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YSP Podcast Transcript: Episode 356. Restoring our faith in new builds: decennial liability insurance for strata

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Intro: Welcome to Your strata Property, the podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source.

Amanda Farmer: Hello and welcome to this week's podcast episode. I'm your host, Amanda Farmer, and my guest this week is Corey Nugent. Corey has over 30 years experience in the insurance industry, primarily in building and construction. Having worked with small and large insurers, including national and multinational organisations, and more recently with the Insurance Council of Australia.

Corey has an enviable breadth of knowledge and experience in how insurance applies across the construction segment of the economy and how the built product performs and lives post-completion.

In recent times, Corey has been working closely with the Office of the Building Commissioner and the New South Wales Government, assisting with the development of reforms now implemented across the New South Wales building and construction industry.

Corey is the CEO of Resilience Insurance, the first insurance business bringing the game-changing decennial liability or latent defects insurance into Australia.

To explain all this and more, I'll take you over now to my chat with Corey Nugent.

Amanda Farmer: Corey Nugent, welcome to the show.

Corey Nugent: Hi Amanda, thank you. Thanks for having me.

Amanda Farmer: Corey, let's start with a little bit of background. What brought you into the strata sector? Have you got any particular personal connection to strata or strata living?

Corey Nugent: Back a while ago, yes. So, one of my first property purchases was exactly that, where I lived in a brand-new property, bought off the plan and moved in. And quite luckily for me, we had a really good builder with our property who, for probably the first two or three years, was one of the most seen people on our property, always fixing things and dealing with things. But I've certainly had friends and family that have not had that experience. So, directly and indirectly, there's been quite a bit of involvement, I guess.

Amanda Farmer: Well, lucky you to be moving into a new building and to have that hands-on builder. I do love a good news story. Sometimes we get a bit stuck, especially in my part of the strata sector, stuck on problems and think that that's the case for all buildings and all experiences of strata. But it's not. So, thank you for sharing that.

Corey Nugent: Sure. I think that's a really good call out that there is a perception, a wide perception, that strata does often have significant negative experiences from a quality and build perspective. And there certainly is quite a number of positive stories. But I guess that's what we do. And we work very closely with ICIRT. That's the whole reason for our market-led solutions that we have, is to try and improve that performance moving forward and that experience that consumers have, end users have, in moving into or owning strata property.

Amanda Farmer: You've just mentioned there, Corey, ICIRT. And that, I think, might be a great place to go next. ICIRT, I-C-I-R-T.

Corey Nugent: That's right.

Amanda Farmer: What is that all about?

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Corey Nugent: The Independent Construction Industry Rating Tool. So, it's a product delivered by Equifax. Some people may be aware it's a regulated ratings agency and they provide a range of ratings and other services to the financial services and other industries. But the ICIRT tool is designed to be a rating mechanism on the producers of buildings, so developers and builders primarily, albeit that there are numerous other sectors of the building industry that are now rated or being rated. So, what it does is it enables a consumer and or end user to understand from the initial point who is a trustworthy producer of building products. So, before someone goes in and purchases a product, they can understand that their developer, their builder is going to be there, has a really good opportunity to be there post-completion to attend to those issues that may or do come up from time to time, be them small or large. So, it's a visible, available tool for consumers to use to understand who it is that they're contracting with, which is a really significant change in Australia in terms of consumers having that power of understanding who they're contracting with and is that real and are they going to be around in the future.

Amanda Farmer: So, you've said this is a change, that was my next question, is this a new thing? How long has this been around? It's sounding like it's new to Australia.

Corey Nugent: It is. Equifax is a global company and different countries operate in different ways and I'm sure the different ratings mechanisms do operate around the world, but this is a, ICIRT is a first mover in Australia. It comes out of the building reforms that have been prosecuted across the country, of which in New South Wales, I think we've seen the most movement or the most progressive movement in terms of transparency and accountability, but also bringing in that trustworthy element of what's there. So, if we look at David Chandler's work and that of the Office of Building Commissioner and Department of Customer Service, the work that they've been prosecuting or progressing over the last three years, one of the key measures amongst many in that space has been to enable the commercial market to get involved in establishing mechanisms that drive either security, trustworthiness, accountability, and ICIRT is a critical one of those insofar as it now enables, and it's the first of its type in Australia, been available for probably about 18 months or so now, maybe a bit longer, where it enables consumers from the outset before they walk into a display suite and put down a deposit or similar to understand who it is that they're contracting with. So we've seen, and there's been a lot of media over the last two years, particularly maybe even longer than that, of some really poor experiences in terms of consumers in new building product just delivered that is or has significant defects or other issues and those owners either have problems in terms of the cost of rectification or even the ability of those contracting parties, the developer and the builder, to attend to those works. And that can be catastrophic on those owners financially and emotionally.

