Liability for building actions under the EP&A Act

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Background

- Under section 109ZK of the EP&A Act, a ‘building action’ may not be brought for loss or damage arising out of or concerning defective building work more than 10 years after the date upon which the occupation certificate (OC) was issued, or - in the absence of an OC – the last date upon which the building work was inspected by a certifying authority or the date the building was first occupied or used.

- Similarly, a ‘subdivision action’ may not be brought for loss or damage arising out of or concerning defective subdivision work more than 10 years from the date upon which either a subdivision certificate or compliance certificate was issued.

- ‘Building work’ is widely defined and includes (but is not limited to) the design, inspection and issuing of a Part 4A certificate or a complying development certificate (CDC) in respect of the building work. ‘Defective’ is not a defined term under the EP&A Act.

- The 10 year limitation period does not apply to an action for damages for death or personal injury arising out of defective building work or defective subdivision work.

- Under section 18E of the Home Building Act 1989 (HB Act), proceedings for a breach of a statutory warranty in relation to residential building work must be commenced within six years for structural defects or two years for non-structural defects. These periods of liability were reduced in 2011 from seven years on the basis that it is reasonable for owners to be delivered a building that will perform the basic functions for at least six years, including keeping out water and not requiring significant unexpected restorative work. These periods were aligned with the time periods for lodging a home warranty insurance claim.


- The time limits applied under section 18E of the HB Act apply to proceedings based on the statutory warranties and other actions, such as negligence. They are not affected by the operation of section 18E of the HB Act.

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Section 109ZK of the EP&A Act does not operate to extend any of the limitation periods under the Limitation Act 1969, and only acts to impose an upper limit for the commencement of building actions and subdivision actions.

**Issue**

Certifying authorities are subject to:
- the potential to continue to be liable in respect of residential building work after a licensed builder ceases to be liable for a breach of statutory warranty
- liability for up to 10 years irrespective of the nature of the work or work not the subject of the HB Act

Feedback received during our consultation sessions this year indicated that the liability periods between the EP&A Act and the HB Act should be aligned and the extent of liability should be commensurate between the two Acts.

**Proposed response**

One proposed response to the above issues is to legislate to amend the EP&A Act to specify:
- the types of building actions that may be commenced under the EP&A Act
- the circumstances that may trigger the commencement of a building action
- the circumstances where an action cannot be commenced
- the persons (other than certifying authorities) who should be liable for a building action under the EP&A Act
- whether all those who are liable (as nominated in the EP&A Act) should be required to hold mandatory professional indemnity insurance
- the time period in which specified building actions may be commenced.

**Why?**

The proposed response would:
- align the liability provisions under the EP&A Act with the HB Act in relation to residential building work
- clarify and limit the exposure to liability for certifying authorities
- clarify the circumstances and time periods in which a building action may be commenced
- identify the people, other than certifying authorities, who have liability for building actions.

**What do you think?**

Click onto the [online survey](#) to tell us what you think of the proposed responses and to identify any other options.

The Survey will close by 31 August 2012, so let us know your thoughts before then.