

Home Warranty Insurance Rescue Package: A Stamp Duty Funded Defects Insurance Rescue Package for 4 or more Storey Buildings

Strata Community Association (NSW) Submission
9 October 2023

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 Dylan Lin, Policy and Advocacy Officer, SCA (NSW). Dylan.lin@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.ada.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf

² Ibid, p.8-13

³ Ibid, p.8.

SCA (NSW)'S PERSPECTIVE

1. Introduction

This submission presented by SCA (NSW) offers a comprehensive overview of the multifaceted topic of defects and Home Warranty Insurance in NSW. While the current Home Building Compensation Fund (HBCF) remains barely adequate for homeowners, **SCA (NSW) strongly supports the idea of creating a state-funded insurance scheme akin to the Building Insurance Guarantee Corporation (BIG Corp). This proposed scheme would serve as a long overdue rescue package for homeowners in four or more-storey buildings who have suffered a loss from defects as a result of the insolvency of the builder.**

2. Background of Statutory Protections

Home Warranty Insurance has undergone a significant transformation over the years, shaped by a series of pivotal events and policy changes that have gradually led to the decline of consumer protections against building defects.

1. Prior to 1997, the Building Services Corporation (BSC) operated as a home warranty insurer funded by revenue collected from stamp duty. However, in 1997, the BSC underwent privatisation, resulting in a series of changes that progressively diminished consumer rights, a trend that persisted until 2020.
2. During the years spanning 1997-2002, a noteworthy development was the implementation of a 7-year first resort home warranty insurance policy for all low-rise and high-rise residential apartments. However, in March 2001, the financial collapse of the two primary home warranty insurers, FAI and HIH Insurance, prompted significant industry reforms. In response, NSW Fair Trading intervened by establishing BIG Corp, which honourably paid out all outstanding insurance claims.

Time to Treat Homeowners in 4 or more Storey Buildings Fairly

Table of Legal Reforms

Date	Statutory warranty against builder and developer	Home Warranty Insurance	Other statutory protections	Minister introducing the reform	Legislation introducing reform
7.11.1989	<u>3 year</u> statutory warranty – all defects <u>7 year</u> statutory warranty – major structural defects	BSC Comprehensive Insurance Scheme / BSC Special Insurance Scheme <u>3 year</u> first resort home warranty insurance statutory warranty – all defects <u>7 year</u> first resort home warranty insurance statutory warranty – major structural defects		Labor	Building Services Corporation Act 1989 (now known as Home Building Act 1989)
1997	Introduction of private building certification			Craig Knowles (Minister for Urban Affairs and Planning; Labor)	Environmental Planning and Assessment Amendment Act 1997 No 152
1997 to 1.7.2002	<u>7 year</u> statutory warranty – all defects	<u>7 year</u> <u>first resort</u> home warranty insurance – all residential apartments		Faye Lo Po' (Minister for Fair Trading and Minister for Women; Labor)	Building Services Corporation Legislation Amendment Act 1996
1.7.2002	<u>7 year</u> statutory warranty – all defects	<u>2 year</u> warranty <u>last resort</u> insurance – all defects <u>6 year</u> last resort insurance – major defects All residential apartments		John Aquilina (Minister for Fair Trading; Labor)	Home Building Amendment (Insurance) Act 2002 No 17
31.12.2003	<u>7 year</u> statutory warranty – all defects	<u>2 year</u> warranty <u>last resort</u> insurance – all defects <u>6 year</u> last resort insurance – major defects Only for residential apartment in a 3 or less storey buildings		John Della Bosca (Minister for Commerce; Labor)	Home Building Amendment (Insurance Exemptions) Regulation 2003

- In December 2002, the risk profile was adjusted, shifting from 7-year first resort home warranty insurance to a 2-year warranty last resort insurance for all types of defects. Simultaneously, a 6-year last resort insurance policy was introduced for major defects, but in 2003, its scope was restricted to residential apartments in buildings with three storeys or fewer (as shown in the Table above). This change was driven by the recognition that Homeowner Warranty Insurance (HOWI) was required for retrofits of four or more storey buildings and remedial works for four or more storey buildings. Therefore, there is a strong and urgent need to provide insurance for those who unwittingly missed out.
- The year 2018 ushered in a 2% bond scheme, allowing liquidators to claim unsecured developer funds in cases of insolvency. This marked a stark contrast with the previous arrangement, where homeowners were entitled to approximately \$340,000 per lot in insurance coverage. Under the new scheme, the coverage per lot was significantly reduced to \$12,000. This substantial difference prompted a considerable number of people to sign contracts for work before the effective date of this change to avoid the associated costs.

5. In 2020, the Design and Building Practitioners Act 2020 introduced the concept of Duty of Care, compelling parties to exercise reasonable care to avoid economic losses resulting from defects. The subsequent Residential Apartment Buildings Compliance Enforcement Act 2020 granted authorities the authority to issue rectification orders against individuals involved in the construction of class 2 buildings. It also empowered inspectors to assess buildings and issue orders prior to the issuance of an occupation certificate. However, this is of no value against an insolvent builder or developer, hence the need for government protection.
6. All this time though NSW Fair Trading has ensured Home Warranty Insurance for:
 1. Retrofit buildings of 4 or more storey residential buildings (e.g., commercial converted to a residential building).
 2. Remedial works in residential buildings of 4 or more storey buildings.

