



Common Property Repairs and Maintenance Compliance and Enforcement Policy: Stakeholder Consultation Draft

Strata Community Association NSW Submission
21 August 2025

INTRODUCTION

1. Strata Community Association (NSW) Overview

Founded in 1980, Strata Community Association (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 Andrew Jefferies, Senior Policy and Advocacy Advisor, SCA NSW. Andrew.Jefferies@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.

COMMON PROPERTY REPAIRS AND MAINTENANCE COMPLIANCE AND ENFORCEMENT POLICY STAKEHOLDER CONSULTATION DRAFT FEEDBACK

Introduction

The Strata Community Association NSW (SCA NSW) welcomes the opportunity to provide feedback as a key industry stakeholder to NSW Fair Trading's Common Property Repairs and Maintenance Compliance and Enforcement Policy Stakeholder Consultation Draft.

SCA (NSW) notes the passage of the *Strata Schemes Legislation Amendment Act 2025* (the Act) by the NSW Parliament on 12 February 2025 with a commitment to strengthening the strata and community land laws, ensuring the proper maintenance of buildings and enhancing the living experience for all residents in strata and community land schemes.

We note that Fair Trading intends to commence exercising new compliance and enforcement powers on 27 October 2025 and its commitment to ensuring that compliance is achieved with minimal cost impact and the provision of education and resources to help owners corporations meet their obligations under the law.

While the objectives of this draft policy are generally sound, there are areas which present operational difficulties that we believe require some modification or clarification. Our response highlights some potential conflicts with existing legislation.

SCA NSW's Response

Please find our responses to the Common Property Repairs and Maintenance Compliance and Enforcement Policy draft below:

Section 2 – Compliance and Enforcement

- **2.2.2 – Responsibilities and expectations for strata residents and owners - timeframe for raising issues with the strata committee or strata managing agent**

SCA (NSW) agrees that concerns about common property repair and maintenance issues, should be reported in writing to the strata committee or strata managing agent. It can often take many weeks to assess the concern, obtain quotes, submit a motion for the agenda and

to schedule a general meeting to raise funds through a special levy. Issues relating to building defects and warranties are particularly complex and take significant time to resolve.

- **2.2.2 – Responsibilities and expectations for strata residents and owners – lodging a complaint with Fair Trading**

We note that there is no cost to a consumer to lodge a complaint with Fair Trading to seek further assistance, where mediation fails or where an owners corporation declines to participate in the mediation process. However, while participation in mediation is encouraged, it's not mandatory and Fair Trading's response to facilitating compliance and issue resolution will depend on the level of risk, the consequence of the matter and the specific circumstances of each case.

SCA (NSW) points out that many disputes and complaints relating to strata living end up at the NSW Civil and Administrative Tribunal (NCAT) where the standard fee to make an administrative review application or to seek an external appeal starts at \$127, rising to \$519 should the complaint need to be determined by an Appeals panel. These costs are not insignificant and appear designed to deter vexatious applications.

- **2.2.3 – Potential Intervention Outcomes - Rectification plan**

Following assessment of a complaint and identification of a breach of common property repair and maintenance obligations, the draft policy notes that Fair Trading may request the owners corporation to provide a rectification plan outlining proposed actions and timeframes for completion.

SCA (NSW) recommends that a template guidance be developed, with input from industry experts, to ensure compliance with relevant planning, building and strata laws. This should provide clear and effective guidance to an owners corporation with regards to proposed actions and adequate, agreed timeframes.

Section 3 – Determining appropriate investigation and enforcement responses

- **3.1 – Fair Trading's investigation powers – timeframe to require documents**

Fair Trading has a range of regulatory powers to investigate when an owners corporation fails to meet its obligations to maintain and repair common property and may require a person to produce documents and records relevant to an investigation into compliance.

Such a request must specify the manner in which the documents must be provided, the required format and a *reasonable timeframe* by which the documents must be supplied.

SCA (NSW) strongly recommends that a minimum requirement of at least seven days be provided to produce documents as part of compliance investigations. The task to produce documents usually falls upon the strata managing agent to carry out and we expect that the sector will require additional time to adjust to the new compliance and enforcement regime. Our feedback is that the current, three-day timeframe to provide a reply to a request for documentation is far too short.

