interstate Comparisons

The scale and complexity of management varies from state to state (Table 3.1) with variation in both scheme size and the nature of activity on the strata properties. However, all states have schemes that include residential, commercial, retail, industrial, rural and accommodation (hotel/short stay) uses. Queensland and New South Wales have many large schemes with multiple category uses. For example, one high rise scheme in New South Wales has four distinct commercial activities (parking, retail, office space and short term accommodation) as well as a residential component.

Real estate analysts suggest that the market share of strata in property development is continuously increasing. In addition the size and complexity of schemes will increase. As a consequence, the funds associated with schemes will grow.

The Committee finds that:

Finding 4

The living arrangements of Australians are changing with a trend to increased occupancy in strata title residences and a commensurate increase in experience of strata community governance issues.

²⁷ *Subdivision Body Corporate Regulations, 2001 (Vic) s302.*

Table 3.1. Statistical overview of strata schemes and management from around Australia as at October 2002.

REGION:	ACT	NSW	Qld	SA	Vic	WA
Number of plans	2,261	62,000	30,000	17,000	62,000	40,000
Number of units	25,550	600,000	300,000	60,000	310,000	180,000
Units per plan	11.3	9.7	10	3.5	5	4.5
Complaints	240	40,000	20,000	(12,000)*	10,000	10,000
Mediation	NA	900	800	NA	NA	NA
Arbitration	NA	450	400	NA	NA	NA
Strata Managers	10	500	150	100	NA	120
Scheme per manager	226	124	200	170	NA	300
Unit per manager	2,555	1,200	2000	600	NA	1,500

NB. Victorian figures as at May 2003; figures not available for Tasmania or Northern Territory.

One of the key advantages in the NSW and Queensland markets are the economies of scale because of the combination of the population base supported by the larger average size of developments. Interestingly the average size of developments is smaller in Victoria where regulation is minimal. It is possible that increased regulation in Queensland and NSW may add value by providing more certainty in the market place.

Also of note is the growth of litigation involving strata/community title properties. The Committee met with Francesco Andreone, a lawyer in New South Wales specialising in strata title law. Mr Andreone reported that litigation pursuing public injury in shopping centres has declined, and that the weight of cases in this area has moved to strata properties where there is less coverage (and more opportunity) in the legislation and regulations covering this area.

* Includes real estate complaints.

3.3 Reserve Funds in Other Jurisdictions

(a) New South Wales

The establishment of a reserve fund is a statutory obligation in NSW under section 69 of the *Strata Schemes Management Act 1996*. However, an owners' corporation for a strata scheme comprising two lots need not establish a reserve fund if:

- the owners' corporation so determines by unanimous resolution; and
- the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot; and
- no building or part of a building in the strata scheme is situated outside those lots.

A recent review conducted in NSW considered whether the Act should give strata companies guidance in their reserve fund estimation by requiring them to plan ahead for a lengthy period, for example, 10 years.

Strata companies would have to take into account what work would be required to be done on the building or other property over a 10 year period and budget accordingly. This would provide strata companies with clear guidelines on how far ahead they should plan for their financial commitments, while minimising the potential for large unexpected expenditure.²⁸

It was envisaged that individual strata companies would need to determine the desirable level of their reserve fund, taking into account the age and value of the strata scheme. The NSW review was reluctant to prescribe a particular formula, as it was unlikely that any single formula would cover the diversity of schemes in existence.

(b) Queensland

In Queensland, it is compulsory for a strata company to establish and maintain a reserve fund based on annually reviewed long term projections of future expenditure liabilities.²⁹ The administrative fund and the reserve fund budgets, together with a statement of accounts, are prepared for each financial year.

The budgets forecast anticipated expenditure and form the basis for setting the annual contributions of each lot to the administrative and reserve funds. The administrative fund budget must contain estimates for the financial year of necessary and reasonable

²⁸ *NSW National Competition Policy Review of Strata Schemes Management Act 1996*, NSW Department of Fair Trading, 2001, pp. 21-22

²⁹ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.4.

expenditure to cover maintenance of common property and assets, the cost of insurance and other recurrent expenditure.

The budget for the reserve fund must provide for necessary and reasonable expenditure from the reserve fund for the financial year, and must reserve a proportional amount necessary to be accumulated to meet anticipated expenditure over at least the next nine years.

The annual contributions for these funds are decided at each annual general meeting and must be determined by ordinary resolution.

3.4 Financial Controls

(a) Australian Capital Territory

The ACT *Community Title Act 2001* requires the body corporate to keep a fund for meeting its financial obligations under the Act. The fund must be kept at a level sufficient to meet reasonably foreseeable expenditure to be incurred by the body corporate.

(b) New South Wales

The NSW Act makes provisions for strata managing agents to:

- make and provide written records of the functions carried out on behalf of owners;
- provide information relating to the required trust account; provide details of any money received by the strata managing agent; and
- provide full particulars relating to transactions entered into on behalf of the owner's corporation.³⁰

Under section 74 of the NSW Act, an owners' corporation must pay any amounts that it receives into an account established in a financial institution in the name of the owners' corporation.

Owners' corporations are required to prepare financial statements and must keep the accounting records prescribed by regulations.

³⁰ NSW *Strata Schemes Management Act 1996*, Sections 31,33,35 and 36.

(c) Queensland

The body corporate must have one or more accounts kept solely in the name of the body corporate and must be at a financial institution such as a bank, building society or credit union.

A copy of the statement of accounts showing income and expenditure must accompany the notice of the next AGM to be held after the end of the financial year for which the accounts are prepared.

Most strata schemes are required to have the statement of accounts audited each financial year by an independent auditor who is appointed by ordinary resolution of the body corporate. The auditor must have the appropriate qualifications and experience, and cannot be a strata council member, or the strata manager.³¹

(d) South Australia

South Australian strata law requires strata managers to use trust accounts and places a number of conditions and restrictions (including penalties) on the use of such accounts.³²

Under the Act, there is a requirement that all persons, who have been authorised to hold money on behalf of the body corporate, must place the money in a trust account. Accounting requirements apply and the trust account must also be audited. These provisions apply to both unpaid and paid strata managers.³³

3.5 Mediation

Disagreements and disputes between owners are a real possibility when living in strata titled properties. In many cases, disputes may be resolved simply through communication. On other occasions it may be necessary to take the dispute further in an attempt to gain consensus among parties in the dispute.

Mediation is a structured negotiation process in which a neutral and independent mediator assists parties in dispute to achieve their own resolution. The mediator's role is to:

- help the parties to identify the issues in dispute;

³¹ QLD Department of Natural Resources, Financial Management Information relating to the *Body Corporate and Community Management Act 1997*.

³² refer South Australian *Strata Titles Act 1988*, Section 36 (C-L inclusive)

³³ Department of Consumer Affairs and Employment Protection, submission dated 28 October 2002, p.12

- where necessary, assist the parties to understand their rights and responsibilities; and
- suggest options and strategies by which the issues may be addressed.

Mediation is not commonly applied. In Victoria there is no formal dispute resolution system. While the Dispute Settlements Centre Victoria handles some disputes, the absence of a formal system is a recognised problem.³⁴

(a) Mediation in NSW

NSW has adopted a process whereby a mediation service is provided through the Strata Schemes and Mediation Services Branch of the Department of Fair Trading. Mediation is the preferred way to resolve a dispute, and only if mediation is unsuccessful can an application to the Strata Schemes Adjudicator or the Consumer, Trader and Tenancy Tribunal be made.

If other attempts at resolution fail, the issues that the Strata Schemes Adjudicator can rule on include:

- repairs to ceilings, wall, bathrooms;
- parking on common property without approval;
- alterations to common property (eg. closing in balconies);
- use of air conditioners;
- noisy residents;
- appointment of a managing agent;
- invalidation of meetings; and
- variation of insurance.

Where the strata company is satisfied an owner/occupier has breached a by-law, it can decide to issue a Notice to that person requiring future compliance with the by-law. If it is not complied with, the strata company may, within 12 months of serving the Notice, ask the Tribunal to impose a penalty of up to \$550. The Act does not require mediation before issuing the Notice, or applying for a penalty.

³⁴ Personal communication, Brian Beecham, Justice, Victoria, 6 June 2003.

3.6 Code of Conduct

In some Australian jurisdictions, the concept of introducing a code of conduct for strata managers has been explored. In principle, the provisions of a code could be inserted into relevant legislation and form part of the terms of a contract entered into between a strata company and strata manager. A Queensland report on the proposed regulation of the strata management industry suggested that the following obligations be placed on strata managers, such that strata managers:

- have a good working knowledge and understanding of the Act;
- act honestly, fairly and professionally in performing their functions;
- exercise reasonable skill, care and diligence in performing their functions;
- act in the best interests of the strata company unless it is unlawful to do so;
- keep the strata company informed of any significant development of issue relating to an activity performed for the strata company;
- take reasonable steps to ensure that employees comply with the Act and code;
- do not engage in conduct that is fraudulent, misleading or unconscionable³⁵ in performance of their functions;
- take reasonable steps to ensure goods and services are supplied to the body corporate at competitive prices; and
- do not accept an engagement with another strata scheme if to do so gives rise to a conflict of interest, except where this conflict is disclosed in writing.³⁶

The Queensland *Body Corporate and Community Management Act 1997* has recently been amended and now incorporates a code of conduct under section 118, with the detail of the code contained in a schedule attached to the legislation.

