LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Inquiry into the management of strata properties)

Members:

MS C BARRY (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MR S RATTENBURY

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 2 JULY 2025

Secretary to the committee:
Ms K de Kleuver (Ph: 6207 0524)

By authority of the Legislative Assembly for the Australian Capital Territory

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Amended 20 May 2013

The committee met at 11 am.

AGOSTINO, MS EMMA, Senior Policy Adviser, ACTCOSS
BUCHANAN, MR GEOFFREY, Policy Advocacy and Business Development Manager, Care Inc
BOWLES, DR DEVIN, Chief Executive Officer, ACTCOSS
MAYES, MS LEASA, Director, Counselling Team, Care Inc
MUKAMURI, MR TAWANDA, Principal Solicitor, Care Consumer Law
STEWART, MS LODY, Financial Counselling Knowledge Management and Advocacy Lead, Financial Counselling Australia

THE CHAIR: Good morning, and welcome to this public hearing of the Standing Committee on Legal Affairs inquiry into the management of strata properties. The committee will today hear from ACTCOSS, Care, the Australian Electric Vehicle Association, legal experts and strata industry experts.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contributions they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who are in attendance at today's event.

This hearing is a legal proceeding of the Assembly and has the same standing as the proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly.

The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words, "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome witnesses from ACTCOSS, Care and Financial Counselling Australia. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

If you wish to make an opening statement, please keep it to one to two minutes, to allow us to get through the questions that we have for you today. Does anyone wish to make an opening statement?

Mr Mukamuri: I have read the privilege statement, and I understand and agree to it. Thank you for the opportunity to address the Standing Committee on Legal Affairs regarding the management of strata properties in the ACT.

Care's submission highlights critical concerns impacting unit owners in the ACT, particularly those experiencing financial hardship. Firstly, affordability is a pressing

issue, and an unanticipated increase in contributions can lead to financial stress, especially for low income earners. We recommend limiting annual contribution increases and providing financial assistance through rebates and relief funds.

Secondly, the lack of financial hardship protections under the Unit Titles (Management) Act is alarming. Unlike other industries, unit owners have no access to flexible payment plans, interest waivers or fee relief. This leaves them vulnerable to aggressive debt recovery practices, which can escalate into forced bankruptcies and loss of housing. We argue for the inclusion of financial hardship provisions and fair processes before debt recovery begins.

Thirdly, non-standardised contribution notices create confusion and hinder transparency. Standardised templates, plain English communication and timely reminders are essential to ensure clarity and procedural fairness.

Fourthly, dispute resolution mechanisms are inadequate. The reliance on costly legal processes deters unit owners from seeking resolution. We propose accessible internal and external dispute resolution options, including a potential strata commissioner to mediate disputes.

Finally, unit owners lack access to clear, up-to-date information about their rights and responsibilities. We recommend providing comprehensive guides, workshops and a free legal service to empower and support owners. These reforms are vital to creating a fair, equitable and supportive strata system in the ACT.

Care thanks the committee for inviting Lody Stewart, from Financial Counselling Australia, to join this panel with us today. Lody has helped to engage significant, leading strata reform in New South Wales, which provides an important example of the process and content of legislative reform that provides hardship protections for unit owners.

Lody has also undertaken analysis of strata-related bankruptcy filings, which we have provided to the committee. This panel has found that, over the last financial year, to 31 May 2025, half of AC matters filed in bankruptcy lists of the Federal Court involved strata filings. Unit owners are being aggressively pursued with legal action, including forced bankruptcy proceedings, over relatively small arrears, and are losing their homes.

A primary focus of the legislative reform must ensure unit owners have access to hardship protections, dispute resolution processes, and information and support services to avoid such severe and unnecessary outcomes. I will now hand over to Care's Director of Financial Counselling, Leasa Mayes.

Ms Mayes: I would like to share some information about a typical ACAT order for strata levies that we see. I have rounded the figures. The respondent is to pay the applicant the sum of $3,500. This is made up of $2,500 for levies, so $1,000 has been added at ACAT for additional fees: $80 interest; $172 for the tribunal filing fee; expenses under section 31 of the Unit Titles (Management) Act of $528; schedule of expenses as allowed by the tribunal; and $220 appearance fee.

Generally, at ACAT you are not able to recover your fees. At ACAT, it appears that there is an exception for strata levies. I also want to make the point that a fairly low amount of debt of $2½ thousand can increase substantially through one hearing.

I want to make a side observation that there is a debt collection company that specialises in strata debt collection. Their fee structure is available on their website. I had a look this morning and it states that their fees for ACAT hearings are $568. But on their website the filing fee is included in the $568. At ACAT, it is a separate, additional cost. The $220 appearance fee does not appear at all on the fee structure for ACAT matters. It does, however, appear for bankruptcy hearings. But it has been added to the ACAT fees that are being accepted.

Are the fees correct? It is a bit hard to know, because there is nowhere somebody can go and get legal advice. They cannot get advice about whether they should defend it. We do know of people querying the charges at ACAT, and they get a fairly vague response. They really do not know if that is correct or not, which is quite concerning to us.

We see people with a number of ACAT orders. Once the levies reach $2,500, an ACAT application is made. The additional fees are added; then another $1,000 is added. It can actually accumulate quite quickly. You just need three of those matters for the amount to reach $10,000, which is the minimum amount for bankruptcy proceedings to commence. The minimum is $10,000. Once it reaches that, those proceedings can commence.

We also see that, when an owner tries to make a payment, the payment is applied to the recent fees, not the ACAT order fees. Even though they are really trying to do something about it, it is not helping. It is not helping them to save their home. It is really hard. There is no specialist service that they can go to.

Negotiating on levies is probably one of the most challenging aspects of our job, because there are no hardship provisions. If you make an offer and it is rejected, there is nowhere for you to go. Even when people are trying to do something about it, they can potentially become bankrupt for relatively low amounts of money.

THE CHAIR: Thank you. Does anyone else have an opening statement?

Ms Agostino: Yes, I have an opening statement. Thank you for the opportunity to appear today. Both the ACT and federal governments have invested significantly in building more social and affordable housing. ACTCOSS supports this growth, while recognising further investment is needed. However, this is just one part of the solution to the persistent housing crisis.

Strata-managed properties must be a part of the solution, providing viable options outside the social and affordable housing system. They should offer older Canberrans a feasible downsizing option, enable single parents to enter the market and provide accessible housing for people with disabilities, all in well-connected locations that are otherwise financially out of reach for those on low or fixed incomes. Importantly, they

should also provide secure, affordable rental options for low income renters.

Energy equity is also critical. Currently, strata arrangements can act as a barrier, rather than a catalyst, for energy upgrades. Due to complex and unclear approval pathways, many apartment residents, both owners and renters, are locked out of cost-saving measures, like solar panels, electrification or efficient window coverings. This leaves them behind in the transition to net zero emissions and entrenches energy inequity.

The ACT is leading the country in energy transition and hopes to continue as a leader. At this point strata-managed properties are perhaps the biggest challenge to getting the transition right. This will increase as government policy increases the proportion of multi-dwelling housing. Incentives need to be better aligned and the right levers created in order for strata-managed properties to move from being a hindrance to a help, enabling greater social equity.

Right now, strata-managed properties are too often falling short of these essential roles. Ensuring they are affordable, inclusive and well governed is vital to reduce housing stress and expand home ownership and rental security for low income and disadvantaged groups. They also need to be future focused to achieve energy equity and support a just transition that benefits all residents.

THE CHAIR: Thank you, Emma. We will move to questions. Thank you very much, Leasa, for your opening statement. You mentioned, and Tawanda also mentioned, in your statement that it appears ACAT does add considerable cost to existing debt. There has been mention of a strata commissioner. How do you see the role of a strata commissioner in resolving some of that dispute resolution and what are the functions that you would like to see a strata commissioner perform?

Ms Mayes: I believe that most of the matters we see at Care could be resolved before they get to ACAT. There are simple things like requiring hardship to be assessed before it goes to ACAT. There are measures to see whether the person can pay it by a payment plan. If that was required, a lot of these matters would not need to go to ACAT. Perhaps the commissioner could mediate some of those matters. For instance, if a payment plan is rejected, perhaps there could be a role to try and see whether that was fair or not, and for the owner to put their case forward on that.

THE CHAIR: In your experience with the clientele that you see, one of the things that was mentioned this morning was that it was really difficult to engage with strata managers to get that dispute resolution process going. How have you found the process? Has it been your experience that it has been difficult to get that resolution regarding strata management?

Ms Mayes: Yes, it is. It really depends on the strata that you are in. Some of the stratas advertise payment plans, and they make it as easy as possible by putting their own structure in. But some do not. Some appear to be using ACAT as a debt collection procedure without trying to resolve it first; or they are saying that you have to pay it in full, and there is no other option. They say, "If you don't pay it in full, we're going to ACAT."

Often you will make an offer. We might do a budget with a person, and they might have an amount that they can afford. We put that to the strata, and they say, "No, it has to be paid in full." It is very hard to know what to do. There is no dispute resolution that we can go to, to say, "We think that decision was unfair, and we think this person can pay it." It is quite difficult. We just have to keep contacting the strata and asking them again and again, or maybe increasing the offer, possibly putting more stress on the person. We can look at whether we can find other funds to go to strata. We are then prioritising strata, possibly, over some of their other debts, which could be their home loan or rates.

Mr Mukamuri: One of the recommendations that we have given is the establishment of the internal dispute resolution mechanism. What we see in other industries, like the financial service industry, is that there is an internal dispute resolution system, where the disputes have to be resolved internally. There is a timeframe for those disputes to be resolved before they go to the external dispute resolution mechanism. In the strata industry, there is no formal internal dispute resolution.

A good standard is the ASIC Regulatory Guide 271, which requires financial services to establish internal dispute resolution which is fair and independent, and we see that it sometimes works well in the finance industry. People can get good outcomes within the organisation before matters escalate to the court process.

THE CHAIR: Are you talking about establishing within the strata management agency a dispute resolution mechanism before you then go to a strata commissioner, before ACAT—three layers? How would that work? Where would that internal dispute resolution sit? Is it within strata or are you talking about a strata commissioner?

Mr Mukamuri: I am talking about within the strata. That internal dispute resolution allows a home point to try to resolve things with their strata before they go to external agents. That works with a complaints policy. For example, if it is in line with the ASIC RG 271, that lays out different standards in terms of the intent of dispute resolution. For example, what is a complaint? How should the complaint be resolved? What are the contents of the decision letter? That is a good practice that allows issues to be resolved before they escalate.

THE CHAIR: Are there any stratas that you have dealt with that have that dispute resolution? Are there any case examples of stratas that have internal dispute resolution here in the ACT? I think you mentioned that some stratas have a standardised payment plan option, and they display that on their website. How does that process work if someone does not fulfil their payment plan?

Ms Mayes: It is very informal. It is if the levies are increased, or after the meeting with the owners corporation; it is mentioned then. It is like saying, "Should we offer a payment arrangement offer?" It is not formalised in their structure. The owners want it, so the strata manager puts it forward. I have not seen a formal internal dispute resolution process.

Mr Mukamuri: Neither did I.

MR RATTENBURY: Thank you both for your submissions. You have raised really

important issues of equity that have not otherwise come up in the hearing, and I just wanted to acknowledge that the issues you have identified are incredibly important. I was very struck by the figures in the Care submission that 21 per cent of all forced bankruptcy proceedings in the territory were initiated by strata companies. That is a very extraordinary figure. I was struck by the fact that it compares to 10 per cent nationally. Do you have any insights as to why the ACT is so much higher proportionately? It might be Ms Stewart, I am not sure, for the national perspective.

