

Western Australian Strata Titles Act 1985 Five-Year Review

Phase one consultation

Strata Community Association (WA) submission

30 October 2024

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About us

Strata Community Association (WA) is the professional body representing the interests of the strata sector in WA, founded in 1989. Providing education, advocacy, and support to strata managers, service providers, owners, and stakeholders within the strata community.

A not-for-profit member-based organisation, representing approximately 1,500 individuals who subsequently represent over 133,000 owned properties in Western Australia. SCA (WA) is committed to:

- Promoting and encouraging the highest professionalism, ethical standards and best practices within strata management.
- Driving positive change and fostering a thriving strata community through effective advocacy and representation at local, state, and federal levels of government.
- Developing resources, training and educating industry professionals, equipping strata stakeholders with the knowledge and skills necessary to navigate the complexities around strata titled properties.

Based on the 2022 Australasian Strata Insights Report¹, more than 105,000 Western Australian residents live in private apartments with 52,540 strata schemes and 260,680 lots registered. Australia-wide, more than 2.5 million people live in flats and apartments, the vast majority being strata titled. This figure does not include other forms of strata title such as townhouses and community titled developments. Nor does it include businesses operating in strata titled commercial buildings. The estimated value of property under strata title in Australia in 2022 is approximately \$1.3 trillion.

As the growth of apartment and strata living has intensified over the last decade, the strata management strata services industry has grown in lock step to serve it. Strata managers navigate through a maze of legislation and regulation ranging from strata specific legislation, regulation, workplace, health and safety issues and building codes as well as measures applicable to the management of strata company funds.

Introduction

SCA (WA) is pleased to provide a comprehensive response to the 5-year review of the Strata Titles Act 1985. This opportunity allows us to represent the views of our membership and the broader strata management sector, ensuring that the voices of those directly involved in the operation and management of strata properties are heard. Our response highlights key areas of concern and offers practical recommendations to enhance the effectiveness of the legislation moving forward.

Please find SCA (WA)'s responses to the consultation questions on the following page(s).

¹ 2022 Australasian Strata Insights, City Futures Research Centre, UNSW Australia, accessed online 20/10/2024 at: <https://cityfutures.adu.unsw.edu.au/2022-australasian-strata-insights/>

Summary of SCA (WA) Positions

Section 3 Positions - Improving cost controls in strata titles schemes

3.2 - Scheme termination

- Repeal of the Part 12 provisions pertaining to scheme termination, and a return to the previous iteration of the legislation, that being, that a Court (the Supreme Court) would terminate a scheme on application assessed against a criteria.

3.3 – 10-Year plans

- Minimum education or qualification for those conducting and preparing 10-year plans.
- The Act to provide guidelines on structure, outline and description of inclusions in the report.
- Items within the 10-year plan relevant to the structural integrity of the building and safety of those working and living on the property need to be included, prioritised and enforced.
- A tiered system for the implementation of the 10-year plan requirements with larger schemes having prescribed requirements.
- Plans to be a minimum of 10 years, with strata companies having the option to create 20 or 30-year plans if this is in line with the needs of their scheme.
- Mandatory for the scheme to raise a percentage of the money estimated in their approved 10-year plan each year as part of their reserve fund.

3.3 - Sustainability Infrastructure

- Clearer definition of what constitutes “sustainability infrastructure”.
- Clearer information around the interrelated definition of sustainability infrastructure and its relationship with structural alteration provisions.
- Broadening of section 64 and the ability for owners to install sustainability infrastructure for their lots.
- The provision of Government grants to assist schemes with the affordability of infrastructure projects and assessments.

3.4 - Seller disclosures

- For disclosure statements to include separate line items of each document the buyer is entitled to receive and needs to understand, including the requirement for the buyer to sign to confirm they have received each document and understood each item.

Section 4 Positions - Enhance strata living

4.3 - Proxies

- For proxies to only be able to be allocated to a natural person.
- Enduring proxies to be limited to a length of up to five (5) years, in line with contract terms.
- Ability for SAT to impose greater penalties on those found to be using the proxy system in a manner that causes detriment to or harms the overall operation of the strata company.

4.4 - Strata Council statutory duties

- Increased provisions to address situations where a strata council member has breached their duties or failed to declare a conflict of interest.

4.5 – Alterations to lots

- Including clearer definition of what is to be included within the term ‘structure.’

4.7 – Governance and Conduct By-laws

- Amendments to Schedule 1 By-laws – 3, 4(8) and 6(4)
- Amendments to Schedule 2 By-laws – 1, 2, 6, 7, 10 and 15
- Additional By-laws to be developed for:
 - Debt Recovery, On-charging and Insurance Excess
 - Smoke & Vape drift
 - Review of Financial Year definition, or inclusion as a By-law

4.9 – Inspection of Records

- Introduction of a sliding scale approach when considering the fees for inspection of records, whereby a fee is charged at a set rate, adjusted annually by the current CPI rate for a specified number of inspections, and further increased based on inspection frequency.

4.9 – Bullying and Harassment

- Implementation of provisions into the Act that address the significant bullying and harassment experienced by strata managers.

4.10 – Strata Advice Service

- The establishment of a well-funded and adequately resourced Strata Commissioner’s Office to provide education, advisory services and information for potential and existing strata owners, managers and services providers, whilst also managing and assisting in dispute resolution and any future registration requirements of the sector.

4.11 – Building Manuals

- The definition of key documents to be extended to include building manuals (or building services document) as per those listed above and required for the Builder to obtain the BA-7 Certificate of Occupancy.
- Consequences for non-compliance of the provision of required documentation to be articulated and enforced, beyond the requirement to take the matter to SAT.

Section 5 Positions - Strata manager practice and standards

5.2 – More skilled and professional strata management industry

- Greater level of government involvement, investment and participation in the strata sector.
- Implementation of the identified required regulatory amendments which will allow strata managers to meet the minimum education requirements as prescribed.
- A clear definition of “strata manager” to include anyone who is employed to perform scheme functions, and an obligation for those who perform these functions to be registered and comply to the regulatory requirements.
- Establishment of a well-funded and adequately resourced Strata Commissioner’s Office; to facilitate the registration of those strata managers performing scheme functions, and assist in enforcing compliance with statutory requirements, including penalties and consequences for those who do not comply.