3.7 Problems in Other Jurisdictions

Strata property living in other jurisdictions has involved a number of related problems. A recent case in question is the 653 owner, \$400 million Regis Towers development in Sydney NSW, where in under three years, the Consumer, Trader and Tenancy

³⁵ The *Trade Practices Act 1974 (Cth)* includes provisions on unconscionable conduct.

³⁶ QLD Report on *Regulation of Body Corporate Managers*, Faculty of Law, Queensland University of Technology, 2002,p.22

Tribunal dismissed the body corporate executive committee and their strata manager because the building was “broke, unsatisfactorily maintained and mismanaged.”³⁷

In Queensland in 1997, the state’s largest body corporate manager that managed the finances of 700 buildings with 7,000 property owners was involved in the mismanagement of more than \$100,000. It was discovered that some property owners had paid three times the amount required for levies, with many never recovering lost funds.³⁸

³⁷ Jacqueline McArthur, Stata Spheria, *The Australian Financial Review Magazine*, April 2003, pp. 25-27.

³⁸ *ibid*

CHAPTER 4 POTENTIAL RISKS IN STRATA

4.1 Introduction

In recommending the Committee undertake this inquiry, a key concern of the Minister for Consumer and Employment Protection was the issue of public risk. In considering public risk, it is important to note that under the current legal framework discussed earlier, strata companies that obtain strata management services from licensed real estate agents have a greater degree of protection in the event that a dispute arises or funds are misappropriated. The Committee recognises there is also the potential for risk to strata companies that are self-managed.

4.2 Risks for Owners

There are a number of areas where self-managed strata property schemes may be at risk through the actions of property owners that take on the responsibility of management duties for those schemes. Areas such as accounting practices, conflict of interest and competency may all present an element of risk to the strata company.

Several submissions received by the Committee indicate that there is general misunderstanding of the roles and responsibilities of owners and strata managers. Some consumers fail to comprehend their rights and responsibilities when they purchase a strata title property. The roles of both strata managers and property owners need to be clearly defined within the Act. The Committee believes it is appropriate to have clear guidance for both owners and managers in relation to mutual responsibilities and owners must be made aware of their obligations prior to the purchase.

The Committee finds that:

Finding 5

Many strata property owners and managers are not fully aware of their rights and responsibilities under the *Strata Titles Act 1985*.

Submissions received indicate that the *Strata Titles Act 1985* is complex and difficult to interpret. Most strata property owners do not have the necessary skills to confidently read and interpret the legislation that applies to their living arrangements.

It was suggested a plain English version of the Act would help to alleviate some of the problems faced by both lot proprietors and strata managers alike.

The Committee finds that:

Finding 6

The *Strata Titles Act 1985* is complex and difficult to interpret.

4.3 Risk-Managing Managers

Strata management companies are not currently licensed, registered or regulated under current WA legislation. While general laws such as the *Commonwealth Trade Practices Act 1974*, the *Fair Trading Act 1987* and the *Corporations Act 1990* apply to strata managers, there are no specific regulatory requirements placed on the services provided or funds administered.³⁹

The Committee finds that:

Finding 7

The roles and responsibilities of strata managers are not defined, and strata managers are not licensed or regulated, under the Western Australian *Strata Titles Act 1985*.

The provisions in Part IV of the Act do not relate to management by third parties. There is no specific power in the Act to employ managers. However, the Schedule 1 by-laws give a council of owners the power to employ managers and agents. Provisions in the Act relate to voting on management contracts and imply that there can be a management contract.

While some strata companies enter into contracts with external strata managers, the strata manager is not part of the strata company. The manager assists the strata company with the management of the scheme in accordance with the contractual arrangement.

The type of services provided by strata managers will depend on the contractual arrangements between the particular strata company and the appointed manager.

³⁹ Department of Consumer and Employment Protection, Submission dated 25 October 2002, p.2

The Committee finds that:

Finding 8

The content of the contract between strata property owners and an appointed strata manager is not subject to regulation under the *Strata Titles Act 1985*.

(a) Consumer Protection

The Department of Consumer and Employment Protection (DOCEP) is the state government agency responsible for providing services relating to consumer protection, labour relations, and occupational safety and health. However, the area of strata titles and the overall regulation of strata managers is not within DOCEP's jurisdiction and as such relatively few complaints have been received by DOCEP on this issue.

DOCEP has indicated that the complaints it has received generally refer to:

- failure to maintain adequate records and difficulty in obtaining records from strata managers;
- unauthorised charges and expenses, specifically in arrears of management fees;
- failure to obtain quotations for costs and insurance;
- failure to convene annual general meetings; and
- defalcation of approximately \$20,000 by a strata manager. In this case the strata manager was a licensed real estate agent and a claim was successfully made against the Real Estate Board's Fidelity Guarantee Fund. This protection would not be available to a consumer whose strata manager was not a licensed real estate agent.⁴⁰

DOCEP advised the Committee that

An underlying problem in the complaints seemed to be a lack of corporate knowledge within the strata company, caused by a turnover of owners and owners not devoting the necessary time to keeping up to date. Another issue is a lack of understanding by strata managers, real estate agents and their clients of the division of responsibilities between a strata manager and a property manager in terms of repairs. This can lead to delays in repairs and additional costs.⁴¹

⁴⁰ Department of Consumer and Employment Protection, submission dated 25 October 2002, p.8.

⁴¹ Department of Consumer and Employment Protection, submission dated 25 October 2002, p.8.

The Committee received a number of submissions from lot proprietors who expressed concerns over similar issues to those raised above. The following are some potential areas for concern.

(b) Theft of Strata Company Funds

One of the tasks of strata managers is to collect and disburse strata levies. The Act allows for, but does not require, the establishment of a reserve fund. Reserve funds are those which are established to meet contingent expenses, other than those required for routine purposes, which may be substantial in nature. The Committee recognises the potential risks for consumers where large amounts of money are held for administrative expenses and, where applicable, in the reserve fund.

It may be estimated that there is \$25 million held by 121 strata managers, assuming the average of managed funds is \$200,000 per company.⁴²

The Committee is of that view that these numbers are significant enough to warrant greater protection than is currently provided for under the Act.

These funds could potentially be mismanaged or stolen by a strata manager, an employee of a strata manager, or a volunteer in a self-managed scheme. Unlike funds for real estate transactions, funds for strata companies can remain unchecked for long periods of time and therefore present a significant theft risk.

It is worth noting that there does not appear to be a prevalence of such activity in Western Australia at this time. Anecdotal evidence from some other states in Australia indicates that there is a degree of ‘skimming’ of strata company funds. Skimming refers to incidents whereby relatively small amounts are skimmed from various strata company accounts.

The Committee is of the view there is potential risk for misuse and/or mismanagement of strata company funds, because of the absence of regulatory control of the handling, recording or protection of funds.

The Committee finds that:

Finding 9

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

⁴² Assumptions based on DOCEP note of balances held by real estate agents for strata management purposes in the range \$10,000 to \$1,000,000.

(c) Investment Issues

Under the *Strata Titles Act 1985*, a strata manager may invest the strata council's reserve fund (if applicable) on behalf of the strata council. Investment of funds is a risk venture in itself, and the potential for risk to reserve funds is considered problematic in this respect.

(d) Delegation of Strata Company Powers

The strata manager cannot be given any powers other than those powers given to the strata company under the Act. In this respect, strata managers are not governed or regulated under the Act, rather the management contract governs the extent to which the strata manager will assist the strata company in performing its duties under the Act.

The Act in its current form does not make direct provision for the delegation of powers by the strata council to a strata manager.⁴³ These powers are contained within the standard by-laws in Schedule 1 of the Act, which may be altered by the strata company.

The standard Schedule 1 by-laws allow a strata company's council of owners to:

Employ on behalf of the strata company such agents and employees as it thinks fit in connection with the control and management of the common property and the exercise and performance of the powers and duties of the strata company.

The Committee is of the view that this arrangement is unclear and open to misinterpretation. It allows for the potential dilution of property owners' powers, through the absence of specific and binding rules that ensure the delegated power is not used against the strata company's intentions.

