

Authorised Version No. 084
Domestic Building Contracts Act 1995

No. 91 of 1995

Authorised Version incorporating amendments as at
28 October 2018

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The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The main purposes of this Act are—

- (a) to regulate contracts for the carrying out of domestic building work; and
- (b) to provide for the resolution of domestic building disputes and other matters by the Victorian Civil and Administrative Tribunal; and
- (c) to require builders carrying out domestic building work to be covered by insurance in relation to that work.

S. 1(b)
substituted by
No. 52/1998
s. 37(1).

S. 1(c)
amended by
No. 37/2016
s. 4(1)(a).

* * * * *

S. 1(d)
repealed by
No. 37/2016
s. 4(1)(b).

2 Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (1A) Section 158 comes into operation on 1 May 1996

- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

S. 2(1A)
inserted by
No. 2/1996
s. 3(1).

- (3) If a provision referred to in subsection (2) does not come into operation on or before 1 January 1997, it comes into operation on that day.

3 Definitions

- (1) In this Act—

architect means a person who is registered as an architect under the **Architects Act 1991**;

assessor means an assessor appointed under section 48;

Authority means the Victorian Building Authority established under the **Building Act 1993**;

breach of dispute resolution order notice means a notice issued under section 49U;

builder means a person who, or a partnership which—

- (a) carries out domestic building work; or
- (b) manages or arranges the carrying out of domestic building work; or
- (c) intends to carry out, or to manage or arrange the carrying out of, domestic building work;

building includes any structure, temporary building or temporary structure and also includes any part of a building or structure;

S. 3(1) def. of *assessor* inserted by No. 15/2016 s. 3(1).

S. 3(1) def. of *Authority* inserted by No. 34/2013 s. 35(Sch. 2 item 2.1(a)).

S. 3(1) def. of *breach of dispute resolution order notice* inserted by No. 15/2016 s. 3(1).

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building owner means the person for whom domestic building work is being, or is about to be, carried out;

building site means a place where domestic building work has been, is being, or is about to be, carried out;

business day means a day that is not—

- (a) a Saturday or a Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

certificate of conciliation means a certificate of conciliation issued by the chief dispute resolution officer under section 45F or 46E;

S. 3(1) def. of *certificate of conciliation* inserted by No. 15/2016 s. 3(1).

chief dispute resolution officer means the chief dispute resolution officer appointed under Division 9 of Part 4;

S. 3(1) def. of *chief dispute resolution officer* inserted by No. 15/2016 s. 3(1).

* * * * *

S. 3(1) def. of *Commission* amended by No. 68/2001 s. 17, repealed by No. 34/2013 s. 35(Sch. 2 item 2.1(b)).

conciliation includes a conciliation conference;

S. 3(1) def. of *conciliation* inserted by No. 15/2016 s. 3(1).

S. 3(1) def. of
*conciliation
officer*
inserted by
No. 15/2016
s. 3(1).

conciliation officer means—

- (a) the chief dispute resolution officer; or
- (b) a person appointed as a conciliation officer under Division 9 of Part 4;

contract price means the total amount payable under a domestic building contract and includes—

- (a) the amount the builder is to receive and retain under the contract; and
- (b) the amount the builder is to receive under the contract for payment to any other person; and
- (c) the amount any third person is to receive (or it is reasonably estimated will receive) directly from the building owner in relation to the domestic building work to be carried out under the contract—
 - (i) for conveying to the building site or connecting or installing services such as gas, electricity, telephone, water and sewerage; or
 - (ii) for the issue of planning or building permits—

but does not include any amount that the builder excludes in accordance with section 24;

cost plus contract means a domestic building contract under which the amount the builder is to receive under the contract cannot be determined at the time the contract is made, even if prime cost items and provisional sums are ignored;

default penalty has the meaning set out in section 128;

defective, in relation to domestic building work, includes—

- (a) a breach of any warranty listed in section 8;
- (b) a failure to maintain a standard or quality of building work specified in the contract;

* * * * *

S. 3(1) def. of *determination* repealed by No. 15/2016 s. 3(2).

Director means the Director within the meaning of the **Australian Consumer Law and Fair Trading Act 2012**;

S. 3(1) def. of *Director* substituted by No. 17/1999 s. 30(1), amended by No. 21/2012 s. 239(Sch. 6 item 14.1).

dispute resolution order means a dispute resolution order issued under Division 6 of Part 4, or that order as amended under this Act;

S. 3(1) def. of *dispute resolution order* inserted by No. 15/2016 s. 3(1).

Domestic Builders Fund means the Domestic Builders Fund established under section 124;