5.2 – Strata Management Contract

- Oversight and regulation of strata managers to be conducted by a Strata Commissioner, who can provide guidance for the management of contracts between owners and strata managers.
- Review the Act to ensure that it prevents unfair contract terms, ability to validly terminate a contract and the imposition of unreasonable fees in these circumstances.

5.3 – Trust accounts

- Include mandatory provisions for the audit of strata company funds held in trust accounts.

5.4 – Conflict of interest and disclosures

- Strata Managers to be required to disclose all potential conflicts, for any arrangement or service, proactively using a standardised disclosure form and update this regularly or as circumstances change
- To require strata managers to have processes that ensure continual management of conflicts to mitigate influence and to guarantee all aspects are discussed, transparent, recorded, disclosed and documented.
- All third-party service providers to be required to disclose all potential conflicts, for any arrangement or service, proactively using a standardised disclosure form and update this regularly or as circumstances change.

5.3 - Licensing or Registration system for Strata Managers

- The implementation of a registration system for strata managers, with co-regulation, facilitated by a Strata Commissioner's Office.

5.5 – Strata Manager definition and authorisation

- To expand the definition of a 'strata manager' to include anyone who is employed to perform any scheme functions. For this definition to then ensure that anyone who meets the definition is required to meet all strata management regulatory requirements.
- To allow the strata company to manage the level of authority provided to a strata manager through their contractual agreement, allowing them the flexibility to decide what functionality will be most appropriate for their scheme.

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Section 3 - Improving cost controls in strata titles schemes

3.2 Subdivision, development, scheme termination / redevelopment

Would the costs of developing strata titles schemes be significantly reduced if the subdivision and development approvals processes and requirements were streamlined?

SCA (WA) has no comment in relation to the subdivision and development approvals processes and does not consider the development of strata titles within its scope as the peak body for strata community management.

What are the factors preventing the take up of leasehold strata titles schemes?

Leasehold schemes were predominantly for large scale projects, targeted to Governments, Universities and the Not-For-Profit sector. Potentially the preventing factors for these being taken up are related to recent economic conditions and that several entities had just completed large projects prior to the implementation. Promotion of leasehold strata title schemes to the relevant sectors would be recommended.

Does Part 12 of the Strata Act strike the right balance between ease of terminating a scheme and protecting the rights and interests of vulnerable persons and objecting owners?

What are the factors preventing strata titles schemes from fully utilising the termination provisions in Part 12 of the Strata Act?

Is scheme termination a viable solution to the cost pressures of maintaining ageing buildings?

The current system is not a viable solution to the cost pressures of maintaining ageing buildings and SCA (WA) advocates for a repeal of the provisions pertaining to scheme terminations. The process is generally extremely costly, time consuming and complicated, and, as there is no guarantee it will be approved by the State Administrative Tribunal, there is significant risk in proceeding.

SCA (WA) recommendations

- Return to the previous iteration of the legislation. That being, that a Court (the Supreme Court) would terminate a scheme on application, with the court assessing the termination against the criteria that is given. SCA (WA) believes this model would be a far more efficient and effective solution.

3.3 Managing costs of common property

Has the requirement for designated strata companies to prepare a 10-year plan been effective in assisting strata companies to plan and budget for scheme maintenance?

Is there a need to expand the requirement to prepare a 10-year plan to more schemes?

Is the 10-year plan requirement fit for purpose in assisting strata companies in their plans for raising funds incrementally?

The provisions for the 10-year plans have assisted schemes to consider their long-term financial planning, however, are not currently fit for purpose, and require amendment to be more effective and manageable for the strata community.

SCA (WA) membership has indicated that the 10-year plan requirement has assisted strata companies in raising funds for the plans in some cases. Specifically, the plans have helped facilitate conversations around reserve funds, and the need to put money in. Whilst schemes may not always follow the plans prescriptively, it has helped with education around the need.

However, it is noted the plans often are ineffective in assisting those schemes that require the provision the most. Schemes that do not adequately manage their money, are often correlated with those schemes that have opted for the cheapest 10-year plan option and are not utilising the provision to ensure they are adequately protected. Larger schemes, due to the nature of their size and infrastructure are generally better off, with more issues relating to this matter coming from small to medium size schemes.

There are also concerns that the company preparing the 10-year plan may be held liable if they do not estimate enough money to be set aside for each item in the event there is an issue, and as such overestimate the amount of money required, resulting in dissatisfaction from owners and the scheme electing to only pay nominal amounts towards the plan. This approach would result in a higher special levy being required in future.

SCA (WA) recommendations:

- Minimum education or qualification for those conducting and preparing 10-year plans. At present, these can be conducted by those who are not suitably qualified, including the council members or simply utilising printing stock/software, allowing for ineffective or inaccurate reports to be created.
- The Act to provide guidelines on structure, outline and description of inclusions in the report to address the quality concerns within the reports and ensure that all reports are reviewing the required items and that the strata companies are able to ensure that what is being reported and quoted on is consistent across all the plans.
- Items within the 10-year plan which are relevant to the structural integrity of the building and safety of those working and living on the property need to be included, prioritised and enforced. This includes fire services and electrical infrastructure provisions.
- A tiered system for the implementation of the 10-year plan requirements. Survey strata schemes, villas and townhouses do not have the same shared infrastructure and complexity as larger schemes and as such do not require the same level of obligation. Additionally, consideration should be given to the current and increasing value of property, with a small survey strata schemes being valued into the

requirements even when there is not a significant level of common property to make this appropriate.

- Plans should be amended to be a minimum of 10 years, with schemes having the option to create 20 or 30 year plans if this is in line with the needs of their scheme, with this being reviewed on a five-yearly basis.
- SCA (WA) believes it should be mandatory for the scheme to raise a percentage of the money each year. That the cost and requirement to have the plan is justifiable if there is no impost to action it.

How successful have reforms been in the uptake of sustainability infrastructure, particularly for older strata schemes whose electrical infrastructure requires significant investment?

SCA (WA) has not recognised any notable differences in the uptake of sustainability infrastructure specifically as a result of the reforms introduced into the Act.

SCA (WA) membership has indicated that Section 64 of the Act is a provision that currently does not meet the standard of effectiveness, and recommends that the provision needs to be redrafted.

