



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 37**

**Review of  
The Land Agents Act**

**REPORT**

**JANUARY 1974**

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

The Commissioners are -

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**WORKING PAPER**

TO: THE HON. T.D. EVANS, M.L.A.  
**ATTORNEY GENERAL**

### **TERMS OF REFERENCE**

1. "To investigate the present provisions of the *Land Agents Act* and report on amendments needed to effectively exercise control over land transactions and whether provisions of the Act should be enlarged to cover other sales by agents or developers".

2. The Commission was asked to consider specifically the following matters -

- (a) the system of licensing;
- (b) the need for provision for renewal of licenses which have lapsed through unforeseen circumstances;
- (c) the need for further control over agents, as in New South Wales;
- (d) the need to restrain agents from arranging sales which may be impossible to complete, as where such a sale is induced by the agent's misrepresentation as to the availability of finance;
- (e) the need for improved auditing requirements;
- (f) the need for control over salesmen employed by developers;
- (g) the need for control over the activities of land settlement agencies.

3. The following additional proposals, which were originally discussed in a working paper issued in June 1972 (Project No. 1 Parts II & III) have also been considered in the course of this project -

- (i) that licensed land agents should be entitled to hold in their trust accounts all money paid to them on account of a purchase of land until the availability of a title to the land is assured;
- (ii) that all sales of land (other than between private persons not engaged in the business of buying and selling land) must be made through a licensed land agent. (See paragraphs 45 & 80-81 below).

4. Commentators on the working paper, including the Mortgage Brokers Association of W.A., expressed a desire that mortgage brokers be controlled by statute. Consequently the Commission sought and was given your approval to include in this project a consideration of whether they should be so controlled. The Commission decided not to hold up the present report and will at a later date issue a separate working paper on mortgage brokers.

### **THE WORKING PAPER**

5. On 18 June 1973, the Commission issued a working paper which was divided into three sections -

- A. LAND AGENT
- B. DEVELOPERS
- C. SETTLEMENT AGENTS

A copy of the working paper is attached at the end of this report.

6. Appendix I to this report lists those to whom the working paper was sent for comment (Part I) and those who commented (Part II). All comments have been taken into account, even if not specifically referred to in this report.

### **PLAN OF THE REPORT**

7. This report follows the working paper in discussing separately land agents, developers and settlement agents. It also follows the sub-headings of the working paper.

A summary of the recommendations with respect to land agents is to be A, paragraph 79, and with respect to developers at the end of Section B, paragraph 85.

The view of the members of the Commission on settlement agents will be found in Section C.

## **A. LAND AGENTS**

8. In this report, the Commission makes a number of recommendations for amending the law relating to land agents. In areas where no recommendation is made, the Commission should be taken as accepting the present law as satisfactory.

### **Supervising authority**

9. The Commission proposed in paragraphs 36-38 of the working paper that the existing Land Agents Supervisory Committee should be replaced by a more broadly based body of five members appointed by the Governor - a legal practitioner to act as a chairman, with a minimum of, say, eight years practice; two licensed land agents; one accountant/auditor and one other person. The paper proposed that the land agent members should be appointed after election by the general body of licensed land agents and that all members should be appointed for fixed terms of, say, four years, with rotational retirement.

10. There was general agreement with the proposals outlined in paragraph 9 above with the following qualifications -

- (a) The Real Estate Institute of Western Australia (in this report called "R.E.I.W.A.") and the Land Agents Supervisory Committee suggested that the "other person", and not the proposed legal practitioner member, should be the chairman.
- (b) The Law Society proposed that the "other person" be a surveyor or person specially qualified in Titles Office procedures.
- (c) R.E.I.W.A. and the Land Agents Supervisory Committee proposed that one land agent should be nominated by R.E.I.W.A. and the other elected by the general body of licensed land agents.

11. The Commission remains of the view that the chairman should be a legal practitioner with a minimum of eight years practice, particularly if the supervising authority is to have wider judicial functions than the Land Agents Supervisory Committee now has. It agrees,

however, that one of the land agent members should be appointed on the nomination of R.E.I.W.A.

It is now also of the view that no member should be appointed for more than two consecutive terms. (see paragraph 79, Recommendation No. 1).

12. The view was expressed in paragraph 39 of the working paper that difficulties in the enforcement of the *Land Agents Act* would be overcome if the Land Agents Supervisory Committee had inspectors on its staff. The Commission's proposal that suitable qualified inspectors be appointed to the supervising authority's staff was supported by all who commented on this aspect and the Commission recommends accordingly. (see Recommendation No. 2).

13. If the recommendations in paragraphs 11 and 12 above are adopted, additional sources of finance would be required. Paragraph 40 of the working paper listed the possible sources as being -

- (a) increases in land agents' annual license fees, or land salesmen's annual registration fees, or both;
- (b) new license fees from persons who could be brought under the control of the supervising authority, such as settlement agents, land auctioneers and business agents;
- (c) increased contribution from the Land Agents Fidelity Guarantee Fund; and
- (d) interest accruing from the investment of a portion of licensed agents' trust accounts (see also paragraph 71 of this report).

R.E.I.W.A. opposed the use of interest on the investment of a portion of licensed land agents' trust accounts, being of the view that any additional administrative costs met exclusively by contribution from licensees.



The Commission on the other hand, does not consider any of these sources of income to be objectionable, but considers that no specific recommendation can be made until the functions and duties of the supervising authority are settled.

### **Licensing of agents**

14. The Commission suggested in paragraphs 41, 42, 45, 46 & 49 of the working paper that -

- (a) The supervising authority should be the licensing authority for land agents, as this is a function which it could effectively perform. In addition, if this was done, it would avoid difficulties of liaison with the court and differences in approach from court to court.
- (b) The supervising authority should have power to cancel licenses on prescribed grounds, attach conditions to the issue of licenses, hold inquiries, disqualify or suspend licensees and in lieu of cancellation or suspension, fine licensees up to a maximum of \$200, reprimand or caution them.
- (c) There should be a right of appeal to a superior court from all decisions of the supervising authority.

15. These suggestions were supported by R.E.I.W.A., the Land Agents Supervisory Committee and other commentators except that the Land Agents Supervisory Committee proposed that the maximum fine should be \$750.

16. The Law Society and the Police Department, however, were of the view that the supervising authority should only issue licenses in the absence of objection and that contentious applications be dealt with by the courts. The Law Society suggested that this would overcome difficulties that may otherwise arise if the licensing authority was located in Perth.

17. The Law Society also submitted that the power to cancel licenses should remain with the courts and said -

"The power to cancel a license is tantamount in many cases to cancelling a person's ability to earn his income. Such proceedings are therefore of a very serious character and must in all respects be done in accordance with the best ideals of our system of justice. The best system of justice which has arisen to date is through the court system, involving the oral examination and cross-examination of witnesses according to the normal rules of evidence. We believe such a procedure is not an administrative function and should be dealt with as at present by a stipendiary magistrate, with the parties having a right to representation by a Counsel".

The Law Society further submitted that the other disciplinary powers outlined in the working paper (see paragraph 14 (b) of this report) should also be exercised by the courts and that only conditions created by the Act should be attached to licenses.

18. One member of the Commission Mr. B.R. Rowland agrees with the views expressed by the Law Society as to licensing and cancellation. He considers that this would obviate the necessity of what is primarily an administrative tribunal having to exercise judicial functions. In his view, a court is more competent to evaluate factual evidence than a body such as the supervising authority with its varied composition. He believes however, that there would be no real objection to giving the supervising authority power to hold inquiries, suspend licenses for up to a specified period, say 2 years, and, in lieu of suspension, to fine, reprimand and caution.

19. All members of the Commission agree that whatever system of licensing is adopted, there should be a right of appeal to the Supreme Court against all decisions at first instance. However the majority of the Commission, having regard to such a right of appeal, and having regard to its recommendation that the chairman should be an experienced legal practitioner (see paragraph 11 above), adhere to the views expressed in the working paper that the supervising authority is the appropriate body to exercise the functions of licensing and cancellation. In so far as it may be suggested that the proposed supervising authority would not have time to attend to those extra functions, inquiries made as to the number of objections to licensing applications and applications for cancellation of licenses over the last four years indicate that this would not give rise to difficulties. Any other difficulties arising from the location of the supervising authority in Perth would be mitigated by allowing evidence on affidavit in appropriate cases in the absence of objections. The supervising authority could also of course sit in other centres. (see Recommendation 3).

20. It was suggested in paragraph 44 of the working paper that the grounds for objection should be prescribed, that any person should be able to object upon prior notice, that applications should be advertised and that there should be a public hearing whenever there was an objection.

The Police Department suggested that the interests of the public would be better served by not limiting the grounds for objection. The Commission however is of the view that objections should be limited to an applicant's suitability as a land agent and that the best way of doing this is to prescribe those grounds. It recommends accordingly. (see Recommendation 4).

21. The Commission also suggested in paragraph 47 of the working paper that the supervising authority should have power to prescribe a code of professional conduct for land agents, and to take disciplinary action for any breach of such code. All commentators on this suggestion agreed with it, although the Law Society suggested that an agent should have a right to elect to be dealt with by a court instead of the supervising authority.

While the Commission considers that ethics are primarily a matter for professional associations, it notes that supervising authorities in a number of Australian States have power to prescribe such a code. There would seem on balance to be no objection to giving a similar power in this State to the proposed supervising authority. (see Recommendation 5).

22. The Commission suggested in the working paper that offences against the Act should continue to be prosecuted in the courts in the normal way (paragraph 48). The Land Agents Supervisory Committee considered that the supervising authority should have power to hear such offences, with a discretion to direct some of them to the courts.

The Commission considers that, as a matter of principle, the hearing of criminal matters should be left to the courts. (see Recommendation 6).

### **Qualifications of a land agent**

23. The Commission while not expressing any opinion, stated in paragraph 50 (a) of the working paper that the qualifications of an applicant for a license could be upgraded by extending the present academic course.