S. 3(1) def. of *Domestic Builders Fund* inserted by No. 15/2016 s. 3(1).

domestic building contract means a contract to carry out, or to arrange or manage the carrying out of, domestic building work other than a contract between a builder and a sub-contractor;

domestic building dispute has the meaning set out in section 54;

S. 3(1) def. of *domestic building dispute account* inserted by No. 15/2016 s. 3(1).

domestic building dispute account means the domestic building dispute account in the Building account within the meaning of the **Building Act 1993**;

S. 3(1) def. of *Domestic Building Dispute Resolution Victoria Trust Fund* inserted by No. 15/2016 s. 3(1).

Domestic Building Dispute Resolution Victoria Trust Fund means the trust fund established under section 51;

domestic building work means any work referred to in section 5 that is not excluded from the operation of this Act by section 6;

S. 3(1) def. of *domestic building work dispute* inserted by No. 15/2016 s. 3(1).

domestic building work dispute has the meaning set out in section 44;

S. 3(1) def. of *home* amended by Nos 109/1997 s. 533(Sch. 2 item 2.1), 74/2000 s. 3(Sch. 1 item 37.1).

home means any residential premises and includes any part of a commercial or industrial premises that is used as a residential premises but does not include—

- (a) a caravan within the meaning of the **Residential Tenancies Act 1997** or any vehicle used as a residence; or
- (b) any residence that is not intended for permanent habitation; or
- (c) a rooming house within the meaning of the **Residential Tenancies Act 1997**;
or

- (d) a motel, residential club, residential hotel or residential part of licensed premises under the **Liquor Control Reform Act 1998**; or
- (e) a nursing home, hospital or accommodation associated with a hospital; or
- (f) any residence that the regulations state is not a home for the purposes of this definition;

insurer means—

- (a) any person providing any required insurance under the **Building Act 1993** (whether or not that person has a direct contractual relationship with a builder); and
- (aa) any person providing any required insurance under the **Architects Act 1991** (whether or not that person has a direct contractual relationship with an architect);

S. 3(1) def. of *insurer* amended by Nos 26/2001 s. 16(1), 35/2004 s. 38, 52/2005 s. 30, 37/2016 s. 4(2).

* * * * *

major domestic building contract means a domestic building contract in which the contract price for the carrying out of domestic building work is more than \$5000 (or any higher amount fixed by the regulations);

prime cost item means an item (for example, a fixture or fitting) that either has not been selected, or whose price is not known, at the time a domestic building contract is entered into and for the cost of supply and delivery of which the builder must make a reasonable allowance in the contract;

proceeding includes any application for the review of a determination;

provisional sum is an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under a domestic building contract for which a builder, after making all reasonable inquiries, cannot give a definite amount at the time the contract is entered into;

sub-contractor means a person who enters into a contract with a builder to carry out part of the work that is to be carried out under a domestic building contract;

S. 3(1) def. of *Tribunal* substituted by No. 52/1998 s. 37(2), repealed by No. 15/2016 s. 3(2).

* * * * *

S. 3(1) def. of *Victorian Managed Insurance Authority* inserted by No. 15/2016 s. 3(1).

Victorian Managed Insurance Authority means the Victorian Managed Insurance Authority established under the **Victorian Managed Insurance Authority Act 1996**.

- (2) If a builder and a building owner agree that domestic building work is to be carried out on a home in stages by the builder under a series of separate contracts that are to be entered into after the initial agreement, then for the purposes of this Act the initial agreement and the subsequent contracts are to be considered to be a single contract.

- (3) If a provision of this Act requires or enables the giving of a document to a specified person, the provision is satisfied if the document is given to an authorised agent of that person.
- (4) A contract for the sale of land on which a home is being constructed or is to be constructed that provides or contemplates that the construction of the home will be completed before the completion of the contract is not, and is not to be taken to form part of, a domestic building contract within the meaning of this Act if—
- (a) the home is being constructed under a separate contract that is a major domestic building contract; or
 - (b) the contract of sale provides that the home is to be constructed under a separate contract that is a major domestic building contract.
- (5) Subsection (4) does not apply to a contract for the sale of land that is the subject of proceedings commenced in a court or tribunal before 16 March 2004 but not completed before that date in which it was alleged, before that date, that the contract was, or formed part of, a domestic building contract.