SCA (WA) recommendations:

- Clearer definition of what constitutes “sustainability infrastructure” noting that sustainability infrastructure and technology is a rapidly evolving industry, and such a prescriptive list of sustainability infrastructure items may place limitations on the induction of additional innovations in the space.
- Clearer information around the interrelated definition of sustainability infrastructure and its relationship with structural alteration provisions, to ensure any overlap is understood.
- Broadening of section 64, as it presently only relates to common property, and the ability for owners to introduce sustainability infrastructure for their personal lots, ie providing shelter on a balcony, currently requires a resolution without dissent, which contributes to limiting the introduction of sustainability infrastructure into strata schemes more broadly.
- The provision of Government grants to assist schemes with the affordability of infrastructure projects and assessments similar to NABERS could be utilised to increase the uptake of sustainability in strata.

3.4 Cost-related consumer protections

Have the seller disclosure provisions in the Strata Act given buyers a better understanding of what they will own and the cost of what they are buying into?

The seller disclosure need to clarify the ask – do you want maintenance disclosure for common property or within lots?

Is there a better way to present the seller disclosure information to the buyer so they better understand the scheme they are buying into?

SCA (WA) remains supportive of the seller disclosure provisions, and believes they are an important step in the obligation to present information to buyers, to assist those that are interested and wish to understand what they are purchasing, however do not believe they are currently effective.

Too many buyers remain uneducated as to what their obligations are in relation to ownership of a strata property. Sales representatives, who provide the information relating to the seller disclosure provisions, require further education to ensure that the information being provided is correct and to an acceptable standard.

SCA (WA) will note that in almost all cases, those that are being provided seller disclosure information are not necessarily reading or understanding the information they are being provided.

SCA (WA) recommendations

- For disclosure statements to include each document that the buyer is entitled to receive as a separate line item for them to individually sign and confirm that they have received the relevant documentation and understood each item.

Should the Strata Act be amended to include consumer protections around financial hardships? Examples include requiring a strata company to consider requests from lot owners for payment plans or debt management plans.

If consumer protections around financial hardship were introduced into the Strata Act should there be rules around how the strata company may charge lot owners for debt recovery? For example, providing clear rules around administrative fees associated with financial hardship requests.

Currently the Act allows for Strata Companies to provide reasonable financial hardship options and plans to owners facing financial hardship.

SCA (WA) believes that any provisions implemented around financial hardship terms, would likely be counterproductive and make the process and options less flexible for both strata companies and owners who need consideration of payment plans.

Section 4 - Enhance strata living

4.2 Objectives of the Strata Act

Should the Strata Act have express objectives?

If express objectives were included in the Strata Act, are the various objectives identified above relevant or are there other objectives that should be captured?

If objectives are to be brought into the Strata Act, what corresponding provisions would need to be introduced to the Strata Act to give effect to those objectives?

SCA (WA) believes there would be scope in the objectives to the Acts to be expanded and improved upon, as express objectives of the legislation are often considered by the courts, and they are extremely relevant in cases where a determination needs to be made as to the application of the legislation.

4.3 Proxies

Have the additional controls on proxies introduced to the Strata Act helped improve the operation of proxies for lot owners and strata companies?

Is proxy farming a significant issue for lot owners and strata companies?

Are additional restrictions on proxies required, for example imposing limits on the number of proxies held or introducing time limits requiring proxies to be renewed periodically?

In consultation with SCA (WA) membership it has been advised that the additional controls on proxies that have been introduced, whilst the association supports them, have not had a significant impact on the operation of strata schemes.

Whilst harmful and can cause a significant impact on the scheme when they occur, the instances of proxy farming reported are relatively low, and are not believed to be widespread throughout the sector in Western Australia.

In reviewing options to improve the management of proxies in strata schemes, SCA (WA) believes limiting the number of proxies would not be the most effective measure to introduce. Ultimately, it is an owners decision who they wish to allocate their proxy to, and they should be able to do so if they wish. Similarly, SCA (WA) does not believe that restrictions on proxies will increase owner involvement in the operation of the scheme.

SCA (WA) recommendations

- For proxies to only be able to be allocated to a natural person, and not a corporate entity. This would ensure the individual lot owner would need to nominate a specific person or the chair of the meeting.
- Enduring proxies to be limited to a length of up to five (5) years, in line with contract terms to ensure that these are reviewed and not perpetual.
- Ability for SAT to have the ability to impose greater penalties on those found to be using the proxy system in a manner that causes detriment to or harms the overall operation of the strata company.

4.4 Strata Councils

Has the introduction of statutory duties for strata council members improved the standard and operation of these councils?

SCA (WA) believes the introduction of the statutory duties for strata councils are positive, and should remain in place, however, membership have advised they have not observed a noticeable improvement in the standards and operation of council members.

It is increasingly difficult to get owners to participate as council members, and engage with the operation of the scheme, let alone follow the statutory duties.

The introduction of statutory duties is likely to have increased utility in self-managed schemes, as they help to clarify and understand the role of the strata council.

Where a council member has breached a statutory duty are the removal provisions on application to the Tribunal working effectively?

Due to the resourcing restraints at SAT, the process of using the Tribunal to police instances of strata council members breaching their duties is not effective. The SAT process is generally quite a long process, and by the time the situation has progressed through, the scheme has undertaken another AGM.

SCA (WA) recommends

- Increased provisions to address situations where a strata council member has breached their duties. Potentially consider investigating the provisions surrounding ethical responsibilities for strata councils that have been implemented in legislation in jurisdictions such as NSW and New Zealand.

Is there value in amending the Strata Act to create a tiered approach to scheme governance where strata councils for large schemes are required to fulfil greater governance obligations?

Is there benefit in requiring high-rise schemes to fulfill greater governance obligations?

SCA (WA) believes the current obligations are sufficient and do not believe that there would be any benefit in requiring high-rise schemes to fulfil greater governance obligations than those that already exist.

Would strata councils for large schemes benefit from making it easier for them to bring outside specialist help onto the council (e.g. structural engineers or building infrastructure specialists)?

Strata councils already have the ability to consult with outside specialists to assist in providing their expertise when required. Specialists will not provide advice to councils without appropriate payment, regardless of whether they maintain a position on the council. As such, SCA (WA) finds that there would be little benefit from the Act including provisions that make it easier to bring specialists onto the council.

4.5 Alterations to lots

Do the lot alteration provisions of the Strata Act provide enough clarity to lot owners and strata companies to deal effectively with lot alterations in their scheme?

Currently, SCA (WA) finds that the provisions relating to lot alterations in the Act do not provide enough clarity to strata companies and owners.

