

# Building Reforms 2024

Strata Community Association NSW Submission  
18 October 2024

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# INTRODUCTION

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## 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 includes a membership of over 3,000 members, including suppliers, strata companies and 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.<sup>1</sup>

## 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.<sup>2</sup> 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.<sup>3</sup>

## 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](mailto:Dylan.lin@strata.community)**

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<sup>1</sup> 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](https://cityfutures.adu.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf)

<sup>2</sup> Ibid, p.8-13

<sup>3</sup> Ibid, p.8.

## SCA NSW'S POSITION

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### Introduction

The Strata Community Association NSW (SCA NSW) is the peak industry body for Strata and Community Title Management in NSW. Representing over **3,000 members**, including professional strata managers and service suppliers, SCA NSW plays an important dual role as both a professional institute and consumer advocate. Collectively, our members manage property portfolios valued at over **\$450 billion**, demonstrating the association's significant influence on the strata sector. With **89,049** strata and community title schemes across NSW, **95 per cent** of which are residential, SCA NSW supports the state's leadership in high-density living, where over half of Australia's apartment dwellers reside.

SCA NSW welcomes the opportunity to engage in the consultation process for the proposed building reforms, including the Draft Building Bill 2024, Draft Building Compliance and Enforcement Bill 2024, Draft Building Insurance Bill 2024 and Draft Building (Licensing) Regulation 2024. As the peak body representing strata managers, SCA NSW is committed to supporting reforms that strengthen the governance of strata schemes in NSW.

## **Building Bill 2024**

### **1. Section 95 – Narrowing the Definition of Major Defects**

Section 95 of the Bill introduces a new definition of "major defect." The proposed definition includes sub-sections 95(1)(b) and 95(2)(b), which state that for a defect to be classified as a "major defect," it must have: "a significant impact on the building." This definition contrasts with the current Home Building Act 1989 (HBA 1989), which defines a major defect as one that: "causes, or is likely to cause" the listed impacts.

**The removal of the "likely to cause" wording in favour of requiring significant impact narrows the scope of major defect claims.** This would reduce consumer rights by limiting the identification of major defects until damage has already occurred. **To maintain protections, the original "causes, or is likely to cause" terminology should be reinstated.**

### **2. Section 96 (1)(f) – Warranties for Habitation**

**The Bill should ensure that each specific part of a home worked on is fit for habitation.**

Currently, section 96(1)(f) requires that: "work will result in a home being fit for habitation." However, to align with section 18B(1)(e) of the HBA 1989, it is necessary to include the phrase: **"to the extent of the work conducted."** This will ensure that statutory warranties cover the fitness for habitation of the parts worked on, rather than just the home.

### **3. Definition of Home**

The current definition of "home" in the Bill does not encompass "part of a home" or certain extensions of the term "dwelling" found in clause 3(2) of Schedule 1 of the HBA 1989. This omission could exclude critical areas of a property from coverage, leaving homeowners without recourse in cases of partial work or individual components. **SCA NSW recommends broadening this to include these longstanding provisions to ensure comprehensive coverage under the new statutory warranties.**

#### 4. Section 98 – Developer Accountability

While page 19 notes that the Bill does not intend to absolve developers of their warranty obligations, several sections require clarification or amendment to ensure protections for consumers and owners corporations are not weakened.

Section 98 outlines the providers of statutory warranties, including section 98(b):

*"if a person did not enter a contract with the owner for the work—the person who contracts or arranges for, facilitates or otherwise causes, whether directly or indirectly, the work to be carried out."*

However, this provision fails to cover “developers” as defined in Schedule 4. The current provision applies primarily in instances where no contract exists with the owner, possibly intended for circumstances where the builder is also the owner. This leaves a gap for developers, especially in multi-tiered contractual arrangements. **SCA NSW recommends this section should be amended to explicitly reference “a developer in respect of the work” to close this loophole and ensure developer accountability.**

#### 5. Section 100 – Building Bond Extension

Section 100 of the Bill proposes an extension of the warranty period for non-major defects where a building bond applies. However, section 100(3) is ambiguous as the provision states: “the warranty period for non-major defects expires 90 days after the issue of the interim report if no final report is required.” This provision could inadvertently reduce the warranty period to as little as 18 to 21 months, rather than the intended 24 months, when no final report is needed. This would leave owners corporations with insufficient time to identify and resolve non-major defects. **SCA NSW recommends amending section 100(3) to ensure that the full two-year warranty period applies regardless of whether a final report is necessary.**

#### 6. Part 5 – Decennial Insurance

The requirement for decennial insurance in Part 5 of the Bill is supported. **However, SCA NSW recommends that the Bill include a provision that deems insurance policies to extend coverage as required by law.** Specifically, the policy should be invalid, similar to sections 103D and 102 of the HBA 1989. This ensures that owners are not unfairly exposed due to insurance policies failing to meet statutory requirements.

## 7. Chapter 6 – Building Work Compliance Declarations

**Chapter 6 of the Bill should mandate more comprehensive inspections and an expanded list of building elements requiring building works declarations.** These declarations must be in a prescribed form that clearly details the scope of work performed, the products used and the locations involved.

