

*Secretary of the Department of Finance Services and Innovation’s process to appoint building inspectors for the Strata building bond and inspections scheme (SBBIS).*

SECRETARY’S PROCESS

Appointment of building inspectors

for

Strata building bond and inspections scheme

**Published by**

NSW Fair Trading

PO Box 972

PARRAMATTA NSW 2124

Tel: 13 32 20

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

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# Table of Contents

[Table of Contents 2](#_Toc501614032)

[Introduction 5](#_Toc501614033)

[Overview of this Guideline 6](#_Toc501614034)

[Part 1: Strata inspector panel and qualified person 7](#_Toc501614035)

[1.1 Listed Body administers the Strata inspector panel 7](#_Toc501614036)

[1.2 Qualified person 8](#_Toc501614037)

[1.3 Obligations of building inspector 8](#_Toc501614038)

[1.4 Inspections and reports 8](#_Toc501614039)

[1.4.1 Interim report 8](#_Toc501614040)

[1.4.2 Final report 9](#_Toc501614041)

[1.4.3 Copies or notices of reports 9](#_Toc501614042)

[1.5 Powers of a building inspector 9](#_Toc501614043)

[Part 2: Process to appoint the qualified person as the building inspector 10](#_Toc501614044)

[Part A: Interim inspection and report 10](#_Toc501614045)

[2.1 Developer to appoint qualified person as building inspector 10](#_Toc501614046)

[2.1.1 Initial period of a strata scheme – ends within 12 months after the completion of building work 10](#_Toc501614047)

[2.2 Secretary to arrange appointment of a qualified person as building inspector 10](#_Toc501614048)

 [Developer failed to appoint – for any reason 10](#_Toc501614049)

[2.2.1 Initial period of a strata scheme – ends within 12 months after the completion of building work 10](#_Toc501614050)

[2.2.2 Owners corporation approves the building inspector – owner objects 10](#_Toc501614051)

[2.2.3 Initial period for a strata scheme - does not end within 12 months after the completion of building work 11](#_Toc501614052)

[2.2.4 Secretary otherwise becomes aware that a developer has not appointed a building inspector 11](#_Toc501614053)

[2.3 The process the Secretary will follow to arrange the building inspector. 11](#_Toc501614054)

[2.3.1 Select the step to access the strata inspector panel 11](#_Toc501614055)

[2.3.2 Select the step to access the qualified persons 11](#_Toc501614056)

[Part B: Final inspection and report 13](#_Toc501614057)

[2.4 Final report is required: 13](#_Toc501614058)

[2.4.1 Developer does arrange final report 13](#_Toc501614059)

[2.4.2 Building inspector to be appointed by Secretary – final report 13](#_Toc501614060)

[2.5 The process the Secretary will follow to arrange the building inspector. 13](#_Toc501614061)

[2.6 No final inspection is required 13](#_Toc501614062)

[Part C: Additional information 15](#_Toc501614063)

[2.7 The specialist and additional inspector’s reports 15](#_Toc501614064)

[2.8 The costs of appointments and reports 15](#_Toc501614065)

[2.9 Interim and final reports 15](#_Toc501614066)

[Part D: Appointing the building inspector - Diagrams 16](#_Toc501614067)

[2.10 Appointing the building inspector - developer 16](#_Toc501614068)

[2.11 Appointing the building inspector – Secretary 18](#_Toc501614069)

[Part 3: Secretary expectations and requirements 19](#_Toc501614070)

[3.1 Listed body 19](#_Toc501614071)

[3.1.1 Listed body in the Regulation 19](#_Toc501614072)

[3.1.2 Designated contact 19](#_Toc501614073)

[3.1.3 Membership 19](#_Toc501614074)

[3.1.4 Application and renewal process 19](#_Toc501614075)

[3.1.5 Nature of the listed entity 20](#_Toc501614076)

[3.1.6 Terms and conditions 20](#_Toc501614077)

[3.1.7 Code of Conduct 20](#_Toc501614078)

[3.1.8 Complaint handling and dispute resolution process 21](#_Toc501614079)

[3.1.9 Discipline and sanctions 21](#_Toc501614080)

[3.1.10 Monitoring listed bodies 22](#_Toc501614081)

[3.1.11 Record keeping system 22](#_Toc501614082)

[3.1.12 Publishing strata inspector panel information 22](#_Toc501614083)

[3.1.13 Strategy if the listed body exits the strata inspector panel 23](#_Toc501614084)

[3.2 Qualified persons requirements 23](#_Toc501614085)

[3.2.1 Members 23](#_Toc501614086)

[3.2.2 Member’s probity 23](#_Toc501614087)

[3.2.3 Record keeping system 24](#_Toc501614088)

[3.2.4 Publishing qualified person information 24](#_Toc501614089)

[3.2.5 Strategy if the qualified person exits the strata inspector panel 24](#_Toc501614090)

[Part 4: Ongoing requirements for listed bodies with a strata inspector panel 25](#_Toc501614091)

[4.1 Standard conditions of strata inspector panel 25](#_Toc501614092)

[4.2 Variation of Guidelines from time to time 27](#_Toc501614093)

[Part 5: Management of co-regulatory membership framework 28](#_Toc501614094)

[5.1 Audit or investigate a listed body with a strata inspector panel 28](#_Toc501614095)