Specifically, SCA (WA) believes that the Act needs to include an adequate definition of what is intended to be included within the term 'structure' (versus the term 'structural' for example), as SAT has broadly interpreted this term.

SCA (WA) recommends

- A structure should be defined as an installation or alteration that:
 - a) requires Local Government approval; or
 - b) would breach plot ratio or open space requirements; or
 - c) may adversely affect the easements of support or shelter to other lots or common property; or
 - d) may affect the structural integrity of the buildings on the scheme.

This definition needs to exclude common minor alterations such as:

- a) internal fixtures and fittings that are not structural in nature and not visible from outside the lot;
- b) sustainability infrastructure; and
- c) utility infrastructure.

Should the Strata Act include specific provisions setting out clear requirements for the approval of renovations and lot alterations?

It is understood that these provisions have already been incorporated.

Is there benefit in taking a 'sliding scale' approach to the approval of renovations and lot alterations like that taken in NSW?

Should the Strata Act include provisions on the responsibility for the installation and maintenance of infrastructure where that infrastructure only benefits a lot or a few lots in the scheme?

The provisions relating to alterations are already complicated enough, and SCA (WA) does not believe that there is benefit in taking a sliding scale approach or making further amendments to the approval process. SCA (WA) believes that this approach may serve to complicate a model that is already complex and difficult to navigate.

Is there benefit in requiring a lot owner who has infrastructure servicing their lot, that crosses other lots and common property, to enter into an infrastructure contract with the strata company?

There is currently provision in the utilities easements, allowing access to other lots and common property for the purpose of service and conduit of utilities. It may be of benefit to amend this to include access for alterations as opposed to including within the Alterations section.

4.6 Managing common property

Does the Strata Act provide enough detail on the decision-making process for strata companies to alter, improve, or make structural changes to common property?

Should the Strata Act include a clear decision-making process for strata companies to approve works to alter, improve, or make structural changes to common property, beyond approving a budget or expenditure on these works?

Is there value in introducing a lower voting threshold for the approval of expenditure on other kinds of infrastructure (not just sustainability infrastructure)?

The Act currently provides enough detail on the decision-making process for strata companies to alter, improve and make structural changes to common property. SCA (WA) does not believe any further amendments are required within this area.

SCA (WA) would support the implementation of a lower voting threshold in this regard.

4.7 Governance and Conduct By-laws

Are the Governance by-laws in Schedule 1 and Conduct by-laws in Schedule 2 still relevant to modern strata living?

The current Schedule 1 and Schedule 2 By-laws were initially drafted in NSW's in the late 1950's. Considering this, it is believed that these are not adequate to represent the needs of contemporary strata living and recommend that they are re-drafted to be more applicable to current strata life.

Members of SCA (WA) have provided the below list of potential alterations to the By-laws and comments on the items listed within Landgate discussion paper.

SCA (WA) recommendations

Schedule 1 By-laws	
3. Power or strata company regarding submeters (3)	<ul style="list-style-type: none"> • Potential to incorporate water meters and new regulations around. • Introduce by-laws for levying based on sub-metered utilities
4. Constitution of council (4)(8)	<ul style="list-style-type: none"> • Consideration to reduce to ordinary resolution or provide a specific stipulation about breaches of the Act to assist in the removal of council members not acting in the best interest of the strata company.
6. Chairperson, secretary and treasurer of council (6)(4)	<ul style="list-style-type: none"> • Allow for strata managers to chair these meetings as per General Meetings. This is regularly requested by strata companies.
Schedule 2 By-laws	
1. Vehicles and parking (1)	<ul style="list-style-type: none"> • Inclusion of not parking in another lot's car bay. • Inclusion of car bays only being for the purpose of parking of a motor vehicle (not storage of items).
2. Use of common property (2)	<ul style="list-style-type: none"> • This is used on occasion, and would be better to be left in, and potentially extend to all common property. • Inclusion of not causing damage to common property / paying for repairs for damage caused. • Include information around pets on common property, as opposed to banning or requiring pets to be approved, as this will become more difficult with the <i>Residential Tenancies Act</i>.
6. Deposit rubbish etc. on common property (6)	<ul style="list-style-type: none"> • Extend to the storage of items and rubbish on common property.
7. Drying of laundry items and signage (7)	<ul style="list-style-type: none"> • Considerations of this by-law to balance between sustainability impacts and aesthetics for the scheme. Potential to amend: <ul style="list-style-type: none"> • to include a specific time-frame; • removal of "... on any lines provided by the strata company for that purpose." • Items to be secured; and/or

	<ul style="list-style-type: none"> • items must not be overhanging a balcony (ie. Not on the balustrade). • The inclusion of signage is not at the detriment to anyone, and it is believed it is better to keep than remove.
10. Floor coverings (10)	<ul style="list-style-type: none"> • Inclusion to account for leakage, seepage etc to the common property or a lot • This By-law is necessary to ensure onus is on the owner of the lot to prevent noise transference.
15. Decoration of, and affixing items to, inner surface of lot (15)	<ul style="list-style-type: none"> • Part about painting / wallpaper is outdated and should be removed, internal painting should not impact or damage common property to the detriment of other owners. • Residential Tenancy Act now states people can hang pictures in their property.

Are there other by-laws that should be captured in the Strata Act?

Within the reforms in 2020, Part 1, Section 3 was introduced that stated:

Financial Year - for a strata company means —

- a) if the scheme by-laws are silent on the matter, the period of 12 months ending on 30 June; or
- b) if the scheme by-laws specify a period of 12 months ending on a different date as the financial year for the scheme, the period specified in the by-laws;

Historically, the financial year of the strata scheme was from the month of registration, and this amendment has had a significant impact on the strata sector. Moving into 2025, this will come into effect and will mean the vast majority of AGMs will fall in the same three month period, and will cause delays and undue pressure on the strata managers.

Additionally, with the By-laws introduced in 2020, and potentially from this review, it would be beneficial to have confirmation that these do not need to be approved by the strata company, and the change in legislations also changed the standard By-laws that apply to all schemes, unless by-law amendments have been lodged.

SCA (WA) recommendations

- **Debt Recovery, On-charging, Insurance Excess:** Ability to incorporate recovery costs for debts and legal expenses, including levies, utilities, breaches of By-laws and repairs to common property damage. Insurance excess recovery to be applicable whereby a Lot Owner is specifically responsible for the damaged caused to the common property.
- **Smoke & vape drift:** Recommend including a By-law that specifies no smoking or vaping on common property and for lot owners to be responsible to ensure that no other owner is adversely affected by their smoke or vape drift if consumed on their lot. Whilst this would be difficult to enforce, having it would set the expected behaviour.

