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AUSTRALIAN TAX OFFICE PROVIDES RELIEF FOR COMBUSTIBLE CLADDING COSTS

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AUSTRALIAN TAX OFFICE PROVIDES RELIEF FOR COMBUSTIBLE CLADDING COSTS

As combustible cladding is fast becoming a major focus for multi-storied buildings in New South Wales, lot owners and owners corporations are now facing a major bill and headache to replace combustible cladding.

Various local council's in New South Wales are issuing owners corporations letters expressing an intention to issue a fire order that will require combustible cladding installed on the property to be replaced.

In some instances, fire orders have already been issued and owners corporations are being forced to strike a special levy or take out a strata loan to replace combustible cladding with a non-combustible material that satisfies council's requirements.

Unless, an owners corporation has a remedy against the developer or the builder of the strata scheme, for breach of statutory warranties under the *Home Building Act 1989*, or a right to sue for breach of a duty of care, it will have no other choice but to strike a special levy or take out a loan to pay to replace the combustible cladding.

Lot owners and owners corporations in New South Wales are facing a mammoth task to raise the necessary funds to replace combustible cladding in circumstances where seeking State Government help is limited.

The problem with combustible cladding has been further exacerbated by the current pandemic as a number of lot owners are unable to afford a special levy due to having lost employment. Some are even facing bankruptcy.

Despite these difficulties, some relief has now arrived from the Australian Tax Office (**ATO**). A recent ATO ruling states that as an owner of an apartment in a building complex, the owner has a shared responsibility to fix building defects. That shared responsibility involves contributing to a special levy in order to comply with any State Government requirement. The special levy that is struck must be in respect of rectifying defects to common property.

The ATO will now allow an owner to claim a deduction for costs that the owner incurs to replace or contribute to the replacement of combustible cladding in order to meet government requirements. To enable a claim for deduction, the ATO expects that the combustible cladding will be replaced with fire resistant cladding by the owners corporation.

The recent ATO ruling may be of some help to owners and owners corporations who have no further right of recourse against anyone for the replacement of the combustible cladding but to strike a special



levy to replace the cladding.

Lot owners and owners corporations should obtain specialist tax advice from a qualified accountant or tax adviser who will be able to give advice on the amount that can be claimed as a deduction from the ATO.

The announcement from the ATO can be accessed through the following link:

<https://www.ato.gov.au/General/Property/Residential-rental-properties/Apartment-building-defect-expenses/>

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About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collection.

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