

NSW Building Bill 2024

Strata Community Association NSW Submission
31 May 2024

INTRODUCTION

1. Strata Community Association NSW Overview

Founded in 1980, Strata Community Association NSW (SCA NSW) was formerly known as the Institute of Strata Title Management. SCA NSW serves as the peak industry body for Strata and Community Title Management in New South Wales. The association proudly fulfils a dual role as both a professional institute and consumer advocate.

2. Membership

SCA NSW boasts a membership of over 3,000 members, including lot owners, suppliers, and professional strata managers who oversee, advise, and manage a combined property portfolio estimated to be worth over \$450 Billion.

3. Strata and Community Title Schemes in NSW

NSW is home to 89,049 Strata and Community Title Schemes. A significant 95 per cent of these schemes are comprised of residential lots. Altogether, the total number of Strata and Community Title lots in NSW stands at 1,043,690.¹

4. NSW as a Leader in High-Density Living

According to the 2022 Australasian Strata Insights Report, there are 2,501,351 people residing in apartments across Australia. A majority of these apartment dwellers (51 per cent) are in NSW.² NSW also leads the way in the trend to higher density living in Australia and boasts the highest proportion of apartment households relative to all occupied private dwellings, standing at 22 per cent.

5. Employment Impact

Strata is a significant employer, directly providing jobs to 1,413 managers throughout NSW, as well as an additional 1,317 other related employees.³

6. Promoting Professionalism

1. SCA NSW is dedicated to fostering a high standard of professionalism in the strata industry with initiatives like the Professional Standards Scheme (PSS), which contributes to ensuring strong consumer outcomes for over 1 million strata residents in NSW.
2. SCA NSW membership encompasses a wide range of entities, from large corporate companies to small family businesses to dedicated volunteers. Members possess expertise in all aspects of strata management, service provision, and governance.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA NSW. Dylan.lin@strata.community

¹ Hazel Easthope, Danielle Hynes, Yi Lu and Reg Wade, Australasian Strata Insights 2022, City Futures Research Centre, UNSW, Accessed at https://cityfutures.adu.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf

² Ibid, p.8-13

³ Ibid, p.8.

TABLE OF CONTENTS

Introduction	1
Overview: The Building Bill 2024.....	3
SCA NSW Responses	4
Questions 1-2: Licensing Framework Changes.....	4
Questions 3-5: Contract Protections Scope	4
Questions 6-7: Contract Requirements	5
Question 8: Contract Requirements – Maximum Deposits	5
Questions 9-10: Contract Requirements – Contract Variations.....	6
Questions 11-14: Contract Requirements – Progress Payments.....	6
Questions 15-17: Contract Requirements – Preliminary Service Agreements.....	7
Questions 18-21: Statutory Warranties.....	8
Questions 22-25: Dispute Resolution.....	9

OVERVIEW: THE BUILDING BILL 2024

With an increasing number of the NSW population residing in strata, the Strata Community Association NSW (SCA NSW) is committed to improving strata laws and regulations to meet the needs of the strata community. In response to the consultation paper on consumer protections for home building work under the Building Bill 2024, SCA NSW has provided comprehensive insights and recommendations.

The association recognises the importance of restoring confidence in the strata and construction industry through regulatory reform in NSW. These reforms, aimed at improving transparency, accountability and the quality of building work, have garnered support from both the strata community and industry stakeholders. The costs and risks associated with substandard, non-compliant and unsafe building work are keenly felt by strata owners, underscoring the need for robust consumer protections.

Building failures across various building types not only incur financial costs but also pose safety risks to occupants and tarnish the reputation of the strata and construction industry. It is imperative to address these challenges through a clear and comprehensive regulatory framework that ensures compliance among industry practitioners.

As SCA NSW continues to advocate for the interests of the strata community, this submission provides feedback on the 25 consultation paper questions to strengthen consumer protections for home building work in NSW. The association's recommendations, centred on minimum contract requirements, statutory warranties and dispute resolution, aim to improve strata laws and regulations in NSW.

SCA NSW RESPONSES

Questions 1-2: Licensing Framework Changes

- 1. Do you support maintaining the status quo regarding the current licence types?**

SCA NSW supports maintaining the status quo regarding the current licence types.

- 2. Are there other ways to improve the current licence types? Please provide examples.**

SCA NSW has no additional suggestions for improving the current license types.

Questions 3-5: Contract Protections Scope

- 3. Are there any considerations that should be made in limiting the scope for consumer protection to building work carried out on a home?**

SCA NSW believes there are no considerations that should limit the scope of consumer protection to building work carried out on a home.

- 4. What are the impacts of providing consumer protections for pre-fabricated building work? Are there any considerations that should be made?**

SCA NSW contends that no other factors should be taken into account when refining the review process.

- 5. In relation to the definition of 'home' should any other types of residence be included or excluded?**

SCA NSW asserts that no other types of residences should be included or excluded in the definition of 'home'.

