

Building Commission NSW Draft Home Building Amendment (Insurance Cover) Regulation 2026

Strata Community Association NSW Submission

13 July 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 1,073,277[1]. 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.

DRAFT HOME BUILDING AMENDMENT (INSURANCE COVER) REGULATION 2026 - STRATA SECTOR RESPONSE

Introduction

The Strata Community Association NSW (SCA NSW) is grateful for the opportunity to respond to Building Commission NSW's (BCNSW) consultation on the ***Draft Home Building Amendment (Insurance Cover) Regulation 2026***.

Our members are the professionals at the coalface of newly constructed strata buildings and through their daily role, navigate defect regimes, manage owner's corporations through building bond claims and inspection processes, advise lot owners on their rights, and carry the administrative load of every new legislative requirement applied to the sector.

We note that the consultation seeks to broaden the current exemption of building businesses from Home Building Compensation Insurance (Warranty Insurance) when constructing apartment buildings of **more than three storeys** so that this insurance wouldn't be required for apartment buildings containing **more than two dwellings.**

Under this proposal, builders of apartment buildings exempt from this insurance must instead pay a Strata Building Bond (SBB) if the building will be strata titled (or purchase future decennial insurances if approved), as is already the case for the construction of strata apartment buildings of more than three storeys, as per the consumer protection framework under Part 11 of the *Strata Schemes Management Act 2015 (SSMA 2015)*.

An amendment to the *Home Building Regulation 2014* is proposed to implement this exemption with a commencement date of **1 September 2026**. The exemption applies to works contracted or done from that date that would have otherwise required insurance with no retrospectivity or refunds for works required to be insured prior to this date.

SCA (NSW) supports the intent of the proposed regulation, noting that at present, the Home Building Compensation Fund (HBCF) premium for low-rise apartment buildings stands at approximately 11.3% of construction cost before tax. Reducing this cost impact is a legitimate and necessary policy objective to help support the supply of medium density housing across the state.

However, we remain concerned that the Strata Building Bond and Inspection Scheme (SBBIS) effectively becomes the sole financial backup for small, low rise and low lot count strata schemes that have never previously been a part of the SBBIS.

Support for the proposed regulatory exemption is conditional with the accompanying measures:

- A strengthened SBBIS with a minimum bond floor and additional inspections for small schemes;
- Expanded practical accessibility of Section 37's Duty of Care for under resourced Owners Corporations;
- A prescribed, plain language purchaser disclosure regime;
- Default professional management during the defect liability period for new, small strata schemes; and an
- Accelerated pathway to a competitive decennial liability insurance market as a durable and effective long-term backup strategy

Furthermore, SCA (NSW) wishes to highlight the extraordinary and unprecedented volume of reforms that have been implemented across our sector throughout the first term of the Minns Government. In addition to the Strata Schemes Legislation Amendment (Miscellaneous) Bill 2025 and Fair Trading Building Legislation Amendment Bill 2026 (which still await NSW Legislative Council consideration) and the progressive rollout of reforms relating to the *SSMA 2015*, SCA has participated in consultations or provided feedback across a range of future reforms such as the Productivity Commission's Review of Strata Insurance, the Emergency Services Levy, Minimum Energy Efficiency Rental Standards (MEERS), NABERS Energy Ratings and others.

We trust that the effects of the accumulative reform loads are well understood by both Building Commission NSW and NSW Fair Trading when considering the adoption of this set of reforms.

CLASS 2 BUILDINGS – CONSUMER PROTECTION FRAMEWORK

SCA (NSW) considers it important to set out the Consumer Protection Framework within which this reform sits. While the consultation paper focuses appropriately on the insurance dimension, the HBCF component remains just one element of a multi-layer system.

