

Department of Consumer and Employment Protection

Review of Proposed Licensing/Regulation of Strata Title Managers

Final Report

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Executive Summary

Introduction

In 2002/2003, the Legislative Assembly's Economic and Industry Standing Committee ("EISC") conducted an "Inquiry into the Strata Management Industry". The inquiry was established in response to industry and government concerns in relation to potential management and capital risk issues in the industry and also that strata managers were not licensed or regulated in any form.

The EISC did not find any evidence of crisis in the strata management industry and in June 2003, their final report was tabled in Parliament.

The Government subsequently tabled its response to the EISC Report and also noted that there was no evidence of market failure in the industry.

It should be noted that in response to the EISC Report the two main Government Agencies, DOCEP and Landgate, had many different views on the recommendations.

The response concluded that the available data did not indicate the necessity of a high degree of regulatory intervention, such as the introduction of a licensing regime, but that further consultation and assessment was needed.

Consequently, Stamfords Advisors and Consultants ("the Consultant") was engaged to conduct a review in relation to the proposed licensing and / or regulation of strata title managers.

The Consultant is required to conduct extensive research, stakeholder consultation and analysis on all aspects of the licensing/regulation of strata title managers. The Consultant will consider the nature and extent of risks posed to strata proprietors by strata managers, assess the adequacy of the existing regulatory framework for strata companies, and use those findings to make appropriate recommendations for the future.

Current Situation

The Strata Titles Act 1985 ('Strata Titles Act') includes governing the obligations and responsibilities of strata companies. The current legislation does not recognise strata title managers and they are not required to be licensed or regulated in any way.

Strata management services are currently provided by strata management companies, which may be members of the Strata Title Institute of Western Australia (“STIWA”), real estate agents or other persons wishing to provide such services. The composition of strata schemes vary and as such the management can be fairly straightforward whilst others are more complex, requiring skills in financial reporting and town planning, as well as in-depth knowledge of legislative requirements.

It should be noted that approximately 85% of strata schemes comprise less than four lots with the majority of those not using strata title managers and handling their own affairs.

The Strata Titles Act is primarily administered by Landgate with the exception of dispute resolutions, which is administered by the State Administrative Tribunal (“SAT”).

Proposed Amendments

Landgate is in the process of reviewing the Strata Titles Act. During this consultancy it was found that Landgate is proposing amendments to the Act to deal with strata title managers and their relationship with strata companies/councils.

Benchmarking

Part of the scope was to carry out benchmarking in other states and territories to ascertain their approach to strata management. The approach each jurisdiction takes to strata management varies between each one, including the terminology. No two jurisdictions have the exact same model which highlights that there is no single best solution that can be adopted.

Each jurisdiction seeks to establish an optimal solution that balances the costs and risks to the benefits to achieve the best outcome for strata lot proprietors.

During the last three years ACT and Victoria have undertaken similar reviews of their relevant legislation on a similar scale to Western Australia. New South Wales and Queensland have also revised their existing legislation to provide improvements.

Of note, NSW and the Northern Territory are the only jurisdictions that require strata managers to be licensed.

Principles of Regulation

The *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies*, endorsed by COAG, is based on the premise that regulation should be introduced when there is an assessed need based on market failure, that the costs and benefits have been well considered and that regulation is likely to improve market outcomes.

Those principles have been considered throughout this consultancy and the issues and any degree of market failure will contribute to whether a licensing regime is a viable solution.

Stakeholder Consultation

The focus of the consultation was to consult with stakeholders and determine the current issues that they are aware of when dealing within the industry, from the perspective of both a strata title manager and a strata company.

Stamfords convened individual meetings with relevant government agencies and with key industry organisations, comprising:

- Department of Consumer and Employment Protection;
- Landgate;
- Community Titles Advisory Committee;
- CHU (strata insurance company);
- Real Estate and Business Agents Supervisory Board (“REBA”);
- Strata Titles Institute of Western Australia (“STIWA”); and
- Real Estate Institute of Western Australia (“REIWA”).

The Consultant also developed a detailed questionnaire which was sent to strata title managers and strata companies.

The responses showed that between and within all stakeholder groups, there are different views on many of the topics. This again shows that the strata industry is complex and diverse with no “right answer” in many cases. It should also be noted that those stakeholders that supported licensing strata title managers, in many cases, had not considered whether it was cost beneficial, or how and why a licensing regime would solve some of the issues raised.

Of note no issues of widespread market failure were raised by stakeholders.

Identified Market Risks

The Consultant, through analysis of existing reports and associated documents, research and stakeholder consultation, identified the following potential primary risks posed to strata companies by strata managers. These risks included:

- Misappropriation of funds;
- Mismanagement of funds;
- Poor Advice; and
- Lack of accountability and/or recourse.

Many of the identified risks stem from strata companies not being fully informed in respect of managing the best outcomes for their strata scheme. This lack of knowledge often leads to an imbalance in the relationship between a strata company and its strata manager, such that a strata manager may be in a position to establish a working arrangement with the strata company that best suits their own needs.

Nevertheless, although there were a number of risks identified, the Consultant found no evidence to suggest that these risks materialise on a significant enough or regular basis to justify significant government intervention.

Preferred Approach

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

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

All stakeholder feedback and all associated potential issues lead to the conclusion that no area requires attention in respect of all strata companies or all strata title managers.

Having said that, however, the report proposes a number of modifications to the existing Strata Titles Act, as well as a range of targeted information and education material, to assist strata councils to reduce the identified risks and be better equipped to monitor the performance of a strata manager.

The recommendations from this Consultant aim to strengthen the rigour associated with the operations of both strata title companies and strata title managers. This will minimise the risk to strata title companies and their funds in their dealings with strata title managers.

The recommendations are to:

1. Extra to the proposed Landgate amendments, amend the Strata Titles Act to require strata title managers to have professional indemnity insurance, and use trust funds for monies managed on behalf of strata companies.
2. Address the information requirements of strata companies in respect of what they should look for when engaging a strata title manager, the role of that manager, the form of contracts they should enter into and financial reporting requirements, and advice on dispute resolution, all through the provision of information (which is not currently available). Ensure strata companies and strata title managers are aware of, and have access to, this information.
3. Review STIWA's accreditation program to align it to best practice.
4. Endorse Landgate's proposed changes to the Act regarding dispute resolution.

Strata councils will not be subject to mandatory requirement to do the tasks detailed in 2 above, but will be able to make more informed decisions for their strata company.

Dispute Resolution

There is currently no provision in the Strata Titles Act to enable a strata proprietor or company to bring an application before SAT against a strata title manager. It is understood, however, that Landgate is seeking to amend the Strata Titles Act to enhance dispute resolution and provide for orders/settlement to be determined by SAT. This will include giving SAT jurisdiction to deal with disputes between the strata company and strata manager.

These amendments and the Consultant's recommendations dealing with providing information to strata companies regarding contracts structure and financial reporting requirements, to be considered when engaging a strata title manager, will allow small matters to be dealt with more effectively internally, and also allow SAT to hear matters between strata companies and strata title managers.

1 Summary of Recommendations

The following is a summary of recommendations. Full details are in Section 9.

| | |
|---------------------------|---|
| Recommendation 1: | The Consultant agrees with Landgate’s proposed changes to the Strata Titles Act. |
| Recommendation 2: | The Strata Titles Act should be amended to require strata title managers to hold adequate professional indemnity insurance. |
| Recommendation 3: | The Strata Titles Act should be amended to require strata title managers to hold all strata company funds under their management in a trust account. |
| Recommendation 4: | Landgate should provide a full set of literature to strata companies detailing the description and role of strata title managers as per the Act, and the elements a strata company should consider before appointing a strata title manager. |
| Recommendation 5: | Landgate should provide a full set of literature to strata companies detailing a suggested pro-forma for contract conditions to be established between a strata company and a strata title manager. |
| Recommendation 6: | Landgate should provide a full set of literature to strata companies outlining financial reporting requirements as per the Act, and detailing a suggested pro-forma for financial reporting requirements by a strata title manager to a strata council. |
| Recommendation 7: | The STIWA accreditation program should be reviewed by an industry committee to ensure it provides training, education and continuing professional development in line with both state and national industry best practise. |
| Recommendation 8: | The Consultant agrees with Landgate’s proposed changes to the Strata Titles Act relating to disputes resolution and SAT. |
| Recommendation 9: | Landgate should provide a full set of literature to strata companies detailing advice and approaches to dispute resolution and including suggestions for internal resolution and the role of SAT. |
| Recommendation 10: | Landgate should implement a program to ensure all strata companies and strata title managers are aware of the literature mentioned in previous recommendations and also ensure they have easy access to it. |

2

Introduction

The number of Western Australians living or working within strata title properties is increasing. The growth within the Western Australian housing market will see the number of strata title properties increase greatly over the coming years. In an increasingly expensive property market, strata schemes appeal to many people because they offer opportunities for lower cost housing.

All strata lot proprietors are part of a strata company and in doing so have obligations and responsibilities under the *Strata Titles Act 1985* (“Strata Titles Act”). While most of the smaller schemes, typically less than four lots, carry out their own strata business affairs, many of the larger ones use strata title managers to conduct this business. At this time strata title managers are not bound by any regulation or formality and this has been the subject of concern, discussion and review.

Stamfords Advisors and Consultants (“the Consultant”) was engaged to conduct a review in relation to the proposed licensing and / or regulation of strata title managers. The Consultant is required to conduct extensive research, stakeholder consultation and analysis on all aspects of the licensing/regulation of strata title managers.

The Consultant will consider the nature and extent of risks posed to strata proprietors by strata title managers, assess the adequacy of the existing regulatory framework for strata companies, and use those findings to make appropriate recommendations for the future.

The *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies*, endorsed by COAG, was considered within this Consultant. Although a comprehensive document, the base premise is that regulation should be introduced when there is an assessed need based on market failure, that the costs and benefits have been well considered and that regulation is likely to improve market outcomes.

2.1 Background

The following is included to provide general background and an understanding of terminology for the consultancy.

A strata title property is a development with individual strata lots and shared facilities or ‘common property.’ These properties are known as strata and survey-strata schemes (‘strata schemes’) and are established under the Strata Titles Act.

The Strata Titles Act facilitates the subdivision of land into lots for residential and commercial properties, and provides for the management of strata schemes. Over 80 per cent of strata schemes are residential properties. The remaining strata schemes are non-residential, including factories, farms, vineyards, industrial land, industrial complexes, shopping centres, hotels and other businesses.

Upon the registration of a strata/survey-strata plan, a strata company is created. All strata lot proprietors are members of the strata company. The strata company is responsible for ensuring they comply with a range of legal requirements and obligations as detailed within the Strata Titles Act. The Strata Titles Act provides for a council of proprietors (“strata council”) to run the strata company on behalf of all strata lot proprietors.

Management of strata schemes and their administration and Strata Titles Act responsibilities is either performed by the strata company, or council, or through engaging a ‘strata title manager’ to assist them. Of note, the responsibility for compliance lies with the strata company and cannot be delegated to a strata title manager.

The current legislation does not recognise strata title managers and they are not required to be licensed or regulated in any way. Strata management services are currently provided by strata management companies, which may be members of the Strata Title Institute of Western Australia (“STIWA”), real estate agents or other persons wishing to provide such services.

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

It should be noted that approximately 85% of strata schemes comprise less than four lots with the majority of those do not use strata title managers and handle their own affairs.