[5.2 Request information from a listed body with a strata inspector panel 28](#_Toc501614096)

[5.3 Notice of voluntary cancellation of strata inspector panel 28](#_Toc501614097)

[5.4 Warning notices 28](#_Toc501614098)

[5.5 Secretary’s involvement in complaints 28](#_Toc501614099)

[5.6 Secretary’s involvement when listed body’s strata inspector panel is cancelled 29](#_Toc501614100)

[5.10 Penalties 29](#_Toc501614101)

[Part 6. Secretary’s request for additional information from the qualified person before appointment as a building inspector 30](#_Toc501614102)

[Part 7. Glossary 32](#_Toc501614103)

[Part 8. DOCUMENT CONTROL 33](#_Toc501614104)

[8.1 Document Approval 33](#_Toc501614105)

[8.2 Document version control 33](#_Toc501614106)

[8.3 Document review date 33](#_Toc501614107)

# Introduction

This document sets out the process the Secretary[[1]](#footnote-2) will follow to arrange for the appointment by the Secretary of a qualified person as a building inspector to carry out an inspection of, and report on, the building work in accordance with Part 11 of the *Strata Schemes Management Act 2015* (NSW) (the Act).

The process includes the Secretary’s expectations of:

* the listed bodies that provide a strata inspector panel for the purposes of the Act, and
* the qualified persons that may be appointed building inspectors for the purposes of the Act.

Part 11 of the Act and Part 8 of the Strata Schemes Management Regulation 2016(NSW) (the Regulation) further outline requirements for the operation of the Strata Building Bond and Inspections Scheme (the Scheme).

Part 11 of the Act and Part 8 of the Regulation apply to building work carried out on a building, or part of a building that is included in a strata scheme. This applies to residential building work including buildings used for mixed purposes incorporating residential use.

The developer means the developer of a strata scheme by whom or on whose behalf building work to which Part 11 applies, was carried out.

The owners corporation means an owners corporation constituted under section 8 of the Act.

A building inspector means a person appointed for the purposes of this Scheme as a building inspector for building work. A person is qualified to be appointed as a building inspector only if the person is a member of a class of persons prescribed by the Regulations for the purposes of the Act.

A person who is a member of a strata inspector panel (SIP) established by any of the bodies listed in the Regulation is qualified to be appointed as a building inspector.

The guideline for developers and owners corporations to appoint a building inspector is located on the Fair Trading website in the publication ‘Guideline: Appointment of building inspectors for Strata building bond and inspections scheme.’

The requirements for the interim and final reports are located on the Fair Trading website in the publication ‘Inspection reports: combined forms for interim and final reports for Strata building bond and inspections scheme.’

This document addresses how the Secretary will appoint a qualified person as a building inspector for the purposes of SBBIS.

# Overview of this Guideline

**Part 1** sets out **what** the strata inspector panel is and **who** the qualified persons are.

**Part 2** sets out the **process** to appoint a qualified person as the building inspector.

**Part 3** sets out the Secretary’s **expectations** and **requirements**.

**Part 4** sets out the **standard** and **specific** conditions the listed body must comply with to maintain a strata inspector panel.

**Part 5** sets out the how the Secretary will **manage** the co-regulatory framework.

**Part 6** sets out the **form** to be completed by the qualified person before appointment by the Secretary.

**Part 7** sets out a **glossary** of key terms used in the Guideline

**Part 8** sets out the **versions** and updates to this Guideline

# Part 1: Strata inspector panel and qualified person

Strata inspector panels are provided by authorised bodies that are listed in the Regulation (Part 8, Clause 45). These bodies are responsible for the management and administration of their strata inspector panel. Listed bodies have their own processes and membership criteria, however they must satisfy all the requirements included in this document for their qualified persons to be appointed by the secretary as building inspectors.

Each of the listed bodies may have different levels of membership depending on the varying qualifications, skills, and experience of its members.

## 1.1 Listed Body administers the Strata inspector panel

Part 8, Clause 45 of the Regulation contains the following listed bodies:

(a) the Housing Industry Association

(b) the Master Builders Association of New South Wales

(c) the Australian Institute of Building

(d) the Australian Institute of Building Surveyors

(e) the Australian Institute of Building Consultants

(f) the Institute of Building Consultants Inc

(g) Engineers Australia

(h) the Australian Institute of Architects

(i) the Association of Accredited Certifiers.

Each listed body must determine if a person is a qualified person and competent to perform building inspections and produce reports for the purpose of the Strata Building Bonds and Inspections Scheme. The listed body also determines if the qualified person will be included on the strata inspector panel.

The management and administration of these panels should be such that promotes self-governance in an accountable and transparent way. The strata inspector panel may publish freely accessible information on their respective websites to outline what they are doing to achieve self-governance and information about the members included in their strata inspector panel. This is not a mandated requirement, however, the Secretary will strongly favour appointment of building inspectors from strata inspector panels that have complied with this Guideline.

## 1.2 Qualified person

An individual person who is a member of a listed body in Part 8 of the Regulation may be recognised as a building inspector. That person must be able to perform the role of building inspector to conduct interim and final inspections and provide reports as mandated in the Act.

No other specific industry specific membership is required to perform strata building inspections for the purposes of the Scheme.

The qualified person’s registrations, qualifications, skills, experience and acknowledged competency limitations must be freely accessible on the listed body’s website. The Secretary will strongly favour appointment of building inspectors who maintain their own websites and publish information about their expertise.