Amanda Farmer: So those who are looking to buy off the plan or into a brand new building can look up the builder developer and see if they are trustworthy, what their background is, what their history is. How do they do that? Is this a website that they go to? Is this all-public information?

Corey Nugent: There is. So ICIRT have their own website. I believe it is [buildrating.com](https://www.buildrating.com) and you can go on to that site and you can identify if your builder and developer is rated and what their rating is. Each of those practitioners would be rated on a star rating from one to five, five being the highest level. And we do have at least one developer builder in New South Wales now that has a rating of five, which is fantastic. A number of them that are rated four plus, which equally is extremely strong. And you can get some context around what that rating means and why it's there, but it would be highly advisable of any consumer looking to purchase into property around Australia to understand if their developer and or their builder has an ICIRT rating and ask if they don't, why they don't. Because it absolutely provides that certainty once you investigate what the ICIRT rating is providing, that trust around not only will they be able to complete the job, but the job will be completed appropriately because they have that corporate understanding and methodology in place. And they're likely, incredibly likely to be around post-completion to attend to any of those issues and have experience in attending to those issues post-completion.

Amanda Farmer: And is this a free service, Corey?

Corey Nugent: Absolutely free. Yes. So the builder and developer pay a fee for that to be rated and consumers, it's a free site for them to be able to go on and investigate if their developer and or builder rated.

Amanda Farmer: So that's [buildrating.com](https://www.buildrating.com). We'll make sure there is a link to that website therein the show notes. That's a great

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tip for those who are looking to buy into our newer or brand new strata buildings. What is decennial liability insurance, Corey? And why is that being introduced in New South Wales?

Corey Nugent: So decennial liability insurance is a really exciting development. In Australia, we've led the product in New South Wales, backed off again, a lot of the reform that has occurred there, but it is available all over Australia. Decennial liability insurance is a mouthful for most people, and it is a French term largely, because that's where the product originated from. So what we term this product for the Australian market is latent defects insurance. And what that is designed to provide is a security for consumers post-completion for 10 years on structural and structural envelope, and I'll explain that shortly, what that means, but structural envelope defects that might occur throughout that period. So those catastrophic issues that we've already spoken about that consumers have experienced and have been very public, but that are consistent across many buildings, are now able to be protected for the consumer for that period post-completion. This is not a new product. It is into Australia. We are the first provider of this product into Australia, but it has existed around the world for over 70 years and has been successful in addressing many of those issues around the world, particularly across Europe for many, many decades. And Resilience Insurance is the first provider of the product into Australia, supporting the reform agenda that we've been working with government on and is a real change for consumers and benefits consumers into the future.

Amanda Farmer: So who takes out this insurance and who is able to claim on this policy?

Corey Nugent: This insurance product operates very differently from what many traditional insurances will provide in Australia. So right now we would see an experience where a consumer would purchase into a strata building, take possession and at some point over the near future identify defects in the construction and see to have those remediated. Invariably that involves one of two mechanisms. One is litigation and that is expensive and timely. It takes forever to prosecute those cases and it costs a lot of money not only to litigate those cases but then to address the defects. The second one is that in New South Wales for example there is a strata bond requirement legislated that exists and that lives for about two years. It is limited to two percent of the value of construction so if the owners identify that there is a defect there may be opportunity to recover some of that cost through that two percent bond.

