

SPECTRUM SPEAKS

The first quarter of the year is well underway, and for many in the building and construction industry, that means juggling cash flow challenges, keeping the pipeline strong for 2025, and managing ongoing and new legal disputes to ensure swift resolutions. Through it all, we're here to support you—keeping you informed on key industry changes and helping you navigate any legal hurdles that come your way.

Already, 2025 has brought some notable developments. Recent decisions on conditional occupancy permits and 'reasonable and necessary' rectification costs have reinforced the Tribunal's stance on key issues. Meanwhile, the proposed Building Legislation Amendment (Buyer Protections) Bill has introduced fresh layers of regulation, with potential changes taking effect as early as April 2025 and more to come by July 2026. We're keeping a close eye on these updates and will continue to provide insights on what they mean for your projects and operations.

In other news, we're pleased to welcome Grace Beale to the Spectrum Lawyers & Consultants team! Grace brings a wealth of experience from another building and construction law firm, along with expertise in civil litigation, debt recovery, insolvency, contract disputes, and commercial agreements. She's settling in this week, and we look forward to introducing her properly in the next quarter's newsletter.



As always, if you need assistance, we're here to help. Stay tuned for more updates as the year unfolds!

Fred & Donna

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Building Legislation Amendment (Buyer Protections) Bill 2025

BY DONNA

The Building Legislation Amendment (Buyer Protections) Bill 2025 introduces significant reforms to Victoria's building industry, strengthening consumer protections and tightening regulatory oversight. The Bill establishes a statutory insurance scheme, mandates developer bonds, consolidates consumer dispute resolution under the Victorian Building Authority (VBA), and expands enforcement powers against defective or incomplete construction work. It also introduces the Building and Plumbing Commission, a new regulatory body responsible for compliance and enforcement.

The Bill amends several key pieces of legislation, including:

- Building Act 1993;
- Domestic Building Contracts Act 1995;
- Sale of Land Act 1962;
- Subdivision Act 1988; and
- Victorian Civil and Administrative Tribunal Act 1998.

Statutory Insurance Scheme (Part 4, Sections 43–56)

A central feature of the Bill is the introduction of a first-resort statutory insurance scheme for domestic building work, incorporated into new Part 9A of the Building Act. Under this scheme, builders must obtain insurance directly from the VBA (Section 137AAB, Part 15).

The scheme applies to single-home construction and multi-home buildings up to three storeys. It covers contracts exceeding \$20,000 (Section 44) and requires a notice of insurance coverage before a building permit is granted (Section 46). Builders who fail to obtain the required insurance will face penalties (Section 51), with the VBA granted expanded enforcement powers to ensure compliance (Sections 57–68).

The key concern is how this scheme will be funded within an already strained insurance system. Will the first-resort model lead to increased claims, and if so, is there sufficient financial capacity to sustain this approach?

Developer Bond Scheme (Part 6, Sections 92–102)

The Bill introduces a developer bond scheme under new Part 9B of the Building Act, requiring developers of buildings exceeding three storeys to lodge a financial bond with the VBA. Set at 2% of the total build cost, this bond must be held for two years after completion to ensure defects are addressed.

Non-compliance attracts penalties of up to 2,500 penalty units (approximately \$500,000) (Section 93). Occupancy permits cannot be issued until compliance is confirmed (Section 94), and buyers have the right to rescind contracts if developers fail

to meet bond obligations (Sale of Land Act 1962, Section 101). The scheme is expected to transition into a 10-year liability model.

Transfer of Consumer Dispute Resolution to the VBA (Part 2, Sections 3–30)

Consumer dispute resolution responsibilities will be transferred from Domestic Building Dispute Resolution Victoria (DBDRV) to the VBA.

The VBA will oversee dispute resolution, appointing a Chief Dispute Resolution Officer (Section 23), conciliation officers, and assessors (Sections 24, 25). The Bill grants the VBA the authority to issue Rectification Orders to address defective or incomplete construction work (Section 85).

A new definition of ‘residential apartment building’ is introduced, covering Class 2 apartments and buildings with two or more homes exceeding three storeys (with some exemptions). Rectification Orders will be enforceable for up to 10 years after occupancy (or longer under VCAT Section 75C). A Domestic Building Dispute Resolution Victoria Trust Fund will be established to support these changes (Section 19).

The key question is whether this is merely a shift in responsibility without an increase in resources to handle disputes effectively.

Strengthened Enforcement & Disciplinary Actions (Part 5, Sections 81–89)

To improve accountability, the Bill grants the VBA additional enforcement powers, including:

- Issuing Rectification Orders against builders (Section 84);
- Refusing occupancy permits for non-compliance (Section 83);
- Immediate suspension of builders who fail financial checks (Sections 37–39);
- Penalties for builders falsely claiming insurance (Section 52);
- Penalties for developers selling properties without an occupancy permit (Section 100).

Rectification Orders can now be issued up to 10 years post-occupancy, providing stronger consumer protections.

Minimum Financial Requirements for Builders (Part 3, Sections 33–42)

The Bill imposes new financial probity requirements for builder registration to ensure financial stability in the industry.

These include:

- Mandatory submission of financial statements and insurance proof (Section 35);
- Immediate suspension of financially unstable builders (Sections 37–39);
- Annual compliance audits for registered builders (Section 33).

