

The Hon. Matthew Mason-Cox  
Minister for Fair Trading  
52 Martin Place  
SYDNEY NSW 2000

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17 December 2014

Dear Minister

**THE REAL ESTATE INSTITUTE OF NEW SOUTH WALES SUBMISSION  
ON THE *HOME BUILDING AMENDMENT ACT 2014* (NSW)**

The Real Estate Institute of New South Wales (**REINSW**) has had the opportunity to consider the issues discussed in the submission prepared by the Owners Corporation Network (**OCN**) and dated 18 August 2014. REINSW supports OCN's position that owners face serious consequences as a result of the planned home building reforms expected to take place in mid-January 2015.

REINSW is of the view that the introduction of the *Home Building Amendment Act 2014* (NSW) and Regulation (**Home Building Reforms**) should be deferred until the commencement of the strata law reforms. Since the Home Building Reforms retrospectively removes key consumer rights, consumers will be better protected if those reforms were introduced at the same time as the strata law reforms. That way, consumers can get the benefit of the 2 year inspection (paid by the developer) and a 2% defects bond to be used where the builder fails to rectify defects.

A deferred commencement date would also allow the NSW Government sufficient time to consider the following issues with the Home Building Reforms:

1. **Major Defect** - The definition of "Major Defect" in section 18E needs to prescribe fire safety and waterproofing as major defects, carrying a 6 year warranty. The proposed definition would result in owners having a 2 year warranty period for many serious defect issues, which is not a reasonable amount of time with regards to fire safety and waterproofing matters.
2. **Professional Advice Defence** – REINSW believes it is dangerous to remove the requirement for professional advice to be in writing. Its concern revolves around the ease in which builders are able to take



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advantage of the Professional Advice Defence in circumstances where no advice, in fact, was received.

Sophisticated builders and developers will structure their projects to ensure that major risk items (such as render, masonry, waterproofing and fire services to name a few) are covered by instructions from independent experts. The defence significantly diminishes owners' rights, particularly if those experts have exclusion clauses in their retainers.

Further, the amendments permit a developer to use another entity to engage the independent building professional, who will carry out work for the developer's other entity. The section cannot allow developers to manipulate and rely on the defence by project structuring arrangements. REINSW does not want to see the situation where builders stall matters and set up shelf companies with the intention of letting the 2 year warranty period expire. In that circumstance, owners will be left without recourse to both the builder and independent building professional.

3. **Diligent Pursuit** – REINSW recommends a definition of “Diligent Pursuit” be included in the Home Building Reforms so that there is no dispute over what it involves and how a person can discharge its obligation of diligent pursuit with precision.

The Home Building Reforms, as proposed, are significant changes to the current legislation and will have adverse impacts on the rights and obligations of consumers in relation to building defect claims. REINSW urges the NSW Government to seriously consider the issues discussed in this submission in an attempt to reduce the effects of community backlash that will exist if the Home Building Reforms remain unchanged.

REINSW thanks you for the opportunity to provide this submission. Should you wish to discuss it further, please contact the writer on (02) 8267 0513.

Yours faithfully

Tim McKibbin  
**Chief Executive Officer**  
**The Real Estate Institute of New South Wales**