Some commentators suggested a less comprehensive academic course than at present. Other suggested a more comprehensive course, such as the Diploma of Real Estate Management. Two pastoral companies advocated the issue of restricted licenses whereby land agents would only be able to operate in those fields where they had shown that they possessed adequate knowledge - for example, in the fields of urban, rural or commercial property or of property development. Some commentators who operate as business agents suggested that the qualifications required of business agents should differ from those required of land agents.

The Commission notes that the present land agents' course was recently upgraded (1971) and suggests that it may be better not to extend the course until its effectiveness has been assessed. The Commission does not consider that the establishment of categories of land agents licenses is justified at this stage.

The Commission also suggested in paragraph 50(b) of the working paper that some practical experience was desirable as a qualification. This met with general approval although there was a difference of opinion as to the extent of experience required.

On reviewing the matter the Commission considers that, in addition to other requirements, applicants for a license should be required to satisfy the licensing authority that they have had adequate practical experience. Two years in the employment of a land agent as a full time land salesman would normally be sufficient experience, although the licensing authority should be able to accept other equivalent forms of experience. (see Recommendation 7).

### **Incorporation of land agencies**

24. The Commission suggested in paragraph 51 of the working paper that a company itself could be licensed, instead of the present practice of a nominee holding a license on its behalf (see also paragraph 17 of the working paper). The Commission suggested that the qualifications for the licensing of a company should be that the company was financially sound, that all, or a specified percentage of all directors, managers and other principal officers resident in this State were licensed land agents or licensed managers, and that the directors were jointly and severally liable for the acts and defaults of the company. The following comments were made on those suggestions -

- (a) The Law Society considered that all resident directors and other principal officers of a licensed company should be required to be licensed land agents. The Land Agents Supervisory Committee and R.E.I.W.A. considered that the percentage of such officers to be so licensed should be determined by the supervising authority.
- (b) The Law Society suggested that a limit should be placed on the liability of directors for the acts and defaults of a licensed company.

25. The Commission, having reconsidered the matter raised in paragraph 24 above is now of the view that it is too onerous to require all the directors and other officers to be licensed, and agrees with the view expressed at the 7th Annual Conference of Land Agent Licensing Authorities, held in November 1973 at Perth, that it would be adequate if at least 50% of all directors resident in this State were required to be licensed land agents. If there are no directors resident in this State then the Commission considers that the officer in control of the business of the company in this State should be required to be a licensed land agent.

In any event, the Commission believes that the officers in control of each place of business should also be required to be licensed land agents. A discussion of this matter is to be found in paragraph 33 below.

The Commission is still of the view expressed in the working paper that directors should be jointly and severally liable for the acts and defaults of the company. (see Recommendation 8).

26. In paragraph 52 of the working paper, the Commission suggested that special provisions might be necessary for trustee and pastoral companies. At present, trustee and pastoral companies and others may be certified by the Minister as being "approved applicants" (s.4(2b)). The effect of such approval is -

- (a) the applicant's nominee does not need academic qualifications; and
- (b) when a license is granted the persons in charge of the licensee's places of business do not have to be registered land salesmen (s.7A(8)).

Under the existing Act, pastoral companies and companies whose land agency business is a minor part of their activities (such as a trustee company), are not required to have their directors and salesmen registered as land salesmen (s.15A(4)). Because they are not so registered, they make no contribution to the Fidelity Guarantee Fund, even though the Fund covers theft by such persons (s. 26).

27. R.E.I.W.A. expressed the view that the concessions referred to in the preceding paragraph should not be available to pastoral companies when they are dealing in other than pastoral or agricultural land.

The 7th Annual Conference of Land Agent Licensing Authorities resolved that it was opposed in principle to statutory provisions enabling the Minister to certify an applicant as being an "approved applicant" when such applicant did not have the qualifications required by s.4(3)(a) of the *Land Agents Act*.

The two trustee companies and the three pastoral companies which commented on the working paper advocated the retention of the present privileges referred to in paragraph 26 above.

The two trustee companies argued that, for reasons of economy, expedition and convenience, it was to the benefit of the estates and trusts that they administered that real estate matters be dealt with in their offices. The private Acts relating to these two companies already enable them to charge for inspections and reports on real estate. The salesmen they employ are mainly involved in limited areas only of real estate, such as letting houses and collecting rents.

The three pastoral companies that commented said that it was impractical to apply to them the proposals in paragraphs 51 & 56 of the working paper (incorporation of land agencies and registration of land salesmen). They stated that they train their officers to be specialists in rural sales and exercise adequate supervision over them and that they had not received any complaints concerning the service they provide. The Commission was informed that these three pastoral companies favoured control of branch offices by either licensed land agents or licensed managers.

28. The Commission considers that the existence of exceptions to the general requirements of the Act, applicable only to a few licensees, is undesirable. However the Commission recognises that a number of companies have enjoyed the concessions referred to in paragraph 26 above for some time and that their withdrawal could cause difficulties.

The Commission is of the view that the best method of dealing with this matter would be to specify in any new legislation the trustee and pastoral companies which are presently licensed, as being licensed land agents from the commencement of that legislation. Such companies would be subject to all the provisions of the legislation, except that -

- (a) the proposals in paragraphs 24-25 above as to incorporation of land agencies would not apply; and
- (b) the separate places of business of such licensees would not need to be under the control of a licensed land agent (see paragraph 33 below).

However, the Commission sees no reason why the land salesmen of such licensees should not be registered, thereby bringing them under the control of the supervising authority and requiring them to contribute to the Fidelity Guarantee Fund.

The Commission does not consider that the reasons advanced by the pastoral companies are sufficient to justify any concessions when they are operating in urban areas in competition with other land agents, and accordingly it recommends that the provisions outlined in this paragraph should be limited to pastoral companies operating in rural areas only. (see Recommendation 9).

### **Renewal of licenses**

29. The Commission put forward the proposal in paragraphs 53 and 54 of the working paper that a license should be continuous, with the payment of a fee for an annual certificate for the right to carry on business. The Police Department, the Land Agents Supervisory Committee, R.E.I.W.A., the Law Society and the 7th Annual Conference of Land Agent Licensing

Authorities did not agree and favoured a continuation of the present system of annual renewals.

The Commission has reconsidered the matter but sees no reason why a land agent should be required to apply for a license each year. The Commission believes that the power of the supervising authority to conduct an inquiry into a land agent's license at any time provides adequate protection. The Commission adheres to its view that if a licensee neglects to obtain a practising certificate for a consecutive period of 5 years the license should expire and he should then be required to apply for a new license in accordance with the provisions of the Act then in force if he wishes to recommence business. (see Recommendation 10).

### **Registration of salesman**

30. All but two of the commentators on this subject agreed with the suggestion in paragraph 56 of the working paper that applicants for registration as land salesmen should be required to be fit and proper persons and of a specified minimum educational standard. A number of commentators went further and suggested that land salesmen be required to undertake an academic course. Mr. T.K. Macfarlane, the chairman of the Land Agents Supervisory Committee, considered the present practice under which anyone could register as a land salesman was preferable since there could be difficulty in prescribing minimum educational standards and in any event the disciplinary powers of the Committee would act as a safeguard.

The Commission considers it preferable to investigate the suitability of applicants before registration, and adheres to its view in the working paper. (see Recommendation 11).

31. The majority of the Commission favour the adoption of the further proposal in paragraph 57 of the working paper, namely that the supervising authority should have similar licensing and disciplinary functions with respect to land salesmen as does the Land Agents Supervisory Committee at present, except that the maximum penalty in lieu of cancellation should be raised from \$20 to the more realistic figure of \$100. (see Recommendation 12).

For the same reasons as have been mentioned earlier (see paragraph 18 above) the other member of the Commission, Mr. Rowland, considers that the supervising authority should



register salesmen only in the absence of objection and that otherwise the application should be dealt with by a court. He is also of the view that only a court should have power to cancel a land salesman's registration and that the supervising authority should have limited disciplinary functions only, similar to those suggested by him for land agents.

### **Management of land agencies**

32. In paragraphs 58 to 65 of the working paper the Commission discussed the necessity of ensuring that the persons who direct the operations of land agencies have adequate knowledge and experience, and the desirability of preventing the widespread practice of "dummying" whereby persons who are not licensed land agents exercise control over land agencies, the licensee himself taking little or no active part. This practice can occur in a land agency partnership where only one partner need be licensed, or in a company, where one person appointed by the company may hold the license on behalf of the company. It can also occur where a licensee has land salesmen in control of a branch office since any land salesman who has been registered for two years can be in control of such a place. (*Land Agents Act s.7A*).

At the time the working paper was prepared, the Commission considered that the problem was greatest in the case of partnerships, and suggested that all partners, or at least all active partners, should be licensed land agents. (paragraph 58). After considering the comments received, the Commission believes that the problem arises principally because of the inadequate control exercised by some licensees over their places of business.

33. Consequently, the Commission is now of the view that the practice of "dummying" could largely be controlled by requiring a licensed land agent to be in actual control of each place of business, so that no licensee would be in actual control of more than one place of business. This was proposed in paragraph 63 of the working paper and was supported by the Land Agents Supervisory Committee, R.E.I.W.A. and several other commentators. (see Recommendation 13).

34. In the case of land agency partnerships, the Commission, after considering the comments received, now believes that it would be too onerous to require all partners to be licensed land agents. There would seem to be no good reason for distinguishing between

partnerships and companies (see paragraph 25 above), particularly if the suggestion in the previous paragraph is adopted. Accordingly the Commission recommends that at least 50% of all partners should be required to be licensed land agents. (see Recommendation 14).

Complementary provisions have already been suggested with respect to licensed companies which would assist in controlling the practice of "dummying" (see paragraphs 24 and 25 above).

35. The Commission also confirms the suggestion in paragraph 63 of the working paper that all places of business and the name of the licensee in actual control and any changes thereto should be notified to the supervising authority from time to time and specified on his license. (see Recommendation 13.)