Ms Stewart: I am happy to speak to that. From what we can tell, because there are very few safeguards or protections in the Unit Titles Act in the ACT, it basically leaves the door open for requests to enter into a payment arrangement to repay arrears up to individual strata schemes or strata managers. The default usually is the answer of, "No, we will not. You pay it all or we are going to take legal action."

Insights gained through the New South Wales experience is that the process of administrating payment arrangements is quite manual for a strata manager and so they are more likely to flick the matter to a legal firm to manage the debt recovery process. Legal firms are not incentivised to enter into a payment arrangement. Their incentive and their fees are based on legal action and charging for that process. So the pathway to more legal court enforcement is the preferred option, because there are no safeguards in the act. There is no requirement. Strata managers really do not want to spend their time manually administering a payment arrangement, and so that leads to very quick escalation through the court enforcement process.

As we have identified, in New South Wales there are 91,000 strata schemes and you have 91,000 approaches to hardship or payment arrears. The same goes in Victoria, where there are 120,000. Based on the most recent *Strata insights* report, I think there were 4,800 strata schemes in the ACT. But, proportionally, if you look at the bankruptcy statistics, you are eight times more likely in the ACT to be faced with forced bankruptcy proceedings than you are, say, in Victoria. That is really alarming and concerning. As I said, because you have this vacuum in the act where there are no safeguards and there are no requirements around payment arrangements. There is not even a requirement to issue a final notice before legal action commences; you have got 28 days to pay and if you do not pay within that timeframe, legal action can commence immediately afterwards.

MR RATTENBURY: Thank you. I noticed in your figures as well, there was quite a variation. You had for the 2021-22 financial year, 39 per cent of forced bankruptcy proceedings were strata filings. Do you have any insight as to the variance in those figures across the years?

Ms Stewart: From what I can tell, across the board, there was a big uptick in the 2-21-22 financial year because there were significant COVID protections in 2020 and 2021 and there was a temporary forced bankruptcy threshold of $20,000, which restricted a lot of forced bankruptcy proceedings if they did not meet that threshold. As soon as that threshold dropped, the proceedings increased.

MR RATTENBURY: I will go to the issue of renters. We have had a number of discussions around renters' status and support within the strata settings. Do either of

your organisations have any particular comments you want to make about renters in the strata environment?

Dr Bowles: We are conscious that renters are often several steps removed from decision-making. That is in an overall context where an increasing proportion of Australians are lifelong renters and see the property they are renting not as their home for a year, but, "This is home where I retire." I think that barrier is often enhanced because they need to go through either a property manager or an owner or both before they can talk to the strata manager.

There are a number of cases where a more direct approach would be useful. For instance, when a defect is causing inconvenience or a lack of safety, like a leak, and it is the strata's job to fix that leak, having a streamlined pathway so that the renter can go directly to the strata manager will ultimately be helpful for actioning that more quickly, which may mean that the repair is less expensive. But, from our perspective, it also has the really important outcome of increasing the renter's safety or amenity more quickly.

MR RATTENBURY: I particularly wanted to ask about public housing in strata. We will ask the government about this tomorrow, but certainly there seems to be a sense that Housing ACT are increasingly reluctant to participate in strata environments. I wonder if you both know of that and have any views on the appropriateness of public housing in the strata context. Certainly I have heard anecdotal reports of public housing tenants being perhaps discriminated against or singled out in a strata environment. Is that something that either organisation has information on?

Ms Stewart: No.

Dr Bowles: No.

MR RATTENBURY: No? Okay thank you.

THE CHAIR: Mr Emerson, do you wish to ask a question?

MR EMERSON: Would that be okay?

THE CHAIR: Members, are you okay with it?

MR RATTENBURY: Yes.

THE CHAIR: Excellent. Please proceed.

MR EMERSON: I wanted to ask about EV uptake and equity in that process. Obviously, more and more people are living under strata and are less and less likely that people on lower incomes are going to be in a standalone dwelling where they have power over their charging infrastructure. I want to test your understanding of the barriers to retrofitting existing multiunit buildings and requirements of new dwellings to have a certain number of EV charging stations. What are the barriers there? What could government do to address them?

Dr Bowles: I think there are a significant number of barriers that stem from the fact that there are a lot of different parties with different interests. On the one hand, you have a group of owners who, in general, want to increase the value of their investment and, if they live there, preserve neighbourly relations or, if they do not, be able to rent out their place for the highest return possible. These owners do not have a uniform set of interests in that, particularly, in some larger complexes, there will be a range of capacity to pay for upgrades. So some people are willing to pay $10,000, recognising that they are going to get a $20,000 return over the next however many years; other people will simply not have the money to hand.

At the same time, you have the government, I think rightly, progressing an energy transition and having a set of interests in that. At the same time, again, you have strata managers who have, I would say, often their own set of interests. They are working in businesses. Good on them. We live in a capitalist society and that is entirely reasonable. Typically, they are not incentivised to help owners make transformative investments like EV charging stations or, indeed, a number of other investments around the energy system, like batteries and solar or even better insulation. In fact, they are disincentivised to because their contract will see them make no more money, but it is potentially four times as much work.

One of the changes that could occur is, as we know, to have incentives and schemes by the government that are better tailored for that kind of upfront investment in strata-managed properties. But I think the government, in doing so, needs to acknowledge that the interests of strata managers may not align with the interests of homeowners, and that possibly there are some carrots and sticks—sticks potentially coming from a commissioner with attendant infrastructure and carrots being financial incentives specifically for strata management companies—to help make these transitions.

MR EMERSON: I understand that one of the barriers is the actual amount of electricity supplied to each of these buildings and that some of these requisite substation upgrades, capacity upgrades, can cost in the order of hundreds of thousands of dollars—and that is a big kind of a stick, I suppose. What would your view be on government playing a role? That is a charge to Evoenergy, which is half owned by the ACT government. Is that one of the levers that you were kind of referring to that government can pull to make this more viable?

Dr Bowles: I guess my first observation would be that there are big differences between buildings. There are a lot of strata-governed buildings that are relatively small and would require perhaps some upgrade, but perhaps not, and it is not huge. For others that do require significant upgrades, it is not entirely clear to me why an energy company that makes a return on the infrastructure should not be the one to make that investment. I hope that answered the question.

MR EMERSON: Yes; thank you.

MR WERNER-GIBBINGS: I have a question for ACTCOSS. Your submission is aligned with others that we have heard and listened to or read, and highlights that inadequate qualifications among strata managers can lead to costly mistakes and that

those mistakes particularly impact low-income and vulnerable owners and renters. Can you expand, please, for the committee on how these effects are happening in practice? What kind of consequences are you seeing?

Dr Bowles: I might venture an answer and Emma—

Ms Agostino: I can take that one. That would have come out of our members consultation. That one was largely coming from the perspective of seniors and saying that, with having inexperienced and not qualified enough EC members, they are dealing with much larger budgets. But also there was a concern that, without checks and balances on conflicts of interest, potentially they are favouring people where they may be financially or personally to gain, and then that gets passed on to owners in forms of higher fees. The other concern for EC members was that they might also be vulnerable to ACAT disputes, because it was not made clear their roles and responsibilities and that they might almost accidentally cross a boundary they did not realise existed. That came from a particular member.

THE CHAIR: Care, you mentioned in your submission and proposed standardising notice of contributions and reminder notices. Can you please explain what the benefit of that would be and what a standardised notice of contribution would look like or include—the sorts of things you are looking to see?

Mr Mukamuri: At the moment, really, with each strata in terms of sending contribution notices or any notices, there is no standard form document. Each strata has its own way of doing things. Obviously, with different people, some from non-English speaking backgrounds and some with not enough education to be able to understand some of the contents, it becomes a challenge for people to understand what they are supposed to be paying and the arrears and other requirements. What we recommend is a standard form across the strata industry which is simple so that people can understand their obligations.

Also, in terms of the notices, we have already noted that, once a contribution notice is sent, there are no further notices that are sent before legal action commences. If we can have contribution notice is sent, then may be another notice, an overdue notice or a warning could be sent before legal action is commenced. If all those documents can be standard to avoid confusion and for clarity and for people to understand what they are required to do would reduce disputes in terms of their obligations.

Mr Buchanan: I can maybe just add to that, and Lody might have some insights from New South Wales. My understanding is Victoria is an example that you can look to for standardised notices. In talking with clients who have had strata issues, I think the fact that they have gotten into hardship difficulties and they have tried to work out what they owe, how much and what it is for, the lack of any standard approach to providing that information to the unit owner has just worsened the situation and made it more difficult for them to engage and to know.

I think overall the big thing that came out of my conversations with those clients was the power imbalance and people end up just paying. That is also on the National Debt Helpline, which Care is a provider for in the ACT. The advice around strata levies is,

"Make this your priority because basically there is no other option for you and you have your financial kind of bankruptcy and your house at risk so the stakes are too high." It makes it a really problematic issue and a priority for reform, from our perspective. I do not know if Lody has anything else to add.

Ms Stewart: Very quickly, I would add that, apart from having a standardised template so that you have consistent information going out to all owners across the ACT, one of our big wins both in Victoria and New South Wales is a mandatory information statement that will accompany every levy notice in the state. Information on that information statement is prescribed and includes information about how to ask for a payment plan and free supports that are available, such as financial counselling and the National Debt Helpline, or where to go if you have a complaint or a dispute.

In the ACT, you currently have no standard, and so it could just be a piece of paper with the amount that is due, but no information apart from that. It does create a power imbalance. The power will sit with the person who has the information, being the strata manager, and not the owner. So they are not fully informed and the information is not transparent. That is why it is important to standardise and have, I guess, a best practice template.

THE CHAIR: Thank you very much, Lody, for that contribution, and I thank all of you for your meaningful contribution. Is there anything that you want to mention that we have not covered today—a burning issue, a pressing issue—that you think would be useful for the committee to hear.

Mr Mukamuri: Yes, unmet legal need. In the ACT, there is a requirement for an establishment of a strata legal service, because what we see at our ACAT duty lawyer service is that clients are being referred around and they are just being passed on because there is no free legal service for disputes relating to strata. Our recommendation is for the establishment of that free legal service in ACT.

THE CHAIR: Thank you. That is really good. I am glad I asked. Dr Bowles?

Dr Bowles: In general, we are asking strata-managed properties to do a lot of lifting on a lot of policy areas, including densification, increasing supply of housing affordable to a person on an average income and helping with the energy transition. At the same time, I have outlined that there are a lot of competing interests. It strikes me that a commissioner and, more broadly, government have a unique and necessary role in providing incentives so that different actors are lifting in the same direction to achieve the big lifts that we are asking strata-managed properties to do.

THE CHAIR: Thank you very much. On behalf of the committee I want to thank you today for your attendance. Have a lovely day.

MR RATTENBURY: Thanks, everybody.

Short suspension.

CAMPBELL, DR PETER, Committee Member, ACT Branch, Australian Electric Vehicle Association
ELLISTON, DR BEN, Chair, ACT Branch, Australian Electric Vehicle Association

THE CHAIR: We welcome witnesses from the Australian Electric Vehicle Association. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, please keep it to one to two minutes as there are a few questions that we would like to get through today. Do either of you have an opening statement that you would like to make?

Dr Elliston: Yes; we have a very brief statement.

THE CHAIR: Excellent. Please proceed.

Dr Elliston: Thank you. Our submission focuses on EV charging in strata, where adoption is lagging due to barriers to home charging. Home charging is cheaper, more convenient and always available. This creates an equity gap between those with home charging and those who rely exclusively on more expensive public charging. The government has a target of 80-plus per cent of new vehicle sales being zero emissions vehicles in five years, and, with current policies, it is falling behind where it needs to be. Every barrier we know about must be addressed to turn this around.