- **3.1 – Fair Trading’s investigation powers – nomination of a director or other officer to answer questions on behalf of the owners corporation**

Fair Trading may require a person to provide verbal or written answers relevant to an investigation into an owners corporation’s repair and maintenance obligations to help clarify evidence to support an investigative process. This requirement may also include an owners corporation to nominate a representative to answer binding questions on its behalf.

We note that the draft policy does not specifically make clear how a representative should be nominated as part of this process, nor the time required to make this appointment.

SCA’s position is that a nominated representative should be elected at a convened general meeting and that a minimum of twenty-one days be allowed for the Owners Corporation to make this appointment and provide this advice to Fair Trading.

Other Concerns

Integration with Strata Schemes Management Act 2015

- **Section 106 Compliance Obligations**

Section 106 of the Strata Schemes Management Act 2015 (SSMA) establishes that "An owners corporation for a strata scheme must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation."

However, subsection (3) provides exceptions where owners corporations can determine by special resolution that "it is inappropriate to maintain, renew, replace or repair the property" provided "its decision will not affect the safety of any building, structure or common property in the strata scheme." Compliance may also be deferred if the owners

corporation is pursuing an individual in relation to the defects, such as the builder and/or developer.

SCA NSW is concerned that this draft policy does not adequately acknowledge these existing statutory exceptions under Section 106(3), potentially creating conflicts where enforcement action overrides lawful special resolutions.

Integration with Property and Stock Agents Act 2002

- **Potential Dual Regulation**

Strata managing agents are already subject to comprehensive regulation under the Property and Stock Agents Act 2002, including “rules of conduct” and obligations under the SSMA. Section 53F of the Property and Stock Agents Act 2002 establishes prohibitions on agents receiving gifts or benefits that could create conflicts of interest.

SCA NSW believes that the policy creates potential dual regulation where strata managers could face disciplinary action under both regulatory frameworks for the same conduct, raising natural justice concerns

Unrealistic Timeframes and Expectations

- **Complexity of building issues requiring significant investment**

SCA NSW is concerned that the draft policy assumes owners corporations can respond rapidly to complex building issues requiring significant financial investment. Specific problems could include:

- Special resolutions for enforceable undertakings require 21 days' notice plus meeting time – this is a very tight timeframe to call an EGM if notices are sent by post
- Major repairs often require multiple quotes, engineering reports, and council approvals
- Capital works funding through special levies can take 2-3 months to collect
- Some repairs require seasonal timing (e.g., waterproofing during dry periods)
- Increased cost and compliance with the Design and Building Practitioners Act 2020.

SCA recommends the following steps to improve regulatory guidance outcomes:

- Acknowledge Section 106(3) SSMA exceptions with this policy implementation
- Establish a clear hierarchy when WHS Act immediate action requirements conflict with democratic strata processes

- Create emergency procedures that satisfy both WHS PCBU obligations and SSMA governance requirements
- Coordinate with SafeWork NSW to prevent conflicting regulatory enforcement
- Allow phased compliance with interim safety measures that meet WHS "reasonably practicable" standards
- Provide clear guidance on when safety obligations override normal strata decision-making timeframes
- Consider additional notice time for meetings including special resolutions for enforceable undertakings – this remains a tight timeframe when notices are sent by post.

Ambiguous Documentation Requirements

- **Relevant documents**

The draft policy requires "documents relevant to an investigation" without defining scope or reasonable limits. Some specific concerns include:

- Unclear what constitutes "relevant" documents with references to "10 years of records" and "all correspondence"
- No guidance on format requirements (digital vs. physical copies)
- Potential privacy issues with resident correspondence
- Smaller schemes could potentially be overwhelmed with administrative burden

SCA NSW suggests the following steps to improve regulatory guidance:

- Define specific document categories with retention periods that align with SSMA requirements
- Ensure document production powers comply with Privacy Act 1988 and administrative law principles
- Coordinate with existing PSA Act record-keeping requirements to prevent duplication
- Standardise digital formats and delivery methods
- Provide document request templates with clear scope limitations that respect constitutional search and seizure protections

Inconsistent Penalty Structures

- **Penalty amounts don't reflect scheme scale and complexity**

SCA NSW is concerned that penalty amounts don't reflect the varying scale and complexity of strata schemes. These concerns include:

- \$22,000 maximum penalty is disproportionate for small schemes with limited funds
- Same penalties apply to 4-lot schemes and 400-lot complexes
- Lack of consideration of the scheme's financial capacity
- Some penalties may force schemes into financial distress

SCA (NSW) recommends consideration of the following points:

- Implement tiered penalty structure that considers SSMA Section 106(5) damages framework
- Ensure penalties are proportionate and don't exceed constitutional limitations
- Coordinate with PSA Act penalty structures to prevent double jeopardy
- Consider financial hardship provisions consistent with administrative law principles
- Provide alternative compliance measures for smaller schemes
- Allow payment plans that don't conflict with owners corporation levy collection processes under the SSMA.

Unclear Priority System

- **Risk-based approach lacks criteria**

SCA NSW believes that the "risk-based approach" for compliance lacks specific criteria for prioritisation. Highlighted problem areas include:

- Fire safety, lifts, and waterproofing are broad categories
- No guidance on relative priority between different safety issues
- Unclear how Fair Trading will assess "significant health or safety concerns"
- Undefined risk assessment criteria

SCA NSW recommends the following steps to provide clarity:

- Develop detailed risk assessment matrix that aligns with WHS Act "reasonably practicable" standards
- Integrate SafeWork NSW priority systems for workplace safety during maintenance
- Provide clear examples that consider both SSMA maintenance obligations and WHS safety requirements
- Establish transparent triage system that coordinates with other regulatory priorities
- Create online self-assessment tools that help identify both strata compliance and WHS obligations

- Ensure risk categories align with Building Commission NSW and local council frameworks

Investigation Powers

- **Excessive investigation powers**

SCA NSW believes that some investigation powers are excessive for the residential strata context. We are concerned about:

- Destructive testing powers could damage units without compensation framework
- Search warrant provisions seem disproportionate for maintenance disputes
- The recording of conversations may discourage cooperative resolution
- Entry to residential premises creates privacy concerns

We urge Fair Trading to consider the following points:

- Limit destructive testing to circumstances that comply with Law Enforcement (Powers and Responsibilities) Act 2002
- Ensure investigation powers don't conflict with WHS inspector powers under WHS Act
- Reserve search warrants for serious safety violations and ensure constitutional compliance
- Provide opt-out provisions for recording that respect privacy legislation
- Strengthen consent requirements for residential entry consistent with common law privacy rights
- Coordinate with SafeWork NSW investigation protocols to prevent jurisdictional conflicts

Mediation Prerequisites

- **Mediation prior to an NCAT application**

SCA NSW notes that mediation must be attempted before NCAT applications. However, we highlight the following issues:

- Mediation may not be appropriate for urgent safety issues
- Some owners corporations may refuse to participate to delay resolution
- Mediation can take weeks or months to schedule
- Technical building issues may require expert determination rather than mediation

SCA NSW recommends:

- Coordinate mediation timeframes with WHS enforcement deadlines
- Set maximum mediation scheduling timeframes (14 days) that don't compromise worker safety
- Provide expedited expert determination for technical disputes involving WHS compliance
- Create deemed refusal mechanism that doesn't delay safety-critical work
- Ensure mediation processes don't conflict with WHS consultation requirements

Special Resolution Requirements

- **Enforceable Undertakings**

SCA NSW notes that special resolutions are required for enforceable undertakings. Practical issues of this requirement includes:

- 75% difficult to achieve for expensive repairs – this is inconsistent when general repairs and maintenance only requires an ordinary resolution of the owners corporation or if the strata committee is not restricted by resolution.
- Opponents can block essential safety work
- Meeting notice periods delay urgent action
- Proxy voting complications in large schemes

SCA NSW recommends the following points to improve measures in this area:

- Create emergency procedures that override SSMA Section 132 voting requirements for immediate safety threats
- Acknowledge Section 106(3) SSMA exceptions while prioritising safety obligations
- Enable secure electronic voting that complies with strata legislation requirements
- Consider that WHS Act obligations may override normal democratic processes for worker safety
- Provide alternative approval mechanisms for WHS-mandated safety work
- Coordinate with strata committee PCBU training requirements

