

2 MARCH 2021

PUBLIC CONSULTATION DOCUMENT

Purpose

The purpose of this Public Consultation Document is for the Professional Standards Councils (Councils) to seek comments and submissions from the public in considering an application for a professional standards scheme by Strata Community Association (NSW) "SCA NSW".

SCA NSW consists of membership chapters of strata managers, service providers and owners.

The Professional Standard Scheme will **only** apply to the strata management chapter members providing strata management services to consumers owning and/or living in strata properties domiciled in NSW.

This is a mandatory consideration for the Councils under Section 8 of the Professional Standards Act 1994 (NSW) in that Councils are required as part of a process to give public notice explaining the nature and significance of the scheme. This document serves that purpose.

Public notification of a scheme does not necessarily mean the proposed scheme will be approved by the Councils and authorised by the relevant Attorneys General or Minister.

SCA NSW has submitted an application to the Councils to approve a professional standards scheme. The Councils is the body responsible for approving schemes under the Professional Standards Legislation.

Professional Standards Legislation is Australian state-based legislation. Its objects (generally across all jurisdictions) are:

- To protect the consumers of services provided by professionals
- To facilitate the improvement of occupational standards for professionals
- To enable the creation and approval of schemes to limit the liability of professionals to whom a scheme applies.

For a scheme to be approved under Professional Standards Legislation, the occupational association proposing the scheme must demonstrate a high commitment to professional standards and consumer protection, implement comprehensive risk management strategies and set professional indemnity insurance standards for scheme participants.

SCA NSW's application is being considered by the Councils and is now available for public submissions and comments.

How can I make a comment or submission?

Comments and submissions must be made in writing to the Chief Executive Officer, Professional Standards Councils, within 28 days of public notification.

The Professional Standards Councils is located at Level 2, St James Centre, 111 Elizabeth Street, Sydney, NSW, 2000.

Website: www.psc.gov.au

Email: pscinfo@psc.gov.au

Telephone: 1300 555 772 / (02) 8315 0800.

Comments and submissions received will be public, unless confidentiality is specifically requested, and will be subject to the Privacy and Personal Information Protection Act 1998.

BENEFITS OF A PROFESSIONAL STANDARDS SCHEME

How will consumers benefit from the Scheme?

- SCA NSW Members will be bound by a Code of Ethics that compels members to act honestly, ethically and with a duty of care to their clients.
- Members must comply with a formal Complaints and Discipline regime for consumer or industry participant complaints.
- Members must comply with a continuous education regime that is double the requirement to hold a strata manager license or certificate from Fair Trading.
- Members must meet certain practice standards in day to day operations.
- Members will be regularly audited to ensure compliance with the Code of Ethics.
- SCA NSW will report to Professional Standards Australia on member activity and adherence with the Professional Standard Scheme.

How does the Scheme enhance the professional standards of SCA NSW members?

- SCA NSW Members have held the ambition to be formally recognized as a professional association since foundation 41 years ago.
- SCA NSW, if successful, would be the only property services vocation association to meet the requirements of a Professional Standard Scheme.
- SCA NSW members have been engaged for the past 2 years on the journey to obtain professional recognition and unanimously voted to amend our constitution to meet with vocational association requirements to have a Professional Standards Scheme.
- SCA NSW will have a new benchmark of conduct, risk management, education and business practices that will set SCA NSW members apart from other strata management practitioners.

How does limiting participant liability help consumers?

- The current legislative requirement provides that Strata Managers must have a minimum Professional Indemnity insurance of at least \$1m. Further, formal Continuous

Professional Development (CPD) points of 9 for a Licensee-in-Charge and 6 for a Licensed Manager. There is formal oversight on Strata Managers by NSW Fair Trading.

- Consumers are placed in a dramatically better position under a Professional Liability Scheme through a doubling of the CPD requirements for Strata Managers, monitored and enforceable Code of Ethics, formal Complaints Handling regime, and annual audits of operations, processes and procedures of members.
- Consumers are limited to their claims of liability to managers to \$750,000. This amount is far in excess of the historical successful claims made against strata managers over the past 10 years.