The AEVA believes that a right to charge should be explicit in legislation. The current legislation has useful provisions for the installation of sustainability infrastructure, but only solar panels are given anywhere as an example. A right to charge is common in jurisdictions that are leading the EV transition. The act states that owners corporations cannot unreasonably block the installation of sustainability infrastructure. A strong right-to-charge statement would be ideal, but next best would be some examples that make it clear that EV charging equipment is sustainability infrastructure. It would dissuade owners from opposing reasonable proposals.

A recent study found that many Australians believe myths about EVs. Almost half believe that EVs are more likely than combustion cars to catch fire, when the opposite is true. Insurers know how to assess risk, and road registered EVs are low risk. Unit owners holding unfounded fears are needlessly holding back the EV transition. Other unit owners are simply unaware of how they could use the existing sustainability provisions to put up a well-considered proposal. Thank you for inviting us to appear today.

THE CHAIR: Thanks, Ben. Do you have an opening statement, Peter?

Dr Campbell: No. Thank you.

THE CHAIR: We will now proceed to questions, if that is all right. You mention in your submission that there is a lack of explicit examples or mention of the types of things that might constitute sustainable technology. You mentioned in your opening statement that the legislation only provides for solar. How much do you think this lack of clarity is a barrier in preventing the uptake of sustainable technology by unit owners

or tenants?

Dr Campbell: It is an easily fixed barrier. I skimmed through many of the other submissions and something that struck me was that people did not know that there are provisions in the act already that they could use to address what they are complaining about. In the case of EVs and other sustainability things, there could simply be a note under relevant sections that says, "Non-restrictive examples are—" with a list.

THE CHAIR: A note in the legislation itself?

Dr Campbell: Yes. In lots of parts of the legislation, it could have a non-restrictive list of things that might be covered by that section. Putting clotheslines in a community garden, better insulation, and EV charging.

THE CHAIR: Thank you, Peter.

MR WERNER-GIBBINGS: Ben, congratulations. The chair always asks for people to do a one- to two-minute opening statement and, 15 minutes later, they finish, but that was a one- to two-minute opening statement, so bravo!

Dr Elliston: It is my fifth draft, I should add.

MR WERNER-GIBBINGS: There is a lot of stuff that we will have to have a conversation about. There is the right to charge. That is interesting. I would ask you to elaborate on that and how you see that working. Making your case is going to take a fair bit of work, but how do you see it, particularly in terms of cost-sharing for the use of common infrastructure. How do you see that working, in broad brush, and then I will have a more specific question about the practical barriers residents are facing.

Dr Elliston: The first thing to say about the right to charge that is implemented in other countries is that they almost universally tilt things in favour of the person trying to get the charging equipment connected, but there are always caveats. There are always ways that owners corporations can say, "Sorry, but that is prohibitively expensive" or "It's physically impossible" or whatever. In other countries, those were always provisions that were made. We would be saying the same thing here. There would always be provisions for things that are impossibilities. The other thing to say is that it is not necessary for owners corporations to build all the infrastructure in one go. Not everybody is going to purchase an EV in one go. The rollout can occur over 15 years, so there may not actually be very large up-front costs if it is done properly.

MR WERNER-GIBBINGS: Could you elaborate on the practical barriers residents are facing when trying to install EV chargers, especially when relying on common power sources? How do you think a statutory right would overcome these challenges?

Dr Campbell: A lot of what is in the UTMA already is about the installation of equipment, but one thing that is missing a bit—and this is where we are seeing impediments at the moment—is where there is already an ordinary power point that could be used. If an owners corporation had an EV charging plan, they could say, "We've checked our power points. Until we have more than a certain number of residents doing EV charging, the existing power points are enough." A plan could be

incremental. The act talks about the level of resolution that is required to give permission and so on. Sometimes the problem is not about installing stuff; it is about being allowed to use what is already there.

MR WERNER-GIBBINGS: You are talking about bringing in a trickle charge out of a power point.

Dr Campbell: Yes. An absolutely bog-standard, ordinary 10-amp wall socket. For the first few EVs in a building, it might be quite reasonable for the owners corporation, via the executive committee, to say, "We'll give you permission to use that ordinary power point with your portable charge cord; however, we also include as a condition that this can be rescinded at some point. This is an interim arrangement while we are working out what our better longer term EV charging plan will be." Owners corporations need to understand that they can do that and that could work. It buys them time and allows them to, for example, anticipate in their sinking fund plan that they will need certain equipment, upgrades and whatever. It buys time to work out what that is and what it will cost, to plan for it and so on.

MR WERNER-GIBBINGS: We were already discussing barriers, but is there a difference in the barriers that prevent a greater uptake of EV charging technology in strata complexes? Is there a difference in barriers between bigger complexes and smaller complexes?

Dr Campbell: The barriers could change from one building to the next—big, small or whatever.

MR WERNER-GIBBINGS: So there is not necessarily a pattern?

Dr Campbell: Yes. One of the key concepts for charging in strata that we try to get across is: there is no perfect solution that fits everybody. There could be two identical buildings. In one place the owners may be happy to be gung-ho. They might say, "We're going to fit out the whole place with the ultimate solution. We're going to do that in one go." Another place might say, "We want to work through a series of incremental stages." The first part of that could be using some existing power points and then maybe a shared charger, but then realising that it is not going to be good enough, ultimately, in a spare parking space. They could have a phased plan. One building will be huge, with multistorey basement car parking. Another place might have two or three units with parking underneath—a relatively small space. It might be practical to wire back to the distribution board of each individual unit. It is far better to let people charge from behind their own meters. They can pick whatever electricity retail plan they care for and there is no administrative burden on the owners corporation—just a little oversight of the kind of equipment allowed to be installed and giving permission to run some cable over a few metres of common property. There are many physical solutions possible, and what is best in one place might not be possible or the best option for another place. The barrier to each solution could be different.

MR WERNER-GIBBINGS: Thank you.

MR RATTENBURY: You picked up on the point I wanted to ask about: the useful notion that there is no single model and there is a range of ways to do it. That is a really

important piece of evidence. You also touched on fire risk and provided some useful data in your submission. We had a submitter the other day talking about the difference between batteries in cars and batteries in other devices: scooters and the like. Again, that is a really important distinction. Would you perhaps reflect on that?

Dr Elliston: Yes. The first thing about EVs versus what I think the insurers call personal mobility devices is that the charger for personal mobility devices is a separate piece of equipment. You could buy a scooter or an e-bike and the charger that you have supplied is actually not the right one for the battery, whereas the charger is actually in the car; it was put there by the manufacturer and it has been designed to work in that car. You cannot mess that up. There are also quality concerns with some of the batteries in cheaper personal mobility devices. This is not something that we have intimate experience with, but certainly everything we have read from the insurance industry is that they consider personal mobility devices to be a much greater risk, and that is where efforts should be put.

MR RATTENBURY: The suggestion put to us was that specific charging areas for those devices in buildings should be thought about—

Dr Elliston: That is right.

MR RATTENBURY: and that EVs, as you have identified, have a very low level of risk.

Dr Elliston: Yes.

MR RATTENBURY: Thank you.

MR BRADDOCK: Recommendation 9 in your submission talks about the option of funding EV charging infrastructure via a sinking fund. I want to be clear: is your interpretation that the current act, as written, definitely allows this to happen and that it is just a case of seeking guidance to make it very explicit? Is that the case in your argument?

Dr Campbell: Yes. It is our observation that one of the impediments is people insisting that a sinking fund can only be for maintaining the stuff we already have. If the government were to provide some general charging guidance for strata, a point to include would be to note the acquisition of new property or renewal or replacement et cetera, and that the property can include sustainability or utility infrastructure—to put those words in. Our understanding of the act is that the sinking fund can be used to anticipate new stuff that you are going to install down the track, and you start saving up for it.

MR BRADDOCK: Any monies received from the actual electricity used, if it were via a third party, could be then utilised to pay back the original infrastructure's instalment costs?

Dr Campbell: I think so. There is section 23, which is to do with sustainability infrastructure. It includes the possibility that the owners corporation can receive income from that sustainability infrastructure. I think that, primarily, a feed-in tariff from solar

panels was anticipated.

MR BRADDOCK: Yes.

Dr Campbell: We would argue that it would be consistent with what is written in that section if there were income over and above the cost of the actual electricity to the owners corporation—if that were no more than would be used to cover the cost of maintenance, possibly the installation, and so on. Basically, if it were in keeping with it and not an obvious profit over the top.

MR BRADDOCK: Yes. This is a concept the owners corporation network had yesterday, where you could borrow from the sinking fund. In essence, this would be the same. You would draw down an amount, and then you pay it back in instalments over time, based on the income received, to cover those infrastructure costs.

Dr Campbell: Yes. Essentially, that is what the sinking fund does for everything. Money trickles in at a more steady rate, and it is used to cope with bigger, more intermittent and more lumpy expenses coming out. That is the whole point of it.

MR BRADDOCK: Thank you.

THE CHAIR: Is there anything else that you want to mention—a pressing issue that you have not been asked about?

Dr Elliston: One thing we wanted to talk about, because it was raised in the last session, was substation upgrades to apartment buildings and things like that. We tried to make the point in the submission that most EV charging done at home can be done very slowly. There is no need to necessarily create huge demands on the electricity network if charging is done at low-demand periods, such as the middle of the night. There is the potential to accommodate a large number of vehicles in existing buildings without resorting to upgrading electricity infrastructure. I just wanted to make that point.

Dr Campbell: Conceptually, it is analogous to the electricity grid as a whole: there are morning and evening peaks, and the system meets those peaks. When demand is down, you have all the headroom that can be used to handle electrification in all sorts of ways, including EV charging.

MR RATTENBURY: You obviously keep the cost down materially for buildings putting systems in place. Your argument, then, is that you probably do not want to put too many fast chargers in the building; you would be encouraging a lot of owners to—

Dr Elliston: The slower you go the more cars you can accommodate. There are quite clever systems which will load-balance between vehicles charging and vary the charge rate as time goes on. As the demand of the building goes down, as the evening wears on, any plugged-in vehicles can charge a bit faster.

MR RATTENBURY: From a user point of view, people have the ability to override that. I am getting a bit technical here, but I am interested. If someone thinks, "I have to charge my car because I'm going on a long trip tomorrow. I have to get it done," they do not necessarily want load management like that, so how does it work in that context?

Dr Campbell: If you are trickle-charging like that, you get at least 100 kilometres worth of range overnight. If you came home with a severely depleted battery and you added 100 kilometres overnight, and you needed to drive to Melbourne in the morning, stop for a coffee in Yass on your way, or Jugiong or wherever—

MR WERNER-GIBBINGS: There are great chargers in Jugiong.

Dr Campbell: and top up at a fast charger once you are underway.

MR RATTENBURY: Thank you.

THE CHAIR: On behalf of the committee, thank you for your attendance today. Your evidence has been really useful.

The committee suspended from 12.03 pm to 1.00 pm.

McEWIN, PROFESSOR IAN

THE CHAIR: We welcome Professor Ian McEwin. Please confirm you are appearing as an individual?

Prof. McEwin: Yes. My wife and I put in a joint submission, but I am appearing by myself.

THE CHAIR: Thank you. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence would be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, please keep it to one to two minutes as we have a few questions that we would love to get through with you. Do you have an opening statement?

Prof. McEwin: Yes, just a couple of sentences. Our submission is pretty simple. We basically argue that there is not enough guidance given to managers and to the executive committees. One of my specialties is corporate law and economics and that is what I look for, because there are a lot of duties of directors that there has been a lot of litigation about but very little, at least in the ACT and in New South Wales, on corporate strata. I accidentally came across an article—which I meant to include in the submission—that I can give to the secretary.

THE CHAIR: We can table it, yes.

Prof. McEwin: It basically goes through the difference between Queensland and New South Wales and then goes through some of the duties that are similar to corporate law, on which I am more familiar. We just felt that it would be useful to have some examples as an attachment to the act that could be included as an annex or whatever, just as guidance, The fact is that in section 47—

MR RATTENBURY: Is it the reference to "reckless"?

