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MONTHLY NEWS

FROM HELENSBURGH TO NAROOMA
AUGUST - SEPTEMBER 2020 Volume 17

OVERVIEW OF THE NEW LEGISLATION



The key features of the new legislation include:

1. Design and Building Practitioners Act 2020 (DBP Act)

- Under the DBP Act, a duty of care is owned by a person who carried out construction work to exercise reasonable care to avoid economic loss caused by defects:
 - in or relation to the building at which the work was done; and
 - arising from the construction work.

- Building work;
- Designs for building work;
- Manufacture or supply of a building product used for building work;
- Supervising, coordinating, project managing or otherwise having substantive control over the carrying out of any of the above.
- The duty of care is owed to owners of the land on which the building is located. An owners corporation and community association are both expressly defined as an owner and are entitled to rely on the new law, as are the individual owners within strata and community schemes. They may claim for loss caused by the breach of duty of care even though they were not owners of the land at the time of the construction of the building.
- The damages that can be claimed include the costs of rectifying the defects, including consequential loss caused by the defects, and also the costs of reasonable alternative accommodation if this is necessary.
- The duty of care provision in the new DBP Act commenced on the date of its assent, which was 11 June 2020.
- The DBP Act applies to existing buildings if the loss first became apparent within the 10 years immediately before the commencement of the new legislation. In other words, it is retrospective for a period of 10 years.
- This means that an owner's corporation can now pursue many of the parties involved in the construction of its building in addition to the builder and developer. An owners corporation can now also directly pursue the architect, engineer, project manager, individual subcontractors and suppliers, and possibly even the private certifier if they were an active participant in the construction work, having substantive control over the carrying out of the building work.
- The DBP Act is intended to overcome the High Court decision of *Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288* [2014] HCA 36 which effectively denied an owner's corporation, as a successor in title of a developer, the benefit of a common law duty of care for negligent building work carried out by the original builder. The issue was that the owners corporation did not have a close enough relationship with the builder to give rise to a common law duty of care.
- The new DBP Act creates a statutory 'duty of care' thereby removing the difficult hurdle in the case of a successor in title such as an owners corporation of establishing that a common law duty of care was owed by an original builder.
- The DBP Act will apply to residential buildings and is likely to apply to commercial and industrial buildings.
- In the case of residential buildings, the DBP Act will supplement rights that already exist under the *Home Building Act 1989*.
- The limitation period for claims under the DBP Act is still the usual 6 years for breach of duty of care under the *Limitation Act 1969* and the time to make a claim starts to run from the date an owners corporation first suffers loss because of a defect.
- Claims under the DBP Act are also subject to the 10 year long stop period from date of completion of the building under s.6.20 of the *Environmental Planning and Assessment Act 1979*.

DBP Act will be able to argue that their liability should be reduced if there are other professionals at fault.

- A cause of action for breach of duty of care can be added in existing proceedings that have already been commenced under the *Home Building Act 1989*.

2. Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)

- The RAB Act commences on 1 September 2020.
- Developers must give advance notice to the NSW building commissioner before applying for an occupation certificate.
- The building commissioner has the power to:
 - Prevent the issue of an occupation certificate or registration of a strata plan if, for example, there is a 'serious defect' in the building, or the building bond required under the *Strata Schemes Management Act 2015* has not been lodged.
 - Investigate building work for serious defects and compliance with the Building Code of Australia and Australian Standards and can:
 - Issue stop work orders and building rectification orders to developers;
 - Require developers to pay for the Department's compliance costs in respect of building rectification orders.
- The definition of a serious defects includes:
 - failure to comply with performance requirements of the Building Code of Australia;
 - defects likely to deny habitability or use of the building for its intended purpose;
 - use of banned building products.
- The RAB Act also applies retrospectively to buildings completed in the previous 10 years.

Anything Else?

The new laws also introduce a system for regulating design and building work, including registration of designers, engineers, builders and other specialist practitioners. Developers, builders and certifiers will be rated on their record of building failures, finances, complaints and insurance claims which is intended to ensure that only quality practitioners can be engaged in construction work.