36. Transitional provisions would be necessary, to afford unlicensed partners, directors and persons in control of places of business the opportunity where necessary of qualifying for a license. The Commission therefore suggests a three year period before the proposals in paragraphs 25, 33 and 34 above become operative. (see Recommendation 15).

37. No commentator disagreed with the proposals in paragraph 65(a), (b), (c) and (d) of the working paper, which were to prohibit -

- (a) Any person from holding more than one license.
- (b) A licensed land agent from advertising his license for sale or use or allowing an unlicensed person to use his license in any way.
- (c) A licensed land agent from employing an unregistered land salesman.
- (d) A licensed land agent from sharing commission with any person other than with his employees or another licensed land agent.

The Commission recommends legislation accordingly, except that, in view of the Commission's recommendations in paragraphs 34 and 73 of this report, it would also be

necessary to permit a licensed land agent to share commission with his unlicensed partner or with an auctioneer. (see Recommendation 16).

38. The Commission in paragraph 65(e) of the working paper raised the question of whether it was desirable to prohibit the employment of land salesmen part-time. R.E.I.W.A. and the Land Agents Supervisory Committee stated that such a prohibition was desirable. The Law Society was of the view that there should be no such prohibition.

The Commission considers that the real risk of abuse arises where land salesmen are simultaneously employed by different land agents or developers and accordingly recommends that this practice be prohibited. It would not however go so far as to prohibit a land salesman from working part-time with one land agent only or one developer only. (see Recommendation 17 and paragraph 83 below).

39. The Commission, in paragraph 66(a) of the working paper, also raised for consideration the question whether the suitability and location of land agency offices should be controlled. R.E.I.W.A. advocated that a land agent should only be permitted to operate from premises zoned for commercial, office or retail purposes.

Some commentators supported control of the suitability and location of offices, although the Law Society did not. The Commission considers that this is primarily a matter of town planning and does not consider that control should be imposed in legislation dealing with land agents. (see Recommendation 18).

40. The proposal in paragraph 66(b) of the working paper that the use of business names by land agencies should be subject to the approval of the supervising authority was opposed by the Law Society. The Land Agent Supervisory Committee suggested that where the name of a licensee is not included in the business name, his initials and surname should appear under the business name whenever the latter is used.

The Commission does not recommend control of business names by the supervising authority, although it is of the view that a licensee should be entitled to carry on one business as a land agent under one business name, and that this name should be recorded on his license. This in part is the present law (The *Land Agents Act* s.7).

In addition, where the business of a land agent is carried on under a name other than the surname of the licensee, his name should appear in all correspondence, and a notice containing it should be exhibited at every place of business (see Recommendation 19). The special problem of advertisements is dealt with in the next paragraph.

41. Several commentators, including the Land Agents Supervisory Committee and R.E.I.W.A., advocated that a licensee should not be required to put his full address in any advertisement, as he is at present (Section 13A). They were of the view that this was an unnecessary expense, and that it would be sufficient to require the inclusion of the name of the city, suburb or town where the relevant office is located. Several other commentators advocated less restrictive provisions than at present. The Law Society said that the advertisement should be specific enough to enable a reader to identify the agent responsible. The Commission agrees with the Law Society. In some cases the name of the agent should be sufficient to identify the agent, whilst in others, an address may also be necessary. (see Recommendation 20).

### **Duties of a land agent**

#### *(a) Commission*

42. In paragraph 67 of the working paper the Commission suggested that a written appointment of an agent should be necessary to support the recovery (as at present) and retention of commission, although it suggested that it should not be necessary for the appointment to have been given prior to the agent finding a purchaser. Mr. T. Macfarlane and Professor Sackville considered that a prior written appointment should be required. Mr. Macfarlane pointed to the risk of a conflict of interest that could arise where an agent already acts for a prospective buyer before he is appointed by the vendor, and Professor Sackville pointed to the desirability of avoiding disputes and of preventing an agent putting pressure on a vendor to sign an appointment after the sale. However, the Land Agents Supervisory, Committee and R.E.I.W.A. both favoured the South Australian position, whereby the written appointment need only be obtained before receipt of the commission.

The Commission believes that the legitimate interests of both the agent and the principal would be sufficiently protected if the written appointment is given at any time. A written appointment should, however, be a requirement for retention of commission out of money held by or under the direction of the agent, as well as for its recovery. (see Recommendation 21).

43. The Commission in paragraph 68 of the working paper suggested a *prima facie* rule, subject to any agreement to the contrary, making commission payable only on the completion of a transaction, unless the failure to complete was due to the fault of the land agent's principal. The Commission in the same paragraph thought it might be desirable to go even further and make this an absolute rule notwithstanding any agreement to the contrary. Both the Land Agents Supervisory Committee and R.E.I.W.A. were in favour of a *prima facie* rule.

The Commission is divided on the question as to whether an absolute rule should be enacted. Such a rule would protect a person from liability to pay commission arising out of an undertaking contained in small print which the person did not read or did not fully understand. On the other hand such a rule would interfere with freedom of contract.

The Commission is unanimously of the view that at least a *prima facie* rule should be enacted in order to remove doubts as to the correct law presently applicable in this State. Completion should be defined as occurring at the time of settlement for cash sales, and at the time when possession is given for terms sales. (see Recommendation 22).

44. In paragraph 69 of the working paper the Commission favoured giving the supervising authority power to prescribe rates of commission. At present R.E.I.W.A. fixes rates for its own members, but land agents who are not members of R.E.I.W.A. are free to enter into any contract as to the rates of commission to be charged. R.E.I.W.A. opposed any statutory fixation of rates, claiming that its rates were satisfactory and readily ascertainable by the public. The Land Agents Supervisory Committee has from time to time received complaints alleging that excessive commission had been charged, and in its submission, the Committee suggested the adoption of the R.E.I.W.A. rates for all land agents, whilst the Law Society suggested that the rates should be fixed either by the Minister or the supervising authority.

The Commission considers that the rates should be prescribed, and that power to do this should be given to the supervising authority, subject to disallowance by Parliament. (see Recommendation 23).

(b) *Trust accounts*

45. The proposal in paragraph 70 of the working paper (which in turn was the subject of an earlier working paper, see paragraph 3 above) was that purchase money should be retained in trust pending completion of any sale. This view was supported by R.E.I.W.A., The Institute of Legal Executives and the Police Department. On the other hand the Law Society considered that in any conditional contract, the agent should act as a stakeholder and hold the purchase money received until the condition was fulfilled. A number of commentators on the earlier working paper, including the Housing Industry Association, the Master Builders' Association of Western Australia, the Developers Institute of Australia, Western Australian Division and A.V. Jennings Industries (Australia) Limited, were strongly opposed to the proposal.

After reconsideration, the Commission is of the view that the proposal should not be adopted. The matter should be left to agreement between the parties. (see Recommendation 24).

46. The Commission also proposed that all money received by an agent in respect of a land transaction should first be paid into his trust account (working paper, paragraph 71). At present only the balance after payment of expenses, commission and other charges must be paid into trust. There was no disagreement with this proposal, and the Commission recommends its adoption. (see Recommendation 25).

(c) *Rates and taxes*

47. The Commission's suggestion in paragraph 72 of the working paper that the adjustment of rates and taxes should be the responsibility of the land agent in all cases was supported by the Land Agents Supervisory Committee, R.E.I.W.A. and the Law Society. It was opposed by one commentator only.

The Commission adheres to the view expressed in the working paper and, in addition, recommends that the agent should be liable for the cost of such adjustment unless the principal instructs the agent to obtain legal assistance in respect of that adjustment. (see Recommendation 26).

48. The Land Agents Supervisory Committee queried whether land tax should be apportioned as this tax is payable on the aggregated value of all the land held by one owner at the commencement of a financial year (*Land Tax Assessment Act 1907* s.8 and *Land Tax Act 1948* s.7), and as there is no specific statutory power to apportion land tax between successive owners.

The Commission is of the view that this is a matter for agreement between parties, and if the parties elect to adjust land tax and agree upon the method of adjustment to be employed, then the agent should be responsible for this adjustment in the same way as he is responsible for the adjustment of any other charges upon the land.

(d) *Representations as to finance*

49. The Commission's proposal in paragraph 74 of the working paper requiring agents to give to all intending purchasers of land a statement signed by the agent and containing particulars of any proposed finance promised by the agent, was supported by all who commented on it. The Land Agents Supervisory Committee and R.E.I.W.A. suggested that it should be sufficient if these particulars were contained in the offer and acceptance.

The Commission considers that the enactment of its proposal would assist in avoiding disputes arising from representations as to finance and recommends that such a statement should be given, and that it should be in a separate document rather than in the body of the offer and acceptance. (see Recommendation 27).

50. The Commission's attention was also drawn to cases where contracts of sale, conditional upon the obtaining of finance within a specified period, had lapsed because the purchaser believed that it was the agent's responsibility to arrange finance. The Commission considers that this problem could be overcome by requiring a written provision signed by the

agent, specifying who is responsible for arranging finance. Such a provision could be included in the statement referred to in the preceding paragraph. (see Recommendation 27).

51. In paragraph 75 of the working paper the Commission referred to a bill before State Parliament to amend the *Trade Descriptions and False Advertisements Act 1936*. This bill has now been passed and by Section 9 of the amending Act it is now an offence to make a false or misleading statement that is intended or apparently intended to promote the sale of land.

(e) *Representations on the sale of businesses*

52. The working paper, in paragraph 77, proposed that a signed statement should be given to every prospective purchaser of a small business, giving details of the business, its turnover, profit and other relevant matters. The Law Society and the Police Department supported the proposal. The Land Agents Supervisory Committee and R.E.I.W.A. also agreed, but considered that the statement should only be required in respect of sales effected through land agents.

The Commission considers that such a statement should be given but that it should only apply to sales through land agents and it should be limited to businesses the purchase price of which does not exceed \$50,000 (see Recommendation 28). The extension of licensing provisions to business agents is dealt with in paragraph 74 below.

