

Project Intervene Webinar Q&A

#	Question	Answer
1	Hi , how does the program ensure the Owners Corporations are protected with the time limitations of 2 years and 6 year periods ? will lawyers still need to be included if an agreement is not reached with the builder/developer ?	Owners coporation should consider lodging complaint with Fair Trading if they have serious defects in the common property. However, this action does not 'stop' the clock from statutory warranties - owners corporation may wish to seek independent advice about this
2	I am concerned that having only one company managing defects for all of NSW will lead to blown out timeframes due to workload?	Sedgwick Australia is engaged to manage a panel of contractors who will be carrying out the investigation work to allow for the program to be scaled up as required. Clear instructions and process is being provided to ensure quality and consistency.
3	May you please share timeframes from notifying Project Intervene with the flow as the OC have limitation periods	Owners Corps should act in accordance with their own advice in relation to statutory warranty limitation periods. Project Intervene will - if successful negotiations are concluded - lead to a developer undertaking that is enforceable. Remediation of defects is done under that developer undertaking. if the developer does not agree, the limitation periods will not have stopped. that is why the owners corporation must consider its own advice. the best outcome is if all matters are agreed and recorded in the one developer undertaking but that cannot be guaranteed by the department.
4	if the Builder or developer is not is active, how does FT address a defect in the Scheme?	Without an active or solvent developer or builder, Fair Trading cannot take any action against those entities to enforce remediation responsibilities
5	Can you please clarify how this project protects or 'stops' the statutory warranty period from expiring? The reason most schemes resort to commencement of proceedings/ litigation is to preserve their rights with regard to the 2 warranty limit. How this will project resolve this portion of the problem?	By registering with Project Intervene doesn't 'stop' the clock on warranties. The clock continues to run. However, if the developer enters into a developer undertaking that covers the defects, they will be remediated under the developer undertaking and the develoepr undertaking is enforceable.
6	i assume by active developer - it is one who hasnt gone into bankruptcy.	Thanks for your Question Sydney, yes that's right, the developer/builder still need to be trading or at least be able to be pursued so the OBC can pursue them for the costs. If the Builder/Developer is no longer trading, the owners will have to rely on other avenues to pursue their defects. I trust this helps

7	What happens if a company does go into liquidation. is there any recourse on the principals of a bankrupt company??	To be eligible for program, there has to be an active developer. Unfortunately, without a developer we cannot issue an order to have the serious defects remediated
8	Can you advise how the scope or specification for rectification of the defects will be agreed between the parties	Where the developer agrees to an undertaking, the undertaking manager will work with the developer and owners corporation to agree to the list of serious defects. The developer will then engage design practitioner(s) to prepare designs which will need to be declared and uploaded by a registered practitioner into the NSW Planning Portal. The developer undertaking is a compliance tool under the legislation between the Department and the developer, for the benefit of the owners corporation
9	would the slides be available so we can share with the Owners?	Yes - copied previously provided to SCA
10	Can the progress of a building registered with Project Intervene be accessible to the public to see where rectification is at?	Once an undertaking is entered into and an Undertaking Manager appointed, the Manager will provide regular updates to the owners corporation and the Department as to progress of the remediation works. This process is not expected to be publicly available.
11	How does the project intervene sit with the bond scheme?	Project Intervene is supported by powers under RAB Act looking at serious defects in the common property. It can operate alongside the SBBI scheme which considers minor and major defects under HB Act
12	Question:- does this process have sufficient experts to review defects reported and further review of common property or does the OC still need independent experts to review areas of common property not reported ? Question 2:-what happens from now until closure 30June 2023 if there are defects but limitation period expires in 4 months ? Question 3: does this program cover fire defects, structural , mechanical, hydraulic etc ?	<p>1. Appropriately qualified consultants in various disciplines are being engaged to inspect the key building elements - waterproofing, fire safety systems, structure, building enclosure and essential services (part of common property), to identify any serious defects. The owners corporation does not need to engage experts for registration with Project Intervene, but if the owners corporation do have any expert reports already, they should submit them.</p> <p>2. The owners corporation should lodge a complaint with Fair Trading and take any other steps to enforce the statutory warranties ASAP</p> <p>3. Yes - these are key building elements in the Design and Building Practitioners Act - these are the key building elements that the Department has powers to inspect and order remediation</p>

