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# MEMBER ALERT

15 June 2020

## New Duty of Care could affect your liability

Hi Amer,

If you carry out construction work in NSW you need to be aware of new laws that could affect your liability for defective building work.

The Design and Building Practitioners Act 2020 (the DBP Act) introduces a new obligation, or duty not to act negligently, that is, not to perform defective work that would cause a financial loss to a homeowner.

### **This loss could include costs associated with:**

- The rectification work.
- Any other damage caused by the defective work.
- Alternative accommodation where necessary.

### **Who does the duty apply to?**

The duty applies to anyone carrying out construction work. It includes builders, sub-contractors, manufacturers and suppliers of building products and building designers.

### **What does the new duty mean for me?**

The changes mean that both current and future owners of all buildings will be able to sue building contractors and others who neglectfully carry out construction work such as building design work and manufactured building products for defective building work, irrespective of any contractual arrangements.

**Don't I already have obligations to fix defective work?**

Yes, builders already have obligations under the statutory warranties in the Home Building Act to fix defects for up to two years for minor defects and six years for major defects from the date of practical completion. The new duty applies in addition to these existing obligations.

**How long does the duty of care apply for?**

For up to 6 years after the owner becomes aware of the defect the home owner can sue those responsible for the defects. Note this is potentially longer than the statutory warranty periods

**Does the duty apply to work I've already completed?**

Yes. It applies to any work that you have done in the last 10 years.

**Can I have a term in my contract to exclude the new duty?**

No, it is not possible for anyone to contract out of their duty of care obligations.

**What should I do next?**

HIA is developing further guidance for members on how to respond to the new duty of care.

Yours sincerely,



David Bare  
NSW Executive Director



 @HIA\_NSW

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