Layer	Instrument	Function	Affected by reform?
1	NCC / BCA compliance pathway	Minimum building standards (structure, fire, waterproofing, energy)	No unchanged
2	DBPA regulated designs & declarations	Practitioner accountability; design lodgement on Planning Portal pre- and post-build	No unchanged
3	DBPA s.37 statutory duty of care	Civil liability remedy for economic loss from defects; non-delegable post-Pafburn HCA 2024	No unchanged
4	HBA s.18B statutory warranties	6-year (major defect) / 2-year warranty binding builder, developer and successors in title	No unchanged
5	Financial safety net	Last-resort financial recovery: currently HBCF insurance (≤3 storey) or SBBIS (>3 storey)	YES HBCF replaced by SBBIS for >2-unit Class 2 buildings

- **Layer 1 – NCC/BCA Compliance:** All new Class 2 buildings must comply with the National Construction Code (NCC 2022, Amendment 2 in force from 1 May 2025). NCC 2022 materially raised requirements for Class 2 buildings: thermal performance now requires a 7-star NatHERS equivalent rating per sole-occupancy unit, with new whole-of-home energy budgets, condensation management measures and EV-charging readiness provisions. Compliance is enforced through the certification pathway construction certificates and occupation certificates cannot issue without demonstrated NCC compliance. In NSW, BASIX replaces the NCC's energy-efficiency provisions for residential buildings, operating as a co-equal mandatory standard. NCC compliance is an upstream quality control independent of any insurance or bond mechanism.

- **Layer 2 – DBPA Practitioner Registration and regulated designs:** *The Design and Building Practitioners Act 2020* (DBPA) requires that all design work for Class 2 buildings be prepared by registered design practitioners, with design compliance declarations lodged on the NSW Planning Portal before construction commences and building compliance declarations before the occupation certificate application.

  Regulated design categories cover structural, fire safety, waterproofing, mechanical/plumbing/electrical, and any performance solutions. No occupation

certificate can be issued until all required declarations are on the Portal, and where applicable the SBBIS bond has been lodged. This creates a mandatory practitioner accountability trail for every new Class 2 building, entirely independent of HBCF insurance.

However, SCA (NSW) notes one significant gap: mandatory professional indemnity insurance for registered building practitioners under the DBPA remains subject to an exemption extended to 30 June 2027. Practitioners operating without adequate PI cover reduce the practical value of accountability the DBPA is intended to create.

- **Layer 3 – DBPA Section 37 – Statutory Duty of Care:** Section 37 of the DBPA imposes a duty on any person who carries out construction work to exercise reasonable care to avoid economic loss caused by defects, owed to current and subsequent owners of the land (including owners corporations). The duty applies to designers, builders, developers, supervisors, project managers, and those with substantive control over construction.

  The High Court's decision in *Pafburn Pty Ltd v Owners SP 84674 [2024] HCA 49* materially strengthened this duty. By a 4:3 majority, the Court held that proportionate liability under Part 4 of the Civil Liability Act 2002 does not apply to Section 37 claims against developers and head contractors. They are effectively jointly and severally liable, unable to reduce their exposure by apportioning fault to subcontractors.

  Defendants must pursue cross-claims; owners corporations can recover full loss from the developer or head contractor without proving each subcontractor's share. This is a significant development that substantially improves the accountability framework for all Class 2 buildings, including the low-rise cohort that will enter the SBBIS under the proposed reform.

  The Section 37 duty is subject to a 10-year long-stop under section 6.20 of the Environmental Planning and Assessment Act 1979. It applies clearly to all Class 2 buildings, including 3-unit manor houses. The practical limitation of Section 37 as a remedy for small strata schemes is access: litigation requires expert evidence and funding that a 3-lot owners corporation with a modest capital works fund typically does not have. This limitation is addressed in SCA (NSW)'s recommendations below.

- **Layer 4 – HBA Section 18B Statutory Warranties:** Section 18B of the Home Building Act 1989 implies into every residential building contract warranties that work will be performed with due care and skill, in compliance with all applicable laws, within reasonable time, using suitable materials, and resulting in a dwelling fit for occupation. The warranty periods are six years for major defects and two years for

other defects, running from completion. Sections 18C and 18D extend these warranties to subsequent owners and to owners corporations.

