



**RESPONSE OF SCA (WA)  
TO LANDGATE'S  
OCTOBER 2014  
CONSULTATION PAPER  
ON STRATA TITLES REFORM**

**12 JANUARY 2015**

## Introduction to SCA(WA)

Strata Community Australia (WA) is the only Western Australian association supporting the strata sector, with a membership base that includes 100 strata management businesses, 112 strata managers, 46 businesses involved in providing services to the strata sector, 10 strata companies and 101 lot owner members. We bring together people who manage strata schemes, live in strata communities and provide services for them. We also offer education, advice, and advocacy to enable better understanding of strata rules, obligations and rights.

SCA(WA) was incorporated in 1989, shortly after the enactment of the *Strata Titles Act 1985 (WA)*<sup>1</sup>. The association was previously known as The Strata Titles Institute of Western Australia.

As the strata industry has developed, so too has Strata Community Australia. In 1992, state strata associations agreed to create a national organisation, the National Community Titles Institute. In August 2010, the boards of the six state and territory bodies came together to plan for a new and more professional level of representation. They chose a name that reflected our aspirations for national recognition and the collective physical and human sides of this sector. In July 2011, Strata Community Australia Ltd replaced the National Community Titles Institute. SCA(WA) works closely with SCA on education, professional development and law reform initiatives.

A council of elected and appointed councillors and several volunteer committees govern SCA(WA). Its committees include:

- Best Practice: implements and administers accreditation programs for strata managers and publishes the Code of Conduct that binds members
- Education: delivers both professional development for members and disseminates information to the public
- Professional Standards: receives and deals with misconduct complaints against members and takes disciplinary action against members who breach the Code of Conduct
- Legal Affairs and Public Policy: advises the council on policy initiatives and submissions to government on legal issues

The Legal Affairs and Public Policy Committee have primarily prepared this feedback paper. That committee comprises:

- Ida Smithwick, Committee Convenor. Ida is a Strata Consultant with 30 years of experience in strata management. Ida is also the convenor of SCA(WA) Professional Standards Committee and has been a past President of SCA(WA), Council member for 13 years and representative for SCA(WA) on the PIAC at the Department of Commerce
- Mark Atkinson, Lawyer. Mark is the Principal of Atkinson Legal, a director of SCA Ltd and past President of SCA(WA)

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<sup>1</sup> References to the Act and to sections are references to this Act and to sections of this Act

- Rachel Cosentino, Lawyer. Rachel is a Practice Group Leader for General Law in Slater & Gordon's Perth office, has been a Council member of SCA(WA) for 3 years, and is the President of SCA(WA)
- Paul Keet, Managing Director Strata Asset Services (WA). Paul has been a strata manager for over 20 years, is also a member of the Best Practice Committee and was a member of SCA(WA) Council for several years
- Warren Kiddle, Owner and Director of Strata Administration Services. Warren has been a member of SCA(WA) since 1995 and is a Council member
- Jake Kneebone, Executive Chairman Exclusive Strata Management. Jake has over forty years' experience in the property industry in WA, having worked in building contracting, real estate sales, property development, property management and, over the last 24 years, strata company management. Jake previously served as a Councillor of SCA(WA)
- Henry Van Es, Owner and Strata Manager Director, Smithwick Strata Services. Henry has been a strata manager for 7 years

The Legal Affairs and Public Policy Committee consulted widely with members of SCA(WA) in compiling this response. Feedback from members was invited and provided:

- by direct contact with committee members
- in forms and emails received from members
- during a forum on 3 December 2014 attended by 61 members

This response was approved for submission to Landgate by SCA(WA) Council at its meeting on 20 January 2015.

## General Feedback

SCA(WA) provides the following general feedback on the Consultation Paper.

1. The reforms are essential to improving the future liveability of Perth.
2. SCA(WA) is pleased that the Act is being reformed 30 years after it was introduced. However, SCA(WA) does not support some of the reforms.
3. It is disappointing that the well-known inadequacies of the existing Act are not proposed to be addressed in this reform. The significant recent Supreme Court appeal decision of *Tipene & others v The Owners of Strata Plan 9465 & others* is but the latest of many cases that highlight the many errors in the existing Act. Most of these errors could be easily fixed. There is a wealth of material available to Landgate from 20 years of dedicated work by volunteers and others to use as a strong base for reform of these errors. Why would Landgate not want to use this material to provide the necessary strong legal foundation for the more complex schemes that are coming?

4. Terminology is important. The glossary and the Consultation Paper contain many instances of inconsistent terminology and definitions at odds with the existing Act. Further, the Consultation Paper does not adequately identify the terminology to be used for the new forms of tenure. SCA(WA) recommends that the Act be renamed the “*Strata and Community Titles Act 2016 (WA)*.” This way, the public will know what legislation deals with community titles. This name also accurately conveys the close relationship between strata titles and the concept of community titles. Similarly, SCA(WA) is keen to see “Strata Community Scheme” adopted in preference to “Community Titles Scheme”. Again, this is because the word “strata” conveys a clear link between community titles and strata. Community schemes are collections of strata and survey-strata schemes and it is appropriate that the names of these schemes reflect this. Using only “community title” may give the public the impression that this tenure is something different to strata title when it is not. Rather, this new form of tenure is simply strata title, albeit in more complex forms.
5. These reforms present the ideal opportunity to license strata managers. The ‘regulation’ of managers proposed in the Consultation Paper is not adequate and likely to be counterproductive. SCA(WA) again urges the government to license managers, using the same model as many other occupations.
6. Nothing is said in the consultation paper about the practical effect of the proposed changes on requirements such as the strata company providing a section 43 certificate. Strata managers prepare many of these certificates. The strata company may only recover the prescribed fee for provision of the section 43 certificate. The fee prescribed is currently \$100 (schedule 1 item 4 *Strata Titles General Regulations 1996*<sup>2</sup>). SCA(WA) made a submission to the then Minister for Lands in 2013 to revise and increase the regulated fee (**attached**). The fee has not been revised since 2006. It is disproportionate to higher fees charged by utilities and local government authorities for comparable searches and to the level of skill, the time and the onerous nature of the provision of the certificate. The level of professional risk and complexity involved in providing a section 43 certificate will increase with these reforms and the regulated fee must also increase to reflect this.

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<sup>2</sup> References to regulations are references to these regulations

## Chapters 3 to 7 Tenure Reforms

SCA(WA) supports the proposed tenure reforms. However, SCA(WA) is not making any submissions on individual proposals.

### Chapter 7 Vendor disclosure

SCA(WA) supports providing information to buyers in a clear, concise and timely manner to enable them to make a fully informed decision before committing to a purchase. The Consultation Paper does not appear to give adequate attention to this. The format of the existing mandatory disclosures and the timing of their supply will need closer review with the introduction of more complex schemes<sup>3</sup>. Currently, much of this detailed information is buried in many locations within a contract and is seen immediately before making an offer. This does not, practically, allow buyers to be properly informed or conduct due diligence.