- **End of Financial Year** - Preferably, Part 1 Section 3, would be altered to say “The Financial Year at the end of the month of registration of the scheme, whatever is specified by ordinary resolution of the Strata Company, or whatever is specified in the scheme By-laws.”

If this is not possible, then SCA (WA) would recommend adding a By-law that specifies that “The Financial Year at the end of the month of registration of the scheme, whatever is specified by ordinary resolution of the Strata Company, or whatever is specified in the scheme By-laws.”

Is a resolution without dissent too arduous a resolution for strata companies to work with in relation to STRA?

Generally, a Resolution Without Dissent is not too arduous for strata companies.

4.8 Strata company objectives

Has the inclusion of the strata company objectives been useful to strata council members or lot owners in making decisions for the benefit of the scheme?

The inclusion of strata company objectives has been useful to strata council members and lot owners in making decisions for the benefit of the scheme.

SCA (WA) membership has indicated that the biggest impact the provisions have had is that it is the most commonly relied upon and utilised provision when an owner applies to SAT.

Are there other objectives or matters that the strata company should take into account?

SCA (WA) believes that specific provisions relating to bullying and harassment, and the conduct of strata council members, should be required to be implemented and taken into account.

4.9 A safe place to work and live

Should the Strata Act include specific provisions dealing with the bullying and harassment of scheme participants and the people who provide goods and services to schemes?

SCA (WA) believes that the level of bullying and harassment being experienced by strata managers is at an all-time high. Whilst there are provisions in other pieces of legislation that address bullying and harassment, SCA (WA) membership has indicated that those legislative provisions are ineffective and have had no impact on the scope of the issues in the industry.

SCA (WA) strongly recommends the implementation of provisions into the Act that deal directly with bullying and harassment.

Should there be specific provisions in the Strata Act, or possibly the by-laws, requiring strata companies, lot owners, and lot occupants to provide a safe and healthy environment?

As noted above, SCA (WA) strongly support the implementation of provisions into the Act that deal directly with bullying and harassment. Should it be decided that the best mechanism for this to be implemented be through a By-law, SCA (WA) recommends something along the lines of the below drafted by-law provided to BStrata by Lavan Legal.

SCA (WA) notes that the by-laws should not contain provisions that mitigate against bullying and harassment, as those can be voted on and removed by the scheme.

1. Interactions Between Owners, Occupiers, Council Members, Building Managers, Strata Managers, and Others

- 1.1. Each owner, occupier, strata manager, and building manager:
 - 1.1.1. Must be treated with courtesy and respect appropriate to the situation.
 - 1.1.2. Must treat other owners, occupiers, contractors, council members, building managers, and strata managers with courtesy and respect.
 - 1.1.3. Must act politely and courteously when communicating with council members, building managers, or strata managers.
 - 1.1.4. Must not engage in threats, bullying, harassment, verbal abuse, racial abuse, slurs, or any form of intimidation or disparagement.
 - 1.1.5. Must ensure that any guest they bring onto the lot or common property:
 - Treats others with courtesy and respect;
 - Communicates politely with council members, contractors, or building managers;
 - Does not engage in bullying, harassment, or other inappropriate behaviour.

2. Lodging Requests with the Council, Strata Company, or Strata Manager

- 2.1 Each owner and occupier acknowledges:
 - 2.1.1 That threats, bullying, harassment, verbal abuse, racial abuse, slurs, or any form of intimidation or disparagement directed at a council member, building manager, or strata manager will breach this by-law.
 - 2.1.2 That council members are volunteers performing duties under the Act and must be treated with respect.
 - 2.1.3 That council members are not obligated to respond to every request, especially if:
 - The information is available under section 107 of the Act;
 - The request is trivial or intended to criticise, harass, or waste time.
 - 2.1.4 That strata managers are paid to perform specific tasks and are not required to respond to every request, especially trivial or vexatious ones.
 - 2.1.5 That the terms of the management contract may require the strata company to pay for the manager's time spent responding to non-essential requests.
 - 2.1.6 That owners and occupiers must comply with this Code to ensure that the scheme's funds are not wasted on non-core requests.
 - 2.1.7 That when communicating with the council, building manager, or strata manager, requests must not:
 - Be trivial or intended to harass, annoy, or harm;

- Distract the recipient from their duties or cause unnecessary stress.
- 2.1.8 That such requests may interfere with a council member's quiet enjoyment of their lot and pose a psychological hazard to council members or strata managers.
- 2.1.9 That owners and occupiers must comply with any request policy adopted by the council, including submitting requests through an online form if required.

SCA (WA) recommendation

- Implementation of provisions into the Act that address the significant bullying and harassment experienced by strata managers.

What would be a reasonable fixed amount for inspecting records, particularly noting that the cost of recovering and invoicing for \$1 is not viable?

Should a different approach be taken to charging for the inspection of materials such as an hourly rate or a fee that increases where requests reach a regulated threshold of frequency?

At present the cost for inspecting records being charged at \$1 is not viable, however SCA (WA) believes charging for the inspection of materials must find a balance to ensure that consumers are able to access their own records, however, not do so in a way that the frequency of inspection is able to be abused due to the low threshold cost.

There needs to be a balance, so that on the occasions whereby a strata management business may not be providing the requested records in an adequate manner, owners and the strata company are able to obtain the information they require.

Alternatively, as most strata management companies have portals and other systems, where the majority of the information is accessible, and the abuse of the inspection of records in these circumstances can be extremely detrimental.

SCA (WA) will also note that one of the reasons that the records need to be inspected is that there is no document discovery phase in the Tribunal, unlike Court processes.

Additionally, there are concerns that any set fee stated within the legislation has the potential to become outdated due to inflation.

SCA (WA) recommendations

- The introduction of a sliding scale approach when considering the fees for the inspection of records, whereby a fee is charged at a set rate, adjusted annually by the current CPI rate for a specified number of inspections, and further increased based on inspection frequency.

4.10 Dispute resolution and general strata advice

Has the introduction of the Tribunal as a one-stop-shop for strata disputes been effective in resolving disputes more quickly, cheaply, and effectively?