Critically, these statutory warranties do not depend on HBCF insurance. They survive the proposed exemption entirely. A developer or builder who constructs a defective manor house remains liable under section 18B regardless of whether HBCF insurance or the SBBIS applies. The practical limitation as with section 37 is the solvency of the builder or developer and the resources of the owners corporation to pursue a claim. HBCF insurance was the mechanism that previously stood behind section 18B when a builder became insolvent; the SBBIS is the proposed replacement for that function.

- **Layer 5 – Financial Safety Net – HBCF or SBBIS:** HBCF insurance (the layer the proposed regulation amends) is supposed to be a last-resort, trigger-based product that pays only on builder death, disappearance, insolvency, or license cancellation, capped at $340,000 per certificate. Its primary function is to stand behind the section 18B statutory warranties when the builder cannot meet them. For low-rise apartments (currently less than 3 storeys), the HBCF has been the designated mechanism; for 4+ storey apartments, the SBBIS has been the designated mechanism, since its introduction under Part 11 of the SSMA.

  The proposed reform extends the SBBIS already the framework for mid and high-rise strata buildings to cover all Class 2 buildings with more than 2 sole-occupancy units, with a 2% building bond replacing a premium of approximately 11.3% of construction cost.

SCA NSW's Response

Question 1: Do you support the intent of this policy change? Please provide the reasons.

SCA (NSW) supports the intent of the proposed policy change, subject to accompanying measures:

- **The HBCF premium has become an insurmountable barrier**

The trajectory of HBCF premiums for sub-three-storey apartment buildings is extraordinary. The icare base rate for H03 New Residential Apartment Building Construction has risen from approximately 0.9% of construction costs in FY2017 to approximately 11.3% (before tax) from November 2025. This is not a marginal cost impost but rather an equivalent to the cost of up to two additional apartments in a typical small development. This outcome has often been described as making low-rise Class 2 developments commercially unviable in many markets, particularly in regional centres where building heights are typically capped at three storeys and developers cannot escape the HBCF scheme by building higher.

The actuarial drivers of this premium increase adverse selection, a shrinking pool of insured projects as development shifted to SBBIS-exempt 4+ storey buildings, and rising claims in the remaining pool are not a temporary market condition. They are structural and without the proposed exemption, HBCF premiums for low-rise apartments are likely to continue increasing.

- **NSW housing supply targets**

NSW's National Housing Accord target requires approximately 75,000 new homes per year for the next five years. Completions in 2024 were approximately 45,100, the lowest since 2014, and 40% below the Accord target. The Low and Mid-Rise Housing Policy, the Transport Oriented Development program, and the NSW Pattern Book are all premised on substantially increasing the supply of medium-density apartment buildings, including manor houses and 3 -6-unit low-rise schemes. Removing a cost impost that demonstrably suppresses that building type is directly aligned with the government's housing supply agenda.

- **Aligning the SBS across Strata**

From a strata sector perspective, making the SBBIS the default consumer protection mechanism for all Class 2 strata-titled apartment buildings is a welcome simplification. SCA (NSW) members currently operate under two parallel frameworks: HBCF for newly managed small schemes and SBBIS for mid and high-rise schemes. A single framework is more efficient,

reduces the risk of error, and aligns the consumer protection experience for all apartment purchasers regardless of building height.

- **Position exemption as part of a broader package**

SCA (NSW) notes that HBCF insurance, while significant, is one of several cost imposts on low-rise apartment development. Research by the NSW Productivity and Equality Commission and others identifies finance costs, construction costs, labour availability, and planning and approval delays as the dominant drivers of development feasibility constraints. While the proposed exemption reduces one impost; we believe the exemption should be positioned as part of a broader, overall package, not a stand-alone solution to the housing supply challenge.

Furthermore, SCA (NSW) notes the contrast with Victoria, where from 1 July 2026 the Victorian Government is introducing a First Resort Home Warranty Scheme under the Building (Statutory Insurance Scheme) Regulations 2026, increasing cover to $400,000 for domestic buildings of three storeys or fewer. NSW is moving in the opposite direction at expects that the different policy rationale will be raised in public debate.