The problem with that is that it lives only for two years and the likelihood of finding a significant structural defect in that two years is extremely limited and two percent invariably will cause problems in terms of will that be sufficient to cover the cost of those defects which then exposes the consumer. So latent defects insurance which we've introduced is purchased by the developer at commencement of the building work and the key for that is that we change the way we ensure buildings. We require the developer and or the builder during construction to appoint an independent inspection firm which will consist of a range of different professionals, Geotech engineers, mechanical engineers, civil engineers and the like all the way through construction to ensure that both the design and the construction meet what is intended to be built and what was purchased by the consumer. So at completion not only has the builder, generally an ICIRT rated builder and developer, already got that tick of approval, we as the insurer have been through a process to independently check that that work has been done through construction appropriately. So when consumer moves in they take on ownership of that policy, it doesn't cost them any further moving forward, they don't need to go and buy the policy or pay the premium at that point, it's already paid by the developer at commencement and they inherit that policy for 10 years from completion for those structural defects that may occur in that building beyond that point.

The reason it's dramatically different is that inspection program enables a mechanism that hasn't existed before, an entirely independent inspection program of performance and removal of defects. And what we do through that program is if we identify an issue during construction, it's not ticked and we move on and we take that sort of element out of the cover of the policy, it's incumbent on the builder and developer to fix it before completion in order for the policy to commence. So the consumer has a lot more security that what they're purchasing is exactly what they intended to take on when they settle.

Amanda Farmer: Is this type of insurance mandatory or going to be legislated as mandatory in our space, Corey, or this is just a nice to have for developers who want to be seen to be trustworthy in the market?

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Amanda Farmer: Is this type of insurance mandatory or going to be legislated as mandatory in our space, Corey, or this is just a nice to have for developers who want to be seen to be trustworthy in the market?

Corey Nugent: At the moment it's voluntary, so developers and builders can pick that up and there has been a question around,

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all right, well this is an insurance product and insurers are going to charge a premium which is going to increase the cost of construction and in turn increase the cost of purchase. That's actually not accurate.

So the 2% bond that I was talking about before is a 2% cost that is charged and paid by the developer at completion and essentially the developer can get that back if the performance after two years is good but it's lost otherwise. So that cost is already borne into the purchase price because it's part of construction.

This insurance costs on average around about one and a half percent but it's an alternative to the bond. So a builder and developer can choose to either take the two-year bond or buy this insurance that lasts for 10 years. The insurance is cheaper than the bond which makes it for the developer an economic benefit but for the consumer a significant change in terms of the security that they have for a much longer period. Right now, it's voluntary. There was a ministerial panel established by the previous minister Kevin Anderson to investigate this and finalised by the Department of Customer Service and that report was given to government. Government have consulted widely on that in some areas and may consult further in the future, and there was a couple of options under that program to look at potential mandatory inclusion or changes to the strata bond but that's going to be a decision for government at the end of the day in terms of which way they prefer to go in that space.

Positively we've had really good feedback and this program has been operating for six to nine months in New South Wales. We've had really positive feedback from builders and developers and a lot of them investigating and seeking to take this type of insurance as an alternative in New South Wales seeing the benefit that it provides them and for their customers in who they're selling to. So, it has really good take up already. Eventually we're going to find in New South Wales under the voluntary mechanism of ICIRT and latent defects insurance the consumers will be armed with the knowledge of knowing that they can choose and select their purchase on a rated developer and builder and on a building that has latent defects insurance over those that choose not to provide that protection and transparency.

Amanda Farmer: Corey some of our listeners may be familiar with homeowners warranty insurance and the mandatory nature of that for strata buildings of a certain size. Can you explain how this latent defects insurance is different to homeowners warranty?

Corey Nugent: Yes, it's dramatically different from homeowners warranty from that point of view the first and more obvious ones is homeowners warranty generally relates to residential homes and it does include some strata property at the lower level of that you know so under three stories for example, and those sorts of things. Homeowners warranty provides what they call a last resort insurance mechanism, and that means that in order to make a claim, if you find defects, your builder needs to be either dead, disappeared, or insolvent. If that's not the case, despite having those defects you either need to pay for it yourself, litigate, or wait for one of those triggers to occur.

Latent defects insurance is entirely different. It is first resort, and it is strict liability. So what that means is that when the defect occurs, the claim can be made and the insurer responds you don't need to wait for any of those additional triggers, so it changes the landscape significantly in that space. Strict liability is a technical term but essentially what it means is that historically whether it's a low rise or high rise building, consumers have generally only had the mechanism of the builder or developer or professional services professional indemnity insurance to seek. So "who messed up?" "Who was at fault?" and "we need to go to court to find out who was at fault" and that might be numerous parties for a certain percentage which will take years. Strict liability which is what this policy operates on that it doesn't require fault to be the cause to drive the claim it is there a defect or not. The issue of fault is one for the insurer to take on with those people that caused the issue later, but for the consumer I have a defect I need it fixed and the insurer is there now to deal with that.