<p>13</p>	<p>How enforceable is the BRWO? Where the six years warranty under the home building act has expired and the BRWO hasn't yet been complied with - will the Owners Corporation have any expectation that the BRWO will still be enforced by fair trading? Or will the Owners Corporation still need to commence their own legal proceedings to enforce the warranties?</p>	<p>There are very high penalties for non-compliance with BWRO (up to \$330,000 and other additional penalties). Regulator will enforce the BWRO.</p>
<p>14</p>	<p>This may have been answered but it wasn't very clear: There are often several defects that are identified with varying levels of severity, and my understanding is that only those that are determined as serious are considered in the Project Intervene undertaking. Do the provisions of the HBA and the DBPA etc still apply for those remaining defects if the owners corporation wishes to pursue their rectification also, or are those rights revoked following participation in the program?</p>	<p>Project Intervene is focussed on getting the serious defects or potential serious defects under RAB Act fixed. Where there are minor defects, the owners corporation should lodge a complaint with Fair Trading (in addition to any other steps it may take) and Fair Trading will deal with them under HBA</p>
<p>15</p>	<p>What is considered a serious defect and to what scale does it have to be.</p>	<p>Thanks Jason, there are 5 key elements that are considered a 'Serious Defect' which are: Waterproofing Structural Fire Essential Services (Like Mechanical Ventilation) Enclosures (eg roofing and windows) If these are found to be defective, they will be included in the remediation works. The Act defines what is "serious" so it is best to check that but it is a defect that affects safe occupation of the building, or its use for its intended purpose, among other things I trust this helps</p>
<p>16</p>	<p>If I understood the response correctly 'if the undertaking does not affect the statutory rights the Owners Corporation may have' this will mean the rate of litigation or proceedings will likely continue as the main tool or means for a Owners Corporation to preserve their rights. The assessment and identification of defects often occurs close to the 2 year initial warranty expiry. Therefore if this process does not pause that timeframe Owners Corporations will remain in the same position - that is commencement of litigation prior the expiry of the statutory warranties for that scheme.</p>	<p>We should wait and see.</p>

17	Can a "rouge" committee be forced into project intervene? Presume this means a "rogue" committee?	The Owners Corporation would have to agree to enter into the Deed Poll, so this would require a resolution of the OC at a general meeting. If there were serious defects and a complaint were lodged with Fair Trading, it may be that other compliance action could be taken outside of Project Intervene but the circumstances of each building will determine the outcome. It would be a matter of a valid resolution being passed by the owners corporation. I trust this answers your question
18	Project Remediate has encountered delays with items taking 12-18 months before any tangible progress being made, can we expect shorter timeframes with Project Intervene?	We expect to take up to 6 months to triage, carry out investigation work and issue draft building work rectification order to the developer. If the developer agrees to an undertaking, we will move quickly to enter into an Undertaking Process Deed Poll, and work on final list of serious defects. The undertaking will need to be executed including agreement by the OC. Then proper designs need to be prepared before remediation work commences.
19	Why does this project have a finite end date? Surely it should be ongoing, I don't expect that there will be no buildings with defects after 30 June 2023 (surely some of these defects will only become apparent after a few years of occupation)	This is surge project to have unresolved serious defects remediated. Once the program is over, the function will be absorbed back into the regulator. Complaints can be lodged normally.
20	What if the developer/builder is 'around' but has opened under a new entity?	Further investigation will need to be carried out to determine linkage
21	What safeguards are in place to stop the builder from folding when the process starts?	The builder/developer is required to provide a financial undertaking prior to entering into the deed poll before works commence
22	Can Project Intervene operate if an interim defect report has not yet been prepared by the appointed building inspector? or before the final defect report has been prepared by the building inspector?	As part of the program, an inspection will be carried out to identify or confirm that serious defects exist in the common property. To be eligible for the program, OC will need to show they believe there are serious defects, either complete the OC lodgment form, take photos and briefly describe what is seen or lodge the interim report obtained by an expert.
23	Can the builder dispute the defects listed? And will experts costs be included in the undertaking?	Yes the developer or builder may challenge an order in the Land and Environment Court. Project Intervene will not reimburse OC expert costs. There is no requirement to have expert reports. See Project Intervene webpage on how to lodge.
24	Where a building has lodged a claim with NCAT and a Deed has been settled, now that more defects have been identified is Project Intervene an option. The builder is	Yes owners corporation can still apply for Project Intervene but only for serious defects in common property

	active but will not respond to the second round of defects.	
25	If a building already has a Deed in place for the rectification of defects by the builder and/or developer, will Project Intervene be open to address additional defects found which do not form part of original Deed, so long as its under warranty period?	Yes Project Intervene will consider projects with an existing deed of settlement, as the program is looking at serious defects in the common property. Our experience has found that deeds with the builder doesn't pick up all the serious defects, so there is chance we will find serious defects that is not subject of the deed, provided the building meets the program criteria.
26	As a Design Practitioner and remedial Consultancy firm, how can we participate in Project Intervene?	You can apply to the OBC to be placed in the expert panel
27	How is a layman going to identify fire safety defects by walking around the property?	Fire safety issues may be brought to attention via annual fire safety statement check. Or if you can identify serious defects in other building elements, enough to show that the building qualifies for the program.
28	When will the NSW GOV close the loophole for Builders / Developers to deregister their empty shell companies?	Regretably this is a federal law, under the corporations Act, it is not state based. However the ICIRT rating addresses this.