Questions 6-7: Contract Requirements

6. Do you support maintaining the monetary threshold for when a minor works contract is needed for home building work at \$5,000? Why/why not?

SCA NSW supports raising the monetary threshold to account for the increase in building work costs.

7. What effect will maintaining the contract requirement threshold of \$5,000 have on contracting to do home building work in the industry?

SCA NSW believes that maintaining the contract requirement threshold of \$5,000 will increase administrative costs for minor works.

Question 8: Contract Requirements – Maximum Deposits

8. Do you support maintaining the 10% maximum deposit threshold? Why/why not?

SCA NSW advocates for maintaining the 10% maximum deposit threshold. Maintaining the 10% deposit offers increased consumer protection while ensuring contractors have initial funds to start work. Moreover, consistent schedule payments outlined in contracts can sufficiently support cash flow for both parties.

Questions 9-10: Contract Requirements – Contract Variations

9. Do you support the requirement for a written variation document with the required components outlined in the paper? Why/why not?

SCA NSW supports the requirement for a written variation document with the required components outlined in the paper. This approach will reduce disputes and ensure transparency regarding the nature of the variation along with any associated cost changes to the work being done. While there is a concern about potential delays in work progress, clearly documenting variations as part of the contract provides both parties with important information and notice of any actions required beyond the initially proposed works.

10. Do you support the minimum requirements for variation documents? Are there any additional requirements that should be added?

SCA NSW supports the minimum requirements for variation documents.

Questions 11-14: Contract Requirements – Progress Payments

11. Does the hybrid model for progress payments address the concerns about flexibility with the prescribed stages?

SCA NSW supports the hybrid model for progress payments, affirming its flexibility in addressing concerns with the prescribed stages.

12. If we adopted the hybrid model, do you have any other concerns we should consider?

SCA NSW does not have any additional concerns regarding the hybrid model.

13. Would you support moving away from the hybrid model and allowing all builders to prescribe their own progress payment stages on condition that the payments are tied to the value of the work completed? If so, why?

SCA NSW supports moving away from the hybrid model, acknowledging that specific builds may require altered progress payments.

14. Do you have any concerns about allowing builders to prescribe their own progress payment stages? Why/why not?

SCA NSW does not have any concerns about allowing builders to prescribe their own progress payment stages, provided they are tied to the cost of completed work.

Questions 15-17: Contract Requirements – Preliminary Service Agreements

15. Are there any other types of work that you consider to be within the scope of work for a PSA?

SCA NSW does not propose any additional types of work to be included within the scope of work for a PSA.

16. Do you consider that linking PSAs to subsequent contracts for residential building work is an effective way of discouraging improper use of PSA's? If not, what other measure do you consider will be effective?

SCA NSW considers linking PSAs to subsequent contracts for residential building work an effective way of discouraging improper use of PSAs.

17. Are there any other issues relating to contracts that you would like to raise?

SCA NSW has no further issues relating to contracts to raise at this time.

Questions 18-21: Statutory Warranties

18. Does the inclusion of ‘incidental work’ provide appropriate consumer protections? What types of work do you think ‘incidental work’ would cover?

SCA NSW supports the inclusion of 'incidental work' to provide appropriate consumer protections. Incidental work should encompass any minor work that is required to complete the work contracted.

19. Do you support the hybrid definition for ‘major’ defect? Why/why not?

SCA NSW supports the hybrid definition of major defects. This definition provides clarity regarding the defect's impact on the building and its functionality and the likely cause of the defect. Consequently, it offers a clearer distinction between what constitutes a major defect and what does not.

20. Do you support the definition of ‘practical completion’ that will apply to statutory warranties? If not, why?

SCA NSW supports the definition of ‘practical competition’ that will apply to statutory warranties.

21. Are there any other issues relating to statutory warranties that you would like to raise?

SCA NSW advocates for greater consumer protection measures, including extending the statutory warranty period to 7 years for both major and non-major defects, consistent with previous provisions.

Questions 22-25: Dispute Resolution

22. Are there any matters that you think should be dealt with directly by NCAT and not be triaged through the Regulator?

SCA NSW believes that NCAT should directly deal with building matters involving amounts less than \$100,000 on existing buildings.

23. What would be the impacts of the statutory warranty 'pause' to allow the time to deal with building disputes where the warranty expires within 6 months?

SCA NSW opposes the notion of a statutory warranty pause for resolving building disputes within 6 months of the warranty's expiration. If the existing 2 or 6-year time limit does not provide enough time for dispute resolution by the Regulator, either the Regulator requires greater resources or the warranty periods should be extended. Notably, there is already a 6-month extension if defects are identified within the last 6 months of the warranty periods.

24. Are there any other issues relating to dispute resolution you would like to raise?

SCA NSW currently has no additional concerns regarding dispute resolution.

25. What do we need to consider to give effect to providing a single duty of care framework in the Building Bill?

SCA NSW has no further considerations to add.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA NSW. Dylan.lin@strata.community