

from the desk of Jess



THE NEW BUILDING BILL IS IN THE MAIL...





I recently attended the NSW government roundtable forum on the new Building Bill, which is all set to replace the decrepit Home Building Act. It is very much in line with the overall goal to enhance consumer protection.

While some of the changes make sense to me and are long overdue, there are some proposals which I question. The final decision hasn't been made yet – everyone has until 31 May 2024 to weigh in and give feedback.

Here are the top five proposed changes that resonated with me.



1 SIX? TEN? DUTY OF CARE, WHEN?

Ever since the DBP Act came out in 2020, there has been this misconception that developers and builders have a 10 year liability to owners. No no no. That's not how it works.

There are three different Acts that have to be considered, and I agree, it does make it very confusing. First, there is the 10-year reference in the DBP Act, then there is a six-year reference in the Limitations Act, and then there is the 10-year-long stop in the EPA Act! The Consultation Paper has acknowledged this confusion.

I'm calling out for one clear rule, please!

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2 A DEFECT-IVE DEFINITION

Since the RAB Act's introduction, both builders and consumers have been scratching their heads over the difference between a "serious defect" and a "major defect" – surely these terms are synonymous, so why do we need two? Happily, the new Building Bill will establish a new hybrid definition combining both. Claimants will now have to prove the defect relates to a **building element** that causes a **threat of collapse** and/or renders the building uninhabitable, which constitutes a **breach of NCC** and Australian Standards. I'm all for this change.

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3

EXTENDING THE STATUTORY WARRANTY TO 10 YEARS? OUCH!!

This one will make some builders want to headbutt the nearest brick wall.

Who is for extending the current **6-year major defect warranty period to 10 years?**

Not me... at the moment at least.

We need developers and builders to stay in the industry and deliver on the governments ambitious housing targets, not exit when NSW needs them the most.

This change gets a hard *NO* from me.



4 FREEZE! COLLABORATE AND LISTEN

There will be a 6 month freeze before a six year **major defect warranty period** expires. This is to eliminate the need for an owners corporation to 'lawyer up' and start a legal claim when all they want is settlement involving rectification.

A negotiated outcome is always better than a protracted court battle in my opinion and while it might sound counter-intuitive for a lawyer to endorse the above change, I'm 100% up for it.





5 MANDATORY MEDIATION... REALLY?

Every developer, owners corporation or builder who has ever had the dubious pleasure of dealing with NCAT will tell you the Tribunal is operating over-capacity. Now the Commission is introducing mandatory mediations. Is this really going to fix the problem? And what happens if one party refuses? I'm a mediation sceptic.

A better approach would be to empower NCAT – increase its resources to clear the backlog, improve quality control of its members and mandate a rule where parties can have three chances to “adjourn” to try and settle. This is where the focus should be!

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Everyone has until 31 May
2024 to weigh in. Share
your thoughts in the
comments below.

Need to know more?

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