

# Building Defects in High Rise Strata Schemes

## What can an Owners Corporation do?



Following the events of Opal Towers, and Mascot Towers some say that New South Wales is currently in a strata building crisis. The stakes are high, not just financially, but also the risk of safety and wellbeing of residents.

The Opal Tower unit owners have recently launched a class action against Sydney Olympic Park Authority claiming a breach of warranty and that the Tower was not designed or constructed with “due care and skill”.

The process of fixing strata building defects is expensive and time-consuming, especially so in circumstances where it can be hard to distinguish between genuine building defects and ordinary ‘wear and tear’, or whether it is common property or individual lot owner’s property.

**Construction Legal** has a lot to say about the current strata building crisis and has been very active in this space. Most recently, we have lodged submissions to the government enquiry. A copy of our submissions, which puts forward an entirely new and holistic approach to the current building reform, is available on request.

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## Statutory Warranties

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We urge Owners Corporations and owners of strata units to ensure they understand their statutory rights under the *Home Building Act 1989*. Some of these rights include long statutory warranty periods for defects arising in the apartments and common property, i.e.:

- » 6 years from the date of occupation certificate for major defects which includes water proofing, fire safety and structural defects (plus 6 months if defect becomes apparent in the last 6 months of the warranty period); or
- » 2 years from the date of the occupation certificate for all non-major defects (plus 6 months if defect becomes apparent in the last 6 months of the warranty period).

## Major vs Minor Building Defects

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In *Home Building Amendment Act 2014*, a major defect is defined as a defect in a “major element” of a building such as internal or external load bearing component of a building (i.e. foundations, footings, floors, walls, beams), fire safety system, or waterproofing. These major defects must consequently lead to uninhabitable or incapable of use of the building for its intended purpose, or destruction of building, or a threat of collapse of the building. In other words, it must involve a significant degree of seriousness.

If the defect is deemed to be a minor one, then owners corporation only has a 2 year statutory warranty period, which is very short-lived given the hurdles that need to be passed such as investigating the defects, communicating the defect to the developer or builder, notifying the home warranty insurer, and filing subsequent proceedings in the Tribunal or Court if matters are not resolved.

## A Guide to resolving building defects in a strata complex:

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1. Identify the defect; is it major or non-major?
2. Categorise the defect; is the defect to common property or private property?
3. Do you know when your statutory warranty expires?
4. Communicate: Report the building defect to the right person; all common property defects should be reported to the strata manager and all internal lot defects should be reported to the builder.
5. Undertake a professional defect report, preferably after 3 to 6 months of occupation.
6. If the builder refuses to rectify the defects, contact **Construction Legal** to help you navigate through your legal options.

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