Rectification Plan Process

- **Provision of detailed rectification plans**

Owners corporations must provide detailed rectification plans. Identified issues include:

- Requires technical expertise not available to most committees
- Professional consultants expensive for smaller schemes
- Plans may need multiple revisions based on Fair Trading feedback
- No guidance on acceptable plan standards

SCA NSW recommends the following solutions to provide guidance for the strata sector:

- Provide standardised rectification plan templates that address both SSMA compliance and WHS requirements
- Create panel of pre-approved consultants with WHS expertise for smaller schemes
- Establish clear criteria for plan acceptance that satisfy both regulatory frameworks
- Allow provisional approval with staged implementation that maintains worker safety
- Ensure plans address PCBU obligations for contractor safety during remedial work
- Coordinate technical requirements with Building Commission NSW standards

Information Sharing and Privacy

- **Sharing of information with other regulators and government bodies**

At present, Fair Trading can share information with other regulators and publish enforcement actions. Concerns with this position include:

- May impact property values and marketability
- Residents may not be aware their scheme is subject to investigation
- Potential defamation risks for incorrectly published information
- Privacy issues for unit owners and tenants

SCA NSW recommends that Fair Trading consider the following actions:

- Implement notification requirements that comply with Privacy Act 1988 before public disclosure
- Coordinate information sharing with SafeWork NSW and other regulators under established protocols
- Provide correction mechanisms for inaccurate published information consistent with administrative law
- Limit disclosure to final enforcement outcomes only, respecting procedural fairness principles

- Establish clear privacy protection protocols that address constitutional privacy rights
- Ensure information sharing doesn't compromise ongoing investigations by multiple agencies

Digital Infrastructure Requirements

- **Electronic record recording and cybersecurity**

The following issues have been identified:

- Many smaller strata managers lack sophisticated document management systems
- Electronic recording and storage requirements may exceed current capabilities
- Digital communication platforms may not meet Fair Trading requirements
- Cybersecurity concerns with sensitive building information

SCA NSW suggests these measures to support certainty for industry:

- Provide government-supported digital platforms that comply with cybersecurity standards
- Establish minimum technology standards with transition periods that don't compromise safety compliance
- Create shared service options that address both SSMA record-keeping and PSA Act requirements
- Develop industry-standard security protocols consistent with Privacy Act obligations
- Ensure digital systems can coordinate with SafeWork NSW and other regulatory databases
- Address constitutional concerns about digital surveillance and data retention

Financial Implementation Challenges

- **Funding mechanisms for cost recovery**

We note the following issues relating to cost recovery:

- No clear guidance on how schemes recover compliance costs
- Special levies may be rejected by owners corporations
- Insurance may not cover regulatory compliance costs
- Smaller schemes may lack financial capacity for major works

SCA supports consideration of the following points:

- Establish emergency funding mechanisms that don't conflict with SSMA levy collection procedures
 - Clarify insurance coverage requirements in coordination with PSA Act professional indemnity obligations
 - Provide government assistance programs that address constitutional concerns about property rights
 - Create staged payment options that align with strata financial management requirements under SSMA
 - Ensure funding mechanisms consider WHS Act obligations for immediate safety work
 - Coordinate with existing building bond schemes and insurance frameworks
- **Reserve Fund Planning**

The following issues regarding planning for reserve funds have been identified:

- Current reserve fund planning may be inadequate for new compliance requirements
- Actuarial studies don't typically account for regulatory enforcement
- Schemes may need to dramatically increase levies
- Older buildings may face disproportionate compliance costs

SCA urges the following actions to be taken to address the identified issues:

- Update reserve fund planning guidelines to include compliance costs while respecting SSMA Section 76 requirements
- Provide transition periods that don't compromise immediate safety obligations under WHS Act
- Create hardship provisions consistent with administrative law principles of procedural fairness
- Develop industry benchmarks that consider both SSMA maintenance obligations and WHS safety requirements
- Establish government loan facilities that complement existing strata financing mechanisms
- Ensure reserve planning addresses PCBU obligations for ongoing workplace safety

For further information about this consultation, please contact Andrew Jefferies, Senior Policy and Advocacy Advisor, SCA NSW. Andrew.Jefferies@strata.community