



New South Wales

Strata Schemes Management Amendment (Building Defects Scheme) Regulation 2020

under the

Strata Schemes Management Act 2015

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Strata Schemes Management Act 2015*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to amend the *Strata Schemes Management Regulation 2016*, in relation to the scheme for rectifying building defects in new strata schemes under Part 11 of the *Strata Schemes Management Act 2015* (as amended by the *Strata Schemes Management Amendment (Building Defects Scheme) Act 2018*).

This Regulation makes provision with respect to the following—

- (a) the persons qualified to be appointed as building inspectors for the purposes of that Part,
- (b) the role of certain professional associations (**authorised professional associations**) in determining whether persons are qualified to be appointed as building inspectors,
- (c) the keeping of registers by authorised professional associations of those qualified persons,
- (d) the imposition of conditions by the Commissioner for Fair Trading (the **Secretary**) on the exercise of functions by building inspectors,
- (e) protecting authorised professional associations from liability when exercising certain functions,
- (f) the requirements relating to the nomination by the developer of a strata scheme of a building inspector for approval by the owners corporation for the scheme,
- (g) the documents that the developer of a strata scheme must provide to a building inspector and the Secretary when lodging a building bond,
- (h) authorising the developer for a strata scheme to appoint a builder to rectify defective building work who is not the builder responsible for the work when that builder is unavailable for certain reasons,
- (i) the calculation of the contract price for building work for the purposes of determining the amount required to be secured by a building bond in relation to that work,
- (j) the lapsing of a building bond,
- (k) enabling the Secretary to require the developer of a strata scheme to provide information or documents, additional to those required to accompany a building bond, to substantiate the contract price used to calculate the amount of the building bond,
- (l) the procedures relating to applications for, and the payment of, amounts secured by a building bond,

- (m) the fee payable by the developer of a strata scheme when the Secretary arranges for the appointment of a building inspector,
- (n) offences for which penalty notices may be issued,
- (o) law revision amendments.

This Regulation is made under the *Strata Schemes Management Act 2015*, including sections 15(p), 189 (definition of *contract price*), 193(2), 198A(1)(b), 204(3), 206(7), 209(2), 213(3), 213B(2) (definition of *professional association*), 214, 250(2) and (4) and 271 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Strata Schemes Management Amendment (Building Defects Scheme) Regulation 2020*.

2 Commencement

This Regulation commences on the commencement of the *Strata Schemes Management Amendment (Building Defects Scheme) Act 2018* and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Strata Schemes Management Regulation 2016

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

approved form means a form approved by the Secretary.

Department means the Department of Customer Service.

[2] Clause 5 Agenda for first AGM

Omit “appoint” from clause 5(2). Insert instead “approve the appointment of”.

[3] Part 8, Division 1, heading

Insert before clause 44—

Division 1 Interpretation

[4] Clause 44 Interpretation

Insert at the end of the clause—

(2) In this Part—

authorised professional association means any of the following bodies—

- (a) the Housing Industry Association Limited (ACN 004 631 752),
- (b) the Master Builders Association of New South Wales Pty Ltd (ACN 074 397 532),
- (c) the Australian Institute of Building (ACN 000 165 248),
- (d) the Australian Institute of Building Surveyors (ACN 004 540 836),
- (e) the Australian Institute of Building Consultants Pty Ltd (ACN 605 683 690),
- (f) the Australian Society of Building Consultants Incorporated (NSW Y1805133),
- (g) the Institute of Building Consultants Inc (NSW Y0848702),
- (h) Engineers Australia Pty Limited (ACN 001 311 511),
- (i) the Association of Accredited Certifiers Incorporated (NSW INC9880607),
- (j) the Australian Institute of Quantity Surveyors Ltd (ACN 000 093 005),
- (k) RICS Australasia Pty Ltd (ACN 089 873 067).

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

building inspector functions mean the functions of a building inspector under Part 11 of the Act.

strata inspector panel—see clause 45.

[5] Part 8, Division 2

Omit clause 45. Insert instead—

Division 2 Building inspectors, inspection reports and rectification

45 Persons qualified to be appointed as building inspectors

- (1) An authorised professional association may establish and maintain a strata inspector panel for building work of a particular kind (a *strata inspector panel*).
- (2) The association may appoint an individual to be a member of the panel if satisfied that the individual is appropriately qualified to carry out building inspector functions in relation to that kind of building work.
- (3) A member of the panel is qualified to be appointed under section 193(2) of the Act as a building inspector for that kind of building work.