SCA(WA) is concerned about proposals within the Consultation Paper that will interfere with elements of the existing sale process working well and place additional obligations on strata companies and their strata manager members as part of the sale process. In particular:

1. they likely shift liability for information provided from the seller to the strata company and to the manager
2. they likely shift at least some of the buyer's obligations to conduct due diligence on to strata companies and managers
3. they impose obligations on strata companies they may not be able to meet
4. disclosure information to be provided by strata companies ought not require any interpretation of source documents
5. they will consume additional resources (time and staff) to meet disclosure obligations, often urgently
6. strata companies and managers are already not adequately compensated for the information supplied in a section 43 certificate (see general feedback above). Greater risk and obligations ought to be reflected in greater prescribed fees for strata companies and managers

The Consultation Paper does not adequately recognise the capacity of any prospective buyer or buyer to conduct due diligence (with the seller's authority) by inspecting strata company records. These records will often contain far more relevant information than could possibly be disclosed with every sales contract. This capacity is not well understood. To alleviate this, SCA(WA) suggests that funding be allocated on an ongoing basis (websites, etc.) for the supply of information to the public about their rights to inspect.

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<sup>3</sup> Schemes refers to both strata schemes and survey-strata schemes

As a matter of terminology, SCA(WA) suggests the Act be amended to refer to sellers and buyers, not vendors and purchasers. This reflects modern usage and would then follow the commonly used Joint Form of General Conditions.

SCA(WA) suggests that Landgate convene a meeting of all involved in the sales process (developers, agents, managers, lawyers and other conveyancers) to identify weak points in the sale process and agree on possible solutions (including who is best placed to provide required information).

## 7.1 Previously approved changes

### Page 55

*Reform proposals previously approved by Cabinet are included here to give a full view of the context of the current proposals. The Act will be updated to include within the information a strata company may be requested to provide to the purchaser information about the strata management contract from the strata company. This amendment will allow the purchaser to request information about the contract itself, including:*

- *the name and address of the strata manager*
- *the duties to be performed by the strata manager*
- *the fees payable under the strata manager contract*
- *the start date and term of the contract*

### SCA(WA)

**Supported with changes.** The updated information must include all management and other service contracts. Building management contracts, lift maintenance contracts and planned maintenance contracts have financial impacts greater than strata management contracts

### Page 55

*The strata company may refuse to provide and or permit inspection of any part of a document that the strata company reasonably believes contains defamatory material*

### SCA(WA)

**Not supported without more information and changes.** Who will determine what is defamatory? There does not appear to have been any industry consultation or demonstrated industry failure that would require this provision. A more important issue is expressly preserving client-lawyer professional privilege on strata company documents

## 7.2 Proposed (new) disclosure items

### SCA(WA)

**Supported with changes.** Item 4: disclosure of levies must recognise that often contributions are not levied in equal instalments and that contributions can be levied on a one-off basis. Item 5: a balance sheet would be more informative. Fund balances can vary by large amounts on any day. Item 6: unworkable unless confined to registrable transactions not yet registered at Landgate. A single large scheme will licence parking for hundreds of cars, small signs, goods storage, etc. Item 8: not supported. The minutes of schemes not

externally managed are often in narrative form and not coherent or helpful. Item 12: what is the point of disclosing this right to inspect just one of the possibly many relevant contracts? There is no justification advanced for this proposal or for it being confined as it is. Item 13: no comment.

The forms attached to the Consultation Paper require significant re-drafting and see responses to proposals 112 and 113

### 7.3 Make disclosure format more consumer friendly

#### 7.3.1 Combine general and specific disclosure information

**Proposal 112** *Incorporate generic and specific information currently spread over two separate forms (Form 28 and Form 29) into a single disclosure form to make it more understandable*

**SCA(WA)** **Supported with changes.** Suggest providing key lot information on a one-page summary, referring to more detailed explanations available elsewhere

#### 7.3.2 Different disclosure form for each type of sale

**Proposal 113** *That there be 4 separate disclosure forms applicable to strata title property transactions*

- ) *Sale of a strata lot by the original proprietor (including off-the-plan sales)*
- ) *Sale of a survey-strata lot by the original proprietor (including off-the-plan sales)*
- ) *Sale of a strata lot in an established scheme*
- ) *Sale of a survey-strata lot in an established scheme*

**SCA(WA)** **Opposed.** Use of four forms will most likely confuse agents and buyers and cause the wrong form to be selected. SCA(WA) suggests using a single standard form, with an attachment containing relevant information if it is the original proprietor selling a lot. Also, avoid introducing new terms and concepts to the legislation (such as "off the plan" and "built"). Finally, consider a time limit on Original Proprietor disclosures as many of these will become irrelevant if the Original Proprietor is still an owner of the majority of lots for many years

#### 7.3.3 Move key information into the disclosure form

**Proposal 114** *That some of the information currently found in the attachments to the disclosure form be incorporated in a basic way into the body of the form:*

*the unit entitlement of the lot*

*the aggregate (total) unit entitlement for the scheme*

*the number of lots in the scheme*

**SCA(WA)** **Supported**



### 7.3.4 Supply of information by the strata company (s43)

**Proposal 115** *Incorporate into the disclosure statement an ‘application form’ which the purchaser or his/her agent can use to apply to the strata company for additional information*

**SCA(WA)** **Supported with changes.** It is an application to inspect, not to supply information. Further, the majority of schemes not externally managed are unlikely to have an accurate address for service of the application, nor have the required records in accessible form.

**Proposal 116** *Add a list of information that is obtainable from the strata company and a checklist of information that a purchaser should understand about the scheme before the purchaser signs the contract*

**SCA(WA)** **Supported with changes.** Note that the Act does not oblige a strata company to copy documents for people inspecting under section 43. Reproducing the list of obtainable information in every disclosure is unnecessary - suggest incorporating the source of the information in the checklist of information the buyer should understand. SCA(WA) also suggests that funding be allocated on an ongoing basis (websites, etc.) for the supply of information to the public about their rights to inspect, etc.

### 7.3.5 Electronic disclosure

**Proposal 117** *Expressly allow vendors to provide vendor disclosure in soft copy (electronic) format*

**SCA(WA)** **No comment**

### 7.3.6 Disclosure incorporated into the contract of sale

**Proposal 118** *If the vendor includes the disclosure details in the contract of sale rather than via the prescribed disclosure form(s), the information must be highlighted to the purchaser*

**SCA(WA)** **Supported with changes.** This proposal does not go far enough. SCA(WA) suggests a prescribed disclosure document and that this document must be separate from the contract.

