

Liability defies logic so beware when you repair

Who'll be held responsible for problems resulting from structural deterioration?

A balcony collapse in Manly and numerous other close calls have made this a hot topic among concrete repair specialists, legislators and building owners.

The answer isn't necessarily "obvious" given recent findings of the courts, which often defy a layman's logic.

Court logic

As one speaker at a recent ACRA seminar on liability put it: if two men meet in the street and have a discussion, there will be three versions of the event. One will be the version told by Man One. The second will be the version told by Man Two. And the third will be the truth.

The fourth — as another speaker observed dryly — will be the version finally adopted by the courts.

Clearly, on this basis alone, the best chance of a tolerable outcome in disputes is to not invite the court's determination of the truth at all, simply by avoiding the courtroom altogether!

Whether you're destined for court or not, **good paperwork is a "must" for your own protection.** This is especially true of briefing documents, which should be drafted to ensure that the repair experts only ever tackle the areas that they're meant to and not overlook areas that demand investigation.

Who's an expert?

This is a question of particular concern where a contractor does work directly for a building owner. For residential property in particular, a contractor takes on a big responsibility for ensuring that any work carried out is appropriate and fit for its intended purpose.

To put it another way, a contractor (or consultant for



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that matter) cannot carry out inappropriate or poorly conceived work on a building and get off the hook legally by claiming that it was what the owner told him to do.

Unless repair professionals issue carefully written warnings before undertaking such work, they could well find themselves in a lot of trouble.

The design and specification of repair systems must take all relevant circumstances into account. Clearly, to minimise risk, the repair pro must **investigate concrete deterioration thoroughly.**

The Home Building Act applies to any work carried out on a residential property, including repair work on home unit buildings.

This puts the burden of responsibility even more squarely on the shoulders of contractors and other industry specialists to ensure that the work is carried out in a proper and workmanlike manner and is fit for its intended purpose.

'No-claim' cover

Equally as contentious an issue is home warranty insurance. Its intention is to cover the consumer in the event that work done on his house is sub-standard.

But the contractor is legally responsible for rectifying defective workmanship anyway. So essentially **the insurance company will only pay out on a claim if the contractor can't be found!** ■