Prof. McEwin: Yes; sorry. Schedule 1 is code of conduct—honest and fair, reasonable exercise, reasonable care and diligence, acting in a corporation's best interest, not engaging in unconscionable conduct and disclosing. That is useful to a lawyer, because a lawyer would know what those words mean, but we really felt that it would be useful to have some examples. The reality is that in the body corporate that I have been involved in, whenever a dispute comes up, it is resolved at an annual general meeting—and that is it, and no correspondence is entered into. But what they ignore are the processes that led them to come to a decision. I felt, being the lawyer, that there were certain issues that should have been addressed as part of the procedures at the meeting and also as part of a preliminary to the meeting. That is the first thing. It is relatively straightforward. I think anyone with experience in corporate management would be able to draft some examples.

The second thing is about the dispute resolutions. Going to a tribunal is well out of the means of most owners in strata units. It would be much better to have a simple, relatively informal process. I use the example of an ombudsman, but that is possibly more formal than most people would want. There needs to be something simple to

decide as a filter before anyone appeals to a tribunal. I know that most people would say, "Oh, a tribunal; it is like a court." Well, it is not.

I have been an expert witness in quite a lot of major litigation in competition law and also involved in some areas in corporate law as well. It is not as bad as what people think. But, unfortunately, that serves as a barrier to complaining about what is going on. As you know, it is easy for developers to maintain a few apartments in a building and gain a disproportionate influence because of the knowledge that they have about how the place was built. It is simple stuff. All I am saying is that, surely, you can come up with a better procedure, hopefully. I should not have said "surely"—hopefully.

THE CHAIR: Thank you. You have touched on a few questions I had, but I just wanted to ask a few more specific questions. Earlier in this session we heard from Care Financials. The suggestion was that there is essentially an internal disparate resolution mechanism within the body corporate before it goes to another suggestion, which was a strata commissioner, before we then get to a tribunal. I just wanted to get your thoughts about those structures and how you see that working in with strata.

Prof. McEwin: I am not familiar with that. I am only just reacting to what people tell me on the ground rather than going through it. Those two extra stages, I think, would be useful, as long as they are not too costly. You do not want to be bound by the rules of evidence. That is a fact in competition tribunal matters. They are not bound by the rules of evidence. It makes it a lot easier to give evidence that would not otherwise be admitted.

I think even the fact that someone has started off on this procedure will probably lead to a large proportion of disputes being settled at a very early stage. It is just at the moment I think that most strata managers and probably a lot of executive committees feel that people will not do anything about it, so they are largely unconstrained. It is overcoming that sort of attitude that I think is important.

THE CHAIR: Thank you. Specifically to your submissions, I think you indicated that schedule 1 of the UTMA code of conduct is deficient and should be more detailed and prescriptive in order to assist ECs. You have mentioned a few, but are there any other additional things you would like to see updated?

Prof. McEwin: All I can really say are the things that we have had problems with, like the length of time it has taken to resolve problems. I realise I am bound by parliamentary privilege, so I will just mention this. I think there were some shortcuts taken in the strata building that we owned back in the early days. It was to save money at a late stage of building. Those problems are starting to be apparent now. When we mention it, I think all the executive committee is concerned about is using strata owner money to solve problems that they believe should be our responsibility but it is not. In my view, there seems to be a lack of understanding. The Strata Management Act makes a distinction between the owners' responsibility and the balconies et cetera, which are owned by the owners but managed by the strata or executive committee as common property.

One of the issues that came up was who was going to be liable for the problems around their lack of dealing with a problem concerning the balconies, and I think there was a certain feeling among some of those executive committee members that it was ours and

not theirs, when it was clearly theirs. Their insurance would cover this sort of thing. Their liability insurance would definitely cover this sort of thing. But they did not seem to go to the next stage. That is one example you could be talking about: because of the management, what sorts of things are they responsible for and what sorts of things are the owners responsible for.

THE CHAIR: A clear list.

Prof. McEwin: Yes; just saying it clearly. I can tell you that most people will not read the act. They have to be written in plain English for people to really try to understand. With directors of companies, there is heaps of information written by law firms and all sorts of people about what the responsibilities are. It is easy to do research in layman's terms. It is not in this area. It is quite opaque.

THE CHAIR: Thank you. I know my colleagues are eager to ask you a few questions.

MR WERNER-GIBBINGS: Thank you. Professor McEwin. You and your wife raised concerns in your submissions about executive committees and strata managers using their discretionary powers to pursue their own interests.

Prof. McEwin: The possibility of it, yes.

MR WERNER-GIBBINGS: Potentially; and sometimes that potential might be at the expense of other owners.

Prof. McEwin: Yes.

MR WERNER-GIBBINGS: This is a sort of two-tiered question. What specific mechanisms or reforms, and perhaps with reference to the corporations law, do you think would best prevent conflicts of interest and ensure greater accountability in strata governance? The flow-on question, which I will repeat once you have answered the first one, is: are there particular principles or practices from corporations law that you think we in the committee could consider adopting or adapting for our own purposes?

Prof. McEwin: The basic problem—and I think this covers both issues to some degree—arises because there can be the oppression of the majority. This article goes into this and how the whole basis of having an annual general meeting is in accordance with the normal, standard democratic principles. But like in a parliament, there are no procedures apart from the parliamentary procedures which govern against that. We are dealing here with a similar sort of economic problem that people in a corporation have. People put up a lot of money into buying a unit. People buy shares; they can lose out if the value of the shares goes down because of malfeasance. It is the same sort of problem in that sense. Of course, as we mentioned in our submission, the actual amount involved is much greater for an apartment, for most people, than it is likely to have as an investment in shares or anything else.

In legal terms, it is called oppression by the majority. This is one of the points I was getting back to earlier on, which I did not get to go on to in any detail. I get the feeling at some annual general meetings that things have been determined a priori with certain groups of people within the place who get on well with the executive committee

members. That is what happens in practice. It is understandable, particularly in small blocks of 10, 12 or so apartments. They will all know each other,, and there will be certain animosities et cetera. That is the sort of thing that has to be overcome. You have to have a procedure for dealing with issues where the minority who will feel oppressed, will complain about the majority decision about an issue which affects them.

The fact is that it may be the complainant's fault—he does not understand the real issue—but there is no sort of mechanism for getting the executive, the manager and the people who are complaining about the system together. That is where I think it is quite important to have it suggested. I am against compulsory procedural guidelines—or not guidelines, but measures. It should be voluntary, to give people who are wanting to complain some guidance about what they can do and how they can go about it.

In a sense, what was happening, in the problem I was alluding to was that, once a decision was made at the annual general meeting—most of whom had never even looked at the proposals that were being put up before the AGM—there was no correspondence entered into by either the manager or the executive committee. They felt it was okay. But what they had ignored—and I pointed out—was the procedural side of things. This is the sort of thing that you are talking about. What sort of procedure should you go through if there is a complaint that is going to be ratified at an AGM?

This sort of thing happens in corporate law all the time. You usually get a majority shareholder who really dictates. Of course, what they are doing often is structuring transactions or investments in a way which maximises their own return at the expense of everyone else. They can get out at the right time to potential buyers who may have imposed certain conditions on the sale. One of them may be to dilute the shares of the majority but small shareholders. The way they can do that is by setting up new classes of shares, but that is not relevant to the strata.

It is about ensuring that there are proper procedures done before an AGM. I think that needs to be something explicit which requires the strata manager, in particular, to actually say, "These proposals have been put up for approval. These are what we have had with solicitors. Any inquiries, any submissions? No-one has made any submissions and that is fine." I think getting that procedural side done before the AGM is as important as anything else—as well as the AGM itself.

MR RATTENBURY: Thanks for your submission. I have two, hopefully, specific questions. Why did you talk about fleshing out the code of conduct? Have you seen specific examples anywhere else that we might borrow from?

Prof. McEwin: No, I have not, which really surprised me but I have not done an extensive search. It is useful to read this article, I think. I would be surprised if New South Wales, in response to this decision, had not done something but they may not have done it.

MR RATTENBURY: We know they have done it.

Mr McEwin: You have to ask: why would that happen? It would happen because there are big interests involved in building and the developer as well as the unions involved may not want these sorts of things to get out. In economics, there is a school called the

Public Choice School, which I know quite a few of the very senior people, particularly in the United States, who would say, "This is the first thing you have got to do. When you look at the legislation, you have to look at whose interests are being served." The fact that it has not been done suggests to me that the interests of who would be affected have somehow thwarted it. I am sure you are more familiar with that than me.

MR RATTENBURY: Thank you. You made a passing reference in your submission to section 47. You say you are not going to discuss it in detail, why is the definition of reckless of concern to you?

Prof. McEwin: I am not a lawyer who has ever done any strata-type courses or anything like that. I went around and asked quite a few people, including lawyers in government, both federal and the ACT, what was meant by "reckless"? They said, "It is a very elastic concept." But it is critical because, if the executive committee is shown to have been reckless, then of course they are personally liable, they are not excluded from liability.

I could understand a lot of people would not like that to happen. I would not do it personally against someone I knew was not all that wealthy in an apartment block who was doing something for free in the interests of everyone. That is the last thing you really want to happen. But there needs to be a little bit more guidance on that. and I am not quite sure how you could do it. I guess you could come up with a criminal activity which would be reckless, but they may not go through the criminal route because it is too hard to prove intent et cetera. There are a lot of things that can be done by saying things which suggest the opposite on the record.

MR RATTENBURY: Thank you.

THE CHAIR: Excellent. We are right on time. Thank you so much.

Prof. McEwin: My wife will be pleased to hear you say that.

MR RATTENBURY: Do we need to have the tabling of the document?

THE CHAIR: Yes.

Prof. McEwin: I did a PhD in economics before I did my law degree, and she said I was a nice guy up until I did a law degree.

MR RATTENBURY: We have lawyers in the room. We should be careful.

Prof. McEwin: Yes, I know. That is why I said it. Okay, thanks very much for your time.

THE CHAIR: Thank you very much for your attendance today.

Short suspension.

KERIN, MR CHRISTOPHER, Principal, Kerin Benson Lawyers
PROCTOR, MS SUSAN, Fellow and Council Member, Australian College of Strata Lawyers

THE CHAIR: I welcome witnesses from Kerin Benson Lawyers and the Australian College of Strata Lawyers. Do you have any comment to make on the capacity in which you appear?

Ms Proctor: As well as being a Fellow and Council Member of the Australian College of Strata Lawyers, I am a local strata lawyer.

THE CHAIR: Please note that, as witnesses, you are protected by parliamentary privilege and are bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, please keep it to one to two minutes, as we have only a short time to get through the questions. Do you have an opening statement?

Mr Kerin: I will rely on my submission, which canvasses a range of things.

THE CHAIR: Thank you. Ms Proctor?

Ms Proctor: I would like to add that I am also the co-chair of the Improving Strata Laws Committee of the Australian College of Strata Lawyers, which has recently been constituted. A lot of the work that we are doing in that committee is cross-jurisdictional analysis of particular policy issues that are impacting strata throughout Australia. I strongly believe that we can learn from other jurisdictions, apply relevant contextual improvements and consider, in light of more mature jurisdictions, such as New South Wales and Queensland, where there has been a lot of litigation, how particular policy responses have ultimately been resolved successfully or not. I am very excited about being co-chair of that committee and about where that can potentially head, when it comes to being more prospective in terms of putting forward reform, rather than having a retrospectively addressing issues type of approach.

THE CHAIR: Thank you; that is really useful. We will go on to questions. This question is for both of you. In your submission, you mentioned the concept of fiduciary duty and talk about fiduciary obligations.

Ms Proctor: We have two different submissions.