Consumer Protections in Off-the-Plan Sales (Part 3, Sections 79–80)

Consumer protections in off-the-plan property transactions are enhanced, preventing buyers from being forced to settle before an occupancy permit is issued (Sale of Land Act, Section 79). Buyers can also withdraw from contracts if the developer fails to comply with the Developer Bond Scheme (Sale of Land Act, Section 101)

VCAT & Legal Amendments (Part 4, Sections 80, 91)

The Bill introduces key legal amendments, including:

- VCAT will no longer be able to delay VBA enforcement actions (Section 80);
- Legal appeals will not stay VBA enforcement, ensuring regulatory decisions are executed promptly (Section 91).

Establishment of the Building and Plumbing Commission

A new regulatory body, the Building and Plumbing Commission, will oversee building quality control, insurance administration, and dispute resolution. The Commission will have the authority to:

- Enforce compliance and rectify defects;
- Withhold occupancy permits and prevent property sales if serious defects remain unresolved.

Additional Consumer Protections

- Mandatory Building Manuals – Builders must provide detailed manuals outlining materials, warranties, and maintenance history;
- Increased Construction Inspections – Additional pre-waterproofing and pre-plastering inspections;
- First-Resort Insurance Access – Homeowners can claim insurance immediately without waiting for builder insolvency.

Transitional Provisions (Part 2, Sections 290–315)

- Victorian Managed Insurance Authority (VMIA) insurance policies will transfer to the VBA (Section 292);
- Ongoing disputes and claims will now be handled by the VBA (Section 294);
- VMIA staff will transfer to the VBA (Section 314);
- Full implementation by 1 July 2026 (Section 2).

Repeal of the Act (Part 8, Section 106)

The Act will be repealed upon full implementation, with its provisions consolidated into the Building Act 1993 (Section 106).

Conclusion

The Building Legislation Amendment (Buyer Protections) Bill 2025 represents a major reform for Victoria's building industry. By consolidating insurance, dispute resolution, and enforcement under the VBA, the Bill aims to enhance consumer protections, ensure greater accountability, and strengthen regulatory oversight. While these measures provide much-needed safeguards for homeowners, the real test will be whether the industry has the resources to support these reforms effectively. The success of these changes will ultimately depend on how well they are implemented and enforced.

Chat to us if you'd like to learn more about how this might affect you.

Is Your Business Geared to Sales?

BY FRED

Sales are the driving force behind any business. Without a steady flow of customers purchasing your products or services, even the most well-structured companies can struggle to survive. But being truly geared for sales goes beyond having a dedicated sales team—it means ensuring every part of your business is working together to attract, convert, and retain customers. Whether you're in construction, professional services, retail, or manufacturing, a strong sales-focused approach can fuel growth and long-term success.

Creating a Sales-Ready Business

A business that is geared for sales has systems, processes, and a company culture that actively supports revenue generation. Sales are not just the responsibility of one team—they should be embedded in every part of the business, from marketing and operations to customer service and leadership.

Many businesses fail to reach their full potential because they operate in silos, where departments don't communicate effectively. A truly sales-ready business ensures that every team understands its role in customer acquisition and retention.

A Clear Sales Strategy

Does your business have well-defined sales goals? Too often, companies operate without a clear sales strategy, relying on

word-of-mouth referrals and occasional marketing efforts. A strong sales plan should include measurable targets, timelines, and accountability.

Key elements of a structured sales strategy include:

- Identifying your ideal target market;
- Defining clear sales objectives (monthly, quarterly, and annually);
- Mapping out the sales funnel and lead conversion process;
- Establishing key performance indicators (KPIs);
- Providing ongoing training and equipping teams with the right tools.

Without a structured approach, sales efforts can become inconsistent and unpredictable. Businesses that succeed in sales continuously refine their strategies to improve results.



The Role of Marketing

Marketing and sales go hand in hand. A business that is truly geared for sales understands the importance of a strong marketing strategy to attract the right audience. Effective marketing creates brand awareness, generates leads, and nurtures potential customers through the sales funnel.

Key marketing elements that support sales include:

- A Professional Website – Designed to convert visitors into customers, with clear calls to action and engaging content;
- SEO & Online Presence – Ensuring potential customers can find you when they search for relevant products or services;
- Content Marketing – Blog articles, case studies, and videos that establish expertise and build trust;

- Social Media Engagement – Platforms like LinkedIn, Facebook, and Instagram help businesses connect with potential clients and showcase their work;
- Paid Advertising – Google Ads and social media campaigns generate high-quality leads from active buyers.

By integrating marketing with sales, businesses can build a steady pipeline of leads and improve conversion rates.

Customer Experience as a Sales Strategy

One of the most overlooked aspects of sales is customer experience. Businesses that prioritise customer satisfaction see higher conversion rates, increased referrals, and long-term loyalty. It's a key part of your strategy that deserves priority attention. After all, without customer's you don't have a business.



Ways to enhance customer experience include:

- Responsive Communication – Prompt replies to inquiries build trust and demonstrate professionalism;
- Personalised Service – Understanding customer needs and offering tailored solutions improves satisfaction;



- Consistent Follow-Ups – Many sales are lost due to a lack of follow-up; a structured process helps secure conversions;
- After-Sales Support – Providing ongoing support, warranties, or post-sale check-ins strengthens relationships.

When customers have a positive experience from the first interaction through to project completion (or product delivery), they are far more likely to refer others and return for future business.

