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LawTalk Blog



My building works have significant structural errors. Can I force the builder to start again?

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The *Building Work Contractors Act 1995* ("the Act") allows the Court to make numerous different types of orders in respect of fixing defective building work.

However, sometimes a builder may make such a serious error, or so many errors, that no rectification by additional building works is possible.

Serious building errors might include:

- where a dwelling is constructed in entirely the wrong location; for example, so that it encroaches on neighboring land;
- where some fundamental aspect of the foundations are defective and the building will forever be affected by that; for example, there is no concrete mesh in the slab or the slab mix is incorrect.

The only options in situations like this are either for the home owner to live with the situation (and potentially significant future disturbance, such as repeated and ongoing cracking in walls and ceilings) and maybe accept some financial compensation for that or alternatively for the entire building be demolished and rebuilt.

Clearly, either outcome has very serious repercussions, either for the home owner, the builder, or both.

The High Court in [Bellgrove v Eldridge](#) (1954) set out the principles that if a defect or breach of contract is established by a home owner, then the compensation due is calculated to be

“the reasonable cost of rectifying the departure or defect so far as that is possible”, however only on the basis that “it must be a reasonable course to adopt”.

It follows that if compensation cannot cover the reasonable cost of rectifying the departure or defect (because rectification is impossible) then the Court has the power to order that the defective works be demolished and rebuilt.

However, that is generally only ordered if such an order is reasonable in the specific circumstances and an award of compensation or the performance of remedial work is insufficient to adequately remedy the situation.

The position adopted by the High Court of Australia has been amended and strengthened by the remedies available under the Act of 1995, but the principles in *Bellgrove* still apply.

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- [Defects with your home building works? Does the builder have to return and fix them?](#)
- [Does my builder have to have insurance?](#)
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