### 7.4 Timing of the disclosure

**SCA(WA)** **No comment**

### 7.5 Notifiable variations (s69C)

**Proposal 119** *There will be an additional disclosure obligation describing any registered changes to the development disclosure document (see discussion under staged strata for further information)*

**SCA(WA)** **No comment**



**Proposal 120** *Where a lot is sold off-the-plan the vendor will be required to notify the purchaser of a change to the subdivision approval, development approval, and any review of those approvals*

**SCA(WA)** **No comment**

#### 7.6 Termination of the contract (s69D)

**Proposal 121** *The purchaser's right to avoid the contract will be expanded to include the vendor's failure to disclose a copy of the development disclosure document, where applicable, and provide details of any registered variation to the development statement*

**SCA(WA)** **No comment**

**Proposal 122** *Where the vendor disclosure must be provided at least 24 hours prior to contracting the purchaser will have an additional termination right where the disclosure is not provided in accordance with this*

**SCA(WA)** **No comment**

#### 7.7.1 Vendor disclosure in a community scheme

**Proposal 123** *Create a separate community title disclosure form relating only to community level disclosure and documents*

**SCA(WA)** **Supported**

**Proposal 124** *Mirror the disclosure requirements applicable to strata schemes in terms of financial and management information*

**SCA(WA)** **Supported**

**Proposal 125** *Require the vendor to disclose a copy of the community plan and the community management statement. Where there is outstanding development, the community development statement will also be disclosed*

**SCA(WA)** **Supported.** How will it be known when there is "outstanding development?"

**Proposal 126** *Incorporate general information around community title schemes into the community title form*

**SCA(WA)** **Supported with change.** Suggest providing key information on a one page summary, referring to more detailed explanations available elsewhere

**Proposal 127** *Apply the same rules on timing of disclosure that apply for strata and survey-strata schemes*

**SCA(WA)** **No comment**

<b>Proposal 128</b>	<i>Require the original proprietor of a lot in a community scheme to direct the purchaser to a copy of the community plan, community management statement, and community development statement in advertising for the lot</i>
<b>SCA(WA)</b>	<b>Supported</b>
<b>Proposal 129</b>	<i>Extend the notifiable variation obligations and contract avoidance rights under s69C and s69D to community title disclosure</i>
<b>SCA(WA)</b>	<b>No comment</b>
<b>Proposal 130</b>	<i>Create a separate leasehold strata title disclosure form</i>
<b>SCA(WA)</b>	<b>Opposed.</b> See response to proposal 113
<b>Proposal 131</b>	<i>Require the vendor of a leasehold strata title lot to disclose a copy of the leasehold certificate of title (showing the lease expiry date)</i>
<b>SCA(WA)</b>	<b>Supported</b>
<b>Proposal 132</b>	<i>Incorporate the disclosure around staged development into the standard strata and survey-strata disclosure forms</i>
<b>SCA(WA)</b>	<b>Not supported.</b> What is “disclosure around staged development”?
<b>Proposal 133</b>	<i>Require the vendor to disclose a copy of the developer disclosure document where the strata scheme is part of an incomplete staged development</i>
<b>SCA(WA)</b>	<b>Supported</b>

## Chapter 8 Management of strata schemes

### 8.1.1 Powers of the Strata Company

**SCA(WA) supports** these proposals.

### 8.1.2 By-laws

<b>Page 64</b>	‘A person who is entitled to vote, or who holds the proxy to vote, will be disqualified from voting on a resolution where they have a conflict of interest’
<b>SCA(WA)</b>	<b>Not supported.</b> This is unworkable. A person entitled to vote will have a conflict of interest or potential conflict of interest in every resolution by the proprietor’s interest in the common property and the strata company
<b>Page 64</b>	A breach need not be wilful and persistent to ground an application to SAT
<b>SCA(WA)</b>	<b>Supported</b>
<b>Page 64</b>	By-laws not allowed to ban the keeping of dogs trained to assist with

a disability

**SCA(WA)** **Supported with changes.** Suggest also add power for the strata company to compel the person to provide medical certification verifying the disability and that the keeping of the dog is a genuine requirement to aid the person with the disability. SCA(WA) members have experienced the current provision being abused

### 8.1.3 Insurance

**Page 64** Increase minimum public liability insurance

**SCA(WA)** **Supported.** Further, future changes should be able to be made by regulation.

**Page 65** Allow a strata company not to apply insurance proceeds to rebuilding

**SCA(WA)** **Not supported.** Members foresee this giving rise to greater scope for disputes and liability for decisions how to apply funds

### 8.1.4 General Changes

**Pages 65-66** Allow a strata company to install infrastructure on a majority vote

**SCA(WA)** **Not supported unless changed.** SCA(WA) suggests reform be confined to sustainability initiatives and allow dissenting owners to apply to SAT to stop works on specified criteria of fairness, etc. For instance, the proposed works would cause a Lot to experience undue noise or vibration from a wind turbine.

**Pages 65-66** Increase penalties

**SCA(WA)** **Supported.** SCA(WA) also suggest Original Proprietors be obliged to deliver up the building permit and the occupancy certificate. The permit and certificate are crucial for any later defect claims

### 8.1.5 Strata Managers

SCA(WA) broadly supports the recognition of the role of the strata manager in the Act. In the drafting of these amendments, there needs to be a clear distinction between the functions of the strata company and the offices of the strata council and the powers of the strata company. The current accepted principle that a strata company cannot delegate its powers under the Act although it may delegate its functions should be clarified and preserved.

The Consultation Paper does not set out whether the strata manager will be the business that contracts with the strata company to provide services for fee or reward or whether a strata manager will be an individual who is an officer or employee of that business. As the reforms propose minimum requirements in relation to the terms, the definition of strata manager should encompass the strata management business, rather than an individual strata manager.

In relation to the proposal that SAT may make an order to settle a dispute between a strata manager and a strata company, SCA does not consider that a strong or compelling case has been made that is desirable or beneficial for consumers. We make the general observation this is a highly unusual proposal. We can identify no other commercial service provider subject to legislative intervention in disputes between it and its customers in this way. Our observation is this proposal has evolved from a need for licensing of strata managers that SCA has long advocated to provide consumer protection. However, there is a vast difference between resolving disputes between a customer and a supplier (in this case a strata company and a strata manager) and the supervision or regulation of a profession for professional standards.

There is no need for legislative intervention for resolution of disputes between strata companies and strata managers. Strata companies can terminate contracts for strata management services if the manager breaches the contract. Strata companies also finely negotiate the terms between it and a strata manager – for example, strata companies call for tenders from potential strata managers and specify the terms in the call for tenders.

Further, a strata company that suffers loss or damage because of the conduct of a strata manager can pursue existing causes of action for negligence, misrepresentation, fraud and breach of contract. Like all other consumers, Courts can grant remedies and can well deal with such matters. SAT is not placed in any better or special position to deal with disputes of this nature. Further, because SAT is a no-costs jurisdiction, it is not an appropriate forum for dealing with these matters.

SCA supports licensing of strata managers. However, the empowerment of SAT to deal with disputes with managers is a different species of reform to regulation or oversight of the professional standards of managers. The proposed reforms do nothing to advance the interests of consumers, but simply add yet another forum for consumers to seek resolution of their disputes or claims.