CONCLUSION

[Shergold Weir Report](#) and due to defects in a number of strata buildings in New South Wales. These new laws support the NSW Government's six-pillar Building Reform package and apply to both existing buildings built in the last ten years and to the construction of new buildings going forward. The new laws will go a long way to ensure buildings, including commercial buildings, in NSW are constructed to keep the occupants safe, and in turn attempt to rebuild and restore public confidence in the NSW construction industry.



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HOMESTEAD

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For more information contact the following:

Paul - 0499 988 394
Craig - 0414 505 365
Geoff - 0414 453 986
Office - 02 4283 5797

Welcome to All Trade Services Illawarra

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All Trades Services Illawarra will work with your tradesmen you have on file or we also have our own tradesmen we use if needed. The benefit in using All Trades Services Illawarra is you and your staff only need to contact one tradesmen for all maintenance issues, quotes and reports while we deal with all trades to ensure the job is completed to the highest of standards. All Trades Services Illawarra is on call 24/7 for all emergencies and after hour services needed.

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For more information:

Contact: 0431 147 746

Website: www.alltradesillawarra.com.au



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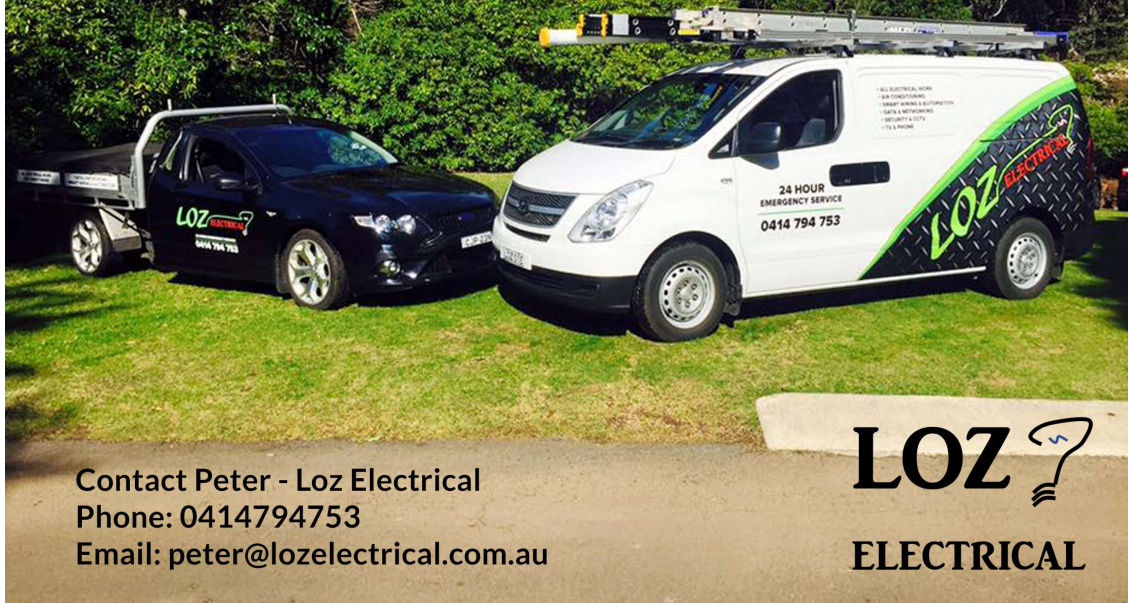


STRATA INSURANCE

CRM Brokers' Strata division engages specialist strata brokers whose main function is to deal solely with all things strata. Our in-house Claims team ensures we provide accurate assessments when discussing claims and potential issues with insurers.

We are mindful of the fact that the Owners Corporations' premium is one of the major expenses for strata, however, this should not be isolated as a sole factor when considering the placement of cover with an insurer. The importance of having claims paid when most needed; i.e. the speed at which a claim is assessed and approved; the policy wording to accompany a claim, are additional factors that must be taken into account during the broking process.

Loz Electrical is licenced and insured to carry out Electrical, Security & Air Conditioning work, servicing areas from South Sydney to Huskisson. Our diversity in the industry allows us to be your one-stop-shop.



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- Security Alarms

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