



New penalties for Owners Corporations failing to maintain common property

New Penalties for Owners Corporations failing to maintain common property - The Building Compliance and Enforcement Bill 2022

Introduction

Long-suffering apartment owners will rejoice following the proposed laws to enforce the statutory duties of Owners Corporations (OCs) to maintain and repair common property in a timely manner. The effect of this new legislation will mean that OC's are at risk if they wait the full statutory warranty period before they engage a builder to repair major defects.

This new legislation will also replace the famous Residential Apartment Building (Compliance and Enforcement Powers) Act 2020 (**RAB Act**) that developers and builders have quickly come to learn, understand and comply with.

Overview of the Proposed Bill

The NSW Government recently released a draft government bill titled the '**Building Compliance and Enforcement Bill 2022**' (BCE), as part of the Office of Building Commissioner's ongoing phase of building industry reforms. You can have your say until 25 November 2022 after which time, the consultation process will close.

Key Changes

OCs currently have a legal duty under section 106 (1) of the Strata Schemes Management Act 2015 (SSM) to properly maintain and keep in a state of good and serviceable repair, the common property and any personal property vested in the OC;

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A similar provision also exists under section 109 (1) of the Community Land Management Act 2021 (CLM).

Notwithstanding these obligations, more often than not, action against builders or developers for defects is often delayed, usually due to the owners not having sufficient funds support the legal action required to force the builders hand to return to site and fix the problems. If the BCE Bill is however introduced, OC's may not have the luxury of delaying the rectification process.

The BCE Bill is designed to give 'authorised officers' including the NSW Building Commissioner - David Chandler (**Commissioner**) - powers to force OCs to fix common property defects.

Specifically, the Commissioner will have powers over breaches of the statutory duties under s 106 and s 109 of the SSM and CLM acts respectively (the Provisions). These powers would include the following:

1. Valid entry onto common property under a strata scheme without the permission of the occupier or a search warrant (s 37(2) BCE);
2. Accepting a written undertaking given by a person/body that they will take action to carry out maintenance and repair work in relation to a breach of the Provisions (s 53 (3) BCE);
3. Power to apply to an issuing officer for a search warrant if the commissioner believes on reasonable grounds that there has been breach of the provisions (s 38(1) BCE);
4. Seizing a thing, opening up, cutting open or demolishing building work if the commissioner has reasonable grounds to believe it is necessary for investigating, monitoring or enforcing compliance with a duty under the Provisions (s 40(2)(h,k) BCE);
5. The Commissioner may apply to the Land and Environment Court for an order to remedy or restrain a breach of the Provisions (s 55(1) BCE);
6. Whether or not the Commissioner has received a complaint, the power to investigate a license or registration holder for breach of the Provisions (s 56 (1) BCE);
7. Power to issue a compliance notice if the commissioner believes that the person has breached the provisions (s 72(1) BCE).

Key Takeaways

OCs within Class 2-9 buildings who fail to comply with a direction of the commissioner will attract a maximum penalty of \$220,000 or \$22,000 for each day the offence continues (s 48(a) BCE).

OCs and associations in particular should ensure that they are aware of the impact of the proposed legislative changes on their statutory duties to owners.

For further information on the BCE contact the team at Construction Legal.

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