Construction forecast: trends and future risks - NSW, Australia

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Kennedys

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Foreword

It was a busy end to 2023 with a raft of new case law and legislative reforms in New South Wales which are set to further shake up the building and construction industry in 2024 and affect the incidence and value of third party insurance claims.

The aim of the latest reforms is to build on the NSW Government's commitments to secure behavioural change in the building industry and improve the quality, safety, and durability of buildings in NSW. The reforms are intended to restore consumer confidence in the industry by improving accountability and responsibility for defective and non-compliant buildings. Further legislative reforms are earmarked for 2024 and 2025.

> Building safety and housing supply and affordability remain key political drivers in Australia. The Federal and State Governments have set ambitious targets to tackle housing shortages amidst current and projected population growth.

In NSW, the State Premier has delivered on his election promise to establish a standalone building regulator to enforce quality and standards in the sector and to ensure that buildings under construction are compliant, safe and durable.

However, these commitments to address housing supply and building safety and durability create challenges for those operating in the industry.

Inflation has been a significant issue in property and construction claims and 2024 will see a continuing increase in claims inflation fuelled by:

- The global volatile economic environment.
- The fragile geopolitical landscape as demonstrated by the continuing conflicts in Ukraine and the Middle East.
- The ongoing disruption to global supply chains.

These events have influenced the rise of insolvencies, especially within the construction sector.

In this report, we look at the latest set of building reforms in the Building Legislation Amendment Act 2023 (NSW), which included:

- An expansion of the NSW Building Commissioner's powers.
- The creation of a chain of responsibility for building products safety.
- Decennial liability insurance.
- Laws to tackle illegal phoenixing.
- New powers to suspend certifiers and DBPA registered practitioners.

We also look at some of key decisions from late 2023 and assess what this may mean for insurers in 2024. This includes:

- Confirmation that the proportionate liability regime does not apply to claims for breach of statutory duty under the Design and Building Practitioners Act 2020 (NSW).
- Decisions which consider the scope of cover for consultants, subcontractors and agents including:
  - Who can sue and under what policy – a look at the latest *Opal Tower* decision and what it means for insurers extending cover for subcontractors and consultants.
  - Construction of D&C PI policies – the scope of professional services.

Building industry reforms – the latest

On 21 November 2023, the NSW Government passed the Building Legislation Amendment Bill 2023 (NSW) into law. This was shortly followed by the establishment of the NSW Building Commission.

The Building Legislation Amendment Bill 2023 (NSW), which was assented to on 11 December 2023, makes miscellaneous amendments to building legislation. The latest amendments to the legislative regime form part of the ongoing reforms designed to transform the regulation of the construction industry and restore trust and confidence in residential buildings.

The changes include:

1. Expanding proactive enforcement powers for the NSW Building Commissioner, including rectification and stop-work orders for residential homes.
2. Imposing obligations and accountability on all persons in the building product supply chain to ensure the design, manufacture, supply and installation of safe and compliant building products.
3. Enhancing the framework for decennial liability insurance to increase consumer protections for apartment building owners.
4. Expanding powers for the NSW building regulator to tackle illegal phoenixing.
5. Enabling immediate suspension of key building, design and certifier practitioners, where allowing them to continue to work would pose a serious risk to public safety, consumers or other building businesses.

The new legislation was shortly followed by the establishment of the NSW Building Commission, the State's first building regulator. The Commission, which opened its doors on 4 December 2023, will be led by the NSW Building Commissioner David Chandler. With a A$24 million commitment from the State Government, the Commission will be a standalone body for regulation, licensing and oversight of the sector (the Office of the Building Commissioner previously formed part of NSW Fair Trading). As part of the change, the number of staff will increase from 40 to 400.

No proportionate liability defence for claims for breach of statutory duty claims under the Design and Building Practitioners Act 2020 (NSW)

The Owners – Strata Plan No 84674 v Pafburn Pty Ltd [13.12.23]

On 18 December 2023, we issued a case note on the Court of Appeal decision which clarified that:

- The proportionate liability regime does not apply to claims for breach of the statutory duty; and
- Although a defendant is entitled to cross-claim against concurrent wrongdoers, it cannot reduce its own liability to the plaintiff for the whole loss suffered by the plaintiff by reference to such wrongdoers.

