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The Director
Public Accountability Committee,
Parliament House,
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Sydney NSW 2000

By email: Public.Accountability@parliament.nsw.gov.au

Regulation of building standards, building quality and building disputes

The Insurance Council of Australia (ICA) welcomes the opportunity to provide input on this important issue.

Maintaining adequate construction standards in Australian buildings is a primary mechanism to reduce the risk of building failure. Poorly constructed buildings will at a minimum suffer more damage from exposures such as extreme weather.

It follows that insurers have a strong interest in ensuring that construction is of the highest quality possible and that the standards used for compliance reflect that objective.

The general insurance industry supports the operation of the National Construction Code (NCC), relying on it to define standards of construction and performance measures for buildings. Insurers, like the community, have assumed that buildings are indeed constructed to meet or preferably exceed these minimum standards. Compliance with the NCC is a matter for enforcement by state and territory based regulators.

A number of high profile compliance failures in NSW, coinciding with use of non-conforming and potentially dangerous external cladding on modern and some refurbished buildings, has led to a crisis in confidence for insurers who provide professional indemnity coverage for building professionals and increasingly for insurers who insure the physical buildings once construction has been completed.

In NSW this has translated into:

- The introduction of exclusions in professional indemnity insurance products for certifiers, removing cover for works relating to cladding or non-conforming building products. The NSW government has responded by authorising certifiers to operate legally without this cover.
- Buildings with major defects finding it increasing difficult to obtain insurance cover.

To address this crisis, the ICA has called for a range of measures to improve and demonstrate compliance with the NCC.

- Restore confidence in compliance regimes. Agreement through the BMF to accelerate implementation of the Shergold & Weir recommendations, to improve

industry performance and to give consumers and insurers confidence in the built environment. This measure was agreed to on 19 July and the ICA looks forward to an opportunity to assist with the process.

- Remove uncertainty from liability. At state level introduce requirements for all stakeholders involved in design, build and certification to provide formal acknowledgment that their works comply with the requirements of the National Construction Code.
- Improve building documentation. Establish a national building register database, where all building plans, as built documents, performance based solutions, operating and maintenance documentation must be stored and made accessible to building industry professionals, owners and insurers. States should ensure that regulation stipulates that practical completion of a construction project cannot be granted until all documentation has been provided to the register.
- Improve building research. Establish a building research facility, by expanding the remit of the natural hazards CRC to include building vulnerability, to establish a research capacity that will be responsible for material testing, standards development and engineering guidance to policy makers on issues of national significance (eg cladding remediation).
- Quantify the current non-compliance problem. Conduct an audit of all residential and mixed-residential buildings over three stories in height and less than twenty years old, to identify non-compliance and defect issues. Identification of buildings to be audited should be performed by the consent authority and failure to have an audit completed should ultimately influence ongoing occupancy conditions.
 - Audit items should be determined independently by the institute of engineers, institute of building surveyors and insurers.
 - Audits should be conducted by qualified building surveyors and fire safety engineers.
 - Audits should be completed by the end of 2021.
 - Audit reports should be provided to building owners only, unless life threatening defects are detected in which case the local consent authority is to be notified.
- Harmonise defect liability regimes. All states and territories should consider an increase to the defects liability period for new buildings to 10 years and should remove any cost limitations that are below the full replacement cost of the building. For example, bond arrangements used in some states, where 2% of the construction costs are held for rectification of future defects, are manifestly inadequate given the nature of the defects now being detected.

The ICA submits that there is significant reform required across the nation in order to improve the built environment and how it is perceived by all stakeholders. Whilst a national agreement has been established on implementation of Shergold & Weir to address future risk, there remains key differences in how each state is pursuing rectification of current cladding and building defects.

The ICA is encouraged by the appointment of the NSW Building Commissioner and looks forward to engagement with this office to work towards re-establishing confidence in the sector. Once this is achieved, and compliance failures can be seen to be reduced, PII providers will be able to consider a return to the market with unrestricted products.

If you have any queries please contact Karl Sullivan, Head of Risk and Operations via email ksullivan@insurancecouncil.com.au or phone (02) 9253 5155.

Yours sincerely



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