

Preliminary report on the online questionnaire:

Inquiry into the regulation of building standards, quality and disputes

As part of its Inquiry into the regulation of building standards, building quality and building disputes, the Public Accountability Committee launched an online questionnaire to encourage individuals to participate in the inquiry.

The online questionnaire provided individuals with an easily accessible means of having their say, given the anticipated high levels of public interest in this inquiry.

The committee received 390 responses.

Responses to the online questionnaire will inform the committee's views throughout the inquiry and be used in the inquiry report.

The online questionnaire did not replace the usual submission process, which was still available for those individuals and organisations who wished to make longer and more detailed responses to the inquiry's terms of reference.

Questions asked

The online questionnaire consisted of nine questions seeking background information on participants and their views on the matters raised in the terms of reference.

The background information included where participants live and the capacity in which they responded to the questionnaire (eg home owner, tenant, building industry professional).

The multiple choice questions sought participants' views on various matters:

- satisfaction with the current processes of private certification in protecting building standards
- adequacy of protections for owners and purchasers of new apartments/dwellings
- satisfaction with the response of strata committees to building defects in common property.

The open-ended questions encouraged participants to expand on their views on key issues:

- limitations on building insurance and compensation schemes for owners and purchasers of new apartments/dwellings
- experience with seeking to address building defects, including use of flammable cladding
- suggestions in relation to the regulation of building standards, quality and disputes by government agencies in New South Wales.

The full list of questions is at Appendix 1.

Snapshot of responses to multiple choice questions

The majority (81 per cent) of respondents live in metropolitan Sydney. Most (66 per cent) are homeowners and a distinct minority (15 per cent) are building industry professionals.

Almost half (49 per cent) of respondents are owners or residents of buildings identified as having defects, with 7 per cent of these living in Mascot Towers, and 5 per cent living in buildings with flammable cladding.

Respondents are dissatisfied the current process of private certification: over 90 per cent said they are very dissatisfied (71 per cent) or dissatisfied (21 per cent).

Respondents are also concerned about the adequacy of protections for owners and purchasers of new apartments/dwellings: over 90 per cent said they are highly inadequate (74 per cent) or inadequate (18 per cent).

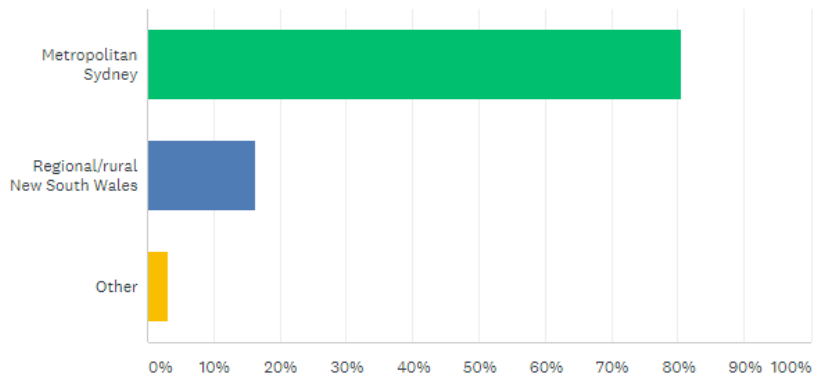
Most respondents (63 per cent) have experience with a strata committee responding to building defects discovered in common property. There are contrasting responses to the level of satisfaction with the response from the strata committee: 43 per cent are very dissatisfied or dissatisfied, while 34 per cent are satisfied or very satisfied.

Detailed breakdown of responses to multiple choice questions

A detailed breakdown of responses to the multiple choice questions is provided below.

Where do you live?

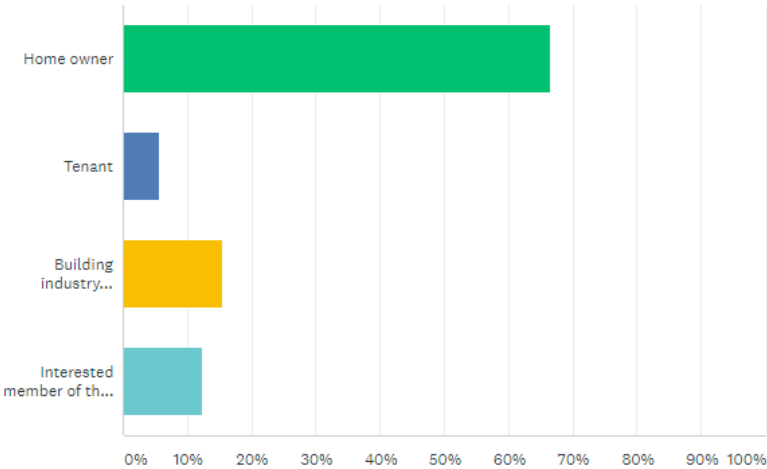
Answered: 382 Skipped: 68



ANSWER CHOICES	RESPONSES
Metropolitan Sydney	80.63% 308
Regional/rural New South Wales	16.23% 62
Other	3.14% 12
TOTAL	382

In what capacity are you responding to this questionnaire?

