



Building Commission NSW Investigations and Complaints Policy

Strata Community Association NSW Submission
23 June 2026

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 91,346 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 1,073,277¹. 44% of these schemes have been registered since 2000.

4. NSW as a Leader in High-Density Living

According to the 2024 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 20 per cent.

5. Employment Impact

Strata is a significant employer, directly providing jobs to 1,259 managers throughout NSW, as well as an additional 854 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.

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¹ Authored by Hazel Easthope, Yi Lu and Alejandra Rivera, [Australasian Strata Insights 2024](#), City Futures Research Centre, UNSW.

² Ibid, p.8-13

³ Ibid, p.8.

BCNSW INVESTIGATIONS AND COMPLAINTS POLICY - STRATA SECTOR RESPONSE

Introduction

Strata Community Association NSW (SCA NSW) welcomes the opportunity to respond to Building Commission NSW's (BCNSW) draft investigations and complaints handling policy directives.

We note that BCNSW has released four draft instruments as part of the policy directive package, reflecting the organisation's objectives and principles for protecting consumers from significant harm:

- **Complaints Policy**
- **Guidelines for Determining Disciplinary Action**
- **Our Approach to Investigations**
- **Public Register Requirement Limited Harmonisation**

SCA (NSW) attended BCNSW's industry stakeholder roundtable on Tuesday 9 June, which outlined how investigations are conducted and what consumers, industry participants and regulated entities can expect from the process.

We acknowledge BCNSW's important role in supporting a compliant and effective building and construction sector in NSW. In particular, BCNSW's role in investigating non-compliance and taking appropriate enforcement action helps protect consumers from significant harm, promote ethical and lawful conduct, and maintain confidence in the administration of the regulatory scheme.

The strata sector broadly supports the principles underpinning each of the draft documents and provides further comments and recommendations in this response.

KEY RECOMMENDATIONS

- **Recommendation 1 – Complaints Policy:** should expressly recognise owners corporations (and their agents/committees) as complainants; provide a strata-appropriate outcome-feedback approach where complaints are substantiated by complainant-funded evidence; and ensure strata remediation avenues are within officers’ referral suite.
- **Recommendation 2 – Guidelines for Determining Disciplinary Action:** should retain the framework; calibrate the certifier “new strata work” condition to the severity matrix rather than triggering on “any” breach; and correct two identified drafting errors.
- **Recommendation 3 – Our Approach to Investigations:** support for the scope and timeframes candour, but pair with prominent signposting to genuine strata remediation pathways.
- **Recommendation 4 – Public Register Requirement Limited Harmonisation:** support for harmonisation, confirm the maximum publication duration, severity-calibrated publication permanence, and publication format and location.
- **Recommendation 5 – Cumulative Reform Load and Co-ordination with NSW Fair Trading:** have regard for the cumulative reform load when sequencing implementation and coordinate with NSW Fair Trading at the strata interface.

SCA NSW's Response

Complaints Policy

SCA (NSW) supports the policy's stated commitment to a positive complaint-handling culture, reducing barriers to making complaints, and aligning with the NSW Ombudsman's Guidelines for Effective Complaint Management and AS 10002:2022.

The two-business-day acknowledgement timeframe, the allocation of a unique identification number for each complaint, early referral where another agency is more appropriate, and the guiding principles of impartiality, transparency, accessibility, consistency, respect and accountability are welcome and consistent with good regulatory practice.

- **Single Consumer/Trader Model Does Not Reflect Strata**

The policy's central architecture — one complainant, one trader, and an expected response or resolution — does not readily map to strata complaints. In the strata context:

- The complainant is typically the owner's corporation, often acting through its strata managing agent or strata committee, rather than a single consumer;
- Affected "consumers" may be dozens or hundreds of individual lot owners; and
- The subject matter is usually common property, which no single owner controls or can resolve alone.

SCA (NSW) was unable to identify anything in the draft policy that expressly addresses who may complain on behalf of an owner's corporation, or how BCNSW will treat a complaint authorised by a strata committee resolution. This is likely to create uncertainty for the very consumers the policy is intended to protect.

SCA (NSW) Recommendation: Expressly recognise, either in the definition of "Complainant" or in the "How we receive complaints" section, that an owners corporation — and a strata managing agent or strata committee acting on its behalf — may make a complaint, and briefly describe what authority, if any, BCNSW expects to see.

