

## Building Defects

In this first edition of Nicholsons Highlights, we consider the important issue of how Body Corporate Managers can assist lot owners and Bodies Corporate to be aware of and take the necessary steps to rectify incomplete or defective building works. We examine the Building Services Authority's (BSA's) ability to provide a direction to a builder to rectify or complete building works as well as the statutory insurance scheme.

Body Corporate Managers routinely receive inquiries from Bodies Corporate in respect of building defects. It is important to be aware that there is a very limited window of opportunity within which to take simple steps to have incomplete work completed and/or defects rectified at no, or little, cost to the Body Corporate under the legislative framework that the BSA works within.

After those time limits expire, any potential legal claim is likely to be difficult. As the law presently stands, only in unique circumstances will a Body Corporate or individual lot owner have a cause of action against a builder/developer for incomplete or defective works and, even if those circumstances are met, pursuing a claim is likely to be time consuming and expensive and will not particularly guarantee a favourable outcome.

### Defect Categories

The BSA uses two categories to define a defect. Category 1 defects are serious defects which, for example, allow water penetration, or adversely affect the structural adequacy of the building or the health and safety of occupants, amongst other things. Category 2 defects are defects that are less serious and include, for example, poor finishes to the building.

### Time Limits—Direction to Rectify or Complete

In the case of Category 1 defects, the BSA must be notified within 6 years and 3 months from the date of entering into the building contract. For Category 2 defects the BSA must be notified within 6 months of the practical completion of the works.

*Ask Questions: As a Body Corporate Manager, be aware of the time limits that apply to your Bodies Corporate for making claims on the BSA, and what steps are required to rectify incomplete or defective building works.*



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## When Insurance Claims can be made

Where a builder cannot, or does not, comply with a direction to rectify or complete, a claim under the statutory insurance scheme may be made. For Category 1 defects, a claim can be made if the defect becomes evident within 6 years and 6 months from the date of entering into the building contract and the claim is made within 3 months of the defect first becoming evident. For Category 2 defects, a claim can be made where the defect first becomes evident within 6 months, and is made within seven months after the date of practical completion of the works.

## How can Body Corporate Managers Assist Their Clients?

As a Body Corporate Manager, we recommend that you liaise with your Committees to ensure they are aware of their rights.

Generally, when a building defect issue is raised by a Body Corporate, you should identify the relevant time limits and assist the Body Corporate by considering whether a building report should be obtained and notifying the BSA within those time limits.

For further information on this edition of Highlights, please feel free to contact our experienced Body Corporate team, Matthew Weaver, Troy Hawthorn, Andrew Suttie, or any of our partners.



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