



REINSW

REAL ESTATE INSTITUTE
OF NEW SOUTH WALES

Window Safety
Fair Trading Policy
PO Box 972
PARRAMATTA NSW 2124

By email: policy@services.nsw.gov.au

23 April 2013

Dear Sirs,

Children and Window Safety Consultation Paper

This submission is in response to the “Children and Window Safety” Consultation Paper (**Consultation Paper**).

The Real Estate Institute of NSW (“**REINSW**” or “**the Institute**”) is the largest professional association of real estate agents and other property professionals in New South Wales. The REINSW seeks to promote the interest of members and the property sector on property related issues, and in doing so the REINSW believes it has a substantial role in the formation of regulatory policy in New South Wales.

General

The REINSW is supportive of initiatives to minimise the risk of death or injuries occurring as a result of children falling from windows and appreciates the opportunity to comment on the Consultation Paper.

The Institute does not have the expertise to comment on matters such as the types of devices that should be used, the height of windows on which the devices should be installed or what the performance standards for safety devices should be. Accordingly this submission will focus on several other aspects of the proposals.

The REINSW strongly opposes the proposal to include child safety devices in the prescribed condition report for rental premises as, among other things, this has the potential to shift the liability burden onto the letting agent who has no expertise with regard to child safety devices and no qualifications to comment on whether a device is a child safety device or whether it is in good working order.

Comments of Consultation Paper

The REINSW has identified several areas arising from the content of the Consultation Paper, which require careful consideration in the development of the mechanism for implementing the proposed measures.

Condition report

As noted above, the Institute opposes the proposal to list child safety devices on the condition report for rental properties. There are a number of serious concerns with this proposal, including:

1. It requires a letting agent or a residential property manager to make a determination about matters in respect of which he or she has no qualifications or expertise. Whilst a managing agent would be able to visually determine that a device is installed on a window, the agent should not be placed in a position of having to make representations as to whether the device is a child safety device and whether it is in working order. This can result in claims against the real estate professional and have devastating consequences for them if it turns out the devices were not approved safety devices or were not functioning properly in circumstances where the agent was not qualified to make the assessment in the first place.

It is submitted that a more appropriate mechanism would be to require owners to obtain certification in respect of window devices from appropriately qualified professionals on a periodic basis and to provide the certificate to the tenant (similar to the certification requirements recently introduced under the swimming pools legislation).

2. Owners who would not otherwise be required to install child safety devices (for example in homes not forming part of a strata scheme) may be asked by prospective tenants to do so. This will impose additional costs on landlords in circumstances where they are otherwise legally not required to have the devices installed.
3. There is also a possibility that owners could discriminate against families with children when choosing tenants. This will further disadvantage families in an already strained residential rental market.

Performance standards

It is noted from the Consultation Paper that currently there is no Australian Standard for child safety window devices and that it is proposed to adopt an 'outcomes' based approach as per the guidance contained in the National Construction Code.

It is submitted that in order to promote certainty as to the requirements for compliance there should be a prescribed standard. In the absence of a standard the question of whether a device complies will be subject to debate, especially with regard to the second and third points of the performance standard, being that the device must be strong enough to

withstand the pressure of a child and that it is designed to prevent the child unlocking it – these are questions capable of being determined only by a relevant expert.

Liability of owners corporations

The Consultation Paper states on page 9 that “Owners corporations would bear the full responsibility for ensuring that window safety devices that meet the required standard are installed on every window in the strata scheme that poses a safety risk to young children”. And further on page 14, the Consultation Paper states that “Owners corporations that do not install window safety devices risk being held legally liable because they have not complied with the law”. On the other hand, the Consultation Paper states on page 12 that individual strata owners could be permitted to install child safety devices.

It is submitted that if the owners corporations are to bear all the liability for the installation of the devices and the responsibility for failing to do so, then the owners corporations should have full control over what devices are installed, by whom and how they are installed.

The legislation should prescribe a mechanism whereby an owner can approach the owners corporation to request the installation of the devices. The owners corporation would then carry out the installation so as to ensure uniformity of devices and installation throughout the building.

If the owners corporation fails to install the devices within a specified timeframe then the owner’s right to install the devices would be triggered. This right should be subject to the installation being done in a proper and competent manner by an appropriately qualified professional so as to ensure that the devices are properly installed and subject also to the usual requirements with regard to alterations to common property. The owner would then be required to provide the owners corporation with a certificate from that professional stating that the devices installed and the manner of installation comply with the legal requirements.

It should be noted that even in circumstances where the owners corporation has installed the required child safety devices, the owners corporation has no control over how the occupants (owners or tenants) are actually using the windows or devices. Owners corporations should not be held liable for the neglect or misuse of window devices by the occupants.

Consideration should be given to the question of who is responsible for the maintenance and use of the devices and whether the treatment should be different depending on whether they are installed by the owners corporation or by the owner or, alternatively, whether it should be the same irrespective of who installed them.

The imposition of a penalty on the owners corporation for failing to comply with the requirements could act as an incentive for some owners corporations to carry out the works. However penalties in the legislation are of no value unless there are programs for regulatory enforcement in place.

Other issues

There are a number of other foreseeable implications with regard to the proposals which should be addressed before any legislation is passed, including:

- (a) *Environmental and sustainability issues* – If windows are only capable of being opened to 12.5 centimetres this will cause issues for residents with ventilation and cooling in the warmer months. It is foreseeable that residents (whether tenants or owners) will wish to have air conditioning installed in the unit to alleviate some of these problems. This will place an additional financial burden on landlords where tenants are requesting that air conditioning be installed. It will also have environmental and sustainability effects because of the increased usage of air conditioning.
- (b) *Health hazards* – Reduced ventilation in the homes will increase the incidence of mould and dampness. This creates health issues for occupants and additional expense for landlords when they are asked to address issues of mould or dampness in cases where this would ordinarily be easily addressed by properly ventilating the premises.
- (c) *Older buildings* – It has been suggested that in some older buildings the windows themselves are not capable of withstanding the pressure of a child climbing or leaning against them and therefore lockable devices in these cases will be of no assistance to prevent falls. Also, in some older buildings windows are not actually common property but are the responsibility of the lot owner. These issues should be addressed in any proposed legislation.
- (d) *Financial considerations* – Window renovations and the installation of safety devices will place a financial burden on owners which may prevent or delay the work being carried out. It will also be a further deterrent for owners or investors wishing to purchase strata titled residential properties.

Conclusion

In summary, it is submitted that:

- the condition report for rental properties should not refer to child safety devices as neither the managing agent nor the tenant are qualified to make an assessment with regard to the devices;
- a standard for the specification that devices and the methods of installation must meet in order to comply should be developed and prescribed;
- landlords should be required to arrange for periodic inspections and certification and supply to a tenant a certificate from an appropriately qualified professional as to whether the devices are child safety devices meeting the standards and performance requirements under the legislation and whether they are in proper working order;

- owners corporations should have full control and oversight over the installation of safety devices in their building and if owners install the devices, then they should have the device and installation work certified and supply the owners corporation with the certificate; and
- where penalties are imposed, these should be subject to regulatory enforcement.

The REINSW appreciates the opportunity to lodge this submission and welcomes discussion of the issues raised by this submission with NSW Fair Trading policy officers.

Yours faithfully,



Tim McKibbin
Chief Executive Officer



Eva Sklavos
Legal and Policy Manager