

Building Defects Advanced Edition FAQ – Non-performance of Deeds and NCAT Rectification Orders

What can an owner do if a builder fails to comply with an NCAT work order or a deed?

Several options are available. These include but are not limited to:

- Applying for a money order through NCAT to recover rectification costs.
- Recommence enforcement proceedings, if still within applicable time limits.
- Check the terms of the deed or work order—some deeds include joint expert determination clauses.
- Determine whether non-compliance is due to the builder's breach or another factor.
- Assess whether the owner has Home Owners Warranty Insurance (HOWI) coverage.

Consequences for the builder: What happens if a builder fails to comply?

Serious repercussions may include:

- Financial liability for rectification work.
- Fines or penalties.
- Suspension or cancellation of their builder's licence—especially for significant or repeated non-compliance.

Time limits for enforcement: What are the relevant time limits for taking action?

1. NCAT Work Orders

- These must be enforced within 12 months of the effective date.
- If not enforced within this period, the right to enforce through NCAT may be lost.

2. Deeds

- Deeds are binding contracts governed by contract law.
- In NSW, owners have up to 12 years from the effective date of the deed to commence proceedings for breach.

Key differences: NCAT orders vs deeds

	NCAT Work Orders	Deeds
Enforcement Timeframe	1 year from effective date	12 years from date of deed
Enforcement Path	NCAT or Court	Court (contract law)
Consequences	Regulatory action, licence risk	Contractual remedies
Flexibility	Limited timeframe	Broader window for action

Common non-compliance issues & how to overcome them

1. Builders Ignoring Orders: Builders may delay or refuse compliance.

Action: Apply for money order or escalate to NCAT or Court.

2. Incomplete or Defective Work: Partial or poor-quality rectification efforts.

Action: Return to NCAT for further orders or obtain expert reports to prove non-compliance.

3. Time Limit Constraints: Owners may miss the 1-year deadline.

Action: Educate owners early, track dates, and act quickly.

4. Enforcement Difficulties: Builder may be insolvent, unlicensed, or uncooperative.

Action: Owners can pursue this further in NCAT, District Court, or pursue Home Building Compensation Fund claims if applicable.

Importance of documenting time limitations

- Owners must track all relevant limitation periods—these differ under the Home Building Act, D&BPA, HOWI, and SBBIS.
- Seek legal advice early to understand and act within deadlines.
- Failure to act on time could permanently bar a claim.

How can we help?

Bannermans Lawyers can provide you with the expert legal advice you need in relation to building defects as we understand that your home or investment property is one of your most important assets.

For a FREE 15 minute consultation on how we can help resolve your defects in a cost effective and efficient manner click [here](#).



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