

Planning for Success: The Building Safety Act 2022 and Risk Management



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Overview of the Building Safety Act 2022

The Building Safety Act 2022 (“Act”):

- introduces extensive, wide-ranging changes to the regulation of the construction sector; and
- includes an emphasis on “higher-risk buildings”, currently defined as those:
 - over 18 metres in height; or
 - having at least 7 storeys.



Overview of the Building Safety Act 2022

The scope of the Act is not limited to “higher-risk buildings” and will impact:

- anyone involved in the construction, development and ownership of property;
- how construction projects are carried out and regulated;
- how data and information is collated and stored during the lifecycle of certain projects; and
- how the risks associated with any given project or property are managed.



Building Safety Regulator

A division of the Health and Safety Executive, the BSR will:

- oversee the safety and performance of all buildings;
- act as the building control authority for work relating to higher-risk buildings;
- regulate the building control profession; and
- exercise enforcement powers in relation to non-compliance with the Building Regulations.



Civil Liability for Breach of the Building Regulations

If brought into force, s. 38 of the Building Act 1984 will expose builders to civil liability for damages arising from non-compliance with the Building Regulations.

- When will liability arise?
- What damages are recoverable?
- Within what period must a claim be brought?



Civil Liability in relation to Dwellings

s. 2A of the Defective Premises Act 1972 exposes any person who “takes on work in relation to any part of a relevant building” to a duty to see the work is done in a workmanlike or professional manner, with proper materials and so that any associated dwelling is fit for habitation.

- When will liability arise?
- What damages are recoverable?
- Within what period must a claim be brought?



New Homes

The Act introduces:

- an obligation on developers of new build homes to provide the purchaser with a new build home warranty; and
- the New Homes Ombudsman, which:
 - will administer the New Homes Ombudsman Scheme; and
 - may enforce the New Homes Quality Code.



Building Liability Orders

A Building Liability Order:

- may be granted by the High Court in relation to liabilities arising:
 - under s. 38 of the Building Act 1984 (which is not yet in force);
 - under the Defective Premises Act 1972; or
 - in relation to a “building safety risk”;
- will impose the liabilities of one body corporate on “associated” body corporates; and
- will only be granted where it is “just and equitable” to do so.



Managing Risk and Practical Tips

- What is the risk?
- Immediate risk management:
 - carry out a review of current and historic projects now;
 - implement a system for ensuring and evidencing compliance with the Building Regulations;
 - review corporate structuring; and
 - watch out for “pro-employer” contract terms.
- Future planning and risk



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