SCA (NSW) Recommendation: SCA (NSW) supports the intent of the proposed policy change to remove HBCF insurance as a requirement for Class 2 buildings with more than 2 sole-occupancy units. Support is conditional on the SBBIS being appropriately strengthened for the low-rise cohort and an accelerated pathway to decennial liability insurance as a durable and effective long-term backup.

Question 2: Do you support the regulation as drafted? If not, what changes do you suggest, any why?

SCA (NSW) supports the regulation as drafted in its broad architecture. The new defined term 'apartment building' (Class 2 building with more than 2 sole-occupancy units) is technically sound and appropriately aligned in the Building Code of Australia terminology. The transitional provisions in proposed clause 78 are appropriate. However, three key issues warrant attention before commencement.

- **Reliance on BCA definitions without practical guidance**

The operative concept 'sole-occupancy unit' is borrowed from the Building Code of Australia. It is the correct term and creates a clear definitional boundary, but it is not intuitive for smaller builders, certifiers, or developers operating at the low-rise end of the market, particularly in regional areas. A manor house developer building their first Class 2 project may not understand whether their development falls within the exemption.

SCA (NSW) recommends that BCNSW publish a comprehensive guidance note with worked examples before the commencement date, covering manor houses, mixed-use buildings, townhouse clusters, and the edge cases described in response to ***Question 4*** below.

- **Clause 56A Developer notification obligation requires reinforcement**

Proposed clause 56A imposes a written notification obligation on developers who have entered into pre-September 2026 contracts where the HBC insurance provisions in those contracts cease to have effect. This is an important and necessary consumer protection measure, but SCA (NSW) is concerned about developer compliance, particularly at the smaller end of the market.

The clause 56A obligation is a developer-to-purchaser notification it falls on the developer, not on BCNSW or NSW Fair Trading, to issue it. There is no prescribed form or content. There is no explicit penalty reference in the draft for non-compliance. And there is no mechanism in the draft for purchasers to know whether they should expect to receive such a notice.

SCA (NSW) recommends that clause 56A be strengthened by prescribing a minimum content for the written notice (explaining that HBCF insurance will not be obtained, what the SBBIS bond is, how it works, and how to make a claim); impose a time limit for its issuing and include an explicit penalty for non-compliance. BCNSW should also publish a model notice.

- **Decennial liability insurance is not currently a market option**

The consultation paper and its supporting infographic presents decennial liability insurance as an alternative to the SBBIS for exempt buildings. This creates an impression of consumer choice that **does not currently exist**. No decennial insurance products have been approved in NSW. Resilience Insurance remains the sole provider in the Australian market, and we understand that the Government's timeline for the introduction of mandatory DLI is 2028.

SCA (NSW) recommends that explanatory material should accurately reflect that decennial liability insurance is not currently available as an alternative to the SBBIS and that the SBBIS is the sole operating consumer protection mechanism for exempt strata-titled buildings.

SCA (NSW) Recommendations:

- BCNSW to publish a comprehensive worked-example guidance (manor houses, mixed-use, townhouse clusters) at or before date of gazettal.
- Strengthen Clause 56A: prescribe minimum notice content, impose a time limit, and include an explicit penalty for non-compliance. Publish a model notice.
- Explanatory material to accurately state that DLI is not currently an available alternative to the SBBIS in NSW.

- **Question 3: Do you see any risks of negative impacts on any stakeholders? If so, what are they and do you have any suggestions for how they are managed?**

SCA (NSW) identifies five material risks arising from the proposed reform, grouped by stakeholder category:

- **SBBIS financial adequacy for small, low-value strata schemes**

The Strata Building Bond and Inspection Scheme was designed for, and has operated in, the 4+ storey apartment sector. The bond (2% of contract price) is meaningful as an absolute dollar amount when applied to a $20 million high-rise contract it is far less meaningful when applied to a $1.2 million manor house contract, where it yields a bond of $24,000. Defect rectification for structural, waterproofing, or fire-safety defects in a newly built building can far exceed that sum.