S. 3(4)
inserted by
No. 37/2004
s. 3.

S. 3(5)
inserted by
No. 37/2004
s. 3.

4 Objects of the Act

The objects of this Act are—

- (a) to provide for the maintenance of proper standards in the carrying out of domestic building work in a way that is fair to both builders and building owners; and
- (b) to enable disputes involving domestic building work to be resolved as quickly, as efficiently and as cheaply as is possible having regard to the needs of fairness; and

- (c) to enable building owners to have access to insurance funds if domestic building work under a major domestic building contract is incomplete or defective.

5 Building work to which this Act applies¹

- (1) This Act applies to the following work—
 - (a) the erection or construction of a home, including—
 - (i) any associated work including, but not limited to, landscaping, paving and the erection or construction of any building or fixture associated with the home (such as retaining structures, driveways, fencing, garages, carports, workshops, swimming pools or spas); and
 - (ii) the provision of lighting, heating, ventilation, air conditioning, water supply, sewerage or drainage to the home or the property on which the home is, or is to be;
 - (b) the renovation, alteration, extension, improvement or repair of a home;
 - (c) any work such as landscaping, paving or the erection or construction of retaining structures, driveways, fencing, garages, workshops, swimming pools or spas that is to be carried out in conjunction with the renovation, alteration, extension, improvement or repair of a home;
 - (d) the demolition or removal of a home;

- (e) any work associated with the construction or erection of a building—
 - (i) on land that is zoned for residential purposes under a planning scheme under the **Planning and Environment Act 1987**; and
 - (ii) in respect of which a building permit is required under the **Building Act 1993**;
 - (f) any site work (including work required to gain access, or to remove impediments to access, to a site) related to work referred to in paragraphs (a) to (e);
 - (g) the preparation of plans or specifications for the carrying out of work referred to in paragraphs (a) to (f);
 - (h) any work that the regulations state is building work for the purposes of this Act.
- (2) A reference to a home in subsection (1) includes a reference to any part of a home.

6 Building work to which this Act does not apply

- (1) This Act does not apply to the following work—

* * * * *

- (b) any work in relation to a farm building or proposed farm building (other than a home);
- (c) any work in relation to a building intended to be used only for business purposes;
- (d) any work in relation to a building intended to be used only to accommodate animals;

S. 6
amended by
No. 15/2016
s. 4(2) (ILA
s. 39B(1)).

S. 6(1)(a)
repealed by
No. 15/2016
s. 4(1).

- (e) design work carried out by an architect or a building practitioner registered under the **Building Act 1993** as an engineer or draftsman²;
- (f) any work involved in obtaining foundations data in relation to a building site;
- (g) the transporting of a building from one site to another.

- (2) This Act or a provision of this Act does not apply to any work that the regulations state is not building work to which this Act or that provision (as the case requires) applies.

S. 6(2)
inserted by
No. 15/2016
s. 4(2).

7 This Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2—Provisions that apply to all domestic building contracts

Division 1—General warranties³

8 Implied warranties concerning all domestic building work

The following warranties about the work to be carried out under a domestic building contract are part of every domestic building contract—

- (a) the builder warrants that the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;
- (b) the builder warrants that all materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
- (c) the builder warrants that the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act 1993** and the regulations made under that Act⁴;
- (d) the builder warrants that the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract;
- (e) the builder warrants that if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for

occupation at the time the work is completed;

- (f) if the contract states the particular purpose for which the work is required, or the result which the building owner wishes the work to achieve, so as to show that the building owner relies on the builder's skill and judgement, the builder warrants that the work and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

9 Warranties to run with the building

In addition to the building owner who was a party to a domestic building contract, any person who is the owner for the time being of the building or land in respect of which the domestic building work was carried out under the contract may take proceedings for a breach of any of the warranties listed in section 8 as if that person was a party to the contract⁵.

10 Person cannot sign away a right to take advantage of a warranty

A provision of an agreement or instrument that purports to restrict or remove the right of a person to take proceedings for a breach of any of the warranties listed in section 8 is void to the extent that it applies to a breach other than a breach that was known, or ought reasonably to have been known, to the person to exist at the time the agreement or instrument was executed.

Division 2—Restrictions applying to the nature and contents of contracts

11 Limit on amount of deposit

- (1) A builder must not demand or receive a deposit under a domestic building contract of more than—
 - (a) 5% of any contract price that is \$20 000 or more;
 - (b) 10% of any contract price that is less than \$20 000—

before starting any work under the contract.

Penalty: 100 penalty units.

