

BODY CORPORATE NEWSLETTER

DEFECTIVE OR INCOMPLETE BUILDING WORKS

GETTING HELP WITH DEFECTIVE OR INCOMPLETE BUILDING WORKS

We have seen many occasions when someone who has bought a shiny new apartment finds out it leaks as soon as the first thunderstorm arrives after they move in. What can they do given the fact they may have paid a lot of money already for the unit and don't necessarily have a lot of money to go suing builders/developers etc? There is potentially another less expensive option. The building regulator who actually has some teeth and can make a difference to help protect consumers who may be suffering because of defective or incomplete building works. Body Corporates and their managers may also get assistance from the regulator if for example, the defective or incomplete works relate to common property. In this regard, please see our March newsletter where we talk about common property and duties relating to defects in common property.

WHO IS THE REGULATOR?

The Queensland Building and Construction Commission ("the QBCC") is a statutory body and is part of the portfolio of the Minister for Housing and Public Works.

It was established under the *Queensland Building and Construction Commission Act 1991*^[1] (the "QBCC Act") to regulate the building and construction industry in Queensland.

WHAT POWERS DOES THE REGULATOR HAVE?

The power of the Commission to issue a direction to rectify is conferred by section 72 of the QBCC Act.

That gives the Commission a broad discretion but it is subject to a restriction found at section 72A(4) of the QBCC Act which provides:

A direction to rectify or remedy cannot be given more than 6 years and 3 months after the building work to which the Direction relates was completed or left in an incomplete state unless the tribunal is satisfied, on application by the Commission, that there is in the circumstances of a particular case sufficient reason for extending the time for giving the direction and extends the time accordingly.

Also relevant is the Commission's published policy on the rectification of building work^[2] which relevantly provides.^[3]

^[1] (as amended).

^[2] *Rectification of Building Work Policy* made by the Board of the Commission, on 20 June 2014, pursuant to section 19 of the QBCC Act (the "Policy").

1. It is the policy of the Board that if a consumer is seeking the assistance of the Queensland Building and Construction Commission (QBCC) to issue a direction to a building contractor to rectify defective building work, the consumer must lodge a formal complaint with the QBCC of defective building work as soon as possible but no later than within 12 months of becoming aware of the defects.
2. The QBCC will then consider the issuing of a direction to rectify to a building contractor:
 - a. for structural defective building work, within 6 years and 3 months of the building work being completed; or
 - b. the non-structural defective building work, within 12 months of the building work being completed.

The expression "structural defective building work" being defined^[4] to mean:

...defective building work (other than residential construction work causing subsidence) that is faulty or unsatisfactory because it does one or more of the following:

- (a) adversely affects the structural performance of the building;
- (b) adversely affects the health or safety of persons residing in or occupying a building;
- (c) adversely affects the functional use of a building;
- (d) allows water penetration into a building.

LODGING THE COMPLAINT

We can help you to prepare and lodge a complaint with the Commission, it isn't a hard process but it is important to do it correctly and quickly (i.e. don't let the limitation period for complaints expire). In an upcoming newsletter we will look at what happens after a complaint is lodged and your dealings with the commission.

For legal advice or assistance with any Strata or Body Corporate matters, contact Sam or Shane using the contact details below.

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^[3] At section 3.

^[4] At Section 5