THE CHAIR: Yes. Can you please explain for the committee's benefit what that means and how this is supposed to govern the way in which strata managers are to act in relation to owners corporations, or say how an executive committee is supposed to act in relation to the whole OC, or even the developer in relation to the OC? Basically, what is the fiduciary duty as it applies to the strata manager, what is the fiduciary duty as it applies to the owners, and what is the fiduciary duty as it applies to the developer?

Ms Proctor: As we are not together—

THE CHAIR: Anyone can answer.

Mr Kerin: Fiduciary duty is simply a concept at law. There are different levels of obligation. The lowest level is a duty of care between people who are strangers, then there is contractual duty; then, at the highest level, there is a fiduciary duty. People who owe fiduciary duties have to act in the best interests of the person to whom they owe the duty.

It is a concept that applies across a whole range of areas, not just strata. Strata managers, as agents to a principal, being the owners corporation, owe a duty to act in the best interests of the owners corporation. Executive committee members have a fiduciary duty to act in the best interests of the owners. Developers do have a fiduciary duty, but it is probably limited in its scope.

THE CHAIR: How would that duty play out? Where would we look for that? Would it be in the materials that are provided?

Ms Proctor: Fiduciary duties are under the common law. Most professionals have fiduciary duties where they are acting in a professional capacity representing another party's interests—the Public Trustee, solicitors, real estate agents, or any professional that is entrusted with a duty from another party and to act in their best interests, as Chris said.

The common law exists throughout and, in many jurisdictions, there have been provisions imported into our legislation to remind parties of their fiduciary duties. Our code of conduct goes some way to reflect fiduciary duties in being informed, being educated and not acting in your own interests.

It is a principle of law; it is a fundamental principle of law. Where it gets complicated is that it is not a principle of law that is commonly understood by strata managers in terms of their obligations. Often, where there is legislation or where there are education materials, if those parameters do not spell out the extent of an obligation, it might not be possible for someone that has not studied fiduciary obligations at law school to understand the breadth and extent of how the common law would respond to that.

Most jurisdictions, within their strata legislation, will reflect the fiduciary responsibilities between the different parties that you have reflected on and through the agency legislation, but the understanding of what that means in practice is where there are failings, I think.

THE CHAIR: What do you think we could do to improve that understanding in the current structure?

Ms Proctor: Simple education tools. I know through the college that what my fellow strata lawyers and I are looking to do is trying to provide that information by having real examples of what a breach of a fiduciary duty could look like. The concept of commissions comes up—understanding what that is and what it is not, and when you may have a conflict of interest or not. A common example is where there can be breaches of fiduciary duties that might not fit neatly within legislative parameters but are indeed still breaches of fiduciary duties. Using examples and simple education tools to say what is okay and what is not okay ultimately would be useful, in terms of

educating the sector as to what is not appropriate.

Mr Kerin: This may be an entirely self-serving comment, but I wrote a book, the *Guide to ACT Strata Law*, which was published in December last year.

Ms Proctor: That is excellent product placement. There it is, over there.

Mr Kerin: Excellent; there you go!

MR WERNER-GIBBINGS: Slightly self-serving, but it is fine!

Mr Kerin: In the last six months, almost 200 copies have been sold. That is a tool that I have written expressly for owners, executive committee members and strata managers.

Ms Proctor: I think it is the job of ACT government to look at providing those educational tools and to provide them for free. I think that is an appropriate way to ensure that the knowledge is available to all, at different levels within the organisation. I have read Chris's book; I think it is great. I have not read the latest edition, and I am not saying anything about that at all, other than—

Mr Kerin: That it is great.

Ms Proctor: I am not denigrating it in any way, shape or form, but I do think that reading legal texts is perhaps beyond even some of our more experienced strata managers, in understanding what is and is not okay. Very simple, straightforward, plain English guides are what I think we need on particular issues.

From my own experiences through challenges in ACAT over what is and what is not common property, with some things where you would think there would be a straightforward answer within the legislation, there is not. It is complicated and it is clunky. We need to have legislative reform to improve those aspects of our legislation; then we need to have easy-to-understand guides that might mean that we are not clogging up ACAT with arguing over responsibilities for certain aspects of things as opposed to others.

MR WERNER-GIBBINGS: My first question is to Ms Proctor. You may or may not be surprised, but quite a lot of issues around governance capacity of executive committees have been raised in submissions and during our conversations this week—knowledge gaps, lack of education, and the best way of using that information, which we have just discussed.

With the training, there is a real divide between whether training should be made mandatory—"This is what is required," and whether that will have impacts on whether or not people put their hands up to be on executive committees—or voluntary, where it has been suggested that you might get more people doing the training. Where do you sit in that regard?

Ms Proctor: The owners corporations that I act for are often coming to see me because they are challenged with difficult, significant issues—multimillion dollar building contracts, cladding issues, complicated funding approaches, how to deal with the

concessional loan scheme and other things. They are complex situations that many lawyers would not be able to pick up easily, in understanding how the Unit Titles (Management) Act can respond to that. These are 100 per cent complicated issues that no one committee or strata manager should have to bear alone.

The way I am trying to move with a lot of owners corporations that I represent, where there is a struggle with getting rotation of executive committee members, enough support for people wanting to put their hand up, enough talent, and getting that talent to sit on the executive committee level, is to look at incentivising that role by discounting levies for executive committee members.

There is realm to do that under the Unit Titles (Management) Act. If the owners corporation in a general meeting so choose, they can allow a discount of certain amounts, and they can allow a discount for people that sit in the role of an executive committee member. That might make it more attractive to put your hand up to sit on the committee. It might attract people that do not necessarily have the skills that you would want for a committee, but it might give you enough of a pool to then elect on skillsets in certain types of owners corporations. That is one potential solution. It does not directly respond to your query.

MR WERNER-GIBBINGS: We are happy to listen to solutions or potential solutions.

Ms Proctor: I refer also to allowing for access to free online education materials. Most people who put their hand up to be an executive committee member want to do it for the right reasons. They would want to inform themselves, in the simplest way possible, to understand what their duties are. If that was accessible, I think they would do it. With respect to whether it is mandatory or not, you have the problem that Chris has identified. There is potential turnover annually of EC members.

MR WERNER-GIBBINGS: Churn.

Ms Proctor: Yes. There is the content of a course, the timeframe of a course, when it would or would not be mandatory—those sorts of things. I do not think it should be at any cost to the proponents to go through that process.

MR WERNER-GIBBINGS: Mr Kerin, with the specific reforms or mechanisms that you might recommend to improve transparency and accountability in financial dealings between strata managers, insurers and owners corporations, you mentioned concerns about the limited disclosure requirements for commissions and potential conflicts of interest under the current legislation. Are there specific reforms?

Mr Kerin: The current legislation does not really set out any sort of regime for disclosure. The New South Wales legislation is quite onerous and has been made even more onerous as a result of the two ABC programs that ran last year and the political reaction to that. But there is a significant gap between New South Wales and ACT legislation in that regard. It would not be outrageous for the ACT to move in that direction, but I would not go as far as New South Wales has gone.

MR RATTENBURY: Thanks for your submissions. They provided lots of interesting points. Mr Kerin, you spoke in your submission about the code of conduct and the

possibility of penalties for breaching the code of conduct. A previous witness outlined a view that he thought the code of conduct could do with elaboration. It was really written for lawyers, and there are a lot of concepts that lawyers understand but perhaps EC members do not. Firstly, do you have any comment on whether you think the actual code of conduct needs elaboration? Secondly, when you talk about a penalty, what sort of penalty would you have in mind?

Mr Kerin: It is not uncommon for people to come to me complaining about the way EC members have behaved. That, of itself, does not necessarily mean they are guilty of a breach of the code. A lot of it is personal animus. That is just the nature of strata.

MR WERNER-GIBBINGS: Luckily, we do not have that.

Mr Kerin: No.

Ms Proctor: Nature of people.

MR WERNER-GIBBINGS: Yes.

Mr Kerin: There have been a number of attempts—maybe three or four that I am aware of—where people have sought to have ACAT make a finding of a breach of the code. They have all failed. I am not aware of any finding by ACAT where someone has been found to have breached the code. But I have always said: so what? If someone breaches the code, what then? There is no sanction or anything, so people can effectively do what they like. There should be some sanction, but the reality is that it should not be a large amount of money; it should be sufficient.

MR RATTENBURY: Should it be money, though, or should it be removal from the EC? This is an interesting question, I think.

Mr Kerin: ACAT, in a couple of decisions, has shown reluctance to make findings to prevent people from being on the EC, because of the limited pool and the nature of it being a democratic institution. I would not go down that path. I think that a financial penalty of $1,000 or $500 would be sufficient for most people.

MR RATTENBURY: Ms Proctor, do you want to comment on that?

Ms Proctor: Yes. I have recently presented a paper at the latest ACSL conference with another lawyer from New Zealand. New Zealand have just adopted a code of conduct, and they have looked at ours in their unit title legislation. It is interesting as to whether or not it is aspirational or whether it is enforceable. I totally agree with Chris. It is not enforceable in the sense that there are absolutely no ramifications for breaching the code, pursuant to the legislation. Most strata managers and executive committees find that out, along the process, when something terrible has occurred, and they are powerless to put into effect any meaningful change.

I have certainly been through processes where strata managers in particular have not been licensed, are doing the wrong thing, restricting the role, and trying to assert their own self-interests in maintaining the books by continuing with using influence or acting in breach of their potential obligations. It is a rare occurrence, but it has happened. The

relevant regulatory authorities have felt that they did not have any powers to do anything about it, through the Agents Act and ACAT—not through the UTMA.

What is the point of a code of conduct? That is the first consideration. Is it there just to provide some guidance as to what is right or wrong? Is it there to actually have some effect? If it is to have some effect, perhaps a penalty needs to be attached to it or some sort of consequence for a breach. At the moment it does not serve either of those functions.

MR RATTENBURY: Thank you. Mr Kerin, in your submission you had some input on decision-making models, which I particularly welcomed because you went to some of the issues we have in mind, in having the terms of reference. Specifically, you talked about amending the quorum provisions, where people have an absentee vote. Your argument, as I understood it, is that they essentially participate but are not counted as part of the quorum. On the face of it, it seems like a good idea. Are there arguments as to why that would be unpopular or problematic?

Mr Kerin: I am not aware of how this occurred. This is a bit of an anomaly, I think.

Ms Proctor: The ACT is one of a few jurisdictions that has a quorum requirement. In a similar fashion, there is a 28-day period in which you could potentially challenge a decision, and the bizarreness and ridiculousness of that arose in the Manhattan decision, in relation to undoing or unpicking prior decisions that were made and acted on—unscrambling-the-egg type issues that just should not be something owners corporations have to be concerned about. If they have something that warrants taking it to ACAT, it is not going to be kicked out of ACAT or an absurdity arises, where an administrator is appointed and it all has to be redone.

MR RATTENBURY: I also appreciated your evidence on the scale of the strata commissioners in New South Wales and Queensland. That has been a big discussion over the last couple of days. It is very useful to have those figures, so thank you for that. Ms Proctor, in your submission you specifically raised the issue of mixed use buildings—owners corporations being able to pass on increased cost to specific unit owners where commercial activities impact on insurance premiums and other issues. This has come up again. There have been a few live examples in the ACT. Is this currently allowed under the law or does it need a specific legislative change?

Ms Proctor: I believe it is allowed. As some background, I was part of the ACT legislative reform process, from 2014 onwards, in terms of the amendments to the UTMA in 2020. Those amendments specifically altered the provisions of section 78(2)(b) and (3). This is unique. The ACT is unique and leading, which I am very proud of, in this particular aspect.

MR RATTENBURY: Even the last example, then!

