



SAT

State
Administrative
Tribunal

Western Australia

*Appearing in the State Administrative
Tribunal – horses for courses*

by Dr Bertus de Villiers (Member: SAT)

Adjunct Professor: Curtin Law School

paper presented at Society of Trust and Estate Practitioners (Perth)

31 August 2017



SAT

State
Administrative
Tribunal

Western Australia

LAY-OUT

- SAT (NOT SO) NEW JURISDICTION
- UNIQUE PROCEDURES
- BURDEN OF PROOF AND STANDARD OF PROOF
- DEALING WITH LITIGANTS IN PERSON
- DEALING WITH EXPERT WITNESSES
- THE FUTURE



SAT

State
Administrative
Tribunal

Western Australia

SAT (NOT SO) NEW JURISDICTION

- Commenced in January 2005
- Wide jurisdiction for 'elderly law': eg planning reviews (eg grannyflats), building, strata (eg over 55), retirement villages, residential parks, guardian and administration (eg ss107; 109, 11A; s40 Wills Act), equal opportunity
- Members – legally trained and some experts in different fields
- Objectives: substantial merit; speedily; little formality; minimise costs; use knowledge (s9 SAT Act)
- Practice: bound rules of natural justice; not bound rules of evidence but...; act according to equity, good conscience and substantial merits without legal technicality and legal forms; may inform itself; duty to explain process and assist parties (s32 SAT Act)
- On-line dispute resolution: CT Act; GAA Act and Strata Titles Act



SAT

State
Administrative
Tribunal

Western Australia

BURDEN OF PROOF AND STANDARD OF PROOF

- Consistent principles, but different approach depending on jurisdiction
- **Civil and commercial:** burden on applicant and standard balance of probabilities (as per civil court system)
- **Vocational:** burden on vocational regulator; Briginshaw-test namely 'actual persuasion'. Tribunal "must feel an actual persuasion of the occurrence or existence of the relevant facts". (*Legal Practitioners Complaints Committee and Gandini* [2006] WASAT 163.)
- **Review:** no strict burden but practical on decision-maker; *de novo*; civil standard to prove a specific fact: (*Wignall and Commissioner of Police* [2006] WASAT 206)
- **Guardian and admin:** no strict burden since investigative; applicant explains rationale for application; protective jurisdiction; SAT takes carriage; SAT also conducts inquiries (In *S v SAT* [2012] WASC 306 at [101] Heenan J said "...the onus lay upon the applicant to establish, to the degree of persuasion which the gravity of the allegation and the seriousness of its consequences required, that she was not ... competent".)
- Particular relevance: *GC and PC* [2014] WASAT 10: Because of significant consequences 'clear and cogent evidence' required to rebut presumption of capacity. Also *GC* [2017] WASAT 80 (diminished capacity not incapacity)
- Caution: testamentary capacity not the same as capacity for purposes of GAA Act: capacity relates to the nature of the transaction - *Gibbons v Wright* [1954] HCA 17; (1954) 91 CLR 423



SAT

State
Administrative
Tribunal

Western Australia

DEALING WITH LITIGANTS IN PERSON

- Around 8 000 applications in sat
- Performance indicators to conclude speedily
- Around 80% litigants in person, particularly GAA, strata title and residential parks
- B De Villiers (2014) "Self-represented litigants and strata title disputes in the State Administrative Tribunal - an experiment in accessible justice" *Journal of Judicial Administration* (24) 30-45