Amanda Farmer: And assuming that the builder may well still be around but this is a policy of first resort so the insurer is stepping in who goes in to fix the defect do you as the insurer want to send the builder back to fix their own mistakes.

Corey Nugent: This insurance that we're offering is what we call selective, so that means we will only offer this insurance to those builders and developers that are trustworthy - similar to an I-CIRT rating are trustworthy - and able to attend to the work positively what we would generally find with that cohort is that look things go wrong, and in a strata building for example, it's not always that

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the builder did the wrong thing. It could be a range of factors that have brought that about, so we will engage with the builder to see what that is, because it's always the most economical and quickest way to try and address those things. But, if we were to use the builder to address any defects that exist, we would be there overseeing that and making sure that it was affected properly. If the builder is not able to do it efficiently in terms of time and the like quickly enough, the insurer is there and we will address it as the insurer to ensure that it is fixed promptly.

Amanda Farmer: And just to clarify is this insurance only available for brand new builds not for remedial work or work done once the building is constructed?

Corey Nugent: That's right. At the moment it is for new builds. There is opportunity in the future to look at lower rise buildings and for significant remediation work but that's something that will evolve over the short to medium term is my expectation.

I think the experience and drawing to some case studies or comparisons as to where this sits on the lived experience of strata and the like, not that the product was around at the time, but if we look at the experience of say an opal or a mascot towers type of structure where there was significant defects and look the cause of those defects is an issue for courts to work out down the track, because that's the mechanism that we live under. But if we look to say an opal towers example that there was a significant structural defect, identified the owners were required to move out of the property on Christmas eve and they were out of home for quite a considerable period of time in that case the time that was lost between moving the owners out and identifying who was going to respond to what, commencing the legal action which by the way is still progressing through the courts, the insurer would have been there in that case, because alternate accommodation is covered under this policy the insurer would have been there on Christmas eve, accommodated the owners separately and immediately, attended to that rectification work that may or may not have included the builder depending on if the builder or the developer was around at that point in time, but part of the reforms prosecuted in new South Wales support that remediation projects. The owners would have been back in their properties much much sooner without the cost, without the need for litigation, in that space or the expense for litigation, and that work would have been signed off in a manner that assured the owners that they now are in a position that they should have been in at completion. More importantly to that is that post the rectification works the ancillary issues that have come up on buildings like that and it's - I'm picking on opal here but - it's not inconsistent to many of these properties that experience this the reporting and the satisfaction of the rectification work means that the engineering and other reporting that is in place is qualified. So things like strata insurance that applies on those buildings is now many multiple times more expensive than what it was prior to the identification of the defects, that is a direct cost straight back to those owners which is multiple times more than what they had, and more importantly the value of their asset is now significantly diminished. So when they bought off the plan, they bought into the property at six or eight hundred thousand dollars or even a million depending on where they bought, that property is now not worth that value and they've lost that value and equity in their property for who knows how long in that space this type of insurance product enables that security that it's not the owners that need to go out and bring those legal actions to try and recover those costs and hope that the work is done well or appropriately. It's on the insurer because this is a strict liability policy where the insurer is required, because there is defects to step in and get these things fixed now. And it's in the insurer's interest to get it done properly and quickly.

Amanda Farmer: Sounds like an absolute dream. I think you alluded earlier cory to the types of defects that are covered by this insurance. Did you want to speak a little bit to that? You use some terms; they're structural, and fill us in a bit on what might be covered and what might not under this insurance.

Corey Nugent: We cover the core structure of the building or the building envelopes all of the concrete or similar construction elements that go to the building structure itself, we cover waterproofing we cover some building services and those sorts of details. So what we've looked to in this protection and it mirrors what is available overseas and is working extremely successively overseas, is the reporting and the evidence that has been obtained over recent years, both by the office of building commissioners so they've done a lot of investigation on what are the core the five core causes of significant defects in buildings. Those five core issues are covered under this policy. So waterproofing is by far the largest, but then there are the structural issues the concrete the cracking the movement and those sorts of areas.