This situation may be rectified through the insertion of the powers to delegate responsibility into the main body of the Act, rather than in the standard by-laws, which can be removed or altered at any time by a strata company. Queensland legislation makes provision for such a situation by enshrining the power for the council of owners to revoke or to override a managing agent's delegated powers should they see fit.⁴⁴

(e) Definition of Strata Manager

There is currently no definition of "strata manager" within the *Strata Titles Act 1985*. The Committee believes that because there is no specific power in the act to employ

⁴³ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.6

⁴⁴ *QLD Body Corporate and Community Management Act 1997*, Section 106.

strata managers, the conduct of managers is open to interpretation as defined within the contractual agreement between the strata company and the strata manager.

The Committee believes the absence of a clear definition of a strata manager has the potential to disadvantage proprietors who are unfamiliar with their rights and obligations under the Act, or may place unsuspecting proprietors at the mercy of unscrupulous strata managers.

4.4 Fund Management Issues

All Western Australian strata property schemes are required by section 36(1) of the Act to establish and maintain a fund for administrative purposes.⁴⁵ There is no requirement under the Act for any funds received by strata companies (whether managed by the company or appointed manager) to be deposited into trust accounts.

There is also no provision for the regulation of bank accounts, conduct of audits, establishment of fidelity insurance, access by lot proprietors to financial details or other reasonable controls.⁴⁶ There is some protection for strata companies that employ strata managers who are also licensed real estate agents under the REBA Act, and also in the case of strata companies who take up insurance policies tailored for strata schemes. Insurance company advice indicates most policies available in Western Australia do cover fidelity.

(a) Competency

Many of the submissions received by the Committee make comment on the need for training of strata managers. There is a specific need to for strata managers to be competent in carrying out their duties as many of these duties involve handling potentially large sums of money and arranging important services such as insurance and maintenance for strata properties.

Strata managers (including voluntary, unpaid managers) are not required to have accounting qualifications, training or experience. The potential associated risk is that poor accounting and record keeping practices may arise. Potential problems may include funds not being banked promptly, funds not being accounted for separately to other strata companies and poor record keeping in terms of receipts for transactions.

(b) Accounting Practices

The Committee received evidence from strata property owners regarding the deficiency of regulation in relation to financial standards and reporting. Though the

⁴⁵ With the exception of 2 lot schemes and some 3-5 lot schemes, which may be exempt under Sections 36(a) and 36(b) of the Act.

⁴⁶ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.5.

Act states that a proper statement of accounts are to be kept⁴⁷, the lack of prescription leaves the implementation open to interpretation. In some cases this is the result of poor practice by owners as managers of their own strata companies, and in other cases the result of variable standards applied by strata managers. Owners want annual reports that are transparent and comprehensible.

The Committee finds that:

Finding 10

No uniform standard of reporting requirement exists for strata title schemes.

There are currently no requirements for strata company funds to be handled in a specific manner or for those funds to be deposited in a financial institution.

The Committee finds that:

Finding 11

The *Strata Titles Act 1985* does not require strata company funds to be deposited into a trust or bank account or for those funds to be audited.

4.5 Maintenance

Many strata companies do not set aside funds or plan to meet capital expenses such as replacing or conducting major works or repairs on strata properties. Planning to meet long-term capital expenses will alleviate the potential for financial hardship for strata property owners. The Committee was advised that;

Many of the first residential and commercial strata buildings [in WA] are now over thirty years old. While some have been well maintained, the quality of others has deteriorated over time. Most of us are aware of large strata buildings in need of redevelopment.....The only means of ensuring that necessary maintenance is being undertaken is to make planning, implementation and compliance compulsory. This is the fairest approach to succeeding generations of owners in strata buildings⁴⁸.

⁴⁷ *Strata Titles Act 1985*, Section 35(1) (g)

⁴⁸ Property Council of Australia (WA Division) Submission to the Economics and Industry Standing Committee, dated 5 June 2003, pp. 7-8.

The Committee is of the view that a compulsory long-term management plan is the appropriate mechanism to ensure strata companies are aware of and prepared for future maintenance issues.

The Committee finds that:

Finding 12

The *Strata Titles Act 1985* does not require long-term planning for major repairs and maintenance of strata title properties.

Reserve Funds

As discussed above, many, if not most, strata companies do not set aside funds to meet major essential works such as re-painting a building, connecting a site to deep sewerage, establishing underground power, replacing asbestos-affected items, replacing lifts or air-conditioning installations or re-surfacing driveways.⁴⁹

In WA, the establishment of a reserve fund is optional. Section 36 (2) of the Act states that strata company may:

- a) *establish a reserve fund for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the strata company likely to arise in the future;*
- b) *determine from time to time the amounts to be raised for the purpose described in paragraph (a); and*
- c) *raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlements of their respective lots.*

The failure by a strata company to establish or maintain a reserve fund can impose a large and unexpected cost on current owners. In a recent submission to the Attorney General, Mr Robert Kronberger, the Strata Titles Referee, stated that:

There is resistance to reserve funds in WA because lot proprietors are reluctant to contribute to a fund from which they cannot withdraw monies when they dispose of their lots and from which expenditures may not be incurred for many years, even long after they have ceased to be lot proprietors. The 'market' has not yet reached the point of understanding that unless financial planning for long-term repair and maintenance is in place, a strata company confronted with a large expense item will have to raise the whole amount from the then

⁴⁹ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.4.

*proprietors or commit the strata company to borrowing the necessary funds.*⁵⁰

The result of failing to maintain a reserve fund is likely to be the sudden imposition of a special purpose levy on all lot owners, which would potentially expose many people to financial hardship, particularly those on limited incomes such as aged pensioners. In a worst case scenario, owners may be left with an asset of declining value that may be difficult to sell other than at a loss.⁵¹

The Committee considered a hypothetical situation, which demonstrates the potential magnitude of financial hardship confronting strata property owners. In the event that a ten-lot scheme required \$350,000 of repairs and replacement, each unit holder would be required to find \$35,000 each. This would be above their operating account contribution and in many cases would result in extreme difficulty for those property owners.

The Committee is of the view that the existence of a carefully planned reserve fund, which has built up resources over a number of years, is the ideal option.

The Committee finds that:

Finding 13

Under the *Strata Titles Act 1985*, a strata company is not required to establish and maintain a reserve fund.

4.6 Voting Procedures

Of further concern to some owners are the voting methods practiced during strata council meetings. The issue of forming 'voting blocks' was raised. These concerns are particularly in relation to the handling of proxy votes by the strata manager. Though the practice is lawful, the implications of managers controlling the proxy votes may not be appreciated by those proprietors with a limited understanding of meeting procedures and can prove detrimental to other proprietors.

(a) Conflict of Interest

The Act currently protects owners of strata properties by banning a person who has a financial interest in the management contract between the strata company and the

⁵⁰ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.4.

⁵¹ Property Council of Australia (WA Division) Submission to the Economics and Industry Standing Committee, dated 5 June 2003, p.8.

strata manager from making a proxy vote for an owner.⁵² Effectively, this prevents a situation where a strata manager could vote on the continuation of their own contract.

However, there are opportunities for conflicts of interest to arise where the interests of the strata manager conflicts with the interest of the strata company. For example, a strata manager may contract a family member or friend to conduct repairs for the strata company without following principles ensuring the most efficient, competitive or appropriate arrangements are made.

Furthermore, since strata managers may act on behalf of the strata company in signing contracts, there is the potential for strata companies to be bound to inappropriate contracts, potentially resulting in significant losses. This includes insurance arrangements for common property.

Some owners highlighted in their submissions that minority owners may be disadvantaged within some schemes as a consequence of majority holdings by a single entity, such as the case where a developer retains ownership of a large part of the scheme.

Provisions relating to unconscionable conduct are included in the *Trade Practices Act 1974 (Cth)* and may be worthwhile in the *Strata Titles Act 1985*.

The Committee finds that:

Finding 14

There is a potential risk for minority owners to have little or no say in the running of a strata title company. This risk is higher where a single majority holding is able to exercise authority in an unconscionable manner.

Conversely, the Committee received a submission that argued that a minority may also be able to exercise a 'blocking' vote in an unconscionable manner, such as in the case of the termination of strata schemes for redevelopment. Sections 30 and 31 of the Act require unanimous agreement from all lot holders or application to the District Court for the termination of a scheme.⁵³

⁵² Refer Section 50A *Strata Titles Act 1985*

⁵³ Property Council of Australia (WA Division) Submission to the Economics and Industry Standing Committee, dated 5 June 2003, pp. 10-13.

The Committee finds that:

Finding 15

There is a potential risk for minority owners to veto essential works using provisions in the *Strata Titles Act 1985* requiring unanimous agreement.

4.7 Strata Titles Referee

(a) Powers

The Referee's powers include general powers to make orders for the settlement of disputes or for the rectification of complaints relating to the strata company's failure to exercise or perform a power, duty or function, which the Act states must occur.

The extent of enforcement is limited to an order to comply and failure of parties to comply with orders must then be addressed through the courts. The Committee received evidence that in some instances orders from the Referee have simply been ignored. The time involved in obtaining a determination was said to be lengthy; and the resolution process further extended should the matter then proceed to court.