## 1.3 Obligations of building inspector

A building inspector carrying out functions under this Part cannot and does not represent the interests of the developer of a strata scheme and has a duty to act impartially in carrying out the functions of a building inspector under this Part. This subsection has effect despite any condition of the appointment of the building inspector and whether or not the inspector was appointed by the developer.

A building inspector must act impartially in the course of the building inspector’s functions as a building inspector under this Act. They must not seek or accept, or offer or agree to accept, any benefit of any kind, whether on the building inspector’s own behalf or on behalf of any other person.

A person must not, on an understanding that a building inspector will act otherwise than impartially in the exercise of the building inspector’s functions as a building inspector under this Act, give, or offer to give, any benefit of any kind, whether to the building inspector or any other person.

## 1.4 Inspections and reports

## 1.4.1 Interim report

A building inspector appointed is to carry out an inspection of the building work, and provide an interim report, not earlier than 15 months and not later than 18 months after the completion of the building work.

The requirements of the interim report are contained in the Inspection report for Strata building bond and inspections publication on the Fair Trading website.

## 1.4.2 Final report

A building inspector appointed to carry out a final inspection is to carry out a final inspection of the building work, and provide a final report, not earlier than 21 months and not later than 2 years after the completion of the building work.

The requirements of the final report are contained in the Inspection report for Strata building bond and inspections publication on the Fair Trading website.

## 1.4.3 Copies or notices of reports

A building inspector must give a copy of an interim report or final report to the following persons not later than 14 days after completing the report:

* Developer,
* Owners corporation, if the initial period has ended
* Secretary,
* The builder responsible for any defective building work identified in the report.

## 1.5 Powers of a building inspector

A building inspector appointed to prepare a report may enter and inspect any part of the parcel of the strata scheme.

The building inspector must give at least 14 days written notice to the owners corporation and the owner and any occupier of any affected lot of an intention to enter any part of the parcel of the strata scheme.

The owners corporation, any person who has exclusive use of common property, a strata managing agent, any building manager or manager of the common property and any owner or occupier of a lot must provide any assistance that is reasonable to enable an inspection to be carried out in accordance with this Division.

A person must not, without reasonable excuse, refuse a building inspector access to any part of the parcel of a strata scheme or a lot in the strata scheme, or obstruct or hinder a building inspector, in the exercise of the inspector’s functions under this Act.

# Part 2: Process to appoint the qualified person as the building inspector

## Part A: Interim inspection and report

## 2.1 Developer to appoint qualified person as building inspector

The developer must appoint a building inspector, however, if the developer fails for any reason, the Secretary will arrange the building inspector.

## 2.1.1 Initial period of a strata scheme – ends within 12 months after the completion of building work

The developer must appoint a qualified person as a building inspector to carry out an inspection of, and report on, the building work, where the initial period of a strata scheme ends within 12 months after completion of building work – see: Fair Trading website in the publication ‘Guideline: Appointment of building inspectors for Strata building bond and inspections scheme.’

## 2.2 Secretary to arrange appointment of a qualified person as building inspector

## Developer failed to appoint – for any reason

If a building inspector is not appointed by the developer through this process, the Secretary will then arrange for the appointment of a qualified person as a building inspector to carry out an inspection of, and to report on, the building work.

## 2.2.1 Initial period of a strata scheme – ends within 12 months after the completion of building work

On notification by a developer that the developer has not appointed a building inspector, the Secretary will arrange for the appointment of a qualified person as a building inspector to carry out an inspection and report on the building work.

## 2.2.2 **Owners corporation approves the building inspector – owner objects**

When an owner’s corporation approves the proposed qualified person as the building inspector but an owner of a lot in the subject strata scheme objects to the appointment of that qualified person, that owner may give the Secretary written notice of their objection and the grounds for the objection, no later than 14 days after the approval of the appointment. The Secretary will consider an objection received by written notice only if received within the legislated timeframe.

If the Secretary determines it to be reasonable and appropriate in the circumstances, the Secretary will then arrange for the appointment of another qualified person as the building inspector to carry out an inspection of, and to report on, the building work. The Secretary will make the decision as soon as reasonably practicable.

The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner’s corporation.

## 2.2.3 Initial period for a strata scheme - does not end within 12 months after the completion of building work

If the initial period for a strata scheme does not end within 12 months after the completion of building work, the developer of the strata scheme must give the Secretary written notice of that fact not later than 21 days after the end of that period. The Secretary will then arrange for the appointment of a qualified person as a building inspector to carry out an inspection and report on the building work.

## 2.2.4 Secretary otherwise becomes aware that a developer has not appointed a building inspector

The Secretary will arrange for the appointment of a qualified person as a building inspector to carry out an inspection of, and to report on, the building work.

## 2.3 The process the Secretary will follow to arrange the building inspector.

The Secretary will access the Strata Building Bond and Inspections Scheme portal (SBBIS portal), and

## 2.3.1 Select the step to access the strata inspector panel

The Secretary will use the SBBIS portal step to access the strata inspector panel page. The Secretary will select the listed body in order of the placement in the Regulation and rotate through the list. The Secretary will assess the listed body’s information freely accessible on their website.