If we look to the evidence again, there was a report done for the building ministers meeting probably 18 months ago by the center

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for international economics, and they were talking about the cost of defects in Australia and the numbers in that were frightening that the cost of defects on properties outside that residential sector was 1.7 billion dollars per year. Now, without an insurance solution to that, that is 1.7 billion dollars, plus legal costs plus angst and emotional distress directly to consumers. Now I'm not saying that as an insurer, we're saying well we're going to stick our hand up and we're going to collect premium and pay 1.7 billion dollars.

There are a number of areas and this is where David Chandler's reforms come into play that it is insurance is one element of how we fix this issue the inspection regime that we have put in place for example will significantly limit the occurrence of those defects, the work done by the industry segments so the inspection segment, building surveyors, the building industry, themselves and the associations and the acceptance of need to change supported by regulation will change that dynamic over time. But the insurance industry coming into this piece supported with tools like Equifax, enable consumers now for the first time in Australia to one be informed on what they're purchasing, and have security in that knowledge of knowing who they're contracting with and that ultimately there is a financial security supporting their asset that if it doesn't perform to the standard that was promised that there's an insurance policy behind it that will support them back into that position that they should have been in.

Amanda Farmer: I agree it's a game changer and I know David Chandler has been talking for some years about an insurance solution to this problem or an insurance solution being part of the puzzle to put together. When I spoke to him back in 2020 I interviewed him for our shared space summit and later brought that chat here to the podcast he was talking then about decennial liability insurance and wanting to bring that in from overseas, and using those overseas examples so it's incredibly encouraging to see that that's happened.

You said Cory it's been available for around about the last 18 months, so when we have purchasers who are looking to buy into new buildings, would I be right to say if they're looking at a building that the strata plan was registered around 2021 or later they should be looking to see if this insurance exists. How do they go about checking that?

Corey Nugent: Yes they should be looking, they'll be asking the developer so we're working through at the moment some wider availability of information. There are a lot of regulatory areas that we need to be careful of in terms of putting out specific property information and those sort of things publicly, but we are certainly available to be able to provide that advice to those consumers that are seeking that directly, or the most efficient way is to ask the developer have they got this insurance. Now we have issued policies that are currently working through construction in place where those developers are progressing the inspection programs, and positively what we're finding in that space is that where there have been issues through construction, none of them have been significant but where there have been issues, those developers and builders have been extremely proactive in attending to that and the product that will be produced over the coming months and years out of those jobs that we already are. Those projects we're already working with will be significant for those consumers that are there, so consumers ought to be asking now if they are going to a display suite this weekend to have a look and purchase a property. The first question to the sales team for the developer is "do you have latent defects insurance?" and "can you show me your ICIRT rating?" and their money, their hard-earned money that they've spent a lot of time saving should be directed towards those projects where the builder and developer is willing to support their own product with that surety.

Amanda Farmer: And in that way we also see change as the market starts to vote with their feet and only be putting their money in these trustworthy buildings.

Corey Nugent: That's exactly right well in fact we've seen that ICIRT has been available for a little bit longer than the latent defects product and we have seen in discussions with David Chandler and his team who've done an amazing amount of work in this space in three years we have seen evidence of consumers asking about the ICIRT rating for example, and moving their purchase decision off the back of that, so I think we will see more and more of that with latent defects insurance and ICIRT ratings playing into this space where consumers are now greatly more informed and greatly higher levels of protection assuring their purchase that it will be what they intended.

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Amanda Farmer: It's a good thing. Corey you've said resilience insurance is the only insurer offering this latent defect insurance in the market at the moment, we may well have some developers tuning in who want to get on board with this how do our listeners find out more and connect with you and resilience?

Corey Nugent: Yes certainly, so they can connect with us through our website which is resilienceinsurance.com.au, otherwise I'm on LinkedIn as well, please look me up and I'm happy to assist in any way I can so you know from that point of view it's something where we're completely open we are the first in this market. We by no means believe we will be the last and we're hopeful that there will be other competitors coming to this space. My belief is we'll see that sooner rather than later and I think that's a good thing that we've got competition in this space and more availability of the product for consumers because that's what's going to drive the end piece of change in the experience of consumers in Strata.

Amanda Farmer: Great way to end there. Thank you so much Corey for joining me today.

Corey Nugent: No problem at all, thank you for having me. It's been a great time.

Outro: Thank you for listening to Your strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?