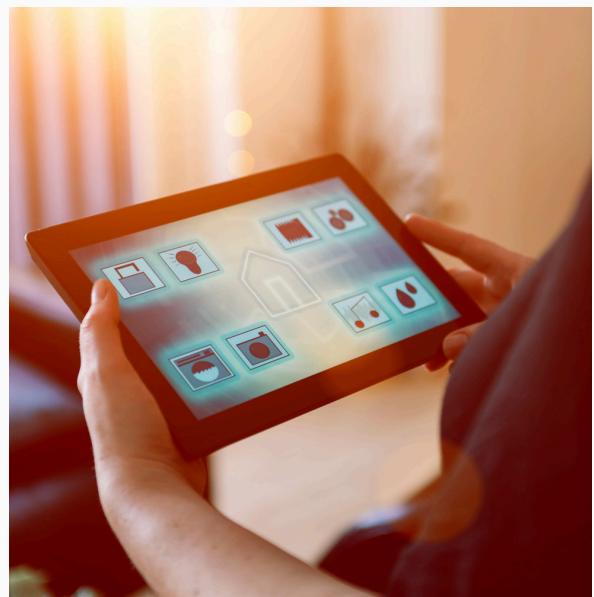
Leveraging Technology for Sales Growth

In today's competitive market, businesses that embrace technology gain a significant advantage. The right sales and marketing tools can automate processes, track customer interactions, and provide valuable insights.

Technologies that enhance sales efficiency include:

- Customer Relationship Management (CRM) Systems – Helping businesses manage customer interactions and track leads;
- Email Automation – Keeping leads engaged through targeted campaigns;
- Sales Analytics – Using data to make informed sales decisions;
- Online Booking & Scheduling – Making it easy for potential clients to book appointments, improving conversion rates.

With the right technology, businesses can streamline sales efforts and scale operations more effectively.



Sales Training & Team Alignment

A business is only as strong as its team. Ensuring that sales teams—and all customer-facing employees—are well-trained is crucial for driving revenue. A strong sales training program should focus on:

- Understanding customer needs and pain points;
- Mastering objection handling and negotiation techniques;
- Developing strong communication and presentation skills;
- Learning the company's products and services inside out;
- Staying informed about industry trends and competitors.

Beyond training, businesses should ensure alignment between sales, marketing, and operations. A seamless collaboration across teams leads to a stronger, more cohesive customer experience.

Measuring & Refining Sales Performance

A business that is truly geared for sales tracks performance continuously.



Without regular analysis, it's difficult to identify areas for improvement or determine which strategies are working.

Key metrics to track include:

- Lead conversion rates – How many inquiries turn into actual customers?
- Sales cycle length – How long does it take to close a deal?
- Customer acquisition cost (CAC) – How much does it cost to acquire a new customer?
- Average transaction value – What is the average spend per customer?
- Customer lifetime value (CLV) – How much revenue does a customer generate over their relationship with your business?

By regularly reviewing these metrics, businesses can refine their sales approach, optimise marketing efforts, and improve overall performance.

The Bottom Line

Being geared for sales means more than having a strong sales team—it requires a company-wide commitment to growth, customer experience, and continuous improvement. Businesses that integrate marketing, customer service, technology, and training into their sales strategy are the ones that thrive in competitive markets.

If your business isn't achieving the sales results you're aiming for, it may be time to assess whether your operations are supporting revenue generation. With the right adjustments, you can create a business that is not only geared for sales but positioned for long-term success.

Contract Termination Midway Through a Project

BY MARIA

Builders are accustomed to managing complex projects, meeting tight deadlines, and ensuring quality workmanship. However, when a contract is terminated before practical completion, it presents unique challenges that must be handled carefully. In such situations, documenting the status of the work and taking the right steps post-termination is critical. This process is essential for protecting professional interests and determining liability, especially when a new builder is engaged to complete the project.

In this article, we explore why proper documentation is essential and how it can safeguard builders against potential disputes, ensuring a smoother transition for the next builder to take over the project.

Why Documenting the Status of Work is Critical

When a contract is terminated before practical completion, homeowners often engage another builder to finish the work. The new builder must assess the existing work to determine what remains and whether any issues need to be addressed. Without clear and thorough documentation of the project's status, complications can quickly arise.

Disputes may emerge over responsibility for certain elements of the project, particularly if defects are identified in the completed work.

Without proper records, it may be difficult to determine whether these issues originated with the initial builder or were caused by the new builder. This uncertainty can lead to liability concerns, costly legal disputes, and potential reputational damage.

The Importance of Clear Documentation

At the time of termination, builders should take several critical steps to ensure the project's status is well-documented:

1. Create a Detailed Record of the Work Completed

Builders should compile a thorough record of the work completed up to the point of termination.



This record should include:

- Descriptions of completed tasks;
- High-quality photographs capturing the condition of the work at various stages;
- Documentation of materials used; and
- Time records for different phases of the project.

This comprehensive documentation provides a clear reference for the project's status and helps prevent future misunderstandings.



2. Provide a Comprehensive Report to the Homeowner

Once documentation is gathered, builders should prepare a detailed report outlining:

- The work completed
- Remaining tasks
- Any issues encountered that require attention

A clear distinction should be made between completed work and unfinished tasks. Where possible, both the builder and homeowner should sign this report to acknowledge the project's condition at the time of termination. A signed document can serve as valuable evidence in case of disputes.