A copy of the article is available here.

So what building claims are apportionable?

Basis of claim	Apportionable?
Breach of statutory warranty under the Home Building Act 1989 (NSW). Applies to developers and holders of a contractor licence.	No, s.34(3A) Civil Liability Act 2002 (NSW)
Breach of statutory duty under the Design and Building Practitioners Act 2020 (NSW) Applies to persons who carry out 'construction work' defined as: "(a) building work, (b) the preparation of regulated designs and other designs for building work, (c) the manufacture or supply of a building product used for building work, (d) supervising, coordinating, project managing or otherwise having substantive control over the carrying out of any work referred to in paragraph (a), (b) or (c)".	No, refer Pafburn decision
Contravention of s.18 Australian Consumer Law - misleading or deceptive conduct.	Yes, s.34(1) Civil Liability Act 2002 (NSW) Part VIA Competition and Consumer Act 2010 (Cth)
Contravention of s.29 Australian Consumer Law - false or misleading representations about goods or services.	No
Breach of contract.	Yes, s.34(1) Civil Liability Act 2002 (NSW)
Common law negligence.	Yes, s.34(1) Civil Liability Act 2002 (NSW)

Professional indemnity v public liability – from mind the gap to beware the double exposure

Two recent cases have explored the nature and extent of cover available in respect of services provided by an insured's consultants, sub-contractors and agents. The decisions highlight how the lines may become blurred between the nature and extent of cover being offered.

In *Opal Tower*, the Supreme Court of New South Wales looked at whether cover was available to the structural engineer under the named insured's (the builder's) policy of third party liability insurance (even though the structural engineer performed no manual on-site activities).

In *FKP*, the Full Federal Court of Australia looked at the extent of indemnity available to the insureds (the builder and developer respectively) under its D&C professional indemnity policy in respect of the conduct of its consultants, sub-contractors, and agents (but not directly to the consultants, sub-contractors and agents).

These decisions are discussed further below.

What is the difference between public liability and professional indemnity cover?

Public party (also known as third party or general) liability insurance covers physical risks such as personal injury or property damage. Professional indemnity insurance covers errors and omissions in performing services of a professional nature. While each policy is different, some of the key characteristics of cover are:

	Public liability	Professional indemnity
Who is covered?	Insureds, contractors of any tier, and consultants for their manual on-site activities only.	Insureds, e.g. developers, builders, architects, and engineers. In the case of D&C PI Cover, the policy may extend cover for the conduct of consultants, contractors and agents (but the indemnity is usually not extended to the consultants, subcontractors or agents).
What is covered?	Claims for bodily injury or damage to property caused by the insured.	Errors and omissions in the performance of services of a professional nature but excludes cover for manual on-site activities e.g. construction, installation, workmanship.
What is excluded?	Professional liability.	Property damage.

*The inclusion of 'other insurance' clauses, intended to limit or exclude liability to indemnify by reason that the insured has entered into another contract of insurance, is common. However, such provisions are void under Australian law unless the other policy is specified in the first policy.

Opal Tower – who can sue (and under what policy)?

WSP Structures v Liberty Mutual Insurance Company t/as Liberty Specialty Markets [28.09.23]

On 18 October 2023, we issued a case note on the latest decision to the handed down in the *Opal Tower* saga, in this instance concerning whether the structural engineer WSP was entitled to indemnity under the builder Icon's policy of third party liability insurance.

The court found that the builder Icon's third party liability insurers were liable to pay for the costs and liabilities incurred by structural engineer WSP.

A copy of the article is available here.

The court rejected insurers arguments that Icon's third party liability policy did not extend to cover the structural engineer because the cover for subcontractors did not extend to consultants.

The court found:

- Structural engineer WSPS was an insured under Icon's PL policy, even though it carried out no manual on-site activities.
- WSPS could pursue the claim under both its PI insurance and Icon's PL policy (but an insurer under one policy may plead the indemnity under the other policy as a valid defence and/or make a claim for contribution).
- Payment of the liability by WSPS's parent company did not discharge the indemnity owed by insurers.
- WSPS had the legal liability to pay. Payment by its parent WSPA did not discharge insurers liability to indemnify.

