

## **DEALING WITH DEFECTS DOWN THE TRACK**

By KIM LOVEGROVE

When can legal proceedings be issued for building defects? This is one of the most common questions posed by building owners and solicitors.

Under the current Building Act there is 10 years to issue legal proceedings for building defects to enable aggrieved people to sue for costs of building repairs.

Previously one had six years to issue legal proceedings from the date that the damage was detectable.

The 10 year clock, however, starts to tick from the date that an occupancy permit or a certificate of final inspection is issued by a building surveyor.

It is for this reason that the Building Act requires building surveyors to issue such certificates when the building is fit for occupation. These certificates provide clear evidence of "day one" of the 10-year period. They are thus critical evidential documents and the law requires that they are kept by the councils.

This has been the law since the Building Act was proclaimed on 1 July 1994. Building permits issued for work done after that date are subject to that act.

If you do not issue legal proceedings within 10 years of the date of issue of an occupancy permit, the guillotine will unceremoniously and unequivocally amputate the right to sue.

But there is an exemption for death or fatality. The 10 year guillotine does not block the right to sue if someone is killed or maimed as a result of a defect.

If a building permit has not been taken out or an occupancy permit hasn't been issued. The previous six-year law applies.

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