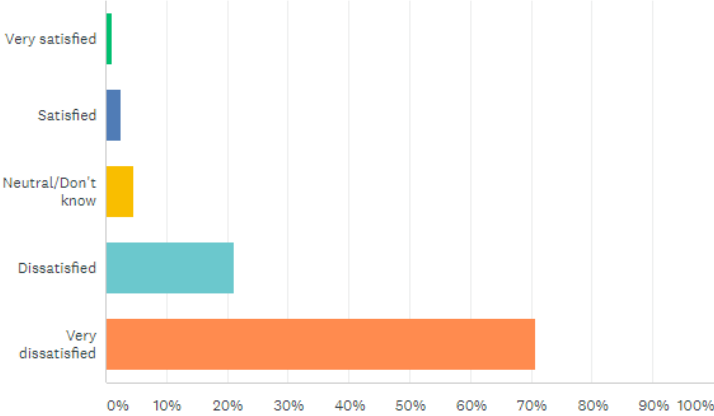
Answered: 370 Skipped: 80



ANSWER CHOICES	RESPONSES
▼ Home owner	66.49% 246
▼ Tenant	5.68% 21
▼ Building industry professional	15.41% 57
▼ Interested member of the public	12.43% 46
TOTAL	370

How satisfied are you with the current processes of private certification in protecting building standards?

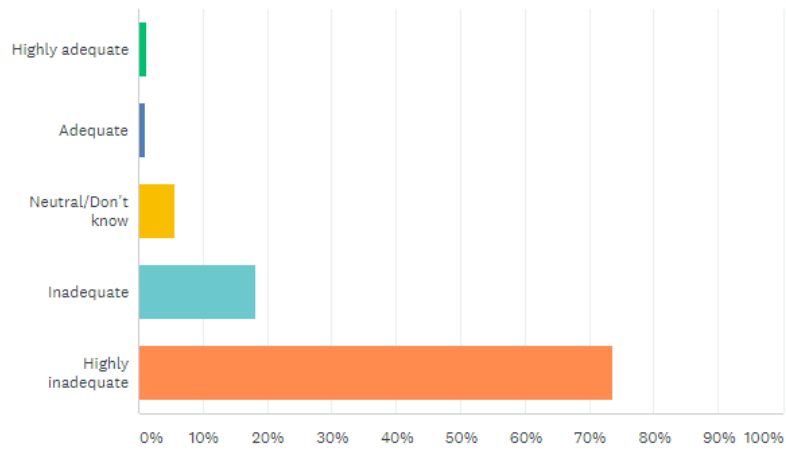
Answered: 365 Skipped: 85



ANSWER CHOICES	RESPONSES
▼ Very satisfied	1.10% 4
▼ Satisfied	2.47% 9
▼ Neutral/Don't know	4.66% 17
▼ Dissatisfied	21.10% 77
▼ Very dissatisfied	70.68% 258
TOTAL	365

How adequate are consumer protections for owners and purchasers of new apartments/dwellings?

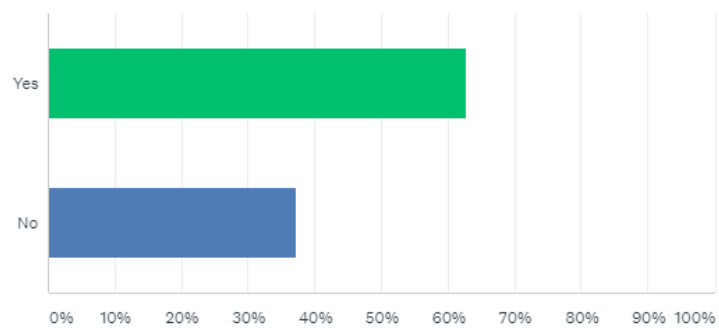
Answered: 369 Skipped: 81



ANSWER CHOICES	RESPONSES	
Highly adequate	1.36%	5
Adequate	1.08%	4
Neutral/Don't know	5.69%	21
Inadequate	18.16%	67
Highly inadequate	73.71%	272
TOTAL		369

Do you have experience with a strata committee responding to building defects discovered in common property?