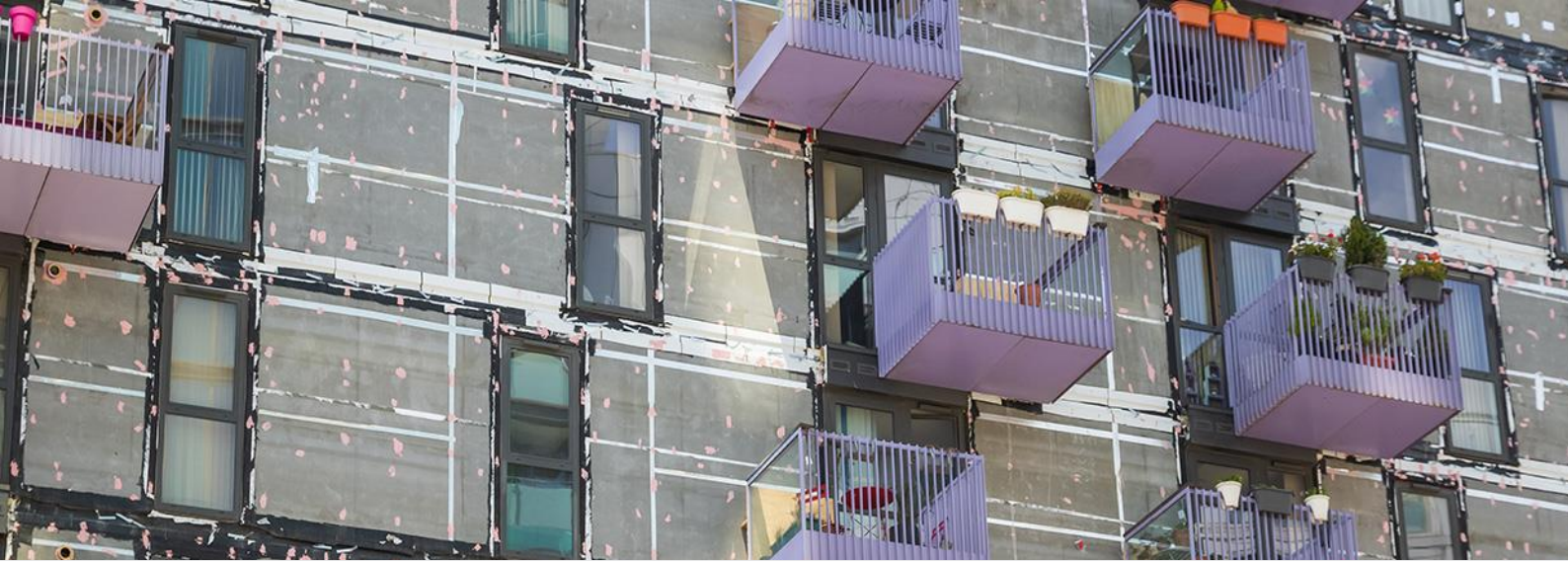
In this case, there was no exclusion in the policy for professional liability.

Update

The matter is currently on appeal.

Insurers brought an application for a stay of the orders to pay the indemnified amounts pending the hearing and determination of the appeal.

The court granted the order for the stay but only unless and until parent company WSPA provide a written undertaking to repay any indemnified amounts.



Professional services and the conduct of consultants, sub-contractors and agents

Zurich Australian Insurance Ltd v FKP Commercial Developments Pty Ltd [2023] FCAFC 188 on appeal from *FKP Commercial Developments v Zurich Australian Insurance (No 2)* [2023] FCA 582

Background

FKP Commercial Developments Pty Ltd and FKP Constructions Pty Ltd (together, FKP) were the developer and builder respectively of two mixed-use residential apartment and commercial buildings in Rosebery, New South Wales.

FKP sub-contracted all of the design and construction works to sub-contractors.

The buildings contained defects and the owners corporation (OC) brought proceedings against FKP alleging breaches of the statutory warranties under the Home Building Act 1989 (NSW) and breach of the statutory duty under the Design and Building Practitioners Act 2020 (NSW).

