

Domestic Building Contracts and Tribunal (Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 lists the main purposes of the Bill.
- Clause 2 sets out the commencement of the Bill.
- Clause 3 corrects an inappropriate commencement of s. 158 of the **Domestic Building Contracts and Tribunal Act 1995** by declaring the section came into effect on 1 May 1996 and deeming the Act to have always included this amendment.
- Clause 4 makes amendments to s. 110 of the **Domestic Building Contracts and Tribunal Act 1995** to clarify the procedure for appeals on questions of law from the Domestic Building Tribunal to be heard by the Court of Appeal.
- Clause 5 creates a specific head of power for regulations to be made exempting persons or buildings from part or all of the **Domestic Building Contracts and Tribunal Act 1995** subject to any conditions appearing in the regulations or imposed by the Minister. The purpose of this amendment is to enable greater flexibility in the operation of the Act, and to ensure that its provisions apply where appropriate and do not impose an unnecessary burden on those to whom the provisions are not appropriate.
- Clause 6 amends the definition of "recognised person" in the **House Contracts Guarantee Act 1987** to include "building inspectors" appointed under the **Building Act 1993**. This ensures that building inspectors can conduct such functions as inspections of and reporting on owner built houses which are sought to be sold within the statutory guarantee period after construction.
- Clause 7 inserts three sections into the **House Contracts Guarantee Act 1987**.

New section 34A comprises a series of provisions which, for the month of April 1996, validates actions of the approved guarantor and provides for guarantees to be given in relation to the construction, renovation or sale of domestic premises, including the sale of owner built premises within the guarantee period under the **House Contracts Guarantee Act 1987**. The

provision gives the Domestic Building Tribunal power to resolve disputes which may arise in relation to the operation of the section.

New section 34B requires that builders or supervisors of domestic building works must notify the approved guarantor of domestic building contracts entered into or domestic building work commenced in April 1996 within 14 days of the commencement of the **Domestic Building Contracts and Tribunal (Amendment) Act 1996**. A penalty applies for non compliance. A similar provision already exists in the **House Contracts Guarantee Act 1987** in relation to notification prior to April 1996.

New section 34C ensures that no person is liable for an offence under the **House Contracts Guarantee Act 1987** during April 1996 in respect of an action or inaction if the action or inaction would not have been an offence if the commencement of s. 158 of the **Domestic Building Contracts and Tribunal Act 1995** had not been changed by clause 3.

- Clause 8 amends s.131 of the **Building Act 1993** so that the Domestic Building Tribunal must allocate respective proportions of liability where it makes an award against two or more defendants held jointly and severally liable. Such defendants are only liable for the respective proportion of the total amount awarded against them.
- Clause 9 amends the "prescribed period" in the **Building Act 1993** (during which time owner builders must obtain an inspection and report if they wish to sell their owner built premises) to six years and six months, or such longer period as may be prescribed, not exceeding ten years. The provision also makes a similar amendment to the definition of "prescribed building practitioner" in the **Building Act 1993** to that made by Clause 6 to the **House Contracts Guarantee Act 1987**.
- Clause 10 amends s. 137E of the **Building Act 1993** so that it is not an offence for a person to enter a contract of sale for land on which a home is being or will be constructed where the construction is completed before the contract of sale and the contract of sale is a major domestic building contract, or requires the home to be constructed under a major domestic building contract.
- Clause 11 amends s. 184 of the **Building Act 1993** to enable an additional representative to be appointed to the Building Practitioners' Board. It is proposed that as the Board has additional responsibilities in relation to domestic builders (eg: registration) following the proclamation of the **Domestic Building Contracts and Tribunal Act 1995**, it is appropriate that this group be represented on the Board.

Clause 12 amends Schedule 4 of the **Building Act 1993** to validate building permits issued in the month of April 1996 notwithstanding that a section 27(4) certificate (issued by the approved guarantor under the **House Contracts Guarantee Act 1987**) has not been given to the relevant building surveyor.