Is there value in introducing to the Strata Act an alternative, low-cost dispute resolution pathway, with prescribed timelines?

Would there be value in adding a dispute resolution by-law to the Strata Act?

From the perspective of SCA (WA) membership, the State Administrative Tribunal (SAT) is effective in resolving disputes, however it can be a slow, time-consuming and costly process, and as such is not an appropriate mechanism for all disputes.

SAT does not currently have the required resources to manage the demand for determinations. Whilst it was thought to be a cost-effective system, the way it is set up means, that if one side engages legal representation, then the other side needs to as well, which ends up being quite a costly exercise.

SCA (WA) membership has indicated that alternative dispute resolution pathways are already available to those that may require it, however methods for alternative dispute resolution are either ignored, bypassed, or utilised in a manner that serves to inflame the dispute it is seeking to resolve.

A specific By-law to address dispute resolution would not be effective in assisting in this matter, as the parties generally need advice and information, so SCA (WA) does not think this would be a valuable addition.

Should there be a legislated strata advice service for lot owners, tenants, strata companies, and strata managers?

Many of the owner complaints received by SCA (WA) and members would be easily resolved with the implementation of an advice service and SCA (WA) would strongly support the implementation of a legislated service for this.

SCA (WA) believes that there is currently an absence of advice available to strata sector stakeholders, leading them to seek advice from Landgate, who can only direct them to the online resources and then SCA (WA) who can only provide minimal information and then direct them to strata lawyers or consultants, which can be a costly process.

Across September and October, SCA (WA) fielded about 50 owner enquiries, which absorbed over 12 hours of time, with at least 50% of these advising they had been directed to the association by either Landgate or SAT.

Whilst SCA (WA) does their best to support those calling to seek advice, SCA (WA) is a membership body funded by members and representing their interests and the staff are not qualified Strata Managers or lawyers, and as such, are not equipped to provide the advice which is sought.

The implementation of a Strata Commissioner's office which operated an advisory service, staffed by qualified persons, would have a dramatic impact on the efficiency of the SAT, and reduce the demand on the tribunal, associations and Landgate from those seeking simply seeking advice.

SCA (WA) recommendations

- The establishment of a well-funded and adequately resourced Strata Commissioner's Office to provide education, advisory services and information for potential and existing strata owners, managers and services providers, whilst also managing and assisting in dispute resolution and any future registration requirements of the sector.

4.11 Building manuals

Should there be an obligation for the scheme developer to collect, control, and retain building manuals to be handed over?

The provision of key documents to be handed over to strata managers is essential for the effective ongoing management of the property. The existing legislation means the current quality of the documents being provided is inadequate and does not allow for clear knowledge of the inclusions, service requirements and accessibility of the varying aspects of the building. Additionally, in circumstances where the building company has gone under, locating this information later for the strata company can be extremely difficult.

Expanding the legislation to include documents that already need to be developed, prepared and approved by the builder to obtain the BA-7 Certificate of Occupancy, would mean that there is not an unreasonable impost on them to also provide these to the Strata Manager. These documents include:

1. Occupancy and Compliance Documents
 - a) BA-7 Certificate of Occupancy
 - b) Energy rating and fire rating compliance reports (including specifications and product details such as fire extinguishers, alarm systems, and firewalls)
2. As-Built Drawings and Variations
 - a) Complete set of current working drawings at completion, including variations:
 - i) Architectural drawings
 - ii) Hydraulic drawings
 - iii) Engineering drawings and details
 - iv) Electrical drawings
 - v) Civil drawings
 - vi) Mechanical drawings

(These plans must include a water management plan and waterproofing details, essential for diagnosing water ingress issues in the future.)

3. Asset Manuals and Operational Documents
 - a) As-constructed drawings and specific operational manuals for:
 - i) Air conditioners
 - ii) Hot water units
 - iii) Ovens
 - iv) Exhaust fans and ventilation systems
 - v) Solar panels
 - vi) Security systems and intercoms
 - vii) Pedestrian lifts
 - viii) Audio-visual components
 - ix) Stormwater management systems

- x) Irrigation/reticulation systems
 - xi) Common area appliances
 - xii) FIP (Fire Indicator Panel) fire management systems
 - xiii) Electric vehicle (EV) chargers
4. Specifications and Product Information
- a) Full written specifications, including addenda and material/product specifications, for future reference.
5. Cost and Replacement Estimates
- a) Contract estimates for major specification items to assist with future replacement cost assessments, such as:
 - i) Solar panels
 - ii) Air conditioning units
 - iii) Common area assets

SCA (WA) recommendations

- The definition of key documents to be extended to include building manuals (or building services document) as per those listed above and required for the Builder to obtain the BA-7 Certificate of Occupancy.
- Consequences for non-compliance of the provision of required documentation to be articulated and enforced, beyond the requirement to take the matter to SAT.

Section 5 – Strata manager practice and standards

5.2 Changes within the industry

How can the Strata Act nurture a more skilled and professional strata management industry to deal with the spectrum of strata governance and community living issues?

Strata commenced in Western Australia in the 1960's and over the past 60 years has evolved and developed significantly. As the strata buildings have grown and become more complex, as has the role of the strata manager, with greater complexity of requirements, more legislation to be across and significantly more money under management. Tied with this, the strata manager is now easily reachable, via email or phone, and owners want immediate responses and action.

Currently the sector has grown faster than the legislation and governance structure that surrounds it, and it is apparent that as we move to higher density living and more sustainable living, strata will increasingly be utilised and the needs for a fully resourced, skilled, professional and regulated strata management sector will become inescapable.

To date, there has been an apparent lack of acknowledgement and involvement from all sides of government when it comes to strata, where action is only taken when it is perceived to be impacting constituents. This apathy is what has led to the current situation whereby, despite the engaged associations, and hard work of government employees at Landgate and SAT, that regulation amendments are stalled and there appears to be little to no appetite to invest in the mechanisms of managing the sector.

SCA (WA) strongly recommends there be a greater level of government involvement, investment and participation in the strata sector now before it becomes unmanageable through the current trajectory of growth.

Stress on strata managers themselves is at an all-time high, with research conducted by Macquarie Bank² into strata management benchmarking, noting an average annual turnover of staff at 31%, with the ability to find and recruit staff as the most significant challenge faced by strata managers within the State. The attrition of experienced strata managers and lack of strata professionals entering and participating in the sector serves to further limit the sectors' professionalism.

