

House Contracts Guarantee (Miscellaneous Amendment) Bill

No.

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By Authority L. V. North, Government Printer Melbourne



LEGISLATIVE COUNCIL

Read 1° 7 May 1991

(Brought in by the Honourable B. W. Mier)

A BILL

to make miscellaneous amendments to the **House Contracts Guarantee Act 1987** and for other purposes.

House Contracts Guarantee (Miscellaneous Amendment) Act 1991

The Parliament of Victoria enacts as follows:

1. Purposes

The purpose of this Act is to make miscellaneous amendments to the **House Contracts Guarantee Act 1987**.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

Act No. 44/1987, as amended by Nos. 97/1987, 5/1989 and 39/1990.

3. Principal Act

In this Act the House Contracts Guarantee Act 1987 is called the Principal Act.

4. Definitions

In section 3 (1) of the Principal Act— 5

- (a) in the definition of “Approved guarantor” omit “being complied with”; and
- (b) for the definition of “Guarantee period” substitute—

‘ “Guarantee period” means— 10

(a) in relation to work of the type specified in section 6 (1) (b) if—

- (i) the work is not carried out under a domestic building work contract; and
- (ii) no building approval is required for the work— 15

the period of 7 years from the time when that work was commenced; and

(b) in relation to any other domestic building work, means the period of 7 years from the time when— 20

- (i) the contract for the performance of that work (or for the management or supervision of that performance) was entered into; or 25
- (ii) building approval was granted for that work—

whichever occurred first.’

5. Improvements to relocated buildings

(1) In section 3 (1) of the Principal Act, in the definition of “Domestic building work”— 30

- (a) in paragraph (d)—

- (i) for “and” after sub-paragraph (i) **substitute** “or (ii) placing the building on the site; or”; and
- (ii) in sub-paragraph (iii), after “(i)” **insert** “or (ii)”; and

5 (b) after paragraph (d) **insert—**

‘(da) the work of improving a residence that is excluded from the definition of “dwelling-house” in this sub-section by paragraph (b) of that definition, if the work is carried out after the building is placed on the site to which it is moved; or’.

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- (2) In section 6 (1) (e) of the Principal Act, after “(d)” **insert** “or (da)”.

6. *Liability for defects*

15 (1) For section 3A (3) (b) of the Principal Act **substitute—**

“(b) the loss or damage suffered arose out of—

- (i) the builder’s failure to fulfil the builder’s obligations under the domestic building work contract; or

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- (ii) a defect arising from work done, work that ought properly to have been done, or materials supplied, by the builder under the domestic building work contract.”.

(2) For section 7 (3) (b) of the Principal Act **substitute—**

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“(b) in any case, a defect arising from work done, work that ought properly to have been done, or materials supplied, by the builder under the domestic building work contract or by a person working under the management or supervision of the supervisor under the supervision contract, that appears in the building during the guarantee period.”.

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(3) In section 8 of the Principal Act, for “caused by bad workmanship” **substitute** “arising from work done, work that ought properly to have been done, or materials used, by the builder”.

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(4) For section 11 (2) (b) of the Principal Act **substitute—**

“(b) the defect must be taken to have arisen from work done, work that ought properly to have been done, or materials supplied, by the builder under the domestic building work contract or by a person working under the management or supervision of the supervisor under the supervision contract, and”.

(5) For section 17 (1) (b) of the Principal Act **substitute—**

“(b) the defect had arisen from work done, work that ought properly to have been done, or materials supplied, by the builder under the domestic building work contract or by a person working under the management or supervision of the supervisor under the supervision contract.”.

7. Speculative renovations 15

(1) In section 6 (1) (b) of the Principal Act, after “constructing” **insert** “or improving”.

(2) For section 6 (3) of the Principal Act **substitute—**

“(3) The approved guarantor may issue a conditional certificate of guarantee in the case of a dwelling-house that is— 20

(a) constructed by an approved builder or an owner builder; or

(b) improved by an approved builder—

and intended to be sold by the builder, stating that the guarantee will come into force on the completion of the contract of sale.”. 25

8. Nature of guarantees

(1) After section 7 (3) of the Principal Act **insert—**

“(3A) For the purposes of this section, “**loss or damage**” includes, but is not limited to— 30

(a) the cost of rectification or completion of the performance of the obligations of the builder or supervisor under the contract; and

- (b) legal costs and consultants' fees incurred in a dispute with the builder or supervisor; and
- (c) rent paid for alternative accommodation, or rent foregone; and
- (d) penalty interest.'

