# 4 Hot Defect Trends

**STRATA BUILDING DEFECTS – TRENDING ISSUES**

The strata industry has a long history of dealing with defective building works and there are some usual suspects, such as water penetration and concrete cancer. However, in recent years, some new types of building defect have risen to prominence. In our experience, the following have become particularly problematic:

- Aluminium cladding
- Balconies and balustrades
- Electrical wiring
- Loose fill asbestos insulation

**Aluminium Cladding**

Defective aluminium cladding is a major problem, because it represents a substantial safety hazard, as illustrated by fires in Melbourne and London and because the rectification costs can be enormous. The actual defect generally involves use of imported aluminium cladding products, which do not comply with relevant standards, generally in relation to fire retardant characteristics of the material used as the core of the product.

The Government response includes:

- amendments to Commonwealth laws restricting importation of aluminium cladding products.

- amendments to New South Wales laws imposing substantial penalties for use of banned building products.

- establishing a New South Wales Fire Safety and External Wall Cladding Taskforce and associated 10 point plan, including identifying buildings potentially affected, carrying out inspections and creating a new fire safety declaration that will require high rise residential buildings to inform state and local governments as well as NSW Fire and Rescue if their building has cladding on it.

New South Wales Fire and Rescue has been inspecting buildings and a significant number of residential high-rise buildings have been identified as having potentially unsafe cladding.

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In order to address their statutory obligations and potential liability, NSW strata schemes should take action, including:

- Inspection of Council records to obtain details of the type of cladding installed and the manner of installation.
- Arranging an audit and risk assessment by a qualified expert to identify the nature of the aluminium cladding used, its fire resistance properties and the fire risk associated with the cladding taking into account all fire control measures in the building.
- Seeking an expert's opinion on the best method available to make the building safe and to provide a scope of works to address the issues.
- Determining whether approval from a planning authority or an order from Council is required to be able to perform the scope of works.
- Obtaining legal advice on who is liable to pay and whether or not it is too late to commence proceedings to obtain rectification or orders for damages. There could be numerous parties who are liable, such as, designers, developers, builders, subcontractors, manufacturers, importers, private certifiers, Council and insurers.
- Briefing consultants who provide annual fire safety statements to ensure reporting on non-complying aluminium cladding.
- Disclosing the existence or potential existence of any non-complying aluminium cladding to the strata scheme's insurer and seeking confirmation of continuation of cover.
- Disclosing the existence of any non-complying cladding to the Home Warranty Insurer and if appropriate lodge a claim.
- Register the building details with NSW Fair Trading.
- Comply with Taskforce requirements.

Further information can be obtained here more information

**Balconies and balustrades**

Potential problems include scenarios where:

- Balconies and balustrades have become unsafe due to defective building work or deterioration, e.g. where "concrete cancer" is involved.
- Balconies and balustrades were compliant when constructed and involve no specific defect, but are not compliant with current standards and which an owners corporation is now required to upgrade as a consequence of seeking approval for other works.
- Balconies and balustrades were compliant when constructed and involve no specific defect, but are not compliant with current standards and which an owners corporation wishes to upgrade for safety reasons, but is not legally required to do so. In this scenario, disputes can


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arise between different groups of owners as to whether the work is necessary or appropriate and whether it constitutes repairs and maintenance, or an upgrade requiring a special resolution.

Recent developments in the law have brought focus to this issue. On the one hand, an owners corporation's liability for failure to carry out repairs and maintenance has increased with the enactment of the Strata Schemes Management Act 2015 ("SSMA"). In contrast with the previous legislation, the SSMA now provides that a lot owner suffering loss can claim compensation from an owners corporation which has failed to observe its statutory duty to repair and maintain the common property. On the other hand, several recent cases have made it clear that an owners corporation's duty to repair and maintain the common property does not extend to carrying out works which amount to upgrades, which represent a common property upgrade requiring approval by special resolution.

**Electrical wiring**

A defect notice can be issued if an electrical installation does not comply with safety standards, e.g. due to faulty wiring, alterations or additions, or trees or branches growing too close to electrical wires. This can necessitate works and potentially result in disconnection of the service. It can also impact on insurance cover.

A common difficulty in this area involves determination of whether the relevant wiring is common property or lot property, i.e. whether the liability resides with the owners corporation or lot owner.

**Loose fill asbestos insulation**

We have written about this previously and further information can be obtained here. more information

Broadly:

- The voluntary purchase and demolition scheme for properties affected by loose fill asbestos is well advanced, with 142 properties having been identified as affected and most of those now purchased and with demolition and/or remediation commenced in most cases.

- Owners of affected properties who have not participated in the scheme are now out of time to do so and will need to comply with statutory obligations in relation to such properties.

We have considerable experience with these issues and could help you pre-empt difficulties in this area.

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## Key takeaways

- Aluminium cladding poses significant safety hazards and requires urgent attention from strata schemes.
- Balconies and balustrades may need upgrades to comply with current safety standards.
- Strata schemes must conduct thorough inspections and audits to identify potential defects.
- Legal advice is crucial for determining liability and rectification options.
- Compliance with government regulations and taskforce requirements is essential for safety.

****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**
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