(f) *Disclosure of agent's interest*

53. It was suggested in paragraph 79 of the working paper that it should be an offence for a land agent or specified person associated with him to be directly or indirectly interested in the purchase of land from the principal without the principal's prior written consent. All commentators agreed that the principal's consent should be obtained, although opinions varied as to when this consent should be required. Some commentators agreed with the view expressed in the working paper. R.E.I.W.A. considered that the consent need not be obtained prior to the purchase. The Land Agents Supervisory Committee suggested it should be obtained before finalisation of the sale.



The Commission adheres to the views expressed in the working paper, and would extend the requirement to include any land transaction (including leases and options) in which the land agent is directly or indirectly interested and in which he also acts or purports to act as an agent. (see Recommendation 29).

(g) *Forms of offer and acceptance*

54. The Commission suggested that the supervising authority should have power to prescribe or approve forms of offer and acceptance for use by land agents without infringing the *Legal Practitioners Act, 1893* (paragraph 80(a) of the working paper). This proposal was supported by the Land Agents Supervisory Committee, the Associated Banks in Western Australia and the Police Department. The Law Society did not consider that the supervising authority should have power to approve forms of offer and acceptance for use by land agents. It believed that the present practice of co-operation between the Law Society and R.E.I.W.A., whereby a form is jointly approved for use by R.E.I.W.A. members, is the best method.

The Commission has been informed that most land agents now use the Law Society-R.E.I.W.A. approved form. It considers that it would be most unlikely for a court to hold that the completion of such a form by a land agent would be in breach of the *Legal Practitioners Act*.

The Commission does not consider that it is either necessary or desirable to give the supervising authority power to determine which forms of offer and acceptance may be used by land agents.

55. The Commission proposed in paragraph 80(b) of the working paper that a land agent or salesman should give to a person signing an offer and acceptance form or other form of contract a true copy of the document immediately after he has signed it. No commentator disagreed and the Commission recommends the enactment of such a provision. (see Recommendation 30).

(h) *Sole agencies and multiple listings*

56. In paragraph 81 of the working paper, the Commission expressed the view that control of the use of sole agencies and multiple listing contracts may warrant consideration. A number of commentators made suggestions for control of sole agencies although R.E.I.W.A. and the Law Society considered legislation unnecessary.

The Commission notes that statutory controls have been introduced in Queensland and Victoria, but in the absence of any specific complaints in this State, it makes no recommendation for such control. In any event, the improper use of such contracts could be grounds for disciplinary action.

### **Financial control**

(a) *Audit and auditors*

57. The Commission, in paragraph 82(a) of the working paper, proposed that a land agent should be required to appoint an auditor at the time of applying for a license or at the time of commencing business, that the appointment be continuous, and that any change in auditor be approved by the supervising authority. No commentator opposed these proposals although the Institute of Chartered Accountants in Australia (Western Australian Branch) (in this report called "I.C.A.A."), in association with the Australian Society of Accountants (Western Australian Branch) (in this report called "A.S.A."), which made joint submissions, suggested that the appointment need only be made at the commencement of business.

The Commission considers it would be more convenient to require the notification of the auditor's appointment to accompany the application for a license, thus avoiding difficulties in ascertaining when a licensee had commenced business. In other respects the Commission affirms its views as expressed in the working paper. (see Recommendation 31).

58. The Commission further proposed in paragraph 82(b) of the working paper that only auditors registered under the *Companies Act 1961-1973* be entitled to audit a land agent's accounts, with provision for the appointment of other persons in districts where no such auditor is available.

No commentator opposed this proposal, although the Land Agents Supervisory Committee suggested that auditors already approved prior to any new Act should be entitled to continue. However the Commission thinks it preferable that a uniform scheme should operate and recommends the adoption of the view expressed in the working paper. (see Recommendation 32).

59. In subparagraphs (c) (d) and (f) of paragraph 82 of the working paper it was suggested that a full audit of a land agent's accounts should not be necessary in all cases, that the auditor should be required to report direct to the supervising authority immediately upon completion of the audit, with a copy of the report to the land agent, and that the supervising authority should have power to extend the time limit for lodging audit reports.

These proposals were supported by all who commented on them and the Commission recommends their adoption. (see Recommendation 33).

60. The Commission proposed in paragraph 82(e) of the working paper that an auditor be empowered to make an interim report to the supervising authority at any time, if he discovers a material breach by the agent. I.C.A.A. and A.S.A. suggested that the term "material breach" should be defined and gave examples.

On reconsideration, the Commission thinks that it should be left to the judgment of the auditor as to which irregularity or other matter should be reported, and recommends that an auditor should have power to make an interim report in these circumstances. (see Recommendation 34).

61. The proposal in paragraph 82(g) of the working paper that the supervising authority be given power to require an auditor to furnish further information or carry out a further audit at any time, was not opposed by anyone who commented upon it. I.C.A.A. and A.S.A. suggested that it may be necessary to settle who should pay the auditor's fee.

The Commission adopts this suggestion and recommends that the fee should be paid as directed by the supervising authority, either from the Fidelity Guarantee Fund or by the

licensee concerned. (compare s.14G(24) of the *Land Agents Act* and see Recommendation 35).

62. In paragraph 83 of the working paper, the Commission expressed doubt as to whether, in addition to the annual audit, an audit should be required within 3 months of a land agent commencing business as well as on every change in or cessation of business (including a change or cessation caused by death).

Neither the Land Agents Supervisory Committee nor R.E.I.W.A. considered an audit within 3 months of commencement of business to be necessary. I.C.A.A. and A.S.A. suggested that an audit should be required after the expiration of 3 months of commencement of business, the report to be completed within a further 2 months.

After reconsideration, the Commission supports the views of I.C.A.A. and A.S.A., although it suggests that provision should be made for the supervising authority to be able to waive this requirement where it does not think an audit necessary. (see Recommendation 36).

63. I.C.A.A. and A.S.A. supported the proposal for an additional audit on every change in or cessation of business whilst R.E.I.W.A. considered it unnecessary. The Land Agents Supervisory Committee suggested that an additional audit should only be required on the cessation of business.

After considering all these views, the Commission does not recommend that compulsory audits should be necessary in the circumstances described particularly if the supervising authority is to retain the power the Committee now has to carry out surprise audits, and to have the additional power to inspect the accounting records of an agent at any time.

64. In paragraph 83 of the working paper the Commission suggested that it might be desirable to prescribe the steps to be followed by an auditor in carrying out an audit. This was supported by the Land Agents Supervisory Committee, but was opposed by I.C.A.A. and A.S.A. who stated that an auditor should be free to decide how to conduct each audit.

However the Commission considers that because of the special nature of a land agent's business, it would be desirable to prescribe certain minimum steps to be observed by all

auditors in carrying out an audit and recommends accordingly. The Commission notes that steps have been prescribed for the audit of legal practitioners' trust accounts in the *Rules of the Barristers' Board* made in 1972 pursuant to the *Legal Practitioners Act 1893*. (see Recommendation 37).

65. It was proposed in subparagraphs (a) and (b) of paragraph 84 of the working paper that an auditor should be disqualified from acting if he is a close relative of the land agent under audit or if he is engaged in business dealings with or through that land agent.

I.C.A.A. and A.S.A. suggested that these matters should be left to the determination of the auditor in each case. R.E.I.W.A., was also opposed to the proposals. The Land Agents Supervisory Committee suggested, with respect to the first proposal, that an auditor should be disqualified unless approved by the supervising authority. The Committee did not favour the second proposal.

66. A number of approved auditors are not members of either the I.C.A.A. or the A.S.A. The Commission is therefore of the view that, in these circumstances, in the absence of professional associations which can exercise adequate control over all auditors of land agents, some safeguards should exist. The Commission recommends that auditors be required to disclose to the supervising authority any personal or business relationships they have with the land agent under audit, and the authority should have power to disqualify the auditor from acting in any particular case. A right of appeal to a court from the authority's decision would apply (see paragraphs 14(c) and 19 above and see Recommendation 38).

67. The Land Agents Supervisory Committee made the additional suggestion that the supervising authority should have power to suspend any auditor, thus preventing him auditing any land agent's accounts. This power under the *Land Agents Act* is presently vested in the Minister (see paragraph 28 of the working paper). The Commission agrees with the suggestion and recommends its adoption. A right of appeal to a court would also apply. (see Recommendation 39).

(b) *Receivers*

68. In paragraph 85 of the working paper the Commission proposed that provision be made for the appointment of a receiver in certain situations to carry on a land agent's business. The Law Society and the Associated Banks agreed with this proposal. The Land Agents Supervisory Committee considered that the present power to make an order restraining dealings on a land agent's trust account was adequate (see paragraph 30 of the working paper). The Committee also stated that the supervising authority (instead of the Supreme Court) should have power to make a restraining order, to be made absolute by a Judge.

After considering these comments, the Commission considers that the power to appoint a receiver could be a useful supplement to a restraining order. At the same time the Commission considers that both the appointment of a receiver and the issue of a restraining order should only be made by the Supreme Court. (see Recommendation 40).

(c) *Fidelity Guarantee Fund*

69. The Commission suggested in paragraph 86(a) of the working paper that the present ground for claims against the Fidelity Guarantee Fund was too restrictive and that further grounds should be added, similar to those in Queensland. Several commentators agreed that the grounds should be expanded. The Police Department suggested that they should include any established malpractice. The Commission considers that the Police Department's suggestion may be too broad a definition and that the ground should cover any loss of property arising out of the criminal or fraudulent conduct of a licensee, or of the servant, agent, director or officer of a licensee. (see Recommendation 41).

70. In paragraph 86(b) of the working paper the Commission suggested that the present limit on the Fund of \$150,000 should be increased. The Land Agents Supervisory Committee suggested that the limit be increased to \$350,000 and R.E.I.W.A. suggested \$250,000. The Commission accepts the statement that the present limit is inadequate in view of the depreciation in the value of money, but does not consider that it is in a position to recommend what the proper limit should be. In any event, the limit cannot be fixed until it has been decided whether agents other than land agents are to be covered by the Fund. Whatever the proper limit may eventually be the Commission is of the view that it should be set by statute.