(2) For section 7 (5) and (6) of the Principal Act **substitute—**

“(5) The approved guarantor is not liable under a guarantee for loss or damage—

- (a) of \$200 (or any larger amount that is prescribed for the purposes of this paragraph) or less arising out of a single defect; or
- (b) of \$600 (or any larger amount that is prescribed for the purposes of this paragraph) or less arising out of a series of defects—

unless—

(c) the claim is for loss or damage arising out of the work of constructing a dwelling-house and the building owner, within 3 months after the dwelling-house is first occupied—

- (i) notifies the builder or supervisor orally or in writing; or
- (ii) notifies the approved guarantor in writing—

of the defect, or all the defects, as the case requires; or

(d) the claim is for loss or damage arising out of the work of improving a building and the building owner, within 3 months after the work is completed—

- (i) notifies the builder or supervisor orally or in writing; or
- (ii) notifies the approved guarantor in writing—

of the defect, or all the defects, as the case requires.

(5A) Despite sub-section (5), the approved guarantor is not by virtue of that sub-section liable under a

guarantee for loss or damage arising out of a series of defects unless the loss or damage arising out of each defect is at least \$50.

- (6) The approved guarantor is not liable under a guarantee for loss or damage of more than— 5
- (a) \$200 (or any larger amount that is prescribed for the purposes of sub-section (5) (a)) but less than \$1000 (or any larger amount that is prescribed for the purposes of this paragraph), arising out of a single defect; or 10
- (b) \$600 (or any larger amount that is prescribed for the purposes of sub-section (5) (b)) but less than \$3000 (or any larger amount that is prescribed for the purposes of this paragraph), arising out of a series of defects— 15
- unless—
- (c) the claim is for loss or damage arising out of the work of constructing a dwelling-house and the defect appears within one year after the dwelling-house is first occupied; or 20
- (d) the claim is for loss or damage arising out of the work of improving a building and the defect appears within one year after the work is completed.
- (6A) Despite sub-section (6), the approved guarantor is not by virtue of that sub-section liable under a guarantee for loss or damage arising out of a series of defects unless the loss or damage arising out of each defect is at least \$200.”. 25

9. Identified defects 30

- (1) In section 9 (3) of the Principal Act—
- (a) before “defects” insert “(a)”; and
- (b) after “(1) (a)” insert “; or
- (b) the missing part of any items listed in that report as incomplete”. 35
- (2) In section 10 (4) of the Principal Act—
- (a) before “defects” insert “(a)”; and

- (b) after “section” insert “; or
- (b) the missing part of any items listed in that report as incomplete”.

10. New section 10AA inserted

5 After section 10 of the Principal Act insert—

“10AA. Further extension of guarantee

(1) If—

- 10 (a) a person has purchased a dwelling-house that was constructed less than 7 years before the contract for sale was entered into; and
- 15 (b) there was no guarantee in force under this Act in relation to the dwelling-house at the time that contract of sale was entered into; and
- (c) the person intends to enter into a contract for the sale of the dwelling-house within the guarantee period—
the person must, within 6 months before entering into the contract referred to in paragraph (c)—
- 20 (d) obtain from a recognised person, and give to the purchaser before the purchaser signs the contract, a report on the dwelling-house containing any matters that are required by the Minister under section 10 (1) (d); and
- 25 (e) pay to the approved guarantor the amount fixed under section 10 (1) (e).

30 (2) If the vendor does not comply with subsection (1), the purchaser may rescind the contract for the sale of the dwelling-house at any time before the purchaser becomes entitled to possession or to the receipt of rents and profits.

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- (3) A provision in a contract for the sale of a dwelling-house by which the right conferred by sub-section (2) on the purchaser is excluded, limited, modified or restricted is void. 5
- (4) If the vendor complies with sub-section (1), the purchaser must, for the purposes of this Act, be treated as if the purchaser had purchased the dwelling-house under a contract for sale entered into with an approved builder, except that the guarantee applicable by virtue of this sub-section does not extend to— 10
 - (a) defects identified in the report obtained under sub-section (1); or
 - (b) the missing part of any items listed in that report as incomplete.”. 15

11. Procedure for resolving complaints and claims

After section 13 (4) of the Principal Act insert—

- “(4A) The chief administrator may, at any time— 20
 - (a) review the procedures adopted by the approved guarantor under this section; and
 - (b) notify the approved guarantor of any amendment to those procedures that the chief administrator requires. 25
- (4B) The approved guarantor must adopt the amendments required by the chief administrator.”.

12. New section 14A inserted

After section 14 of the Principal Act insert— 30

“14A. Rectification by builder

- (1) If the approved guarantor—
 - (a) accepts liability for a claim; and

(b) decides that the building owner does not have reasonable grounds to refuse access to the builder—

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it must notify the building owner that the builder must be allowed access to rectify the defect.