3. Outline Any Outstanding Work or Potential Issues

Builders should clearly document any outstanding tasks or concerns that may impact project completion. Whether these involve minor finishing touches or major construction elements, specificity ensures the new builder can seamlessly continue from where the previous builder left off.

It is equally important to document unresolved design flaws, structural issues, or non-compliance with building regulations. This proactive approach helps the new builder prepare for potential challenges and reduces the risk of costly delays.

4. Maintain Copies of All Communications

Throughout the termination process, builders should retain copies of all communications with the homeowner, including:

- Emails;
- Text messages;
- Phone call records;
- Meeting notes;
- Compliance certifies; and
- Building notices; release of copyright; notify building surveyor and authorities.



These records serve as critical evidence if disputes arise over the reasons for termination, the status of the work, or the level of involvement. Clear communication records can prevent misunderstandings and protect a builder's professional reputation.

The Long-Term Benefits of Proper Documentation

While contract termination midway through a project is far from ideal, handling the situation professionally can significantly reduce the risk of future disputes. Proper documentation not only protects a builder's interests but also facilitates a smoother handover to the new builder.

If concerns arise about the quality of completed work, detailed documentation provides a strong defence. A well-documented record of project progress can demonstrate that contractual obligations were met up until the point of termination, minimising the risk of liability for defects or issues that emerge later.

Conclusion

A contract termination before project completion can be disruptive, but the way it is managed can influence the outcome. By carefully documenting the status of work, maintaining open communication with the homeowner, and ensuring all relevant information is accurately recorded, builders can protect themselves against potential disputes and liability claims. These proactive steps not only safeguard professional reputations but also help ensure a smoother transition for the new builder taking over the project.

The time and effort invested in meticulous documentation now can ultimately save builders from costly legal battles, financial loss, and reputational damage in the future. Taking these necessary steps is not just about protection—it is an investment in long-term success and professional integrity.



Does a Conditional Occupancy Permit Mean You Have Not Achieved Completion?

BY DONNA

Business Analysis of Troise v Blue Key Properties Pty Ltd (Building and Property) [2025] VCAT 9

On 2 January 2025, Senior Member Edquist delivered a significant ruling in *Troise v Blue Key Properties Pty Ltd*, with implications for the construction and property sectors. The case centred on a contractual dispute regarding three two-storey residential units in Werribee and whether the builder had completed the works as per the contract. A key issue was the validity of the Occupancy Permit issued on 9 September 2020 and whether it signified contractual completion.

The owners refused to pay the final invoice, citing defects. During the dispute, Unit 3 was vandalised. The owners subsequently terminated the contract on 30 April 2021, arguing the builder had repudiated it.

Invalid Occupancy Permit and Non-Completion of Works

A central issue was whether the works were complete when the builder issued the final invoice. The Tribunal determined that completion had not been achieved and invalidated the Occupancy Permit issued by Acme Building Consultants on 9 September 2020. As a result, the builder's demand for final payment was deemed unjustified.

Key findings included:

- The Occupancy Permit was conditional, requiring all appliances and services to be fitted off and commissioned before occupation;
- The Building Act 1993 (Vic) does not distinguish between conditional and unconditional permits (*Barbour v Australian Elegant Homes Pty Ltd* [2018] VCAT 1242; *Cardona v Brown* [2012] VSCA 174);
- Works were incomplete, as confirmed by a pre-handover inspection conducted by an independent building consultant.
- A building surveyor's approval does not equate to contractual completion, which remains a matter of contractual interpretation.



Termination and Special Condition 6's Legal Deficiency

The owners issued a notice of intention to terminate under clause 43.1 of the contract. The builder argued the owners had repudiated the contract by failing to pay within 14 days of the Occupancy Permit, as required by Special Condition 6. The Tribunal found:

- Special Condition 6 contravened s132(1)(a) of the Domestic Building Contracts Act 1995 (Vic) and was unenforceable;
- The builder's notice of completion was invalid, meaning procedural steps under clause 36 had not been triggered;
- Without a valid notice of completion, the builder's final claim was not payable.

Builder's Liability for Vandalism and Risk Management

During the payment dispute, Unit 3 was vandalised. The Tribunal ruled that:

- The builder retained legal responsibility for the works until possession passed to the owners;
- Under clause 20 of the contract, the builder bore the risk for site damage;
- As the contract had not yet been terminated at the time of vandalism, the builder was liable for rectifying the damage.

This decision reinforces the need for builders to implement site security and risk management measures during disputes.



Damages Assessment and Financial Implications

The owners sought compensation for defective works, vandalism, variation credits, and delays. The Tribunal applied the principles from *Tabcorp Holdings Ltd v Bowen Investments Pty Ltd* (2009) 83 ALJR 390, ensuring damages restored the owners to the position they would have been in had the contract been properly performed.

Key financial takeaways:

- **Rectification Costs:** Awarded based on actual costs rather than estimates (*Hyder Consulting (Australia) P/L v Wilh Wilhelmsen Agency P/L & Anor* [2001] NSWCA 313);
- **Inflation Adjustment:** A 3% increase was applied to reflect rising costs;
- **Rectification Margin:** A 30% margin on rectification costs was deemed reasonable;
- **Loss of Rental Income:** The Tribunal left open whether consequential losses were recoverable beyond liquidated damages;
- **Interest on Damages:** The owners were given 60 days to apply for interest on awarded damages.