The Strata Titles Act is primarily administered by Landgate (formerly known as the Department of Land Information (“DLI”)) with the exception of dispute resolutions, which is administered by the State Administrative Tribunal (“SAT”).

Landgate is in the process of reviewing the Strata Titles Act. Amendments are being developed in consultation with the Community Titles Advisory Committee (“CTAC”). CTAC is supported by Landgate and comprises representatives from a range of relevant industries.

2.2 History

In 2002/2003, the Legislative Assembly's Economic and Industry Standing Committee ("EISC") conducted an "Inquiry into the Strata Management Industry". The inquiry was established in response to matters put before EISC by the Minister for Consumer and Employment Protection, the Hon. John Kobelke, after dealing with approaches from members of the industry and matters arising across government that revealed the emergence of potential management and capital risk issues. The inquiry also addressed the points that strata title managers were not licensed or regulated in any form, that strata lot proprietors/companies did not have a full understanding of their rights and responsibilities under the Strata Titles Act, and that there was, in general, inadequate provision of capital reserves for long term maintenance.

In June 2003, the EISC tabled the final report with its findings and recommendations in Parliament.

The EISC did not find any evidence of crisis in the strata management industry but provided a series of recommendations. In essence (among 17 findings and 21 recommendations) the report recommended stronger financial reporting mechanisms, the establishment of reserve funds and the appointment of licensed strata managing agents.

The Government tabled its response to the EISC Report in October 2003 (the 'Response'). While acknowledging the groundbreaking committee work in what is a diverse and complex industry, the Response noted that there was no evidence of market failure in the industry.

The Response was developed following consultation with stakeholders including some strata title proprietors, who agreed some degree of regulation was appropriate but expressed strong concern about the additional costs they would have to meet.

The Response concluded that the available data did not indicate the necessity of a high degree of regulatory intervention, such as the introduction of a licensing regime, but that further consultation and assessment was needed.

Additional papers were also prepared on regulating strata title managers from DLI/Landgate, with recommendations from CTAC and a submission to Landgate's review from the Department of Consumer Employment and Protection ("DOCEP").

The then DLI developed a Comments Paper in response to the EISC Report. This Paper supported 14 of the recommendations (some with reservations) and did not support 7 of the 21 recommendations.

This highlights the situation that the strata industry is complex and diverse with no "right answer" in many cases. There are different views on individual matters both between government agencies and within the same agencies and with stakeholders throughout the history of this matter.

Continuing discussions were held on the matter between DOCEP and Landgate, until in mid 2006 Landgate and DOCEP agreed to engage an external consultant to carry out further assessment in relation to the licensing/regulation of strata title managers. DOCEP would coordinate the tender and the consultancy on behalf of the two agencies.

Stamfords was engaged to carry out the consultancy in February 2007.

2.3 Scope of Work

The scope of the consultancy was to:

- identify the nature and extent of risks posed to strata proprietors in relation to the management of strata schemes in light of the obligations imposed on strata companies under the Strata Titles Act;
- identify the regulatory options available including, but not limited to, licensing under the *Real Estate and Business Agents Act 1978*; and consider ways in which funding may, if necessary, be sourced to support a licensing regime for strata title managers (including licence fees and the level of cost strata proprietors may bear);
- analyse the costs and benefits of regulating strata title managers under each regulatory option identified, including the costs and benefits to government, strata proprietors, strata management companies, small business, and regional impacts;
- recommend whether or not a mandatory licensing scheme for strata title managers or other form of regulation is necessary having regard to:
 - the statutory and common law rights obligations and responsibilities of strata title proprietors and the managers they appoint to assist in the management of strata properties;
 - the value of land under strata title schemes and the funds that are managed under those schemes;
 - the identified risks to strata proprietors;
 - the degree of market failure; and
 - the costs and benefits of each regulatory option.
- identify options for dispute resolution between strata title managers and strata companies having particular regard to:
 - the management responsibilities of strata companies under the Strata Titles Act and the nature of the relationship between strata companies and strata title managers;
 - the extent to which the State Government should be responsible for mediating disputes; and
 - the role of the State Administrative Tribunal as mediator.

3

Jurisdiction Benchmarking

This section provides a summary of the approach to strata management in the other Australian states and territories.

The fundamental structure of a strata scheme is consistent across Australia, that is, a number of lots comprise a scheme, most residential and some commercial, and many with common property. The approach each jurisdiction takes to strata management varies between each State, including the terminology. No two jurisdictions have the exact same model which highlights that there is no single best solution that can be adopted. Each jurisdiction seeks to establish an optimal solution that balances the costs and risks to the benefits to achieve the best outcome for strata lot proprietors.

The Consultant carried out benchmarking by using available literature, reports and other documentation and contacting relevant government agencies in each jurisdiction.

During the last three years ACT and Victoria have undertaken similar reviews of their relevant legislation on a similar scale to Western Australia. New South Wales and Queensland have also revised their existing legislation to provide improvements.

Of note, NSW and the Northern Territory are the only jurisdictions that require strata managers to be licensed.

A brief summary of each jurisdiction is detailed below.

3.1 New South Wales

New South Wales employs a full licensing regime whereby strata title managers must be licensed agents under the *Property, Stock and Business Agents Act 2002*. The responsibilities and accountability for strata management are clearly defined under the *Strata Schemes Managing Act 1996*.

The NSW strata industry is deemed to be highly regulated and as such very prescriptive as to the requirements of strata companies and strata title managers.

3.1.1 Strata Management

Features of the model include:

- An education-based licensing scheme;
- The functions of the strata company may be delegated to a strata title manager, including accountability for the function, with some exceptions;
- Strata title managers must undertake continuing professional development (“CPD”) to retain licenses (being implemented from September 2007);
- Strata company accounts must be held in a trust and the interest is paid into the Property Services Compensation Fund, managed by the Office of Fair Trading;
- Prescribed eligibility for a license, including being a fit and proper person, holding relevant qualifications and not a disqualified person; and
- There is no requirement for compulsory professional indemnity at this stage.

3.1.2 Financial Accountability

Improved management of strata companies is met through:

- Financial accountability with a requirement of maintaining accounting records and financial statements for 5 years and compulsory insurance; and
- Large schemes (100+) must also have their accounts audited every year, create a budget of expected expenditure items during the year and obtain quotes on large purchases.

The regulations review saw the implementation of new strata companies having an obligation to create ‘sinking funds’ for a 10-year plan of anticipated capital expenditure. There is a transitional period for all strata schemes to create a sinking-fund plan over the next 4 years to July 2009. It should be noted 2-lot schemes are exempt.

3.1.3 Dispute Resolution

Dispute resolution is managed through a three-step process.

Mediation services are provided by the Office of Fair Trading for a fee. Mediation must be attempted before seeking an order through Adjudication, with certain exceptions. Some agreed settlements can be made into an enforceable order by an Adjudicator.

If agreement cannot be reached through mediation, then the company may apply for adjudication to the Strata Schemes Adjudicator by providing written documentation and evidence. The Adjudicator makes a decision based on the evidence provided.

Orders made by Adjudicators may be appealed to the Consumer, Trader and Tenancy Tribunal. Certain matters may also be heard directly by this Tribunal.

3.2 Queensland

In Queensland, the *Body Corporate and Community Management Act 1997* provides regulation modules detailing specifics on particular areas of management for different scheme types. This allows for easier modification to particular areas of regulations.

Body corporate managers (strata title managers) are empowered by body corporates (strata councils) through delegation of all or any of its powers, authorities, duties and functions.

3.2.1 Strata Management

Body corporate managers are not required to be licensed, however are subject to a Code of Conduct enforced through legislation. The Code of Conduct prescribes how body corporate managers are to approach the management of titles and is used as a part of the agreement between the parties.

A body corporate cannot delegate its responsibilities to body corporate managers, however it may authorise the body corporate manager to exercise some or all of its functions and powers.

3.2.2 Financial Accountability

A body corporate must prepare budgets for both the administrative fund and sinking fund. Sinking fund budgets must be prepared based on 10 years of anticipated expenditure.

Accounts must be kept and if managed by a body corporate manager, they must prepare reconciliation statements on a monthly basis to the body corporate. Audits must be completed on accounts on an annual basis.

3.2.3 Dispute Resolution

Dispute resolution services are provided and administered by the Commissioner for Body Corporate and Community Management who is also responsible for education and information services.

The formal dispute resolution process allows for a wide range of disputes to be dealt with including internal disputes between owners, between owners and the body corporate and the body corporate and body corporate managers.

Once an application has been submitted, the Commissioner or delegated dispute resolution officer will either dismiss the application or make a recommendation on the process to be undertaken from mediation, conciliation or adjudication. Finally, appeals of the adjudicator may be made to the District Court.

3.3 Victoria

Victoria currently has minimal regulation of strata title managers, limited to some insurance requirements, however, it is in the process of implementing new legislation with a negative licensing regime.

Victoria has recently completed their review of strata titles and in September 2006 passed through Parliament a new *Owners Corporations Act 2006* due to come into force at the end of 2007. Until this time the existing regulation will continue to be enforced.

3.3.1 Strata Management

Under the existing regulations there are few regulatory controls in place for strata title managers. Any strata title manager can be appointed as long as they have professional indemnity insurance of at least \$2 million.

The review has proposed that body corporate managers now be registered and that a public record be created, together with clear guidance on the appointment and removal of a body corporate manager.

3.3.2 Financial Accountability

A body corporate is required to keep accounts and prepare financial statements, however the regulations are vague as to the actual requirements. The review has expanded on the requirements to prepare financial statements with prescribed standards and audits performed on the accounts.

A body corporate must have both public liability and common property insurance.

3.3.3 Dispute Resolution

The recommended route for dispute resolution at present is:

- Internal resolution;
- Apply to the Dispute Settlement Centre of Victoria which provide a mediation service; or
- Apply to the Magistrates Court for an order determining the dispute.

Under the new legalisation, a three tier approach is being implemented.

- First, each owners' corporation must have an internal dispute resolution process;
- Second tier is, at any time, a person may approach Consumer Affairs Victoria to conciliate or mediate between parties; and lastly
- Third tier is the Victorian Civil Administrative Tribunal to resolve dispute and make binding determinations.

3.4 Australian Capital Territory

There is currently very little regulation within the Australian Capital Territory (“ACT”) for strata title managers. The ACT Government is currently in the process of a major review of the *Unit Titles Act 2001*. Part of the review investigated the current issues with body corporate managers and dispute resolution pertinent to this review. Their draft legislation based on the review will be available mid to late 2007.

3.4.1 Strata Management

At present strata title managers are not regulated nor is there any licensing or registration processes. The only restriction placed on strata title managers at present is they must have professional indemnity insurance. There is little reference to body corporate managers within the legislation.

The review found that they generally body corporate managers were in favour of licensing, however expressed concern about compliance costs due to the small size of the industry. This is a similar view established in this consultation.

3.4.2 Financial Accountability

Owners’ corporations must create both an administrative fund and a sinking fund. Corporations of two or three lots can declare themselves exempt from the sinking fund requirement. The legislation details the level of investment based on unit development classifications.

Corporations must have both public liability and building/common property insurance.

The legislation makes provision for the creation of financial statement and auditing of corporation accounts, however it is optional.

3.4.3 Dispute Resolution

At present there is little scope for formal dispute resolution services. The legislation provides access to a State appointed conciliation service. Failure to come to agreement can only be resolved in a Magistrates Court.