45A Register of members of strata inspector panel

- (1) An authorised professional association must keep a register of members of a strata inspector panel established by the association that contains the following particulars in relation to each member—
 - (a) the member's name,
 - (b) any registered business name under which the member carries on business as a building inspector, together with the related Australian Business Number,
 - (c) the address of the member's principal place of business,
 - (d) the member's telephone number and other particulars (such as an email address) for contacting the member for business purposes,
 - (e) any formal qualifications held by the member that are relevant to the individual's business as a building inspector,
 - (f) any conditions in force under clause 45C in relation to the member that the association has been made aware of as a result of notification to the association under that clause.
 - (2) The register may contain any other particulars that the association considers appropriate, including particulars of project experience that have been provided by the member to the association and that the association considers relevant.
 - (3) An authorised professional association that is required to keep a register under this clause must retain the register and its contents for at least 7 years after the date on which the last entry was made in it.
 - (4) An authorised professional association that is required to keep a register under this clause must ensure that the register is made available free of charge for inspection by the public—
 - (a) at the professional association's offices during ordinary office hours (in paper or electronic form), and
 - (b) on the internet.
- Maximum penalty—40 penalty units.

45B Secretary's guidelines

- (1) In exercising its functions under clauses 45 and 45A, an authorised professional association must have regard to the guidelines (if any) approved by the Secretary for the purposes of this clause that have been provided to the professional association by the Secretary and are in force.

- (2) The Secretary is to cause such guidelines to be published on the website of the Department.

45C Conditions imposed on building inspectors by Secretary

- (1) For the purposes of section 214(1)(a3) of the Act, the Secretary may impose a condition on the exercise of building inspector functions by a building inspector.
- (2) Conditions may be imposed on a specified building inspector or a class of building inspectors by written notice—
- (a) in the case of a specified building inspector—given to the building inspector and to the authorised professional association that established the strata inspector panel of which the building inspector is a member, or
 - (b) in the case of a class of building inspectors—given to each authorised professional association and published in the Gazette.
- (3) The imposition of a condition under this clause takes effect on the date specified in the notice concerned.
- (4) A building inspector exercising building inspector functions must comply with any applicable conditions imposed under this clause.
Maximum penalty—200 penalty units in the case of a corporation and 100 penalty units in any other case.
- (5) This clause applies to the variation or removal of a condition imposed under this clause in the same way as it applies to the imposition of the condition.

45D Liability of professional associations in respect of accreditation and other functions

For the purposes of the definition of *professional association* in section 213B(2) of the Act, each authorised professional association is prescribed.

45E Nomination of building inspector for approval of owners corporation

- (1) A developer nominating a building inspector for approval under section 195(1) of the Act at a general meeting of an owners corporation must do so by written notice given to the owners corporation at least 14 days before the general meeting.
- (2) The notice must be in the approved form (if any) and contain the matters specified in the form (if any).
- (3) The notice must include or be accompanied by the following particulars—
- (a) the name of the authorised professional association that established the strata inspector panel of which the building inspector is a member,
 - (b) the particulars required to be kept in relation to the building inspector under clause 45A(1),
 - (c) particulars of project experience that have been provided by the member to the developer or that appear on the register.

Maximum penalty—40 penalty units in the case of a corporation and 20 penalty units in any other case.

[6] Clause 46A

Insert after clause 46—

46A Documents to be provided to building inspector by developer

- (1) For the purposes of section 198A(1)(b) of the Act, the following are prescribed—
- (a) a copy of the initial maintenance schedule relating to the strata scheme,
 - (b) copies of the following documents relating to the building work—
 - (i) the contract or contracts between the developer and the builder,
 - (ii) any specifications and any variations (including any “issued for construction” and “as-built” drawings and specifications and particulars of approved alternative solutions to meet the performance requirements of the *Building Code of Australia*),
 - (iii) any written warranties,
 - (iv) any schedule of samples (being samples of fixtures, fittings, materials and finishes) approved by the developer for use in the building work,
 - (v) any development consents, approvals or certificates granted or issued under the *Environmental Planning and Assessment Act 1979*,
 - (vi) in the case of building work involving an alternative solution in respect of a fire safety requirement under the *Building Code of Australia*—any report prepared by or on behalf of an accredited practitioner (fire safety) in relation to the alternative solution that was required in connection with an application for a certificate under the *Environmental Planning and Assessment Act 1979*,
 - (vii) any certificates relating to the design of the building work that were required in connection with an application for a development consent, approval or certificate under the *Environmental Planning and Assessment Act 1979*,
 - (viii) any report obtained by the developer or builder relating to the inspection of the building work.
- (2) In this clause, a reference to an **accredited practitioner (fire safety)** includes a reference to a fire safety practitioner for things done before 1 July 2020.

[7] Clauses 47, 48 and 52(a)

Omit “form approved by the Secretary” wherever occurring. Insert instead “approved form”.