FKP brought proceedings against Zurich Australian Insurance Ltd (Zurich) seeking indemnity under its policy of Design and Construction Professional Indemnity insurance for its liability to the owners corporation in the OC proceedings.

Pursuant to that policy, Zurich agreed: "… to indemnify the insured against loss incurred as a result of any claim for civil liability first made against the insured and notified to us during the period of insurance, based on the insured's provision of the professional services".

It also extended cover for:

> … loss resulting from any claim arising from the conduct of any consultants, sub-contractors or agents of the insured for which the insured is legally liable in the provision of the professional services. No indemnity is available to the consultants, sub-contractors or agents.

The provision of professional services required to engage the insuring clause

The only services FKP performed were project management and construction management services. Those services were Professional Services under the policy.

Jagot J (as she then was) sought to hear and determine two separate questions in the insurer proceedings. The first related to the advancement of claim expenses (superseded by the settlement of the OC proceedings). The second, whether the OC's claim against FKP was a claim for civil liability based on the insured's provision of the Professional Services within the meaning of the Insuring Clause. Jagot J answered no. She found that for FKP to be indemnified, the claim must be based on the provision of, or failure to provide, the relevant professional services as distinct from the fact of residential building work having been done and the provision of, or failure to provide, the professional service being an ingredient of the cause of action.

> She ultimately concluded that the causes of action did not depend on the insureds having provided or failed to provide any professional services and accordingly "the asserted facts are not sufficient to engage the insuring clause in the Policy".

Extension of cover for conduct of the consultants, sub-contractors and agents

Unable to rely upon the insuring clause, FKP sought in the alternative to rely upon the extension of cover for consultants, sub-contractors or agents of the insured.

Jagot J sought to hear and determine a third separate question - whether the OC's claim against FKP was a claim arising from the conduct of any consultants, sub-consultants or agents of the insured for which the insured is legally liable in the provision of the professional services within the meaning of the extension.

Following Jagot J's appointment to the High Court, the third separate question was heard and determined by Jackman J who dealt with it by reference to the three components:

1. Whether the OC's claim against FKP is a claim "arising from" the conduct of FKPs sub-contractors.
2. Whether FKP are legally liable for the conduct of their sub-contractors.
3. Whether FKP are legally liable in the provision of the professional services.

The third component was the focus of the appeal before the Full Federal Court of Appeal.

Is legal liability in the provision of the professional services a causal requirement?

Both Jagot J and Jackman J found that the requirement that the insured be "legally liable in the provision of the professional services" was not a causal requirement.

Jagot J found that, in contrast to the insuring clause which does require that the cause of action must depend on the insured's provision of, or failure to provide, the professional services, the

extension of cover only requires that the insured is legally liable for the conduct in its provision of the professional services, irrespective of the source of the legal liability.

On appeal

The central contention on appeal was whether cover under extension 3 depended on the consultants, sub-contractors or agents themselves providing professional services. Zurich contended that where, as on the assumed facts, the services provided by the sub-contractors from which the claim arises are services in the nature of construction work and therefore not within the definition of "professional services", extension 3 does not respond.

Zurich submitted that the insuring clause operates where the insured is personally performing the professional service, whereas extension 3 picks up the liability of the insured where the personal performance is by someone other than the insured.

Appeal decision

The Full Federal Court accepted the primary judges reasoning and rejected the grounds of appeal. It held:

1. The insuring clause is not limited to the provision of professional services by the insured personally.
2. In construing the policy, the nature and extent of cover must be discerned from the terms of the policy and could not be presupposed and imposed on the terms of the policy. Pursuant to the legislative framework governing building projects, including the statutory warranties relied on by the OC, developers and builders are exposed to liability for the conduct of their sub-contractors, even where the developer or builder performs no more than a project management role (as was the case here). Accordingly, it was not commercially unreasonable for the insured to be covered for its provision of professional services and for any liability it has for any conduct of any consultant, sub-contractor or agent, including but not limited to the provision of professional services, "in the insured providing professional services". The insurer's contractual right of subrogation provides a commercial mitigant to the insurer.
3. There was no error in the facts. The only services FKP performed were project management and construction management services which were professional services under the policy. FKP Constructions' legal liability for the conduct of its sub-contractors in performing the residential building work on its behalf is "factually and temporally connected with its provision of project management services … FKP Constructions' legal liability for its sub-contractors' conduct arises because it is liable for its sub-contractors' conduct as explained above, both under the Home Building Act and at general law. The relationship which is the source of that liability is at the heart of the project management services performed by FKP on the project".

