



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Property:JDgl779501

11 October 2013

The Hon. Anthony Roberts MP  
Minister for Fair Trading  
Level 36 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

By email: [office@roberts.minister.nsw.gov.au](mailto:office@roberts.minister.nsw.gov.au)

Dear Minister,

**Strata Scheme Management Amendment (Child Window Safety Devices) Bill  
2013 ("Bill")**

I write to you on behalf of the Society's Property Law Committee ("Committee"). Earlier this year, the Committee made a submission in response to NSW Fair Trading's *Children and Window Safety Consultation Paper* dated 13 March 2013. The Committee has now reviewed in detail the Bill and has several concerns it wishes to raise with you urgently.

The Committee is concerned the Bill does not make sufficiently clear whether the owners corporation, or a lot owner who installs a window safety device pursuant to proposed s 64A(3), must repair and maintain the device. The Committee notes the owners corporation's obligation in proposed s 64A to ensure there are complying window devices for all windows subject to the requirement. Arguably this implies an obligation on the owners corporation to repair and maintain all devices, even if a particular device was installed initially by a lot owner. Maintaining the device is critical to the effectiveness of this policy initiative. The Bill should clearly identify the party with the continuing obligation to ensure the devices remain compliant and in good working order and repair.

If it is proposed that the party who installed the device will be responsible for repair and maintenance, then this will lead to difficulties in later years in identifying the relevant party. This difficulty will be circumvented if the obligation vests with the owners corporation, consistent with the owners corporation's primary responsibility to ensure there are complying window safety devices for required windows.

The Committee suggests the objectives of the policy initiative should be further supported by including in the Bill a prohibition on an owner, owners corporation or occupier removing a device unless it is immediately replaced with a device that complies with proposed s 64A and the regulations.

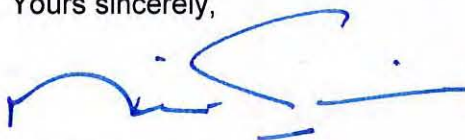
The Committee notes that proposed s 64A(6)(c) enables regulations to be made with respect to notification by owners who install window safety devices to the owners corporation. These notices will be very important in assisting owners corporations to comply with the requirements of the legislation. On that basis the Committee suggests the Bill be amended by removing s 64A(6)(c) and in its place inserting an obligation on the owner to notify the owners corporation within seven days of installation. The Committee suggests that the notice should be in writing and include full details of the device and the qualified tradesperson who installed it.

The Committee also suggests an amendment to proposed s 64A(3) to make it clear that the rights of lot owners in this sub-section are limited to windows in boundary walls of the owner's lot. The sub-section in its present form enables lot owners to install the devices on any common property windows, other than windows on another lot owner's lot. For example, as currently drafted a lot owner might seek to install a window safety device in a window of a common property hallway, which the Committee assumes would not be the intention of the Parliament.

In the Committee's view the content of the regulations will be of critical importance, given the breadth of topics in proposed s 64A(6) and s 64A(7). The Committee would welcome the opportunity to have further input into the drafting of those regulations.

Your officials may find it convenient to direct any questions in respect of this letter to Gabrielle Lea, Policy Lawyer for the Property Law Committee by email to [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au) or on (02) 9926 0375.

Yours sincerely,



Michael Tidball  
**Chief Executive Officer**