The proposed reforms also have other significant negative implications for strata managers. The proposal to impose a requirement to maintain records of services provided is ambiguous, vague and, potentially, unreasonably onerous. What records must be kept? How does this align with standard business practices, including the practices of all other businesses that provide services to consumers? How will this requirement ultimately affect the cost of provision of those services and the cost to the strata company of engaging a strata manager?

## **8.2 New Proposals for management of strata schemes**

### **8.2.1 Empower the strata company to appoint members to positions on the strata council**

**Proposal 134** *Written nominations for office bearers on the council are distributed before the meeting, with the notice of the meeting. These may provide background information on nominees. Nominations may still be made at the meeting itself.*

**SCA(WA)** **Not supported.** SCA(WA) members' experience is that it is far more common for owners to be reluctant to nominate for the strata council. In the majority of cases, councillors are elected unopposed. The nomination process should be made easy and simple. It should have as few barriers and technicalities as possible so that owners are not deterred from nominating and nominations can be encouraged or solicited before and at an AGM

**Proposal 135** *The strata company has the option of appointing council office bearers at the meeting*

**SCA(WA)** **Not supported.** SCA(WA) strongly supports the retention of the current provisions that allow the strata company to elect amongst themselves officers for positions on council at the council's first meeting after it is known who is on the strata council

**Proposal 136** *If the strata company does not take this option, the strata council may still appoint the officers at the first meeting.*

**SCA(WA)** **Not supported.** See response to proposals 134 and 135

### 8.3 Quorum

**Proposal 137** *That those strata owners present half an hour after the appointed time of a general meeting can be deemed to constitute a quorum*

**SCA(WA)** **Supported.** Many of our members have expressed the view that a 15-minute waiting time is sufficient before a meeting can proceed

**Proposal 138** *If those present determine that it is appropriate the meeting can still be reconvened in a week's time*

**SCA(WA)** **Not supported.** It is unnecessary given the power of any meeting to determine its own procedure, including to adjourn, and only likely to lead to confusion if expressly mentioned in legislation

### 8.4 Audits

**Proposal 139** *That an audit of the strata company accounts be included on the agenda for discussion at every AGM. This will include consideration of the most appropriate checks and investigations an audit should contain, such as proper authorisation of payments*

**SCA(WA)** **Neither supported nor opposed.** SCA(WA) members see little or no benefit in requiring that an audit be on the agenda for discussion at every AGM. Audits will do nothing to enforce compliance with the Act's requirements as to how powers of expenditure are exercised

## 8.5 Reserve Fund Forecast

**Proposal 140** *That a reserve fund forecast be on the agenda for discussion at every AGM*

**SCA(WA)** **Supported.** However, many SCA(WA) members have expressed a strong view that a reserve fund should be compulsory and the common view is that, as a general rule of thumb, the reserve fund contributions should be at least 5% of the administrative expenses of the scheme. This cannot be true of all schemes, particularly those with no or minimal common property improvements.

## 8.6 Insurance

**Proposal 141** *That insurance is on the agenda for discussion at every AGM.*

**SCA(WA)** **Supported with changes.** The regulations will need to specify the content of the agenda (e.g., when valuation or building replacement cost assessment was undertaken, when it ought to be undertaken again). Further, it should be compulsory to reassess adequacy of insurance amount, based on expert advice, at least once every 5 years.

## 8.7 Standards of financial reporting and controls

**Proposal 142** *That financial control standards are on the agenda for discussion at every AGM*

**SCA(WA)** **Supported.** SCA(WA)'s position is that there should be stronger provisions for financial reporting and controls. While acknowledging that the imposition of financial controls may be onerous for smaller schemes, the proposals to simply require strata companies to discuss these matters at a general meeting will have limited effect and will be difficult to enforce in any practical way. SCA(WA) suggests an approach akin to that created by the *Associations Incorporation Act* to have different levels of financial reporting depending on the size of the association

**Proposal 143** *That educational material be developed to assist purchasers in understanding financial options and obligations of the strata company*

**SCA(WA)** **Supported.** SCA(WA) is well placed to develop this material

## 8.8 Electronically enable the Act

**Proposal 144** *Strata companies be given a general power to conduct their affairs through electronic means*

**SCA(WA)** **Supported**

**Proposal 145** *References in the STA which currently exclude the use of technology be amended to enable technological assistance with meetings, communications and document management*

**SCA(WA)**      **Supported**

**Proposal 146** *Technological means of communication will only be deemed acceptable if all parties agree to this form of communications*

**SCA(WA)**      **Supported.** The *Electronic Transactions Act 2003 (WA)* already deals with consent to electronic transactions

### 8.9 By-laws not to be unreasonable or oppressive

**Proposal 147** *That by-laws cannot be put in place that are unreasonable or oppressive*

**SCA(WA)**      **Supported with clarification needed.** Clarity is needed about when a by-law will be unreasonable and what must be taken into account in determining whether a by-law is invalid

### 8.10 Classification of by-laws

**Proposal 148** *That the STA provide guidance around the nature of schedule 1 and schedule 2 by-laws in order to assist strata companies to correctly classify any new by-law as being in one or the other*

**SCA(WA)**      **No clear position reached.** Several decisions of SAT suggest clarity is needed in proper classification of by-laws. However, schedule 1 by-laws need a resolution without dissent to be adopted or amended. This, practically, locks owners in to the by-laws adopted by the developer on registration, at least on any contentious issues. It is practically impossible to change financial by-laws after registration of a scheme by resolution without dissent. That is often not appropriate, as the developer is unable to foresee every scenario that arise as the scheme develops. There is therefore some support for there being a single schedule of by-laws, able to be created, amended, etc. by special resolution (with a special resolution being amended to allow unfinancial owners to vote). If a new by-law or repeal of a by-law interferes improperly with an owner's proprietary rights, the reformed Act will allow SAT sufficient scope to intervene. Members stressed the significance of proprietary rights

### 8.11 Information disclosure by strata managers

SCA(WA) has long advocated that licensing of strata managers is both desirable and necessary to ensure effective consumer protection, minimum education, good character and trust accounting standards and sanctions for defaulting strata managers.

SCA(WA) has 112 strata manager members. The eligibility requirements for this category of membership are that the strata manager is working in a strata management business that is also a member. Strata managers working in businesses that are not members of SCA(WA) are not eligible for membership. In NSW where the industry is licensed, there are 1 656 strata managing agent licenses and 765 strata managers (employed under the supervision of a licensed strata managing agent) for 73 943



schemes. From this information, we could surmise reasonably accurately that the Western Australian strata sector with 62 663 strata schemes might support 1 391 strata managing agents and 642 strata managers.

The given rationale for not progressing with licensing of strata managers is that it is not known how many strata managers operate in the industry in Western Australia. This justification is disappointing. Ascertaining the number of strata managers in Western Australia is easy. The Yellow Pages online listings show 134 strata management businesses trading in Western Australia. The Australian Strata Services Directory lists 70 strata management businesses.

However the more pertinent issue is not the number of strata managers, but rather the number of consumers (strata companies and lot owners) and the size and importance of the sector that would benefit from licensing.