(2) If the building owner refuses access to the builder and the approved guarantor decides that refusal is unreasonable, the approved guarantor—

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(a) must notify the building owner of that decision; and

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(b) may offer, in settlement of the claim, to pay the building owner an amount determined by the approved guarantor to be equivalent to the reasonable costs of rectification of the defect by the builder.”.

13. Costs

(1) In section 15 of the Principal Act—

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(a) before “The” insert “(1)”; and

(b) after “any costs” insert “and reasonable disbursements”; and

(c) after “the costs” insert “and disbursements”.

(2) At the end of section 15 of the Principal Act insert—

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“(2) The approved guarantor must reimburse a claimant for any costs and reasonable disbursements incurred by the claimant if—

(a) the claimant rejects an offer made by the approved guarantor; and

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(b) the claimant is subsequently awarded an amount larger than that offered, by the appeals committee or the Administrative Appeals Tribunal; and

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(c) the costs and disbursements were incurred at any time after the rejection of the offer.

- (3) Despite sub-sections (1) and (2), the claimant is not entitled to be reimbursed costs and disbursements unless the claimant notifies the approved guarantor of the total amount of the costs and disbursements within 6 months after becoming aware of that amount. 5
- (4) If a claimant has delayed the processing of the claim by the approved guarantor for a period by—
- (a) failing to comply, within a reasonable time, with a request of the approved guarantor to provide documents or quotations; or 10
 - (b) postponing an inspection by the approved guarantor; or
 - (c) unreasonably failing to make the premises available for the purposes of estimation by the approved guarantor of the cost of rectification— 15
- the approved guarantor is not liable for costs and disbursements incurred before the expiry of the time specified in sub-section (1) and an additional period that corresponds to the period for which its processing of the claim was delayed by the claimant.”. 20

14. *Appeals*

- (1) For section 16 (1) of the Principal Act **substitute**— 25
- “(1) A claimant, a builder or a supervisor who is directly affected by any decision of the approved guarantor may, within 30 days (or any longer time that the appeals committee allows, if it is satisfied that neither party will be prejudiced by its allowing longer) after the decision is made and on payment to the approved guarantor of any prescribed fee, appeal to the appeals committee established by the approved guarantor under its rules.”. 30
- (2) After section 16 (1) of the Principal Act **insert**— 35
- “(1A) If the approved guarantor has decided that the building owner refused access (whether reasonably or not) to the builder, then in calculating time for

the purposes of sub-section (1) there must not be included any time before the parties are advised of the amount that the approved guarantor offers to pay the claimant.”.

5 (3) For section 16 (6) of the Principal Act **substitute**—

“⁽⁶⁾ If a builder or supervisor appeals under sub-section (1) against a decision of the approved guarantor not to reject a claim, the appeals committee may vary or quash the decision even if, at any time between the making of the decision and the determination of the appeal—

10 (a) the approved guarantor has made any payment to the claimant in respect of the claim; or

15 (b) the approved guarantor has informed the claimant of its decision not to reject the claim and the claimant has acted on that information so that, if the decision were to be varied or quashed, the claimant would be detrimentally affected; or

20 (c) the builder or supervisor has begun to rectify the defect.

(6A) If the appeals committee varies or quashes a decision in circumstances specified in sub-section (6), the claimant is liable to refund to the approved guarantor any payment referred to in sub-section (6) (a).”.

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15. *Discretionary payments*

For section 17 (2) of the Principal Act **substitute**—

30 “(2) The approved guarantor may only make a payment under sub-section (1) if—

(a) the appeals committee established by the approved guarantor under its rules has affirmed the decision of the approved guarantor to deny liability on one or both of the grounds referred to in sub-section (1); or

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(b) the chairperson of the appeals committee has, on a written application by the claimant, decided that no appeal hearing is to be held—

and if the chairperson of the meetings of directors of the approved guarantor has recommended that the payment be made.”. 5

16. Requirements in relation to domestic building work contracts

In section 18 (3) (a) of the Principal Act, for “10 penalty units” substitute “50 penalty units”.

17. Approved guarantor

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(1) In section 22 (1) of the Principal Act—

(a) for the expression beginning “(1) Housing Guarantee Fund Limited” and ending “by the company; and” substitute—

“(1) Unless the Minister revokes the approval on the grounds specified in sub-section (2A), Housing Guarantee Fund Limited is the approved guarantor for the purposes of this Act. 15

(1A) The approved guarantor must make sure that— 20

(a) its articles of association provide that—

(i) the number of directors of the company is 9; and

(ii) 4 directors are to be appointed by the Minister; and 25

(iii) 2 directors are to be appointed by the Minister, each from a panel of 2 names submitted to the Minister by the Housing Industry Association; and 30

(iv) 2 directors are to be appointed by the Minister, each from a panel of 2 names submitted to the Minister by The Master Builders’ Association of Victoria; and 35

(v) the other director is to be appointed by the Minister for a period not exceeding 3 years and is to be the chairperson of the meetings of directors; and”.