Key takeaways for insurers

- The court had regard to the legislative framework informing the commercial reasonableness of the cover sought. Insurers will need to consider how this, and the *Pafburn* and *Opal Tower* decisions, may inform the pricing and writing of risks.
- The court looked at the wording of cover rather than the intent. Insurers should review policy wordings to ensure the nature and scope of cover, including who and what is insured, is clearly defined. Regard should also be had to recent legislative reforms and how these changes may affect the commercial reasonableness of the cover offered.

The NSW Building Commission

What types of buildings are regulated? Classes 2, 3, and 9c.

Two significant pieces of legislation affecting the building sector were introduced in 2020:

- The Design and Building Practitioners Act 2020 (DBPA).
- The Residential Apartment Building (Compliance and Enforcement Powers Act) 2020 (RABA).

The duty of care provisions under Part 4 of the DBPA came into force immediately with retrospective effect going back 10 years. This applies to all classes of building (refer *Roberts v Goodwin*).

Class 2 buildings

The reforms initially focused on class 2 buildings. The NSW Building Commissioner's compliance and enforcement powers under the RABA and the registration and licensing requirements of the DBPA were initially introduced with respect to class 2 buildings (or buildings containing a class 2 part).

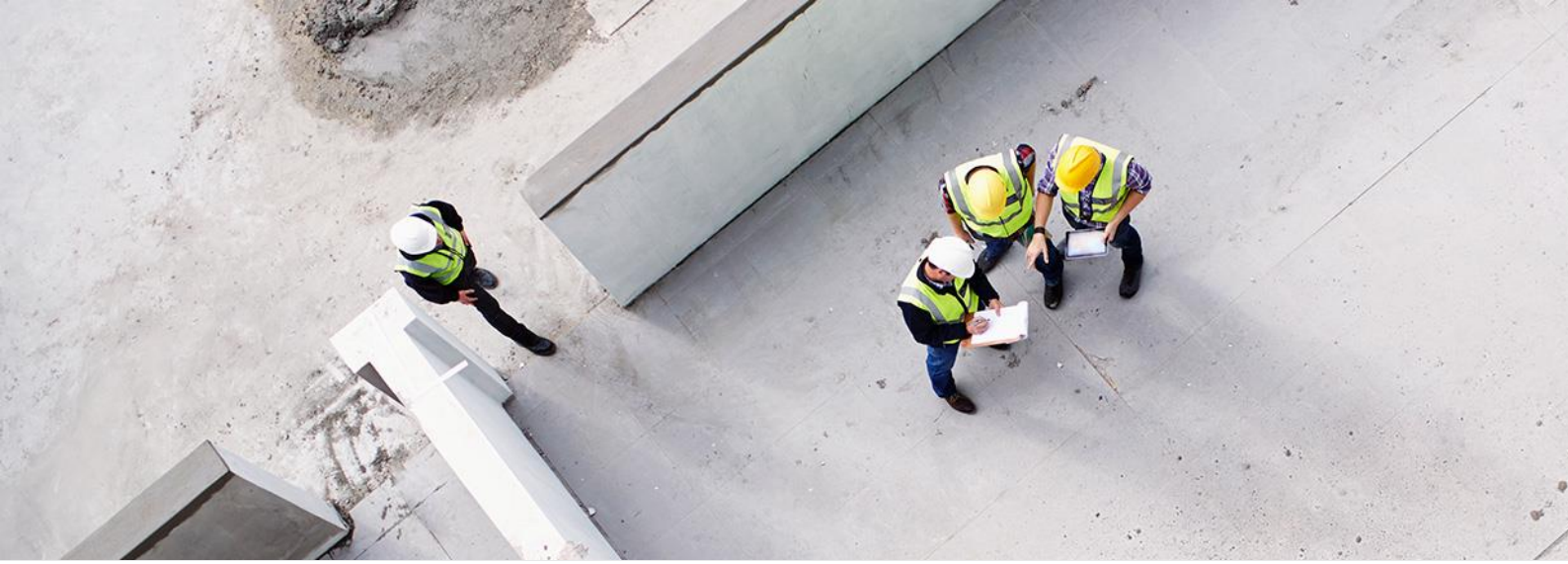
Class 3 and 9c building

From 3 July 2023, the reforms were expanded to include class 3 and 9c buildings (Building Legislation Amendment (Building Classes) Regulation 2023).