SCA(WA) remains firmly of the view that licensing is the most appropriate way to regulate strata managers.

**Proposals 149 and 150** *Regular information disclosure will be required from people working as strata managers and imposition of a fine if disclosure is not made*

SCA(WA) **Opposed.** What information will have to be disclosed? Licensing is the appropriate means to regulate managers

**Proposal 151** *Information about the strata management industry will be publicly available for a fee*

SCA(WA) **Strongly opposed.** Licensing is the appropriate means to regulate managers.

What information will have to be disclosed? What information will be publicly available? SCA(WA) members have legitimate concerns about privacy and confidentiality. It is unpalatable for information that has to be supplied to be on-sold by the recipient of that information, for a fee. Perhaps it would be more useful to mandate that each scheme has to keep its address for service up to date. Currently, Landgate charges a fee to do this and service addresses are rarely updated. If the fee to do this were removed, it would then be possible to legislate for this as an obligation without it being a burden

## 8.12 Code of conduct for strata managers

**Proposal 152** *That a code of conduct be introduced for strata managers. Breaches of the code are grounds for the strata company to apply to SAT for an order terminating the strata manager's contract.*

SCA(WA)

**Strongly Opposed.** It is a prerequisite of membership of SCA that members are bound by a Code of Conduct. It is the SCA's mandated objective to increase and improve professionalism in the industry by enforcing this Code of Conduct. SCA supports the concept of strata managers complying with a Code of Conduct in the elements set out in the Consultation Paper, but says that the Code of Conduct should be that developed by SCA(WA) to avoid members of SCA(WA) being subject to two different codes.

Application by a client of a strata manager to SAT is not the appropriate way to enforce a regulatory Code of Conduct. Because the proposal involves introducing a Code of Conduct but without licensing, the enforcement of Codes of Conduct will be ad-hoc and ineffective. For instance, a strata manager who also controls the strata council by ownership of lots would be in a position of conflict of interest. That strata manager would be in breach of the Code of Conduct by acting for the strata company. Yet because the strata manager controls the strata company, the strata company would never apply to enforce the Code of Conduct or bring the breach to SAT's attention.

Under a licensing regime, an independent regulator could investigate potential breaches, not only upon the complaint of a strata manager but on the complaint of an owner, any member of the public who learned of a potential breach or of its own volition. The role of the regulator would be to investigate and determine whether there was a prima facie case of a breach of Code of Conduct and referral to SAT would only be on matters where there was a prima facie case.

At the other extreme, a strata company may have a trivial complaint or grievance against the strata manager but apply to SAT alleging a breach of the Code of Conduct particularly where the duties under the Code of Conduct are broadly stated such as a duty to 'act in the strata company's best interests'. SAT may be in a position of then dealing with applications that have no grounds or realistic prospects of success. Costs orders may provide a part disincentive, but will never be a true remedy for the misuse of SAT's resources and the strata manager's time. If strata managers are caught up in proceedings in SAT on these matters, strata management services could cost significantly more for all owners

Further, not all breaches of a strata manager's contract or the Code of Conduct should be grounds for termination of the contract. The proposal is a significant interference with the freedom to contract and well established and understood common law and equitable

doctrines

### 8.13 Grounds for termination of strata manager contract

**Proposal 153** *That the STA establish that unsatisfactory performance or non-performance of duties by the strata manager, are grounds for termination of the contract by the strata company*

SCA(WA) **Strongly opposed.** SCA(WA) repeats its response to proposal 152. Proposal 153 adds nothing to protect consumers.

How will proposal 153 be applied? Typically, in contracts for the provision of services, unsatisfactory performance is not a ground for termination without first being notice given of the alleged unsatisfactory performance and of what is required to remedy the unsatisfactory performance. Further, not every instance of unsatisfactory performance will be a ground for termination of a contract. Only those breaches so fundamental they go to the heart of the contract would ordinarily ground a right to elect to terminate the contract. In addition, termination may not be the only appropriate remedy for unsatisfactory performance or non-performance of duties by a strata manager. Other remedies that may be more appropriate include monetary compensation, specific performance or an unjust enrichment claim.

The value of strata management business, like many professional services businesses, is intricately associated with the goodwill of the business. That goodwill reflects the value of the contracts the business has. Incorporating in the Act a provision allowing SAT to terminate contracts between strata managers and strata companies, regardless of their express terms, will significantly interfere with the ability of the strata managers to value their goodwill and to price their services. For instance, pricing may be set on the basis that the term of a contract would be three years and the fees spread over three years evenly even though more of a strata manager's time may be spent at the beginning of the contract. The prospect that a strata company could apply at any point in time during the fixed term to terminate the contract on minimal grounds, expressed broadly, will make pricing services far more difficult

### 8.14 How a strata manager holds funds

**Proposal 154** *That the STA establish a strata manager holds money on behalf of the strata company on trust, and must be able to separately account for all monies held for each strata scheme they are managing.*

**SCA(WA)**      **Support with changes.** There should be no requirement for strata managers to maintain trust accounts, but where trust accounts are operated, the usual equity rules and accounting standards should apply. If money is held on trust, the account name ought to reflect this trust account.

However, it must be recognised that not all strata managers operate trust accounts. Many strata managers have accounts open in the names of the strata companies for whom they act (often at the express request of the strata company). In such cases, the monies are not held by the strata manager on trust, even if the strata manager has authority to operate the account. Any legislative changes must ensure this remains an option for strata companies and strata managers.

Mandating trust account requirements without also introducing licensing will achieve little. Strata managers who do not comply with the trust accounting requirements cannot be prevented from operating in the industry unless they have a licence that can be revoked.

Having identified the need for a legislative requirement for strata managers to hold funds on trust, it seems bizarre that the case for licensing apparently has not been made out adequately to government

## Chapter 9 Dispute Resolution

### 9.1 Overview

SCA supports the aims of simplifying the dispute resolution provisions in the Act and transferring residual District Court jurisdiction to the SAT. Our members' experience is that SAT is reasonably efficient and effective in resolving strata title disputes. SAT members typically have a good understanding of the Act and of the sector. Outcomes of dispute resolution in SAT have a high level of acceptance and satisfaction amongst the parties involved in them.

However, we consider the goal of SAT becoming a one-stop shop overreaches what is realistically achievable and what is required to improve the dispute resolution system. For instance, no clear rationale has been identified for SAT being the jurisdiction to deal with strata debt recovery matters involving strata. Nor is there any clear rationale for having SAT determine claims for breach of contract, negligence, or all claims relating to loss and damage just because those causes of action arise in a strata scheme.