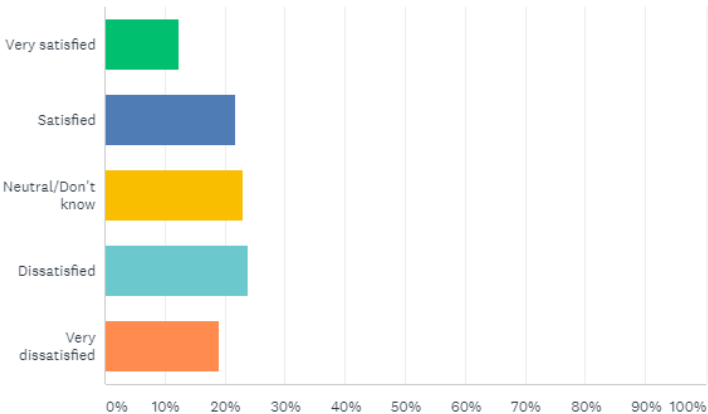
Answered: 351 Skipped: 99



ANSWER CHOICES	RESPONSES	
Yes	62.68%	220
No	37.32%	131
TOTAL		351

If you answered yes to question 7, how satisfied were you with the response from the strata committee?

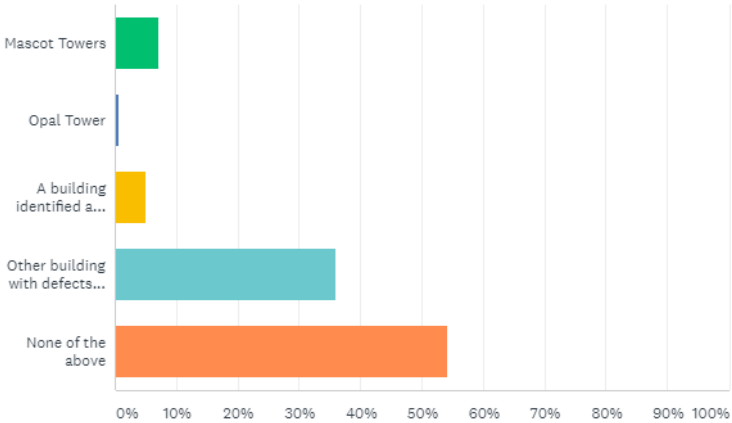
Answered: 252 Skipped: 198



ANSWER CHOICES	RESPONSES	
Very satisfied	12.30%	31
Satisfied	21.83%	55
Neutral/Don't know	23.02%	58
Dissatisfied	23.81%	60
Very dissatisfied	19.05%	48
TOTAL		252

Are you a resident or owner at any of the following buildings?

Answered: 340 Skipped: 110



ANSWER CHOICES	RESPONSES	
Mascot Towers	7.06%	24
Opal Tower	0.59%	2
A building identified as having flammable cladding	5.00%	17
Other building with defects in common property	35.88%	122
None of the above	54.12%	184
Total Respondents: 340		

Responses to open-ended questions

The three open-ended questions provided an opportunity for respondents to comment on limitations on building insurance and compensation schemes, describe their experience with seeking to address building defects, and suggest changes to government regulation.

A sample of answers to these questions is provided below.

Do you have any comments about any limitations on building insurance and compensation schemes for owners and purchasers of new apartments/dwellings?

Limitation periods

- "Statutory building warranty should be extended to 10 years..." (Real estate agent & investor, Metropolitan Sydney)
- "Limitation periods are too short. Adequate insurance should be mandatory for all new developments that covers undiscovered latent defects for the life of the building." (Investor in strata unit, Metropolitan Sydney)
- "Building insurance should be extended on all new buildings or additions to dwellings, say 20 years." (Home owner, Metropolitan Sydney)