The Secretary will select a listed body that suitably addresses all the requirements of this Guideline. The Secretary will inform a listed body in writing when it does not satisfy the requirements. The Secretary will repeat the process to ascertain the next listed body that does meet the requirements**.**

## 2.3.2 Select the step to access the qualified persons

The same process will be followed for the selection of a qualified person. The Secretary will review the required information about the selected qualified person available on their website.

If a qualified person satisfies the requirements of this Guideline they must complete and sign the form included in this Guideline. Following the completion and lodgement of the form to the Secretary, the Secretary will consider and determine whether the qualified person will be appointed as the building inspector.

If the selected qualified person does not satisfy the requirements outlined in this Guideline (Part 3.2 and Part 6) they may not be appointed. The Secretary will repeat the process to identify and appoint a qualified person that does meet the requirements of this Guideline.

In the circumstance when the SIP or the qualified person does not satisfy the requirements in this Guideline, the Secretary will provide the reason to enable appropriate corrective action should they choose, by the respective entity.

The Secretary will provide written notification to all interested parties as to the appointment of the selected qualified person as building inspector.

## Part B: Final inspection and report

## 2.4 Final report is required:

## 2.4.1 Developer does arrange final report

The situations when the developer has arranged the final report are located on the Fair Trading website in the publication ‘Guideline: Appointment of building inspectors for Strata building bond and inspections scheme’.

## 2.4.2 Building inspector to be appointed by Secretary – final report

The Secretary will arrange for the appointment of a qualified person as a building inspector to carry out the final inspection of and provide the final report on, the building work.

The Secretary will arrange the building inspector in the following circumstances:

* On notification from the developer that the original building inspector is not available,
* The developer makes an application to the Secretary to appoint,
* If the Secretary otherwise becomes aware that a developer has not complied with 2.5 (Section 200(1) of the Act, and
* If no building inspector has been appointed in the online portal

## 2.5 The process the Secretary will follow to arrange the building inspector.

The process is the same as above in 2.3.

## 2.6 No final inspection is required

### 2.6.1 Secretary arranged interim report – no defective building work identified

The Secretary is not required to arrange for a final inspection and report if the interim report was prepared by a building inspector arranged by the Secretary and the report did not identify any defective building work

### 2.6.2 Application by developer - for no final inspection.

The Secretary may, on application by a developer determine that the developer is not required to arrange for a final report if:

1. the interim report did not identify any defective building work, and
2. the Secretary thinks it appropriate in the circumstances of the case to make the determination.

The Secretary must give written notice of any decision that a final inspection and report is not required to the owners corporation and the developer not later than 28 days after the decision is made.

In any case in which a final report is not required, the interim report is taken to be the final report. record that building inspector is available proposed qualified person to discuss relevant details and disclosures before proposing them to the owners corporation.

## Part C: Additional information

## 2.7 The specialist and additional inspector’s reports

The Secretary expects a person who has been appointed as a building inspector to engage additional specialists to inspect and report on the areas outside of the building inspector’s competencies. The building inspector is encouraged to engage additional specialists where required – not required to be sourced from the SIP, but any person engaged by a building inspector must be independent of the stakeholders in the construction of the relevant building work. Any reports produced by an additional specialist are to be included in and form part of the interim and final reports. These will be composite and not separate reports.

## 2.8 The costs of appointments and reports

The costs of obtaining an inspection and report by a building inspector under the Scheme are to be borne by the developer, irrespective of whether the building inspector was appointed by the developer.

The parties to the inspection agreement will be the developer and the building inspector only, even when additional specialists are engaged. The costs incurred from the additional specialists by the building inspector under this scheme are to be borne by the developer, irrespective of whether the additional specialists were appointed by the developer.

## 2.9 Interim and final reports

An application to vary the period within which an interim report or a final report is to be provided will be considered by the Secretary on a case by case basis. If a building inspector does not give a copy of the interim report or final report within 14 days after completing the report to the required persons via the online portal, a penalty may apply.

## Part D: Appointing the building inspector - Diagrams

## 2.10 Appointing the building inspector - developer

### 2.10.1 Diagram 1a: Interim inspection

|  |  |
| --- | --- |
| Initial period of strata schemeEnds within 12 months | Initial period of strata scheme ends after 12 months |
| Developer must:Select qualified person as building inspector | Developer must:advise Secretary |
|  |  |  |  |
| Advise owners corporation ofproposed building inspector | Does not do anything |  |
|  |  |  |  |
| Owners corporation approves\* | Owners corporation refuses |  |  |
|  |  |  |  |
| Building inspector appointed | Developer failed to appoint building inspector |  |
|  |  |  |  |
| Developer appoints the building inspector | Secretary to appoint building inspector\*\* |
|  |  |  |  |

\* There is avenue for an owner of a lot in a strata scheme who objects to an approval of the appointment of a building inspector by the owner’s corporation to give the Secretary written notice of the objection and the grounds for the objection no later than 14 days after the approval.

 If appropriate in the circumstances, the Secretary may provide the developer the opportunity to repeat the process or will arrange for the appointment of another qualified person as the building inspector.

\*\* The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner’s corporation.

### 2.10.2 Diagram 1b: Final inspection

|  |
| --- |
| Not later than 18 months after the completion of building works |
| Developer must:Select original building inspector | Secretary becomes aware developer not complied |
|  |  |  |  |
| Available to carry out final inspection and report  | Application to Secretary |  |
|  |  |  |  |
|  |  |  |  |
| Yes: Building inspector appointed | No: building inspector not available |  |  |
|  |  |  |  |
| Developer appoints the building inspector | Secretary to appoint building inspector\*\* |
|  |  |  |  |

\*\* The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner’s corporation.