3.5 Tasmania

Tasmania currently has no regulation of strata title managers.

3.5.1 Strata Management

A body corporate may appoint strata title managers and delegate functions relating to administration, management and control of the common property. There is no regulation of strata title managers.

3.5.2 Financial Accountability

A body corporate must have building, common property and public liability insurance.

There is no requirement to create financial statements, nor have audits performed on any accounts.

3.5.3 Dispute Resolution

The only avenue for dispute resolution is through the Recorder of Titles. The Recorder makes decisions based on law.

It is recommended that owners find their own means of resolution either through internal discussion or via external mediation service.

3.6 South Australia

South Australia is currently in a transition period of changing from strata titles to community titles. As a result, two sets of legislation apply to strata management, depending on the type of scheme in place.

In January 2002 the *Community Titles Act 2002* was created which applies to new properties. No new strata titles have been issued, however old strata schemes may apply to be converted to a community title.

3.6.1 Strata Management

Under the Strata Titles Act, strata title manager can only be appointed in an advisory capacity. They have to act in the best interest of the strata company, however it is the strata company's responsibility to ensure the strata title manager is performing.

3.6.2 Financial Accountability

Trust accounts must be utilised for agents appointed to manage strata companies. Monthly reconciliations are to be provided to the strata company, proper financial statements and reports prepared on an annual basis with an audit performed. Building and public liability insurance is compulsory.

Under a community title, schemes are required to maintain both administrative and sinking funds in addition to the requirement for strata titles.

3.6.3 Dispute Resolution

Depending on the type of dispute, it may be resolved through community mediation services or it can be ruled upon by the strata company in the case of breaches. If a resolution is not achieved or the outcome is unfavourable, then a case can be taken to the Magistrates Court to decide the matter.

Mediation services are provided by an independent not-for-profit organisation operated by Community Legal Services.

In complicated cases or in dealing with large sums of money, the matter may be transferred to a higher court.

3.7 Northern Territory

The Northern Territory Government requires strata title managers to be licensed under the *Agents Licensing Act 2001*.

Strata title managers are licensed by a restricted form of the real estate license. As such, they are exempt from some of the legislation relating to being a real estate agent, however they must comply with the requirement of an agent under the Act.

Strata title managers are required to have indemnity insurance.

4 Stakeholder Consultation

The stakeholder consultation aspect of this consultancy is a key component. The Government’s response to the EISC Report concluded that *“it is appropriate to undertake further industry and public consultation about the report before deciding whether to implement the Committee’s recommendations....”*

The strata industry is complex and diverse and is currently growing, and will continue to grow at a rapid rate. There is a lack of detailed information about the composition of the market. There is no current validated information about the number of strata title managers or the number of strata companies using strata title managers.

The aim of the stakeholder consultation was to determine current or potential risks and issues that exist within the industry, substantiate whether there are any market failures and obtain views on possible solutions for addressing any issues.

4.1 Approach taken for Stakeholder Consultation

The focus of the consultation was to establish what are the current issues that each organisation was aware of when dealing within the industry, from the perspective of both a strata title manager and a strata company, how can issues be avoided or minimised, what improvements can be found within the current system and to solicit their opinions on a licensing regime or alternatives.

The consultation was carried out in two main parts.

The Consultant convened individual meetings with the relevant government agencies and with key industry organisations. Individual meetings took place with the following organisations:

- DOCEP;
- Landgate;
- CTAC;
- CHU (strata insurance company);
- Real Estate and Business Agents Supervisory Board (“REBA”);
- Strata Titles Institute of Western Australia (“STIWA”); and
- Real Estate Institute of Western Australia (“REIWA”).

Secondly, the Consultant developed a detailed questionnaire which was sent to strata title managers and strata companies.

Two points should be noted as a lead into the more detailed statement of responses from stakeholders which follows.

Firstly, both between and within all stakeholder groups, there were different views on many of the topics. This is the same theme that appears in the responses to the EISC Report and the subsequent discussions. In response to the EISC Report the two main Government Agencies, DOCEP and Landgate had many different views on the recommendations, and as further example Landgate, in its Comments Paper responding to the EISC Report, supported 14 (some with reservations) and did not support 7 of the 21 recommendations.

This again shows that the strata industry is complex and diverse with no “right answer” in many cases. Further evidence of this is the different ways of dealing with the industry and strata title managers which have been implemented in each of the states and territories throughout Australia (refer to Section 3 Jurisdiction Benchmarking).

Secondly, it should be noted that those stakeholders that supported licensing strata title managers, in many cases, had not considered whether it was cost beneficial, or how and why a licensing regime would solve some of the issues raised.

4.2 Consultation with Government Agencies and Key Industry Groups

The Consultant met with a range of representatives from government agencies and key industry groups. The major themes arising from this stakeholder consultation was as follows.

4.2.1 Risks and Market Failures

Consultation with DOCEP and Landgate focused on identifying the risks posed to strata proprietors by strata title managers. The focal point of the discussions related to the risk associated with strata title managers dealing with funds on behalf of strata companies.

With the growth in the market and the proposed requirement for strata companies to establish reserve or sinking funds, funds required to be held on behalf of strata companies will significantly increase in the future. This growth and complexity means strata companies will more often engage a strata title manager to manage their scheme, increasing the total amount of funds held by strata title managers.

There is understandable concern that those funds should be as secure as possible. A potential risk that exists is the misappropriation of funds by strata title managers. As the sums involved increase there is more concern that funds could be lost, stolen or defrauded.

Of note, many strata councils do hold fidelity insurance that provides some protection if strata title managers misappropriate funds.

Whilst there is potential risk in respect of these monies, there was no evidence provided by stakeholders to support the premise that strata title managers are acting inappropriately with strata company’s funds.

It is noted that the number of strata schemes who engage strata title managers is limited. Currently about 85% of schemes can be classed as ‘small schemes’, being under 6 lot, and the majority of schemes in this category are self-managed.

Other issues highlighted related to the failure of strata title managers to meet the obligations of their contracts, for example, not organising annual general meetings in a timely manner.

Another issue raised by most stakeholders is the difficulty of strata companies/proprietors to obtain information from government agencies on strata management issues. As example a case was presented where an enquiry was made seeking information on dealing with a strata title manager. The proprietor contacted Landgate and was directed to contact DOCEP. DOCEP was unable to assist as it did not administer the Strata Titles Act and therefore did not have the required information.

REBA stated that there are three key deficiencies in the market:

- lack of accountability of strata title managers;
- lack of understanding of the need for consumer insurance in the form of fidelity insurance; and
- lack of effective information services to either strata companies or the general public.

This view is supported by DOCEP stakeholders who stated a frequent complaint from strata companies was a lack of trust in their strata title managers and their activities in managing their schemes.

From industry organisations, the key issues raised related to the general management of strata schemes by strata title managers. STIWA supported additional education of strata title managers on all topics relating to strata management. This is currently provided through their accreditation scheme. It was highlighted that generally, strata companies are becoming more demanding and as such expect more from strata title managers on a range of topics, for example issues relating to Occupational Health and Safety.

Both REIWA and STIWA representatives felt that schemes which are self-managed could pose a greater risk to themselves by not fully understanding the intricacies of strata management and their requirements and obligations under the Act and other areas, for example, setting realistic plans for repairs and maintenance.

In meeting with REIWA representatives, it was reinforced that a lack of information and education, contributing to poor management by both strata companies and strata title managers is a serious issue.

REIWA raised a number of issues, including for example, that there is a risk that through mismanagement, the council devalues the property through failing to address major maintenance issues etc, which will in part be addressed if the mandatory requirement for reserve funds was introduced.

More information will assist strata councils in a range of areas. It should be noted however that the scope of this consultancy is to deal with issues where strata title managers may pose a risk to strata companies.

There was general support for the use of trust accounts. Concerns were raised, that under a licensing regime structured the same way as for real estate agents, that the interest on balances within trust accounts would be passed on to the regulatory body. Balances of some accounts are significant and with the inclusion of reserve funds, the interest on these accounts provides additional income for the strata companies.

REIWA representatives suggested that detailed guidance be offered on managing reserve funds. In their experiences strata companies often do not know what to account for or how much to put aside in building their reserve funds.

Whilst small schemes are less likely to engage a strata title manager, REIWA representatives were keen to point out that small schemes of 3 or 4 lots can still have significant value and as such have large balances in administration and reserve funds, particularly in commercial properties.

Information and support on managing strata schemes for strata companies was felt to be lacking. REIWA members informed the Consultant of cases where strata companies had failed to obtain sought information from government and had to contact a strata management firm to obtain advice on managing their strata scheme. This presents an issue of conflicting interests, whereby strata title management firms can provide information that is biased to their companies providing a strata title management service.

4.2.2 Regulatory Controls

Industry response generally indicated that some form of regulatory control is required, although acknowledging that there was no evidence of serious market failure. Licensing was the initial solution suggested. When queried about alternatives, most had not considered other options. In all cases it was acknowledged that it would be difficult to justify licensing based on a cost-benefit analysis.

As to implementing a licensing regime, there was a divide as to what legislation licensing should be incorporated under. There were opinions and arguments for inclusion in both the Strata Titles Act and the REBA Act.

Stated benefits of inclusion within the REBA Act included access to the existing infrastructure in the form of trust accounts, the fidelity guarantee fund and conciliation and information services, as provided by DOCEP. It was also thought that it would take less time and effort to amend the REBA Act, as opposed to the Strata Titles Act.

Stated disadvantages are the extensive requirements to becoming licensed under REBA (if they were similar for licensing strata title managers under that Act), which could lead to high barriers to entry; strata title managers not wishing to be pooled within the real estate domain; and the requirement to split another portion of the Strata Titles Act to another government agency to administer and the issues associated with that.

Landgate was strong in their desire to see licensing implemented. Whilst acknowledging the costs associated, they are more concerned with ensuring strata title managers are competent, manage funds appropriately and are accountable, particularly in light of the aforementioned changes.

Acknowledging that accreditation was beneficial, Landgate believed that there was not enough strength behind that, and supported a regime where strata title managers were licensed and accredited.

Landgate did not support the licensing of strata title managers being included within the Strata Titles Act. Changes to the Strata Titles Act are a long process and will take between 5-10 years to be implemented. It was felt that regulation of strata title managers was better placed within its own new act or included as an extension to the existing REBA Act.

In line with COAG requirements, DOCEP was keen to ensure that other options than licensing were explored. Any licensing schemes are expected to be cost neutral and given the small size of the strata title manager industry, will easily become cost prohibitive. Licensing also creates additional barriers to entry, additional bureaucracy and increased costs for businesses and strata proprietors.

DOCEP saw some difficulties in respect of licensing because some strata managers that are real estate agents are already licensed. Those acting as strata title managers would need another or subsequent license and may be reluctant to pay additional fees. Any model that opened access to the REBA fidelity guarantee fund for strata title managers would be met with resistance from real estate agents.

Other DOCEP stakeholders interviewed were supportive of a licensing regime. Discussion confirmed that no complaints relating to misappropriated funds had been dealt with during their time with DOCEP and any problems would be historical.

Some DOCEP stakeholders felt that licensing of strata title managers under the REBA framework would provide the same benefits that consumers of real estate agents benefit from, e.g. fit and proper person and annual audited accounts and access to the fidelity guarantee fund.

It was acknowledged that a licensing regime may not be required and that accountability may be achieved through other means, for example compulsory Professional Indemnity insurance.