Exclusions

- "Building defects too narrowly defined." (Home owner, Regional/rural New South Wales)
- "There is no risk cover available to owners and residents to insure building defects that were due to structural issues." (Home owner, Metropolitan Sydney)
- "Ridiculous to limit insurance by storey height." (Building industry professional, Metropolitan Sydney)
- "Most insurance cover is inadequate and does not really cover for what the owners really have to face within terms of building maintenance and defects. In the case of Mascot Tower, the insurance does not cover for any of the issues we face and most likely there will be increased premiums..." (Home owner, Metropolitan Sydney)
- "Building insurance by owners/investors has get-out clauses for structural defects which makes it useless." (Real estate agent & investor, Metropolitan Sydney)
- "Owners of apartments have no protection should something go wrong in a new apartment building. Owners require at least the same protections that are available to owners of single detached dwellings." (Building industry professional, Metropolitan Sydney)

Claiming compensation

- "Too hard to prove fault and seek compensation once certification signed off and building completed. Proof of fault often involves having to cause more damage to locate and prove fault with no promise of compensation." (Home owner, Metropolitan Sydney)
- "Compensation should extend to full refund payment at market rate of apartment/building, i.e. treat as if building has been completely demolished." (Home owner, Metropolitan Sydney)
- "It is inappropriate that home warranty insurance claims can only be triggered once a builder has died, disappeared or become insolvent." (Home owner, Metropolitan Sydney)

What has been your experience with seeking to address building defects, including use of flammable cladding?

- "I am a strata manager and have spent the last 17 years dealing with defects, under various regimes. The process is unrelenting on owners, causing financial and emotional stress as first the insurers, and now builders seek to fatigue owners corporations in litigation. I have cases 15 years on and still open." (Building industry professional, Metropolitan Sydney)
- "Our owners corporation has been able to get compensation for defects but only by long court proceedings. We are now going through long and protracted rectification works, often uncovering further defects in the process." (Home owner, Metropolitan Sydney)
- "I was a tenant in a Zetland apartment. We were electrocuted numerous times. Frequent water leaks in apartment, common areas cordoned off due to water logging while carpet tiles replaced. Major construction project to replace plumbing through entire building ... Denied any compensation despite downstairs area unusable for 2 weeks during construction works and no hot water for up to 4 days..." (Tenant, Metropolitan Sydney)
- "My partner and I have personal experience of buying a near new flat (a few years old) and issues have continually arose. In particular water proofing issues ... The first safety features being installed incorrectly ... We have looked into getting the builder/developer to try and fix the issues, but as it seems is the usual story we cannot bring action against them as the developer blames the builder and the builder has gone into liquidation..." (Home owner, Metropolitan Sydney)

Personal toll

- "My experience was very frustrating. Suddenly, the committee needed to engage engineers and lawyers and the budget had to be expanded. To establish the fact the building has serious risks in terms of safety, compliance, finance, people management, and communication ..." (Home owner, Metropolitan Sydney)

- "Very negative, takes a toll on mental and physical health, traumatic and financially crippling."
- "The experience has been highly complex, bureaucratic and stressful from a consumer point of view. It has been 9 years since the defects were first identified and they still haven't been fixed while the process of seeking redress runs its course." (Home owner, Metropolitan Sydney)

Experience dealing with government agencies

- "Each and every government agency contacted failed to resolve dispute. All keen to "pass the parcel" to another agency. Police say it's a civil matter. NCAT says it doesn't have the necessary powers under the Strata Management Act. Fair Trading says it appears fraud may be involved, therefore it's a matter for the police! ☹" (Home owner, Metropolitan Sydney)
- "Disgraceful. Whilst building – had building inspectors visit the house and builders were told of defects but continued. Rang Fair Trading whilst still building – nothing can be done until you get the keys. Engaged Fair Trading after we moved in – the whole process was a joke. Fair Trading still had no power and we were told to engage legal advice..." (Home owner, Regional/rural New South Wales)
- "My current experience of our owners' corporation pursuing a builder through legal action was extremely expensive, time consuming and ultimately resulted in the builder declaring himself bankrupt during the lengthy court process ... Our experience of then trying to have the defects fixed and reclaim costs via building insurance has been very slow and protracted with poor customer service and communication. Our claim is still being assessed 12 months after we submitted the claim." (Home owner, Metropolitan Sydney)

Financial burden

- "The experience has been extremely stressful, protracted and financially crippling. The legal costs of pursuing the builder to seek to rectify the defects amounted to in excess of \$50,000 per unit and affected younger owners with little savings and retired owners without disposable income and reliant on the age pension." (Home owner, Metropolitan Sydney)
- "We have had to borrow more than a million dollars as an owners corporation to rectify the significant defects." (Home owner, Metropolitan Sydney)
- "Legal costs, inspection costs, building consultant costs, remedial building works costs..." (Home owner, Metropolitan Sydney)