Due to the lack of regulatory oversight, over the past four years, the SCA (WA) has adopted a self-regulation model of the strata sector, with members being required to obtain educational qualifications, ongoing professional development training, have standard business processes, and meet all regulatory requirements to obtain Strata Management Practice Standards (SMPS) certification. The constitution of the SCA (WA) was amended in 2021 and requires all members to achieve this by July 2026 to retain their membership with the SCA (WA).

A significant step towards professionalism for the sector would be the introduction of consequences and penalties if requirements in the Act are not met. At present the *Strata Titles (General) Regulations 2019* require strata managers to:

²2024 *Strata Management Benchmarking Report (2024) Macquarie Bank*. Available at: <https://www.macquarie.com.au/assets/bfs/documents/business-banking/bb-strata-industry/2023-macquarie-strata-benchmarking-report.pdf> (Accessed: 26 October 2024).

- Obtain and declare to strata companies they have completed a National criminal record checks for all strata managers at least every three years;
- Obtain minimum educational requirements;
- Obtain professional indemnity insurance;
- Disclose remuneration and benefits;
- Operate trust accounts for strata companies (either together or pooled); and
- Provide an annual return to Landgate for the years 2021 – 2025.

However, as there is no regulatory oversight of strata managers, or a clear definition of who is considered a strata manager (Section 5.5), there are no ramifications or consequences for those who are not meeting these requirements.

At present, the onus is on strata companies and owners to investigate the strata manager and confirm they have met all of their requirements under the regulations, and if not, they are able to issue a show cause notice and move towards terminating the contract. This however does not prevent the strata manager from operating in the sector or provide any significant consequence for non-compliance.

SCA (WA) members do need to provide evidence of compliance of the above requirements as part of their renewals each year, which provides a level of consumer protection. However, strata managers who are not members of the association or who have been removed from the association due to contravening the code of conduct, are still able to operate in the sector with little oversight.

SCA (WA) recommendations

- Greater level of government involvement, investment and participation in the strata sector.
- Implementation of the identified required regulatory amendments which will allow strata managers to meet the minimum education requirements as prescribed.
- A clear definition of “strata manager” to include anyone who is employed to perform scheme functions, and obligation for those who perform these functions to be registered and comply to the regulatory requirements.
- Establishment of a well-funded and adequately resourced Strata Commissioner’s Office, to facilitate the registration of those strata managers performing scheme functions, and their compliance of requirements, with penalties and consequences for those who do not.

Is the strata management contract and imposition of statutory duties on the strata manager an effective way to regulate strata managers?

The current system is not working effectively, causing issues for both strata companies and owners as well as strata managers.

The use of Show Cause notices should be applied judicially, and applied to serious breaches. At present they are issued for minor breaches and are causing additional time and stress for strata managers, preventing them from being able to effectively manage the scheme.

The language of the contract should follow common law contract language, to ensure that serious breaches or anything which would allow a termination of a long-term contract under contract law for the strata company without penalty. In cases of validly terminated contracts,

strata managers should be prohibited from being allowed to charge the strata company the remaining balance of fees for the contract term simply.

Further to the information above, SCA (WA) does not believe the current system is effective in regulating strata managers. Placing the onus of oversight on the clients to investigate and then take action to terminate their strata manager, with the strata manager then disputing the termination, is an inefficient and ineffective way to regulate strata managers.

This contract review system is dependent on owners to understand the requirements and take on the burden of terminating the contract. This also does not prevent the strata manager from continuing to act in the same manner with other schemes.

SCA (WA) recommendations

- Oversight and regulation of strata managers to be conducted by a Strata Commissioner, who can provide guidance and seek penalties for the management of contracts between owners and strata managers.
- Review the Act to ensure that it prevents unfair contract terms, inability to validly terminate a contract and the imposition of unreasonable fees in these circumstances.

Is the Tribunal working as an effective mechanism to address strata manager disputes?

The current system is not effective in regulating strata managers, and as discussed in Section 4.10 – the State Administrative Tribunal (SAT) is not resourced sufficiently, and is generally a slow, time-consuming and costly process, and as such is not an appropriate mechanism for disputes.

5.3 Trust accounts and licensing requirements

Should there be further protection under the Act for strata company funds held in authorised deposit-taking institutions accounts of strata managers?

SCA (WA) is supportive of further protections under the STA for strata company funds held in authorised deposit-taking institutions accounts of strata managers. We strongly agree that mandatory audits of trust account be mandated as a provision under the Act.

SCA (WA) recommendations

- For the Act to include mandatory provisions for the audit of strata company funds held in trust accounts.

To what extent would a licensing or registration system for strata managers help meet the policy goal of a more skilled and professional strata management industry?

SCA (WA) has traditionally advocated for a licensing system for strata sector for many years, however, following ongoing consultation around the cost of a licensing regime and the apparent lack of interest from the government, SCA (WA) has moved to advocate for a co-regulation system that may move to a licensing system being implemented in the future.

SCA (WA) is strongly supportive of a registration system for strata managers in WA, with co-regulation, whereby the association can report to government agencies to assist with regulation and compliance and believe this would go a long way towards increasing the professionalism and accountability of the strata management industry.

A registration scheme would allow the WA Government to set minimum standards for accountability, transparency and professional development. Ensuring that registered professionals are subject to effective oversight and adherence to a code of conduct, which in turn would serve to enhance consumer confidence in the industry and increase the trust and reputation of strata managers as a highly skilled profession.

SCA (WA) believes that a registration model facilitated by a well-resourced and funded Strata Commissioner's office, as has been implemented in other jurisdictions such as NSW and Qld, would be the ideal scenario.

Alternatively, SCA (WA) would consider a registration scheme facilitated by the Department of Energy, Mines, Industry Regulation and safety (DEMIRS) to be favourable. SCA (WA) would like to note that it is imperative to the continuing professionalism of the strata management industry, that if a registration scheme is implemented, it is done so separately from the Real Estate and Property Management Industries.

SCA (WA) recommendation

- The implementation of a registration system for strata managers, with co-regulation, facilitated by a Strata Commissioner's office.

5.4 Conflict of interest and disclosures

Would clearer obligations around what the strata manager should disclose be useful, such as a clear obligation to list any interest in other services e.g. cleaning?