The 2% bond amount was deliberately set as a minimum, with the intention that it would increase to 3% on 1 July 2024, a timeline that has since been deferred to 1 July 2028. The policy rationale for maintaining a 2% bond for the high-rise sector while also applying it to very small low-rise schemes where the absolute dollar protection is a fraction has not been articulated.

SCA (NSW) recommends that BCNSW introduce a minimum bond floor (expressed as a dollar amount) for schemes with fewer than a specified number of lots or below a specified contract value, to ensure the bond provides meaningful financial protection across all scheme sizes. We believe that the NSW Government should also recommit to the 3% bond increase and confirm its implementation timeline.

- **Section 37 Duty of Care is litigation-dependent and inaccessible to small schemes**

Post-Pafburn, the DBPA Section 37 Duty of Care is now the most powerful accountability tool in the NSW construction consumer protection framework. It is non-delegable, applies to developers and head contractors who cannot apportion fault to subcontractors, and extends to current and future owners including owners corporations.

However, Section 37 is a court-based remedy. Establishing a defect claim under Section 37 requires expert evidence (building inspectors, structural engineers, quantity surveyors) and legal representation. For a 3-lot strata scheme where the common property defects have a rectification cost of $80,000, the cost of litigation may approach or exceed the value of the claim. The existence of the right does not deliver practical access for small, under-resourced owners corporations.

SCA (NSW) recommends that the government consider expanding the jurisdiction of NCAT's Consumer and Commercial Division to hear Section 37 and Section 18B claims up to a higher monetary threshold, reducing the cost and complexity of access for small strata schemes. Mandatory pre-litigation building defect dispute resolution (as exists in some other jurisdictions) should also be considered.

- **Protection gap for non-strata titled exempt Class 2 Buildings**

The proposed regulation exempts all Class 2 buildings with more than 2 sole-occupancy units from HBCF insurance, regardless of whether the building will be strata-titled. The Strata Building Bond, however, only applies where the building is, or is to be, strata titled.

A Class 2 building with 3 or more sole-occupancy units held in company title, Torrens title, or stratum subdivision will be exempt from HBCF insurance and also ineligible for the SBBIS. That building's purchasers will rely entirely on Layers 1-4 of the consumer protection architecture described above with no last-resort financial backstop.

SCA (NSW) recommends that BCNSW clarify whether non-strata-titled 3+ unit Class 2 buildings are intentionally within the scope of the exemption without alternative financial protection, or whether the regulation should be amended to maintain HBCF insurance for that subset consistent with the approach taken for 2-dwelling non-strata-titled Class 2 buildings.

- **Smaller Developer compliance with SBBIS obligations**

The builders and developers most likely to construct 3-6 unit low-rise apartment buildings are generally smaller operators and first-time Class 2 developers, regional builders or owner-developers who have never engaged with the SBBIS. The bond lodgment obligation, the inspector appointment process, the interim and final inspection timelines, and the defect notification and rectification obligations under Part 11 of the SSMA require a level of regulatory familiarity that cannot be automatically assumed.

The consequences of non-compliance fall primarily on purchasers, who may be unaware that the bond has not been lodged until a defect manifests and they attempt to make a claim. SCA (NSW) recommends that BCNSW establish a proactive compliance check verifiable on the NSW Planning Portal at the point of strata scheme registration for new schemes lodged from 1 September 2026, confirming that the bond has been lodged before registration proceeds.

- **Self-managed and lightly managed small strata schemes cannot navigate the SBBIS alone**

A material proportion of small strata schemes (3-6 lots) in NSW are self-managed or have minimal professional management. These owners' corporations will be responsible for tracking the SBBIS inspection timeline, approving or objecting to the developer's proposed inspector, receiving and acting on inspection reports, notifying lot owners of identified defects, and initiating bond claims for unrectified defects all without professional assistance.

