



Guide to Managing Body Corporate Building Defects

By Todd Garsden, Partner.

Building defects continue to be an issue, and source of dispute, for bodies corporate. A 2019 Deakin University report into the issue revealed that 85% of apartment buildings have some form of structural defect.

Recent high-profile examples (e.g. Johnson Apartment Tower in Brisbane, Opal Tower, Mascot Towers and Sugar Cube Apartments in Sydney) reinforce this issue and highlight the potential consequence for owners.

Building defects are generally defined as building work that is non-compliant, faulty or below a reasonable standard of quality. Defects can include, but are not limited to, issues with:

- Aesthetics (bubbling paint)
- Safety (non-compliance fire systems)
- Water proofing (water intrusion)
- Compliance (combustible cladding)
- Structural (concrete cracking)
- Other (subsidence)

To an untrained eye, a lot of building defects can initially seem inconsequential, or even go unnoticed. Some can take time to develop – such as water proofing issues and structural defects – and generally don't appear until well after a complex has been built.

To help protect bodies corporate from defective building works, a number of significant changes were made to the Body Corporate and Community Management Regulations in 2021. The changes require bodies corporate (and body corporate managers) to take a more proactive role in protecting the legal rights of owners by identifying and rectifying building defects early.

No matter who is ultimately responsible for the building defect, the body corporate has an obligation under the Body Corporate and Community Management Act to maintain common property in good condition. This extends to identifying and rectifying building defects on a timely basis, including pursuing the builder or contractor for any defective work they are responsible for.

Importantly, a body corporate that fails to act on a timely basis can lose the right to claim against the builder or contractor. When this happens, the burden to rectify any defects could fall directly and solely on to the body corporate, which is then usually passed on to owners in the form of special levies.

To help bodies corporate with this important responsibility, industry leaders Mahoneys and Sedgwick have prepared a detailed guide to managing body corporate building defects. In this guide we discuss:

- What is a building defect
- The body corporate's obligations for defects
- Why it is important to identify defects early
- The importance of a building defect report
- What bodies corporate should do to protect their rights
- How Mahoneys and Sedgwick can help



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How Mahoneys and Sedgwick can help

Mahoneys and Sedgwick are experienced at helping bodies corporate identify and rectify building defects. Specifically:

Mahoneys can help with:

- Advising the body corporate on its legal rights and obligations, including
 - right to receive the construction documents from the developer
 - obligation to consider appointing an expert to do a defect assessment
- Obtaining the construction documents from the developer
- Reviewing and verifying the construction documents received by the body corporate
- Working with the expert appointed to conduct the building defect assessment
- Reviewing the building defect assessment report and advising on appropriate next steps, including
 - confirming who is responsible for the defect
 - what action, if any, can be taken (and against whom)
 - any strategies for achieving the desired outcome
- Pursuing the builder for any defects they are responsible for

Sedgwick can help with:

- Conducting the preliminary building defect assessment
- Working with the body corporate's lawyers to:
 - review/assess any defects identified and
 - determine and support any next steps

- Providing additional opinions/reports/evidence required to support any action to be taken
- In the event that the body corporate is required to undertake the work, helping
 - scope out and cost any rectification works
 - contract out and manage any work to be undertaken
- Overseeing and reporting on any remediation work undertaken by the builder or appointed third party



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