



Child Safety Window Devices

Following a recent spate of child deaths from falling out windows, the New South Wales Government has introduced a Bill to require certain owners corporations to install window safety devices to facilitate child safety.

The Strata Schemes Management Amendment (Child Window Safety Devices) Bill 2013 ("**Bill**") was introduced to the New South Wales Parliament last week. The Bill:

- (a)** amends the Strata Schemes Management Act 1996 ("Act"); and
- (b)** introduces a new requirement for owners corporations to ensure that complying window safety devices are installed for windows in each building to which the requirement applies.

When Does The Requirement Apply?

The test is whether or not the strata scheme and its windows are schemes and windows to which the new section 64A of the Act (inserted by the Bill) applies. The Regulations under the Act (which will not be available until after the new section becomes operational) will specify the strata schemes and windows to which the new requirement applies. So at this stage it is not possible to say which schemes and which windows in those schemes will be affected by the new requirements. However, it is likely that if a scheme is caught by the legislation, not all windows will be caught (e.g. windows on the ground floor, or below a specified height, may not require the safety devices).

Installing The Devices

The new section 64A imposes a duty on an owners corporation whose scheme is caught by the new laws to carry out at its own expense work required to comply with the requirements. The work can be carried out on common property and within lots and this is work to which the owners corporation's statutory access rights to lots applies (vide amendments to sec. 65 of the Act). The work involves the installation of the required devices and the devices must be in compliance with the regulations.

Failure to discharge this duty is an offence and carries a maximum monetary penalty calculated on 5 penalty units (i.e. \$550.00). The duty can also be enforced by an adjudicator's order if the owners corporation has failed to comply with it. An owners corporation is deemed to have failed to comply if it has not complied within 2 months of an application for such an adjudicator's order. However, such an order cannot be sought until after the grace period allowed for owners corporations to comply with the new section 64A.

Time For Compliance

An owners corporation is not required to comply with the new section 64A until 13 March 2018. However, it may comply at any time after the amendments take effect.

Can owners install their own devices?

An owner of a lot in a strata scheme to which section 64A applies may install a complying window safety device on a window to which the section applies provided the window is in their lot. In doing so the owner must:

- (a)** repair any damage to the common property caused by the installation;
- (b)** ensure that the device is installed in a competent and proper manner;
- (c)** ensure that the device has an appearance, after installation, in keeping with the appearance of the building; and
- (d)** notify the owners corporation of the installation (this being an anticipated requirement of the regulations).

Failure of an owner to comply with (a), (b) or (c) above may result in an adjudicator's order enforcing those obligations.

Practice Note

It is important that owners corporations comply with these new requirements within the time limit imposed by the Bill. However, from a risk management perspective an owners corporation to which the obligation applies would be well advised to comply as early as possible after the new laws take effect. Apart from the obvious protection this would afford children living in or visiting the building, it may also protect against any personal injury claim for damages based on foreseeability.