

Bannermans Lawyers

Excess Claims in Building Defect Insurance Claims

Clarification of excess for a common property HOW claim.

Excess claims

In recent cases in the Consumer, Trader and Tenancy Tribunal and then on appeal in the District Court, Vero Insurance Limited sought to argue that for each home owners warranty insurance claim made by an owners corporation for common property, an excess of \$500 per lot applies, even though only one insurance claim is lodged.

In the District Court appeal decision of Vero Insurance Limited v The Owners of Strata Plan No. 69352 [2010] NSWDC 54, Vero were unsuccessful in their argument.

In our experience this was a widespread practice of Vero which we never admitted as correct and we expect that Vero is under considerable pressure to change its position previously asserted on a wide range of decisions.

Vero and excess

Unless the matter is appealed further the position seems clear that Vero, in relation to certain policies of home owners warranty insurance, is not entitled to assert an excess of \$500 per lot for a home owners warranty insurance claim for the common property.

Key Points

Some key points:

1. Owners corporations abilities to sue for defects regarding breach of statutory warranties where the party to the contract with the builder was not the land owner have been seriously questioned and hopefully, the government's urgent response will resolve the issue.
2. Vero Insurance Limited unsuccessfully sought to claim an excess of more than \$500 per common property insurance claim.
3. This area of law is complex and important new cases are regularly decided. Owners corporations should always seek legal advice regarding their defects claims.

Prepared by David Bannerman

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