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(2) In section 22 (1A) (g) of the Principal Act, after “the committee” **insert** “, and for the appointment of a chairperson of the committee”.

(3) After section 22 (2) of the Principal Act **insert**—

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“(2A) The Minister may revoke the approval under sub-section (1) of Housing Guarantee Fund Limited if that body fails or ceases to comply with any provision of sub-section (1A) or (2).

(2B) The Minister may, at any time—

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(a) review the articles of association and the rules of the approved guarantor; and

(b) notify the approved guarantor of any amendment to those articles or rules that the Minister requires.

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(2C) The approved guarantor must make the amendments required by the Minister.”.

(4) In section 22 (5) of the Principal Act—

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(a) after “guarantor,” **insert** “whether or not the Minister revokes approval under sub-section (2A),”; and

(b) after “non-compliance” **insert** “or the revocation of that approval”.

(5) On the commencement of this sub-section the existing directors go out of office.

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(6) The reconstitution of the approved guarantor does not affect the continuity of the company, which must be taken to be the same body before and after that reconstitution.

18. Defence to recovery against builder or supervisor

After section 23 (5) of the Principal Act **insert—**

“(6) It is a defence to a claim under sub-section (5) for recovery of an amount paid by the approved guarantor if the person convicted under sub-section (3) or (4) proves that the discretion of the approved guarantor to make the payment under section 17 was improperly exercised.”. 5

19. Regulations

(1) After section 33 (1) (d) of the Principal Act **insert—** 10

“(da) prohibiting the inclusion of a provision, or a provision included in a class of provisions, in a domestic building work contract or a supervision contract or a contract included in a class of domestic building work contracts or supervision contracts; and 15

(db) prescribing warning statements to be included in domestic building work contracts or supervision contracts and prescribing the circumstances in which it is not necessary for those statements to be included; and 20

(dc) prescribing requirements for legibility and comprehensibility of domestic building work contracts and supervision contracts, including requirements as to— 25

(i) language; and

(ii) size and colour of print and background; and

(iii) style and manner of presentation; and”.

(2) In section 33 (3) (c) of the Principal Act, for “not exceeding” **substitute** “which, subject to section 18 (3), does not exceed”. 30

20. *New section 33A inserted*

After section 33 of the Principal Act insert—

“33A. *Model contracts*

- 5 (1) The chief administrator may issue a model form of domestic building work contract or supervision contract.
- 10 (2) A domestic building work contract or supervision contract in the relevant model form under sub-section (1) must be taken to comply with the provisions of this Act and the regulations about form and content of contracts.”.

21. *Statute law revision*

15 In section 3A of the Principal Act, for “3A. This” substitute “3A. (1) This”.

22. *Amendment of Sale of Land Act*

- (1) In section 32 (1A) of the **Sale of Land Act 1962**—
- (a) after “particulars of” insert “(a)”; and
- 20 (b) after “the land” insert “; and
- (b) any guarantee in force under the **House Contracts Guarantee Act 1987** in relation to any residence on the land, including details of any claims made under a guarantee and how they were resolved”.
- 25 (2) After section 32 (1A) of that Act insert—
- “(1B) The vendor must attach to a statement required by sub-section (1A) (b) a copy of a certificate issued under section 25 (3) (c) or (4) of the **House Contracts Guarantee Act 1987** in relation to each building on
- 30 the land.”.

23. Transitional provisions

The amendments made to the Principal Act by—

- (a) section 5, 6, 7 (1), 10, 19 or 22 do not apply to or in relation to any contract entered into; and
- (b) section 7 (2) do not apply to or in relation to any improvement carried out; and 5
- (c) section 8 (1) do not apply to or in relation to any claim made; and
- (d) section 8 (2) do not apply to or in relation to any loss or damage suffered; and 10
- (e) section 9 do not apply to or in relation to any report obtained; and
- (f) section 12 do not apply to or in relation to any liability accepted; and
- (g) section 13 (1) do not apply to or in relation to a claim if the earlier of the following things happens— 15
 - (i) the claim is rejected; or
 - (ii) the 3 month period referred to in section 15 (1) (a) of the Principal Act expires; and
- (h) section 13 (2) do not apply to or in relation to any offer made; and 20
- (i) section 14 do not apply to or in relation to any decision made; and
- (j) section 15 do not apply to or in relation to any claim under which liability is denied; and 25
- (k) section 18 do not apply to or in relation to any payment made—

before the commencement of that provision.