The SBBIS process, while designed to be accessible, requires procedural knowledge and active governance that self-managed small schemes consistently struggle to provide. This risk is structural: it is not solved by guidance alone.

SCA (NSW) recommends that the government consider whether new small strata schemes (for example, schemes with fewer than 6 lots registered from 1 September 2026) should be required to appoint a licensed strata managing agent for the duration of the defect liability period. This would position SCA members as a professional early-warning and compliance-monitoring function in the cohort of buildings most at risk of SBBIS non-navigation. The cost of this requirement should be weighed against the consumer protection it delivers.

SCA (NSW) Recommendations:

- Introduce a minimum bond floor (dollar amount) for small schemes; recommit to the 3% bond increase with a confirmed implementation timeline.
- Expand NCAT jurisdiction to hear s.37 and s.18B defect claims up to a higher monetary threshold; consider mandatory pre-litigation building defect dispute resolution.
- BCNSW to clarify whether non-strata-titled 3+ unit Class 2 buildings are intentionally exempt from HBCF without alternative financial protection and amend the regulation if required.
- Establish a proactive SBBIS bond-lodgement compliance check at strata scheme registration on the NSW Planning Portal.
- Consider mandatory licensed strata managing agent appointment for new small strata schemes during the defect liability period.

- **Question 4: Are there any edge cases we should be considering?**

  - **Two-apartment mixed-use buildings (shop-top housing)**

The consultation paper expressly raises the question of 2-apartment mixed-use buildings. SCA (NSW)'s position is that title type, not use class mix, should be the governing principle consistent with the approach taken for standalone 2-dwelling Class 2 buildings.

A 2-apartment mixed-use building that is strata-titled (typically a 2-lot strata plan with one residential lot and one commercial lot) will have the SBBIS bond apply to it and does not require HBCF insurance the same position as other strata-titled 2-dwelling buildings. A 2-apartment mixed-use building that is not strata-titled will fall outside the SBBIS and, for the same reasons as a non-strata-titled 2-dwelling standalone building, should retain HBCF insurance. Consistency and title-type as the governing principle avoids creating arbitrary distinctions based on building use-class mix.

  - **Manor houses in greenfield and infill locations**

Manor houses typically Class 2 buildings with 3-4 dwellings of 1-2 storeys are a building type being actively promoted under NSW medium-density planning policy (the Low and Mid-Rise Housing Policy, the NSW Pattern Book). They will often be strata-titled as very small (3-4 lot) schemes, delivered by smaller developers with limited track records, and purchased by first-home buyers or downsizers unfamiliar with strata governance.

This cohort represents the highest-risk category under the new framework: the lowest bond value, the least sophisticated purchasers, and the smallest governance capacity of any building class entering the SBBIS. BCNSW should develop a targeted communications and compliance strategy specifically for this cohort and consider whether additional protections (such as those recommended in response to Question 3) should apply to manor houses specifically.

  - **Off the plan contracts straddling the commencement date**

The proposed regulation applies to work contracted or done from 1 September 2026. The transitional provisions and clause 56A address contracts signed before that date where construction was not yet contracted. However, a more complex scenario exists: a development that is fully designed and DA-approved, with off-the-plan sale contracts executed after 1 September 2026, where the developer had previously circulated a draft contract including HBCF insurance provisions.

The interaction between clause 56A, the vendor disclosure obligations in off-the-plan contracts under the Conveyancing Act 1919, and the purchaser's right to rescind requires clear guidance. SCA (NSW) recommends that BCNSW issue clear transitional guidance addressing this scenario, including whether an updated disclosure schedule is required and whether a rescission right arises.

- **DBPA Practitioner insurance gap for newly exempt low-rise buildings**

As noted above, mandatory professional indemnity insurance for registered building practitioners under the DBPA remains subject to an exemption until 30 June 2027. For the new cohort of low-rise buildings entering the SBBIS for the first time, this means that the DBPA practitioner accountability framework is critically important as Layer 2 of the protection architecture is operating without a mandatory PI insurance backstop. If a registered building practitioner is found liable for a design defect under the DBPA, the practical recovery may be limited by the absence of insurance.