Before a person applies to the Referee for an Order, they must first determine that the Act covers their problem and that the Referee has power under the Act to deal with the problem satisfactorily. Appeals relating to decisions by the Referee are made to the District Court.

(b) Internal Disputes

Part VI of the Act relates to the resolution of disputes. The strata company's principal obligation under section 35(1) is to enforce the by-laws under which the scheme operates. A number of the submissions received by the Committee demonstrated frustration among owners over the current power of the Strata Titles Referee to enforce orders relating to breaches of by-laws.

(i) Breaches of By-laws

In its current form, the Act does not prescribe penalties for breaches of by-laws. Rather, the strata company may amend its by-laws to provide for penalties. The difficulty for strata companies in this respect is that penalties cannot be imposed without first making application to the Referee for an order for payment.

Furthermore, the Act requires that orders must relate to proprietors who have “wilfully and persistently breached the by-law”.⁵⁴ Breaches must occur on more than one occasion, which may be difficult to prove, and can only be claimed against lot proprietors, rather than tenants, lessees or other occupiers.

(ii) Enforcement of Orders

The enforcement of the Referee’s orders is not within the jurisdiction of the Referee. When the Referee has made an order, the onus is on the applicant (strata company) to ensure the order is complied with, and if not, to prove to the District Court beyond reasonable doubt that the order has not been complied with.

Where the Referee has made an Order for the defaulting party to do a specified action (such as rebuild a building that was unlawfully demolished) and this does not occur, the applicant may then reapply to the Referee for permission to have the action carried out at their own expense. A further application to the Referee is required for another Order to reimburse costs incurred. Where an Order has been made for the payment of money, and that Order is not complied with, an applicant must then commence recovery proceedings in the local court.⁵⁵

(iii) Orders for Payment

The Referee is restricted by section 84 (2) of the Act to ordering the payment of not more than \$1,000. Conversely, under the *Retirement Villages Act 1992*, there is no upper limit on the amount the Referee may order to be paid.⁵⁶ The Committee is of the view that there should not be a limit to the amount the Referee may order to be paid, as circumstances differ with each case, and accordingly the amounts of money involved may vary significantly.

The Committee believes the above-mentioned system of dispute resolution is not only confusing for all parties involved but it unnecessarily places financial burden upon applicants and ties up the Court system over what may be relatively minor disputes that could be dealt with in a different forum.

The Committee finds that:

Finding 16

The Strata Titles Referee does not have enforcement powers for dispute resolution.

⁵⁴ *Strata Titles Act 1985*, Section 103I(3) subsection (c).

⁵⁵ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.16

⁵⁶ Mr Robert Kronberger, Strata Titles Referee, *Revised Report to the Attorney General*, 25 February 2003, p.16

The Committee finds that:

Finding 17

The system for resolving internal strata property disputes is cumbersome, unclear, potentially costly and often ineffective.

This report has only cursorily examined the dispute resolution system. However, it is clear that the dispute resolution system is in need of simplification and clarification if it is to adequately achieve the objectives of the Act.

4.8 National Competition Policy

The requirement for strata managers to be licensed raises the question of how such requirements may limit competition and what effect this may have, particularly in regional WA.

The NSW National Competition Policy Review of the *Strata Schemes Management Act 1996* (undertaken in 2001) found that limiting entry to the market is justified on the basis of sound consumer protection. The net public benefit of maintaining restrictions on those permitted to manage strata schemes, particularly in respect to the security of financial assets of owners' corporations, was considered to outweigh any costs involved.⁵⁷

The Committee has met with a number of industry representatives in regional WA who were concerned that the impost of a licensing system (essentially restricting entry to the strata management industry) may have an adverse effect on the regional market.

Economies of Scale in Regional WA

A number of regionally based industry representatives expressed concerns about an increase in the cost of providing strata management services through the imposition of licence fees. These concerns focussed on the potential detrimental effect on businesses and their client's ability to meet any additional costs. This concern is based on the smaller economies of scale achievable in regional WA, due to its relatively lower urban density.⁵⁸

⁵⁷ *National Competition Policy Review, Strata Schemes Management Act 1996*, NSW Department of Fair Trading, Final Report, 2001, p.28.

⁵⁸ The assumption being that in regional WA the number of clients (ie lot owners) is small in comparison to the Perth Metropolitan Area or some of the larger, tourist-oriented regional cities in WA.

Any extra costs to business are (usually) passed on to the consumer. It is not unreasonable to suggest that the cost of employing a strata manager for larger schemes may be considerably less than the cost for schemes where there are a limited number of lot proprietors.

In the context of strata management in rural and regional WA, the concern is that strata managers with fewer clients will spread their increased costs across a smaller client base.

The Committee has explored the notion of having a tiered licensing structure, whereby smaller strata schemes, which are self managed or managed on a not-for-profit (or cost recovery) basis, may be exempt from certain requirements.

The Committee is of the view that a two-tier licence structure with a two-tier cost structure may help to alleviate concerns about compliance costs for small business. A restricted license, with a commensurate lighter compliance regime will reduce associated costs for strata companies and strata managers.

For example, a restricted licence will have to meet a ‘minimum set’ of conditions for accreditation, whereas an unrestricted licence not only has to meet the minimum set, but also show ‘demonstrated continual professional development’ and by definition, professional assessment.

4.9 Models for Regulating Strata Managers

The licensing and/or registration options outlined in this report are not the only ones available for consideration. It is these options that have received the greatest attention in recent public discussions. Some of the regulatory changes outlined would fundamentally alter the current legislative framework and would require significant legislative amendment to be implemented.

(a) Real Estate Model

One option examined in detail by DOCEP requires the regulation of strata managers under the REBA Act and is referred to as the Real Estate Model (REM).⁵⁹ If the REM was applied, the operation of strata managers would generally reflect the requirements of the REBA Act, such as:

- a requirement to hold a licence with a three year renewal;
- requirements to pay client funds into a trust account (audited annually);

⁵⁹ Under the REM, and as a result of the recent Machinery of Government review, the disciplinary functions of the REBA Board may be transferred to the State Administrative Tribunal (SAT). DOCEP may also be taking on more responsibility with the REBA Board acting in an advisory capacity on policy, education, licensing and other issues.

- provision of educational services to industry to assist with compliance;
- provision of a disciplinary tribunal and conciliation advice; and
- a Fidelity Guarantee Fund to reimburse strata owners in the event of loss due to criminal activities of the manager or an employee.

This type of licensing scheme would have a number of advantages as well as disadvantages. A summary of these is listed below:

(i) Advantages

- It builds on an existing regulatory framework;
- A proportion of strata managers are already licensed as real estate and business agents;
- The cost of regulation could be met in part by licence fees and the interest on trust accounts.

(ii) Disadvantages

- A high degree of regulation is relatively expensive to administer;
- It would require the expansion of the role the Strata Titles Referee as the REBA Board has powers in making orders;
- It further divides regulatory responsibility between agencies (DOLA, DOCEP and REBA) creating some difficulty for consumer access.

(b) Builders' Registration Model

The Committee has examined the registration model used by the Builders' Registration Board of WA and notes that there are scaled fees according to whether the applicant is an individual, a partnership or a company.

The *Builders' Registration Act 1939* has two main objectives;

- to ensure that those who are professionally engaged in building are competent; and
- to provide consumers with a means of recourse via the Building Disputes Tribunal, if building work is found to be faulty or unsatisfactory.

The Act prohibits unregistered builders from carrying on business, as only those who are registered by the Board (*individuals, partnerships and companies*) are authorised to contract for or carry out building work where the total fee or charge payable exceeds \$12,000 within the area of the Board's jurisdiction. There is no grading of

builders in WA, though in certain circumstances, the Board may impose conditions on a builder's registration, which can limit his/her operations.

CHAPTER 5 REGULATORY FRAMEWORK

5.1 Introduction

The activities of strata managers are not currently subject to legislative control in Western Australia. While general laws such as the Commonwealth *Trade Practices Act 1974*, the *Fair Trading Act 1987* and the *Corporations Act 1990* apply to strata managers, there are no specific regulatory requirements placed on the services provided or funds administered.⁶⁰

A key issue for the Committee throughout this inquiry has been the notion of corporate and collective responsibility in terms of risk posed to strata property owners. This has been the subject of legislative reform in other Australian jurisdictions, notably New South Wales and Queensland. The Committee has considered the reforms in those states and has incorporated a number of relevant concepts into its regulatory model outlined in this chapter.

Many of the submissions received by the Committee suggested that few lot holders are fully aware of their rights and responsibilities under the *Strata Titles Act 1985*, particularly those relating to the functions and duties of strata managers. The Committee is of the view that clarifying these rights and responsibilities will alleviate a number of these management concerns.