Key Lessons for the Industry

This case highlights the importance of strict adherence to contractual and statutory requirements. Key takeaways include:

- **Occupancy Permits Must Be Unconditional** – Builders cannot rely on conditional permits to justify final payment claims;
- **Contractual Completion Must Align with Contract Terms** – A building surveyor's approval does not automatically mean completion under the contract.

- **Risk Management and Security Measures Are Critical** – Builders remain responsible for site security until legal possession transfers;
- **Defective Work Claims Require Strong Expert Evidence** – Expert reports must be well-prepared and defensible;
- **Special Conditions Must Comply with Legislation** – Progress payment clauses must align with the Domestic Building Contracts Act 1995 (Vic);
- **Damages Reflect Actual Costs** – The Tribunal favours real incurred costs over estimates.

The Troise decision serves as a cautionary tale for builders and developers, underscoring the importance of contract management and regulatory compliance to avoid costly litigation and financial liability.

Chat to our Team if you'd like to learn more about this topic and how it might affect your business.



Top 10 Local Area Marketing Initiatives that All Builders Need to Do

BY FRED

For builders looking to generate consistent leads and maintain a strong presence in their local market, effective local area marketing (LAM) is essential. With the right strategies in place, builders can enhance visibility, build trust, and grow their client base in competitive markets. Here are key initiatives that every builder should prioritise.

Strengthen Your Local SEO

A strong online presence is crucial in today's digital landscape. Optimising your website for local SEO ensures potential clients find your business when searching for builders in your area. This includes:

- Claiming and updating your Google Business Profile with accurate contact details and services;
- Encouraging satisfied clients to leave positive reviews;
- Using location-based keywords throughout your website, blog content, and metadata.

By improving search rankings, builders can increase visibility and attract more qualified leads.

Engage with Your Community Through Sponsorships

Supporting local events, sports teams, or community initiatives is a powerful way to

boost brand recognition and establish trust. Sponsorship opportunities often include branding at events, mentions in promotional materials, and social media exposure. Aligning with community causes that resonate with your target audience positions your business as a valued local contributor.

Showcase Your Work with Open Homes & Site Tours

Prospective clients want to see the quality of your work before making a decision. Hosting open homes or site tours allows them to experience your craftsmanship firsthand, ask questions, and gain confidence in your expertise. To maximise attendance, promote these events through social media, email marketing, and partnerships with local real estate agents.

Build Strategic Partnerships with Real Estate Agents & Land Developers

Forming relationships with real estate agents and land developers can significantly expand your reach. Agents often work with buyers seeking custom homes, making them valuable referral sources.

Collaborating with land developers to offer house and land packages creates additional opportunities. Providing marketing materials and co-hosting information sessions can strengthen these partnerships.

Leverage Social Media Marketing

Social media provides an excellent platform to connect with potential clients and showcase your work. Consistently posting high-quality content—such as progress updates, client testimonials, and educational videos—keeps your audience engaged.

- Facebook and Instagram allow for geo-targeted ads, ensuring promotions reach the right audience;
- LinkedIn can be a valuable tool for networking with industry professionals and local businesses.

An active social media presence builds credibility and keeps your brand top of mind.

Run Targeted Google & Facebook Ads

Paid advertising helps ensure your business remains visible to homebuyers actively searching for builders in your area.

- Google Ads can position your services at the top of search results for queries like “custom home builders near me”;
- Facebook Ads offer detailed audience targeting, allowing you to reach specific demographics, such as first-time homebuyers or those looking to build in new estates.

With well-crafted ad campaigns and clear calls to action, builders can generate a steady flow of leads.

Create Valuable Content to Establish Authority

Content marketing helps position your business as an industry expert while improving organic search visibility. Builders should create informative blog posts, case studies, and videos covering topics such as:

- “How to Choose the Right Builder”
- “Understanding the Home Building Process”
- “Top Design Trends for Modern Homes”



Email newsletters featuring industry insights and project updates can also help maintain engagement with potential clients.

Network at Local Industry Events

Attending local business networking events, real estate expos, and Chamber of Commerce meetings can lead to valuable connections. These events provide opportunities to meet potential clients, industry partners, and suppliers who can refer business to you. Establishing a strong presence at these gatherings helps reinforce your reputation as a leading builder in the community.

Encourage Referrals with Incentives

Word-of-mouth marketing remains one of the most effective ways to generate new business. Offering referral incentives to satisfied clients can help drive high-quality leads. Incentives might include:

- Discounts on future upgrades;
- Gift cards;
- Cash bonuses.



Maintaining strong relationships with past clients through newsletters or social media further encourages ongoing referrals.

Collaborate with Other Local Businesses

Partnering with complementary businesses—such as interior designers, landscapers, and home improvement stores—creates mutually beneficial marketing opportunities. Co-hosting workshops, cross-promoting on social media, or offering bundled service packages can expand your reach and enhance credibility through association with trusted local businesses.

The Bottom Line

A well-executed local area marketing strategy helps builders maintain a competitive edge, attract high-quality leads, and establish themselves as the go-to builder in their community. By taking a proactive approach to marketing, builders can secure long-term success in an increasingly competitive industry.

Family Violence & Parenting Orders- Case Note: Wells & Wells [2024]

BY HANNAH AND ALYSSA

The Federal Circuit and Family Court of Australia often deals with complex and sensitive matters, particularly where allegations of family violence are involved. A recent case, *Wells & Wells* [2024] FedCFamC2F 1516, considered how such allegations should impact parenting arrangements and decision-making responsibilities.

