



Time Limitations on Domestic Building Disputes

If you are thinking about bringing a claim against a builder for defective or incomplete building works, there are a variety of time limitations for doing so.

The Supreme Court of South Australia recently gave clarity around what those time limitations are.

If you wish to bring a claim under section 32 of the Building Work Contractors Act for a breach of the warranties contained in domestic building contracts that the work will be performed with care and diligence using proper materials and in accordance with all plans and approvals, then you must have filed that claim within 5 years of the building work being completed (in other words, the home being subject to “handover”).

It is important to understand that a claim under the Building Work Contractors Act is not the only claim which you may have against the builder.

A building contract is, ultimately, just another contract. At law, you have six years to bring a claim for breach of contract, from the date of the breach. If you take the position that the builder has breached the contract by not doing that which the builder was contracted to do, you may have a claim against the builder in contract law, which is separate to a claim under a warranty on the work pursuant to the Building Work Contractors Act.

Further to that, you may have a claim against the builder for negligence. If the work has not been performed properly and diligently and to the standards expected of a trade professional, then the time limitation to bring a claim would also be six years from the date of the negligent act causing the property damage. Once again, that claim in negligence sits entirely separately from a claim under the Building Work Contractors Act.

Lastly, in some limited circumstances, there may be claims and time limitations applicable against other parties involved in the construction works (but not necessarily the builder directly) under the Planning, Development and Infrastructure Act. This was the subject of the original case appealed to the Supreme Court, and it is now clear law that the strict timeframes of the Building Work Contractors Act are not extended by such claims or timeframes.

Why is a claim under the Building Work Contractors Act so important?

The answer is that the legislation makes the formulation of the claim simpler and remedies available broader than would perhaps be the case under ordinary contract or negligence law. If it is possible to bring a claim within the 5 year time limitation granted by the Building Work Contractors Act, then that is far more preferable when compared to the alternative options.

Lastly and as a footnote to the above, it should also be noted that if the building work is so defective that completion and handover have never actually occurred, then

whilst the five year time limitation cannot be avoided, there may be a valid argument to say that it has not even commenced.

Such claims are complex and full legal advice ought to be sought, including on all of the other matters included in the subject of this article, which is intended as a general guide only.

If you require any assistance in respect of a building dispute, you can contact Managing Partner [Felix Hoelscher](#) or any of Andersons' Commercial Litigation team on 8238 6666 or email enquiry@andersons.com.au