*(d) Interest on trust accounts*

71. In paragraph 87 of the working paper the Commission suggested that one possible source of additional revenue for the Fidelity Guarantee Fund could be interest derived from the investment of a portion of land agents' trust accounts. The Law Society agreed with this, whilst R.E.I.W.A. disagreed. The Land Agents Supervisory Committee expressed the view that the funds available for investment may not be adequate to make the suggestion practicable, although no figures were in fact available.

The Commission continues to favour this source of additional revenue and suggests that if the Fund still requires additional revenue, this should be made up by contributions from licensees. (see Recommendation 42).

72. It was advocated in paragraph 88 of the working paper that a land agent should have express power to invest any trust money held on behalf of his principal in authorised trustee investments for the benefit of his principal. Subject to its comments with respect to paragraph 71 of this report, R.E.I.W.A. agreed, although the Law Society did not see the necessity for such powers.

As it would appear that a land agent may at present invest trust money at the direction of his principal providing that he has complied with section 8 of the *Land Agents Act*, the Commission considers that no further statutory power is necessary. The Commission does not believe that an agent should have express power to invest trust money without the consent of his principal.

**Other agents not covered by the Act***(a) Land Auctioneers*

73. In paragraph 89 of the working paper, the Commission expressed the view that land auctioneers should be subject to the same statutory controls as land agents, the one license covering both activities. At present auctioneers need have no qualifications, apart from being fit and proper persons (*Auctioneers Act, 1921 s.6(2)*), and they are not subject to trust account and audit provisions and other statutory controls applying to land agents.

All who commented on this proposal agreed that statutory controls similar to those applying to land agents were desirable, although opinions differed as to whether a separate land auctioneer's license should issue.

The Commission now considers that land auctions should only be held under the control of a licensed land agent. The auction should be actually conducted by a person licensed as an auctioneer but such person need not also be a licensed land agent. (see Recommendation 43).

*(b) Business agents*

74. The Commission also proposed, in paragraph 90 of the working paper, that business agents should be subject to the same statutory controls as land agents. There was general agreement amongst commentators with this proposal, although some commentators suggested that a separate business agent's license should issue with different qualification requirements. It was also suggested that there should be transitional provisions for the licensing of those unlicensed persons who are presently operating as full time business brokers. The Commission considers that only licensed land agents should be entitled to operate as business agents, the one license covering both activities. The Commission also recommends a transitional provision of three years before this requirement is introduced, thus giving unqualified persons presently operating as business brokers the opportunity of qualifying for a license, with credit to be given for any practical experience they may have had. (see Recommendation 44).

*(c) Mortgage brokers*

75. The Commission is presently considering whether mortgage brokers should be subject to statutory controls. (see paragraph 4 above).

**Other matters**

76. The Commission considers that it should be an offence for a person to act or hold himself out as acting as a land agent in Western Australia if he is not licensed under the Western Australian Act, irrespective of whether the land is situated inside or outside of



Western Australia, and recommends legislation accordingly. A similar provision to that proposed is in the legislation of the Australian Capital Territory (*Agents Ordinance 1968*, s.5(2) and s.18(1)). The Commission's proposal also gives effect to the submission by R.E.I.W.A. which expressed concern at the growing practice of unlicensed persons offering land situated outside of Western Australia for sale in this State. (see Recommendation 45).

77. The Land Agents Supervisory Committee and R.E.I.W.A. proposed that the title of any new legislation should use the words "real estate agent" in preference to the words "land agent". The Commission sees no objection to this proposal.

78. The 7th Annual Conference of the Land Agent Licensing Authorities resolved that where a licensee dies, the person whom the supervising authority approves as the personal representative of the deceased licensee should be deemed to be a licensed land agent and that he should be entitled to carry on the business of the deceased licensee for a maximum of 6 months. At present the personal representative may apply for a license under section 4(3) (a) (v) of the *Land Agents Act*, which provides no time limit on the period for which it can be used.

The Commission favours the present system whereby the personal representative must apply for a license. Under the Commission's proposals, the licensing authority could grant a license subject to such conditions as to time and other matters as it thinks fit (see paragraph 14(b) above). The Commission does not favour a fixed time limit, as the administration of some estates takes longer than others and consequently there is a need for flexibility.

## 79. **SUMMARY OF RECOMMENDATIONS WITH RESPECT TO LAND AGENTS**

1. That -

- (a) The Land Agents Supervisory Committee be replaced by an authority of five members comprising -
  - a legal practitioner as chairman, with a minimum of eight years practice;
  - two licensed land agents;

one accountant/auditor;  
one other person.

- (b) All members should be appointed by the Governor.
- (c) One land agent member should be appointed after nomination by R.E.I.W.A. and one land agent member should be appointed after election by the general body of licensed land agents.
- (d) Members should be appointed for fixed terms of four years each with rotational retirement. No member should hold office for more than two consecutive terms.

(Paragraphs 9-11 above).

- 2. That the supervising authority should have inspectors on its staff.

(Paragraph 12 above).

- 3. **Majority recommendation:** That the supervising authority should be empowered to -

- (a) license land agents;
- (b) attach conditions to the issue of licenses;
- (c) cancel land agents' licenses (this would be concurrent to powers of court to do so for certain prescribed offences);
- (d) hold inquiries to determine whether licensees are carrying on business in conformity with the conditions of the license and the requirements of the Act;
- (e) disqualify from obtaining a license within a specified time persons whose licenses have been cancelled;

- (f) suspend licenses for a specified time.

In lieu of cancellation or suspension, the supervising authority should be able to -

- (i) impose fines up to a maximum of \$200; or
- (ii) reprimand or caution licensees.

All decisions of the supervising authority should be subject to a right of appeal to the Supreme Court. However decisions to cancel or suspend licenses should take effect immediately and should not be deferred until the determination of an appeal unless a court otherwise orders.

Evidence in proceedings before the supervising authority should be permitted on affidavit without the necessity of personal appearance in the absence of objections unless the supervising authority directs. In addition, the supervising authority empowered to hold sittings throughout the State.

**Minority view:** That the supervising authority should be empowered to license land agents in the absence of objection. Otherwise the matter should be referred to a court.

That only a court should be empowered to cancel land agents' licenses and disqualify them from holding licenses.

That the supervising authority should be entitled to hold inquiries, suspend land agent licenses for up to two years, and in lieu of suspension, fine land agents up to a maximum of \$200 or reprimand or caution them.

All decisions of the supervising authority should be subject to a right of appeal to the Supreme Court. However decisions to suspend licenses should take effect immediately and should not be deferred until the determination of an appeal unless a court otherwise orders.

(Paragraphs 14-19 above).

4. That -

- (a) the grounds for objection should be prescribed and should be limited to matters affecting an applicant's suitability as a land agent, such as character, qualifications, convictions and business methods;
- (b) any person should have the right to object to an application providing he gives prior written notice specifying the grounds of his objection;
- (c) applicants for a license should be required to advertise their application and a public hearing should be held in every case where there is an objection.

(Paragraph 20 above).

5. That the supervising authority should be empowered to prescribe a code of professional conduct for land agents and land salesmen, and to take disciplinary action for any breach of that code.

(Paragraph 21 above).

6. That offences against the Act should be prosecuted in the courts in the normal way.

(Paragraph 22 above).

7. That an applicant for a land agent's license should be required to satisfy the licensing authority that he has had sufficient practical experience in the sale and purchase of land to enable him to carry on the business of a land agent satisfactorily. If he has acted as a full time land salesman for two years with a licensed land agent this should be sufficient practical experience. The licensing authority should have the right to accept other equivalent forms of experience.

(Paragraph 23 above).

8. That a company should be entitled to obtain a land agent's license provided that -

- (a) the company is financially sound;
- (b) at least 50% of the directors of the company who are resident in this State are licensed land agents. If there are no directors resident in this State, then the officer in control of the business of the company in this State must be a licensed land agent. Transitional provisions should be enacted to give unlicensed directors an adequate opportunity to qualify for a license. (see Recommendation 15 below).
- (c) all directors are jointly and severally liable for the acts and defaults of the company.

(Paragraphs 24-25 above).

9. That those trustee and pastoral companies which are at present licensed land agents should be named in any new legislation as being licensed land agents as from the commencement of the legislation, and be otherwise subject to all the provisions of the legislation, except

- (a) the provisions of recommendation 8 above should not apply to them;
- (b) the provisions of recommendation 13 below as to control of places of business should not apply to such companies, although all their land sales- men should be required to be registered land salesmen.

In the case of pastoral companies, the provisions of this recommendation should only apply when they are operating in rural areas.

(Paragraphs 26-28 above).

10. That a land agent's license should be continuous, with the payment of a fee for an annual certificate for the right to carry on business. If a licensee neglects to obtain a certificate for a consecutive period of five years, his license should expire.

(Paragraph 29 above).

11. That applicants for registration as land salesmen should be required to be fit and proper persons and of a prescribed minimum educational standard.

(Paragraph 30 above).

12. **Majority recommendation:** That the supervising authority should have the same powers to license and discipline land salesmen as does the Land Agents Supervisory Committee at present, except that the maximum fine in lieu of cancellation should be increased to \$100.

**Minority view:** That the supervising authority should have powers for the licensing and disciplining of land salesmen similar to those proposed in the alternative minority view for land agents (see Recommendation 3 above), except that the maximum fine in lieu of suspension of a land salesman should be \$100.

(Paragraph 31 above).

13. That a licensed land agent should be required to be in actual control of each place of business such that no one licensee is in control of more than one place of business.

(Paragraph 33 above).

That each place of business and the name of the licensee in actual control of that place and any changes thereto should be notified to the supervising authority and endorsed on his license.

(Paragraph 35 above).

14. That at least 50% of the partners in a land agency firm should be licensed land agents.

(Paragraph 34 above).

