



CITY FUTURES RESEARCH CENTRE

MAJOR AND OTHER DEFECTS

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Under NSW law, a defect must result from defective design, defective or faulty workmanship, defective materials or a failure to comply with the structural performance requirements of the [National Construction Code](#). If a defect is identified, it then needs to be assessed for whether it is a 'major' or 'other' defect. Answering this question generally requires technical expertise, so it's recommended that you obtain expert advice. Set out below is an overview of how the law defines major defects.

DEFINING A MAJOR DEFECT

Major defects are treated differently at law to other defects. In particular, different statutory warranty periods apply for major and other defects ([see Who Pays](#)). This can affect the length of timeframes during which you can make a claim for defects against a builder, contractor or developer.

Consider this two-step process to identify whether the defects are major. A defect is considered major if it meets the criteria of both the first AND the second step.

1. Is the defect in a major element of the building?

The defect must affect a 'major element' of the building. A 'major element' is defined in the legislation as follows:

Major element of a building means:

- an internal or external load-bearing component of a building that is essential to the stability of the building, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or
- a fire safety system, or
- waterproofing, or
- any other element that is prescribed by the regulations as a major element of a building.

(Home Building Act 1989 (NSW) Section [18E \(4\)](#))

2. Is the defect likely to cause part or all of the building to become uninhabitable or unusable for its intended purpose, to be destroyed, or to collapse?

Only defects which meet this high threshold are considered a major defect under the legislation. The full legislative definition of 'major defect' is set out below:

Major defect means:

- a. a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these), and that causes, or is likely to cause:
 - (i) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (ii) the destruction of the building or any part of the building, or
 - (iii) a threat of collapse of the building or any part of the building, or
- b. a defect of a kind that is prescribed by the regulations as a major defect, or
- c. the use of a building product (within the meaning of the Building Products (Safety) Act 2017) in contravention of that Act.

(Home Building Act 1989 Section [18E \(4\)](#))

Under subsection (b) above, the regulations now prescribe external cladding as a major defect if it “causes or is likely to cause a threat to the safety of any occupants of the building if a fire occurs in the building” – see [s69A of the Home Building Regulation 2014 \(NSW\)](#). Note that the application of this section has been the subject of recent interpretation by the [NSW Supreme Court \(see s92\)](#).

ADDITIONAL RESOURCES:

- [National Construction Code – Australian Building Codes Board](#)

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