- **Complaints Outcomes**

The policy states that complainants will be advised of the outcome of their complaint, but that BCNSW “will not advise complainants the outcome of any regulatory action” and “will not advise complainants the outcome of the investigation”.

SCA (NSW) understands the need for legitimate confidentiality and procedural fairness. However, owner’s corporations are not ordinary one-off complainants. They frequently commission and pay for engineering reports, defect schedules and expert evidence, funded by owner levies, to substantiate a complaint to the regulator. Where a scheme has invested significant levy-payer funds to assist BCNSW, a bare “resolved” outcome with no further information is a genuine friction point and may discourage future well-evidenced complaints.

SCA (NSW) Recommendation: Provide a strata-appropriate feedback approach. Where a complaint is substantiated by complainant-funded expert evidence, BCNSW should commit to advising the complainant of the general nature of the outcome to the fullest extent legally permissible and confirm whether any decision adversely affecting a licence holder has been published on the public register.

- **Scope Exclusions and Signposting**

The list of matters to which the policy does not apply — including complaints about BCNSW itself, GIPA requests, oversight-body matters and court or tribunal processes — is clear and appropriate. The commitment to refer matters that belong to other bodies, such as NSW Fair Trading, local government and ICAC, as early as possible is sensible and appreciated.

SCA (NSW) further encourages BCNSW to ensure that strata-specific avenues, including NCAT, RAB Act rectification processes and the Strata Building Bond Scheme, are explicitly included in the suite of referral options available to officers, so that strata complainants are directed efficiently to the correct body or process for appropriate action or remedies.

Guidelines for Determining Disciplinary Action

SCA (NSW) strongly supports the draft Guidelines for Determining Disciplinary Action. The five-step process — including the separation of Objective Severity, comprising impact and culpability, from Subjective Factors; the Objective Severity matrix; and the grounding of the overall approach in established authority, including *Australian Building and Construction Commissioner v Pattinson [2022]* on proportionality and deterrence and the “course of conduct” and totality principles — provides a transparent, principled and reviewable framework for disciplinary decision-making.

SCA (NSW) also welcomes the publication of a proportionality and penalty-guidance framework of the kind it has long advocated for with NSW Fair Trading.

In particular, SCA (NSW)’s response to the *Reforming Property Agent Laws* consultation called for clear guidance on which disciplinary actions are appropriate for different types and levels of misconduct, published expected penalty ranges, procedural fairness, and an express framework for mitigating factors. The draft Guidelines are consistent with that position, and SCA (NSW) supports the retention of their structure.

- **Certifier Strata Condition – Drafting Inconsistency**

Schedule 1, relating to the Building and Development Certifiers Act 2018, contains a “potential condition” note stating that “*Certifiers will be unable to work on new strata developments if they have breached the code of conduct in any way in the previous 12 months.*” From a strata-consumer perspective, the intent is welcome: buyers of new strata lots deserve certifiers with clean recent records, and certifier conduct sits at the heart of the building-quality issues the broader reform program is intended to address.

However, this drafting sits awkwardly besides the remainder of the document. The Guidelines are built on a graduated, proportionate response calibrated to severity. By contrast, the proposed condition — triggered by a breach “in any way” — appears binary and absolute. As drafted, a single minor or technical code breach could exclude a certifier from all new strata work for 12 months, regardless of where that breach sits on the severity matrix the Guidelines otherwise establish. SCA (NSW) therefore identifies two practical concerns:

- **Internal coherence:** an absolute trigger is difficult to reconcile with the proportionality and totality principles the Guidelines otherwise emphasise.
- **Supply effects:** the pool of certifiers willing and able to work on new strata buildings is already constrained. A 12-month exclusion for any breach, however

minor, risks narrowing that pool further, delaying strata projects and ultimately harming consumers.

SCA (NSW) Recommendation: Calibrate the certifier strata condition to the severity framework, for example by reserving the new-strata-work exclusion for code breaches assessed at or above a defined Objective Severity level, or by making it a discretionary condition the Delegate may impose having regard to severity, rather than an automatic consequence of “any” breach. These options would ensure the trigger is proportionate and consistent with the remainder of the instrument.

- **Vulnerable Consumers**

The definition of “Vulnerable Consumer or Third Party”, and its incorporation into the impact assessment, is well drafted and helpful. It is particularly appropriate in the strata context, where matters may involve elderly owners, owners experiencing financial hardship, or people with limited capacity to protect their own interests. SCA (NSW) supports its retention.

