

Dealing with defective building work? Get advice ahead of new laws

New legislation passed by the New South Wales government will change the framework for resolving disputes concerning construction work, particularly construction work in relation to residential apartments. The Building (Approvals and Practitioners) Bill 2026 has been passed by the New South Wales government and is expected to commence later this year as the Building (Approvals and Practitioners) Act 2026. The primary issues are:

- Although this article is concerned with civil liability for defective building work, the bill essentially replaces the Design and Building Practitioners Act 2020 and contains many other important provisions, including an overhaul of the building approval system, with a transition from construction and occupation certificates to building and occupation approvals, registration and regulation of building practitioners, as well as significant changes to the role of private certifiers.
- The bill carries over the duty of care imposed on construction professionals under the DBPA, with only cosmetic changes. However, there have been amendments to the definition of "construction work", potentially exposing additional work and persons performing work to actions and persons performing construction work or having it performed for them, to consider whether these changes impact on their contracts.

The bill amends a number of other acts, including amendment of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 to provide for regulations to establish a statutory dispute resolution scheme by 31 December 2026. These regulations have not yet been published, but the following observations can be made:

- It is highly likely that transitional provisions will be imposed (although this has not as yet occurred) preserving actions under the current legislation. Accordingly, persons with claims under the current legislation, who believe that they may be disadvantaged by the proposed dispute resolution scheme, might see advantage in commencing proceedings before the

new legislation commences.

- It is possible that persons with claims under the current legislation could be disadvantaged by the proposed dispute resolution scheme, for example if the scheme involves:
 - Restrictions on the amount or type of claims which may be pursued.
 - Time limitations within which claims must be pursued.
 - Limitations on remedies available under the scheme.
 - Prohibition or restriction of claims in other jurisdictions.
- It is also possible that persons with claims in other jurisdictions could be adversely impacted by the proposed dispute resolution scheme, e.g. if a developer were pursuant to a scheme able to resolve a dispute on terms which do not fully address building defect and other issues posed for owners corporations and lot owners, particularly if their ability to pursue those issues elsewhere is restricted.
- Persons dealing with defective building work should consider legal advice as to the impact this legislation may have on them.

We have considerable experience with these issues and would be pleased to provide you with whatever assistance you may require.

****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.*

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