

09 September 2019

NSW Legislative Council  
Public Accountability Committee

## **INQUIRY INTO REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES- QUESTIONS ON NOTICE**

We refer to the questions on notice as raised with Alisha Fisher, CEO Strata Community Association, at the Inquiry on 16 August 2019 and provide the following additional information as requested by the Committee.

### **Change in definition from structural defect to major defect**

The change in the definition of structural defect to major defect affects the ability of owners in apartment building to arguably make a claim for rectification. The definition when reviewed as a whole lends itself to a position where practically no building would be able to make a claim for defects except where the building or apartments within it were totally uninhabitable (for example Opal towers and Mascot Towers).

The provisions need to be amended to provide that where a structural element of a building is defective in construction it is a defect and not that the second limb requires it also to affect habitability.

### **Appointment of Building Commissioner**

The appointment of David Chandler OAM is consistent with the Government's announcement of a Commissioner to oversee the building quality crisis in NSW. The implementation of initiatives as proposed by the Building Commissioner will be critical to reforming the strata and apartment sector and we eagerly await both those recommendations and the Governments swift adoption of such recommendations. We understand the Building Commissioner has the full resources of Fair Trading at his disposal which we believe appropriate to understand and recommended improvements to the system that operates under the Fair Trading portfolio.

### **NSW Cladding Taskforce**

The NSW cladding taskforce has a website with resources available for consumer access and use, including facts sheets and online portal for scheme registration.

### **Accountability and reforms**

SCA NSW has proposed a seven-point plan that, if adopted, will go a long way to restoring confidence and dealing with the worst impacts of past failures. The reform package reintroduces more accessible insurance schemes, ideally first recourse, and introduces accountability for building quality and standards, including robust penalties for non-compliance.

1. Reintroduction of a robust and accessible Home Owners' Warranty Insurance scheme for all levels of strata development, removing the current four-story exclusion.
2. Increasing the two year statutory warranty period to at least three years.

3. Along the lines of the precedent now established in Victoria, provide an assistance package for cladding and structurally affected schemes. This may include a combination of subsidised loans, rate/taxation relief and other financial assistance.
4. Legislate within the regulatory framework for builders, developers, designers, and certifiers a clear duty of care to owners and owners' corporations
5. Legislate a statutory chain of responsibility through the entire design and construction cycle
6. Introduce mandatory supervision of private certification
7. Introduce a record of occupation certificates accessible to owners' corporations that is separate from the Office of Fair Trading. This will avoid any conflict of interest with its regulatory functions and enforcement of compliance, licensing and administration of home building compensation fund.

### **Initial appointment of strata managing agents and contract tenure**

NSW introduced the most comprehensive review of strata laws in 2016 following unprecedented community and industry consultation. The new legislation introduced a series of initiatives aimed at strengthening the transparency and accountability of strata managing agents. The initial engagement appointment of a strata managing agent by the developer/original owner can only be until the date of the first AGM.

In this regard the developer/original owners influence is significantly diminished at that point as the initial period has expired and lots transferred to owners. There are also limitations on the voting power of developers/original owners should they own more than 50% of the lots to further restrict their ability to unduly influence decision making in a strata scheme. At the First AGM there is a further restriction for a one-year appointment of the strata managing agent.

Mandatory motions introduced in the new strata act obligate the owners corporation to discuss building defects at each meeting until such time as the statutory warranty period expires. Finally, the commencement of the strata building defect bond, a 2% retention amount under Part 11 of the Act, is a further initiative to provide assurance and protection to owners from strata building defects.

We thank the Public Accountability Committee for the opportunity to provide follow up information to the Inquiry.

Your sincerely

Chris Duggan  
President, Strata Community Association (NSW)