

Media Release

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For immediate release

Today the NSW Government proposed amendments to the Design & Building Practitioners Bill 2019 currently being considered by the NSW Parliament. These amendments begin the vital process of providing much improved consumer protection for people buying new apartments. They also improve the overall operation of the Bill in better regulating the NSW building industry.

For these reasons the revised Bill has the support of the Owners Corporation Network (OCN), the organisation representing apartment owners. The Government deserves credit for proposing amendments in response to concerns raised with the original Bill.

“The Statutory Duty of Care proposals, in their revised form, more effectively deliver on promises made by Government before the State election and are most welcome” according to OCN Chairman, Philip Gall. “They restore some much needed building industry accountability to its consumers to the benefit of tens of thousands of new apartment owners” he says.

OCN recognises that this Bill is just the beginning and there is much more work to be done to clean up the deeply ingrained issues with new apartment construction. “For example, \$2 companies disappearing before building defects are rectified is still a big problem” Gall observes. “The effectiveness of the new legislation depends on the yet to be drafted regulations” he adds.

The Owners Corporation Network has also been pressing for known loopholes in the building defect warranties offered under the Home Building Act to be closed. According to Gall “OCN is disappointed the opportunity to restore this aspect of consumer protection has been missed this time around. However, this disappointment is tempered by the Government’s public commitment today to address shortcomings in statutory warranties soon”.

OCN continues to urge caution when buying new apartments, particularly apartments off the plan, and those over three levels where there is no compulsory home owner warranty insurance. “In time we want building quality to improve and have robust financial entities, such as insurance companies, stand behind world class warranties provided to all new apartment owners” Gall says.

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About OCN

The Owners Corporation Network of Australia Limited (OCN) is the peak consumer body representing residential strata and community title owners. Strata is the fastest growing form of residential property ownership in Australia, which raises increasingly important questions over property ownership and governance.

Further Background

Design & Building Practitioners Bill 2019 provides for:

- The establishment of regulations to help implement recommendations of the Building Confidence Report provided to the nation's Building Ministers in 2018
- Once established the regulations will:
 - Determine which types of buildings and building 'design element' are to be subject to the regulations
 - Require certain design and building practitioners to provide declarations that designs and construction comply with defined standards
 - Require registration of design and building practitioners
 - Set up the scope of auditing and enforcement powers
- Re-establishing 'Duty of Care' protections to consumers that should have always applied to apartment owners

The compulsory home building insurance for residential apartment buildings over three storeys was removed in 2003. This means that a licenced builder is not required to insure the project.

It is common for developers and builders to create special purpose companies for each project and to put the company into administration to avoid liability for building defects. This and the absence of home building insurance for buildings over three levels results in the full costs of defect rectification falling on unsuspecting new apartment owners.

The global standard for building warranties is 10 years for major defects. NSW provides a 2 year warranty for "minor defects", and a 6 year warranty for "major defects". However, a major defect means:

"(a) a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these), and that causes, or is likely to cause:

- (i) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
- (ii) the destruction of the building or any part of the building, or
- (iii) a threat of collapse of the building or any part of the building"

This results in limited consumer protection for new apartment owners for defects identified only two years after construction, which can still be costly and disruptive to home life.

The proposed Statutory Duty of Care provisions in the Bill is a meaningful step towards addressing these material shortcomings in consumer protection for new apartment owners.