It was noted that previous DOCEP discussion papers focused on the point of view of the consumer and DOCEP's jurisdiction, however under the REBA Act, the same rights apply whether the client is a consumer, investor or a business.

REBA provided some possible scenarios for licensing of strata title managers:

- Extend the existing REBA Act definition of a real estate transaction to include strata title transactions. Strata title managers would be required to fulfil the entire REBA requirements for licensing;
- Issue conditional licenses to only manage strata titles. Create an accreditation course specifically for strata titles; or
- Establish a completely new Act, new board etc, potentially replicating the existing REBA structure. This would enable a licensing regime to be created based on an existing model reducing start up costs. It is REBA's opinion that a majority of strata title managers are already real estate agents and it would only require those currently not licensed to become licensed.

REBA felt that logically any management of strata title managers would best be situated within the Strata Titles Act (although a past REBA Chairman, in a DLI Paper to CTAC, supported licensing under the REBA Act).

From a REBA perspective inclusion of elements in the Strata Titles Act could create two pieces of legislation where duties of real estate agents and strata title managers (who may be the same person) could conflict.

STIWA was also very supportive of licensing as a means to ‘lifting the bar’ of the quality of service provided by strata title managers. Whilst licensing will not prevent fraud, it provides strata proprietors some level of protection and recourse to recover funds. STIWA are aware of the private insurance policies, however thought that not all insurers offer this protection and it is generally capped at \$40,000.

CHU, the premier insurance company for strata insurance in Australia, advised that CHU insures approximately 85% of strata companies and that the fidelity component is standard at \$40,000 but is not a cap and can be established to the clients’ requirements.

STIWA believed there was a need for strata title managers to establish trust accounts to hold strata funds. It was also felt that there should be a limit imposed on the size of strata schemes that can be self-managed of 6 lots.

STIWA offer an accreditation program for strata title managers. At present this program is voluntary and a strata title manager can be a STIWA member whilst not being accredited. As part of being accredited, strata title managers must hold Professional Indemnity insurance (“PI insurance”) and it is felt this must be part of any licensing regime.

STIWA did not want strata title managers to be “scooped up” within the real estate banner and as such felt that regulation of strata title managers must be included in the Strata Titles Act. They did, however, concede that it may be cost prohibitive to establish another regulatory body when REBA is already in place.

Information provided in discussion with REBA was that a potential obstacle which would need to be resolved under a licensing regime is that within the REBA Act, collections of strata levies by a real estate agent are classified as a ‘real estate transaction’. As such these funds must be processed through the real estate agent’s REBA trust fund. By creating strata title legislation that places rules on the handling of strata monies, there may be a conflict in legislation when a real estate agent provides strata management services.

4.2.3 Dispute Resolution

Dispute resolution is an area of strata titles that is felt to be in need of improvement. Recent reform resulted in the revision of the Strata Title Referee’s functions and the function incorporated within the State Administrative Tribunal’s (“SAT”) jurisdiction. This has increased the difficulties in accessing dispute resolution for strata companies due to cost and time constraints.

One of the obstacles in dispute resolution between strata councils and strata title managers is that SAT can only hear matters in relation to strata councils/companies and not strata title managers. STIWA believes the legislation needs to be amended to include a mechanism to hear complaints against strata title managers.

Given the current difficulties, any changes that would have SAT hear any case will present additional workload on the system, therefore there needs to be certain controls in place that restrict which matters can be presented before any dispute resolution service.

Landgate are of the opinion that strata title managers and strata councils should primarily resolve disputes themselves, either through internal discussion or accessing a third party conciliation service.

A DOCEP stakeholder felt that the real estate method of conciliation provided an effective means of dispute resolution. The conciliation service had in many cases to date stopped the case from proceeding to more formal proceedings. However, real estate conciliation is very resource intensive and costly and funded from the interest accrued on trust accounts.

STIWA has a professional standing committee that deals with complaints against STIWA members, including strata title managers. Most of the complaints tend to be from individual strata lot owners which are not necessarily a true representation of the strata council.

Landgate, DOCEP and STIWA believe that complaints to any forum should only be lodged by the strata council and not from individuals with particular grievances.

4.3 Consultation with Strata Companies and Strata Title Managers

Two detailed questionnaires were distributed, one each for strata companies and strata title managers to obtain their views and opinions on the strata management industry. Copies of the questionnaires are at Appendix C.

4.3.1 Strata Companies

The questionnaire for strata companies focused on determining the structure of financial management, the use of strata title managers and disputes and/or complaints against strata title managers. It was sent to 100 strata companies provided by Landgate and selected at random, with constraints on the sample, to ensure that a suitable cross-section of strata scheme types was provided.

13 completed questionnaires were received by the Consultant. Although this is an average response for a survey of this kind, it is also an indicator that those that did not respond do not have significant issues.

While the discussion below details their responses it cannot be suggested that the 13 responses are representative of the total set of strata companies.

The responses and comments supplied indicate that these strata companies take adequate measures to ensure that the risks posed are minimised. This is accomplished through ensuring insurance policies are in place, including fidelity insurance, that financial statements are prepared and provided to strata proprietors and that reserve funds are in place and maintained. The responses generally stated that the greatest concerns were with the record keeping of, and the quality of financial statements by, strata title managers.

Of the responding strata companies, 61 per cent employ a strata title manager to oversee the management of their strata scheme. The key criteria in selecting a strata title manager are experience and reputation. Being a licensed real estate agent or holding accreditation was given low priority.

The perceived financial risk is reported being low with 75 per cent of respondents believing that their funds were adequately protected against loss, theft and mismanagement. Of the strata companies who employ a strata title manager, 62 per cent of these felt protected.

In relation to dispute resolution, 50 per cent of respondents who engage a strata title manager have had a complaint against either a current or previous strata title manager. None of these disputes required resolution in SAT and were resolved either by dealing with the strata title manager's firm or through termination of the strata title manager's contract and engaging another strata title manager.

The majority (64 per cent) felt that an advisory and conciliation service would be beneficial in resolving disputes.

4.3.2 Strata Title Managers

The questionnaire for strata title managers focused on determining the size of operations for the strata title manager/management company, management of strata company funds, views and possible solutions on the state of the industry and possible implementation of a licensing regime or alternatives.

REIWA and STIWA distributed the questionnaire to their memberships on behalf of the Consultant, reaching approximately 1200 and 160 members respectively. All questionnaires were sent by email. They were sent to all REIWA members as the Consultant could not get information on how many or which REIWA members were also strata title managers. The questionnaire advised the REIWA members who were not strata title managers to disregard the survey.

Also, the Consultant could not identify, either through research or help from REIWA and STIWA (and others) those strata title managers that are not members of REIWA or STIWA.

The Consultant received 40 completed questionnaires from strata title managers. Some responses were from individual strata title managers, either operating independently or the principal of a strata management company, and some were the aggregate answers of a strata management company.

Again, although the total set is unknown, this is likely an average, but small response. (STIWA felt this was a higher than expected response based on their past experiences.)

However, the response to the questionnaire by the strata title managers that did respond was enthusiastic. In addition to completing the questionnaire, some strata title managers provided multi-page addendums with additional comments.

55 percent of the 40 responses were received from licensed real estate agents and the balance from STIWA members, of which 66 percent were accredited members. Of note, 50 per cent of all STIWA's accredited members responded to the questionnaire.

The general thrust of responses was mixed for the majority of questions with some exceptions. In relation to the concerns of strata title managers in providing services it is clear a primary issue is a lack of knowledge within strata companies as to their obligations and requirements and the internal management of strata schemes by strata proprietors.

Based on this lack of knowledge, the strongest response (93 per cent) as to how to address the issues is improved education of the rights and responsibilities of strata proprietors, strata councils and strata title managers. Complementing this are amendments to the legislation to recognise strata title managers and their role in strata management.

In order to minimise the risks posed to strata proprietors, strata title managers felt the best option was to establish a code of conduct (87 per cent) with mandatory contract conditions (70 per cent) and public education (82 per cent).

The respondents saw the current low (no) barriers to entry a concern. (This response must be weighted by the fact that 12 respondents are STIWA accredited and that there may be some self-interest in their response.)

Full licensing of strata title managers was the least preferred solution, with only 59 per cent stating it was a favourable option.

The majority of strata title managers (85 per cent) felt that efficient and effective dispute resolution services were necessary to improve governance matters of strata schemes.

5

Issues and Market Failure

This section analyses the feedback and comment from all stakeholders and identifies and categorises issues raised by them. It also takes into account information in the EISC report and associated documentation.

These issues are then assessed to determine if they are substantial, and whether they have contributed to any market failure in the strata industry. They have also been assessed to determine what measures can be implemented to address them and ensure they minimise the risks to strata companies and therefore lot proprietors.

The stakeholder feedback and subsequent issues can be categorised into three main areas:

- Financial Issues – the main area of concern is that of financial risk. The main reason the EISC Inquiry was commissioned was the government’s concern that capital risk issues were emerging in the strata industry;
- Controls and Accountability Issues – addresses concerns relating to a lack of protection for both strata companies and strata title managers; and
- Education and Information – issues relating to concerns that strata title companies lack the adequate level of knowledge to be confident that strata title managers were competent to carry out their required duties.

The issues and any degree of market failure will contribute to whether a licensing regime is a viable solution.

5.1 Financial Issues and Risks

5.1.1 Funds at Risk Held by Strata Title Managers

The primary concern both within government and amongst many stakeholders is the financial risk in respect of strata company fund balances being held with strata title managers. Strata title managers are often engaged to collect and manage the levies of strata proprietors and thus potentially expose strata proprietors to the risk of misappropriation and/or mismanagement of those funds.

The balances of funds held can be substantial. Some strata title managers reported holding balances of \$1 million. In general, balances are going to increase in the future when factoring in the changes to the market from:

- The proposed implementation of compulsory reserve funds;
- The growth in the property prices, leading to increased balances in reserve funds; and

- The growth of the strata title market, incorporating an estimated 40,000 new strata schemes being built along the new Perth-Mandurah train line.

The EISC Report and the Government's response attempted to calculate the exposure per lot proprietor, but the uncertainty in terms of the numbers of strata title managers, companies and proprietors makes this difficult. The DOCEP March 2004 Paper, *Risks for Strata Lot Proprietors in their Dealings with Professional Strata Managers*, states a figure of \$334 per proprietor and therefore at possible risk. Growth since then and the establishment of reserve funds will increase that figure. Although not substantial in dollar terms, stronger measures to protect these funds are needed.

In relation to reserve funds, there is currently no requirement for strata companies to maintain reserve funds. As such they are at risk of devaluation of their strata property by failing to maintain the strata through regular and major repairs and maintenance. It has been proposed by Landgate to include in changes to the Strata Titles Act, the requirement for strata companies to maintain reserve funds. This is widely endorsed by the stakeholder group.

During stakeholder consultation there was mention of a small number of instances where strata companies identified minor amounts of unaccounted monies but no action was instigated. One instance of strata funds misappropriation resulted in the person being de-licensed as a real estate agent. This is not evidence of market failure to date, and no wider evidence of any problems exists. The issue is concern about the increasing amounts of funds being held, the lack of financial rigour in respect of those funds, and the risks associated with the security of those funds.

At present a majority of strata title managers are signatories of strata company accounts and more often than not are the sole signatory of the account.