The Background

In this case, the father had previously been charged—and later acquitted—of sexually assaulting the mother. He had not seen his children (aged 11 and 12) in person for nearly four years. Seeking to re-establish a relationship, the father applied for joint decision-making responsibility and requested that the children live with the mother but spend time with him every third weekend, with FaceTime contact three times per week.

The mother opposed this, seeking sole decision-making responsibility and requesting that the children only spend time with the father in accordance with their wishes, with FaceTime contact limited to twice per week. An Independent Children's Lawyer (ICL) was appointed, who supported the mother's position.

Key Legal Considerations

In making its decision, the Court was required to assess the Family Law Amendment Act 2023 (Cth),



with the best interests of the children as the paramount consideration. This included:

- The history of family violence and whether the children (or the mother) would be exposed to an unacceptable risk of harm;
- The safety and wellbeing of the children as set out in section 60CC(2)(a) of the Family Law Act 1975 (Cth);
- The father's lack of insight into his parenting deficits, as highlighted in family reports;
- The children's own views, including their fear of being taken away from their mother.

The Court determined that while the children had expressed a desire to see their father, they also had significant concerns about their safety. The father had not engaged in any steps to address parenting concerns raised in reports and had made little effort to maintain a connection with the children over the years.

The Court's Decision

- Ultimately, the Court found that:
- The father had perpetrated family violence;
- The mother remained fearful for her safety;
- The father had not demonstrated a capacity for a meaningful relationship with the children;
- The children would be at risk if required to spend extended time with him.

While supervised visits could have mitigated physical risk, the Court was concerned about potential psychological harm.

The final orders granted the mother sole parental responsibility, with the children living with her and the father permitted only to send cards and gifts—no face-to-face contact was ordered.

Interestingly, the Court stopped short of making an order for no contact at all, stating: “An order for no time would shut the door to the children having a relationship with the father. This is not in the children’s best interests.”

Key Takeaways

This case reinforces the Court’s commitment to prioritising children’s best interests in parenting disputes, particularly where family violence is a concern. Even in cases where the benefit of maintaining a relationship with both parents is limited, the Court remains reluctant to impose a complete barrier—aiming instead to leave the door open for future connections where appropriate.



A Defining Case in Construction Defects

BY REBECCA

The construction and building sector in Victoria is governed by stringent legal requirements designed to protect homeowners, developers, builders, and contractors. The Victorian Civil and Administrative Tribunal (VCAT) plays a pivotal role in adjudicating disputes in this space, particularly when it comes to contractual compliance, construction defects, and statutory warranties.

In early 2025, *Sumner v Nobes* (Building and Property) [2025] VCAT 96 (*Sumner v Nobes*) set an important precedent for assessing defective workmanship and enforcing builder obligations under the Domestic Building Contracts Act 1995 (Vic) (DBC Act). Alongside this case, other recent VCAT decisions—*Troise v Blue Key Properties*, *Castellan v Icecorp*, *Plunkett v Portier Pacific*, and *Mooney v Fanissa*—illustrate how VCAT is applying the law in disputes over construction defects, delays, and lease maintenance obligations.

This article examines these recent VCAT rulings and their broader impact on the construction industry.

Sumner v Nobes (Building and Property) [2025] VCAT 96

The dispute in *Sumner v Nobes* arose from a domestic building contract between the homeowner, Sumner, and the builder, Nobes.



Sumner alleged that Nobes failed to complete the work as stipulated in the contract, resulting in significant defects, including structural deficiencies, the use of substandard materials, and non-compliance with building standards. Sumner sought rectification costs and damages.

Nobes defended the claim, asserting that the defects were minor and did not justify contract termination or financial compensation. The central issue before VCAT was whether the defects amounted to a fundamental breach of contract or if they were minor issues that did not compromise the building's overall integrity or safety.

After reviewing expert evidence and considering builder obligations under the DBC Act, VCAT ruled in favour of Sumner, determining that the defects constituted a breach of statutory warranties. The Tribunal ordered rectification and compensation for the homeowner, reinforcing that builders are responsible for proving compliance with statutory and contractual obligations and must take proactive steps to rectify defects to avoid legal liability.

Key Legal Takeaways from the Decision

The Role of Expert Evidence in Construction Defect Disputes:

VCAT placed significant weight on independent expert reports to assess the extent and severity of the alleged defects. An expert building inspector identified multiple instances of non-compliance with statutory warranties.

Implications for Builders and Property Owners:

- Homeowners and builders should engage qualified experts early in the dispute resolution process;
- Builders must ensure their work complies with statutory standards, as expert reports are highly influential in legal proceedings.

Providing Evidence in Construction Defect Disputes

VCAT determined who bore the burden of proof in Summer v Nobes:

- Builders are responsible for demonstrating that their work complies with contractual obligations and statutory warranties;

- Homeowners must provide clear, documented evidence of defects, including photographs, reports, and communications.

This principle was reinforced in *Troise v Blue Key Properties Pty Ltd* [2025] VCAT 9, where the Tribunal ruled against a developer who failed to properly communicate delays, seek necessary approvals, and adhere to agreed project timelines, resulting in financial liability.

Best Practices for Builders and Developers:

- Maintain comprehensive project records to demonstrate compliance with contractual and legal obligations;
- Document all contract variations and quality assurance checks to prevent disputes.