Is the Scheme professional indemnity insurance?

- The scale of SCA NSW members ranges from one-man operators through to large corporate businesses. Each member will seek advice from their insurance provider on the operate cover for their business. NSW Fair Trading sets a minimum level of Professional Indemnity Insurance of \$1 million.

Continuing Educational Program

- SCA NSW will have a greater level of Continuing Professional Development requirements that what is currently mandated by NSW Fair Trading:
 - Class 1 agents (Licensee in Charge Professional Strata Manager) 9 hours including 3 hours of compulsory, 3 hours of elective and 3 hours of business skills topics
 - Class 2 agents (Professional Strata Manager) 6 hours made of 3 hours of Compulsory topics, 3 hours of Elective topics
 - Assistant Agents: are required to complete 3 Modules of the Certificate IV in Strata community Management (CPP 40516) as part of their CPD requirements each year for a maximum term of 4 years.
- Under the Professional Standards Scheme, SCA NSW members will have double the CPD requirements:
 - Class 1 agents: Licensee in Charge Professional Strata Manager (LPSM) = 18 Hours of CPD per year.
 - Class 2 agents: Professional Strata Manager (PSM) = 12 Hours per year.
 - Assistant Agents: Associate Professional Strata Manager (APSM) = 6 hours per year.
- SCA NSW will audit and monitor compliance with the CPD requirements of each member.

Complaints and Discipline System

- The fundamental goal of this Complaints Management Process is to promote best practice and encourage ethical and professional practice and conduct by all Members.
- **Any** person or company, including SCA NSW members, may make a complaint about the professional conduct of a member.
- SCA NSW have a Complaints Manager responsible for managing the complaints process.
- When a complaint about the conduct of a Member is and, the process is in 4 stages:
 - Stage 1 - Lodging a Complaint and Initial Processing of a Complaint

- Stage 2 - Investigation of a Complaint; and
 - Stage 3 - Review and Hearing of a Complaint
 - Stage 4 - Findings and Disciplinary Action
- A Complaints Panel will have the power under the Code of Ethics of SCA NSW to issue disciplinary action ranging from mandatory member education, formal breach notice, and expulsion of the Member.
- If a Member is expelled, NSW Fair Trading will be advised for their own investigation and action.

The Scheme

What is a professional standards scheme?

Professional Standards Schemes are legal instruments that bind associations to monitor, enforce and improve the professional standards of their members, and protect consumers of professional services.

These associations have been approved by the Professional Standards Councils to represent professionals in a particular occupation who are members of the association for the purpose of professional standards legislation.

In return for these commitments, Professional Standards Schemes cap the civil liability or damages that professionals who take part in an association's scheme may be required to pay if a court upholds a claim against them.

What is the SCA NSW Scheme?

The SCA NSW Professional Standards Scheme will mandate that Members must meet enhanced professional code of conduct, ethics and continuing education in the protection of consumers who own or live in strata buildings in NSW.

Who administers the Scheme?

SCA NSW's Professional Standard Scheme Manager has responsibility for managing the scheme and reporting to the Board of Directors of SCA NSW.

Who is SCA NSW?

SCA NSW is the peak body for the strata sector in New South Wales. SCA NSW represents over 3,000 strata managers, principals, owners and suppliers in the sector.

The SCA (NSW) has been operating successfully as the leading Association in Strata in NSW since its inception. It has the overwhelming majority of professional participants within its membership and is well supported by the marketplace.

There is over 40 years of proud history of strata management association in NSW. As a precursor to the establishment of the Institute of Strata Title Management (ISTM) it was foreshadowed at inception in 1978 the Association objectives should be further professional strata management as opposed to general strata management.

2013 – ISTM changed its name to Strata Community Association (NSW) recognizing the diverse nature of strata title ownership and management.

Where does the Scheme operate?

