

FACTS

The recent case of *The Owners Strata Plan No 64757 v Sydney Remedial Builders Pty Ltd [2024] NSWCA 85* involved a dispute, where the homeowners sued the builder for damages for defective works performed in 2012. The matter was finally brought to court in 2019, and the builder argued that the claims were barred by delay as 7 years had passed since completion.

The contract defined ‘Practical Completion’, and whether or not the date of practical completion was different to the date of completion was called into question.

Section 3B of the *Home Building Act 1989 (NSW)* relevantly allows completion to be defined by the parties:

“(1) The completion of residential building work occurs on the date that the work is complete within the meaning of the contract under which the work was done.

(2) If the contract does not provide for when work is complete (or there is no contract), the completion of residential building work occurs on practical completion of the work, which is when the work is completed except for any omissions or defects that do not prevent the work from being reasonably capable of being used for its intended purpose.”

ISSUE

Whether the contractual terms regarding “Practical Completion” affected the date of completion under section 3B of the *Home Building Act 1989 (NSW)*?

FINDING

The court of appeal refused leave to appeal and, in so doing, approved the decision at the first instance of Rees J of the Supreme Court of NSW. In their joint judgment, Appeal Justices Leeming and Payne stated:

“27. ...Her Honour in our view correctly identified that the terms “completion” of the building work and “practical completion” of the building work are deployed separately within the section. The section draws a distinction between those terms..

28. ...There is no basis for concluding that when making elaborate provision for “practical completion” and the consequences thereof, the parties are to be regarded as having made provision for the different concept of “completion”. To the contrary, this is a case where when the parties’ contract referred to “practical completion”, those words should be understood as bearing their ordinary meaning, as opposed to “completion”.”

As completion date was unchanged, and the appeal was brought over 7 years after the date of practical completion, the court’s finding was that there was no right to sue for alleged defective work.

IMPACT

This decision shows the critical need to issue proceedings well within any relevant time limitations.