

PARLIAMENT OF VICTORIA

**Domestic Building Contracts and Tribunal
(Amendment) Act 1996**

Act No.

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PARLIAMENT OF VICTORIA

Initiated in Assembly 15 May 1996

A BILL

to amend the **Domestic Building Contracts and Tribunal Act 1995**,
the **House Contracts Guarantee Act 1987** and the **Building Act 1993**
and for other purposes.

Domestic Building Contracts and Tribunal (Amendment) Act 1996

The Parliament of Victoria enacts as follows:

1. *Purposes*

The main purposes of this Act are—

- (a) to amend the **Domestic Building Contracts and Tribunal Act 1995** to correct an error in its commencement and to improve the operation of that Act; and

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(b) to amend the **House Contracts Guarantee Act 1987** to ensure that certain guarantees apply under that Act; and

(c) to amend the **Building Act 1993** to improve the operation of that Act.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Correction of error in commencement

(1) After section 2 (1) of the **Domestic Building Contracts and Tribunal Act 1995** insert—

"(1A) Section 158 comes into operation on 1 May 1996."

(2) The **Domestic Building Contracts and Tribunal Act 1995** is deemed to have been enacted as amended by sub-section (1).

4. Appeals from decisions of Tribunal

(1) Section 110(2) of the **Domestic Building Contracts and Tribunal Act 1995** is repealed.

(2) In section 110(3)(b) of the **Domestic Building Contracts and Tribunal Act 1995** for "Court of Appeal" substitute "Supreme Court".

5. Exemption power

After section 135(1)(a) of the **Domestic Building Contracts and Tribunal Act 1995** insert—

"(aa) the exemption of persons or bodies or classes of persons or bodies, or buildings or classes of buildings, or contracts or classes of contracts, from all or any of the provisions of this Act or the regulations in any

circumstances and subject to any conditions provided for in the regulations or determined by the Minister;"

6. Definition of recognised person

In section 3(1) of the **House Contracts Guarantee Act 1987**, in paragraph (c) of the definition of "recognised person", after "building surveyor" **insert** ", building inspector".

7. New sections 34A, 34B and 34C inserted

After section 34 of the **House Contracts Guarantee Act 1987** **insert—**

"34A. Savings provisions

- (1) If a domestic building work contract or supervision contract was entered into in April 1996, the guarantee referred to in section 6(1) or (1A) is deemed to have been given on the domestic building work contract or supervision contract being entered into.
- (2) If a contract for sale referred to in section 6(1)(b) was entered into in April 1996, the guarantee referred to in section 6(1) is deemed to have been given on the completion of that contract.
- (3) If —
 - (a) a contract for sale referred to in section 6(1)(c) was entered into in April 1996;
and
 - (b) section 9 had been complied with before that contract was entered into—the guarantee referred to in section 6(1) is deemed to have been given on the completion of that contract.

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(4) If—

(a) a contract for sale referred to in section 10 was entered into in April 1996; and

(b) section 10(1) had been complied with before that contract was entered into—

the guarantee referred to in that section is deemed to have been given on the completion of that contract.

(5) Any approval given or purported to have been given in April 1996 by the approved guarantor under section 23 is deemed to have been validly given under that section.

(6) Any certificate issued or purported to have been issued in April 1996 by the approved guarantor under section 25(3)(d) is deemed to have been validly issued under that section.

(7) All money received by the approved guarantor under this Act or purportedly under this Act in April 1996 is deemed to have been validly received by the approved guarantor and paid into its funds.

(8) If any dispute arises in relation to the operation of this section, any person affected may refer the dispute to the Tribunal for determination.

34B. Notice to approved guarantor

If, before the commencement of section 7 of the **Domestic Building Contracts and Tribunal (Amendment) Act 1996**, an approved builder or approved supervisor has not served on the approved guarantor a notice referred to in section 24 in respect of a contract entered into or building work

commenced in April 1996, the approved builder or approved supervisor must serve that notice on the approved guarantor within 14 days after that commencement.

Penalty: 100 penalty units.

34C. *No offence for certain acts or failures to act under this Act in April 1996*

Despite anything to the contrary in this Act, a person is not liable for an offence under this Act for an action or failure to act which but for section 2(1A) of the **Domestic Building Contracts and Tribunal Act 1995** and section 3(2) of the **Domestic Building Contracts and Tribunal (Amendment) Act 1996** would not have constituted an offence at the time of the action or failure to act."

8. *Limitations on liability*

After section 131(2) of the **Building Act 1993**
insert—

'(3) In this section "court" includes the Domestic Building Tribunal established under the **Domestic Building Contracts and Tribunal Act 1995**.'

9. *Owner builders*

(1) In section 137B(7) of the **Building Act 1993** for paragraph (a) of the definition of "prescribed period" **substitute—**

"(a) in relation to a contract for the sale of a home—

(i) 6 years and 6 months after the completion date for the construction of the home; or

(ii) if a longer period (not exceeding 10 years) after the completion date for the construction of the home has been prescribed, that longer period; and".

(2) In section 137B(7) of the **Building Act 1993** in paragraph (b) of the definition of "prescribed building practitioner" after "building surveyor" insert ", building inspector".

10. Sale of homes before completion

In section 137E of the **Building Act 1995**, in paragraph (a) after "contract" insert "or the contract of sale is a major domestic building contract or provides that the home is to be constructed under a major domestic building contract".

11. Building Practitioners Board

(1) After section 184(3) of the **Building Act 1993** insert—

"(3A) An additional member may be appointed in respect of the category of builder, and that member is to be chosen by the Minister from a list of three names submitted to the Minister by an organisation which, in the Minister's opinion, is a major professional association for that category."

(2) In section 184 of the **Building Act 1993**—

(a) in sub-section (4), after "(3)" insert "or (3A)";

(b) in sub-section (5) after "(3)" insert "or (3A)".

12. New clause 27 inserted in Schedule 4

After clause 26 of Schedule 4 of the **Building Act 1993** insert—

"27. Saving provision

A building permit issued in April 1996 in respect of prescribed building work within the meaning of section 27 of this Act as in force before the commencement of section 138 of the **Domestic Building Contracts and Tribunal Act 1995** is deemed to have been validly issued even if the certificate referred to in section 27(4) had not been given to the relevant building surveyor before the building permit was issued."

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NOTES

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