There is no provision within the Strata Titles legislation relating to the use of trust accounts for the collection of strata title levies and reserve funds. Use of trust accounts ensures that strata title managers comply with the requirement of trust accounting and that the monies held on behalf of strata companies are used in their interests at their discretion. Trust accounting requirements and related agreements between the strata company and the strata title manager can establish how trust funds may be spent and invested.

5.1.2 Reporting on Funds Held and Financial Matters

There is currently no requirement for strata title managers to provide financial reports, comply with any standards of financial reporting or have audits performed on the financial statements. Stakeholders, including strata title managers deemed this to be an issue through the consultation, although there is no evidence that this has caused any substantive issues or problems for the strata companies. Whilst it provides a means of rigour to strata company accounts, the cost may be a burden for some strata companies if these elements are made mandatory, especially for audits.

Many strata councils do not have the expertise to determine the level, type and frequency of reporting and auditing that best suits their needs and, subsequently, include such in the contract with the strata title manager. There is no substantial information available to guide the strata councils in this regard.

5.1.3 Protection against Misappropriation of Funds

Stakeholders felt that many strata companies were not fully aware of the means to protect themselves against misappropriation of funds. Fidelity cover within insurance policies is protection against this. The Strata Titles legislation includes that strata companies must have building, common property and public liability insurance. It is felt that there is not enough awareness by strata companies of the need to include an appropriate level of fidelity insurance within such insurance policies. Although most policies do provide such cover, and have a standard, or default, amount of cover, it is felt that many strata councils have the fidelity cover because it is included in their insurance policy, but do not fully consider the amount of cover for that component, or that it definitely includes cover against strata title managers.

The issue is the risk posed to strata companies who do not have fidelity insurance, do not have it to the appropriate level, or that it may not cover strata title managers.

5.2 Controls and Accountability

5.2.1 Protection for Strata Companies

It was established through consultation that a concern for strata companies / proprietors is a lack of definition or clarity in relation to strata title managers.

The Strata Titles Act currently does not define a strata title manager or recognise the operations of a strata title manager. As a result, and in the absence of guiding information, many strata companies or councils define the strata title managers' role themselves with the potential to establish a framework that does not include important elements. This can sometimes happen with the strata council seeking the assistance of the strata title manager being considered. In many instances strata councils do not have the required knowledge or understanding to ensure the relationship with and subsequent contract with the strata title manager is fully in line with both their requirements and obligations.

In the absence of legislation or other formal definition there are essentially no restrictions on the activities of a strata title manager. There is no recourse in respect of accountability of the strata title manager, except through a broad framework of legislation, such as contract law, the *Fair Trading Act*, *Consumer Affairs Act* and *Trade Practices Act*.

Contractual agreements between strata companies and strata title managers are not subject to controls through the Strata Titles Act causing both confusion to and possible exploitation of strata companies.

5.2.2 Protection for Strata Title Managers

At present there is no formal requirement for strata title managers to indemnify themselves against any actions taken against them. It is standard business practice for persons working in any industry, who are potentially exposed to cover themselves by professional indemnity insurance.

The requirement through legislation for persons to have such insurance is dependant on the industry in which they work and whether such legislation has been established.

Because, at the moment, no form of recourse can be undertaken against a strata title manager via the State Administrative Tribunal (“SAT”) such recourse is only available through other legal avenues.

STIWA offer accreditation courses for strata title managers, where included in this is the need for the strata title manager to have professional indemnity insurance. However, not all strata title managers are accredited, in fact only a small number are, and therefore not all strata title managers have such insurance.

Importantly, professional indemnity insurance also provides strata companies with a degree of recourse against poor advice.

Although the stakeholder consultation and analysis showed no evidence, apart from isolated instances, of actions by strata companies against strata title managers, and therefore no major risk to date, this is seen as an issue by stakeholders with the potential to become heightened in the future with exposure to all parties if the strata title manager does not have professional indemnity insurance.

5.3 Education and Information Services

One area commented on by most stakeholders was the lack of education and information that provided an acceptable level of knowledge to all parties.

5.3.1 Education/Information for Strata Companies

Landgate advised that:

- Vendors are required by law to advise people purchasing strata titled properties of “certain notifiable information” and the Strata Titles Act before the purchaser signs the contract to buy; and
- Landgate have a simple “Two Step Booklet” and a more comprehensive booklet explaining Strata Titles to purchasers.

There was a common view that most purchasers did not pay high regard to this advice and information, leading to strata companies and councils not being fully aware of their of their obligation to comply with Act, and certainly not the content of the Act.

The issue here is that people buying into strata schemes are not fully informed and this flows onto strata companies and then councils who are likewise not fully informed in respect of managing the best outcomes for their strata scheme. This issue is also relevant in relation to those schemes that do not use strata title managers and manage their own schemes.

The term Strata Title Manager is not mentioned in the current Strata Titles Act or in any other formal document. In line with that there is no description of their role or obligations and no advice to strata companies/councils on this or how to engage strata title managers.

There is little information on strata title management from Landgate.

At present anyone can provide services as a strata title manager.

There are a number of issues with the above:

- The lack of information means strata companies have difficulty in knowing the full range of services that strata title managers can provide;
- Strata companies do not, in the main, know what to look for in a strata title manager to ensure they will receive competent services;
- Strata companies do not know the best way to form and establish a contract with a strata title manager; and
- A flow on from these issues is that strata companies may approach a strata title manager and seek their advice on what they can do and how they can be engaged. This creates a conflict of interest scenario where the strata title manager will offer advice that may lead to them providing services and being engaged in a manner that is more weighted to the interests of the strata title manager.

5.3.2 Education/Information for Strata Title Managers

Education for strata title managers is available through STIWA in the form of an accreditation course and continuing professional development, and REIWA offer continuing professional development courses for real estate agents, some of whom are strata title managers. This professional development includes units on strata title management. Although no hard data exists it is felt that most strata title managers have not undertaken what would be regarded as adequate training for the industry.

The issue here, when including that anyone can be a strata title manager, is that there is not a high degree of relevant training being carried out by strata title managers, and also that strata councils are not aware they could seek details of training or accreditation as part of their decision to engage a strata title manager.

6

Aspects of a Licensing Regime

6.1 Licensing

Whether or not the findings in this report show that licensing is a viable solution is a central part of this consultancy. Licensing provides a legislative and regulatory framework that identifies and ensures strata title managers have a required level of competency, puts in place controls to ensure funds are correctly managed and provides an avenue of redress in the event that a strata title manager does not perform their duties.

Features of a licensing regime that have been suggested include the following:

- The requirement that the strata title manager be a 'fit and proper' person to hold a license;
- The requirement for an educational requirement, either in the form of a national or state qualification or accreditation;
- The requirement to process transactions through a statutory trust account, subject to trust accounting processed and audits;
- The use of trust accounts and participation in a statutory fidelity guarantee fund;
- A two-tier licensing approach to reflect the complexity of different strata schemes types; and
- The provision for management contracts between strata companies and strata title managers with an enforceable Code of Conduct.

Issues to consider in respect of a licensing regime include the following:

- The cost of management of a licensing scheme by the relevant government agency and associated licensing board;
- Cost of compliance for strata title managers, through licensing fees (on individuals and businesses), additional education requirements and other compliance costs, which may be passed on to the strata proprietors;
- Licensing does not eliminate the risks posed to strata proprietors, only minimises it. Defalcation of funds is still possible by a licensed strata title manager;
- The additional barriers to entry for new strata title managers;
- Reduced competition, particularly in regional areas which may create problems with limited access to licensed strata title managers. This could also see increases in fees because of the smaller field;

- Responsibility for the management of associated risks is transferred to government;
- The vast majority of strata schemes (estimated at 85%) would not utilise the services of a licensed strata title manager; and
- Conflicts would need be resolved between other licensing legislation, for example, retirement villages, holiday homes and property managers.

6.2 Cost Analysis

Part of the scope for this consultancy includes conducting a cost-benefit analysis of the licensing of strata title managers. Other sections of the report address the benefits or other wise, and the need regarding the establishment of a licensing regime.

This section considers the costs associated if a licensing regime was to be established.

Licensing poses a significant cost to a range of parties, including government, strata management companies and strata proprietors. The indicative costs for each of these parties are discussed below.

Of note, the section provides indicative costs based on a number of assumptions. If a decision was made by the Government to introduce licensing, a more rigorous and detailed costing exercise would need to be undertaken.

6.2.1 Government

If licensing was introduced, the main cost to the Government would be administrating the provision of licensing.

There is much conjecture as to the number of strata title companies and strata title managers. The ESIC report delivered in 2003 estimated that there were more than 120 strata title companies. In consultation with industry groups, however, it has been suggested that this number is conservative and that the industry is much larger.

Based on the above and in the absence of reliable data on the size of the strata titles management industry, it has been assumed that there are approximately 300 strata title management companies, and approximately 1,000 strata title managers for the purposes of this costing exercise.

The Department currently operates licensing functions for a range of industries, including the real estate and settlement agency industries. The cost of administrating the provision of licensing for these industries is shown below.

| Licensing Area | Number of Licenses | Budget (p.a.) | Per Unit Cost |
|-----------------------------------|--------------------|---------------|---------------|
| Real Estate Agents and Sales Reps | 15,500 | \$3,700,000 | \$239 |
| Settlement Agents | 500 | \$1,100,000 | \$2,200 |

The above table shows that certain economies of scale are achieved as the number of licenses increases. Hence, the per unit cost of producing a license for settlement agents is much greater than for real estate agents given the difference in the number of licensed operators.

The cost structure of administrating licensing for these industries has been used as a basis to estimate an indicative cost of administrating the licensing function for strata title management companies and managers. This would suggest it would cost in the order of \$1.3 million per annum for the government to operate a licensing function.

Government agencies are required to set licensing fees on the basis of full cost recovery. It has been assumed, as is the case for the real estate industry, that there is a two tiered license fee structure, whereby both strata title management companies and strata title managers would be required to be licensed. It is further assumed that the cost of licensing a company is two thirds more expensive than the cost of licensing a strata title manager.

The following table depicts a possible license fee structure based on these assumptions:

| Licensing Fee | Number of Expected Licenses | Weighting Factor | Weighted Number of Licenses | Per Unit Cost |
|-----------------------------------|-----------------------------|------------------|-----------------------------|---------------|
| Strata title management companies | 300 | 166% | 498 | \$1,441 |
| Strata title managers | 1,000 | 100% | 1,000 | \$868 |
| Total | 1,300 | | 1,498 | |

The following table shows an annual license fee for strata companies of \$1,441 and strata title managers of \$868. This is relatively high compared to the real estate industry, where real estate agents are charged a one off fee of \$760 and sales representatives a one off license fee of \$580.

The Department is able to charge such low fees as the real estate licensing function receives significant income from trust account and interest revenue (ie, fidelity guarantee fund), which accounts for approximately 93% of total revenue. Without this income, the fees collected through licensing would not be sufficient to meet the expense of administrating the scheme, which allows the license fees to be set at a level significantly below the cost of producing the license.

Whilst this costing process is less than accurate, it does highlight the potential large cost of administering the licensing function and the requirement to charge excessively high fees to achieve full cost recovery.

It is acknowledged that if licensing of strata management companies and managers was introduced that certain efficiencies and cost savings could be realised by attaching the licensing function to REBA, which would reduce the overall cost of producing a license. However, this would require REBA to effectively cross subsidise the cost of licensing using funds generated from real estate trust monies.