SCA(WA)'s position is that Parliament should be cautious in granting jurisdiction to the SAT. The SAT is not a court. It does not conduct cases under the rules of civil procedure and evidence. It must deal with matters without regard to legal technicality. As appeals can be brought against rulings made by SAT only where the appeal involves an issue of law, it is appropriate that SAT's jurisdiction be limited. These features of SAT raise serious issues whether SAT is the appropriate jurisdiction to deal with causes of action that otherwise lie in the jurisdiction of a Court in most other commercial and consumer contexts

## 9.2 Broaden SAT powers to resolve strata disputes

**SCA(WA) supports** the proposal to transfer jurisdiction under the Act from the District Court to SAT

### 9.2.2 Broaden the list of applicants and types of disputes resolved by SAT

**Proposal 155** *Amend Section 83 to expand SAT's powers to resolve a dispute involving a strata manager and to allow strata managers to apply to SAT.*

**SCA(WA) Not supported.** See response to proposals 151-153.

### 9.2.3 Increased monetary limit for orders made by SAT of \$75 000

**Proposal 156** *Increase the maximum amount that SAT is able to order a party to pay to \$75 000*

**SCA(WA) Supported.**

**Proposal 157** *That SAT have unlimited powers to order damages for compensation for loss*

**SCA(WA) Strongly opposed.** It is not appropriate for SAT to have jurisdiction to determine compensation claims, personal injury claims or claims that may involve significant amounts of damages resulting from negligence or breach of contract. Adequate remedies and causes of action already exist under the general law for consumers and parties who suffer loss because of a breach of a duty or a breach of contract (and we note that the by-laws constitute a statutory contract as between a strata company, owners and occupiers).

Parties bringing and defending such claims may be disadvantaged by the claim being in SAT rather than a court of law where they have the benefit of rules of evidence, costs sanctions and appeal mechanisms

### 9.2.4 Remove restriction on SAT making orders that relate to other dispute resolution provisions

**Proposal 158** *SAT be empowered to make orders under section 83 where another provision applies, on proviso*

SCA(WA) **Supported, provided it is clarified.**

#### 9.2.5 Grant SAT jurisdiction to resolve a strata dispute where title to land is in question

**Proposal 159** *SAT be granted power to resolve disputes where title to land in question where judicial member presiding*

SCA(WA) **Supported with changes.** Appeals from decisions involving title to land should be as of right and not limited to issues of law

#### 9.2.6 Remove restriction on SAT awarding costs

**Proposal 160** *SAT be empowered to award costs in accordance with the SAT Act*

SCA(WA) **Supported**

#### 9.2.7 Broaden SAT power to enforce compliance with by-laws

**Proposal 161** *SAT be empowered to make an order imposing a penalty for a breach of a by-law*

SCA(WA) **Supported**

**Proposal 162** *That SAT be empowered to make an order attaching a penalty as a charge enabling a strata company to lodge a Caveat against the title of a lot for an unpaid penalty*

SCA(WA) **Not supported.** The proposed charging and caveat provisions are too uncertain and too draconian if they could lead to seizure and sale without further court or SAT order. A penalty is needed to encourage compliance with the by-laws. However, the sanction of seizure and sale is likely to be too harsh. If, however, the charge will not empower the strata company to compel a sale of the property, then the charge would serve no real purpose or utility.

It would be preferable that the penalty is a debt due to the strata company and that any new owner of the lot becomes liable to pay the penalty upon settlement of their purchase of the lot. It will need to be shown on any section 43 certificate. This is a simpler and cheaper way of encouraging compliance than a charge and will keep costs to a minimum

**Proposal 163** *SAT empowered to make orders against proprietor in respect of breaches by a tenant*

SCA(WA) **Supported**

#### 9.2.8 Expand power to amend and repeal by-laws

**Proposal 164** *Broaden SAT's powers to repeal or amend unreasonable or oppressive by-laws*

**SCA(WA)**            **Supported.** Close attention will need to be paid to defining the factors that SAT is to take into account in determining whether a by-law is oppressive or unreasonable to strike the right balance between certainty for owners and liveable by-laws, particularly between different uses within a scheme

#### 9.2.9 Increased power to pass, amend and invalidate resolutions

**Proposal 165**      *Consolidate provisions dealing with powers to make orders relating to meetings and resolutions*

**SCA(WA)**            **Supported.** Similar considerations as for proposal 164

#### 9.2.10 Flexibility in making orders so these can vary from the orders sought

**Proposal 166**      *SAT given flexibility in making and varying orders to effectively resolve disputes*

**SCA(WA)**            **Supported.** However, limits need to be placed on this: SAT is still an adversarial jurisdiction and not equipped to act as an inquisitorial jurisdiction

#### 9.2.11 Power to vary an interim order

**Proposal 167**      *SAT be granted power to amend or vary interim orders*

**SCA(WA)**            **Supported**

#### 9.2.12 Order to not do specified act imposed against strata managers

**Proposal 168**      *SAT empowered to make an order against a strata manager to refrain from doing a specified act in relation to a parcel*

**SCA(WA)**            **Opposed.** What mischief is this proposal aimed at? Strata managers have no powers under the Act and no authority to act on a parcel except by authority conferred on them under a contract with a strata company (delegation of function). We understand why orders can be made against an owner or strata company acting in respect to a parcel. We are not aware of any need for similar orders against strata managers

#### 9.2.13 Extended duration of SAT orders

**Proposal 169**      *Remove time limit on SAT orders*

**SCA(WA)**            **Supported.** However, do need to empower SAT to impose time limits on its orders in appropriate cases

#### 9.2.14 Power to serve order before providing written reasons

**Proposal 170**      *SAT orders may be served before issue of written reasons*

**SCA(WA)**            **Supported**

#### 9.2.15 Power to make order enforcing Code of Conduct on strata managers



**Proposal 171** *SAT granted power to make orders enforcing a code of conduct for strata managers*

**SCA(WA)** **Strongly opposed.** As stated in Chapter 8, regulation of strata managers by compulsory code of conduct is not an adequate or appropriate response to the need for consumer protection and is not a substitute for licensing. This is well demonstrated by this proposal.

There is a lack of correlation between a breach of a Code of Conduct and the powers it is proposed be granted to SAT. A breach of a Code of Conduct ought to be dealt with by disciplinary action, with sanctions that range from penalties, suspension and revocation of a licence.

Proposal 171 does not achieve a staged or logical approach to enforcement of a Code of Conduct. It allows a Code of Conduct to be enforced by an ad hoc measure if a consumer / strata company applies to SAT about the alleged breach.