To address the concerns, the Committee has focussed on reforming two key aspects of the strata titles industry and its management. In general terms, these two aspects deal with the size and complexity of strata schemes and the management or governance arrangements for those schemes. Broadly, these reforms relate to:

(a) Classifying Strata Schemes into Categories

- Category 1 (C1) strata schemes are those with up to five single storey lots, generally self managed and less complex than larger schemes;
- Category 2 (C2) strata schemes are those with up to 20 lots per scheme and are generally less complex than larger schemes in terms of size and amounts of funds administered; and
- Category 3 (C3) strata schemes are those with greater than 20 lots per scheme.

⁶⁰ Department of Consumer and Employment Protection, Submission dated 25 October 2002, p.2

(b) New Management/Governance Arrangements

- The provision of information and advice services for strata property owners;
- changes to current fund management arrangements, including the requirement of strata schemes to establish reserve funds;
- a need for more transparent and accountable record-keeping practices;
- a mediation service to assist with dispute resolution between lot proprietors; and
- an appropriate scheme for licensing strata managers.

5.2 Recommended Regulatory Arrangements

(a) Categories of Strata Schemes

The Committee heard evidence from strata property owners and managers that smaller schemes are relatively more straightforward to manage, with fewer ‘problems’ than some of the more complex, multi-lot, mixed use developments.

The Committee has developed a classification system for strata schemes, based on three variables of management complexity, collective risk and governance obligations. A number of statutory requirements will apply, depending on where a scheme falls within the classification system. The requirements relate to financial reporting mechanisms, the establishment of reserve funds and the appointment of strata managing agents.

Larger schemes will have more substantial financial management and administrative issues. Schemes that include areas of shared roof and structural walls as common property will have innate complexity. The Committee believed it was important to differentiate between strata schemes of varying size and complexity as these variables directly impact on the level of management required (see also Table 5.1).

The following system of categories for strata schemes will clarify the rights and responsibilities of lot proprietors, while increasing the transparency and accountability of the process of internal administration of strata schemes:

(i) Category 1

Category 1 (C1) strata schemes are single storey up to five lot schemes that are generally self managed and less complex than larger schemes. All multi storey strata schemes with fewer than 20 lots are to be automatically categorised as C2 schemes. As at February 2003 there were 36,668 C1 strata schemes (Table 2.2).

The Committee proposes that C1 schemes will determine their own levels of accountability and governance and further that C1 managers not be required to hold an industry certificate of competence.

(ii) Category 2

Category 2 (C2) strata schemes are those with up to 20 lots per scheme and are generally less complex than larger schemes in terms of size and amounts of funds administered. As at February 2003 there were 5,899 C2 strata schemes ('medium' and 'large' schemes, Table 2.2).

C2 schemes will be required to adhere to stronger requirements relating to management functions and will be required to appoint a licensed strata manager who holds a restricted licence and the commensurate industry certificate of competence.

(iii) Category 3

Category 3 (C3) strata schemes are those with greater than 20 lots per scheme. As at February 2003 there were 1,107 C3 strata schemes ('very large' schemes, Table 2.2).

C3 schemes are more complex in terms of governance arrangements and are generally responsible for a larger amount of funds. C3 schemes will be required to appoint a licensed strata manager who holds an unrestricted licence and the commensurate industry certificate of competence.

The Committee recommends that:

Recommendation 1

The *Strata Titles Act 1985* be amended to incorporate a classification system that represents strata schemes in the following manner:

- Category 1 (C1): single storey schemes of up to five lots;
- Category 2 (C2): schemes of six to 20 lots and all multi-storey schemes from two to 20 lots; and
- Category 3 (C3): all schemes of more than 20 lots.

Table 5.1. Categories of Strata Properties.

An outline of the current regulatory framework, alongside the different categories of strata scheme proposed by the Committee, including some regulatory changes. These changes are discussed further in the remainder of this chapter.

Current Situation	Category 1 (2 - 5 lot) Not Multi-storey^a	Category 2 (6-20 lot)^b And Multi-storey	Category 3 (> than 20 lots)^c
Information & Advice			
Information booklet produced by DOLA. S69A & B obliges vendor to provide purchaser with 'notifiable information' prior to signing contract.	Updated information booklet produced by jointly by the Strata Titles Referee and DOLA. Provision made for education courses for owners. Obligation for vendor to provide purchaser with expanded list of notifiable information.		
Administrative Funds			
With the exception of some small schemes, all strata schemes must establish an administrative fund.	Unchanged.	Unchanged (but increased powers of oversight/enforcement by Strata Titles Referee).	
Reserve Funds			
Reserve funds are provided for under s36 (2) but are not mandatory.	Reserve funds are provided for under s36 (2) but will not be mandatory.	Reserve fund mandatory for new schemes. Phase in over 3 years for existing schemes.	
Management Plan			
Not Applicable.	Ten-year Management Plan required if reserve fund established.	Must plan up to ten years, reviewed every five years. Management Plan to be lodged with appropriate regulatory body. Management Plan to be included in pre-contract sale documents.	

^a Any multi-tier 2-5 lot developments with shared roof space are to be rated as C2 Schemes.

^b A strata company may apply to the Strata Titles Referee to re-classify C2 to C1.

^c A strata company may apply to the Strata Titles Referee to re-classify C3 to C2.

Current Situation	Category 1 (2 - 5 lot) Not Multi-storey^a	Category 2 (6-20 lot)^b And Multi-storey	Category 3 (> than 20 lots)^c
Record Keeping			
Prescribed record keeping requirements S35 (1).	Unchanged.	Improved reporting standards incorporated into the Act.	
Accounting Practices			
No prescribed account reporting.	Prescribed account reporting advisable. Trust account to be established for reserve fund (if applicable). Audited accounts lodged at appropriate regulatory body if reserve fund established.	Prescribed account reporting incorporated into the Act. Trust account to be established for reserve fund. Audited accounts lodged at appropriate regulatory body.	
Mediation & Enforcement			
Strata Title Referee has limited powers. Appeals through the Court system.	Increased powers for Strata Title Referee for mediation and enforcement. By-Laws disputes to Referee/Tribunal for interpretation. Appeals through the Court system. Referee/Tribunal to investigate complaints about strata managers.		
Licensed Strata Manager			
Not applicable	No requirement to appoint a licensed manager.	C2 schemes requirement to appoint manager with a minimum of a restricted licensed.	C3 schemes to appoint manager with unrestricted license.
Fidelity Protection			
Covered if strata company utilises specific strata scheme insurance or if manager is a licensed real estate agent.	Strata company must take up strata scheme insurance to access fidelity protection if reserve fund trust account established.	Strata company must take up strata scheme insurance to access fidelity protection.	

The Committee has considered in detail whether less complex C2 schemes may be in a position to be self-managed by owners, without a requirement for the establishment of a reserve fund.

The Committee recognises that in some cases, C2 schemes are structurally less complex than others. For example, a C2 scheme where all lots are physically detached may not hold the same long-term capital expenditure requirements as a scheme with shared roof space and common walls. In these cases, it may not be necessary for the scheme to establish a reserve fund or for schemes to adhere to more rigorous standards of reporting and accountability.

The Committee recommends that:

Recommendation 2

A general meeting of a strata company may resolve to apply to the Strata Titles Referee for re-classification to the next lowest category.

(b) Information for Strata Property Owners

As discussed in Chapter 4, strata schemes may be at risk through the actions of property owners who (without the relevant skill set) take on the responsibility of management duties for those schemes. The Committee believes that the correct way to address this concern is to provide information on owners' rights and responsibilities under the Act and on the self-management of schemes.

The cost of production of information booklets and education courses available to volunteer managers and the mediation service will be funded by a levy from the sale of strata units (see section 5.9).

The provision of information may take the form of an updated booklet (currently distributed through DOLA) provided to all strata schemes and to be included in the pre-sale documents for strata title properties. The Committee agrees that the office of the Strata Titles Referee must be involved in the formulation and provision of information for property owners (see also 5.7). Further, the Committee is of the view that courses for strata property owners who wish to self-manage schemes must be developed and implemented by the industry peak body, in conjunction with the appropriate regulatory body.

The Committee recommends that:

Recommendation 3

The Strata Titles Referee be formally involved in the development and provision of information to strata property owners on their rights and responsibilities under the *Strata Titles Act 1985*.

(c) Notifiable Information at Sale

There is currently a statutory requirement under section 65 of the *Strata Titles Act 1985* for potential buyers of strata properties to be provided with notifiable information relating to the strata/survey plan, by-laws and unit entitlements.

The Committee is of the view that potential buyers of strata property must have full access to all information regarding their rights, responsibilities and liabilities as strata property owners prior to signing the contract of sale. Therefore, it is recommended that information relating to owners' rights and responsibilities, recent financial records (including operating accounts and reserve funds), the Management Plan (if applicable) and management arrangements in relation to strata managers must be included in section 65 *Strata Titles Act 1985*.