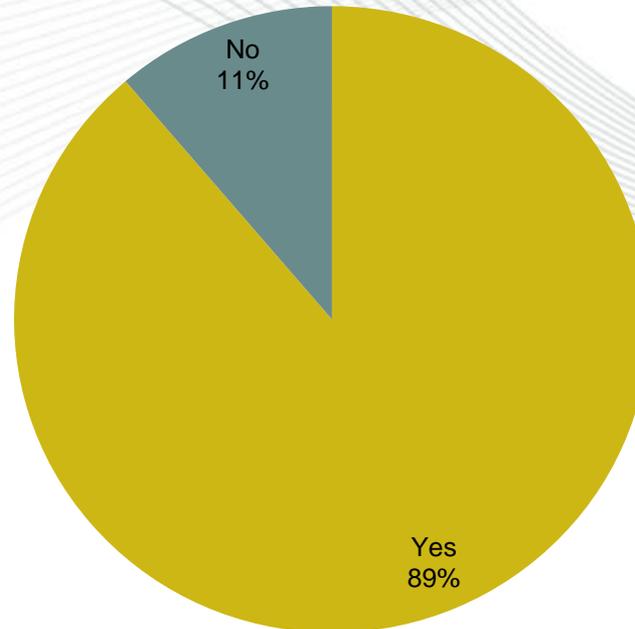


SAT

State
Administrative
Tribunal

Western Australia

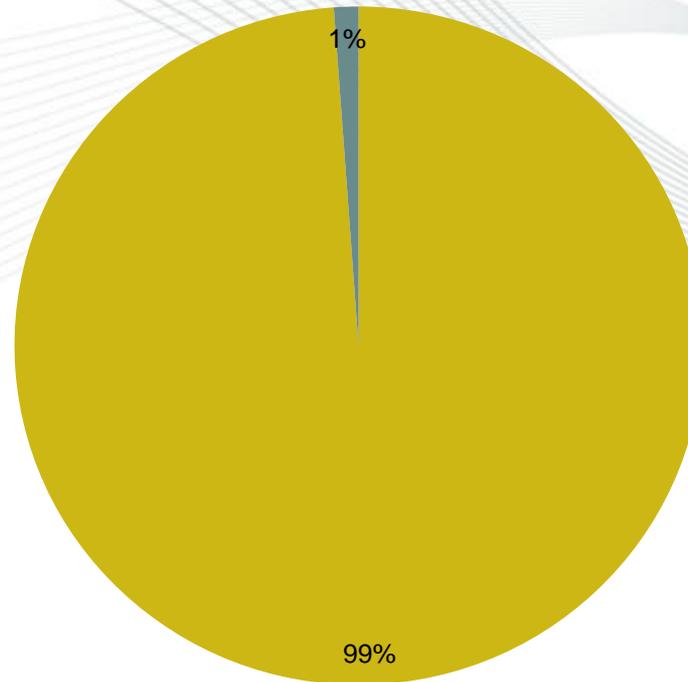
In light of your experience, was it the right decision to represent yourself in the strata dispute?





Were the procedures for mediation explained to you by the mediator?

■ Yes ■ No



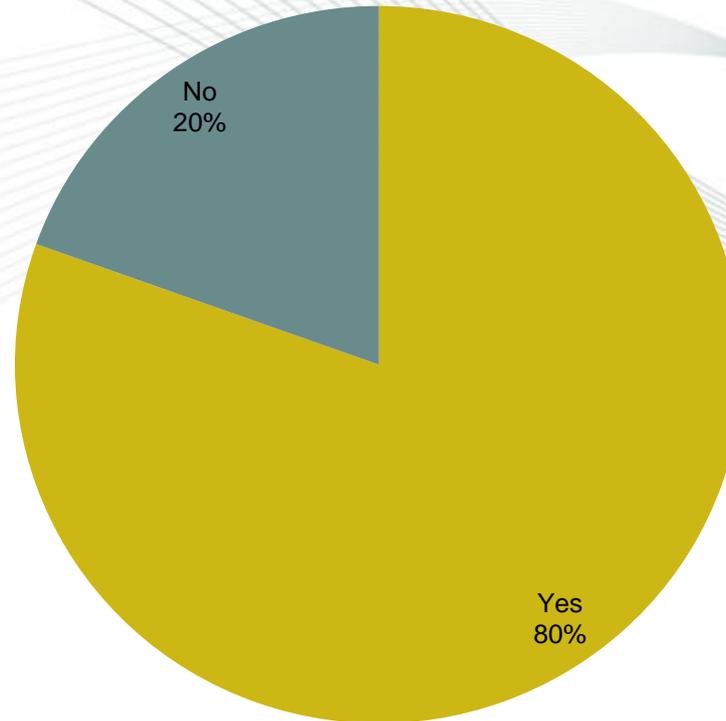


SAT

State
Administrative
Tribunal

Western Australia

Did the Member explain the hearing procedures well?