## 2.11 Appointing the building inspector – Secretary

### 2.11.1 Diagram 2: Interim and final report



# Part 3: Secretary expectations and requirements

##

## 3.1 Listed body

## 3.1.1 Listed body in the Regulation

The listed body must be listed within Part 8 of the Regulation.

## 3.1.2 Designated contact

The listed body must have a designated contact person for the strata inspector panel to whom the Secretary will direct enquiries relating to the appointment process and all ongoing communication. The listed body must provide the designated contact person’s:

* name
* position title
* email address and whether they will accept electronic communication as primary/service communication
* work telephone number
* work postal address
* office address.

A listed body with a strata inspector panel will need to notify the Secretary in writing within 14 days if their designated contact person changes and provide the Secretary with the details of the new person.

## 3.1.3 Membership

Membership with one of the listed bodies is the pre-requisite for inclusion onto that listed body’s strata inspector panel. The listed body administers the strata inspector panel.

The listed body must outline the membership structure and the requirements for each class, such as qualifications and experience. The member then will be referred to as a qualified person in the strata inspector panel.

## 3.1.4 Application and renewal process

The listed body must have a publicly documented application and renewal process for membership that is fair, impartial, transparent and timely. As a minimum, the listed body’s process must incorporate the following:

* a clear and objective membership level criteria that includes
	+ relevant skills, knowledge and experience requirements that an applicant / member must possess to competently perform the building inspector role
	+ the methods that will be used to evaluate the competence of members as they relate to the scheme and building inspector
	+ any other entry requirements that the listed body considers necessary;
* a method to verify the applicant’s application / renewal information;
* a mechanism for appeal if membership renewal is not granted;
* a mechanism to replace an appointed building inspector should that member become incompetent in any manner to complete the appointed inspection. The proposed replacement building inspector must receive approval from the Owners Corporation only if approval was initially provided. If the Secretary had appointed the initial building inspector, the Secretary must receive written notification of the incompetency to determine further action.

## 3.1.5 Nature of the listed entity

The listed body must provide a brief outline that includes:

* its history
* current structure
* core activities
* the industry sectors represented.

## 3.1.6 Terms and conditions

The listed body must publicly document the standard terms and conditions imposed on membership holders under its membership strata inspector panel.

The listed body must include the following:

* a condition that requires a membership holder to keep all records to comply with State and industry record keeping requirements relating to the work they perform as a building inspector for the purpose of this Act;
* a condition that requires a member to make any restriction or condition on their licence (if any) known to any person, with failure to do so resulting in suspension or cancellation of their inclusion in the strata inspector panel as appropriate in the circumstances;
* a condition that a member must not represent that they are able to do work as a building inspector that extends beyond their competency, with failure to do so resulting in suspension or cancellation of their inclusion in the strata inspector panel as appropriate in the circumstances.

## 3.1.7 Code of Conduct

The listed body must have a publicly documented Code of Conduct for qualified persons. The Code of Conduct must require the qualified person to:

* act in the public interest above all other interests when performing their building inspector role;
* comply with relevant laws *The Home Building Act 1989*, or any standards related to the building inspector role;
* comply with the entity’s membership criteria;
* maintain their abilities, skills and knowledge necessary to perform the building inspector role;
* disclose and manage conflicts of interest with information as to what is considered a conflict of interest and the minimum requirements for disclosing and managing conflicts of interest set out in the Code of Conduct;
* act diligently, competently, fairly and with honesty and integrity.

## 3.1.8 Complaint handling and dispute resolution process

The listed body must have a complaint handling and dispute resolution process for the strata inspector panel process that is free, fair, impartial, transparent, timely, and encourages the resolution of disputes. The process must be publiclly documented and must:

* allow any interested person[[2]](#footnote-3) to make a complaint about the activities of a listed body or a qualified person or in its capacity as a building inspector;
* separate the assessment and investigation of complaints about the qualified person or listed body from the final decision making;
* be conducted by persons who were not involved in the matter complained of and are fit and proper to perform this role;
* have a mechanism for appeal for the complainant and qualified person/building inspector;
* have a mechanism to notify the Secretary of complaints made against a member of the strata inspector panel.

## 3.1.9 Discipline and sanctions

The listed body must have a procedure for disciplining a member of the strata inspector panel that is fair, impartial, transparent and timely. The procedure must be publicly documented and must:

* apply procedural fairness, including separating the assessment and investigation of a member of the strata inspector panel from the final decision making;
* be conducted by a person, or persons, who are independent and fit and proper to perform this role;
* describe the grounds for disciplining a member of the strata inspector panel,
* describe the forms of discipline and sanctions which may be imposed on a member of the strata inspector panel, including requiring additional training or education, or suspending or cancelling the membership of member of the strata inspector panel;
* describe how the listed body will monitor imposed disciplinary measures and sanctions; and
* have a mechanism for appeal by a member of the strata inspector panel in respect of any disciplinary action taken against them;
* have a mechanism to notify the Secretary of membership holders who have been subject of any disciplinary action or sanctions.