Strata and strata management

- "Our strata manager lacks the time, expertise and experience to manage the process. The owners' corporation struggled to make decisions due to lack of knowledge and advice on what to do in these situations and varying financial capacity to pursue legal options. Internal strata committee disagreements and poor decision making can result. Owners have had to spend lots of time trying to research and educate themselves about what to do in order to make a decision. The building insurance process also requires owners to notify the insurer immediately when defects are identified and claim within certain time limits. Lack of awareness by owners and strata manager of these time limits has meant that many of our building defects won't be covered under the claim." (Home owner, Metropolitan Sydney)
- "Our Body Corporate was involved in a protracted dispute with the developer and builder of our complex and blame just bounced backwards and forwards until the warranty period expired and both walker away leaving the defects in our strata's lap..." (Home owner, Metropolitan Sydney)
- "With the internal politics with the developer, strata manager, and building manager, it was a nightmare." (Home owner, Metropolitan Sydney)
- "The strata committee have worked very hard to have issues resolved, but there always seems to be roadblocks/administrative red tape that slows the whole process." (Home owner, Metropolitan Sydney)

Experience with insurance claims

- "Despite using legal process to seek redress, the builder declared himself bankrupt after more than 12 months of legal process. We are now seeking to address building defects via home warranty building insurance, which has been lengthy and has resulted in no resolution to date. ... The insurer will only cover a portion of the cost of pursuing the builder which means we are likely to be out of pocket from expenses incurred in commissioning expert building reports and on legal fees. It feels like my life has been on hold while years have been sunk trying to resolve the defects in our building. We are unable to sell our unit while defects are not fixed and must wait for process to be completed." (Home owner, Metropolitan Sydney)

Do you have any suggestions in relation to the regulation of building standards, quality and disputes by government agencies in New South Wales?

Building insurance/warranty

- "Statutory building warranty should be extended to 10 years. Building insurance by owners/investors has get-out clauses for structural defects which makes it useless. Builders should be contributing more to building warranty fund."

- "I recommend all high rise residential projects have Home Owners Warranty Insurance." (Building industry professional, Metropolitan Sydney).
- "There should be a Government managed insurance scheme like 3rd party for cars, that enables building owners to claim for certain types of defects, even if the construction company has gone bust or 'disappeared'." (Building industry professional, Regional/rural New South Wales)

Workforce training and accreditation

- "There should be a system of licensing for Construction Managers of large developments that is both accountable and able to be referenced by prospective purchasers of apartments." (Building industry professional, Regional/rural New South Wales)
- "Builders should be licenced personally. Different classes of licence for low and high rise apartment buildings. Licence to be revoked if builder is involved in a company that has 'phoenixed'." (Interested member of the public, Metropolitan Sydney)

Building certification

- "There is a need for improved inspection as the building is progressing. Owners need to be provided with an approved inspection certificate by a local government inspector at all of the critical stages of construction." (Home owner, Regional/rural New South Wales)
- "It must be compulsory for a geotechnical investigation report to be done on every single piece of land before any building plans are prepared. The geotechnical report should recommend what type of building can be built on a particular piece of land and whether an area is stable and whether a new building of any type could possibly destabilise neighbouring buildings. That should apply to houses, units, townhouses, multi-storey buildings, etc." (Home owner, Metropolitan Sydney)
- "Bring back rigorous certification procedures, ensure certifiers are properly trained and independent of builders/developers, more skilled workforce, certification to be performed at each major stage of construction e.g. laying of foundations." (Home owner, Metropolitan Sydney)
- "I believe the government should appoint independent assessors at 5 and 10 years to inspect." (Home owner, Metropolitan Sydney)
- "Councils seem to be very good at inspecting fire protection after the building is completed and then issues an order to the OC. Perhaps councils need to be part of occupancy certification process." (Home owner, Metropolitan Sydney)

Building certifiers

- "Quality control should be independent and the person/people should be certified and members of professional organisations." (Home owner, Metropolitan Sydney)
- "Building certification needs to be independent of the developers. This means that the certification should be brought back into the fold of State or Local Government and not be a user pays system as it has been since 2007." (Building industry professional, Regional/rural New South Wales)
- "That the consumer based licensing approach remain with three storey houses. The rest, i.e. high rise multi-apartments, need to be treated as a commercial construction with its own regulatory framework supported by professional standards..." (Building industry professional, Metropolitan Sydney)