So the glaring omission here is Home Warranty Insurance for new buildings of 4 or more storeys.

7. In 2012, NSW Fair Trading increased the limit on payouts for incomplete building works from 20% to 40% to cover large losses faced by homeowners where builders were going bankrupt because of collapses in project home builders due to harsh economic times.

3. Consumer Rights for Defects

Over the years, consumer rights for building defects have progressively worsened, a trend which looks largely attributed to developer lobbying. In particular:

1. Over the past two decades, developer contributions to the federal and state governments were approximately \$54.2 million. Among the top 10 contributors were billionaire property developers, including notable figures such as Frank Lowy, co-founder of Westfield, Harry Triguboff of Meriton, and John Gandel of the Gandel Group.²

² Crowe, David. "‘Competitive Advantage’: Call for Curbs as Property Sector Ramps up Political Donations." The Sydney Morning Herald, January 26, 2021. <https://www.smh.com.au/politics/federal/competitive-advantage-call-for-curbs-as-property-sector-ramps-up-political-donations-20210126-p56wva.html>.

These developers wield significant power in the policymaking process for strata-related legislation. Through campaign donations and lobbying endeavours, developers established relationships with elected officials, regulators, and key decision-makers. This access enabled them to effectively shape the laws governing the strata industry for their exclusive benefit.

2. However, 2021 marked a turning point for consumer rights as NSW implemented a ban on political donations from property developers and their close associates. This decision signalled a significant shift towards enhancing consumer protections. Prior to this ban, consumer rights had been on a downward trajectory since 1997. There are a myriad of other such change we can provide but the change we are seeking to address is the one of 31 December 2003.

Notably, the removal of Home Warranty Insurance protection for buildings of four or more storeys by NSW Labor compounded these challenges. Such buildings now face substantial hurdles, and the existence of building defects is indisputable, as consistently highlighted by NSW Fair Trading in the media.

4. Stamp Duty

In the span of the last two decades, the total revenue generated from stamp duty is more than substantial, with specific details as follows:

1. Between 2001 and 2005, the total revenue generated from stamp duty in NSW amounted to an impressive \$16.263 billion.³
2. In the subsequent period from 2006 to 2024, the total stamp duty revenue soared to approximately \$120 billion.⁴
 - a. Specifically, residential stamp duty receipts have accounted for a significant share, totalling \$80 billion since 2009. A staggering statistic is that over 90% of

³ Australian Bureau of Statistics, A. "Taxation Revenue, Australia | Australian Bureau of Statistics." www.abs.gov.au. Australian Government, n.d. <https://www.abs.gov.au/statistics/economy/government/taxation-revenue-australia>.

⁴ NSW, Revenue. "Data and Statistics." Revenue NSW, n.d. <https://www.revenue.nsw.gov.au/help-centre/resources-library/statistics>.

the 83,000-plus strata schemes in NSW are more than six years old and these strata schemes regrettably lack HBCF insurance coverage.⁵

3. Approximately 50% of all stamp duty transactions in Sydney pertain to lots in strata schemes. Estimations indicate that out of the \$36.5 billion in stamp duty revenue received over the past five years, approximately \$18.25 billion can be attributed to transactions involving strata schemes.⁶
 - a. A significant portion of this, around 90%, pertains to uninsured strata scheme lots, totalling approximately \$16.4 billion. This translates to an average of roughly \$220,235 per strata dwelling over the past five years.

5. Recommendation

Considering the substantial revenue generated from stamp duty, **SCA (NSW) earnestly proposes the establishment of a novel scheme akin to BIG Corp. This scheme would provide state-funded insurance to homeowners residing in buildings of four or more storeys who have incurred losses due to defects resulting from the insolvency of builders and developers.** Equality can be addressed by deducting the price of the homeowner's warranty insurance from the payment.

Such a scheme would effectively serve as a crucial rescue package for 4 or more storey strata homeowners who suffered losses due to the builder's collapse. It would enable homeowners to make claims on the necessary funds for repairing their buildings instead of being left in an unfinanced and derelict state. The financial impact of funding this scheme would not significantly strain the federal and state budget as it follows the historical precedent set by BSC and BIG Corp, two similar and successful schemes implemented in the past, and goes with the same vein of support offered freely to homeowners who suffered losses but gained a 100% increase in cover.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA (NSW). Dylan.lin@strata.community

⁵ Cordato, Cordato Partners-Anthony J. "NSW Fair Trading Proposes to Force Strata Schemes to Maintain and Repair the Common Property." Lexology, December 13, 2021.

<https://www.lexology.com/library/detail.aspx?g=e4059903-0916-4f84-8cb5-8aa2f97925b6>.

⁶ Valuer General of NSW, V. "Home - Valuer General of New South Wales." www.valuergeneral.nsw.gov.au.

https://www.valuergeneral.nsw.gov.au/land_values/where_can_you_learn_more_about_your_land_value/property_sales.