

Breathing Space: Delays to the Start Of the Home Building Amendment Act 2014

In a Nutshell

The anticipated 1 December 2014 commencement date for the Home Building Amendment Act 2014 has been delayed allowing owners corporations some breathing space.

We have confirmed with Fair Trading NSW that the Home Building Amendment Act 2014 and the Home Building Regulation 2014 is to commence in two stages in 2015.

The first stage, expected to commence in mid-January 2015 is anticipated to contain all amendments introduced by the Home Building Amendment Act 2014 and the Home Building Regulation 2014 other than amendments to residential building contracts required by that amending legislation.

With the Christmas and New Year period this is effectively only a five week extension.

The second stage, expected to commence either in the first or second quarter of 2015, will contain those reforms which mandate the re-drafting of contracts to comply with the amending legislation.

Action Items

While there has been some relaxation of the commencement date of the amendments, to preserve existing valuable rights owners corporations should consider the following urgent steps before the amendments commence:

1. Consider urgently engaging experts to carry out a building defect audit to ensure that any latent defects, such as fire and life safety system defects are identified;
2. Commence proceedings for breach of statutory warranty to preserve the existing 6 year statutory warranty rights for building defect claims and to avoid a court or a tribunal having regard to the principle that rectification of defective work by the responsible party is the preferred outcome as opposed to awarding damages;
3. Lodge any home warranty insurance claims where a builder has become insolvent, died or disappeared to preserve existing rights under the policy of insurance, and consider whether the home warranty insurance policy contains other applicable triggers for claims such as the builder becoming unlicensed;
4. Give consideration to entering into any rectification building work contracts being negotiated with a builder as a priority;
5. Check that independent experts such as architects, surveyors and engineers have professional indemnity insurance and that the terms of their engagement do not unreasonably limit their liability; and
6. Make a home warranty insurance claim if the builder has "disappeared" interstate, because the new definition of "disappeared" will mean that a builder has to have "disappeared" from Australia. The

amendment will not affect home warranty insurance claims that are made prior to the legislative amendment being proclaimed

Mid-January 2015 Commencement – Statutory Warranty Reforms

The amendments to the Home Building Act 1989 that alter the 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, are expected to commence in the first stage of reforms due to commence in mid-January 2015. Those amendments will have retrospective effect as previously commented in our article: [Time and Building reforms may affect Owners and Owners Corporations: Why Owners Need to Consider Action Now!](#)

In addition, other amendments that are likely to commence in mid-January 2015 for building contracts entered into after that date are as follows:

1. Builders will not be liable where a building defect is due to an owners’ independent experts’ defective design or specification.
2. Subcontractors will be liable for the same statutory warranties as builders.
3. Owners must notify builders and subcontractors of a building defect within 6 months. Any delay that results in rectification costs being increased may cause a court or tribunal to award a reduced amount.
4. Owners corporations will have to enforce statutory warranties against builders and subcontractors to avoid the home warranty insurer being able to reduce its liability. This and the above point will prove difficult absent knowledge of the subcontractor.
5. Owners must not unreasonably refuse access to a builder to rectify a building defect.
6. Rectification will be the preferred outcome in a building dispute claim and a tribunal or court will have a standing directive to make a rectification order over an order for compensation where reasonable.

Later Commencement – Remaining Reforms

The second round of reforms will likely include changes to the form and content of contracts required by the amending legislation and the change to make maximum deposits of 10% uniform across all residential building contracts.

The second round of reforms are likely to commence in the first or second quarter of 2015 and the date of the commencement of those reforms has not been announced.

It will, however, be necessary to review work orders to ensure that subcontractors are identified.

For further information see our article: [Time and Building reforms may affect Owners and Owners Corporations: Why Owners Need to Consider Action Now!](#)

Key takeaways

- The commencement of the Home Building Amendment Act 2014 has been delayed, providing owners corporations with additional time to prepare.
- Owners corporations should engage experts for building defect audits to identify latent defects.
- It is crucial to lodge home warranty insurance claims promptly to preserve existing rights.
- The amendments will change statutory warranties from 'structural defects' to 'major defects', impacting future claims.
- Owners must notify builders of defects within 6 months to avoid reduced liability.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers

01 June 2015

