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Decennial Liability Insurance Consultation
Policy and Strategy, Better Regulation Division
NSW Department of Customer Service

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MANDATING DECENNIAL LIABILITY INSURANCE

The Owners Corporation Network of Australia Limited (OCN) is the peak consumer body representing and advocating the rights and interests of residential strata title, community title, and company title owners and occupiers.

The protection of consumers through the delivery of high quality, sustainable homes is of paramount public importance.

In NSW, urban consolidation has been a goal of successive Governments, resulting in a rapid expansion of the residential strata sector. The emphasis on increasingly tall and more complex apartment buildings to house a growing population demands that only the most suitably qualified professionals are permitted to undertake this work. However failures in the regulatory system and in the construction industry have led to systemic defects in high rise apartment buildings.

The OCN congratulates the NSW government for recognising that mandatory decennial liability insurance (**DLI**) is the path back to achieving consumer trust in the NSW residential unit construction industry. If DLI is delivered on time, without excuses and without any 'devil in the detail', that will be a monumental step forward for future owners while setting up the majority of the construction industry for a long term boom.

That recognition is however only a first step. The OCN will keep its 'champagne on ice' until mandatory DLI is implemented without compromise. When that day comes, the OCN will not hesitate to champion a new system for units completed from about 2030 onwards (7 years away!) that consumers should have faith and invest in.

In the meantime, the OCN will continue to be honest in its advice to potential purchasers of new units. Encouraging them to find new units for which DLI has been voluntarily arranged will now be part of that honest advice.

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The OCN is critical of the condition already being put in the regulatory impact statement that *“DLI only becomes mandatory when all trustworthy developers can secure affordable DLI”*. That is unacceptable. A developer not being able to secure DLI or *“affordable”* DLI by 2028 will be confirmation that the developer is not *“trustworthy”* and NSW will be better off without that developer in business.

The OCN calls upon the NSW government to make it clear now that there will be no excuses by 2028. That is what is needed to force change and improvement, where needed, in the meantime.

Proposed exemptions

The OCN agrees with the proposed exemptions for build to rent developments and developments for which there is HBCF cover. The OCN does not agree with the proposed change of use exemption. If the structural support from an existing building cannot be reliably certified, a change of use development should not be permitted at all. Experience has shown that there is a higher risk of defects, in particular waterproofing defects, in buildings converted to residential. However, that is a reason to ensure future owners in such buildings are adequately protected. If this exemption is allowed, the problem of defects in converted buildings will become worse as developers who are too untrustworthy to obtain DLI will flock to that area of work.

Protection of subrogation rights

NSW needs to implement mandatory DLI. Making that work necessarily means ensuring that insurers have effective access to strong subrogation rights.

The appropriate balance is to:

1. Extend an insured’s rights for the purpose of a subrogation claim by 12 months from the date of an insurance claim made within time during the last 12 months of the policy; while also
2. Approving the inclusion of policy terms in DLI that allow an insurer to, in appropriate circumstances, protect its subrogation position in advance of the insured receiving all of the indemnity that it is entitled to under the DLI.

Yours sincerely



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