What are the building classifications?

The building classifications are:

- **Class 1** – Houses, e.g. standalone dwellings, townhouses, duplexes (i.e. low rise residential).
- **Class 2** – Residential apartment buildings.
- **Class 3** – Residential buildings not falling within classes 1 or 2, e.g. boarding houses, guest houses, hostels, backpackers.
- **Class 4** - Sole dwelling or residence within a building of a non-residential nature.
- **Class 5** – Offices.
- **Class 6** – Shops, restaurants and cafes.
- **Class 7** – Storage-type buildings.
- **Class 8** – Factories.
- **Class 9a** – Public buildings, e.g. hospitals.
- **Class 9b** – Schools, universities, childcare facilities, sporting facilities, etc.
- **Class 9c** – Residential care facilities.
- **Class 10** – Non-habitable buildings or structures.



Building Legislation Amendment Act 2023 (NSW)

Expansion of NSW Building Commissioner's powers

The new legislation expands proactive regulatory powers to the NSW Building Commissioner for class 1 buildings (i.e. low rise residential).

In response to the housing crisis, the NSW State Government has committed to building 75,000 new homes a year for the next five years.

However, the State Premier concedes that this commitment to quantity cannot be at the expense of quality and goes hand in hand with the NSW Government's commitment to restore public confidence in the building sector.

Previously, inspectors could only issue a rectification order after completion and only if someone issues a complaint. New laws give the NSW Building Commissioner the power to proactively investigate residential apartments and free-standing homes before completion and to issue rectification or stop work orders as appropriate.

Rectification orders may require the **contractor** to take steps to ensure a defect or damage is rectified if the inspector is satisfied that the work carried out by the contractor or somebody on their behalf:

- Is defective.
- Is or was being carried out in a way that could result in a defect.

- Has caused damage to a structure or work.
- Has caused damage to a structure or work as a consequence of the defective work.

Stop work orders may require the **developer** to stop if:

- The building work is, or is likely to be, carried out in a way that could result in significant harm or loss to the public or to occupiers or potential occupiers of the building to which the work relates or significant damage to property; or
- The following apply:
  - There is a change in principal certifier or building practitioner for the residential building work.
  - In the Secretary's opinion the building work is, or is likely to be, carried out in a way that could prevent the valid issue of an occupation certificate or building compliance declaration for the residential building work.

Insurers should consider whether the costs associated with compliance with rectification or stop work orders may become the subject of claims under policies whether they be shoehorned into claims for mitigation of loss or otherwise. Insurers should consider whether mitigation expenses are covered under the policy wording as standard or by way of optional extension.

Decennial liability insurance

This new insurance product covers serious defects in the common property of the building, starting from when the building is completed. The new legislation provides a legislative framework to encourage insurers to enter the market and uptake by developers as an alternative to the developer bond.

The NSW Strata Building Bond and Inspection Scheme (the Scheme) was introduced in 2017 and operates under the Strata Schemes Management Act 2015 (NSW).

> Pursuant to the Scheme, developers are required to pay a 2% bond upon commencement of apartment building projects in NSW. The bond can be used to fix up any defects identified in the building during inspections or is repaid to the developer after a prescribed period (two years).

However, the Scheme has been criticised because the amount of the developer bond is inadequate and the timeframes are too short because defects have either not crystallised or there has been insufficient time to resolve them.

In 2022, NSW became the first state to introduce decennial liability insurance (DLI).

DLI policies:

- Cover any potential costs by an owner to fix serious defects of critical building elements for up to 10 years.
- Cover critical parts of a building's common property, including the building's structure, fire safety systems and waterproofing.
- Are intended to provide an insurance of first resort – allowing building owners to make a claim as soon as a defect is identified.