Ms Proctor: Yes. They are just errant bad people. That can happen anywhere, right? We got the legislation to a point where the owners corporation can decide, by special resolution—not, as previously required, unopposed resolution—to adopt a levy methodology that provides for an alternative basis for applying levies. There are parameters written into those provisions that state what needs to be taken into account

in considering the introduction of a formula or a rule that considers the structure of the unit plan, the uses of the unit plan, the location of buildings—those sorts of things. It could mean that—for example, for an apartment tower—you might have, within one owners corporation, within one unit's plan, some townhouse type apartments and an apartment building. The townhouses largely look after themselves and have no access to the apartment building or the lift or the services—lighting in the basement and those sorts of things. It might be appropriate in that situation to look at a split-levy methodology: these guys pay for the costs that are associated and which they are directly benefiting from, and certain aspects, which only benefit the unit owners in the other part of the building, contribute to that. And then there will be common costs that all should contribute to: insurance, auditing fees, accounting fees and legal fees. That all might be appropriately done on a unit entitlement basis.

The impetus and the policy behind looking at those considerations was to allow for greater flexibility where there is a retail element downstairs that is utilising particular services and perhaps not the residential, borne out of a decision that we were on either side of some time ago, regarding that particular reform. It has been useful, and there are certainly owners corporations looking at utilising that.

I raise it specifically in my submission in relation to insurance hikes. Insurance is an issue. Insurance is an issue for many reasons throughout Australia in strata. Different jurisdictions are impacted by climatic events that have caused some buildings to be uninsurable, which has led to legislative reform where there is discretion to opt out of the mandatory regime for insurance, in the event that it is too expensive, too cost-prohibitive or it is not possible to place insurance. You are not necessarily in a situation where all the lot owners would be in breach of their mortgages over their units. We have seen similar issues in the ACT, not with cyclonic activity but with cladding. If you have a tobacconist that comes into your unit plan, straight away—

THE CHAIR: Your insurance goes up.

Ms Proctor: If you can maintain your insurance, it will go up. The use, which might be permittable within the context of the unit plan and the crown lease permitted use, is giving rise to an actual hike in the premium. There have not been any decisions as to ACAT considering the application of split levies and how different rules are drafted to accommodate these things, but that is certainly what I am trying to assist owners corporations to do. At the end of the day, we need to look at ensuring that our strata sector is an attractive place to move into. We do not have a heap of revenue coming into the ACT. We need to utilise our land as best we can. We do not want to have big concerns and risks associated with buying into strata. We need to look at assisting rather than overly regulating. We need to find the parameters so that owners corporations self-govern in an appropriate fashion.

MR RATTENBURY: We had some fairly eye-opening evidence this morning from Care. They talked about the fact that, in the ACT, 21 per cent of all forced bankruptcies were due to stratas pursuing late fees from owners and driving people into bankruptcy. That was well above the national average of 10 per cent. This is for either of you: in your experience in the ACT, do you have any reflections on the culture of the sector in the ACT and why that is the case? The specific proposal they put to us was that we should have hardship provisions in the territory to enable a more nuanced approach to

the recovery of debt. You are probably coming at this from the other side, but can you offer any reflections on that issue?

Mr Kerin: I cannot talk to Susan's practice, but there is a practitioner, who is not in the ACT, who does most of the levy recovery work around Australia. I am surprised that there is a differential, because I would have thought he would treat all jurisdictions the same way; whether he is doing levy recovery in Queensland or New South Wales or the ACT, he is applying the same standards. I am a bit surprised.

MR RATTENBURY: I think the argument was, compared to some other jurisdictions, we do not have a set of rules on hardship which requires people to think about repayment opportunities, repayment programs, and the like. We were given the difference between the local and national average, but—

Mr Kerin: In my experience with levies, owners corporations will enter into payment plans. This is not legislated. It is: "We'll help. Pay it quarterly. If there's a default, we'll start again." That, in my experience, has been the norm. I do not do much levy recovery work. My understanding is the dominant provider of that service is based elsewhere.

Ms Proctor: I do not do debt recovery work. I am not a litigator and I do not do that sort of work. I understand that a lot of the firms that would be engaged in that sort of work are firms that often are appointed by the strata manager and might have a national relationship by doing that work en masse. It is work that is quite low fee and transactional, as a set of steps.

THE CHAIR: Such as conveyancing and things like that?

Mr Kerin: It is low-margin, high-volume work.

Ms Proctor: That statistic surprises me. The introduction of a hardship element can be complicated in terms of the definitional elements. I have seen it attempted, albeit I think not successfully, through the participation agreements, through the cladding concessional loan scheme. I have raised questions as to whether that is actually possible. I do not think it is under the Unit Titles (Management) Act. As the former speaker said, buying a unit is like buying shares in an unlimited liability company. The owners corporation has an obligation to pursue its owners to pay its expenses. That is its statutory function. It has to do that. If it has expenses to pay, which it will, it has to ask the owners to do it. And, if there is all but one left, then that poor mug will have to pay. My recommendation is often that, if you are looking at buying a unit in a unit plan, you would want to make sure that you have some well-heeled people around you—so that you are not necessarily the last person standing, but—

MR RATTENBURY: Very Darwinian of you, Ms Proctor.

Ms Proctor: I know. It is sad! We need to find some way to deal with that imbalance as well. If 50 per cent of an owners corporation fits within a hardship scheme and stops paying the levies, then the other 50 per cent will have to pay it. The costs do not stop coming.

Mr Kerin: It is common for payment plans to be entered into. I have seen a particular

firm do that on a regular basis, and then there is a problem because they do not comply with the payment plan. Gary mentioned that to me before we came in. I was surprised to hear that. I would like to see some granularity around it.

THE CHAIR: We are running out of time, but it would be remiss of me I did not ask this question, considering that, Susan, this is your space: what are the key issues with the Unit Titles (Management) Act? If there are a few provisions that you can change and really irk you, what would they be, and what would be your suggestions?

Ms Proctor: Sorry not to directly answer that question, but we need to look at appointing a strata commissioner, to have someone who understands the nuances of the problems in our current legislation, the rest of ACT government, and the interactions between departments, in terms of planning, tax, the Building Act, liability and insurance. It is across everything. Strata is a very complex beast. The UTMA tries to help owners manage issues, but it does not deal with the myriad problems that impact strata.

In my submission, my solution to that, which I forgot to mention—and I know that we are short of a few pennies, in terms of the budget for the ACT government, so how do we fund the office of the unit titles commissioner? That is my preference, rather than a strata commissioner. We have all the strata managers and owners corporations sitting on buckets of money that are not in trust accounts. Lawyers have regulated themselves over the years to ensure that we have appropriately skilled professionals in the roles of fiduciaries, in terms of the work that they are doing. We potentially have unlicensed and uneducated strata managers managing massive amounts of money with no oversight or regulation or regular trust audit requirements sitting over the top of them.

Lawyers fix this for themselves, in a way, by ensuring that, if we are holding monies on behalf of someone else, it has to be in a trust account. It is regulated by legislation, and that legislation means that the interest earned on those trust funds fund the law societies that then regulate our activities. That is a solution to how we can regulate the sector. I think we should look at that. Sorry that I did not answer that question directly.

THE CHAIR: No; that was really good.

MR RATTENBURY: Presumably, that money is sitting in a bank account of the owners corporation and they are generating interest from it.

Ms Proctor: Sometimes, they may choose to invest it, but, otherwise, they are not.

Mr Kerin: Macquarie Bank, for example, has targeted this area for probably the last 20 years. I understand it holds billions of dollars in strata fees, because the sinking funds are very large. They are worth millions of dollars.

MR RATTENBURY: Of course. There is economic opportunity or potentially lazy capital.

Ms Proctor: Absolutely.

Mr Kerin: Macquarie Bank is a large sponsor of SCA organisations, conferences and

so forth. They have a presence there and they do reports to assist strata managers and so forth. That presence is linked to the fact that they take large sums of money.

MR RATTENBURY: And become the investment managers of those funds.

Ms Proctor: We regulate real estate agents, in terms of ensuring that, if they are investing monies, it goes through their trust account and the interest on that trust account is going to the compensation fund, which I assume is quite small in the ACT. We are not doing it for significantly large sums of money—millions of dollars—that are just sitting there and—

MR RATTENBURY: Is that money being held by the strata managers or by the owners corporations?

Ms Proctor: Strata managers are the agents for the owners corporations. But the owners corporations will often struggle to even get a copy of a bank account that reflects their actual monies held. They are in collective pooled funds.

MR RATTENBURY: So the owners corporation is not earning the interest?

Ms Proctor: No; nobody is earning interest, other than the banks.

MR RATTENBURY: I am being given the wind-up. I could keep going for a while.

THE CHAIR: Sorry; there is another meeting.

Ms Proctor: I definitely recommend we investigate that.

THE CHAIR: Absolutely.

MR RATTENBURY: It was a very interesting part of your submission. Thank you.

THE CHAIR: On behalf of the committee, thank you for your attendance today and your contributions.

The committee suspended from 1.55 pm to 4.13 pm

IRONS, MR CHRIS, Director, Strata Solve
WILLIAMSON, MR GREG, Principal and Licensee, Steadman Williamson Hart

THE CHAIR: I welcome the witness from Steadman Williamson Hart. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, keep it to one to two minutes, as we have a few questions that we would like to ask.

Mr Williamson: I will desperately try to keep it under two minutes. Steadman Williamson Hart are strata managers, but we are completely different from the normal strata manager. We only look after buildings as compulsory managers in New South Wales under section 237, and in the ACT as administrators under section 138. We do not take on normal strata management buildings. Even though, at the end of our appointment, some buildings will want us to stay, we do not. We just make sure that the building has undertaken all the audits, put them back into governance, then hand them back. We will even try to find them a proper strata manager to take them over.

There are a couple of other points of difference. We act as advocates for owners, owners corporations and real estate agents who may have difficulties getting something through. If a real estate agent is having difficulty with trying to get something done through the owners corporation—it might be a block at the owners corporation's executive committee or it could be with the strata manager—we step in and assist, and give them a lot of information.

An additional service that we provide is to owners corporations who are just about to undertake a renovation or remedial project. We can take on that role as the project administrator. If you have a million-dollar repair coming up, that is complicated. Currently, as you know, with the ACT, you do not have licensed strata managers. If you have an owners corporation that does not know how to run a remedial project, coupled with a strata manager that has never done one before, it is complicated. You have to get the right engineers in place, to start with. You have to make sure that you go through local council. You have to have all these things in play. The strata manager may learn on the job, but that will delay the work. If you have someone like us, whereby that is all we really do, we will shorten that.

The other statement I want to make is that, yes, I am a member of the SCA. I am also on the committee for professional strata managers, and on the subcommittee for redrafting the professional guides for the Department of Fair Trading in New South Wales.

THE CHAIR: Thank you. I believe that Chris Irons is now with us. I will go through the privilege statement again. Please note that, as a witness, you are protected by parliamentary privilege and are bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, please keep it to one to two minutes, as we have a short time to get through questions. Do you have an opening statement, Chris?

Mr Irons: I do, yes. I will make this as quick as I can. First of all, thanks very much for the opportunity to speak at the inquiry. While I have general interest in all things strata and have been a practitioner in the sector for over a decade, my specific input to the inquiry today is in relation to the potential appointment of an ACT strata commissioner. I am well qualified to speak on this subject, having been Queensland's Commissioner for Body Corporate and Community Management from 2014 to 2020.

While there are other commissioners in other roles doing very similar things, the Queensland commissioner is unique worldwide. It houses both information and statutory dispute resolution services under the one roof. To put that into a little bit of perspective, it is a little bit like needing to file proceedings in the Supreme Court and then being able to telephone the Supreme Court on a toll-free number to find out how to do so.

