Design & Building Practitioners Act 2020 changes effective from 1 July 2021

Introduction

The NSW Government recently made the Designers and Building Practitioners Regulation 2021 ("Regulation") under the Designers and Building Practitioners Act 2020 ("Act"), assisting greatly in establishing how the Act will be phased in and work in practical terms. The Act operates in conjunction with the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 which we have considered in a separate article titled Building Commissioners New Powers.

We have prepared this article to assist in determining what action you should take in light of the new legislation. This article is aimed at strata schemes, their strata managing agents and others dealing with design and building practitioners. Design and building practitioners will require advice far beyond the scope of this article and should consider obtaining urgent legal advice, as they have a lot to do by 30 June 2021 and may well already be engaged in activities which will be impacted by the new legislation.

The Act imposes new obligations on design and building practitioners, focused on improving performance. Persons dealing with design and building practitioners need to consider the following:

- Design and building practitioners performing most kinds of design and construction work in relation to specified classes of buildings, will need to be registered and to get the most benefit from the new legislation, persons engaging them should ensure that they are registered.

- An important practical consequence is that schemes will have greater scope for pursuing building defect claims, e.g. the legislation potentially extends the range of claims which may be made and the range of practitioners against whom they may be made, as well as potentially extending limitations periods. Accordingly, schemes and their managing agents experiencing building defect issues should obtain legal advice as to the implications of the new legislation. In particular:

    - They may have claims which they had not previously considered.

    - They should exercise care, when negotiating settlement of a claim, not to release additional rights they may have under the Act, unless that is intentional.

- Helpful as it may be, the new legislation is not going to resolve a number of ongoing issues, e.g. whether a design and/or building contract is going to achieve the expected outcome for the property owner. That will, as always, turn on the care and attention put into preparing

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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the contract and schemes and their managing agents considering such contracts should obtain legal advice and not rely on this or any other legislation to fully protect them.

The Act commences in stages:

- As from 11 June 2020, the Act imposes a duty of care on design and building practitioners, i.e. the potential to make a claim against them if they act negligently. This will have potential retrospective effect, i.e. potential to make a claim in relation to work which preceded commencement of the Act.

- As from 1 July 2021, most of the rest of the Act comes into force. This includes registration requirements in relation to design and building practitioners, certification and other requirements in relation to regulated designs and ancillary measures such as provisions in relation to investigations, enforcement and disciplinary proceedings.

- At a future date not yet determined, the last of the Act will come into force, being registration requirements in relation to specialist practitioners, being practitioners carrying out work in relation to building elements.

Key takeaways

- The Act imposes new obligations on design and building practitioners to improve performance.
- Strata schemes can pursue building defect claims more effectively under the new legislation.
- Legal advice is crucial for strata schemes to navigate the implications of the Act.
- The Act introduces a duty of care on practitioners, allowing for claims based on negligence.
- Registration requirements for practitioners are now mandatory to ensure compliance.

****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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BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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