SCA(WA) is concerned that enforcement of a Code of Conduct will become a means for consumers / strata companies to seek the orders referred to in this proposal against strata managers rather than a disciplinary end in itself. Effective regulation of strata managers will only occur when serious breaches of a Code of Conduct are met with suspension of a licence

#### 9.2.16 Power to make order for damages resulting from unfair service contracts entered into by developer

**Proposal 172 & 173** *SAT to have power to intervene if a developer enters into unfair service contracts and award damages*

**SCA(WA)** **Opposed.** Existing common law and equitable remedies are adequate

#### 9.2.17 Power to terminate a service contract

**Proposal 174** *SAT to have power to intervene if a developer enters into unfair service contracts*

**SCA(WA)** **Opposed.** Existing common law and equitable remedies are adequate

#### 9.2.18 Power in relation to insurance

**Proposal 175** *Extend SAT's power to make orders to ensure exclusive use common property is not used for an activity that prevents the strata company from obtaining insurance*

**SCA(WA)**            **Supported.** Needs to extend to all common property subject to a section 42(8) by-law

**Proposal 176**        *Extend SAT's power to make orders to exempt strata company from obtaining insurance to include survey-strata schemes and single tier schemes*

**SCA(WA)**            **Supported**

**Proposal 177**        *Extend SAT's power to order a variation of the minimum public liability insurance required*

**SCA(WA)**            **Supported**

**Proposal 178**        *SAT's power to order one proprietor to contribute to an insurance premium paid by another proprietor extended to include survey-strata and schemes of 5 lots or less*

**SCA(WA)**            **Supported**

#### 9.2.19 Power in relation to infrastructure

**Proposal 179**        *SAT be granted powers to make orders in relation to new infrastructure provisions*

**SCA(WA)**            **Not supported unless changed.** SCA(WA) suggests reform be confined to sustainability initiatives and allow dissenting owners to apply to SAT to stop works on specified criteria of fairness, etc.

#### 9.2.20 Power in relation to alterations in survey-strata scheme

**Proposal 180**        *SAT be empowered to make an order where owner in survey-strata lot has made alteration without approval of strata company where such alteration does not conform to plot ratio restrictions*

**SCA(WA)**            **Supported**

#### 9.2.21 Power to appoint an auditor

**Proposal 181**        *SAT granted power to appoint an auditor*

**SCA(WA)**            **Not supported.** An administrator exercises the powers of the strata company in relation to the scheme. An auditor has no such powers and it is therefore unclear why SAT would appoint an auditor or what would be achieved.

#### 9.2.22 Power relating to termination of schemes

See Chapter 10

#### 9.2.23 SAT power supporting tenure reform

No submission needed

#### 9.2.24                Power to make an order in relation to Community Development Statement

- Proposal 182** *SAT be granted power to resolve disputes arising from the use of community development statements*
- SCA(WA)** **Opposed without more details.** Proposal 182 is extremely broad. The Consultation Paper's introduction to the proposal is brief. What is the rationale and intent of the proposal?

**9.2.25 Power to merge Community Corporation tiers, Secondary Community Corporations and Tertiary Strata/Survey Strata Companies within a single Community Title Scheme**

- Proposal 183** *SAT granted power to resolve disputes arising from the merger or proposed merger of community corporation tiers, secondary community corporations and tertiary strata and survey-strata companies*
- SCA(WA)** **Supported.** Clearly, this power is necessary. More detail is needed

**9.2.26 Order to amend inconsistent by-laws in a community title schemes**

- Proposal 184** *SAT be granted power to amend management statements to ensure consistency between management statements or by-laws within a community scheme*
- SCA(WA)** **Supported**

**9.2.27 Order enforcing Community Management Statement against secondary and tertiary community corporations**

- Proposal 185** *SAT be granted power to make an order to enforce a Community Management Statement against a secondary community corporation or a tertiary strata/survey strata company within a community scheme*
- SCA(WA)** **Supported.** More detail is needed. What criteria will SAT take into account?

**9.2.28 Order to resolve disputes between community corporations**

- Proposal 186** *SAT's granted power to order resolve disputes between community corporations within the same scheme*
- SCA(WA)** **Supported.** More detail is needed. What criteria will SAT take into account?

**9.2.29 Power to make orders in relation to severance for community development lot**

- Proposal 187** *SAT granted power to make orders for severance of community development lots*
- SCA(WA)** **No response**

**9.2.30 Power to make orders in relation to conversion of existing schemes into community title schemes**

**Proposal 188** *SAT granted power to make orders in relation to conversion of existing schemes into a community title scheme*  
**SCA(WA)** **Not supported without more detail.** Who could apply? In what circumstances? What criteria will SAT apply?

### 9.3 Streamline SAT processes

#### 9.3.1 Repealing requirement to lodge Section 77B certificate

**Proposal 189** *Repeal s77B*  
**SCA(WA)** **Supported.** Section 77B is largely redundant

#### 9.3.2 SAT given power to waive service of notice

**Proposal 190** *SAT be given power to exempt a strata company from service on all owners where urgent*  
**SCA(WA)** **Supported**

#### 9.3.3 Summary decisions

**Page 90** *SAT having power to make summary decisions on applications.*  
**SCA(WA)** **Supported with changes.** Is a test to be applied? Grounds for summary decision ought to be aligned with Orders 14 and 16 of the Rules of the Supreme Court. There should be a right of review or appeal, on grounds broader than issues of law

### 9.4 Simplify dispute resolution provisions by grouping into head powers

**Proposal 191** *Group dispute resolution provisions*  
**SCA(WA)** **Supported**

### 9.5 Internal Dispute Resolution Reform

The Association's strata manager members' experiences are that internal dispute resolution is often ineffective and undesirable. Issues that our members raise include

- Independent conciliators and mediators rarely have sufficient knowledge of the Act to be effective in facilitating dispute resolution
- Internal dispute resolution mechanisms can draw out and protract a dispute
- Internal dispute resolution mechanisms can be costly and time consuming
- Internal dispute resolution mechanisms often have no binding effect or result

SCA does not support a:

- mandatory internal dispute resolution clause
- model dispute resolution by-law
- requirement that internal dispute resolution processes be exhausted before applying to SAT

## Chapter 10 Termination of schemes

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<b>Proposal 192</b>	<i>Jurisdiction for termination matters to be transferred from the District Court to SAT</i>
<b>SCA(WA)</b>	<b>Supported</b>
<b>Proposal 193</b>	<i>SAT will apply principles in determining all decisions on ending schemes, including that ending the scheme is just and equitable, objections are unreasonable and that ending the scheme is necessary taking into account any factors that may be prescribed in regulations</i>
<b>SCA(WA)</b>	<b>Supported with changes.</b> The principles to be applied by SAT should be set out in clear terms. The above criteria are not necessarily appropriate. When will ending a scheme be 'necessary'?
	The appropriate principles for all section 51 applications are those enunciated in <i>McHattie v Tuscan Investments</i> and <i>Martin v Bliss</i> .
	For applications to terminate, these should be supplemented by factors specific to terminations (age of scheme, condition of the buildings, ability of owners to refurbish or develop buildings, location of buildings within a particular zone, economic comparisons between repair and replacement and the use being made of the buildings, rights of occupiers)
<b>Proposal 194</b>	<i>A scheme with 10 or more lots may resolve by majority vote to terminate the scheme</i>
<b>SCA(WA)</b>	<b>Supported with changes.</b> Why limit the proposal to schemes with 10 or more lots? There is no justification given or available for this. All schemes need to be able to access the termination provisions
<b>Proposal 195</b>	<i>The process of termination by majority vote for a scheme of 10 or more lots is commenced by the serving of an information statement on the strata company, which sets out details of the proposed termination</i>
<b>SCA(WA)</b>	<b>Not supported without more details.</b> This proposal does not specify who may serve the information statement on the strata company. Is this right confined to an owner or does it extend to the strata company, a group of owners, a mortgagee or a mortgagee in possession of a lot? Does it extend to interested third parties such as developers, or a local government or other government agency? Who bears the cost of preparing the statement? Can this be recouped at the end of the process, and from whom?