15. That a transitional period of three years should be provided before the implementation of the proposed requirements, that at least 50% of partners in a land agency firm, and at least 50% of the directors resident in this State of a licensed company, be licensed land agents (see Recommendation 8 above). In addition, there

should be a transitional period of three years before the implementation of the proposal in recommendation 13 above.

(Paragraph 36 above).

16. That -

- (a) a land agent should be prohibited from holding more than one license;
- (b) a licensed land agent should be prohibited from advertising his license for sale or allowing an unlicensed person to use his license in any way;
- (c) a licensed land agent should be prohibited from employing an unregistered land salesman; and
- (d) a licensed land agent should be prohibited from sharing commission with any person other than with his employees or unlicensed partners or with another licensed land agent, or with an auctioneer.

(Paragraph 37 above).

17. That land salesmen should be prohibited from being employed by different land agents and/or different developers at the same time and a land agent or developer should be prohibited from employing a land salesman who is already employed by another land agent or developer.

(Paragraph 38 above).

(The subject of developers is discussed in Section B of this report).

18. That no statutory controls relating to the suitability and location of land agency offices should be imposed in the proposed legislation.

(Paragraph 39 above).

19. That the use of business names by land agencies should not be subject to the approval of the supervising authority.

However a licensee should only be entitled to carry on one business as a land agent under one business name and this name should be recorded on his license.

And in addition, that where a land agency carries on business under a name other than the surnames of the licensees, those names should appear in all correspondence and a notice containing those names should be exhibited at every place of business.

(Paragraph 40 above).

20. That a licensee should be required to insert in all advertisements such details as are sufficient to identify the agent concerned.

(Paragraph 41 above).

21. That an appointment in writing of a land agent should be necessary for the recovery or retention of commission by that agent, although the appointment may be given at any time.

(Paragraph 42 above).

22. That a rule should be enacted that in the absence of an agreement to the contrary, a land agent's entitlement to commission only arises upon completion of a transaction, unless failure to complete is due to the fault of the agent's principal.

(Paragraph 43 above).

23. That rates of commission should be prescribed, and that power to do this should be given to the supervising authority, subject to disallowance by Parliament.

(Paragraph 44 above).

24. That no statutory obligation should be imposed on land agents to hold in trust, pending the completion of a sale, purchase money received by them.

(Paragraph 45 above).

25. That all money received by a land agent in respect of a land transaction should be paid into his trust account as soon as practicable, and that commission and other proper charges should be subsequently paid out of that account when they lawfully fall due.



(Paragraph 46 above).

26. That a land agent should be responsible for the adjustment of rates and taxes in all cases, although he should be permitted to delegate performance.

That the land agent should be liable for the cost of such adjustment unless the principal instructs the agent to obtain legal assistance in respect of that adjustment.

(Paragraph 47 above).

27. That a land agent should be required to give every intending purchaser of land a written statement signed by the agent containing particulars of any proposed finance promised by the agent, and a statement specifying who is responsible for arranging this finance.

That the contract of sale should be voidable at the instance of the purchaser within one month of the signature of the contract, if the statement is not given, or three months if the finance is not obtained, and that purchase money paid, including the deposit, be repayable.

(Paragraphs 49-50 above).

28. That a land agent should be required to give to every intending purchaser of a small business, the consideration for which does not exceed \$50,000, a written statement signed by the vendor or his agent and containing details of the business, its turnover, profit, and other relevant matters. If the statement is not given, or if the details are incorrect, then the contract should be voidable at the instance of the purchaser within one month after he takes possession, and all purchase money should be repayable.

(Paragraph 52 above).

29. That it should be an offence for a land agent, or a specified person associated with a land agent, to be without his principal's prior written consent, directly or indirectly interested in any land transaction (including leases and options) in which he also acts or purports to act as an agent.

(Paragraph 53 above).

30. That a land agent or salesman should be required to give to a person signing an offer and acceptance or other form of contract, a true copy of the document immediately after he has signed it.

(Paragraph 55 above).

31. That a land agent should be required to appoint an auditor at the time of applying for his license, that this appointment should be continuous and that any change in auditor should be approved by the supervising authority.

(Paragraph 57 above).

32. That only auditor registered under the *Companies Act 1961-1973* should be entitled to audit a land agent's accounts, with provision for the appointment by the supervising authority of other persons in districts where no such auditor is available.

(Paragraph 58 above).

33. That -

- (a) a full audit of a land agent's accounts should not be necessary in all cases, and that instead audits should be conducted in accordance with accepted auditing practice (including selective testing where appropriate);
- (b) an auditor should be required to report direct to the supervising authority immediately upon completion of the audit, with a copy of the report to the land agent;
- (c) that the supervising authority should have power to extend the time limit for lodging audit reports.

(Paragraph 59 above).

34. That an auditor should be empowered to make an interim report to the supervising authority at any time if he discovers any irregularity or other matter which he considers should be reported.

(Paragraph 60 above).

35. That the supervising authority should be given power to require an auditor to furnish further information or carry out a further audit at any time, the cost thereof to be paid as directed by the authority either from the Fidelity Guarantee Fund or by the licensee concerned.

(Paragraph 61 above).

36. That in addition to the annual audit, a further audit should be required at the expiration of three months after the land agent commenced business, the report to be submitted within a further two months, with provision for the supervising authority to waive the requirement.

(Paragraph 62 above).

37. That the supervising authority should be given power to prescribe the minimum steps to be followed by all auditors in conducting an audit of land agents' accounts.

(Paragraph 64 above).

38. That an auditor should be required to disclose to the supervising authority any close relationship by blood or marriage he may have with a land agent whose accounts he is auditing or any business dealings he may have with or through such land agent existing or occurring at any time during his appointment as auditor, and the authority should have power, if it thinks fit, to disqualify that auditor from acting in that particular case.

(Paragraphs 65-66 above).

39. That the supervising authority should have power to cancel or suspend the right of an auditor to conduct land agent audits.

(Paragraph 67 above).

40. That the Supreme Court should have power to make an order appointing a receiver or manager to carry on a land agent's business, in addition to its present power to order a restraint upon trust account dealings.

(Paragraph 68 above).

41. That the grounds for claims against the Fidelity Guarantee Fund should be extended to include any loss of property arising out of the criminal or fraudulent conduct of the licensee, or the servant, agent, director or officer of the licensee.

(Paragraph 69 above).

42. That licensed land agents should be required to invest a specified portion of their trust accounts and that the income therefrom be paid into the Fidelity Guarantee Fund. In the event of the Fund requiring additional revenue, this should be made up by contributions from licensees.

(Paragraph 71 above).

43. That land auctions should only be held under the control of licensed land agents. The person actually conducting the auction should be a licensed auctioneer, although he need not also be a licensed land agent.

(Paragraph 73 above).

44. That only licensed land agents should be permitted to operate as business agents, the one license covering both activities.

That a transitional period of three years should be provided before this requirement takes effect, with credit to be given for practical experience to any unlicensed person who has acted as a business broker prior to his application for a land agent's license.

(Paragraph 74 above)

45. That it be an offence for any person to act or hold himself out as acting as a land agent in Western Australia in respect of any land irrespective of where the land is situated, if he is not licensed under the Western Australian Act.

(Paragraph 76 above).

## **B. DEVELOPERS**

80. The questions arising out of paragraphs 91 to 94 of the working paper with respect to developers are -

- (a) should all sales of land by developers be made through licensed land agents?  
This was the subject of an earlier working paper (see paragraph 3 above).
- (b) should salesmen employed by developers be registered and be subject to the control of the supervising authority?
- (c) should statutory controls over developers and their salesmen be enacted in specific areas of their activities only?

81. R.E.I.W.A. originally proposed that all sales of land by developers should be made through licensed land agents (see paragraph 80(a) above). However a number of the commentators on both working papers, including the Housing Industry Association (W.A. Division), the Master Builders' Association of W.A., the Developers Institute of Australia, the Urban Development Institute of Australia and the Law Society of W.A., were strongly opposed to the proposal.

The Commission does not recommend the adoption of this proposal.

82. A number of commentators, including the Urban Development Institute of Australia, the Land Agents Supervisory Committee and the Law Society, considered that land salesmen employed by developers should be registered (see paragraph 80(b) above). The Law Society suggested that it may be desirable to go further and control developers in a similar manner to that applying in New South Wales. Such controls would prohibit developers from employing unregistered land salesmen and certain other disqualified persons, and would require them to publish their name and place of business in all advertisements, to have a registered place of business and to keep a record of their transactions.

In an extract from the Law Society's original submission to the Commission, it was said -

“A land salesman (whether an employee of a developer or not) generally works on some element of commission, and his very strong motivation is to make a sale. The interests of the parties in what is to them, so vital and important a transaction, may not always be uppermost in his mind.”

“On these general grounds, we think that all land salesmen engaged in the business of selling land should be subject to annual licensing control. To obtain a license, such persons should only have to show that they are of good character, but any breach of the legislation relating to them would prejudice the likelihood of renewal of the licenses. Broadly, the effect would be to extend to the employees of developers the present "land salesman" provisions of the Act”.

Only one commentator, the Bond Corporation, expressly opposed registration of developers' land salesmen, claiming that this was not practical and that as developers were responsible for their salesmen, the protection to purchasers flowing from the *Sale of Land Act, 1970*, sufficiently covered the situation.

83. The Commission agrees with the views of the Law Society and recommends legislation controlling developers in a similar manner to that applying in New South Wales, including the requirement that all land salesmen employed by developers be registered. However, the Commission suggests that the requirements for developers' advertisements should be the same as those recommended for land agents (see paragraph 41 above), and that developers should be prohibited from employing land salesmen already employed by other land agents or developers. (see paragraph 38 above and see Recommendation No. 46).

84. The proposal that developers should give to intending purchasers of land a signed statement as to proposed finance, in a similar manner to that recommended for land agents (see paragraphs 49 & 50 above) was supported by all who specifically commented on the matter, including the Urban Development Institute of Australia. However two commentators expressed the view that no further legislation was necessary with respect to developers.