## 3.1.10 Monitoring listed bodies

The listed body must have a publicly documented process for monitoring the activities of its members to ensure compliance with the Code of Conduct, and identify areas where improvement is needed or disciplinary action may need to be taken. This could take the form of formal and informal audits of members.

The listed body may also monitor its members for other purposes relating to the operation of the membership of the strata inspector panel and a member’s role as a qualified person to perform building inspections for the purpose of the Scheme.

The listed body must have available to the Secretary a copy of its current process for regulating that members’ comply with requisite listed body requirements.

## 3.1.11 Record keeping system

The listed body must have in place a record keeping system to keep all documents about and relating to the strata inspector panel including:

* application and renewal assessments;
* register of current and former members;
* investigations of members;
* complaints records;
* audits of members;
* disciplinary records;
* historical versions of documented processes, including
	+ application and renewal process for membership under the scheme
	+ terms and conditions imposed on members
	+ Code of Conduct for members
	+ complaints handling and dispute resolution process for the strata inspector panel
	+ procedure for disciplining members
	+ process for monitoring the activities of members.

## 3.1.12 Publishing strata inspector panel information

The listed body must have a free-to-access website that includes clear information about the membership of its strata inspector panel. The website must, as a minimum, include the following:-

* a searchable up-to-date register of current and former members listing the member’s
	+ - name individual and trading entity
		- The entity’s ABN and/or ACN
		- phone number
		- email address
* any disciplinary action or sanctions imposed on a current or former members;
* current and historical versions of key documents and information about or related to the membership strata inspector panel, such as
* application and renewal process for membership under the scheme
* terms and conditions imposed on members
* Code of Conduct for members
* complaints handling and dispute resolution process for the membership strata inspector panel
* procedure for disciplining members
* process for monitoring the activities of members.
* Exit/cancellation strategy (see below 3.1.13)

## 3.1.13 Strategy if the listed body exits the strata inspector panel

The listed body must describe its strategy for managing its members who are qualified persons under the Scheme if its inclusion in the Regulation is cancelled by the Secretary or voluntarily surrendered for any other reason.

## 3.2 Qualified persons requirements

## 3.2.1 Members

To be appointed as a qualified person to perform building inspections for the purpose of the Scheme, the qualified person must hold membership with at least one of the listed bodies in clause 45 of the Regulation.

The member must then satisfy the listed body’s criterion to be held out as a qualified person to perform building inspections for the Scheme (if the listed body has any).

The SBBIS portal will have a step for the developer to access the listed bodies. The developer will then select the listed body and be directed to that body’s members.

It is the listed body and member’s responsibility to maintain the member list from which the developer (or the Secretary) will select the member to perform the building inspections.

## 3.2.2 Member’s probity

It will be the responsibility of the listed body to make inquiries of their members’ probity.

The qualified person is required to complete the additional information form included in Part 6 and submit to the Secretary before appointment is finalised.

If any of the conditions cannot be met or are not satisfied in this Guideline, the person will be given the opportunity to provide reasoning to the Secretary as to why they should be considered as a qualified person to perform building inspections for the purpose of *Strata Schemes Management Act* *2015* – Part 11 and the Regulation – Part 8.

## 3.2.3 Record keeping system

The member must have in place a record keeping system to keep all documents about and relating to their inclusion in strata inspector panel including:

* inspection reports
* register of current and former memberships
* investigations records
* complaints records
* audits
* disciplinary records
* historical versions of documented processes, such as inspection methods.

## 3.2.4 Publishing qualified person information

The member must have a free-to-access website that includes clear information about their services. The website must, as a minimum, include:

* the member’s details:
* name
* name of their trading entity
* physical business address
* telephone number
* email address
* membership details:
	+ name of the Clause 45 listed body
	+ membership number
	+ level of membership
* Licence details (if any):
	+ Licence/registration number/s
	+ Type of licence/registrations
	+ Qualifications
	+ Skills and Experience
* any disciplinary action or sanctions imposed on them.

* Cancellation strategy (see 3.2.5)

## 3.2.5 Strategy if the qualified person exits the strata inspector panel

The qualified person must describe their strategy if their inclusion in the listed body is cancelled by the listed body, the Secretary or voluntarily surrendered for any other reason.

# Part 4: Ongoing requirements for listed bodies with a strata inspector panel

The Secretary imposes specific conditions on the listed body and / or the strata inspector panel.

## 4.1 Standard conditions of strata inspector panel

A listed body with a strata inspector panel will need to comply with the standard conditions outlined in this section.

The Secretary may from time to time vary this Guideline in accordance with business and other requirements and this may affect eligibility under the Guideline.

The Secretary will notify a listed body with a strata inspector panel if any standard conditions will be imposed, varied or revoked and provide a reasonable time period, at the Secretary’s discretion, for those conditions to be implemented.

### 4.1.1 General obligations

A listed body and its staff involved in the management and operation of the strata inspector panel have the following general obligations to:

* act in the public interest above all other interests in performing its role as co-regulator of a strata inspector panel;
* act independently, fairly and with honesty and integrity in performing its role as co-regulator of a strata inspector panel;
* avoid and manage conflicts of interest, including conflicts of interest between the commercial interest of the listed body, its members and the management of the strata inspector panel;
* proactively ensure that its strata inspector panel members meet changing industry practices;
* notify the Secretary as soon as becoming aware of any activities or matters that may jeopardise public confidence in the strata inspector panel, the members under the scheme or public safety more broadly.

