

Media Release

For immediate release

2 June 2020

Owners Corporation Network provides qualified support for NSW government's building reform Bills

Jane Hearn, Chair of the Owners Corporation Network (OCN), the only consumer based organisation representing apartment owners in NSW, today welcomed the re-introduction of the Design and Building Practitioners Bill 2019 (DBP Bill) and the introduction of the Residential Apartment Buildings (Compliance and Enforcement) Bill 2020 (RAB Bill) into NSW Parliament this week.

"Apartment Owners for too long have suffered the devastating financial and emotional consequences of costly building defects in what is usually the biggest purchase of their life", Ms Hearn said.

"The two bills before Parliament are the first step on the road to raising standards of the industry, reigning in the 'design and construct' free for all, and transforming the culture of the industry", she said.

OCN fully supports the DBP Bill, that includes a statutory duty of care, to start immediately. This reinstates the duty of care that the High Court put in doubt five years ago.

OCN also supports the majority of the RAB Bill but has concerns about one aspect of the "Building Rectification Orders" that impose severe penalties on Owners Corporations and individual lot owners who refuse access to the developer to enable such rectification works to proceed, even where they have reasonable grounds to refuse such access. The developer has a right of appeal against such an order, but the Owners Corporation (the innocent party) does not. OCN has raised these concerns with the government (see "further background" below).

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Media Enquiries:

Jane Hearn M: 0432 618 937 / E: janehearn2010@outlook.com

Karen Stiles M: 0418 232 476 / E: eo@ocn.org.au

About OCN

The Owners Corporation Network (OCN) is the only body dedicated solely to representing the interests of strata apartment owners in NSW. Strata is the fastest growing form of residential property ownership in NSW, and the growth of this sector raises increasingly important questions over property ownership and governance. The OCN was formed in 2002 when several Owners Corporations came together to address their common problems with major defects in high rise apartment buildings.

Further Background

The Design and Building Practitioners Bill

This Bill is the NSW Government's response to the recommendations of the 2018 *Shergold Weir* report commissioned by the Building Ministers Forum (the group of federal State and Territory Ministers responsible for building construction) which investigated building quality throughout Australia. The aims of that report were to enhance public trust through effective implementation of building and construction standards that protect the interest of those who own, live and work in those buildings.

Additionally, the Bill implements a statutory duty of care to protect consumers of apartment buildings. This provision was included following advocacy from OCN following the Opal Tower evacuation and prior to the last state election.

The RAB Bill

This Bill will give the Building Commissioner wide ranging powers of investigation and enforcement in relation to the construction of apartment buildings. This includes the power to issue Building Rectification Orders, Stop Work Orders, and the power to prevent the issue of an Occupation Certificate where building work is being carried out, or is likely to be carried out in a manner that could result in significant harm or loss to the public or current or future occupiers of the building. A Rectification Order may be issued before completion of a building. The Commissioner may also issue a Rectification Order in relation to an existing building that is occupied.

To have confidence owners need assurance that they will not be penalised for not consenting to access to the developer under a building rectification order if they have good reasons to refuse such access.

To protect the rights of owners, OCN has suggested that an Owners Corporation should have the power to ensure:

1. there is a proper scope of works for the rectification works;
2. the person carrying out the rectification works has suitable skills and experience to carry out the works;
3. the adequacy of the work is checked and approved by the Building Commissioner or owner-appointed inspectors before it is covered up.

Once the rectification works are carried out it is the Owners Corporation that carries the liability if the rectification works are done shoddily.

OCN has suggested that the Bill be amended so that:

1. Owners Corporations and lot owners have a right to "reasonably refuse" access to the developer;
2. Owners Corporations have a right of appeal against such an order as does the developer.

Further Reform Needed

These Bills do not:

1. Introduce the emerging standard of 10-year warranty for major defects in apartment buildings.
2. Introduce a licensing scheme for developers (which exists in Singapore)
3. Impose a requirement for compulsory defect insurance to protect homeowners in apartment buildings above 3 storeys (which presently have no such insurance).
4. Introduce a separate licensing scheme for builders who build apartments above 3 storeys.

Reports into Building Quality of Apartment Buildings in NSW

A series of reports dating back to the 2002 *Campbell Report* have found major problems with the quality of apartment building construction in NSW.

The most recent is that of the NSW Upper House Inquiry into the regulation of building standards, building quality and building disputes. The Report of the Inquiry was released on 30 April 2020. That report concluded that:

“There are a significant number of strata homeowners out there today dealing with the costs of rectifying major defects in their buildings, who have nowhere to turn. These problems were created by decades of deregulation by the State Government, which has stepped away from its responsibilities to ensure homes are built to an acceptable standard and are fit for occupation.”