As licensing of strata title managers is unlikely to generate sufficient income to support the creation of a separate fidelity fund, consideration would also need to be given to appropriating funds from REBA to establish a fund for this purpose. Over time, the balance of any new fidelity fund may provide additional income that could partly offset some of the additional cost associated with operating the licensing function.

If licensing was to be introduced, the Government should undertake a detailed costing exercise to identify the full cost of producing a license.

The Government will also incur additional costs that flow on from any legislation changes that Landgate seek to introduce. However, these costs have not been quantified here as Landgate will be assessing the costs of this through its processes.

6.2.2 Strata Title Managers

The most obvious cost of licensing to strata title managers is the licensing fee. As shown above (based on a number of assumptions), it would cost in the vicinity of \$1,400 per company and \$870 per strata title manager.

There may be some additional costs incurred by strata title managers if accreditation was compulsory, although these costs are largely driven by commercial arrangements. Currently, accreditation through STIWA costs \$330, plus \$360 every 3 years. Managers are also required to undertake continuing professional development training that can cost up to \$560 per annum.

Further, if companies were required to hold professional identity insurance this would also pose an additional cost. Whilst difficult to ascertain the cost of such insurance, given it is based on a range of factors including the size of the company, level of cover, claims history etc, a likely estimate is approximately \$1,000 p.a. for a sole trader.

Strata title managers would also incur additional compliance costs (ie, labour and other costs) associated with complying with the requirements of licensing. For instance, businesses will need to perform a range of tasks in order to comply with the licensing regulation, including notification, education, record keeping etc.

If licensing was to be introduced, a full assessment of the cost of performing these tasks should be undertaken. This should include an assessment of the potential impact on small businesses and regional areas. A model such as the Commonwealth Office of Small Business' costing model could be utilised.

6.2.3 Strata Proprietors

Strata proprietors would ultimately bear the cost of the licensing fee, which would most likely be passed from the strata company/manager through higher strata management fees.

One of the concerns or risks of introducing licensing is that it puts in place barriers to entry, such that it has the potential to restrict competition. As a result, licensing runs the risk of increasing the base rate in the market, which will be a direct cost to strata proprietors.

Again, it is recommended that if licensing is introduced, that the Government quantify the costs to strata proprietors.

6.3 Costs and Need

As shown above the costs to establish a licensing regime, in a full cost recovery environment are significant.

A licensing regime, whilst meeting the aim of providing a form of security for strata proprietors should only be implemented when there is a definitive need for it.

One of the major reasons for government regulatory regime establishment is that there is evidence and proof of market failure. Consideration of strict government intervention should not be considered unless this condition applies. Furthermore, there should be reliable evidence that a less-intrusive government option cannot be utilised.

All evidence presented has led to the conclusion that there is no serious market failure.

7

Alternatives and Other Considerations

Other regulatory options were considered, taking into account stakeholder feedback, and matching that to the need, value and cost of such other options.

Other particular items were also considered and are at 8.2 below.

7.1 Regulatory Options

The following regulatory options were considered:

7.1.1 Negative Licensing

Negative licensing imposes a requirement for a person to hold a prescribed qualification before practising as a strata title manager and accompanying this with a means of removing unfit persons from the industry through disciplinary actions.

This would be established along with any changes to the Strata Titles Act dealing with strata companies and strata title managers, as well as the provision of information to those groups.

The educational element would ensure strata title managers have a qualification in respect of their profession, and a record of all qualified strata title managers would be established.

Although STIWA offer accreditation courses no full qualification process exists which would require effort and cost to establish.

Negative licensing also requires an active form of administration in relation to ensuring educational requirements are met, unfit persons are dealt with, and those persons who are ineligible to trade are recorded.

As there was no evidence of any major issues or market failure to require this level of intervention negative licensing was not further considered.

7.1.2 Soft Licensing

Soft licensing involves registration of strata title managers. Registration is a simple process of adding the name to the register based on the criteria of being of good characters, e.g. having no criminal convictions. Once registered, strata title managers are required to follow a set of guidelines, for example a Code of Conduct. Failure to maintain the standards of the registration would involve cancellation or non-renewal.

The advantage of soft licensing is that there are less demands on becoming a strata title manager than under a full licensing regime but the approach still offers a higher level of rigour. The burden on government is less than for full licensing.

As there was no evidence of any major issues or market failure to require this level of intervention soft licensing was not further considered.

7.1.3 Co-Regulation

Co-regulation involves the Government delegating specified roles in the administration and enforcement of a particular Act to a particular industry group such as STIWA or the National Community Titles Institute.

Advantages of co-regulation are decrease of initial costs, accumulation of experience and expertise of industry and regulatory enforcement. Effective co-regulation is dependent on trust, goodwill, allocation of resources, equity of relationship and ensuring a simple registration process exists.

Co-regulation was not considered at this stage as the legal status of strata title management is in its infancy. If it is deemed further regulation of strata title managers is required at a later time, then co-regulation should be considered.

7.2 Other Considerations

The following are elements of a wider approach that were considered as part of the consultancy.

7.2.1 Accreditation

STIWA provides accreditation for strata title managers. There is a wider approach to accreditation that is used by other organisations and considered here.

This approach would be to introduce a non-legislative self-regulatory framework based upon a voluntary accreditation program for the strata management industry. The accreditation program could be modelled on the National Tourism Accreditation Program, which includes the following requirements:

- A requirement to operate trust accounts for the purpose of achieving higher standards of financial accountability;
- A code of practice;
- A dispute resolution process and panel with authority to fine, suspend or revoke accreditation.

It could be possible to establish an accreditation program that is jointly owned by STIWA (non-profit peak industry body) and Government.

Given that STIWA has an accreditation program in place, STIWA may agree to make amendments to its accreditation program for the purpose of strengthening its consumer protection mechanisms, rather than draft a new and possibly conflicting and competing accreditation program.

Given the lack of any major issues or market failure and the current low consumer risk identified this approach was not further considered.

7.2.2 Code of Practice

The objectives of a code of practice are to:

- Ensure appropriate standards of service are maintained in the strata management industry;
- Encourage and maintain consumer confidence in the strata management industry; and
- Support and promote the strata management industry.

One option in introducing a code of practice would be to encourage and assist the strata management industry to draft a voluntary code of practice (eg, as per the Fitness Industry Code of Practice in NSW). The code would be administered by the peak strata titles management industry body, STIWA. It would apply to strata management companies that were signatories to the code and had satisfied a designated committee of their compliance with the code.

The code would include a dispute resolution process, whereby strata companies could refer complaints to a complaints resolution committee. If a member was determined to have breached the Code, they may be asked to take corrective action, be suspended, or expelled from membership.

STIWA does have a Code of Ethics and a professional standards committee to hear complaints. The existing code focuses on ethical behaviour, and could possibly be expanded to include more rigorous requirements, such as financial reporting.

If a voluntary code was introduced, it would need to be supported by an education campaign so that strata companies were informed and saw value in choosing a strata title manager that was a signatory to the code. A drawback of this approach is that the code is voluntary and as a result many companies may elect to not become signatories to the code. A mandatory code would offer strata proprietors greater protection.

If a mandatory code was introduced, there are two options to consider. Firstly, the Strata Titles Act could be amended to include a provision for a code of practice. This approach is similar to that of real estate agents and sales representatives, whereby the REBA Act includes a provision whereby the REBA Board may prescribe and publish a Code of Conduct for real estate agents and sales representatives.

Alternatively, the code of practice could be prescribed under section 43(1) of the Fair Trading Act 1987, as a code of practice that applies in relation to strata councils and suppliers of strata management services. Suppliers of strata management services would be required to comply with the code. The code would also include dispute resolution procedures. This would be similar to the approach taken by the fitness and retirement village industries.

Given the proposed changes to the Strata Titles Act by Landgate, and that the recommendations in this report aim to move the industry from a situation where strata title managers are not currently even recognised, to one of a much higher level of recognition and rigour, a code of practice was not further considered. Further there is a code of practice in place for real estate agents and a code of ethics and professional standards for members of STIWA.

Caution needs to be taken to avoid conflicts with existing mechanisms if another code was introduced.

It should be noted that the Consultant fully supports such codes of practice but not at this point in time and given what is already in place.

8

Dispute Resolution

Dispute resolution between strata managers and strata companies was an area of concern raised by most stakeholders. These concerns primarily related to the cost of, and access to, justice and mediation services.

Strata councils may currently make applications to the State Administrative Tribunal (“SAT”) to resolve disputes. SAT is an independent body that makes and reviews a range of administrative decisions, and has jurisdiction to hear disputes under the *Strata Titles Act 1985 (WA)* (“Strata Titles Act”).

Since the establishment of the SAT, 154 proceedings have been brought under the Strata Titles Act. The majority of hearings involve complaints between individual strata proprietors or between individual strata proprietors and the strata company. The complaints generally consist of a perceived violation of a strata by-law by strata proprietors or strata companies. The onus is on the respondent to prove no wrong doing on their part.

A major shortcoming of this process is that there is no provision in the Strata Titles Act to enable a strata company to bring an application before the SAT against a strata title manager (*Ong and The Owners of Maylands Shopping Centre Strata Plan 30217 & Anor [2006] WASAT 84*). This is because a strata title manager does not fall within the ambit of section 83(1) of the Strata Titles Act that grants the SAT the powers to make orders “pursuant to an application of a strata company, an administrator, a proprietor, a person having an estate, interest in a lot or an occupier or other resident of a lot, in respect of a scheme”.

The SAT, however, does have the power to terminate or shorten some service contracts involving strata managers in certain circumstances. This is because section 103E of the Strata Titles Act empowers the SAT to terminate or shorten the term of an agreement entered into between the strata company and “another person”. Consequently, in *Parker and The Owners of Timberside Villas - Strata Plan 27426 [2006] WASAT 254*, the Tribunal found that even though no specific order could be made against a strata manager, “it would be inappropriate to consider the grant of an order, affecting the right of another person, without that person being joined in the proceedings”. As a result, the SAT deemed it had the jurisdiction to make an order to modify the term of the management contract between the proprietor owners and the strata manager.

Hence, the relationship between the strata company and strata title manager rests on normal contractual principles and if a strata title manager has breached a contract of appointment, the strata council may pursue the matter on the basis of such alleged breach. Of concern, however, is that anecdotal evidence would suggest that many strata companies do not have a valid contract of engagement in place with the strata manager. In the absence of a valid contract, it makes it especially difficult to resolve disputes between the two parties.

As stated, a major criticism of the dispute resolution process raised by stakeholders was the SAT's inability to hear matters concerning strata managers. It is understood, however, that Landgate is seeking to amend the Strata Titles Act to enhance dispute resolution and provide for orders/settlement to be determined by SAT. This will include giving SAT jurisdiction to deal with disputes between the strata company and strata title manager.

Stakeholders including Landgate and STIWA believe that complaints to any forum should only be lodged from the strata council and not from individuals with particular grievances. Accordingly, the proposed Landgate amendments include the provision that all disputes relating to the strata manager must be dealt with by the strata company. An owner who has a dispute with a strata manager will be required to first bring the matter to a strata company meeting, who can then decide whether it can be solved internally or whether to lodge an application with the SAT.

The Consultant is supportive of the changes proposed by Landgate, which it is believed will improve the complaints process and address many of the concerns raised by stakeholders.