The Committee recommends that:

Recommendation 4

Section 65 of the *Strata Titles Act 1985* be amended to expand provisions relating to notifiable information. Information relating to owners' rights and responsibilities, current financial records (including operating accounts and reserve funds), the management plan and management contracts must be fully disclosed to potential purchasers in the offer for sale.

A related issue is that the *Strata Titles Act 1985* is a complex, difficult piece of legislation for strata property owners (and managers) to interpret and abide by. The Committee considers that any future revisions must include a commitment to simplify the Act using plain English language.

The Committee recommends that:

Recommendation 5

Future revision of the *Strata Titles Act 1985* adopts the use of plain English language.

5.3 The Management of Strata Companies

Strata companies operate under a democratic style of governance, whereby individual lot proprietors are elected by fellow lot proprietors to facilitate the management arrangements associated with the general functioning of the scheme. Each lot proprietor must abide by rules contained within the by-laws and may assist in the management or governance of strata schemes.

Generally, it is a small group of owners within a scheme (the strata council) that takes responsibility for the management of the general business of the strata company. An important facet of strata company responsibility is the handling and administration of strata company funds. These functions may be delegated to a licensed strata manager or may be conducted by individuals within the strata company. In either case, it is important to ensure accountability and transparency in relation to the handling of funds.

In WA, proposed regulatory reform in this area may be achieved by including in the Act requirements to:

- keep full and accurate records of all funds and transactions;
- hold all funds of the strata company in an appropriate account at a financial institution;
- hold the reserve funds in a strata company trust account;
- have two signatories to the trust account;
- limit investment options so as to protect strata funds; and
- disclose any personal or financial affiliations with traders.

(a) Administrative Funds

With the exception of two lot schemes, and in some cases three to five lot schemes under section 36, all strata schemes are required to establish an administrative fund. Section 36 A&B exempts some small schemes from general administrative tasks.

There are no requirements for those funds to be handled in a specific manner or for those funds to be deposited into a financial institution.

The Committee considers it appropriate to require that C2 and C3 schemes, where funds are potentially at greater risk of mismanagement, deposit strata company funds with a recognised financial institution.

The Committee recommends that:

Recommendation 6

The *Strata Titles Act 1985* be amended to require that strata company funds for Category 2 and Category 3 schemes be held in an account at a financial institution.

(b) Reserve Funds

The failure by a strata company to establish or maintain a reserve fund can impose a large and unexpected cost on current owners. Where a strata scheme may need major restoration, repair or replacement due to the age of the property, recent or current owners may be expected to cover the cost of those repairs, regardless of the amount of time they have owned the property.

There is a perception that an owner who sells a strata property does not gain any 'benefit' from the reserve fund to which contributions have been made over the period of ownership of the property. The Committee has considered this suggestion and is of the view that owners who sell a property with a well-established reserve fund have a sales advantage over schemes that do not have an established fund.

The Committee believes it is appropriate to require strata schemes to establish a reserve fund. The exception to this requirement would be most C1 schemes and some C2 schemes upon application to the Strata Titles Referee.

The Committee recommends that:

Recommendation 7

The *Strata Titles Act 1985* be amended to require that each Category 2 and Category 3 strata company establish a reserve fund based on long term projections of future expenditure liabilities.

(c) Plan of Management

The Committee considered whether it was appropriate to prescribe an amount to be contributed to a scheme's reserve fund. It was initially thought that a percentage of the value of the property value might be a suitable measure. However, the Committee resolved it was more appropriate to require schemes to establish the reserve funds based on annually reviewed, long term projections of future expenditure and liabilities.

To ensure best practice is adopted in reporting and planning, the Committee believes that strata companies must prepare a ten-year management plan, reviewed every five years and including an independent building inspection and report. The management plan would be lodged with the office of the Strata Titles Referee and be included in all offer for sale documents.

The Committee recommends that:

Recommendation 8

Strata management companies for Category 2 and Category 3 schemes be required to prepare a ten-year management plan, reviewed every five years.

(d) Accountability and Reporting

Section 35(1) (g) of the *Strata Titles Act 1985* states that a 'proper' statement of accounts is to be kept. The Committee heard evidence that indicated concern among owners regarding the deficiency of regulations in relation to financial standards and reporting. The Committee is of the view that while the Act indicates that a proper statement of accounts shall be kept, the lack of prescription leaves the implementation open to interpretation. Owners require annual reports that are transparent and comprehensible.

It was suggested that the introduction of prescribed reporting standards would alleviate the obscurity in this area. Reporting standards that were uniform in nature would go some way to assist owners with a limited understanding of financial reports to keep track of company funds.

A further benefit of standardised reporting would be that owners are better educated about financial reports. An improved understanding will assist owners should they have involvement with other strata companies. It would also assist the Strata Titles Referee in any review of finances associated with strata company disputes or other matters. Furthermore, standardised financial reporting may also assist new buyers in comparing strata properties, as well as owners moving between strata properties.

This form of regulation would mean relatively low costs to both business and regulators, while increasing the level of public protection.

The Committee recommends that:

Recommendation 9

The *Strata Titles Act 1985* be amended to require strata companies to adopt uniform financial reporting methods.

The Committee recommends that:

Recommendation 10

The *Strata Titles Act 1985* be amended to require statutory funds of Category 2 and Category 3 schemes to be audited annually.

(e) Voting Procedures

As discussed earlier (section 4.6), some owners submitted that minority owners may be disadvantaged within some schemes as a consequence of majority holdings by a single entity. Conversely, a minority may also be able to exercise a ‘blocking’ vote in an unconscionable manner. Provisions relating to unconscionable conduct are included in the *Trade Practices Act 1974 (Cth)* and may be worthwhile in the *Strata Titles Act 1985*.

The Committee recommends that:

Recommendation 11

Any revision of the *Strata Titles Act 1985* include consideration of the use of unconscionable conduct principles contained in the *Trade Practices Act 1974 (Cth)*.

(f) Transition from Existing Arrangements

Establishment by existing schemes of the new regime for management of strata companies described in section 5.3 must be phased in over an appropriate transitional period. The Committee considers three years should provide a sufficient time for existing schemes to adopt the new requirements.

5.4 Future Growth of Strata Properties

Real estate analysts suggest that the market share of strata properties is continuously increasing. In addition, the size and complexity of schemes will increase. As a consequence, the funds associated with schemes will grow.

Regardless of this, if the recommendations of this Committee are adopted, there will be an automatic growth in the amount of funds held by strata companies and this will underscore the need for sound financial management.

5.5 The Management of Strata Managers

Most of the individuals and organisations that made submissions to the Committee believe there is some need for regulation of the strata management industry. It is in the degree to which the industry should be regulated that those opinions vary.

Given that there are at least 121 strata managers, including 102 strata managers listed as members of STIWA (the industry peak body), it is reasonable to assume that WA currently has a viable, professional industry. The Committee is of the view that providing a regulatory framework will enhance the professional standing of the industry. This will in turn provide consumers of these services with a benchmarked standard of professionalism.

(a) Defining Strata Managers

There is currently no working definition or legal definition to describe the activities of a strata manager. It would be appropriate for the *Strata Titles Act 1985* to define a strata manager as a person engaged by the strata company to supply administrative services including procedural advice for meetings of the strata company. Note that a strata manager is distinct from a property manager/caretaker who might be employed by a strata company; the same company may or may not separately employ a strata manager.

This report proposes provisions requiring strata managers be competent in all aspects of the *Strata Titles Act 1985* and regulations to ensure the strata company's compliance with the Act. The provisions within the Act would also include regulations relating to the mode and term of appointment and disclosure requirements relating to potential conflicts of interest.

The Committee recommends that:

Recommendation 12

The *Strata Titles Act 1985* includes a definition of a strata manager, and provide for the establishment of key minimum competencies of a strata manager.

(b) Delegation of Strata Management Authority

Strata management companies sometimes employ staff to act on behalf of the company in carrying out management functions. This situation raises the question of which individuals within a company would be licensed.

A recent review conducted in Queensland considered licensing the strata management companies themselves and at least one executive officer. This was thought appropriate to ensure that if a management company was placed in receivership, administration or liquidation, the licensing authority would be advised. The licensing authority would also be satisfied that appropriate measures were put in place by the receiver, administrator or liquidator to protect the interest of the strata company whose powers had been delegated to the management company.⁶¹

(c) Regulatory Authority

The Committee has considered which agency would be most appropriately responsible for the administration of the licensing of strata managers. It is clear that the Strata Titles Referee must be included in the licensing mechanism. Finalising this matter will require further consultation between the government and industry.

5.6 Requirement to Appoint a Strata Manager

Under the proposed model, strata schemes would be categorised according to the above criteria. A fundamental aspect of the Committee's proposed reforms is the requirement for complex strata schemes (most C2 and all C3 schemes) to appoint a licensed strata manager to assist in the management of the scheme.