The Commission considers that the proposed requirement would be useful and in any event suggests that there should be uniformity in this area in the practice of land sales both by land agents and developers. (see Recommendation 47).

85. **SUMMARY OF RECOMMENDATIONS WITH RESPECT TO DEVELOPERS**

46. That developers -

- (a) be prohibited from employing unregistered land salesmen, or land salesmen employed by another land agent or developer, or persons whose land agents' licenses have been cancelled or suspended;
- (b) be required to include in all their advertisements sufficient details to identify the developer concerned, in the same manner as has been recommended for land agents.

(see paragraph 41 above);

- (c) be required to register with the supervising authority a place of business in Western Australia;
- (d) be required to keep a record of all land transactions in which they have been involved.

All land salesmen employed by developers should be registered and be subject to the same controls as has been recommended for land salesmen employed by land agents (see paragraph 31 above).

47. That developers be required to give to intending purchasers of land a signed statement as to the proposed finance, in the same manner as has been recommended for land agents (see paragraph 49 above).

## C. SETTLEMENT AGENTS

### COMMENTS RECEIVED

86. Twenty of the commentators on the working paper referred to settlement agents. Of these, only the Law Society was categorically against any statutory recognition or de facto acceptance of settlement agents. The others seemed to accept their continued existence. Seven land agents, a developer and R.E.I.W.A. said simply that they should be licensed. The West Australian Real Estate Settlement Association, the Associated Banks in Western Australia, the Police Department, the Institute of Legal Executives, and the Land Agents Supervisory Committee went further and suggested the sort of controls which should be introduced for the protection of the public. These included a supervisory body, trust accounts, adequate audit provisions, a guarantee fund, some form of qualifying examination and a period of training.

87. The Law Society's objections were based on the following arguments -

- (a) **Contract:** Contracts for sale of land, in the form of an offer and acceptance on a printed form are usually completed by persons who are not qualified as legal practitioners. In the course of a settlement, questions of law arise. Settlement agents are not qualified either to recognise these problems when they arise, or to deal with them if recognised. Legal problems cannot be segregated from non-legal problems. It is unrealistic to assume that settlement agents always refer legal problems to legal practitioners, because of -
  - (i) the possibility of a failure to recognise such problems;
  - (ii) the possibility of a reference causing delay in the settlement;  
and
  - (iii) the additional expense of legal practitioners' fees.

On the other hand, where legal practitioners act on settlements, the normal legal advice arising out of the settlements are included in the scale of fees of legal practitioners. Additional charges are made by legal practitioners only when a major dispute arises between the parties.

- (b) **Title:** The assurance of a good and valid title to the property purchased which will transfer exactly what the purchaser contracted to buy and the vendor to



sell, involves the legal assessment of all the facts revealed by the title search and the terms of the contract of sale. It involves the need to -

- (i) interpret the terms of the contract of sale;
- (ii) ascertain the capacity of the vendor to sell - a for example where he is an executor, or is holding under a contract of sale, or is acting under a power of attorney, or as a mortgagee, etc.;
- (iii) evaluate the effect of encumbrances or caveats on the title, to advise as to whether and how they should be removed, and to appraise the effectiveness of documents purporting to evidence their removal;
- (iv) solve many other legal problems. Some of these are listed in paragraph 109 of the working paper.

Settlement agents are not qualified to give purchasers advice as to such matters.

- (c) **Conflict of interest:** Although settlement agents generally consider themselves to be responsible to land agents (who are generally the vendor's agents) and deal with matters from that point of view, they frequently purport to act for both vendor and purchaser, and claim a fee from each of them. However there may be a conflict of interest between the vendor and purchaser. Legal practitioners would recognise such a conflict and would urge the parties to take independent legal advice. Settlement agents may not. South Australia had encountered difficulties with the performance of conveyancing and settlement work by land brokers, both in the standard of work carried out by them and in the problem of conflict of interest. The Society drew attention in this connection to the critical remarks of the Chief Justice of South Australia and of the Hon. Mr. Justice Zelling in recent cases arising out of land transactions (*Hines v. Taylor* (unreported) 9 November 1972 and *Ellul and Ellul v. Oakes* (1972) 3 S.A.S.R. 377).
- (d) **Standard of care:** If a land transaction is badly handled by a legal practitioner, and a party suffers a loss as the result, that party can bring an action for negligence against the legal practitioner and obtain damages by proving that

there was such a want of skill and care from the latter as to amount to a breach of contract. The court assesses the want of skill in the light of the qualifications which legal practitioners hold themselves out as having. If settlement agents were to be recognised by statute, any action for negligence against them would have to be looked at in the light of the amount of skill (substantially below that possessed by legal practitioners) that they possess. This would have the undesirable result of creating two standards of skill in actions for negligence where land transactions are concerned.

The Law Society concluded that, in the light of these considerations, settlement agents should neither be licensed nor allowed to continue doing what it considers is essentially legal practitioners' work.

88. The above comments of the Law Society dealt only with settlement agents. The Commission subsequently asked the Society for its views on the wider issue of how far its suggestions should apply to land agents, banks, and other institutions doing settlement work. To this the Society replied that in its view the *Legal Practitioners Act* should be amended to clarify and ensure that no person other than a certificated legal practitioner should act on behalf of another person in relation to the completion of an executed contract or other transaction relating to or affecting real estate.

89. The Commission made enquiries as to the role of the Queensland Public Curator, who has for many years undertaken general conveyancing work for the public. The present Public Curator, Mr. McAlpine, advised the Commission that his office did a substantial proportion of the conveyancing work. There are Deputy Public Curators in Rockhampton and Townsville and full time managers in other major centres and all work is done by or under the supervision of legally qualified officers. A similar but more limited scheme has recently been adopted in the Australian Capital Territory.

## **DISCUSSION**

### *Introduction*

90. A substantial proportion of vendors and purchasers of land avail themselves of the services of settlement agents. Land agents and others have expressed satisfaction to the

Commission with the standard of these services, and no person has complained to the Commission that he has not obtained a good title or that he has suffered loss due to the fault of a settlement agent.

Some of this popularity possibly arises from the belief that settlement agents give the same services as legal practitioners and charge less. Settlement agents are, of course, neither legally qualified nor authorised (subject to limitations as to which see paragraph 97 below) to provide legal services, and the scale of fees used by the group of settlement agents who do most of the business in this State is only marginally less than the scale applicable to legal practitioners. It should also be borne in mind that although no person has as yet complained to the Commission, this does not necessarily mean that in fact good title has always passed. Defects in title may remain undiscovered for years.

### **Should settlement agents be recognised and controlled by statute?**

91. Settlement agents arrange and attend on settlements after offer and acceptance forms have been completed and signed, and in some cases effect registration. The area of their activities is not precisely laid down but they are doing work which previously would have been performed in the main by land agents or legal practitioners. The steps taken by a settlement agent in a typical transaction are outlined in paragraph 101 of the working paper.

92. In so far as agents are doing work which would otherwise be done by land agents, the main matters of concern are:

- (a) that settlement agents handle large sums of money on behalf of others but are subject to no statutory control; and
- (b) that their charges add to the costs of a transaction (see paragraph 98-103 inclusive below).

In so far as they perform tasks of a legal nature, involving the preparation of legal documents or the giving of legal advice, these tasks should be performed by legal practitioners.

93. If settlement agent are to be controlled by statute, as contemplated by most of the commentators in the working paper (see paragraph 86 above) the statute would need to:

- (a) ensure financial protection for the public by providing for a fidelity guarantee fund, the maintenance of trust accounts and compulsory audits of such accounts;
- (b) provide for a system of licensing, possibly with prescribed qualifications: Several commentators have suggested a qualifying examination and a period of training; and
- (c) provide for the fixing of the fee that could be charged by them. This is dealt with in paragraphs 98-103 inclusive below.

94. The Law Society is opposed to statutory recognition (see paragraph 87 above), and except for South Australia, no other State permits the completion of land transactions on behalf of others otherwise than by or under the supervision of legally qualified persons.

95. The Commission has had considerable difficulty in trying to reconcile the view of the Law Society with the other comments received and is divided on the issue of whether settlement agents should be recognised and controlled by statute.

96. (1) Messrs. Freeman and Rowland, who constitute the majority on this issue, are of the view that any legislation controlling and recognising settlement agents would have the effect of creating a para-legal profession. They believe that, for the reasons advanced by the Law Society (see paragraph 87 above), in the long run the enactment of such legislation would be contrary to the public interest.

(2) They acknowledge that to give effect to their views it will probably be at least necessary -

- (a) to amend s.77 of the *Legal Practitioners Act* by deleting from the proviso the provision which enables any person to draw or prepare a transfer under the *Transfer of Land Act* (see paragraph 97 (1) (a) below); and

- (b) to provide that every dealing lodged for registration at the Titles Office must either be certified as being correct by the party claiming under or in respect of such dealing or by his solicitor (as is the case in N.S.W., Queensland, Tasmania and the Australian Capital Territory; New Zealand also has substantially the same provision). They consider that this would limit banks to the completion of their own transactions and would stop land agents and settlement agents acting in settlements on behalf of others.

(3) Mr. Rowland and Mr. Freeman wish to make clear that they are both lawyers (as is Professor Edwards, the other member of the Commission) and that Mr. Rowland is currently the President of the Law Society. Mr. Rowland and Mr. Freeman nevertheless believe that the public interest would be better served by limiting settlement work to legal practitioners.

(4) In the event of the Government not accepting the recommendation of the majority of the Commission on this issue, the majority would adopt the proposals put forward by Professor Edwards in paragraph 97-104 of this report.

Mr. Freeman would, however, express a reservation about the proposal put forward by Professor Edwards in paragraph 97 (3) of this report, which would prohibit more than one settlement agent from being employed in any one settlement. In practice many settlements require a discharge of an existing mortgage and the registration of a new mortgage and several parties may be involved. In Mr. Freeman's view, conflicts of interest may arise in such cases. Where one or more of the parties are not separately represented, such conflicts may go unrecognised, or if recognised, be inadequately dealt with. (See also paragraph 87(c) above). Mr. Freeman also considers that, notwithstanding any legal restrictions that might be imposed on settlement agents, there would be a tendency, which would be difficult to prevent, for settlement agents to give legal advice to one or other of the parties.