One of the fundamental issues with the current system is that external balcony waterproofing does not require a mandatory inspection or compliance certificate. This is a significant oversight as defective waterproofing is often the cause of extensive water damage. Certifiers typically perform only the minimum requirements to limit their liability. To address these issues, **the Bill must ensure that adequate inspections and certification requirements are enforced, rather than conserving the existing inadequate standards.**

## 8. Section 150 – Building Requirements

**In relation to section 150 of the Bill, SCA NSW recommends the phrase “or carries out work” should be removed.** This phrase is not included in the corresponding provision, section 6(30) of the Environmental Planning and Assessment Act 1979, and its inclusion would have several unintended consequences:

- It would undermine the responsibility of builders to ensure their work complies with the **National Construction Code (NCC)**.
- It would shift the focus away from ensuring compliance with **section 18B of the HBA 1989** warranties, which currently holds builders and subcontractors accountable.
- It would complicate disputes, making them more costly and focused on litigating liability rather than identifying necessary repairs and ensuring the repairs are carried out efficiently.

The inclusion of this phrase would blur the lines of responsibility, making it harder to hold builders accountable for compliance. It would also likely lead to longer, more contentious legal battles.



## 9. Extension to Warranties and Related Concerns

Section 100(1)(c) of the Bill allows for an extension of the statutory warranty period when an owner lodges a building dispute with the Secretary. However, the section refers to a period "prescribed by regulation," which has yet to be detailed. This lack of specificity is problematic as the current proposal prevents owners from commencing warranty claims in the NSW Civil and Administrative Tribunal until the Secretary issues a certificate permitting proceedings.

It is not ideal to implement such a regime while leaving critical consumer protections to be determined later by regulation without full debate in the NSW Parliament. **Without clarity, this risks unfairly stripping owners of their rights without sufficient consultation.**

Further concerns arise from section 100(2), which states that no additional defects may be included, nor further extensions granted. The provision lacks clarity regarding what exactly is excluded. This appears to conflict with well-established case law, which allows additional defect particulars to be added to cases with the Court's leave, provided the cause of action was commenced within time. **The proposed limitation would represent a major reduction in consumer rights, shifting the balance in favour of developers and undermining consumer confidence.**

## 10. Section 161 – Clarification of "Building Claim"

Section 161(1)(b) lists several types of claims, many of which fall within the definition of "building dispute." The current drafting does not clearly distinguish these claims as "building claims," regardless of whether they meet the definition of a "building dispute" for which the Secretary has issued an approval under section 159(1)(d). To avoid confusion, **section 161(1)(b) should explicitly clarify that these types of disputes are considered "building claims."**

## 11. Section 6 – Definition of "Close Associate" in Statutory Warranty Claims

**The Bill inappropriately narrows the definition of "close associate" for the purposes of defence in statutory warranty claims. The existing, broader definition should be fully restored,** as it is unjustified and undermines the accountability mechanisms currently in place.

## **Building Compliance and Enforcement Bill 2024**

### **1. Phoenix Behaviour**

The Bill's approach to Phoenix behaviour—where individuals involved in companies that fail to meet defect claims are able to continue operating through new entities—is concerning. The proposed loosening of restrictions under Part 6 of the Bill is a significant step backward. **SCA NSW proposes the current protections should be tightened, not weakened.** Allowing developers and builders who have failed to meet defect claims to continue without consequence only continues the cycle of poor building practices and leaves consumers paying the price for defective work.

### **2. Section 69(1)(b) – Clarification of Persons Subject to BWRO**

The Bill allows for a Building Work Rectification Order (BWRO) to be issued under section 69(1)(b). However, the current drafting does not clearly define the persons other than a "developer" who may be subject to such an order. **This should be clearly defined to avoid confusion and ensure that all responsible parties are held accountable.**

### **3. Section 87 – Exempt Development Under a Remedial Order**

Section 87 proposes that work carried out under a "remedial order" be considered exempt development. While this may be intended to streamline processes by removing the need for development consent, it could have unintended consequences. As currently drafted, it would exempt work required under such orders from a regulated design by a registered design practitioner and building compliance declarations—except for waterproofing work.

This would mean that builders subject to orders due to defective work would not be required to provide regulated designs or compliance declarations for repairs, potentially leading to substandard work. **Consequently, SCA NSW believes that the exemption is limited to development consent only and that the requirement for regulated designs and compliance declarations remains in place.** Failure to address this could create a loophole encouraging builders with poor track records to seek remedial orders.



#### 4. Section 88(4) – Retention of Refusal Wording

Section 88(4) omits the term "refuse," which is present in section 41(3) of the Residential Apartment Buildings Act 2020. **SCA NSW recommends amending the term to include "refuse or fail" to ensure owners are not penalised for refusing access where they have a reasonable excuse.**

#### 5. Section 96(2)(b) – Broad Scope of Orders

Section 96(2)(b) allows for the issuance of a completely different order than initially proposed, without the affected owners corporation being given an opportunity to comment. This provision is overly broad and could result in significant impacts on the most affected party—the owners corporation—without their input. **This section should be amended to ensure that all parties directly impacted by an order have a chance to provide feedback before any decision is made.**

#### 6. Section 99(1) – Definition of “Relevant Person”

The term "relevant person" in section 99(1) concerning appeals is not clearly defined. **The Bill should specify who qualifies as a “relevant person” to avoid ambiguity.** Importantly, this should include owners corporations, as they are often the party most affected by building compliance issues and should have the right to appeal decisions.

## **Building Insurance Bill 2024**

**SCA NSW believes there is insufficient data on Decennial Insurance (DI)** to fully assess its effectiveness for consumers. A comprehensive cost-benefit and comparative analysis of the Strata Building Bond & Inspections Scheme and DI is important to fully determine the best method to protect consumers.

## **Building (Licensing) Regulation 2024**

**SCA NSW generally supports the Building (Licensing) Regulation 2024 but requests further clarification on section 44**, which pertains to fire safety licenses.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA NSW. [Dylan.lin@strata.community](mailto:Dylan.lin@strata.community)