[8] Clause 49A

Insert after clause 49—

49A Reasons enabling appointment of new builder to rectify defects

For the purposes of section 206(7) of the Act, the following reasons are prescribed—

- (a) the builder responsible for the defective building work is unwilling to rectify the defective building work,
- (b) it would be unlawful for the builder to rectify the defective building work (for example, because the builder does not hold a licence where required to do so by law),
- (c) the builder is unable to rectify the defective building work because the builder has become a mentally incapacitated person or physically incapacitated or is serving a term of imprisonment,

(d) after due search and inquiry, the builder cannot be found in Australia.

[9] Part 8, Division 3, heading

Insert before clause 50—

Division 3 Building bonds

[10] Clause 50 Contract price for determining building bond

Omit “under all the applicable contracts for the building work as at the date of issue of the occupation certificate” from clause 50(1).

Insert instead “or payable under all the applicable contracts for the building work regardless of when the amounts become payable”.

[11] Clause 50(1), note

Omit the note.

[12] Clause 50(2)–(2C)

Omit clause 50(2). Insert instead—

- (2) However, the contract price for building work is to be the price set out in a cost report if—
 - (a) there is no written contract for the building work, or
 - (b) the parties to the building contract are connected persons (other than as a result of being parties to the contract).
- (2A) The cost report is to be prepared by a qualified quantity surveyor—
 - (a) engaged by the developer (except as provided by paragraph (b)), or
 - (b) determined by the Tribunal or the Supreme Court to be appropriate in proceedings dealing with an application by an owners corporation or the Secretary under section 211 of the Act.
- (2B) The quantity surveyor who prepares the cost report must not be connected to—
 - (a) the builder or the developer (other than as a result of being engaged by the developer to prepare the report), or
 - (b) a bank, or other person, providing finance for the building work.
- (2C) For the purposes of this clause, a *qualified quantity surveyor* is a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or the Royal Institution of Chartered Surveyors.

[13] Clause 51

Omit the clause. Insert instead—

51 Maturity dates for building bond

The amount secured by a building bond must be able to be claimed or realised for a period of not less than 30 months and not more than 3 years after the date of the occupation certificate for the building work to which the bond relates.

[14] Clause 52 Additional documents to be lodged with building bond

Omit “amount of the building bond” from clause 52(g).

Insert instead “amount required to be secured by the building bond (including, if applicable, the quantity surveyor’s cost report referred to in clause 50(2A))”.

[15] Clause 52(h)

Omit clause 52(h)–(r). Insert instead—

- (h) the documents set out in clause 46A(1)(b) relating to the building work.

[16] Clause 52(2) and (3)

Insert at the end of clause 52—

- (2) Without limiting subclause (1)(g) and (h), the Secretary may, by notice in writing given to the developer, require the developer to provide any additional information or documents that the Secretary considers necessary to substantiate the contract price used to calculate the amount required to be secured by the building bond.
- (3) The developer must not, without reasonable excuse, fail to comply with the notice.
Maximum penalty (subclauses (1) and (3))—200 penalty units in the case of a corporation and 100 penalty units in any other case.

[17] Clause 53

Omit clauses 53 and 54. Insert instead—

53 Application to pay amount secured by building bond to owners corporation

- (1) For the purposes of section 209(2) of the Act, an application to pay the whole or part of the amount secured by a building bond to the owners corporation must be made not later than 14 days before the last day on which the amount must be claimed or realised under that section.
- (2) The application is to be made in accordance with the procedures (if any) approved by the Secretary and published on the website of the Department that are in force.

[18] Clause 55 Payment of building bond

Insert after clause 55(2)—

- (3) The Secretary may approve procedures relating to the payment by the Secretary of amounts secured by a building bond and publish the procedures on the website of the Department.

[19] Part 8, Division 4, heading

Insert before clause 56—

Division 4 Miscellaneous

[20] Clause 56 Review of decisions

Omit clause 56 (1)(a) and (b). Insert instead—

- (a) a decision under section 200(2)(a) of the Act to arrange for a final inspection and report,
- (b) a determination under section 200(4) of the Act that a developer is not required to arrange for a final report,

[21] Schedule 4 Fees

Insert after item 1—

1A	Arranging appointment of building inspector under section 196 or 200 of the Act	\$1,500
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[22] Schedule 5 Penalty notice offences

Insert in appropriate order—

Section 195(4)	\$220
Section 202(1)	\$220
Section 202(2)	\$220
Section 203(2)	\$220

[23] Schedule 5

Insert at the end of the Schedule—

Offences under this Regulation

Clause 45E	\$55 (in the case of an individual) or \$110 (in the case of a corporation)
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