The Professional Standard Scheme will apply to all strata manager members of SCA NSW servicing consumers owning and/or living in strata properties domiciled in NSW only.

When will the Scheme apply?

The Scheme will apply to Strata Manager members of SCA NSW from the date of commencement.

Does the Scheme apply to all members?

The Scheme will apply to all Strata Manager members of SCA NSW. It will not apply to any other member category. It does not apply to members of SCA in other states or territories.

How does the Scheme operate?

The Scheme will operate by limiting the civil liability on claims made against SCA NSW members to \$750,000. Members of the Scheme must comply with the Code of Conduct, Complaint Handling, Practice Standards and Continuing Education requirements of SCA NSW.

All documentation and promotional material by a member must display a disclosure statement "Liability limited by a scheme approved under Professional Standards Legislation"

How is the level of limited liability of participating [the association] members determined?

The Scheme will limit claims for civil liability against members to \$750,000. This amount was determined after actuarial analysis of historical claims paid over the past five years.

The average number of claims per year over the past five years was 5 and the average highest claim paid was \$34,000.

Can an SCA NSW member opt out of the Scheme?

No. It is a conditional of membership for strata manager members of SCA NSW to be bound by the requirements of the Scheme.

How will consumers know if a SCA NSW member is covered by the Scheme?

It is mandatory that all strata manager members of SCA NSW will covered by the Scheme.

Further, all documentation and promotional material by a member must display a disclosure statement "Liability limited by a scheme approved under Professional Standards Legislation"

How long does the Scheme operate for?

The Scheme will be in force for five years from the date of commencement.

SCA NSW AND ITS MEMBERS

Who are SCA NSW members?

SCA NSW strata managers currently manage approximately 75% of the 1,000,000 strata property owners in NSW.

In NSW there are Strata Title, Community Title and Company Title management of properties types including:

- Apartments
- Townhouses
- Commercial Offices
- Housing estates
- Factory Units
- Retail Mixed use – retail and/or commercial and/or residential
- Retirement Villages
- Serviced Apartments

Collectively there are described as Strata Schemes. As at July 2020 there were 81,710 registered Strata Plans in NSW.

SCA NSW strata manager members have 193 corporate strata management firms which encompasses almost 2,000 individual strata managers and staff.

SCA NSW strata manager firms are broken down into:

- 134 Small firms who manage under 2,200 lots
- 26 Medium firms who manage between 2,200 and 4,170 lots
- 33 Large firms who manager above 4,170 lots

What types of work do SCA NSW members carry out?

Strata Management is a specialist area of property management involving the day-to-day operation and management of Strata Schemes.

The Strata Management business then employs Strata Managers to undertake the duties as per their management agreement which have been delegated to the Strata Management business.

Strata Manager Duties

The duties that Strata Managers are contractually bound by their Management Agreement and also to be compliant with the Strata Schemes Management Act 2015 and Property Stock Agents Act 2002 are illustrated below:



Financial Management

The SSMA and PSAA states requirements that a Strata Scheme need to raise levies in an Administration Fund and a Capital Works Fund.

Levies are invoiced to Owners on a regular basis and payments made to suppliers and contractors. Strata Managers must account for these transactions by producing Financial Statements in accordance with the Australian Accounting Standards.

Accounting software is used and each Strata Schemes financial management is individual and no mingling of Strata Schemes funds.

Functions of Chairman, Secretary and Treasurer

The functions of these Strata Committee member roles are most often delegated to the Strata Management business under the Management Agreement.

These duties including:

- calling and chairing AGM meetings and Strata Committee meetings.
- Issuing and answering correspondence
- Issuing invoices, receipt deposits and making payments

Calling Meetings

There are strict requirements to ensure that all Owners have the opportunity to vote on matters affecting them and the Owners Corporation. Non-compliance with these requirements will result in the decisions being invalid and unenforceable.

