



# THE RAB ACT WRAP UP – ONE YEAR ON....

## Executive Summary

It has been one year since the Residential Apartment Building (Compliance and Enforcement) Act 2020 ('RAB Act') came into effect, giving the NSW Building Commissioner sweeping powers to enter construction sites and issue orders for the rectification of serious defects before occupation certificates can be obtained.

Over the past year, a total of 23 **Stop Work Orders**, **Prohibition Orders**, **Building Work Rectification Orders** and **Enforceable Undertakings** have been issued, demonstrating that the government is serious about lifting the standard of building quality in NSW.

This article will provide a snapshot of the Building Commission's impressive work a year in, and the lessons learnt by industry on how the landscape of building in Class 2 developments has now changed for the better.

## Stop Work Orders

A Stop Work Order will be issued if the Building Commissioner is satisfied that building work is being carried out in a manner that could result in significant harm or loss to the public or occupiers of the building.

To date only one Stop Work Order has been issued, being to Maryland Developments Pty Ltd for their development at Bellevue Hill. Serious defects were found in this project, including the use of plastic formwork materials; ineffective concrete cover in the basement; insufficient height for termination of the waterproof membranes on planter boxes; and inadequate preparation of substrate prior to the application of waterproof membrane. There were also issues of unsupervised construction work and the appointment of a builder without a contract and scope of work.

## Prohibition Orders

A Prohibition Order will be issued to prevent an occupation certificate being obtained if the Building Commissioner determines that the building is unsafe or has such defects that require immediate rectification.

This first occurred on 21 December 2020 when Fitz Jersey Pty Ltd was issued with a Prohibition Order following serious defects being unearthed in relation to the fire safety system. An order was made prohibiting the issuing of an occupation certificate and the registration of a strata plan until otherwise approved by the Building Commissioner.

Most recently, a prohibition order was made on 22 July 2021 to Hassall Developments Pty Ltd following inspections where Compliance Officers found work carried out had resulted in serious defects to waterproofing, internal load bearing components and the fire safety systems. After failing to comply with a Rectification Order issued on 24 November 2020, the Prohibition order was issued.

### Contact

Jessica Rippon, Principal Solicitor | ✉ [jripton@constructionlegal.com.au](mailto:jripton@constructionlegal.com.au)

☎ +61 1300 543 910 | 🌐 [www.constructionlegal.com.au](http://www.constructionlegal.com.au)

## Building Work Rectification Orders

Building Work Rectification Orders require developers or principal contractors to remediate serious defects prior to the issue of an occupation certificate.

An example of one was issued to Capital Corporation Pty Ltd and Sydney Christian Life Centre Ltd for the Otto 2 Project in Rosebery. Serious defects to waterproofing and load bearing components of the building were found. The developer was given 7 days to engage an expert to prepare a plan to rectify the works and provide this to the Building Commissioner within 28 days. They were also required to appoint an independent assessor within 28 days to oversee the remediation works.

Without the ability to seek out defects and issue Rectification Orders, many defects would go unnoticed until much further down the track – leaving the owners to deal with this problem. However, the Building Commissioner's ability to routinely inspect developments during construction ensures that developers are protected from their own oversight and allows them to fix the problem before it gets out of hand.

## Enforceable Undertakings

The most significant power under the RAB Act is the power to require developers to sign enforceable undertakings requiring that either the developer refrain from certain conduct which contravenes the RAB Act or take action to prevent or remedy a contravention of the RAB Act.

To date, one enforceable undertaking has been signed between the Building Commissioner and Toplace Pty Ltd in relation to the Skyview Towers project in Castle Hill. This project was found to have serious structural defects in the basement which had resulted in widespread cracking in two of the five planned buildings. The cracking ran straight through the basement slab, noticeably at and around the basement expansion joints.

Toplace signed the first enforceable undertaking issued by the Building Commissioner agreeing to guarantee the structural adequacy of the building for 20 years, to provide security to the value of \$11 million, to continually monitor the structural adequacy of the building, and to pay the costs of any rectification or remediation works that may arise.

This agreement with Toplace shows us that the Building Commissioner will not hesitate to use the full force of powers granted to him under the RAB Act to combat substandard workmanship which could potentially cause safety concerns and hardship to consumers later on.

## Key Takeaways for Developers and Builders

While some perceive the current roll out of building reforms in NSW as red tape and an unnecessary cost, the long-term objective here is to lift consumer confidence. When this is achieved, everyone will benefit – consumers and industry participants.

The Building Commissioner has shown that the RAB Act is to everyone's benefit, protecting developers and owner/occupiers from the costs of another Opal Towers or Mascot Tower incident. Fixing problems before they arise, and not after it's too late. This means that consumers can have increased confidence in the market they are entering, knowing the Building Commissioner is working with developers to protect consumer interests.

For **head contractors**, ensure your work is being performed strictly in accordance with the highest standards of building and in full compliance with the relevant codes and practices – it goes without saying that supervision is key at all times to ensure quality is maintained from the time the construction certificate is issued until the time you hand over the site to the client.

For **developers**, avoid your reputation being tarnished with an order under the RAB Act by maintaining the highest level of integrity when engaging key players on the project stemming from reputable and diligent structural engineers, designers, builders and certifiers. Consumer confidence in your brand will automatically follow.

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