



Our ref: MIN17/2650

Mr David Bannerman
Principal
Bannermans Lawyers
By email: dbannerman@bannermans.com.au

Dear Mr Bannerman,

I refer to your letter to the Hon Matthew Kean MP, Minister for Innovation and Better Regulation, about reforms to address external aluminium cladding. Minister Kean has asked me to respond to you.

I appreciate your concerns about previous amendments to the *Home Building Act 1999* (the Act) about statutory warranties for major defects. I also understand your concerns based on a recent ruling made by the NSW Supreme Court which narrowed the definition of what constitutes a 'structural defect', and that this narrowed definition could see defective aluminium cladding classed as a non-major defect for the purposes of the statutory warranties for residential building works in NSW. The NSW Government shares your concerns and appreciates the time and valuable input your firm has provided.

As you have outlined in your letter, the definition of 'major defect' in the Act captures a number of scenarios that determine whether a defect in residential building work can be classified as a major defect for the purposes of the Act. The definition of 'major defect' in the Act is intentionally broad and is intended to operate on a case-by-case basis, subject to individual circumstances. Where a defect is found to meet the prescribed tests outlined in the Act, the defect will be taken to be a major defect.

The NSW Government will continue to examine the impact of this ruling by the Supreme Court, as well as other judicial outcomes, and is willing to explore legislative amendments if and when required to ensure the Act continues to meet the original policy intent.

I trust this information is of assistance to you.

Yours sincerely

John Tansey
A/Executive Director, Regulatory Policy