



Matthew Mason-Cox MLC

Minister for Fair Trading

MEDIA ALERT

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RESPONSE TO BROOKFIELD MULTIPLEX HIGH COURT CASE

NSW Fair Trading Minister Matthew Mason-Cox today reassured consumers that their protections and rights would remain intact under the new home building reforms, despite the outcome of the Brookfield Multiplex High Court decision.

On 8 October, the High Court handed down its decision in the case of *Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288*. The High Court ruled that Brookfield Multiplex was not liable to an owner's corporation for alleged building defects in a commercial development.

Mr Mason-Cox said in a somewhat complicated and technical decision, the High Court determined that the owners corporation was not vulnerable as defined under the law, and the builder did not owe a common law duty of care to the owners corporation of a commercial development.

"I have obtained legal advice from the Crown Solicitor's Office that confirms the decision does not affect the consumer protections offered by the State's home building legislation," Mr Mason-Cox said. "This case refers to the law of negligence and involved a commercial development. "The case does not affect the separate NSW statutory scheme of a residential development.

"Consumers continue to enjoy all the protections afforded to them by home building laws, including the statutory warranty scheme. "Any suggestions to the contrary are simply false."

"Amendments to home building laws provide significant protection for consumers and offer clarity about rights and responsibilities of builder's liabilities, particularly in relation to defects.

"The *Home Building Amendment Act 2014* was passed by Parliament in May and is expected to start in mid-January. "The Act contains important changes providing many benefits to both owners and industry."

"Under the new Act, if a strata scheme discovers a major defect up to six years after the building has been built, then they can pursue their builder under the statutory warranties in the Act to rectify that defect.

"In particular, our reforms ensure that all home owners continue to have the benefit of a six year warranty for major defects and two years for minor defects.

“For the first time, the reforms will specifically include fire safety and waterproofing as major elements of the building, which may have access to the six year warranty.

“By clarifying the nature of major defects, this key reform will save owners, and owners corporations, tens of thousands of dollars in legal costs incurred in protracted litigation.

“We are also introducing changes to the licensing system, making it harder for unscrupulous builders to illegally ‘phoenix’, which is where a failed company starts up under a new or similar name to avoid scrutiny by consumers or NSW Fair Trading.

“These changes mean licensing applications can be refused and licences revoked where a person has a history of involvement in companies which the directors closed to avoid their obligations.”

Builders found to be illegally phoenixing now face losing their license. Repeat offenders who engage in unlicensed contracting face up to 12 months imprisonment for seeking work by or on behalf of unlicensed persons and also for home warranty insurance offences.

The new home building laws are the result of two years of extensive consultation with building, strata and consumer stakeholders.

The legal advice obtained through the Crown Solicitor’s Office in relation to the High Court decision has been taken into consideration in finalising the Regulation supporting the new Act.

NSW Fair Trading will continue to monitor the potential implications of the High Court decision.

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