These days, I run a consultancy firm called Strata Solve, helping clients to resolve strata disputes in preference to going to my former office. That may seem, on the face of it, a bit odd. That said, while I greatly appreciate the work of my former office—they are some of the most dedicated and skilled public servants that I know—they are under intense pressure. There are approximately 40 staff in Queensland's office to service over 50,000 strata schemes. To me, that is an equation that does not add up, and it is one of the many factors that I think the ACT would need to consider in relation to appointing a strata commissioner.

I know there is a lot of interest in that in this inquiry. I know it is something that has been spoken about a bit, and I know it is something that other jurisdictions have dealt with as well. It makes a lot of sense. Strata is a unique and unusual area of public policy, and there is a considerable risk for government and MPs in that process. When you have a statutory appointment like a strata commissioner, it gives both clients and governments the assurance that this area of what is sometimes public policy is being taken care of.

Experience tells me that care must be taken to ensure that all parties are clear on what that means and, more importantly, what the commissioner will not do. I know that, in my role in Queensland, there was a strong expectation on the part of clients that the commissioner would be an ombudsman and would solve all of their strata concerns. There was often considerable disappointment and displeasure when clients would learn otherwise.

There are many other aspects of the strata commissioner world that the committee might like to discuss, so rather than going into a lot more detail right now, I will leave it there and hand back to the committee for any queries.

THE CHAIR: Thank you, Chris, for that very comprehensive statement. I will kick off with a question for you, Chris. Picking up on what you said about disappointment from clients around what the commissioner cannot do, can you highlight some of those things that fall outside the remit of the commissioner?

Mr Irons: Thanks for the question. The commissioner in Queensland does not take complaints. The commissioner does not investigate, does not do any compliance activities and does not enforce sections of the legislation. In Queensland's legislation,

there are penalty provisions in some instances, but the commissioner and the commissioner's staff do not enforce those penalty provisions. Those must be enforced through the Magistrates Court in Queensland. The commissioner's office and the commissioner do not provide legal advice.

The other thing that the commissioner does not do is set the policy agenda in Queensland. That comes as quite a surprise to a lot of people. It is not the commissioner that sets out the legislative reform framework in Queensland. That is actually handled by a completely separate part of the same department in Queensland. They do the policy and legislation work. Naturally, the commissioner is a really essential stakeholder in that process, but the commissioner themselves is not responsible for any legislative reform.

THE CHAIR: Those are a lot of things that the commissioner does not do. From our conversations in the last couple of days, it is implied or assumed that these are some of the things—the things that you have mentioned—that the commissioner would need to do. Can you explain what the commissioner does?

Mr Irons: The two services that the commissioner in Queensland provides are an information service and a dispute resolution service. The information service is as the name suggests. It is information and education with the express purpose of trying to prevent disputes. That is what the service exists for. There are various ways in which that is delivered. The main way is that there is a toll-free number where people leave a message, and you get somebody who will walk you through the issue.

The commissioner's office maintains a really extensive online and digital presence. At one point the commissioner's office had the second-most pages of any government agency in Queensland, and I am pretty sure it would still be the case. They do things like webinars, seminars and engaging with stakeholders. They run free online committee training. More recently, they have been in the business of providing a chatbot for those kinds of queries. That is the information side of things.

With the dispute resolution sides of things, it is an exclusive jurisdiction in Queensland, so every strata dispute, essentially, has to go through the commissioner's office for resolution. The end result of that process is an order of an adjudicator. That order is legally binding. It is also legally appealable. The dispute resolution process involves conciliation in a lot of cases. The commissioner's office also acts as a jurisdiction in which parties essentially have to go to it in order to be dismissed from it.

I will give you an example of what I mean by that. Let us say a lot owner claims that a body corporate's inaction has led to water ingress into their lot which has rendered it uninhabitable and therefore they cannot let it out. That loss of rent, while that is a valid thing for the owner to expect, is not an outcome that can be found in the commissioner's office. But a party must go through the commissioner's office and have a matter like that dismissed so that it can then be litigated in an appropriate court.

MR RATTENBURY: Can I ask what the difference is between a dispute and a complaint? On plain English, that is not necessarily evident.

Mr Irons: It is an excellent question. Interestingly, a dispute is defined in Queensland's

strata legislation. A dispute must be a combination of parties, and a dispute must be about a claim or anticipated contravention of the legislation. That is what a dispute is. To put it another way, if somebody has a reservation, for example, about the way in which their committee or general meeting was held, if they claimed that there was some defect in that meeting, that may well be the case, and there may well be a valid complaint that somebody has about that, but unless that defect has resulted in actual harm, like detriment—it has had a material impact on the outcome of the meeting—it remains only a complaint. The dispute, if you like, is about the outcome itself and the need, potentially, to overturn the way in which that meeting was conducted.

THE CHAIR: I have one more question before I move on to you, Greg. Chris, in your experience, have you found that that dispute resolution mechanism, or the commissioner, reduces the volume of matters that then progress further to court?

Mr Irons: That is a tricky one to answer. My suspicion is that most strata schemes in Queensland and most strata owners in Queensland probably do not know the commissioner's office exists, in the first place. That means you would have literally thousands of strata schemes in Queensland that are merrily chugging along, and are not compliant at all, but because nobody raises a concern about it, because everybody is relatively happy and does not know any better, it continues in that way. It is not until somebody moves out, sells, or something happens, that the realisation can sink in at that point that there is actually a problem.

I will share with you this anecdote to illustrate what I mean. I once did a seminar as commissioner, and somebody came up to me afterwards and asked me, "How often are we meant to hold our annual general meeting?" I thought that was a trick question, but it was not. It was a legitimate question. They were a really small scheme, and they had been holding their meetings every two years because nobody knew any better, and nobody had raised an issue. My understanding was that somebody was potentially looking at selling, and somebody was potentially agitating to find out things like where the records and the finances were. At that point people's attention turned to, "Actually, we might need to get a bit compliant."

THE CHAIR: This one is for you, Greg. You have recommended that a strata manager take on the role and responsibility of an executive committee when there is no nomination to undertake this role. Can you please explain how that would work in practice? I am particularly interested in the conflict of interest aspect of that role, or the mechanics of it.

Mr Williamson: It would not be the actual strata manager of that building—let me make that clear—because then there would be a conflict. "Do we vote for the strata manager to have a 150 per cent increase in his management fees?" There may be a conflict. It was mentioned the other day whether or not we should have a pool of professional executive committees. I do not believe that would work. It is far better to have an educated, existing strata committee from the existing pool of owners. That is the ultimate goal.

Let me put it this way: if you have a professional; it does not necessarily mean a strata manager, but someone that has a lot of strata management experience, and an understanding of the rules and regulations of the acts. I have appointed some people

over the years in those roles, to assist them, because the normal strata manager would already be holding general meetings and going to committee meetings. He would not have the time, energy and effort. Whether or not you can get someone from a pool, that would be a secondary position to—

THE CHAIR: Consideration.

Mr Williamson: Yes, or as an alternative.

Mr Irons: To pick up on Greg's point, in Queensland it is possible for a lot owner to apply for an order to have an administrator appointed, which I think is very similar. Greg and I have had a bit of a chat beforehand. It is very similar to what Greg is talking about there. That is essentially someone who acts akin to a receiver of a corporation. I have been appointed as an administrator in one instance. That is usually reserved for really serious incidents of non-compliance and where the scheme is not running as it should.

MR RATTENBURY: That goes to the question I want to ask. I am very interested in the circumstances. You are very clear about your firm's role. What are the sorts of circumstances where you would be appointed? Chris touched on this.

Mr Williamson: I will use the word for New South Wales which is very easy: dysfunctional. It is a very easy word to use but not that easy to define. It could be dysfunctional because an owners corporation is not doing a repair, such as water ingress. It could be that the committee is not actually following the duties that it has to, such as not holding meetings. It could be that, as Chris alluded to, they are having their annual general meeting every two years, so they are not applying the act. It could be that you are down to a two-lot scheme: Joan says yes, Bill says no; there is an impasse and, therefore, the actual owners corporation or unit title is not functioning. ACAT or NCAT says, "Guys, you're not making decisions. I'm going to find someone who is impartial and is looking after the best interests of the scheme"—or the building or whatever it is. "I don't care about the personalities. Go in, fix this, correct it." Nine times out of 10, it is a roof replacement, concrete cancer, a balcony issue—whatever physical repairs can be done. They can be arguing for years. I am running one on ongoing water ingress at the moment. They were first told that the windows leaked in 2019. It is currently vacant. It has had numerous reports, and the owners corporation is saying, "We can't afford that."

THE CHAIR: What would be the trigger? Would it be the owners corporation getting an order for you to step in?

Mr Williamson: It is normally one owner. Sometimes it can be about the west side of the building having balcony issues and there is concrete cancer on the other side, so they selectively seek an order. But, nine times out of 10, it will be just one owner saying, "They're just not doing it. Why should I be punished? I'm paying levies. I'm doing everything else. I have damage to my unit. Why aren't you doing the repairs and maintenance? You have a legal obligation. Please follow it." Whatever the reason is that they are not doing it—sometimes it is about personality; sometimes it is: "But it's going to cost us a million dollars to replace the roof. Let's keep saving $50,000 a year until we reach the million dollars," which will then be $10 million—

MR RATTENBURY: In 20 years.

Mr Williamson: Yes. That is not good enough. I will talk about New South Wales for a second. In New South Wales, appointments are for one year, and, depending on the issue, up to two years. I have had buildings where I have been the compulsory manager for nine years. They are still dysfunctional. I cannot hand the building back. I have to go back to the authority, NCAT, and say, "If I hand this back, one of them is going to shoot the other one." They are that dysfunctional. Sometimes it is just personalities.

THE CHAIR: Just to clarify: this is where properties do not have strata managers?

Mr Williamson: No; they already have strata managers. Nine times out of 10, they already have a strata manager.

THE CHAIR: And the strata manager cannot—

Mr Williamson: He may be breaking down, not educating his owners corporation and saying, "You must do this," but then their excuse is, "I've put something up for a vote and I've been overruled." When I did normal strata management, I used to say to owners, "If you ever see an email or a letter that says, 'I strongly recommend', that is code for 'You must'." I cannot say, "You must do this." I will quote legislation to them and say, "You have a duty of care to repair, replace and maintain," and they say, "We can't afford it." Then someone makes an application to ACAT or NCAT, and we are off.

THE CHAIR: Thank you, Greg.

MR WERNER-GIBBINGS: Mr Williamson, you raised concerns in your submission about strata managers having undisclosed conflicts of interests. Particularly in relation to associated companies and insurance arrangements, there has been a lot of conversation, both in submissions and from what we have been hearing from witnesses, about whether that is a problem, and, if it is, how much a problem it is and the impacts. Can you provide a bit more elaboration on your understanding or appreciation or perspective on the problems, and the specific reforms, disclosure requirements or prohibitions that we, as a committee, could or should explore?

Mr Williamson: I will premise it by saying that we do not take any insurance commissions. I do not believe it should even be payable to a strata manager. I firmly believe that you have your running costs, and then you are taking a commission on a potential issue that you may or may not incur, which is an insurance claim. I am a firm believer in user pays. In getting an insurance renewal, the strata manager writes to the broker: "Please find this." The broker does all the work and then sends the information back.

Coming back to disclosures, I am involved in a compulsory appointment at the moment—part of the witness statement—where it is disclosed in their agreement, probably in six font and halfway down page 42, that they say, "We are the agent for the broker. We are the agent for the insurance company itself. We also have 50 per cent ownership of the broker. We also have financial arrangements with the following other

companies that we will allot." Just having a disclosure is not good enough. It can be disclosure that is hidden in the disclosure statement. I can tell you for a fact that 99.9 per cent of all owners corporations never read a strata manager's agreement. It is coming up for renewal. "John's doing a good job. We're happy with him. We'll sign," or "We don't like John. We'll get another strata manager. It's the same contract. We'll sign." It may be in the disclosure. It should be absolutely banned. That is my personal view. There should be no association of any description. There have been cases, as we know: "We don't take strata commission on insurance. We own the brokerage house," or "We will rebate." I have seen people who say they will rebate; they just forget to rebate it.

