Don't Let Your Cladding Statutory Warranties Expire: FAQ's

The NSW Cladding Taskforce has already audited 185,000 buildings across NSW and has issued 33,000 safety letters to building owners and residents recommending certain actions. Out of 2,300 buildings inspected thus far, the Taskforce has identified 425 as high risk.

If your residential strata scheme is in the process of engaging a consultant to advise on cladding or has just received a cladding report, owners should be aware of the following information to ensure to preserve the statutory warranty rights against the builder, developer or home warranty insurer.

Question: What cladding defects have a 6 year statutory warranty?

Answer: A 6 year warranty will apply to cladding if:

- The building contract was entered into on or after 1 February 2012; or
- No contract, if the works commenced on or after 1 February 2012; and
- The external cladding causes or is likely to cause a threat to the safety of any occupants of the building if a fire occurs in the building

Otherwise the defect will only have a 2 year statutory warranty.

Question: Does some cladding have a 7 year warranty period?

Answer: Yes, but only where the building works were performed under a contract or if there was no contract for works commenced before 1 February 2012.

Question: How do I find out when our warranty period(s) start?

Answer: You need to locate the first occupation certificate for the whole building, as your warranty period commences on 'the date of the issue of an occupation certificate that authorises the occupation and use of the whole of the building'.

Question: What do I need to do before the warranty period expires?

Answer: Before the warranty period expires, a scheme needs to be pro-active to ensure that all possible attempts are made to:

- Identify any potential cladding
- Notify and liaise with the builder, developer and home owners warranty insurer

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- Attempt to negotiate a suitable return to rectify contract with the builder and/or developer
- Prepare and file proceedings in a Court or Tribunal

Question: Are there any grounds for extending the warranty periods provided in the legislation?

Answer: There is a 6 month extension period for both 2 and 6 year warranty items 'if the 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'.

Although not applicable at the time of writing this factsheet, there is an extension of time of 2 year warranty period to 90 days after the time required for the final inspection report, but only where the 2% bond scheme applies.

Attempts to extend the warranties period by agreement is not recommended the reasons for which are covered in our on-line article titled "Owners Beware: Jurisdictional Problems with Agreements to Extend Statutory Warranties".

Question: What if I fall outside the 2, 6 or 7 year statutory warranty period?

Answer: For subsequent owners, such as strata schemes, there are a shrinking number of possible common law actions, however such actions are much more expensive, with much lower prospects of success.

For owners who were a party to a contract with the builder, very different and more obvious legal claims may be available, such as, breach of contract or negligence.

Question: Where can owners get further information?

Answer: Bannermans' website has a number of relevant articles:

- Cladding Update – Lacrosse Tower Fire Decision: The Importance of Statutory Warranties
- Dob Yourself in about Cladding
- Aluminium Cladding – Dealing with the NSW Cladding Taskforce Request

Key takeaways

- A 6-year warranty applies to cladding if the building contract was entered into on or after 1 February 2012.
- Owners should proactively identify cladding issues before the warranty period expires.
- There is a 6-month extension for warranty claims if a breach becomes apparent within the last 6 months of the warranty period.
- Subsequent owners have limited common law actions available outside the warranty periods.
- Bannermans Lawyers provides additional resources on cladding issues on their website.

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