To incentivise the update of this insurance, the Building Legislation Amendment Act 2023 (NSW) introduces an exemption from the requirement to pay the bond where the developer has effected a DLI policy.

> DLI is also known as 10 year liability insurance or latent defects insurance. It is a new insurance product in Australia which covers critical parts of a building's common property, including the building's structure, fire safety systems and waterproofing for up to 10 years.

The policy is taken out by the developer or builder before a building is occupied. The policy then attaches to the building which means the policy will protect successive owners to make claims over that 10-year period.

It covers rectification of defects up to the contract cost of the apartment building even if the developer or builder becomes insolvent or ceases operation. By comparison, the Scheme will only cover the costs of defect rectification up to the value of the bond paid (currently 2% of construction value).

The Building Legislation Amendment Act 2023 (NSW)

The Building Legislation Amendment Act 2023 (NSW) also makes changes to the Scheme by:

- Increasing the 2% developer bond to 3% from 1 July 2024.
- Changing the period when the developer bond becomes repayable to the developer from two years to three years).

* In August 2022, a ministerial advisory panel reported to the state government on the feasibility of DLI in NSW. The panel's preferred model is a mandatory DLI introduced after a transition period which replaces the strata building bond.

The advisory panel to the NSW Government also recommended that amendments are made to the Civil Liability Act 2002 (NSW) and/or the introduction of legislative provisions into building legislation that would appropriately preserve the insurer's right to subrogation from at fault parties where a claim on a DLI policy is made at the end of the 10 year period that would otherwise prevent the insurer making a claim to recover costs from at-fault parties in time.

A regulatory impact statement is currently being prepared. The questions posed include:

- Do you consider there should be an extension of time to enable an insurer to initiate proceedings to protect their right of subrogation against the at-fault party where a claim is made under a DLI policy towards the end of the limitation period? Why?
- Do you consider 24 months from the time the claim is made under the policy is reasonable? Why?
- What impacts do you consider the extension of time to initiate proceedings will have upon practitioners in the industry?

If such changes are implemented, it could impact limitation periods for construction claims currently in place in NSW.

On 4 December 2023, the Parq in Bexley, the first building in Australia to be covered by DLI officially completed. The developer, who is iCirt rated, observed that:

> … the LDI enhances the affordability of apartments with a premium lower than the existing mandatory Strata Bond, which is important at a time when interest rates are rising and cost of living impacts are significant.

The building also has a four star Building Trustworthy Indicator rating. The BTI is a digital product that captures data about the who (participants), what (materials) and how (certificates) of a project to provide a measure of trustworthiness for a building.

Tackling illegal phoenixing

The construction industry experiences high rates of insolvency when compared to other industries. On 20 December 2023, the Australian Securities & Investments Commission reported that in the last financial year the highest number of reports were received for insolvencies in the construction sector (28%) followed by the accommodation and food services industry (15%).

In some instances, insolvencies are the result of illegal phoenix activity. The Australian Securities and Investments Commission defines this as:

> Illegal phoenix activity occurs when a new company, for little or no value, continues the business of an existing company that has been liquidated or otherwise abandoned to avoid paying outstanding debts, which can include taxes, creditors and employee entitlements.

This is regulated under federal law.

At a state level, governments have sought to regulate this practice through ‘anti-phoenixing provisions’ in registration and licensing regimes.

In NSW, the Building Legislation Amendment Act 2023 (NSW) amended the Home Building Act 1989 (NSW) such that the regulator may refuse an application, cancel a licence or disqualify a person from holding a contractor licence if the person has been involved in the management of a company which has become insolvent in the previous 10 years.

This includes where the person was a director at the time of the insolvency event or was a director in the lead up to the insolvency event.

New powers to suspend certifiers and registered practitioners

Certifiers registered under the Building and Development Certifiers Act 2018 (NSW) and practitioners registered under the Design and Building Practitioners Act 2020 (NSW) may now be suspended pending a determination of whether to take disciplinary action against the certifier or registered practitioner.