### 4.1.2 Satisfy requirements of this Guideline

A listed body must continue to satisfy the requirements of this Guideline for the duration of the listed body’s strata inspector panel’s recognition. For example, the listed body continues to:

* publicly document its application and renewal process for membership under its scheme
* publicly document its Code of Conduct, complaints handling and disciplinary procedures

A listed body must immediately notify the Secretary, of any non-compliance of this Guideline and the strategies to be employed to rectify the non-compliance.

### 4.1.3 Comply with a request to provide information to the Secretary

A listed body must comply with the reporting requirements outlined in this Guideline. A listed body must also, on written request, provide the Secretary with any information the Secretary reasonably requires about the listed body and / or the listed body’s strata inspector panel. This includes, but is not limited to, information about:

* the number of individuals approved under the strata inspector panel;
* accepted and rejected applications and renewals for membership under the strata inspector panel;
* complaints, detailing
	+ the number of complaints received by the listed body relating to the strata inspector panel and / or membership holders
	+ the source and nature of the complaints
	+ the action taken by the listed body to remedy the matter complained of and the outcome of that action (including details of the notification given to the relevant authority, where the subject of the complaint is of a type that requires such notification;
	+ the number and type of disciplinary actions taken against membership holders.

### 4.1.4 Comply with relevant laws

A listed body with a strata inspector panel must comply with the provisions of any relevant statues, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority.

### 4.1.5 Notify the Secretary of any circumstances that may affect its ability to comply with any standard or specific conditions

A listed body must immediately notify the Secretary in writing of any circumstances that may affect its ability to comply with any standard or specific conditions. For example, this includes the circumstance where a listed body intends to make a change that may affect its ability to continue to satisfy the requirements of this Guideline.

### 4.1.6 Comply with audits and investigations conducted by the Secretary

A listed body must comply with any reasonable request of the Secretary to conduct an independent audit and / or investigation of the listed body:

* to determine whether the listed body is complying with the requirements of this Guideline such as the conditions of recognition;
* in response to a complaint lodged about a listed body;
* if the Secretary is of the opinion that it is in the public interest to do so; or
* in any other circumstance that the Secretary considers necessary.

## 4.2 Variation of Guidelines from time to time

The Secretary may from time to time vary this Guideline in accordance with business and other requirements and this may affect eligibility under the Guideline.

# Part 5: Management of co-regulatory membership framework

## 5.1 Audit or investigate a listed body with a strata inspector panel

The Secretary may audit or investigate matters in relation to the SBBIS of a listed body with a strata inspector panel:

* to determine whether the listed body is complying with the requirements of the guidelines;
* in response to a complaint lodged about a listed body;
* if the Secretary is of the opinion that it is in the public interest to do so; or
* in any other circumstance that the Secretary considers necessary.

## 5.2 Request information from a listed body with a strata inspector panel

The Secretary may request any information in regards to the SBBIS, that is reasonably required about the listed body and / or the listed body’s strata inspector panel.

## 5.3 Notice of voluntary cancellation of strata inspector panel

A listed body will need to give the Secretary at least 90 days’ written notice of its intention to voluntarily cancel its strata inspector panel. NSW Fair Trading will publish a notice on its website notifying the public that the listed body’s strata inspector panel plans to be voluntarily cancelled by the listed body.

The listed body will need to implement its strategy for managing membership holders that were accepted under the listed body’s strata inspector panel. Any membership granted prior to the date of voluntary cancellation will continue to have effect according to its terms, unless in the opinion of the Secretary it is not in the public interest for the membership to continue.

## 5.4 Warning notices

The Secretary may consult with the listed body and/or qualified person and may publish a notice warning persons of particular risks involved in dealing with a listed body and/or a qualified person in its role as co-regulator of a strata inspector panel.

## 5.5 Secretary’s involvement in complaints

**5.5.1 Complaints about a member (building inspector) in a strata inspector panel**

The listed body is responsible for handling complaints about its membership holders.

A complainant should attempt to resolve the issue directly with the membership holder or listed body in line with the listed body’s documented complaints handling and dispute resolution process.

**5.5.2 Complaints about a listed body with a strata inspector panel**

A complaint may be made to the Secretary about a listed body with a strata inspector panel that relates to:

* its members of the strata inspector panel; or
* the listed body in its capacity as co-regulator of a strata inspector panel.

A complaint must be made in writing.

For example, if a person has made a complaint to the listed body about a membership holder or the listed body in its capacity as a co-regulator, and is not satisfied with the listed body’s response, the individual may make a written complaint to the Secretary to substantiate their complaint about the listed body.

## 5.6 Secretary’s involvement when listed body’s strata inspector panel is cancelled

If a listed body’s strata inspector panel is cancelled the Secretary may appoint another listed body with their consent, to exercise the functions of that listed body whose strata inspector panel has been cancelled.

## 5.10 Penalties

The provision of false or misleading information may result in prosecution and upon conviction, a penalty imposed by a court.

