

The Owners – Strata Plan No 84674 v Pafburn Pty Ltd and NCAT’s Jurisdiction on Design and Building Practitioners Act Claims

The NSW Court of Appeal case of *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd [2023] NSWCA 301*, marks a significant authority for Design and Building Practitioners Act 2020 (NSW) claims including potentially limiting the jurisdictional reach of the NSW Civil and Administrative Tribunal (NCAT) in similar matters, as established in the NCAT Appeal Panel decision of [Deaves v Sigma Group NSW Pty Limited \[2023\] NSWCATAP 94](#).

Central to the *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* dispute was the interpretation of the statutory duty of care as outlined in the *Design and Building Practitioners Act*, non-delegable duties, and vicarious liability, particularly concerning proportionate liability.

Background of the *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* Case

The Owners Corporation of a residential strata scheme sought judicial clarity on whether the duty of care mandated by the Act aligns with the definition of a "tort" under the Civil Liability Act. This question was not merely academic; it had profound implications for the liability scope of builders and developers in construction-related disputes.

Analysis of Key Legal Issues

The appeal presented two pivotal legal questions:

Classification of Non-Delegable Duty

The first issue was whether the statutory duty of care under the Design and Building Practitioners Act should be classified as a "tort" within the context of the Civil Liability Act. This classification was crucial, as it influenced the scope of liability and potential damages.

Applicability of Proportionate Liability

The second issue concerned the applicability of the Civil Liability Act's proportionate liability provisions to this statutory duty. This was significant in determining whether builders and

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developers could limit their liability based on the involvement of third-party contractors or suppliers in the [construction process](#).

The Court of Appeal's Decision

The Court of Appeal's judgement was:

- 1. Statutory Duty as Tort:** The court affirmed the classification of the statutory duty under the Design and Building Practitioners Act as a "tort" for the purposes of the Civil Liability Act. This interpretation emphasised the intricate relationship between legislative enactments and common law principles.
- 2. Non-Applicability of Proportionate Liability:** The court determined that the proportionate liability provisions of the Civil Liability Act did not apply to breaches of this non-delegable duty. This meant that builders and developers could not limit their liability by pointing to the fault or involvement of other parties in causing the damage.

Implications of the Decision

The decision in *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* has far-reaching implications:

- **For the Construction Industry:** The decision emphasises the duty of care that builders and developers owe to owners. It establishes that their accountability extends to the entire construction process, including subcontracted work. This decision could lead to heightened diligence and possibly affect insurance and contract practices in the industry.
- **For Property Owners:** For homeowners and property owners, the ruling is a considerable victory. It provides enhanced protection against construction defects and ensures more robust avenues for legal redress, reinforcing their rights in property disputes.
- **For Legal Precedents:** The case sets a significant legal precedent in New South Wales. It clarifies the interpretation of statutory duties within the construction realm and their interaction with existing tort law, influencing how future similar disputes might be argued and decided.

The Deaves Case and Its Impact on Jurisdiction

The *Deaves v Sigma Group NSW Pty Limited* case, decided by the NCAT Appeal Panel, had determined that NCAT has jurisdiction over [Design and Building Practitioners Act](#) claims. This was

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a significant expansion of NCAT's jurisdiction for breaches of statutory duty under the DBPA, beyond traditional contractual disputes under the Home Building Act.

However, the *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* decision by the NSW Court of Appeal introduces a layer of complexity to this understanding. By classifying the statutory duty of care under the DBPA as a tort for the purposes of the Civil Liability Act, it raises questions about the appropriate jurisdiction for DBPA claims. This interpretation could potentially prevent DBPA claims from the purview of [NCAT](#) to the courts, primarily due to the tortious nature of these claims.

The decision in *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* is a watershed moment in NSW construction law, striking a balance between protecting property owners and clarifying the responsibilities of builders and developers. By classifying the statutory duty of care as a tort, it has potentially shifted certain types of construction disputes from NCAT to the courts, reflecting a nuanced interpretation of overlapping legislative frameworks. The contrast with the *Deaves v Sigma Group NSW Pty Limited* decision underscores the evolving legal interpretation of the Design and Building Practitioners Act. Looking ahead, this case will likely be a touchstone in future [construction law disputes](#), influencing both legal strategy and potentially legislative reforms.

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