

Sale of Undivided Shares in Land

Terms of Reference

In 1972 the Committee was asked to investigate schemes that invite the public to purchase undivided shares in land.

Background of Reference

Increasingly, the advertisements and invitations associated with schemes for the sale of undivided shares in land were found to be misleading. As well, some of the schemes had an excessive number of co-owners, some of whom were difficult to locate. Of particular concern were schemes where no precise commercial enterprise or development was specifically proposed at the time of sale or where no mechanism had been put in place for the proper administration of the scheme.

When the Committee was formally reconstituted as a Commission in January 1973, the reference was handed over as an incomplete project. In March 1973 the Commission issued a working paper which outlined the schemes and matters of concern and discussed a number of possible solutions.

Nature and Extent of Consultation

The working paper was forwarded for comment to a number of parties including judicial officers of the Supreme and District Courts, the Law Society of Western Australia, the Law School of the University of Western Australia, industry associations, relevant government departments and law reform agencies in other jurisdictions. A notice was also placed in *The West Australian* inviting public submissions on the subject. Eight commentators responded to the working paper including the Law Society of Western Australia, the Registrar of Companies, a number of relevant industry associations and institutes and two individuals. The Commission delivered its final report in May 1973.¹

Recommendations

After consideration of the issues the Commission recommended that the *Sale of Land Act 1970 (WA)* be amended to ensure:

- That no person shall offer to the public for purchase, or shall invite the public to purchase, any undivided share in land unless they have complied with specific provisions and the offer is of a specific character.
- That if these provisions are breached the person(s) that commits the breach should be criminally liable and the purchaser should have the right to avoid the contract and recover any money paid.
- That the legislation should apply to offers made and offers accepted after the coming into force of any amending Act.

A comprehensive outline of the Commission's recommendations may be found at pages 7–9 of the final report.

Legislative or Other Action Undertaken

In 1974 Parliament enacted the *Sale of Land Act Amendment Act 1974 (WA)*. This Act introduced sections 19A–19D into the *Sale of Land Act 1970 (WA)* and effectively implemented the recommendations of the Commission.

¹ Law Reform Commission of Western Australia, *Sale of Undivided Shares in Land*, Project No 38 (1973).