THE CHAIR: Thanks for your insight, Mr Williamson.

MR RATTENBURY: You made a recommendation in your submission about building management committees and strata management statements. We know that, since 2020, they are required. You suggest we should, essentially, change the legislation and make that retrospective.

Mr Williamson: Absolutely.

MR RATTENBURY: Are there any flaws in doing that? There is generally a reluctance for retrospective action, but your point is that these buildings need this. Are there any risks in doing that that you are aware of?

Mr Williamson: You will get complaints.

MR RATTENBURY: Why will people complain, because it seems an obvious way to make the building run better?

Mr Williamson: Absolutely. I will use an example. You have a commercial on the bottom and you have six stories of residential units above. You then have to have a building statement that overlays that. But the way we run it in New South Wales is that one member of the resi and one member of the commercial run the collective costs, and they both make levies to that separate entity, which is the building management committee. Therefore, if you have issues, both parties are represented, but you are also saying, "If you have insurance for the whole scheme of the building, the building statement is going to outline who is responsible and what types of levies, just like a normal owners corporation would.

At the moment, if you have a residential unit that is required to be insured and the commercial unit says, "I don't want to be part of that insurance"—let's say something happens to the commercial and he is paid out and moves out, what happens to the residential units? You have to have mechanisms in place. I used to be a strata manager for BMCs. You would have an issue where you would have to hold a separate committee meeting, but there are only recommendations to take it back to the owners corporation to be voted on. It is not difficult; it is just one more meeting, once a month, once a quarter or whatever it may be. It should definitely be retrospective.

MR RATTENBURY: It seems necessary on the face of it.

Mr Williamson: It seems extremely necessary.

MR RATTENBURY: We heard some—for me it was surprising—evidence this morning around the fact that 21 per cent of forced bankruptcy in the ACT are strata companies seeking debts from people and are using the bankruptcy process to pursue them. I found that a very surprising number. I am wondering whether either of you have any comment on that practice from your experience. Is it something you have done in your roles? Why does it happen, aside from the obvious? Is there a better way to approach it?

Mr Williamson: I will give you a practical example that I was involved in when I was a—I do not know what the term is going to be, an old-fashioned strata manager?—not a compulsory strata manager, put it that way. It was only a block of 10. It was a heritage listed building. They had to go to the market and get a strata loan of $1.5 million. It was close enough that all ten were equal entitlement.

So one lot who was well-behind on his normal levies by two years and promised to pay and promised to pay—you go through hardship and then you put him under a payment plan. He would fail that. When the special levies to repay the loan were coming through, which were massive, he was not paying those. So even though we would put him on a payment plan, that failed. Then they did not have sufficient money in their own kitty to keep paying, because now we are paying the loan plus his contribution of the levies. He is ten per cent of everybody. We are running out of money. I have to then raise additional levies and make enough knowing that he is not going to pay.

So they are all now paying an extra ten per cent just so the loans and the running costs can—the ultimate end result is that if we get a judgment at a court and he still does not pay, and he has not complied with that payment plan, then the ultimate response, the only thing you can do, is threaten bankruptcy. Now, sometimes with just the threat of it, they will find the money. Sometimes they will not. I would never try to bankrupt an 85-year-old woman on a pension. We will go out of way to work with her.

Under New South Wales legislation, you have 12 months to catch up on your levies. Now, that is a rolling 12 months, so if you have a quarterly levy, you have 12 months to pay that one off, but the next quarter you have another 12 months. The big problem with our legislation is that it attracts interest through the gazetted rate. The strata manager is saying, "Well, now I've got a lot more work to do because I've got to make sure that Peter has actually paid on the first like he said."

He has to comply because it is a legally binding document. If he does not, then the owners' corporation, under New South Wales legislation, can say, "We're now in financial hardship. We're going to stop that payment plan because we have an obligation to run the building." Hypothetically, and I think it was an example today, if you have a block of 50 and five people are not paying their levies, or everyone wants to go onto a payment plan—

MR RATTENBURY: It is a big gap.

Mr Williamson: It is a big gap. Those who are doing the right thing, paying their levies, have to then supplement those who are not making the levies. I used to have a very

junior time, when I was a junior strata manager, and the screensaver—which never happens now because the screen never has time to go to sleep—used to say, "If you can't afford to pay, you can't afford to stay." Well, that was very early in my career, when I was naive and thought everyone should be able to pay their levies.

Then reality hit when I had children, and bills came through the door, and university fees were being funded, and I was thinking, "I am so glad I don't live in strata," because you cannot control what the—you understand the budget with a normal levy, but every strata building eventually is going to have an out-of-the-blue special, and they are the ones that hurt. I will do some more research and get back to you if you want, on if it is the special levies that are creating the bankruptcy. I have the New South Wales—I have the statistics for Australia-wide. I did not realise that ACT was that high. I thought NSW was higher.

MR RATTENBURY: The evidence given to us by the local financial counselling service was that in the ACT, in the 2023-24 year it was 21 per cent. The national average is ten per cent. Their assertion was the ACT is a jurisdiction that does not have hardship provisions while other jurisdictions do have hardship provisions, and so we need hardship provisions as the first step.

Mr Williamson: That is a fair comment. It is what those hardship conditions are. It is like if they cannot afford it at all because—I remember someone trying to say maybe the government should step in and help them pay the levy, and I go, "Well, my car payment is coming up, by the way. I've got a hardship."

MR RATTENBURY: We have had a Rent Relief Fund in the ACT, where you can get a one-off payment if you have a medical crisis or you lost your job, et cetera. It is designed to stop people becoming homeless with a oncer. I think that is what they were referencing in that context.

Mr Williamson: With due respect to my fellow colleagues in the industry, it is not the first point to make someone bankrupt. You try desperately to work with that person and it is only the end mechanism.

THE CHAIR: Can I just confirm, Mr Williamson. You mentioned that you were going to do some research and come back to us about whether it is the special levies that are causing the percentage increase in the ACT. Are you taking that on notice?

Mr Williamson: Yes.

THE CHAIR: Excellent. Thank you.

MR RATTENBURY: I think that has covered the point, unless, Mr Irons, you wanted to add anything on that issue?

Mr Irons: Only to say, and this probably will not surprise you given what I said before, that issues around debt recovery also cannot be litigated in the commissioner's office in Queensland. It is a specific exclusion from the jurisdiction and a matter of that nature would typically find itself in QCAT. Equally, a dispute where an owner purports to have paid something but thinks that they should not have, or there is a dispute about

something that the body corporate alleges that they owe, that is what is called a debt dispute in Queensland. Debt disputes, again, are specifically excluded from the jurisdiction of the commissioner's office.

THE CHAIR: I know that we are running out of time. Mr Irons, I have one or two questions for you, if that is all right, before we wrap up.

Mr Irons: Yes, please.

THE CHAIR: Your company provides dispute resolution services. How does that function work with the strata commissioner function? What is the gap you are trying to fill?

Mr Irons: Thank you for the question. The gap I am trying to address is, first of all, I am trying to prevent people from ending up in my office. To give you this as an example, if you went to my former office and sought an order about a dispute, the timeframe for that is up to 12 months for the order to be made. What I saw in the role is that as that 12 months went on it is fertile ground for further dispute and further disharmony. I wanted to divert people away from that, and that diversion is what I am essentially doing.

I do a lot of work for clients in the area of what is called self-resolution. It is actually a legislative requirement in Queensland that you must make all reasonable attempts to exhaust resolving the dispute yourself prior to going to the commissioner's office and using that service. So I provide services which involve, say for example, writing to the committee on behalf of an owner, saying, "This problem exists. Everybody knows it exists. My client doesn't necessarily want to go to the commissioner's office but will, but we're going to provide an opportunity for you to try and resolve this. Here are all the good reasons, the solid reasons why you should attempt to do that." So that is one aspect.

The second aspect of the gap it fills is that in Queensland one of the most intensely fought disputes in strata is between a committee and a caretaker about the performance of the caretaker's duties. Those disputes happen all the time. They are very intense, very hard-fought disputes but they are also very expensive, very time-consuming disputes and at the moment the only way they get resolved is in QCAT, which is the equivalent of your ACAT or NCAT. So I am providing a mediation service that fills the gap there to prevent parties from doing that.

To finish off that question, there is the capacity for disputes in the commissioner's office in Queensland to be resolved by what is called specialist means. So you can have a specialist adjudicator, you can have a specialist mediator and you can have a specialist conciliator. So it is feasible for me to fulfil that kind of role in the commissioner's office as well. The parties need to agree to the individual and the commissioner then needs to endorse it.

THE CHAIR: Earlier on you mentioned there are some roles that the commissioner does not perform. In your view, if we are looking to set up a strata commission here in the ACT, do you think these are roles that we should consider including?

Mr Irons: It is a really good question. I think it is a question of resourcing at the end of the day because it will depend how much resourcing is available as to what the role could do. I know I spoke quite negatively at the start of all the things a strata commissioner in Queensland does not do. The things I did do, and which was very positive in my opinion, is that I went out there and I spoke to as many people, as many groups and appeared at as many events as possible. I got a reputation for attending the opening of an envelope.

But that was a deliberate strategy because my view was that if I got in front of enough people and spoke about strata, and spoke about topical issues, and spoke about dispute resolution, then that would mean that those people, potentially, would not need to come back to my office. They would not need to use the services. They would not be stuck in the litigation process. That to me was one of the primary outcomes of my tenure in the role: to be seen as that public figurehead who could be relied upon to provide credible, consistent information to people, but also in a way that meant that they did not need to take up time and money from the delivery of public services.

There are many things that your strata commissioner in the ACT could and could not do, but if you were to ask me what is the one thing that would be really necessary for a strata commissioner in the ACT to do, it would be what I just said then. To be out there engaging, to be the public face, to create that sort of conduit between users and stakeholders and service delivery.

Mr Williamson: Can I just add one thing about the commissioner? Name-dropping at the moment, but I was in a meeting the other day with Angus Abadee, who is our New South Wales commissioner. While he already knew it, he did publicly announce that part of his authority now is that, independently of any lot owner or anybody else, the commissioner can now make an application to seek a compulsory appointment of a strata manager.

You have to be able to give your commissioner a lot of teeth. I mean, I tried to nail him down on "When would you step in," and "A: it would be the last resort." If an owners' corporation is not doing something, and they can pick that up through our Strata Hub or an independent anonymous complaint, first off they will send a warning letter. Now, if that goes to a strata manager, he is normally going to bring that back to the owners' corporation or the committee and say, "Guys, we've just got a warning letter from the department. You'd better fix this."

That may or may not fall on deaf ears. If something does not happen, then the commissioner is going to walk in and go, "You know what, I gave you the choice. I gave you the opportunity. I don't want to use my big stick, but you no longer have a say in your building until the appointment of the compulsory manager is over." We actually see, as compulsory managers, as administrators, we are the last resort. Consequently, we really need to know our stuff. I mean, it is my license on the line, and I am back to ACAT or NCAT to say, "Well, you put this guy in and he didn't know what he was doing." Thank you, but my license is more important than upsetting John and Mary, who might I upset in a building.

THE CHAIR: Thank you so much, Mr Williamson and Mr Irons for that really, really insightful conversation. On behalf of the committee, I would like to thank you, our

witnesses who have been assisting the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. I think you took a question on notice. When you can, please send that through.

Mr Williamson: Five o'clock this afternoon?

THE CHAIR: Thank you. This meeting is now adjourned. Thank you very much for your time.

The committee adjourned at 4.57 pm.