(a) Industry Training and Accreditation

The Committee considers that licensed strata managers must undergo compulsory education and training prior to being permitted to practice and advertise themselves as licensed strata managers. The Committee recommends that the licensing body, in conjunction with other regulatory agencies and industry peak bodies, develop a system of accreditation.

Both restricted and unrestricted strata managers would be required to adhere to standard professional accounting practices, which would be incorporated into the training and accreditation system. The system could reflect the various competencies required for the categories of schemes managed.

⁶¹ QLD Report on *Regulation of Body Corporate Managers*, Faculty of Law, Queensland University of Technology, 2002, pp. 63-64.

The Committee recommends that:

Recommendation 13

Strata companies in Category 2 and Category 3 schemes be required to appoint a licensed strata manager.

The Committee recommends that:

Recommendation 14

The proposed licensing body, in conjunction with other regulatory agencies and industry peak organisations, develop a system of training and accreditation for strata managers.

The Committee notes that currently there are more than 120 strata managers in Western Australia, managing 4,000-5,000 schemes⁶². It is anticipated that the requirement to appoint licensed managers will affect up to 3,000 of the 7,000 C2 and C3 schemes (see Section 2.2). The Committee is of the view that this recommendation for licensed managers achieves an appropriate balance between risk and regulation.

(b) Fidelity Protection

Fidelity Protection Funds (sometimes known as Fidelity Guarantee Funds) are funds established for the purpose of providing financial compensation to people who have lost money through the criminal or fraudulent activities of a licensed agent.

There is some protection for strata companies that employ strata managers who are also licensed real estate agents under the REBA Act, and also in the case of strata companies who take up insurance policies tailored for strata schemes. Insurance industry advice indicates that good general practice policies available in Western Australia do provide fidelity cover. The Committee considers that fidelity protection insurance would provide some protection for consumers of strata management services.

⁶² Mr Peter Munday, REIWA, *Proceedings of a Public Forum, Economics and Industry Standing Committee Report 4*, WA Legislative Assembly, 2002, pp. 44-48.

The Committee recommends that:

Recommendation 15

The government works with industry to develop appropriate regulation for fidelity protection across the strata management industry.

5.7 Licensing of Strata Managers

The Committee considers that, while there is no apparent crisis in the strata management industry, there is a significant element of risk to consumers of strata management services. This risk would be minimised by the introduction of a licensing scheme for licensed strata managers.

The proposed model incorporates the concept of a two-tiered licensing system for strata managers. A two-tiered system would allow for less onerous statutory obligations for managers of properties that are less complex.

Category 1 (C1) schemes are those with up to five lots and are generally thought to be self-managed, and in many cases may opt out of some requirements of C2 and C3 schemes. Category 2 (C2) schemes are those with up to 20 lots per scheme and are usually less complex than Category 3 (C3) schemes in terms of size and amounts of funds administered.

(a) Restricted Licence

Managers of C2 strata schemes are to be required to hold a restricted licence. Within the Committee's proposals, a restricted licence holder would be expected to have a minimum standard of competency, with less onerous regulatory obligations.

Those obligations would include a minimum standard of accredited training (in accordance with the proposed system mentioned above) and a requirement to adhere to an industry-specific Code of Conduct incorporated into the management contract. Under this system, managers receiving a restricted licence would be eligible to manage any number of C1 and C2 schemes.

(b) Unrestricted Licence

Category 3 (C3) strata schemes are those with greater than 20 lots. C3 schemes are potentially more complex than smaller schemes.

Managers of C3 schemes would be required to hold an unrestricted licence and would be expected to meet a higher level of competency and compliance, reflecting the increased complexity and potential risk associated with large strata company funds.

The statutory obligations applying to restricted licence holders would also apply, however a greater level of demonstrated professional development would be required to obtain a licence to manage C3 schemes. Unrestricted licence holders could manage all types of strata schemes.

The Committee recommends that:

Recommendation 16

A two-tier system of licensing for strata managers, reflecting the levels of complexity associated with Category 2 and Category 3 strata title companies, be developed for the industry.

(c) Licence Fees

The concept of a two-tiered licence system involves a scaled system of fees. Fees for a restricted licence would reflect a less onerous regulatory regime and minimise the financial burden to small strata scheme members.

(d) Code of Conduct

As discussed in Chapter 3, the Committee advocates the introduction of a voluntary Code of Conduct for the strata title industry. This would provide strata companies with additional protection in their contract with strata managers. It would also provide a stronger avenue for civil remedy for enforcement, protection or compensation in relation to strata management.

In principle, the provisions of a Code could be inserted into relevant legislation and form part of the terms of a contract entered into between a strata company and strata manager. The Queensland government has recently passed amendments to their legislation and has incorporated a Code of Conduct that applies to body corporate managers. The Code is enforceable by virtue of it becoming part of the agreement between the body corporate and the appointed manager.

The Committee advocates the trial of an industry developed Code of Conduct at this stage of the development of strata title law in WA. It is the Committee's view that the first review of the new strata titles governance arrangements would need to consider whether an industry-based approach had been satisfactory or whether a regulatory Code of Conduct was warranted.

The Committee recommends that:

Recommendation 17

The Government works with industry to establish a Code of Conduct for strata company managers.

The Committee recommends that:

Recommendation 18

The *Strata Titles Act 1985* make provision for a management contract between a strata company and licensed strata manager to include an industry Code of Conduct as an enforceable instrument.

(e) Transition from Existing Arrangements

The Committee is of the view that, when applying for a license, current members of the industry would be able to have their prior experience and current industry-specific education considered when assessing and recognising levels of competence. This process could be managed by the office of the Strata Titles Referee, and the granting of a strata manager's licence should be preceded by an appeal period of six weeks to allow for objections to be considered by the Strata Titles Referee.

Strata companies should have one year from the establishment of the licensing system to make the transition to the compulsory engagement of a licensed strata manager.

While there will undoubtedly be some minimal costs to industry, the Committee believes the conditions associated with obtaining a licence will increase the professionalism of the industry, and increase the value of the business. Licensing should also assist in lowering, or at least containing, the cost of professional indemnity insurance for the industry by providing insurance companies with a benchmark for the credential of a licensed strata manager.

5.8 The Role of the Strata Titles Referee

The Committee believes that the role of the office of the Strata Titles Referee must be enhanced to provide for the regulatory changes proposed in this report. The proposed functions for the office of the Strata Titles Referee should include the following aspects.

(a) Registration of Management Plans

The office of the Strata Titles Referee would be responsible for receiving and holding the compulsory long term maintenance management plans to be developed by strata companies.

(b) Information and Advice

The Strata Titles Referee would be given the responsibility and resources to provide education for owners of their rights and responsibilities under the *Strata Titles Act 1985* and on the management of schemes.

The Committee recommends that:

Recommendation 19

The office of the Strata Titles Referee be given the responsibility to prepare, in conjunction with industry organisations, information for all stakeholders in the industry.

(c) Mediation and Arbitration

The Committee agrees that the current system of dispute resolution available under the *Strata Titles Act 1985* is inadequate and believes a more suitable method to deal with disputes is Alternative Dispute Resolution (ADR).

ADR is a widely recognised form of dispute resolution within Australia and is a significant feature of the Australian justice system. State courts are increasingly referring matters, in some cases compulsorily, to ADR.⁶³

Parties may choose from a range of procedures to resolve disputes. The types and structure of alternative dispute resolution procedures generally follow a hierarchy progressing from the provision of information through to compulsory arbitration. The Committee is of the view that the strata titles regime needs to adopt a three-tiered approach, namely:

- information provision;
- mediation and conciliation; and
- arbitration.

⁶³ A Guide to Arbitration in APEC Member Countries, www.arbitration.co, accessed 11 June 2003.

The Committee believes that it is appropriate to encourage mediation between disputing parties in an attempt to avoid more costly, adversarial processes being adopted. A strata management tribunal could form part of the system of dispute resolution within the proposed State Administrative Tribunal. The Committee considers that the role of the office of the Strata Titles Referee would be enhanced within this system.

The Committee recommends that:

Recommendation 20

The office of the Strata Titles Referee adopt a system of Alternative Dispute Resolution for the strata management industry.

(d) Powers of Enforcement

The office of the Strata Titles Referee has the power to make an order relating to a strata company's failure to comply with the Act, but not to cause that order to be enforced. Under the proposed regulatory changes, the powers of enforcement will relate to disputes between lot proprietors, or disputes between strata companies and their appointed manager, where that dispute arises from failure to comply with the *Strata Titles Act 1985*, and will include the enforcement of accountability provisions.

The Committee recommends that:

Recommendation 21

The office of the Strata Titles Referee be given enforcement powers for orders made under the *Strata Titles Act 1985*.

(e) Reclassifying Strata Scheme Categories

In the Committee's view, the Strata Titles Referee should be empowered to determine whether it is appropriate for C2 schemes to be re-classified as C1 schemes, and for C3 schemes to be re-classified as C2 schemes (see Section 5.2(a)).