Distinguishing Between Minor and Major Defects

In *Summer v Nobes*, VCAT distinguished between minor defects and major breaches. Minor defects, such as paint inconsistencies or surface imperfections, do not justify contract termination or claims for damages. Major defects, including structural failures, water ingress, or safety hazards, can warrant compensation, rectification, or even contract termination.

Key Takeaway for Industry Professionals:

- Builders and developers should address minor defects promptly to prevent disputes from escalating;
- Homeowners and property buyers must differentiate between minor issues and fundamental defects before seeking legal remedies;
- Sellers must disclose known defects to avoid liability for misrepresentation.

This principle was similarly applied in *Plunkett v Portier Pacific Pty Ltd* [2024] VCAT 205, where a property buyer

successfully claimed compensation for undisclosed structural and water damage discovered after settlement.

VCAT ruled that the seller failed to meet disclosure obligations.

Builder Responsibility and Good Faith in Dispute Resolution:

A decisive factor in *Summer v Nobes* was whether the builder made reasonable efforts to resolve the defects before legal action was taken. The Tribunal found that Nobes failed to engage in good faith dispute resolution, which strengthened Sumner's case.

This ruling is consistent with decisions in *Mooney v Fanissa Pty Ltd* [2024] VCC 1032 and *Castellan v Icecorp Pty Ltd* [2024] VCAT 1220, where landlords were held liable for failing to respond to maintenance complaints. These cases emphasise the importance of proactive engagement in defect resolution.



Key Lessons for Builders:

- When defects are reported, engage with homeowners to resolve the issues before litigation arises;
- Ignoring defect complaints can lead to higher damages, increased legal costs, and reputational risks.

Wider Implications for the Construction and Building Sector:

The Summer v Nobes decision, along with other key VCAT rulings, highlights several important trends in the construction and property industry:

Expert Evidence is Crucial in Construction Disputes:

- Tribunals increasingly rely on independent experts to assess defect claims;
- Builders and homeowners should retain expert reports to support their case before a dispute escalates.

Builders Must Act in Good Faith When Addressing Defects:

- Courts and tribunals expect builders to engage with clients and attempt resolution before litigation;
- Failing to do so can result in penalties, damages, and reputational harm.

Proper Contractual Documentation is Essential:

- As seen in Troise v Blue Key Properties, failing to meet project timelines and quality benchmarks can lead to legal liability;
- Builders and property owners should ensure all contract variations or dispute resolutions are documented in writing.

Landlords and Property Owners Must Fulfil Maintenance Obligations:

- Cases like Castellan v Icecorp and Mooney v Fanissa reinforce that landlords must ensure leased properties are safe and habitable;
- Ignoring structural defects or failing to disclose them can lead to legal action and compensation claims.

The Summer v Nobes case, alongside other decisions, highlights the importance of expert evidence, contractual compliance, and proactive defect resolution in the construction industry. These rulings provide valuable guidance for those involved in construction, property development, and building maintenance, emphasising the need for clear documentation, expert assessments, and good faith engagement to mitigate risks, ensure compliance, and avoid costly litigation.



Reasonable and Necessary Rectification Costs

BY DONNA

The case of *Castellan v Icecorp Pty Ltd* [2024] VCACT 1120 centres around a contractual dispute arising from a construction project involving two townhouses. The Owners alleged defective workmanship and breaches of statutory warranties, seeking rectification costs from the Builder. The Tribunal had to assess whether the claimed defects justified compensation and whether contractual expectations were met.

Assessment of Rectification Costs

The Owners relied on the principle established in *Renown Corporation Pty Ltd v SEMF Pty Ltd* [2022] NSWCA 233, asserting that damages should be measured by the cost of rectifying the defects.

However, following *Bellgrove v Eldridge* (1954) 90 CLR 613, the Tribunal emphasised that rectification costs must not only be necessary but also reasonable. The High Court's decision in *Tabcorp Holdings Ltd v Bowen Investments Pty Ltd* (2009) 83 ALJR 390 reinforced this by underscoring proportionality and objective reasonableness in awarding damages.

Causation and Burden of Proof

A key issue in the case was the requirement for clear evidence linking alleged defects to specific damages.



The Tribunal cited *Moody & Co Builders Pty Ltd v Foster Holdings (Sorrento) Pty Ltd (Building and Property) [2022] VCAT 908*, ruling that some claims failed due to insufficient evidence. For instance:

- The absence of weep holes was deemed non-critical, as it did not materially affect the building's functionality;
- Claims regarding missing water stops in showers lacked proof of resulting water damage.

Implications of Promissory Estoppel

A critical aspect of the dispute involved the Owners' alleged waiver of liquidated damages in exchange for additional landscaping works by the Builder. The Tribunal upheld the Builder's reliance on *Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387*, which laid out the principles of promissory estoppel. The Tribunal found that:

- The Owners' conduct led the Builder to reasonably expect that liquidated damages would be waived;
- The Builder relied on this expectation, incurring additional costs and refraining from claiming its final payment;
- The Owners' acceptance of a \$20,000 payment from the Builder confirmed the existence of an enforceable promise.

Key Legal Lessons

This case highlights essential considerations for both construction professionals and property owners:

- Evidence-Based Claims – Claimants must present clear, objective proof linking defects to quantifiable losses;
- Proportionality in Damages – Compensation should reflect reasonable rectification costs rather than an automatic entitlement to full remediation;
- Contractual and Estoppel Risks – Informal agreements can create enforceable obligations, emphasising the need for careful documentation of negotiations.