# Part 6. Secretary’s request for additional information from the qualified person before appointment as a building inspector



**Secretary’s request for additional information from the qualified person
 before appointment as a building inspector**

|  |  |
| --- | --- |
| Unique identifier: |  |
| I \* |  |
|  | (insert name of proposed building inspector) |
| the proposed building inspector and member of  |
|  |
|  | (insert name of listed entity) |

**\*** “I” includes my invoicing entity, trading entity or associated entity

disclose to the Secretary that at the time of proposed appointment and the previous prescribed period:

**Part A**

that I:

1. do not have any outstanding court orders.
2. have not been:
	1. a declared bankrupt
	2. refused insurance whether personally or otherwise
	3. removed from company directorships.
3. am not a connected person with any entity that has been or is being:
4. liquidated or entering voluntary liquidation
5. declared bankrupt
6. been declined insurance
7. investigated or charged for fraud offence/s and/or serious offence/s (criminal and/or civil)
8. removed from company directorships.

If any of the above apply, the person and/or their entity must disclose reasoning as to why they should be considered as a qualified person to perform building inspections for the purpose of *Strata Schemes Management Act 2015* (NSW) – Part 11 and the Strata Schemes Management Regulation 2016(NSW) – Part 8. The Secretary will consider the disclosures on a case by case basis.

**Secretary’s request for additional information from the qualified person
 before appointment as a building inspector**

**Part B**

and, advise the Secretary that:

1. I will engage specialist inspectors[[3]](#footnote-4) to perform the inspection and provide the report for areas outside of my competency, and
2. For the purpose of Part 11 of the *Strata Schemes Management Act 2015* and Part 8 of the Strata Schemes Management Regulation 2016

🞏 I **am not** a connected person to the developer

🞏 I **am** a connected person to the developer - <list the reasons and the section >

Reason and the reference: Act - section, and/or Regulation - clause

***I understand that the provision of false or misleading information by me may result in proceedings being brought against me under the Crimes Act, 1900 that could lead to imprisonment of up to two years and/or fines of up to $22,000***

|  |  |
| --- | --- |
| Signed: |  |
| Name: |  |
| Date: |  |

# Part 7. Glossary

**Building bond** means the same as in the *Strata Schemes Management Act 2015* – section 207(1).

**Building inspector** means the same as in the *Strata Schemes Management Act 2015* – section 193(1).

**Building work** means the same as in the *Strata Schemes Management Act 2015* – section 190

**Code of conduct** means a set of principles, values and rules of behaviour expected by the bodies listed on the strata inspector panel within the Strata Schemes Management Regulation

**Codes of practice** means codes of practice that provide advice to practitioners. Where procedures are recommended for specific professional tasks, these codes are intended to embody 'best practice'.
All practitioners must inform themselves of new and updated codes of practice within a reasonable time of their promulgation in order to remain professionally competent.

**Connected person** means the same as in the *Strata Schemes Management Act 2015* – sections 7, 195, 197

**Developer** means the same as in the *Strata Schemes Management Act 2015* – section 189

**Final report** means a report prepared under section 201 of the *Strata Schemes Management Act 2015*

**Initial period** of an owners corporation of a strata scheme means the same as in the *Strata Schemes Management Act 2015* – section 4

**Interim report** means a report prepared under section 199 of the *Strata Schemes Management Act 2015*

**Listed body** means a body listed in Strata Schemes Management Regulation 2016 – Part 8

**Lot** means the same as in the *Strata Schemes Management Act 2015* – section 4

**Occupation certificate** means the same as in the *Environmental Planning and Assessment Act 1979*

**Owners corporation** means the same as in the *Strata Schemes Management Act 2015* – section 4

**Prescribed period** means the same as in Strata Schemes Management Regulation 2016 - Clause 46

**Qualified person** means the same as in the *Strata Schemes Management Act 2015* – section 193(2)

**Residential building work** means the same as in the [*Home Building Act 198*9](https://www.legislation.nsw.gov.au/~/view/act/1989/147)

**Secretary** means the same as in the *Strata Schemes Management Act 2015* – section 4

**Strata Building Bond Inspections Scheme** means the requirements of *Strata Schemes Management Act 2015* – Part 11 and Strata Schemes Management Regulation 2016 – Part 8

**Strata inspector panel** means the members the listed body has determined qualified to perform the inspections and provide the reports for the purpose of the Strata building bonds and inspection scheme

# Part 8. DOCUMENT CONTROL

## 8.1 Document Approval

|  |  |  |
| --- | --- | --- |
| Name and position | Signature | Date |
| Manager: Strata building bonds and inspections | Melanie Schwerdt | 20/12/2017 |
| Executive Director, Building & Construction Services(Secretary) |  |  |

## 8.2 Document version control

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Version | Status | Date | Prepared by | Comments |
| 1.0 | Draft | May 2017 | Melanie Schwerdt |  |
| 2.0 | Draft | October 2017 | Melanie Schwerdt | Technical workshopFair Trading website |
| 3.0 | Draft | November 2017 | Melanie Schwedt | Fair Trading website |
| 4.0 | Final | December 2017 | Melanie Schwerdt | Legal Services |

## 8.3 Document review date

This guideline will be reviewed when the Act or Regulations are amended and annually based on commencement of regime for first two years, and assessed thereafter.

1. The "Secretary" as per the definition in section 4(1) of the *Strata Schemes Management Act 2015*. [↑](#footnote-ref-2)
2. Interested person means the same as in *Strata Schemes Management Act 2015*- section 213(2) [↑](#footnote-ref-3)
3. The fees for the specialist inspectors will be borne by the developer. [↑](#footnote-ref-4)