

Owners Corporation Update on Commencement Proclamation of the Home Building Amendment Act 2014

In a Nutshell

On 10 December 2014, it was proclaimed that the Home Building Amendment Act 2014 ("**the Amendment Act**") would commence in two stages, with:

1. Stage 1 including the changes to the statutory warranties which will now commence on 15 January 2015; and
2. Stage 2 including the remainder of the amendments largely concerning the form of residential contracts to commence from 1 March 2015.

The proclamation has now provided certainty for the market and follows previously unclear updates from NSW Fair Trading as to when key amendments under the Amendment Act would commence being an unacceptable situation given the retrospective application of a number of amendments.

Key Provisions commencing on 15 January 2015

The key provisions of the Amendment Act that commence on 15 January 2015 are:

1. Altering statutory warranties from a "structural defect" to a warranty for a "major defect" in a "major element", which in lay terms is basically a severe defect.
 - This will have retrospective effect on statutory warranty periods for all building work completed under contracts entered into on and after 1 February 2012, resulting in many defects which currently attract a 6 year warranty period being reduced to a 2 year warranty period*.
 - To preserve existing rights, owners should consider commencing proceedings prior to 15 January 2015 to preserve the existing 6 year statutory warranty rights.
 - In addition, the Amending Act allows home warranty insurance policies issued on and after 1 July 2002 to be amended retrospectively to reduce the liability of home warranty insurers (both private insurers and the government home warranty insurer, SICorp) to reduce their liability resulting in many defects which currently attract a 6 year warranty period being reduced to a 2 year warranty period*.
 - To preserve existing rights, where an insured event has occurred (builder has become insolvent, died or disappeared, or other insured event as detailed in the applicable policy wording) owners should lodge home warranty insurance claims before 15 January 2015.

2. Builders will not be liable where a building defect is due to an owners' independent expert's defective design or specification.
 - This will have effect for contracts entered into on and from 15 January 2015
3. Rectification will be the preferred outcome in a building dispute claim and a tribunal or court must have regard to the principle that rectification of defective work by the responsible party is the preferred outcome.
 - See above for commentary on preserving existing statutory warranty rights by commencing proceedings, where appropriate, prior to 15 January 2015.
 - See above for commentary on preserving existing rights under home warranty insurance policies, where an insured event occurs, by lodging an insurance claim prior to 15 January 2015.
4. The completion date for a new strata building will occur when an occupation certificate that authorises the occupation and use of the whole of the building is issued.
 - This will apply retrospectively to strata buildings unless proceedings were commenced prior to 15 January 2015 or a home warranty insurance claim was made prior to 15 January 2015 on any policy issued by SICorp from 1 July 2010.

Key Provisions commencing on 1 March 2015

We note that the following provisions all have effect for contracts entered into on and from 1 March 2015.

1. Subcontractors will be liable for the same statutory warranties as builders.
2. Owners must notify builders and subcontractors of a building defect within 6 months of a building defect becoming apparent (or within 6 months after owners ought reasonably to have become aware of a building defect).
3. Owners will have to enforce statutory warranties against builders and subcontractors to avoid the home warranty insurer being able to reduce its liability.
4. Owners must not unreasonably refuse access to a builder to rectify a building defect.
5. Maximum deposits of 10% will be uniform across all residential building contracts.
6. A progress payment may only be demanded if it is:
 - a. A specified amount or percentage of the contract price payable following completion of a specified stage of work that has been described in clear and plain language; or
 - b. Payment for labour and materials for work already performed, or costs already incurred, (margin may be added) with the claim supported by invoices, receipts or documentation at intervals fixed by the contract or on an "as invoiced basis".

The new progress payment requirements will not apply to residential building work performed under a construction contract to which the Building and Construction Industry Security of Payment Act 1999 applies.

For further details on the retrospective effect of statutory warranty amendments and how to preserve existing valuable rights before the amendments commence see our article: [Time and Building Reforms may affect Owners and Owners Corporations: Why Owners Need to Consider Action Now!](#)

*If a breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period.

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