

### Terms of Reference

In 1972 the Committee was asked to review the *Land Agents Act 1921 (WA)* and report on amendments required to effectively exercise control over land transactions and whether provisions of the Act should be extended to cover other sales by agents or developers. In particular, the Committee was asked to consider:

- (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 salespeople employed by developers; and
- (g) the need for control over the activities of land settlement agencies.

### Background of Reference

The reference arose from a desire, expressed by peak bodies involved in the real estate profession as well as legal practitioners, that the activities of people working within the real estate industry be regulated by statute.<sup>1</sup> The project was given priority by the Attorney-General and was transferred to the Commission upon its inception in 1973.<sup>2</sup>

### Nature and Extent of Consultation

The Commission issued a working paper in June 1973 which separately discussed the regulation of land agents, developers and settlement agents. The paper was widely distributed throughout the real estate and legal professions and public submissions were sought through newspaper advertisements. The paper attracted a large number of responses from a variety of sources including legal practitioners, real estate professionals, commercial and public interest groups and private individuals. The Commission submitted its final report in January 1974.<sup>3</sup>

### Recommendations

The principal recommendations of the Commission included:

- That the Land Agents Supervisory Committee of Western Australia be replaced by a more broadly based body with wider powers of licensing and discipline.
- That the conditions under which a company or firm can obtain a land agent's license be tightened.
- That the supervising authority be empowered to prescribe rates of commission.
- That the grounds for claims against the Fidelity Guarantee Fund be extended.
- That a land agent's auditor be required to report directly to the supervising authority and any change of auditor to require approval of that authority.
- That the supervising authority be empowered to cancel or suspend the right of an auditor to conduct land agent audits;

<sup>1</sup> The Committee had already discussed some proposals regarding the regulation of licensed land agents in an earlier report; see Law Reform Committee of Western Australia, Working Paper, *Protection for Purchasers of Home Units and Sales of Land Through Land Agents*, Project No 1(Parts II & III) (1972).

<sup>2</sup> The Law Reform Committee of Western Australia was formally reconstituted as a Commission on 19 January 1973.

<sup>3</sup> Law Reform Commission of Western Australia, *Land Agents Act*, Project No 37 (1974).

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- That land auctions be held only under the control of licensed land agents.
- That only licensed land agents be permitted to operate as business agents.
- That developers be controlled by statute in a similar manner to that applying in New South Wales.

The report also discussed whether the activities of settlement agents should be prohibited or controlled. The majority of the Commission recommended that the completion of land transactions on behalf of others should only be performed by or under the supervision of legal practitioners. The minority view was that settlement agents should be permitted to continue, but that their activities should be firmly regulated. The Commission was unanimous on the point that if settlement agents were to continue to operate, their activities should be controlled by statute. It was recommended that such a statute provide for a fidelity guarantee fund, the maintenance of trust accounts and compulsory audit, a licensing system and prescribed fees.

A comprehensive discussion of the issues and the Commission's recommendations may be found in its final report at paragraphs 8–79 (land agents), 80–85 (developers) and 86–104 (settlement agents).

### Legislative or Other Action Undertaken

The *Real Estate and Business Agents Act 1978* (WA) gave effect to the majority of the Commission's recommendations.<sup>4</sup>

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<sup>4</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 20 April 1978, 999-1002 (Mr DH O'Neil, Deputy Premier).