

# Strata Reform: New Strict Liability for Damages for Failure to Repair and Maintain

Section 106 of the Strata Schemes Management Act 2015 (**SSMA 2015**) creates a **new strict liability for damages** for failure to repair and maintain, which is extracted below (new provisions are underlined):

- (1) *An owners corporation for a strata scheme must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation.*
- (2) *An owners corporation must renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the owners corporation.*
- (3) *This section does not apply to a particular item of property if the owners corporation determines by special resolution that:*
  - (a) *it is inappropriate to maintain, renew, replace or repair the property, and*
  - (b) *its decision will not affect the safety of any building, structure or common property in the strata scheme or detract from the appearance of any property in the strata scheme.*
- (4) *If an owners corporation has taken action against an owner or other person in respect of damage to the common property, it may defer compliance with subsection (1) or (2) in relation to the damage to the property until the completion of the action if the failure to comply will not affect the safety of any building, structure or common property in the strata scheme.*
- (5) *An owner of a lot in a strata scheme may recover from the owners corporation, as damages for breach of statutory duty, any reasonably foreseeable loss suffered by the owner as a result of a contravention of this section by the owners corporation.*
- (6) *An owner may not bring an action under this section for breach of a statutory duty more than 2 years after the owner first becomes aware of the loss.*
- (7) *This section is subject to the provisions of any common property memorandum adopted by the by-laws for the strata scheme under this Division, any common property rights by-law or any by-law made under section 108.*
- (8) *This section does not affect any duty or right of the owners corporation under any other law.*

**We anticipate that there will be significant consideration of the following issues given by the Courts and NCAT, given its new damages order making power:**

1. What is the liability of the managing agent?
2. What is “action”?
3. What is “completion of the action”?
4. What does “the safety of any building, structure or common property in the strata scheme” mean?
5. When does the two year period of when the owner “first becomes aware of the loss” begin?
6. What is the effect of s 260 of the SSMA 2015 regarding personal liability for some parties?
7. What effect will the transitional provisions of the SSMA 2015 play in relation to owners currently suffering losses?
8. What role will strata insurance products play and what orders can be made if owners corporations don’t make a claim against that insurance?
9. What role will the common property memorandum play?
10. If there are covenants or easements in place, there may be possible cross-claims in respect of who has a duty to repair and maintain common property.
11. When there is a strata management statement, subject to its terms, other BMC members may also be liable for to repair and maintain common property.

Bannermans Lawyers is ready, willing and able to assist you with your enquiries. For further information, please contact us to discuss.

**Prepared by Bannermans Lawyers**  
**24 October 2016**