Besides the criticisms of the formal dispute resolution process, it was the view of stakeholders that most disputes are, and should be, resolved internally without requiring a formal resolution process. Again, it is understood that the proposed Landgate amendments to the Act include a provision that enables the SAT to award penalties for lodging frivolous complaints. The Consultant supports this view.

Strata companies consulted also saw benefit in having access to an information service to assist them to resolve disputes internally. This service could provide general information and assist strata companies to understand their rights and obligations under the Act. Whilst not providing legal advice, it would assist strata companies to determine the appropriate course of action. This kind of service may also prevent disputes reaching the SAT.

A DOCEP stakeholder felt that the real estate method of conciliation provided an effective means of dispute resolution. The conciliation service is operated by REBA and deals with breaches of a minor or technical nature where a complainant is seeking some remedial action or even financial compensation. It is understood that the conciliation service has in every case to date avoided the case from proceeding to more formal proceedings.

STIWA has a professional standing committee that deals with complaints against STIWA members, including strata title managers. Most of the complaints tend to be from an individual strata lot owner, which is not necessarily a true representation of the strata council. This committee could be reviewed to structure it to be aligned to the principles of the proposed amendments to the Act, that is, to respond appropriately to frivolous complaints, to hear complaints from strata councils and not individual proprietors. This could then provide a service, similar to REBA, that handles complaints of a minor or technical nature that cannot be solved by strata councils internally, but probably not significant enough for SAT.

9 Preferred Approach

9.1 Rationale

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

All stakeholder feedback and all associated potential issues lead to the conclusion that no area requires attention in respect of all strata companies or all strata title managers. For example, some percentage of strata companies will be well informed of their obligations under the Strata Titles Act, engage a strata title manager under a sound contract and have their funds held in a trust account. Others will not. Some will have fidelity insurance to the required coverage level, and ensure the cover extends to strata title managers, whilst others will not. Some strata title managers will have professional indemnity insurance and some will not. Some will provide adequate financial reporting to the strata council and some will not.

The recommendations from this consultancy aim to strengthen the rigour associated with the operations of both strata title companies and strata title managers. This will minimise the risk to strata title companies and their funds in their dealings with strata title managers.

The recommendations, in general, are to:

1. Address the role of strata title managers, professional indemnity insurance, and the use of trust funds through the Strata Titles Act;
2. Address the information requirements of strata companies in respect of what they should look for when engaging a strata title manager, the role of that manager, the form of contracts they should enter into and financial reporting requirements, all through the provision of information (which is not currently available);
3. Ensure that strata title managers are aware of the requirements of them, both via the act, and in respect of the information provided to strata companies; and
4. Endorse Landgate's proposed changes to the Act regarding dispute resolution.

Under this approach strata title managers will be required to have professional indemnity insurance and hold funds in trust accounts. Strata councils will not be subject to a mandatory requirement to do the items detailed in recommendation two above, but will be fully informed and able to make the best decisions for their strata company. Dispute resolution will be enhanced.

9.2 Landgate Proposed Changes to the Act

At this time strata title managers or their activities are not defined in any Act or in any other formal way. It was brought to the Consultant's attention during the consultancy that Landgate are in the process of amending the Strata Titles Act to incorporate the following:

Recognition of strata title managers

The amendments will contain a definition of a strata title manager and the role of both strata title managers and property owners. Provisions will also be included to provide a mechanism for appointing a strata title manager and renewing, extending or terminating the strata title managers' contract.

Delegations of powers

New amendments will allow a strata company to delegate some or all of its powers to a strata title manager.

Accountability of strata title manager

Amendments will provide new sections to provide authorisation for the regulation module to have provisions to allow the strata company to demand information from the strata title manager under certain circumstances.

Disclosure

Amendments will include provisions to require strata title managers to notify the strata company when a contract for supply of goods or services is contemplated or entered into with an associate or the strata title manager.

Strengthening of financial reporting requirements

Amendments have been proposed to strengthen the financial reporting provisions in accordance with the recommendations of the EISC.

Referral of disputes between the strata company and strata title manager to State Administrative Tribunal ("SAT") .

Amendments will include provisions to allow application to SAT to resolve a dispute between the strata manager and the strata company.

Amendments relating to the Strata Titles Referee's Report and SAT.

Amendments to enhance dispute resolution and provide for orders/settlement to be determined by SAT.

At the time of writing the Consultant has no further details of these proposed amendments. Of note, Landgate has initiated an amendment which now formally recognises strata title managers and provides an avenue for further consideration of them within that Act.

The Consultant recognises these future changes, and whilst agreeing with them based on our own assessment, also provides further recommendations in respect of them.

9.3 Recommendations

Landgate’s proposed changes to the Strata Titles Act are mentioned above. Although no detail was provided to the Consultant, the changes are in line with both addressing stakeholders’ comments and providing rigour to the role of both strata companies and strata title managers.

Recommendation 1:

The Consultant agrees with Landgate’s proposed changes to the Strata Titles Act.

Professional Indemnity insurance is established to protect professional service providers against claims and subsequent damages awarded against them relating to the conduct of their professional business activities. In today’s litigious society, no professional can ignore the real possibility that a claim may be brought against them.

It is good and standard business practice for such professionals to be protected in this way. This cover also protects the clients, in this case strata companies, who can be left financially exposed if the professional, the strata title manager, does not have such insurance.

Recommendation 2:

The Strata Titles Act should be amended to require strata title managers to hold adequate professional indemnity insurance.

Stakeholder feedback throughout the consultancy supported the use of trust accounts by strata title managers who held and managed strata company funds. The use of trust accounts ensures that strata title managers comply with the requirement of trust accounting and that the monies held on behalf of strata companies are used in their interests at their discretion.

Recommendation 3:

The Strata Titles Act should be amended to require strata title managers to hold all strata company funds under their management in a trust account.

Landgate has proposed amendments to the Strata Titles Act which will contain a definition of a strata title manager and the role of both strata title managers and strata companies. Other amendments in relation to both are also proposed.

These changes and the recommendations above will then provide rigour and structure to the roles and activities of both groups. To date this has not been the case. There has been no formal definition of a strata title manager or their role. When these changes are made Landgate should then ensure they provide a full set of literature and information that covers all changes to the Act and also provides a model framework for strata companies and councils to consider. A program should also be implemented to ensure all strata companies and strata title managers are aware of the literature and have easy access to it (eg, an initial marketing/communication plan and access via a website).

Recommendation 4:

Landgate should provide a full set of literature to strata companies detailing the description and role of strata title managers as per the Act, and the elements a strata company should consider before appointing a strata title manager.

Recommendation 5:

Landgate should provide a full set of literature to strata companies detailing a suggested pro-forma for contract conditions to be established between a strata company and a strata title manager.

Recommendation 6:

Landgate should provide a full set of literature to strata companies outlining financial reporting requirements as per the Act, and detailing a suggested pro-forma for financial reporting requirements by a strata title manager to a strata council.

Stakeholders felt that accreditation for strata title managers was beneficial but some had concerns about the strength of the STIWA accreditation.

The STIWA accreditation program and continuing professional development is at present voluntary and a strata title manager can be a STIWA member whilst not being accredited.

At this point in time it is felt that an “industry endorsed” STIWA accreditation program would entice more strata title managers to undertake the program and also provide strata councils with another degree of confidence in engaging an accredited strata title manager.

Recommendation 7:

The STIWA accreditation program should be reviewed by an industry committee to ensure it provides training, education and continuing professional development in line with both state and national industry best practise.

Landgate is seeking to amend the Strata Titles Act to enhance dispute resolution and provide for orders/settlements to be determined by SAT.

It is understood this will include giving SAT jurisdiction to deal with disputes between a strata company and strata title manager.

The jurisdiction of SAT in relation to a strata title manager is to be limited to disputes between the strata company and strata title manager and it is not the intention to allow an individual proprietor to lodge an application against the strata title manager. All disputes relating to the strata title manager must be dealt with by the strata company. An owner who does have a dispute with a strata title manager must first bring the matter to a strata company meeting who can then decide whether to lodge an application with SAT.

Recommendation 8:

The Consultant agrees with Landgate's proposed changes to the Strata Titles Act relating to disputes resolution and SAT.

Recommendation 9:

Landgate should provide a full set of literature to strata companies detailing advice and approaches to dispute resolution and including suggestions for internal resolution and the role of SAT.

Recommendation 10:

Landgate should implement a program to ensure all strata companies and strata title managers are aware of the literature mentioned in previous recommendations and also ensure they have easy access to it.

Appendix A: List of Stakeholder Consultations

The following stakeholders were consulted as part of the Review:

| Department of Consumer and Employer Protection |
|--|
| Gary Newcombe – Director Policy and Strategic Development |
| Gerry Milford – Manager Policy, Policy and Strategic Development |
| Nick Roberts – Senior Policy Officer, Policy and Strategic Development |
| Anne Driscoll – Director Business Services |
| Steve Meagher – Manager Real Estate Branch |
| Ken Gardner – Cost Accountant, Corporate Services. |
| Tin Banfield – Manager, Building and Tenancy Industries |
| Landgate |
| Graham Marion – Strata Titles Legislative Review Officer |
| Bruce Roberts – Registrar of Titles |
| Other |
| Max Trenorden, MLA, Member for Avon |
| Bob Rossi – Registrar, REBA Supervisory Board |
| Jacky Courtney – President, STIWA |
| Andrew Chambers – Vice President, STIWA |
| Jake Kneebone – Treasurer, STIWA |
| Craig Bradley – Director Agency Practice, REIWA |
| Peter Munday – Strata Title's Chapter, REIWA |
| Eleanor Loguidice – Strata Title's Chapter, REIWA |
| Members of Community Titles Advisory Committee (CTAC) |

Appendix B: Questionnaires

SELF-COMPLETION QUESTIONNAIRE

REVIEW OF EXISTING REGULATION OF COMPANIES AND STRATA TITLE MANAGERS

INTRODUCTION

The Western Australian Government has engaged Stamford's Advisors and Consultants ("Stamford's") to carry out a review of the adequacy of the existing regulatory framework for strata companies and consider the need or otherwise to regulate strata title managers. Your assistance is sought by filling out this questionnaire, which will provide valuable information for the consultancy.

The outcome of this consultancy is to make recommendations about whether a mandatory licensing scheme or other form of regulation is appropriate for Strata Title Managers, or to recommend alternatives. Alternatives could include any combination of an industry Code of Conduct/Body Corporate approach, industry accreditation schemes, mandatory contract conditions or a public education program.

Your industry body has agreed to send this questionnaire on our behalf. If you are not involved in professional strata management please ignore this questionnaire. The questionnaire is being distributed through multiple bodies, so please accept our apologies if it is received twice.

Your answers will be treated completely confidential.

If you have any queries, please contact Peter Massey at Stamford's on (08) 9476 3144.

