



Building Legislation Amendment Bill 2023

Introduction

The Building Legislation Amendment Bill 2023 has just been passed and forms part of the NSW Government’s continued pursuit of improving the building and construction industry.

At the heart of this new legislation, is an expansion of the Commissioner’s powers, setting the scene for making DLI mandatory in the future and an extension of the statutory duty of care to the supply of building products.

This new legislation will impact industry members at all levels, and we will cover the most important changes in this article.

Broadly, the new legislation:

1. Extends the powers the Building Commissioner already possesses for Class 2 (apartment) buildings to Class 1 (houses) buildings;
2. Extends liability for information about building products and faulty products across the entire supply chain; and
3. Requires developers to provide additional security for Class 2 buildings prior to applying for an occupation certificate.

advance notice to the Secretary, and allows them to issue a rectification order if satisfied that the work is or risks being defective.

It also allows inspectors to enter and investigate houses under construction, entitling them to demand the production of documents or information regarding building work. Where a home is occupied, this is subject to consent or a search warrant.

Corporations and individuals who fail to comply with a rectification order face of fines up to \$330,000 for a single offence.

First Key Change: Residential Apartment Building Act Style Protections Extend to Houses

Currently, the *Residential Apartment Building Act 2020* requires developers to give advance notice before applying for an occupation certificate and grants the Secretary broad powers to investigate and rectify serious defects.

The new legislation extends those powers to residential homes and terraces by reforming the *Home Building Act 1989*. The Secretary can investigate, mitigate, and require the fixing of defects in freestanding houses. The new legislation is focused on proactive measures, requires

Second Key Change: Duty of Care for Supply Chain Extends to all Industry Participants

Construction industry supply chains are complex and rapidly evolving. The new legislation aims to respond to that challenge by ensuring that all participants in the supply chain are held to the same duty of care for product quality. These reforms will be in the *Building Products (Safety) Act 2017*.

Previously, builders who installed defective products faced liability, but those who supplied the product faced less scrutiny. The new legislation aims to rectify that.

The new primary duty is to ensure that all building products not only meet the National Construction Code (or otherwise prescribed) standards and that products are only used for what they were manufactured for.

Each person in the supply chain must provide information about the building product, its intended use, the circumstances under which it may be used, and any conditions on its use. They must also provide instructions as to compliant use and maintenance of the product. This applies to product designers, building designers, and users or installers of the product.

Penalties for a failure to provide full information can amount to \$165,000 for corporations. The new legislation also allows the Secretary to ban non-conforming products, issue recalls, or issue orders as to how a product can be used. Notice must be sent to the Department of any safety risks that are identified.

Suppliers, manufacturers, and importers should keep abreast of any ban or recall orders.

Third Key Change: Signaling Changes to Strata Bond Requirements and Decennial Liability Insurance

It is proposed that, in the next 5 years, Decennial Liability Insurance (DLI) will replace the current bond required to protect consumers against latent defects. The new legislation commences a transition period towards DLI by amending the *Strata Schemes Management Act 2015*.

The NSW Government is considering making DLI mandatory but is aware that the insurance market and construction industry are still adjusting to reforms. As such, the new legislation allows for successive changes to the existing strata bond, anticipating incremental increases as the DLI market matures.

The amount required for the two-year bond period will now be prescribed by supporting regulations. Starting 1 February 2024, it will increase to 3% of the total contract cost of the build, providing more money for consumers to identify and rectify defects in the initial period after construction is completed.

Developers of low-rise apartment buildings (fewer than three-storeys) will also be able to apply for DLI instead of this bond, provided they give the required notice, and it is approved by the Secretary. Developers may be required to give information to the Secretary about their insurance to help ensure compliance. Failure to comply may attract a penalty of up to \$55,000 at first instance.

Key Takeaways – Builders and Developers of Class 1 (House) Buildings

- Make yourself aware of your new obligations.
- If you have experience with the RAB Act, you should expect similar obligations when building homes.
- Make sure your homes and projects are compliant with the new requirements. Be prepared to apply in advance.

Key Takeaways – All Industry Participants

- If you are in any way involved with the supply or use of a building product, (including manufacture, supply, or import) you should be aware of your new obligations.
- Make sure that anyone you supply or sell a product to is provided with all the product's specifications and any further information required for its use and maintenance.
- Keep up to date with orders as to how your products can be used.

Key Takeaways – Developers and Financiers of Class 2 (Apartment) Buildings

The bond percentage is due to increase (to 3%) and developers should cost that into their projects.

You should also be aware that DLI now exists as an alternative and will become more readily available, before potentially becoming mandatory. You should consider that option for future projects.

More information

Have questions or need advice? Contact the team at [Construction Legal](#).