Building codes

- "There has been a movement away from prescriptive technical requirements for building construction. The Building Code of Australia which is volumes 1 and 2 of the National Construction Code 2019 is a technical framework for the construction of buildings. The mandatory level of compliance in this Code are the 'Performance Requirements'. However, these are written in vague terms, the majority are not quantified and they are loose and so open to abuse. The 'Performance Requirements' generally have no boundaries and the common text which appear in many being 'to the degree necessary' is particularly inappropriate. There needs to be a return to a prescriptive based Code or the introduction of additional safeguards to ensure safe and appropriate building outcomes." (Interested member of the public, Metropolitan Sydney)
- "Review / revise 'bare minimum' standards for key elements of buildings." (Home owner, Metropolitan Sydney)
- "The tendency toward performance based solutions in the National Building Code has meant that the code is both difficult to apply simply and developers are reliant on the opinion of experts that whatever is being done meets some kind of performance requirements that is not black and white. This is quite difficult to understand for most people and while supposedly providing flexibility it also makes finding the non-compliance of an installation difficult." (Building industry professional, Regional/rural New South Wales)

Liability

- "The responsibility for the end products should be clear, and the warranty for structural, fire and water insulation problems should be lifetime, if the fault of the developer/construction company is identified." (Home owner, Metropolitan Sydney)

- "Developers and construction companies should pay a substantial bond for the most urgent repairs during the first 5 years." (Home owner, Metropolitan Sydney)
- "Extend developer liability to at least 50% of warranty period for key elements, and perhaps 10 years for serious defects (e.g. foundations, fire safety, etc.). Make directors of developer companies liable, so if company is shut down the directors still have liability for defects (this is to avoid people starting a development company, building shoddy buildings, shutting down that company and starting another)." (Home owner, Metropolitan Sydney)
- "Any private certifier hired by a developer to approve building compliance should be held legally responsible with the developer for any subsequent defects that become evident for a period of 5 years from approval. This will ensure the building standards are adhered to. To protect the integrity of their ability to apply building standards there should be a professional indemnity cover overseen by government similar to the rental bond board." (Home owner, Metropolitan Sydney)

Conclusion

The online questionnaire has been a valuable tool to seek the views of interested stakeholders on the significant issues raised in the terms of reference. The material gathered through the questionnaire will inform committee members views as the inquiry progresses and be reflected in the inquiry report. The committee will also quote from participants' responses to support its findings and conclusions.

The committee notes that the online questionnaire was not a statistically valid, random survey. Respondents were self-selected in choosing to participate (in the same way that submission authors are self-selected) and should not be considered a representative sample of the population.

Nevertheless, the questionnaire provided an important opportunity for affected people to participate in the inquiry, and valuable input for the committee in formulating its findings.

Appendix 1: List of questions

1. Contact details (*free text*)
Name:
Email address:
Postcode:
2. Where do you live?
 - a. Metropolitan Sydney
 - b. Regional/rural New South Wales
 - c. Other
3. In what capacity are you responding to this questionnaire?
 - a. Home owner
 - b. Tenant
 - c. Building industry professional
 - d. Interested member of the public
 - e. Other – *free text*
4. How satisfied are you with the current processes of private certification in protecting building standards?
 - a. Very satisfied
 - b. Satisfied
 - c. Neutral/don't know
 - d. Dissatisfied
 - e. Very dissatisfied
5. How adequate are consumer protections for owners and purchasers of new apartments/dwellings?
 - a. Highly adequate
 - b. Adequate
 - c. Neutral/don't know
 - d. Inadequate
 - e. Highly inadequate
6. Do you have any comments about any limitations on building insurance and compensation schemes for owners and purchasers of new apartments/dwellings?
250 words – free text box
7. Do you have experience with a strata committee responding to building defects discovered in common property?
 - a. Yes
 - b. No
- 7a. If you answered yes to question 7, how satisfied were you with the response from the strata committee?
 - a. Very satisfied

- b. Satisfied
- c. Neutral/don't know
- d. Dissatisfied
- e. Very dissatisfied

8. Are you a resident or owner at any of the following buildings?

- a. Mascot Towers
- b. Opal Tower
- c. A building identified as having flammable cladding
- d. Other building with defects in common property
- e. None of the above

8a. What has been your experience with seeking to address building defects, including use of flammable cladding?

250 words – free text box

9. Do you have any suggestions in relation to the regulation of building standards, quality and disputes by government agencies in New South Wales?

250 words – free text box