The powers apply if:

- The registration holder has been issued with a show cause notice.
- There is reasonable grounds to believe that:
  - The person engaged in conduct that would constitute grounds for a suspension.
  - The person is likely to continue to engage in the conduct.
  - There is a danger of significant harm if the certifier, practitioner or engineer continues to work.

Currently, policies of professional indemnity insurance may enquire as to whether there have been disciplinary proceedings against a prospective insured. Insurers may wish to review proposals and policy wordings to assess whether a prospective insured’s disclosure obligations include a question about suspension.

Building products safety - creation of chain of responsibility

The State Government is creating more accountability in the building product supply chain by introducing a chain of responsibility for all persons involved in the supply of building products.

Building defects often relate to the performance of building products.

The States have responded to the risks posed by the use of high risk products in buildings by introducing legislation which clarifies the duties owed by those within the building product supply chain with respect to the risks and use of non-compliant building products.

> In NSW, the Building Product (Safety) Act 2017 (NSW) gave powers to the Secretary to prohibit the use of certain building products which pose a safety risk. This was followed by a ban on the use of aluminium composite panels with a core of greater than 30% polyethylene in any external cladding (subject to certain exceptions) in August 2018.

The reforms in NSW include an amendment to the Building Products (Safety) Act 2017 to introduce a chain of responsibility for all participants in the building product supply chain (Building Legislation Amendment Act 2023, Part 2A).

The duties imposed by the amendments requires that persons in the building product supply chain of responsibility:

- Must ensure a non-compliance risk does not exist in relation to the product (non-compliance duty).
- Provide information in relation to building products (duty to provide information).

The duties will apply to manufacturers, suppliers, designers who incorporate the product into their designs, installers including those who physically do the work, and those who coordinate or supervise (and can include directors of companies).

These reforms, which will come into force during 2025, will require participants in the building product supply chain to have knowledge that the product complies and conforms with the intended use of the product.

The non-compliance duty will be an executive liability offence.

The Building and Construction Legislation (Non-conforming Building Products — Chain of Responsibility and Other Matters) Amendment Act 2017 (QLD)

In Queensland, the Building and Construction Legislation (Non-conforming Building Products — Chain of Responsibility and Other Matters) Amendment Act 2017 (QLD):

- Established a chain of responsibility, placing duties on building supply chain participants to ensure building products are safe and fit for their intended purpose.
- Expanded the compliance and enforcement powers of the Queensland Building and Construction Commission, and the responsible minister.

The use, supply and manufacture of all engineered stone will be prohibited from 1 July 2024. This is commonly found in kitchen and bathroom benchtops.

Fire safety

With the report into phase 2 of the Grenfell Inquiry now expected later this year, renewed focus will be expected on building product and fire safety.

In June 2017, a fire occurred at Grenfell Towers in London claiming 72 lives and causing significant damage to property.

A public inquiry was launched and the phase 1 report covering events leading up to the fire was issued in October 2019.

The findings and recommendations of phase 2 of the Grenfell Inquiry are expected in the middle of this year, and not before April.

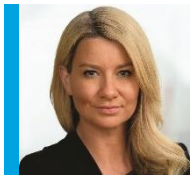
Phase 2 of the Grenfell Inquiry examined the cause of the fire. The delays are attributed to the need for the inquiry team to write to those likely to be criticised in the report and for the chair of the inquiry to consider their responses and whether he needs to change his conclusions. It will then go to the British Prime Minister to determine when to publish the report and its findings, and his response.

> The NSW Government promptly responded to the events of Grenfell by introducing a ten-point action plan around fire safety, which included a building products safety scheme around the use of dangerous building products. The introduction of the Building Products Safety Act 2017 (NSW) and the retrospective ban on the use of combustible cladding followed.

Further fire safety reforms were introduced in 2022 to improve compliance with design, certification and maintenance of fire safety measures. These reforms have commenced on a staggered basis from 13 February 2023 and will continue until 2025. It will affect building owners, developers, certifiers, and building practitioners.

The fire safety reforms will be bolstered by the creation of the chain of responsibility for all participants in the building product supply chain, which is scheduled to come into effect in 2025.

Key contacts



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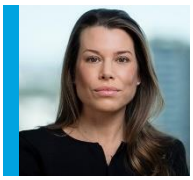

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