SCA (NSW) recommends that the government bring forward the mandatory PI insurance commencement for Class 2 building practitioners, or at minimum confirm that the 30 June 2027 date will not be further extended.

SCA (NSW) Recommendations:

- Confirm that title type (not use-class mix) is the governing principle for mixed-use 2-apartment buildings.
- Develop a targeted compliance and communications strategy for the manor house cohort.
- Issue clear transitional guidance on off-the-plan contracts straddling the commencement date, including vendor disclosure and rescission implications.
- Bring forward mandatory PI insurance for Class 2 DBPA-registered building practitioners or confirm no further deferral of the 30 June 2027 date.

• Question 5: Do you think the new requirements will be easily understandable for industry?

The shift from a storey-based threshold ('rise in storeys of more than 3') to a dwelling-count threshold ('more than 2 sole-occupancy units') is conceptually simpler and removes the technical ambiguity that has produced genuine edge-case disputes under the current framework.

However, SCA (NSW) identifies three audiences for whom the transition will require active support:

- **Builders and Certifiers BCA terminology not always understood**

The operative definition relies on the BCA concept of 'sole-occupancy unit.' Large builders and most certifiers will understand this terminology. Smaller operators, owner-builders, and regional practitioners building their first Class 2 project may not. While the infographic circulated with the consultation paper is a useful start, a more detailed worked-example guidance document should be published alongside the regulation, covering the full range of building types that may be affected.

- **Strata managing agents and scheme secretaries SBBIS onboarding**

The most immediate practical challenge for SCA members is identifying which newly registered schemes from 1 September 2026 are entering the SBBIS for the first time and what additional obligations flow from that. For agents taking on management of a new small strata scheme, a manor house or 3-unit walk-up the SBBIS obligations (inspector appointment, interim and final inspection, bond claim management) may be unfamiliar territory.

BCNSW should update its onboarding guidance scheme and communicate directly with SCA (NSW) to ensure that a comprehensive training and practice note program is developed before the commencement date. SCA (NSW) is ready to assist to develop, distribute and support member guidance.

- **Purchasers and lot owners have no direct communication channel**

The reform reduces costs for developers and builders. The entity most affected by the change in consumer protection instrument is the apartment purchaser who may have no awareness that the protection framework for their new building has changed between when they signed their contract and when they receive their keys. The clause 56A notification obligation addresses contracts already on foot; it does not address contracts entered into from 1 September 2026.

SCA (NSW) recommends that BCNSW requires a prescribed disclosure in all off-the-plan contracts for exempt buildings from 1 September 2026, explaining the SBBIS, the bond amount, inspection timeline, and how to make a claim in plain language.

SCA (NSW) Recommendations:

- BCNSW to publish comprehensive worked-example guidance (covering manor houses, mixed-use buildings, townhouse clusters) at or before the date of gazettal.
- BCNSW to update strata scheme onboarding guidance and engage directly with SCA (NSW) to develop member training and practice notes before commencement.
- Prescribe a plain-language SBBIS disclosure in all off-the-plan contracts for exempt buildings from 1 September 2026.

- **Question 6: Do you have any comments on the proposed commencement date of 1 September 2026?**

The regulation was circulated in draft form on 24 June 2026. A commencement date of 1 September 2026 allows approximately **just ten weeks**. SCA (NSW) does not oppose this date for the regulation itself, however an earlier commencement reduces the period during which the 11.3% HBCF premium continues to suppress low-rise development. Other concerns with the timeline are:

- **Uncertainty with SIRA Insurance Guidelines and icare premium filings**

The consultation paper states that SIRA will publish new insurance guidelines 'at the earliest opportunity after 1 September 2026' and that icare will file new premiums 'at a date to be confirmed.' This creates a period of indeterminate length after commencement during which the regulatory position for residual 2-dwelling buildings is clear but the pricing and operational infrastructure is not. Builders and conveyancers pricing 2-dwelling apartment projects during this period will face genuine uncertainty.