By reaffirming fundamental contract law principles, the Tribunal's decision serves as a valuable precedent for future disputes in the construction sector.



Changes to the Family Law Act

BY HANNAH AND ALYSSA

Following the significant reforms to the Family Law Act that took effect on 6 May 2024—particularly those concerning parenting matters and decision-making for separated parents—further changes are set to commence from 10 June 2025. These amendments focus on financial and property arrangements after separation, introducing key updates on:

- How the family law courts will determine property settlements;
- What factors the courts must consider, including the economic impact of family violence where relevant.

One of the most notable changes is the explicit recognition of family violence in property settlements. Previously, the Family Law Act allowed courts to consider “any other relevant matter” when determining financial disputes. Under this provision, courts often assessed whether family violence made contributions significantly more onerous for one party or led to financial disadvantage.

The new amendments now expressly require courts to consider the economic effects of family violence when determining property settlements. This includes:

- How family violence has impacted a party’s ability to make financial and non-financial contributions;
- The future economic circumstances of a party affected by family violence;
- Wastage, liabilities, and housing needs arising from family violence.

These changes aim to provide clearer and more consistent guidelines for how courts assess family violence in financial matters.

Another key amendment concerns the duty of disclosure in property and financial matters. While parties have always been required to provide full and frank financial disclosure, this duty has previously been set out in court rules rather than in legislation. From 10 June 2025, the Family Law Act will explicitly codify this obligation.

Failure to comply with disclosure requirements may result in significant consequences, including:

- Fines or imprisonment;
- Adverse costs orders;
- The court factoring in non-compliance when determining the final outcome, potentially leading to a less favourable settlement.

These reforms reflect an ongoing effort to strengthen transparency, fairness, and protections for vulnerable parties in family law proceedings.

If you need assistance with property settlements, financial matters, or parenting arrangements following separation, our team at Spectrum Lawyers & Consultants is here to help.

Introducing Specialist Consultant - Blue Kite HR

At Spectrum Lawyers & Consultants, we believe in providing our clients with more than just legal expertise. By working alongside a network of specialised consultants, we ensure our clients have access to the right professionals to support their broader business needs. These trusted partnerships reflect our commitment to putting our clients first—offering well-rounded, strategic advice that extends beyond the legal sphere.

This quarter, we're featuring Blue Kite HR, led by Catie Paterson, a leader in progressive HR strategy and workplace transformation.

With decades of experience, Catie has reimaged HR services to create a better experience for both business owners and employees. Blue Kite HR offers a tailored, forward-thinking approach to people management, ensuring businesses are not only compliant but also thriving.

How Blue Kite HR Supports Businesses

- HR Advice & Support – Modern Award interpretation, employment agreements, work health and safety, performance management, redundancy and termination support, mental health and wellbeing programs, and more.
- Team Development – Leadership training, succession planning, retention strategies, induction and onboarding, and performance review programs.
- Business Services – Strategic planning, business structure reviews, change management, CEO and business owner coaching, and keynote speaking.

Our shared commitment to putting people first ensures that, together, we can help businesses build stronger, more resilient teams.

For expert HR support tailored to your business, contact Catie Paterson at Blue Kite HR.

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Spectrum Lawyers provide legal services with legal expertise across the following areas:

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- To assist builders and/or owners efficiently resolve building disputes
- Developing streamline procedures and training to manage the challenges in today's market
- Advising consultants & contractors on their legal obligations under the Building Act & Regulations
- Advising building surveyors on compliance issues
- Debt recovery
- Dispute resolution at private mediations, DBDRV, Tribunal and Courts
- Reviewing building contracts and advising on rights and obligations

Conveyancing

- Assisting clients with the purchase or sale of residential or commercial property

General Counsel Services

- Reviewing and advising on procurement contracts and licenses
- Reviewing and drafting policies and terms and conditions
- Negotiating contractual documents
- Providing training (contract law, Australian Consumer Law, advertising, warranty, etc.)

Probate, Wills and Powers of Attorney

- Administering estates
- Drafting Wills and Powers of Attorney to protect your family and assets

Family Law

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- Property and financial settlements
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Spectrum Coach are designed to understand your business intimately, which allows us to provide the focused, dedicated support that we hold to high standards to all our clients. We understand that every business is different, and will have different needs. Choose one of our services or choose them all – whatever works for you and your business.

Sales

Without sales, you don't have a business. Our training gives you guidance at a micro level, arming you with specific strategies that are proven to close sales.

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Your front end and back end operations are key to turning a profit. From taking the initial sale to getting to a site start, we have designed processes that are easily adopted to improve efficiencies, increase profits and help you to manage your jobs more effectively.

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Our extensive design library has a range of plans you can use to sell your new homes which are fully customisable. Our training will equip you with the tools you need to sell these plans based on their respective features and benefits. Need a custom design? We can do that too.

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You're busy doing what you do best – building homes. Let our in-house team help you market your business so you can do more of what you love. We can guide you through marketing your brand, generating leads, and can even help you build a website. We can also manage your social media, including writing content and posting on your social media pages.

Business Coaching

We get it - running a new homes business is complicated. As the business owner, you have to be across every aspect, and not all of them are going to be your specialty. Our general business coaching gives you a team that are skilled in all areas of business, from construction to finance.

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