97. (1) In Professor Edwards' view, it is too late now to change a position that is well-established in Western Australia whereby persons other than legal practitioners are permitted, to a limited degree, to complete land transactions. The position is:

- (a) that the *Legal Practitioners Act*, although it prohibits anyone other than a certificated legal practitioner from drawing or preparing "any deed, instrument or writing relating to or in any manner dealing with or affecting real or personal estate", excludes from this prohibition "any person drawing or preparing any transfer under the *Transfer of Land Act*" (s.77);
- (b) that for many years some land agents and some banks, have prepared transfers on behalf of vendors and purchasers, and have arranged and attended on settlements; and
- (c) that for several years now, settlement agents have done the same.

(2) Professor Edwards concedes that there is some risk that statutory recognition would tend to establish settlement agents as a profession similar to that of land brokers in South Australia (see paragraph 106 of the working paper) , and he is strongly of the view that every effort should be made in the statute to ensure that there is no extension of the area in which legal work is at present permitted to be done by persons other than legal practitioners. The statute controlling and recognising settlement agents should therefore ensure that they are restricted to the clerical and routine aspects of settlements and that they do not perform legal work or act as legal advisers.

(3) To ensure that settlement agents do not engage in legal work, the statute should, in addition to dealing with the controls referred to in paragraph 93 above, prohibit more than one settlement agent from being employed in any one settlement. But this would in no way prevent any party from looking after his own interests or from engaging a legal practitioner to do so on his behalf. The settlement agent would be doing clerical and routine work which would be of common interest to all the parties to the settlement, regardless of who pays his fees.

The services which the settlement agent may properly perform are listed in Appendix II. It is to be noted from the Appendix that the settlement agent is limited to the preparation of simple transfers. This may already be the position under Section 77 of the *Legal Practitioners Act*, but the matter is not free from doubt. A settlement agent should not be permitted to prepare complicated transfers, involving the creation, granting or reservation of any encumbrances,

easements, reservations or covenants, for example, restrictive covenants as to building conditions and height restrictions, and easements granting water rights and rights of way. These are matters which should be handled by or under the supervision of legal practitioners.

There should be no question of conflict of interest because the settlement agent would not be looking after the separate interests of any of the parties. If there are complications which prevent the settlement being completed, the settlement agent would merely report to all the parties, each of whom would be free to seek whatever advice and take whatever action he thought fit.

### **Settlement Agents' Fees**

98. If settlement agents are to be recognised by statute, the question of the fee they should be allowed to charge arises.

99. Before they entered the field, the work they now do was done by legal practitioners, banks and land agents. Legal practitioners of course charge for their services. Some of the banks also charge a fee when they arrange the settlement but this fee is small. As far as the Commission is aware, land agents have never made any separate charge for arranging settlements. Any charge for this service has been included as part of the commission on sale. The few land agents who still arrange settlements continue to do so without adding a separate charge for their service.

100. In those cases in which land agents would have previously arranged settlements themselves, but who now refer the parties to settlement agents, the settlement agents fees add to the costs of the transactions although the parties are not getting any additional services or protection.

Similar additional costs are, of course, incurred if settlements which would have been handled by land agents are now set to legal practitioners. But in such cases the parties are getting the extra protection comprised in the legal service for which they are paying.

101. One particular element arising out of the conduct of land settlements is the adjustment of rate and taxes. Although the meaning of s.15 of the *Land Agents Act* is not clear, it seems

to be accepted by most land agents that the section imposes on them the responsibility for the adjustment in all cases. The Commission has been informed by R.E.I.W.A. that the costs for such adjustment are included in their scale of commission on sale. The Commission is not aware of any cases where land agents make an additional charge for adjusting rates and taxes. Settlement agents in fact adjust rates and taxes and they incorporate in their fee some charge for this service, whether or not it is expressly detailed in their account. Consequently, where a sale has been effected by a land agent and a settlement agent is engaged to arrange the settlement, the client will in effect be charged twice for the adjustment. This duplication of charges may also exist in some cases where a legal practitioner undertakes the adjustment, but the Commission has been informed that the practice of at least some legal practitioners is to charge the land agent (and not the vendor or purchaser) for this service.

102. Any duplication of costs for the adjusting of rates and taxes would be avoided if the Commission's recommendation in paragraph 47 above is adopted.

103. The fee to be paid to settlement agents for the clerical and routine services in a settlement (that is, the services listed in Appendix II and see paragraph 97(2) and (3) above) should be fixed on the basis of the nature of the duties involved, bearing in mind that these services have been and to a limited extent still are performed for no additional fee by land agents, and for a nominal fee by some banks. The fee should not, as it does at present, vary with the purchase price of the property, since the duties and responsibilities would be the same irrespective of the consideration. Nor should it include any element for advice or responsibility in relation to title or the assurance of title, as the settlement agent should neither be giving advice nor assuring title.

Banks and land agents have for many years been engaged in arranging settlements, and are as well qualified to give the same routine service as settlement agents. Banks and land agents should therefore also be authorised to charge for this service. As has been pointed out some banks already do so (see paragraph 99 above). However the statutory controls suggested for settlement agents in the report would not apply to banks or land agents because the land agents are already subject to statutory control under the *Land Agents Act* and there would not seem to be a need for such statutory control over banks.



### **Supervising authority**

104. If settlement agents are to be recognised by statute it would be appropriate to include the suggested statutory controls in the statute dealing with land agents contemplated by this report. Settlement agents would then come under the control of the proposed supervising authority. This authority would also be an appropriate body to prescribe their fees.

Mr B.W. Rowland

*CHAIRMAN*

Prof. E.J. Edwards

*MEMBER*

Mr. E.G. Freeman

*MEMBER*

11 January 1974

# **APPENDIX I**

## **PART I**

Copies of the working paper were sent to the -

Associated Banks in W.A.

Australian Society of Accountants (W.A.)

Chief Justice and Judges of the Supreme Court

Citizens Advice Bureau of W.A.

Commonwealth Minister for Housing

Commissioner of Police

Commissioner of Titles

Estate Agents Association of Australia

Housing Industry Association

Institute of Chartered Accountants in Australia (W.A.)

Institute of Chartered Secretaries Administrators (W.A. Branch)

Institute of Legal Executives (W.A.) Inc.

Judges of the District Court

Land Agents Supervisory Committee

Law School of the University of W.A.

Law Society of W.A.

Magistrates' Institute

Master Builders Association of W.A.

Real Estate Institute of W.A.

Registrar of Companies

Solicitor General

State Taxation Department

Technical Education Division of the Education Department

Under Secretary for Law

Urban Development Institute of Australia (W.A. Division)

W.A. Permanent Building Societies Association

W.A. Real Estate Settlement Association

Other law reform commissions and committees

A notice was placed in *The West Australian* in response to which 193 persons requested copies of the working paper.

## **APPENDIX I**

### **PART II**

In response to the Commission's invitation and to advertisements in *The West Australian*, comments were received from -

Allen Estate Agency Pty. Ltd.

Associated Banks in W.A.

Australian Society of Accountants (W.A.)

Bond Corporation

Brunton, E.W.

City Building Society

Commonwealth Institute of Valuers (Inc.) (W.A. Division)

Companies Registration Office

Conrad, R.J. & Associates (land agents)

Dalgety Australia Limited

Day, R.S.

Des Parr Pty. Ltd. (land agents)

Documentary Services (settlement agency)

Elder Smith Goldsborough Mort Limited

Graham's Estate Agency

Grant & Associates (land agents)

Institute of Chartered Accountants in Australia (W.A.)

Institute of Chartered Secretaries & Administrators (W.A. Branch)

Institute of Legal Executives (W.A.) (Inc.)

Johnston, F.S. & Associates (land agents)

Land Agents Supervisory Committee of W.A.

Law Society of W.A.

Lee, John & Associates (land agents)

Lindsay Developments Pty. Ltd.

Linton Investments Pty. Ltd.

Macfarlane, T. (chairman, Land Agents Supervisory Committee)

McCusker, Lawrence & Harmer (barristers & solicitors)

Moodys Real Estate Agency

Marris, John & Co. (land agents)

Mortgage Brokers Association of W.A.

Perpetual Executors Trustees and Agency Company (W.A.) Ltd.

Perth Technical College (Dept. of Law, Business and Commercial Studies)

Police Department

Reading, E.

Real Estate Institute of Western Australia

Realty Promotions (land agents)

Richardson Bell & Co. (land agents)

Rockingham Estate Agency

Sackville, Professor R. (University of New South Wales)

Urban Development Institute of Australia (W.A. Division)

Walter, Hugh & Co. (land agents)

W.A. Real Estate Settlement Association

West Australian Trustee Executor and Agency Company Limited

Westralian Farmers Co-operative Limited

Whittaker, J.P.

## APPENDIX II

List of duties for settlement agents referred to in paragraph 97(3) above.

Searching at the Land Titles Office and at other departments and authorities.

Drawing and preparing a simple transfer\* under the *Transfer of Land Act 1893* and arranging its execution.

Preparing a settlement statement.

Arranging the stamping of any documents in the transaction.

Arranging and attending on settlement, including receiving and disbursing money.

Lodging of documents at the Land Titles Office for registration.

Uplifting of documents from the Land Titles Office.

Reporting to any party to the transaction on the stage proceedings have reached.

In performing any of the above duties no person other than a legal practitioner may, for reward, give any legal advice to a party to the transaction.

\*The term "simple transfer" in this context means any transfer which does not itself create, grant or reserve any encumbrances, easements, reservations or covenants.

Note: No provision has been made in the above list for the adjustment of rates and taxes and notification of the transaction to the relevant authorities, as this is a function which should be performed by the land agent at his expense (see paragraph 47 of the report).