SCA (NSW) recommends that SIRA publish an indicative timeline for the updated guidelines and icare's new premium filing before the regulation commences, so that the market can plan accordingly.

- **Guidance materials and industry communications must precede commencement**

The worked-example guidance, updated strata scheme onboarding materials, plain-language purchaser disclosure templates, and industry communications recommended throughout this submission cannot be effective if published after commencement. The ten-week window between gazettal and commencement is the minimum period required to reach builders, certifiers, developers, managing agents, solicitors, and conveyancers with accurate information about what changes.

SCA (NSW) recommends that all guidance materials be published no later than the date of gazettal not after commencement.

- **Cumulative reform burden**

As noted in our Executive Summary, the strata sector is concurrently absorbing an extraordinary reform load. SCA (NSW) does not seek to delay this reform, but requests that BCNSW and the broader government program actively consider sequencing of their introduction. Every new mandatory process, disclosure obligation, or compliance activity

added to the strata managing agent role during this period compresses the capacity of the sector to implement each set of reforms effectively.

SCA (NSW) Recommendations:

- SIRA to publish an indicative timeline for updated guidelines and icare's new premium filing before 1 September 2026.
- All guidance materials to be published at or before the date of gazettal, not after commencement.
    - BCNSW to coordinate directly with SCA (NSW) and other industry bodies before commencement to ensure the sector is operationally prepared.

A future facing Consumer Protection Framework

SCA (NSW) takes this opportunity to articulate a broader vision for the consumer protection framework that should accompany the growth of apartment living in New South Wales. The proposed regulation is a pragmatic near-term response to a specific cost problem. However, we believe it ultimately sits within a larger policy context that requires considered, durable architecture, not a series of ad hoc adjustments.

SCA (NSW) proposes the following framework for the medium term:

- **Accelerate Decennial Liability Insurance as a durable backup**

Decennial liability insurance mandatory in France, Spain, Belgium, Italy and parts of the Gulf is a first-party, no-fault, 10-year product that attaches to the building, covers serious defects in critical common-property elements, and protects successive owners without requiring litigation. At an indicative cost of 1-2% of construction value (compared to the current 11.3% HBCF premium), it is both affordable and substantively superior in coverage. The Government has already enabled DLI under the SSMA; Resilience Insurance has an approved product.

SCA (NSW) recommends that the government set a firm target date for mandatory DLI and actively work to develop a competitive multi-provider market, including by engaging reinsurance markets and international insurers with established decennial products. An interim enhanced SBBIS (higher bond, additional inspection point) should bridge the gap until DLI is widely available.

- **Make accountability remedies practically accessible**

The DBPA Section 37 Duty of Care and HBA section 18B statutory warranties are powerful rights that are practically inaccessible to small, underfunded strata schemes. The Government should invest in making these rights usable: expand NCAT jurisdiction for defect claims,

introduce mandatory pre-litigation dispute resolution, and explore litigation funding models for small strata schemes pursuing significant defect claims. Post-Pafburn, developers and head contractors face genuine exposure the system now needs to deliver practical pathways to enforce it.

- **Strengthen governance of new small strata schemes**

The growth of manor houses and small apartment buildings as a housing typology will produce thousands of new, small, and often self-managed strata schemes. These schemes are the most vulnerable governance environment in the strata sector and the least equipped to navigate defect processes, building bonds, or complex insurance claims. SCA (NSW) recommends mandatory licensed strata management during the SBBIS defect liability period for new small schemes, positioning professional strata managers as a compliance monitoring and consumer protection function during the period of highest defect risk.

- **Strengthen developer accountability**

The DBPA mandatory PI insurance deferral, the ongoing risk of phoenix developers, and the absence of a formal developer 'fit and proper' screening regime at the low-rise end of the market are structural vulnerabilities. SCA (NSW) supports the developer registration and prohibition-order powers in the Fair Trading and Building Legislation Amendment Bill 2026 and recommends their prompt commencement.

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