Holding Books and Records

Legislation require Strata Schemes to hold all records for 7 years. Further, these records have to be kept securely and available for inspection by Owners, NSW Fair Trading and importantly any potential purchasers. Records are held either in a paper or electronic form or both.

Repairs and Maintenance to Common Property

Strata Schemes are statutorily required to repair and maintain the common property elements of the building. This includes cleaning, electrical and plumbing repairs and garden maintenance. It would also include complex capital works such as painting, window replacement and remedial work.

Engaging contractors

In general, most repairs and maintenance duties are performed by contractors employed by the Owners Corporation. There are statutory requirements for engaging these contractors to ensure they hold the proper licenses, insurance and WH&S requirements to undertake the work engaged.

Contractors can be engaged on a one-off basis, a fixed-term contract to a Scope of Works, or a rolling service basis such as cleaning and gardens maintenance.

Engaging experts

Owners Corporations will often require the services on experts to provide advice on matters affecting the Strata Scheme. These could include lawyers, engineers and consultants.

Budgeting

Strata Managers advise the Owners Corporation on the anticipated expenditure required for the coming financial year and a recommendation on the strata levies to be raised to meet this expenditure.

Tax and BAS management

Strata Schemes are required to lodge a tax return each year by the ATO. Strata Managers need to account for any taxable include and have the tax return lodged by a Tax Agent.

Many buildings are registered for GST and Business Activity Statements have to be lodged by BAS Agents. Strata Managers are required to account for all input credits and taxable expenses and report to enable BAS statements to be lodged.

Paying expenses

Strata Managers, under delegation within the Management Agreement, are required to pay invoices. Strata Managers are required to

Issuing levies and receipting income

Strata Managers must issue levies to Owners based on the Unit of Entitlement at intervals and for amounts agreed by the Owners Corporation. Payments for levies must be individually accounted to each respective Owner under their own separate accounting ledger.

Compliance with Scheme By-Laws

Each Strata Scheme has its own individual By-Laws which govern how Owners, Residents and Visitors have to interact with the Common Property, the Owners Corporation and fellow Owners and Residents.

By-Laws cover rules that apply to all persons, but also individual By-Laws for a single Owner. These are often called Exclusive-use By-Laws and often relate to renovation works.

Legislation sets out a template of standard By-Laws. Strata Schemes can then create additional By-Laws which are agreed at a properly convened General Meeting of the Owners Corporation.

Strata Managers assist the Strata Scheme:

- Developing appropriate By-laws
- Facilitate a General Meeting to have them agreed by the Owners Corporation
- Register the By-Laws with the Land Title office
- Communicate new By-Laws to all Owners, Residents and Visitors
- Monitor compliance with By-Laws
- Issue By-Law breach notices and Notice to Comply to any offenders
- Attend Fair Trading mediation on behalf of the Owners Corporation
- Apply and attend NSW Civil Administration Tribunal (NCAT) to have action taken against By-Law breach offenders

Compliance with Statutory legislation

Strata Managers have to assist and advice Owners Corporation of all their statutory responsibilities that they have to comply. This includes WH&S, Child-Safety Window Locks, SSMA and Strata Scheme regulations, reporting to statutory authorities such as Fair Trading for asbestos and cladding, Fire compliance and lift safety among others.

Arranging insurance and managing claims

Strata Schemes must be adequately insured to protect the Owners property in case of a loss event such as flood or fire. Strata Managers will arrange insurance quotes for the appropriate amount of coverage for the Owners Corporation to agree to be insured.

When a loss event occurs, the Strata Manager will attend to the insurance claim process to have required repairs made.

Debt recovery

When strata levies are unpaid, the Strata Manager will undertake recovery action for the Strata Scheme. This will include sending arrears letters and if still unpaid instigating legal action to recover the debt through the Courts.

WHERE CAN I FIND MORE INFORMATION?

You can find out more information by contacting SCA NSW:

Phone: 02 9492 8200

Email: PSS@strata.community

Address: Suite 102, Level 1
845 Pacific Highway
Chatswood NSW 2067