Please forward your comments by **Thursday 3 May 2007** to:

Mail

Stamford's
GPO Box 2753
PERTH WA 6001

Fax

(08) 9322 1022

Email

mail@stamford's.com.au

Please circle your closest response to the following questions (where applicable)

| General | | | | | |
|--------------------------|---|---------------------|----------------------|---------------------------|-------------------|
| 1. | How many strata schemes do you manage? | | | | |
| 2. | How many strata schemes does your firm manage? | | | | |
| 3. | Are you a licensed Real Estate Agent? | Yes | No | | |
| 4. | Are you a STIWA accredited Strata Company Manager? | Yes | No | | |
| 5. | What are the approximate sizes of lots you deal with? | 2 Units | 3-5 Units | 6-10 Units | 11 or more |
| Financial Aspects | | | | | |
| 6. | What is the total approximate value of the lots? | | | | |
| 7. | What is the approximate balance of funds held for administrative expenses for Strata Companies under your management? | | | | |
| 8. | Where are the funds held? | Bank Account | Trust Account | REBA Trust Account | Other |
| | If other, please specify: | | | | |
| 9. | Are members of your company the sole signatory(s) to these accounts? | Yes | No | | |
| 10. | In your experience, what percentage of strata companies have established a reserve fund? | | | | |
| 11. | Are financial statements provided to strata companies on held accounts? | Yes | No | | |
| | If yes, how often? | | | | |
| 12. | Are independent audits performed and provided to strata companies on held accounts? | Yes | No | | |
| 13. | Do you invest funds on behalf of the strata company? | Yes | No | | |

Please circle your closest response to the following questions (where applicable)

| | | | | |
|---------------------------------------|---|-----------|---------------------------|--------------------------------------|
| 14. | In your experience, what proportion of strata companies would hold fidelity insurance? | | | |
| 15. | Do you arrange fidelity insurance for strata schemes under your management? | No | Through Private Insurance | Through REBA Fidelity Guarantee Fund |
| 16. | Are you responsible for sourcing the following insurance policies on behalf of the strata company? | Building | Common Property | Liability |
| Managing the Strata Properties | | | | |
| 17. | In your experience, are any of the following matters of concern in the provision of Strata Management services? | (Comment) | | |
| | ▪ Strata Titles Act too complicated and difficult to interpret | Yes | No | |
| | ▪ Strata Managers not recognised by Strata Titles Act | Yes | No | |
| | ▪ Dysfunctional strata companies/internal politics | Yes | No | |
| | ▪ Strata Proprietors and Strata Councils not familiar with their obligations under the Strata Title Act | Yes | No | |
| | ▪ Strata Proprietors and Strata Councils not familiar with contractual arrangements with Strata Managers | Yes | No | |
| | ▪ Maintaining Accounts, copies of work completed | Yes | No | |
| | ▪ Providing financial and status reports | Yes | No | |
| | ▪ Ineffective/Incompetent Strata Management | Yes | No | |
| | ▪ Fraud/Theft by Strata Managers | Yes | No | |
| | ▪ Lack of Accountability | Yes | No | |
| | ▪ Low Barriers to Entry | Yes | No | |
| | ▪ Complaints and Disputes and Difficulties resolving | Yes | No | |

Please circle your closest response to the following questions (where applicable)

| | | | | |
|---|--|-----|----|-----------|
| 18. What do you believe is necessary to address the concerns expressed in question 17? | | | | (Comment) |
| | <ul style="list-style-type: none"> ▪ Amend the Strata Titles Act to recognise the existence and role of strata managers in providing services | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Improve education of the rights and responsibilities of strata proprietors, strata councils and strata managers. | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Mandatory requirements for insurance | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Requirement to hold funds in trust accounts | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Requirement to audit trust accounts | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Establish an industry code of conduct for strata managers | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Establish an industry accreditation scheme for strata managers | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Introduce standard or mandatory contract conditions for strata managers (i.e.. insurance, audits, performance) | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Full licensing of strata managers | Yes | No | |
| 19. What is the best option to mitigate any risks posed to Strata Proprietors by Strata Managers? | | | | (Comment) |
| | <ul style="list-style-type: none"> ▪ Industry Code of Conduct/Body Corporate | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Industry Accreditation Scheme | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Mandatory Contract Conditions (ie must be insured, audits performed) | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Public Education | Yes | No | |
| | <ul style="list-style-type: none"> ▪ Licensing | Yes | No | |

Please circle your closest response to the following questions (where applicable)

| Licensing | | | | |
|---|--|-----|----|-----------|
| 20. If licensing was introduced, who would be licensed? | | | | (Comment) |
| | <ul style="list-style-type: none"> The company licensed with every employee able to act as a strata manager without being separately licensed or registered | Yes | No | |
| | <ul style="list-style-type: none"> Both the company and every employee who acts as a strata manager should be licensed | Yes | No | |
| | <ul style="list-style-type: none"> The company licensed but every employee who acts as a strata manager should be separately registered | Yes | No | |
| 21. If strata managers are to be licensed or accredited, what qualifications would be required? | | | | (Comment) |
| | <ul style="list-style-type: none"> Formal Degree/Qualification | Yes | No | |
| | <ul style="list-style-type: none"> Accreditation by STIWA or a registered training organisation | Yes | No | |
| | <ul style="list-style-type: none"> On the job training by experienced Strata Managers | Yes | No | |
| 22. If strata managers were to be licensed, on what basis do you think fees should be calculated? | | | | (Comment) |
| | <ul style="list-style-type: none"> Number of managed lots | Yes | No | |
| | <ul style="list-style-type: none"> Total funds managed | Yes | No | |
| | <ul style="list-style-type: none"> Full cost recovery to government or a regulatory authority for establishing and maintaining a licensing regime including the provision of investigation, compliance, education, policy, fidelity guarantee and conciliation services | Yes | No | |
| | <ul style="list-style-type: none"> Other - please state | Yes | No | |
| 23. How much do you think that each strata proprietor would be willing to pay to support a full licensing regime? | | | | (Comment) |
| | <ul style="list-style-type: none"> \$100 - \$200 pa | Yes | No | |
| | <ul style="list-style-type: none"> \$200- \$300 pa | Yes | No | |

Please circle your closest response to the following questions (where applicable)

| | | | | |
|--|-------------------------------------|-----|----|--|
| | ▪ \$300 - \$400 pa | Yes | No | |
| | ▪ \$400 - \$500 pa | Yes | No | |
| | ▪ More than \$500 pa | Yes | No | |
| 24. If the Strata Titles Act was amended so that governance matters relating to strata managers could be developed by regulation or attached as schedules to the STA (as opposed to licensing), would it be useful if template or model regulations were developed to assist with the duties of strata managers including those relating to: | | | | |
| | ▪ Trust account requirements | Yes | No | |
| | ▪ Financial reporting | Yes | No | |
| | ▪ Mandatory contract conditions | Yes | No | |
| | ▪ Simplifying management provisions | Yes | No | |
| | ▪ Preparation of by-laws | Yes | No | |
| | ▪ Complaints and dispute resolution | Yes | No | |
| 25. If licensing was introduced, do you foresee any potential issues? If so, please provide details. | | | | |
| 26. Any other comments? | | | | |

Thank you for taking the time to complete the questionnaire.

SELF-COMPLETION QUESTIONNAIRE

REVIEW OF PROPOSED LICENSING/REGULATION OF STRATA TITLE MANAGERS

INTRODUCTION

The Western Australian Government has engaged Stamfords Advisors and Consultants ("Stamfords") to carry out a review of the proposal to license/regulate strata title managers. Your assistance is sought by filling out this questionnaire, which will provide valuable information for the consultancy.

The outcome of this consultancy is to make recommendations about whether a mandatory licensing scheme or other form of regulation is appropriate for Strata Title Managers, or to recommend alternatives. Alternatives could include any combination of an industry Code of Conduct/Body Corporate approach, industry accreditation schemes, mandatory contract conditions or a public education program.

Your strata company/council has been randomly selected from Landgate's database of registered strata title plans to provide feedback on the management aspects of your strata title with emphasis on strata management.

Your answers will be treated completely confidential.

If you have any queries, please contact Peter Massey at Stamfords on (08) 9476 3144. Electronic copies of the questionnaire are available from the Stamfords website, www.stamfords.com.au.

Please forward your comments by **Thursday 26 Apr 2007** to:

Mail
Stamfords
GPO Box 2753
PERTH WA 6001

Fax
(08) 9322 1022

Email
mail@stamfords.com.au

Please circle your closest response to the following questions (where applicable)

| General | | | | | |
|--|---------------------------|----------------------------------|---|---------------------------|--------------|
| 27. How many lots are in your strata title? | 2 Units | 3-5 Units | 6-10 Units | 11 or more | |
| 28. What is the estimated average value of the lots? | | | | | |
| 29. Are you familiar with your obligations under the Strata Title Act? | Yes | | No | | |
| Financial Aspects | | | | | |
| 30. Where are the strata fees collected from strata owners held? | | | | | |
| | Bank Account | Investment Fund | Trust Account | REBA Trust Account | Other |
| | If other, please specify: | | | | |
| 31. Who is responsible for managing the funds? | Company/Council | | Strata Manager | Other | |
| 32. Are financial statements prepared on a regular basis? | Yes | | | No | |
| 33. Are strata proprietors provided with annual financial statements? | Yes | | | No | |
| 34. What is the average balance of funds held for administrative expenses for the Strata Company? | \$1 - 1,000 | \$1,000 – 10,000 | \$10,000 – 100,000 | \$100,000+ | |
| 35. Do you accumulate funds for major repairs/maintenance or emergency work (a reserve fund)? | Yes | | | No | |
| 36. Do you have any form of fidelity insurance? (Fidelity insurance is a policy to provide compensation for losses incurred as a result of the disloyalty or dishonesty of an agent of the strata company) | | | | | |
| | No | Through Private Insurance | Through REBA Fidelity Guarantee Fund | Other | |
| | If other, please specify: | | | | |
| 37. Have you ever had to claim against the fidelity insurance? | Yes | | | No | |

Please circle your closest response to the following questions (where applicable)

| | | | | | | |
|---|---------------------------|----------------------|-----------------------------------|---------------------------------|---|--------------|
| 38. Are the following insurance policies in place? | | | | | | |
| ▪ Building | | Yes | | No | | |
| ▪ Common Property | | Yes | | No | | |
| ▪ Public Liability | | Yes | | No | | |
| 39. Who manages this fund? | | Self Managed | Strata Manager | | Other | |
| | If other, please specify: | | | | | |
| Management | | | | | | |
| 40. Do you employ a strata manager to oversee management of the strata? | | Yes | | No | | |
| 41. Is this a paid position? | | Yes | | No | | |
| 42. What criteria did you look for in selecting a strata manager? | | | | | | |
| | Experience | Accreditation | Licensed Real Estate Agent | Reputation/Word of Mouth | Holds Professional Indemnity Insurance | Other |
| | If other, please specify: | | | | | |

Please circle your closest response to the following questions (where applicable)

| | | | | |
|---|---|---|----------------------------|--|
| 43. Which of the following do you see as current concerns in the provision of Strata Management services? | | | | |
| | ▪ Records Management | | | |
| | ▪ Maintaining accounts, copies of work completed | | | |
| | ▪ Providing financial and status reports | | | |
| | ▪ Insurance (fidelity) against Fraud/Theft by strata manager | | | |
| | ▪ Accountability | | | |
| | ▪ Complaints and Disputes resolution | | | |
| Disputes/Complaints | | | | |
| 44. | Have you had any complaints about your current or previous strata managers? | | Yes | No |
| 45. | What was the nature of the complaint? | | | |
| 46. | How were they dealt with? | | | |
| | Directly with Strata Manager | Through Strata Manager's Company | A Mediation Service | SAT (State Administrative Tribunal) |
| 47. | Would you find an advisory & conciliation service beneficial to help resolve disputes with strata managers? | | Yes | No |
| 48. | Do you feel you are adequately protected against financial loss, theft and mis-management of funds? | | Yes | No |

Thank you for taking the time to complete the questionnaire.