

The Subcontractor's Conundrum: How the D&BPA Empowers Owners Corporations to Pursue Justice

The Design and Building Practitioners Act 2020 (the D&BPA) is a relatively new piece of legislation in New South Wales, that has significant positive implications for owners corporations and their ability to claim against subcontractors for defective building work. Previously, a claim against a subcontractor for breach of statutory warranties arose if the builder and developer were the same entity, which was rare. However, with the introduction of the D&BPA an owners corporation now has an avenue of recourse against subcontractors.

In accordance with section 7 of the D&BPA, a building practitioner is defined as a person who agrees under a contract or other arrangement to do building work, or if more than one person agrees to do the building work, a person who is the principal contractor for the work. Section 3 of the D&BPA defines design practitioner as a person who prepares regulated designs. These two classes of practitioners include builders, architects, engineers, and other professionals involved in the building process.

One of the key features of the D&BPA is the introduction of a statutory duty of care owed by building practitioners to owners of buildings. This duty of care applies retrospectively to building works carried out after 10 June 2010.

Importantly, the duty of care extends to subcontractors engaged by the principal contractor. This means that owners corporations may be able to claim against subcontractors for defective building work.

Following on from the decision in *Roberts v Goodwin Street Developments Pty Ltd [2023] NSWCA 5*, subcontractors in substantive control of the works may be found to be personally liable and could be sued up to 10 years after completion of the works. This has given rise to revised insurance and run-off policies.

This has important implications for owners corporations in New South Wales, giving them greater ability to claim against subcontractors for defective building work.

Prepared by Bannermans Lawyers
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