- **Other Drafting Corrections**

SCA (NSW) recommends two further drafting corrections:

- **Step 5 final check (p 12):** the citation to the “totality” / “final check” principle reads “Employsure Employsure at [52] [52]”, with both the case name and pinpoint duplicated. This should be corrected to a single reference.
- **Schedule 1 — DBP Act 2020 table, Extreme Severity (p 18):** the body-corporate monetary-penalty cell reads “Up to \$220,000 (in \$160,001 case of a body corporate)”, which appears to be a transcription error. The figure should be expressed consistently with the equivalent BDC Act 2018 table: \$160,001 to \$220,000 for a body corporate.

Our Approach to Investigations

SCA (NSW) supports the clear explanation of how BCNSW conducts investigations. The principles of impartiality, proportionality and transparency are appropriate, and the document is candid about matters that consumers may otherwise misunderstand.

- **Appropriate Scope and Timeframes**

SCA (NSW) acknowledges the document's frank statement that "an investigation is not part of finding a solution for the customer or supporting the customer", that it is "regulatory in nature", and that investigations "can take a long time". We also note that the process diagram indicates a timeframe of up to two years to complete an investigation.

While this statement is welcome, there remains a risk that strata complainants may be left with the impression that a long regulatory investigation is their remedy, when it is not.

Owner's Corporations frequently need to act within their own limitation periods and on their own timelines to commission rectification, pursue the builder, or claim on the strata building bond. If they wait for a regulatory investigation in the mistaken belief that it will deliver a remedy, they may inadvertently prejudice their actual avenues of redress.

SCA (NSW) Recommendation: Pair the scope and timeframe explanation with clearer and more prominent signposting to the remediation pathways genuinely available to strata consumers, including NCAT, RAB Act rectification orders, prohibition and stop-work powers, the strata building bond, and consumers' own rights to take action, as affirmed in the document. Better informed consumers are less likely to make misdirected complaints, helping to conserve BCNSW's investigative resources.

- **Investigative Fairness**

The section setting out what a person under investigation can expect — a fair and thorough investigation, all reasonable lines of inquiry pursued, notification of rights, an opportunity to respond, and respect for privacy and dignity, with additional support for vulnerable suspects — is balanced and appropriate. SCA (NSW) values this even-handedness and supports its retention.

Public Register Requirement – Limited Harmonisation

SCA (NSW) supports aligning the publication language in the Home Building Regulation 2014 (cl 69(2)(k)) with the Design and Building Practitioners Regulation 2021 (cl 89(1)(j)), so that both the grounds for disciplinary action and the details of the action taken are published on the shared register at verify.nsw.gov.au.

Consistent and certain publication requirements support consumer confidence and general deterrence. A single coherent standard across the two schemes is also sensible for consumers, including Owner's Corporations, who rely on the register when engaging practitioners.

- **The Same Publication Guidelines Should Apply**

SCA (NSW) considers that harmonising what is published should be accompanied by clear guidance on how publication operates over time. In a parallel context with NSW Fair Trading, SCA (NSW) has consistently requested that name-and-publication regimes specify the maximum publication duration, format and location, and consider the long-term viability of affected businesses, particularly where a matter sits at the lower end of the severity scale. The same issues arise with this public register, and a consistent approach across regulators is desirable.

SCA (NSW) Recommendation: In implementing harmonisation, BCNSW should confirm:

- the maximum duration for which disciplinary entries will remain published;
- that publication duration will be calibrated to the Objective Severity of the matter, consistent with the Disciplinary Guidelines, so that minor-severity matters are not published with the same permanence as extreme-severity matters; and
- the format and location of publication, preserving the deterrence and consumer-confidence benefits of publication while keeping the regime proportionate.

Cumulative Reform Load and Co-ordination with NSW Fair Trading

In supporting these draft policy directives, SCA (NSW) asks BCNSW to consider the breadth and depth of the regulatory reforms currently affecting the strata sector.

The sector is currently absorbing an exceptional and concurrent volume of reform. These instruments would operate alongside a broader wave of regulatory change, including reforms presently before the NSW Parliament, as well as the Design and Building Practitioners and certifier schemes.

SCA (NSW) agrees that the current reform load is not, of itself, a reason to delay positive reform. However, implementation should be carefully sequenced to allow for a realistic and fair transitional period, supported by clear guidance and education so that practitioners can comply, and consumers can understand the changes and their associated rights.

Ideally, implementation should be coordinated with NSW Fair Trading to ensure transparency at the strata interface and to minimise confusion, duplication and reform fatigue.

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