SAT

State
Administrative
Tribunal

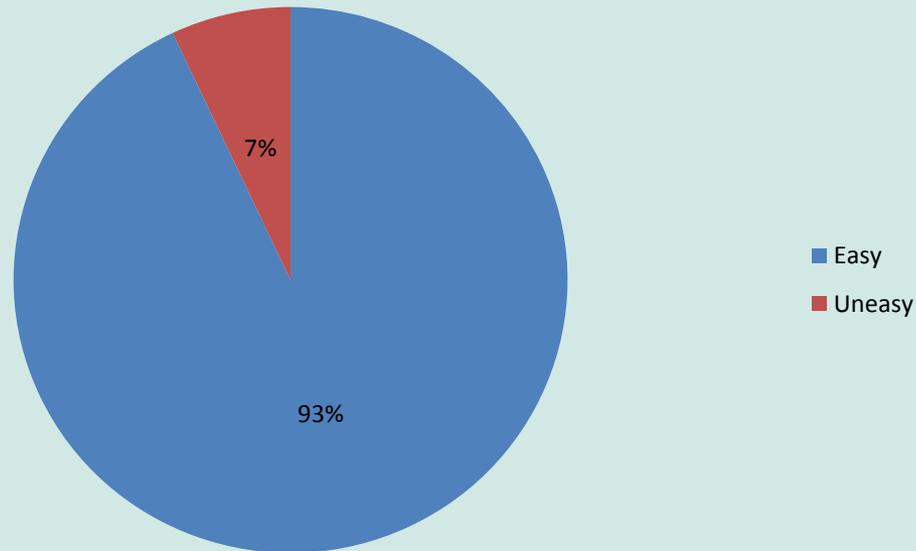
Western Australia

DEALING WITH EXPERT WITNESSES

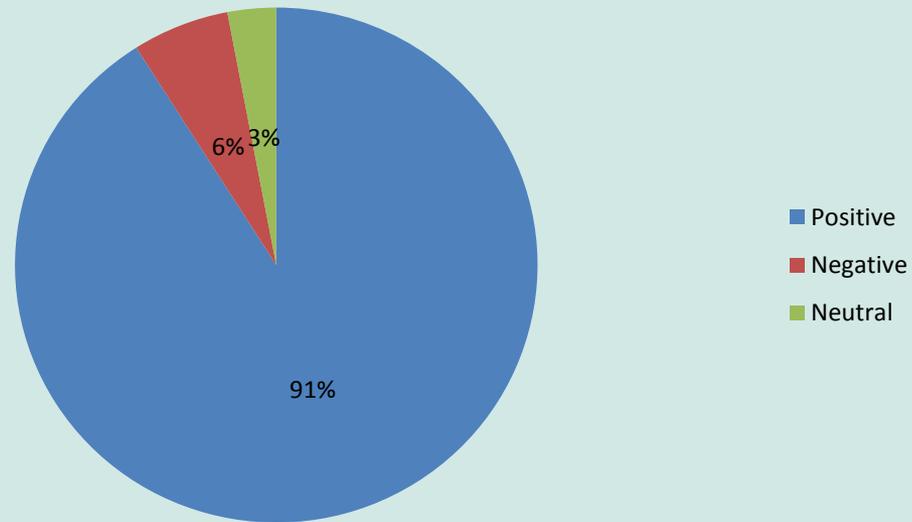
- In all jurisdictions
- Standard practice: conferral *prior to* hearing and *concurrent evidence* during hearing
- Active examination by Tribunal
- B De Villiers (2015) “From advocacy to collegiality – the view of experts of ‘concurrent evidence’ and ‘expert conferral’ in the State Administrative Tribunal” *Journal of Judicial Administration* 25: 11-27.

Questions to experts who regularly participate in conferral and concurrent processes

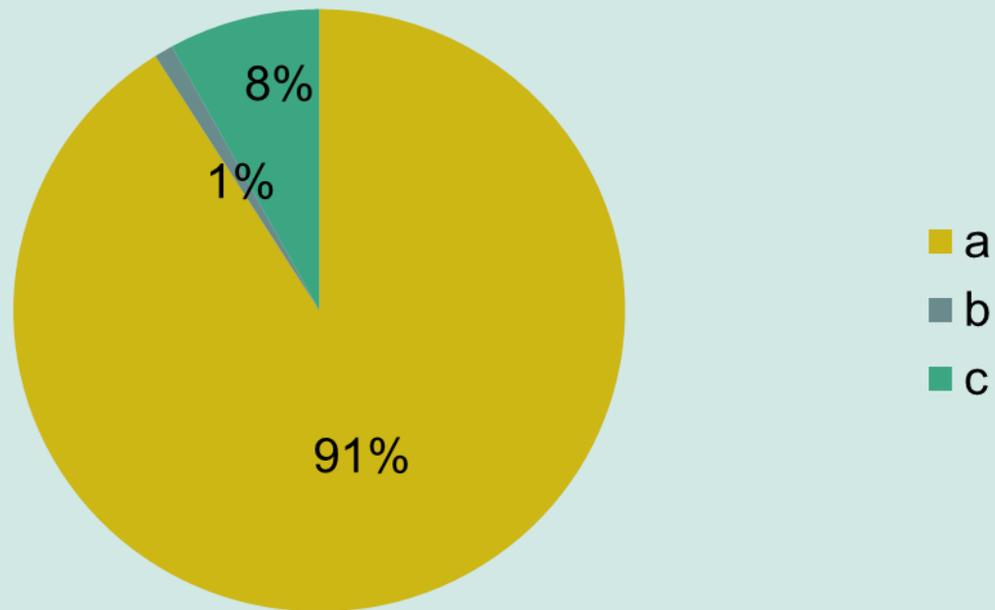
Did you feel “easy” or “uneasy” about the process of giving evidence concurrently with other experts?



Did you find it positive, negative or neutral that a member of the Tribunal who is an expert in the subject field, participated as a member during the hearing?



Overall, in your view, do the techniques of expert conferral and concurrent expert evidence (a) reduce time required for a hearing, (b) add to time required for a hearing or (c) make no difference in time required for a hearing?





SAT

State
Administrative
Tribunal

Western Australia

The Future

- Expanding jurisdiction (eg residential tenancies?)
- Areas in STEP-interest that may be conferred to SAT?
- Greater use by SAT – eg ss 107; 109, 111A
- Increase on-line dispute resolution
- New techniques, eg Early Neutral Assessment and Judicial Initiated Proposal (B De Villiers (2017) “Getting to settlement quicker and cheaper – Early Neutral Assessment and Judicial Initiated Proposal” February *Brief* 45-47.)
- Integral part of WA judiciary