- Proposal 196** *The percentage of owners that approve the termination for a scheme would be:*
- 95% for a scheme aged 15 or more years but less than 20 years
  - 90% for a scheme aged 20 or more years but less than 30 years
  - 80% for a scheme aged 30 or more years.
  - *The vote is on a 1 vote per lot basis*

**SCA(WA)** **No clear position reached.** Strongly suggest changes.

These thresholds are likely to be the headline grabbers for any proposed changes. The voting thresholds are too high and too complex. They will make it harder to terminate, not easier.

In many schemes, one vote per lot may be inequitable. For example, one lot may represent 30% or more of the aggregate value of the ten lots in a strata scheme. Based on one vote per lot, that owner's objection could be defeated by a 70% combined vote of the other owners, despite having contributed 30% of all repair and maintenance costs. There is no reason to alter the usual voting rights.

The age thresholds are too low, unrelated to building design principles and too complex.

SCA(WA) suggests a simpler regime is worth examining:

Scheme age: 0 to 25: section 51 only

Scheme age: 25 to 50 years: section 51 or new regime with a resolution without dissent

Scheme age: 50 years or more: special resolution (with special resolution provisions being amend to allow all owners a vote whether financial or not)

**Proposal 197** *If the required majority is achieved, the resolution to terminate has been passed*

**SCA(WA)** **Supported**

**Proposal 198** *Objecting owners may sell their lot to a third party, sell to the proponent of the process or seek review of the majority decision at SAT. SAT will apply principles in determining all decisions on ending schemes*

- SCA(WA)** **Supported with more details.** If the objecting owner sells to a third party, is that third party bound by the termination resolution?
- If the resolution to terminate the scheme achieves the required percentage vote and a review is sought, will SAT review the commercial terms of the deal or merely check that proper procedures have been followed?
- Will SAT apply the principles discussed in proposal 193?
- Does the new scheme allow other orders to be made? For example, can the dissenting owner be given an option to purchase a lot in any replacement building?
- Proposal 199** *If an objecting owner does none of the strategies outlined above, the proponent may apply to SAT for an order for sale of the lot to the proponent*
- SCA(WA)** **Supported with more details.** The Consultation Paper does not specify whether an objecting owner, or any other owner or mortgagee will have a right to be heard in the SAT application. Similarly, will SAT consider the application according to the principles noted in Proposal 193 or merely consider whether proper procedures have been followed?
- Who is required to pay for any necessary valuation?
- Does the sale need to be to the proponent? If not, what happens if the lot is not sold within a particular period?
- Proposal 200** *SAT will have the authority to fix the minimum price and the terms and conditions of sale after arranging for the valuation of the lot*
- SCA(WA)** **Supported with more details.** The legislation needs to specify the basis on which this valuation is to be made, such as the market value of the lot in its current state or at some earlier date before the termination proposal was raised
- Proposal 201** *If the vote fails the proponent can apply to SAT. The proponent cannot apply to SAT until after they have put the matter to a majority vote*



<b>SCA(WA)</b>	<b>Not able to respond.</b> This proposal seems to be at odds with Proposal 202. Does the proponent have recourse to SAT after one failed attempt to pass a majority resolution to terminate the scheme or is it necessary to wait at least 6 months, make a second attempt (as envisaged in Proposal 202) and then apply to SAT if the second vote fails?
<b>Proposal 202</b>	<i>Once one attempt to obtain a majority vote is unsuccessful, a second attempt may not take place for 6 months</i>
<b>SCA(WA)</b>	<b>See Proposal 201.</b> There needs to be provisions specifying at which stage the proponent will be reimbursed for expenses incurred in preparing the information statement if the termination does not proceed
<b>Proposal 203</b>	<i>The scheme does not come to an end until documents are registered by the Registrar of Titles against all the lots in the scheme and on the strata plan. The documents cannot be lodged with the Registrar of Titles until the period for objecting has lapsed</i>
<b>SCA(WA)</b>	<b>Supported.</b> Encumbrancers needs to be able to be forced to lodge the necessary documents
<b>Proposal 204</b>	<i>Termination of the community title scheme or leasehold strata scheme will be available using the new process for majority vote</i>
<b>SCA(WA)</b>	<b>See Proposals 194, 195 and 196</b>
<b>Proposal 205</b>	<i>In the case of a primary or secondary scheme within a community title scheme SAT will have jurisdiction to terminate a scheme on application by the community corporation, a lot owner in the community corporation, (including a strata company) an administrator, or any owner in a secondary community scheme or tertiary scheme</i>
<b>SCA(WA)</b>	<b>See Proposal 193</b>
<b>Proposal 206</b>	<i>Where there are different levels of management in a scheme, one level of the scheme cannot be brought to an end unless schemes which are subsidiary to that scheme are also ended</i>
<b>SCA(WA)</b>	<b>Supported</b>
<b>Proposal 207</b>	<i>Any scheme that is a secondary or tertiary scheme requires the consent of the higher scheme to the termination</i>
<b>SCA(WA)</b>	<b>Supported</b>

<b>Proposal 208</b>	<i>A single model for dealing with the consequences of a resolution to terminate a scheme will be adopted (This model does not apply to terminating a scheme of 10 or more lots by majority vote, as detailed earlier)</i>
<b>SCA(WA)</b>	<b>Supported.</b> It needs to include principles relevant to survey-strata schemes
<b>Proposal 209</b>	<i>A new plan of subdivision is to be approved by WAPC and registered with Landgate with the notice of the resolution</i>
<b>SCA(WA)</b>	<b>Supported</b>
<b>Proposal 210</b>	<i>The strata company lodges the notification at Landgate, with:</i> <ul style="list-style-type: none"> <li>- <i>the duplicate certificates of title (if any) to the scheme lots discharges of encumbrances and withdrawals of caveat</i></li> <li>- <i>the new plan of subdivision of the land parcel approved by WAPC</i></li> <li>- <i>the application or transfer described above and disposition statement (if relevant)</i></li> </ul>
<b>SCA(WA)</b>	<b>Supported</b>
<b>Proposal 211</b>	<i>The election to vest the land in a manner other than as tenants in common in proportion to their former unit entitlement will be accompanied by a certificate of a licensed valuer to determine the value of the interests created and disposed of as a result of the new plan of subdivision</i>
<b>SCA(WA)</b>	<b>Supported.</b> A requirement to have a recent (within the last 3 years) valuation and determination of unit entitlements prior to commencing any process to terminate a scheme may assist in ensuring that the termination process is not delayed at this stage
<b>Proposal 212</b>	<i>The strata company and the rest of the scheme will cease to exist on registration of the documents at Landgate</i>
<b>SCA(WA)</b>	<b>Supported.</b> Consideration needs to be given to the continuation and enforceability of any third party rights