All conflicts which a Strata Manager may have for any arrangement or service should be disclosed. These conflicts may be personal, financial, or other interests (e.g. commercial) and either conflict or appear to conflict with the impartial and objective performance of the Strata Manager's duties. Common sources include:

- Personal or financial relationships with contractors or service providers.
- Ownership interests in properties within the managed strata scheme.
- Acceptance of gifts or hospitality that could influence decision-making.

Examples of other forms of conflict which should be required to be disclosed include Joint Venture arrangements or aligned business payments through rebate, dividends and/or portfolio-based profit-share payments from third-parties, service fees, overrides, premium funding agreements or any other means of remuneration.

SCA (WA) recommendation

- Strata Managers to be required to disclose all potential conflicts, for any arrangement or service, proactively using a standardised disclosure form and update this regularly or as circumstances change
- To require strata managers to have processes that ensure continual management of conflicts to mitigate influence and to guarantee all aspects are discussed, transparent, recorded, disclosed and documented.

Should third parties, such as insurance brokers, also have a duty to disclose conflicts of interest? What mechanisms could be used to enforce such obligations?

Whilst insurance brokers, and other third-party service providers, may predominantly deal with a strata manager, the strata company is the client, and as such full disclosure of conflicts should be disclosed to the strata company.

In November 2023, SCA Australasia released a Best Practice Strata Insurance Disclosure Guide³ which details the best practice for disclosure that all SCA strata manager members must adhere to from 1 July 2024. This document references the National Insurance Brokers Australia (NIBA) Code of Practice⁴ which was released in November 2023, which includes disclosure provisions for brokers and breaches of the Code are monitored and enforced by the Insurance Brokers Code Compliance Committee (IBCCC) who can refer matters to ASIC.

SCA (WA) recommendation

- All third-party service providers to be required to disclose all potential conflicts, for any arrangement or service, proactively using a standardised disclosure form and update this regularly or as circumstances change.

5.5 Strata manager definition / authorisation to perform scheme functions

Does the definition of a strata manager in the Strata Act need to be amended to provide further clarity around the role of the strata manager and their relationship with the strata company?

Do the provisions in the Strata Act around the strata management contract need to be amended so that they better reflect industry practice (e.g. capture where a strata manager is authorised to undertake scheme functions and where they seek authorisation before undertaking a scheme function)?

Should the Strata Act limit the role of strata manager to administrative management functions in order to distinguish property management and building management activities as other states do?

SCA (WA) believes that the Act should amend the provisions around the strata manager contract to ensure that the role of the strata manager is adequately defined (specifically the provisions surrounding section 143).

Any person who is employed to undertake any role that is described as a scheme function within the Act, to be included as a strata manager, and as such would need to comply with the requirements pertaining to strata managers.

³ SCA Best Practice Strata Insurance Disclosure Guide (2023) Strata Community Association Ltd. Available at: <https://www.strata.community/disclosure-guide> (Accessed: 30 October 2024).

⁴ Insurance brokers code of practice: National Insurance Brokers Association of Australia (2023) Insurance Brokers Code of Practice | National Insurance Brokers Association of Australia. Available at: <https://www.niba.com.au/insurance-brokers-code-of-practice> (Accessed: 30 October 2024).

The Act should not prescribe that the role of the strata manager is limited to purely administrative functions, as different schemes, strata companies and consumers have different needs, levels of sophistication expectations and ability to take on certain responsibilities.

As such, consumers should have the choice and ability to determine the role that they need the strata manager to play for their scheme, and that choice should not be limited in the Act by specifying that strata managers only engage in administrative management functions.

Strata management contracts should discuss and determine the role of the strata manager for each scheme and allow flexibility for the individual strata companies to decide the role they wish their strata manager to undertake and what level of delegated authority they are prepared to assign.

Specifically, the contracts should outline whether the scheme wants the strata manager to act purely to fulfil administrative management functions, or if they want and expect the strata manager to undertake other scheme functions as well.

SCA (WA) notes that it is important to consider that if strata managers are undertaking scheme functions, there are different obligations relating to strata managers as a PCBU, and their duty of care under the WHS legislation.

SCA (WA) recommendations

- To expand the definition of the strata manager to be anyone who is employed to perform any scheme functions. For this definition to then ensure that anyone who meets the definition is required to meet all strata management regulatory requirements.
- To allow the strata company to manage the level of authority provided to a strata management through their contractual agreement, allowing them the flexibility to decide what functionality will be most appropriate for their scheme.

5.6 Strata manager annual returns

Is there a value in extending the requirement for strata managers to complete an annual return beyond the 2025 reporting period?

SCA (WA) is supportive of extending the requirement for strata managers to complete an annual return beyond the 2025 reporting period. The additional data and information that has been obtained as a result of the implementation of the annual returns process has been extremely beneficial for the industry. The increased understanding of the size and scope of the industry, the strata industry's contribution to the wider economy and its overall growth are all data points that have been helpful in making positive changes to the industry, and SCA (WA) would be supportive of the continuation of the requirement.

However, SCA (WA) will note that feedback from wider membership has indicated that there is a relative lack of understanding from strata management firms as to the value of providing the submissions, and what utility they have for the industry. SCA (WA) believes that both Landgate and the wider industry (including bodies like SCA (WA)) have a role to play in ensuring that strata managers understand the reasons for the collection of data through the Annual Return Policy.

SCA (WA) also has concerns around the enforcement mechanisms that ensure that strata managers will provide a response. SCA (WA) understands that the current legislation mandates

that strata management firms must provide an annual return, however there are no provisions in the legislation that enforce penalties for not providing a response.

Whilst SCA (WA) recognises that schemes can provide a show cause notices should their contracted strata management firm not provide a response (information which is now exhibited on the Landgate website), SCA (WA) expects that a large majority of consumers/owners do not know what a show cause notice is, or how to undertake that process.

As such, SCA (WA) would strongly recommend that Landgate implement additional enforcement mechanisms beyond what is currently in place (in the form of additional penalties of some kind), if strata management firms fail to provide an annual return.

SCA (WA) notes that a process has been implemented in the SCA (WA) organisation that checks that members have provided their annual returns responses prior to their membership being renewed, to contribute to compliance in the industry.

If so, what additional information could be collected from strata managers that would be useful for Government and the industry?

SCA (WA) has previously collaborated closely with Landgate to ensure that the annual returns forms collect all relevant information. Any additional information collected would be subject to any reforms made, so as such, SCA (WA) does not presently have any additional recommendations.

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