The right of a strata company to apply to the Strata Titles Referee for re-classification (Recommendation 2, p. 52) to the next lowest category will allow less complex schemes the opportunity to argue that the scheme should be exempt from certain statutory requirements.

Where there is disagreement between lot proprietors about the classification of a scheme, the Committee considers it necessary to give the Strata Titles Referee the option of reviewing a scheme's Category status on the basis of significant concerns raised by lot-proprietors.

5.9 Funding of Provisions

The recommendations made by the Committee will need to be funded from appropriate sources. In particular, the office of the Strata Titles Referee needs adequacy of resourcing for the development and provision of educational materials, and to allow the office to respond in a timely fashion to appraisals, mediations and enforcement.

(a) Cost Recovery - Licence Regime

Licence fees must be set at a level to recover costs associated with managing a licence scheme, and reflecting the category of licence granted. A triennial fee would allow for minimisation of administrative costs.

(b) Cost recovery - Information, Advice and Mediation Service

The Committee acknowledges that there will be a cost of establishing an information, advice and mediation service. However, given that the service should be of direct benefit to all owners, the Committee believes that a fee should be collected from the sale of all strata units, and that the fee be set at such a level to recover costs associated with managing the scheme. The fee will provide for the production of information booklets and education courses available to volunteer managers and the mediation service.

APPENDIX ONE

INTERSTATE BRIEFINGS HELD NOVEMBER 2002 NEW SOUTH WALES, QUEENSLAND AND SOUTH AUSTRALIA

Date	Witness	Position	Organisation
18 November 2002	Mr F Andreone	Lawyer	Andreones NSW
	Mr P Berry	A/Manager, Strategic Policy	NSW Department of Fair Trading
	Ms L Porter	A/Principal Policy Officer	NSW Department of Fair Trading
	Mr A McLean	Manager, Strata Schemes and Mediation Services	NSW Department of Fair Trading
	Ms M Brodie	Policy Officer, Strategic Policy	NSW Department of Fair Trading
	Mr D Wong	Senior Project Manager	NSW Department of Fair Trading
19 November 2002	Ms R Janes	Partner	Herd and Janes Lawyers QLD
19 November 2002	Dr R Priebbenow	Director, Cadastral Policy	QLD Department of Natural Resources and Mines
	Ms S Garvey	Principal Policy Officer	QLD Department of Tourism, Racing and Fair Trading
	Mr C Young	Adjudicator	Office of the Commissioner for Body Corporate and Community Management
	Prof B Duncan	Faculty of Law	QLD University of Technology
	Ms A Wallace	Faculty of Law	QLD University of Technology
	Mr S Thomas	Business Regulation Reform Unit	QLD Department of State Development
	Ms C Castley	Principal Policy Officer	QLD Department of Premier and Cabinet

Date	Witness	Position	Organisation
20 November 2002	Mr S Libbis	Registrar General Land Services Group	SA Department of Administrative and Information Services
	Mr G Borret	Policy Officer	SA Department of Administrative and Information Services
	Mr D Watson	Policy Officer	SA Department of Administrative and Information Services
	Ms S Brown	Adviser	SA Attorney General's Department
	Ms E Emmanuel	Member	Real Estate Institute of South Australia

APPENDIX TWO

PUBLIC FORUMS HELD LEGISLATIVE ASSEMBLY COMMITTEE OFFICE 8 NOVEMBER 2002

Witness	Position	Organisation
Mr C Noble	Strata Titles Legislative Review Officer	DOLA
Mr R Lambert	Senior Research Officer	Valuer General's Office
Dr C Bennett	Senior Policy Officer	DOCEP
Mr R Kronberger	Strata Titles Referee	Ministry of Justice
Ms J Eckert	Chairperson	REBA
Mr J Angus	Author and Strata Manager	Strata Information Resources
Ms B Grigo	Strata Manager	Strata Asset Services
Mr M Atkinson	President	STIWA
Mr P Munday	Strata Manger	REIWA
Mr C James	Lawyer	Law Society WA

KALGOORLIE COUNCIL CHAMBERS
9 DECEMBER 2002

Witness	Position	Organisation
Ms M Boyden	Real Estate Agent	Murphy Boyden Real Estate
Mr G Gilmore	Strata Manager	Wades First National Real Estate
Ms L Murphy	Real Estate Agent	Wades First National Real Estate
Mr A Pandal	Real Estate Agent	John Mathew & Sons
Mr W Walker	Real Estate Agent	Goldfields Realty

BUSSELTON COUNCIL CHAMBERS
28 JANUARY 2003

Witness	Position	Organisation
Mr J O'Malley	Strata Manager	Busselton Strata Managers
Ms E Logiudice	Strata Manager	Logiudice Property Group and Strata Manager Professionals
Mr R Bromell	Private	
Mr P Grant	Private	
Mr T Black	Owner	
Mr D Lucas	Private	
Mr R Clarke	Owner	
Mrs L Clarke	Owner	

APPENDIX THREE

WITNESSES TO HEARINGS HELD

Date	Witness	Position	Organisation
13 November 2002	Mr C Pope	Private Owner	
13 November 2002	Mr R Sharland	Strata Manager	Independent Strata Services
27 November 2002	Ms M Edwards	Strata Manager	Blue Moon Realty
27 November 2002	Ms E Logiudice	Strata Manager	Logiudice Property Group
4 December 2002	Mr R Kronberger	Strata Titles Referee	Ministry of Justice

APPENDIX FOUR

SUBMISSIONS RECEIVED

No.	Date	Name	Position	Organisation
1	9 October 2002	Mr C Pope	Owner	Private
2	15 October 2002	Ms E Logiudice	Director	Logiudice Property Group and Strata Manager Professionals
3	24 October 2002	Ms C Thompson	President	The Law Society of WA
4	24 October 2002	Ms H Edwards	Strata Company Manager	Commercial Strata Management
5	25 October 2002	Mr J.L Sobkowiak	Owner	Private
6	25 October 2002	Mr G Searle	Acting Chief Executive	Department of Land Administration WA
7	25 October 2002	Mr A Chambers	Director	John Franklyn Strata Services Pty Ltd
8	25 October 2002	Mr R.G Sharland	Principal	Independent Strata Services
9	25 October 2002	Mr M Atkinson	President	Strata Titles Institute of WA
10	28 October 2002	Ms M Edwards	Principal	Blue Moon Realty
11	28 October 2002	Mr P Walker	Executive Director Commissioner for Fair Trading	Department of Consumer and Employment Protection

ECONOMICS AND INDUSTRY STANDING COMMITTEE

No.	Date	Name	Position	Organisation
12	28 October 2002	Mr J Angus	Proprietor	Strata Information Resources
13	4 November 2002	Ms B Grigo	Managing Director	Strata Asset Services (WA) Pty Ltd
14	11 December 2002	Mr T Black	Owner	Private
15	20 December 2002	Ms M Stuart	Owner	Private
16	24 December 2002	Mr P Stockden	Owner	Private
17	9 January 2003	Mr M Dempsey	Chief Executive Officer	WA Retailers Association
18	9 December 2002	Mr G Owen	Partner	McCleods Barristers and Solicitors
19	19 December 2002	Mr G Etrelezis	Managing Director	Small Business Development Corporation
20	10 February 2003	Mrs R Commins	Owner	Private
21	14 March 2003	Mr D Russell	Owner	Private
22	8 May 2003	Mr J Lenzo	Executive Director	Property Council of Australia
23	3 June 2003	Mr E A McKinnon	Chairman	Community Titles Advisory Committee
24	6 June 2003	Ms M Clarke	Owner	Private
25	16 June 2003	Ms L Chan	Owner	Private

APPENDIX FIVE

LEGISLATION REFERRED TO IN THE INQUIRY

Legislation	Jurisdiction
Strata Titles Act 1985	Western Australia
Strata Titles General Regulations 1996	Western Australia
Real Estate and Business Agents Act 1978	Western Australia
Builders' Registration Act 1939	Western Australia
Retirement Villages Act 1992	Western Australia
Trade Practices Act 1974	Commonwealth
Fair Trading Act 1987	Commonwealth
Consumer Affairs Act 1971	Commonwealth
Property, Stock & Business Agents Act 2002	New South Wales
Strata Schemes Management Act 1996	New South Wales
Community Land Management Act 1989	New South Wales
Body Corporate and Community Management Act 1997	Queensland
Agents Licensing Act 2001	Northern Territory
Unit Titles Act 2002	Northern Territory
Strata Titles Act 1988	South Australia
Community Titles Act 1996	South Australia
Subdivision Act 1988	Victoria
Subdivision Act (Body Corporate) Regulations 1989	Victoria
Strata Titles Act 1998	Tasmania
Community Title Act 2001	Australian Capital Territory