- (2) For the purposes of subsection (1), the Governor in Council may make regulations fixing a higher dollar amount than that referred to in subsection (1).
- (3) If a builder does not comply with subsection (1), the building owner may avoid the contract at any time before it is completed.
- (4) However, subsection (3) does not apply if VCAT believes it would be unfair in the particular circumstances of a case for a building owner to do this.
- (5) If a court finds proven a charge under subsection (1) against a builder, it may order the builder to refund to the building owner some or all of the amount the building owner has paid the builder under the contract.
- (6) This power is in addition to the power the court has to impose any other penalty.

**S. 11(4)
amended by
No. 15/2016
s. 10(1).**

12 Contract for more than one sort of work must identify the domestic building work

- (1) This section applies to a contract that entitles a builder to be paid both—
 - (a) for carrying out domestic building work; and
 - (b) for carrying out other work or for any other reason.
- (2) The builder must not enter into such a contract unless the contract clearly identifies and distinguishes—
 - (a) the domestic building work from the other work or reason; and
 - (b) the amount of money the builder is to receive under the contract as a result of carrying out the domestic building work from the amount of money the builder is to receive under the contract as a result of carrying out the other work or for the other reason.

Penalty: 20 penalty units.

13 Restrictions on cost plus contracts

- (1) A builder must not enter into a cost plus contract unless—
 - (a) the contract is of a class allowed by the regulations for the purposes of this section; or
 - (b) the work to be carried out under the contract involves the renovation, restoration or refurbishment of an existing building and it is not possible to calculate the cost of a substantial part of the work without carrying out some domestic building work.

Penalty: 100 penalty units.

S. 12(2)
amended by
No. 74/2000
s. 3(Sch. 1
item 37.2).

- (2) A builder must not enter into a cost plus contract that does not contain a fair and reasonable estimate by the builder of the total amount of money the builder is likely to receive under the contract.

Penalty: 100 penalty units.

- (3) If a builder fails to comply with this section—

- (a) the builder cannot enforce the contract against the building owner; but
- (b) VCAT may award the builder the cost of carrying out the work plus a reasonable profit if VCAT considers that it would not be unfair to the building owner to do so.

S. 13(3)(b)
amended by
No. 15/2016
s. 10(1).

13A Effect of GST clauses on certain contracts

S. 13A
inserted by
No. 2/2000
s. 3.

- (1) Section 13(1) does not apply, and is deemed never to have applied, to a cost plus contract—

- (a) that was entered into on or before 8 November 1999; and
- (b) that provides for the builder to be paid any amount in respect of GST (as that term is defined in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth); and
- (c) that—
- (i) does not contain any other provision that makes it a cost plus contract; or
- (ii) is a contract referred to in section 13(1)(a) or (b).

- (2) Section 13(2) does not apply, and is deemed never to have applied, to a cost plus contract referred to in subsection (1) to the extent that it relates to an estimate of the amount payable to the builder in respect of any GST (as defined in subsection (1)(b)).

(3) A cost plus contract—

- (a) that was entered into after 8 November 1999 and before 30 November 1999; and
- (b) that would have been allowed as a cost plus contract by the regulations for the purposes of section 13 if it had been entered into on or after 30 November 1999—

is deemed to be, and to have always been, a cost plus contract of a class allowed by the regulations for the purposes of section 13.

14 Arbitration clauses prohibited

Any term in a domestic building contract or other agreement that requires a dispute under the contract to be referred to arbitration is void.

15 Restrictions concerning cost escalation clauses

- (1) In this section a *cost escalation clause* means a provision in a contract under which the contract price may be increased to reflect increased costs of labour or materials or increased costs caused by delays in carrying out the work to be carried out under the contract, but does not include a provision that enables the contract price to increase to reflect—
 - (a) unforeseeable cost increases resulting from changes to government taxes or charges⁶; or
 - (b) prime cost items or provisional sums.
- (2) A builder must not enter into a domestic building contract that contains a cost escalation clause unless—
 - (a) the contract price is more than \$500 000 (or any higher amount fixed by the regulations); or

- (b) the clause is in a form approved by the Director and complies with any relevant requirements set out in the regulations.

Penalty: 100 penalty units.

- (3) A cost escalation clause in a domestic building contract is void unless—
 - (a) before the contract was entered into, the builder gave the building owner a notice in a form approved by the Director explaining the effect of the clause; and
 - (b) the building owner places her, his or its signature or seal or initials next to the clause.

16 Builder must not seek more than the contract price

- (1) A builder who enters into a domestic building contract must not demand, recover or retain from the building owner an amount of money under the contract in excess of the contract price unless authorised to do so by this Act.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply to any amount that is demanded, recovered or retained in respect of the contract as a result of a cause of action the builder may have that does not involve a claim made under the contract.

Division 3—Provisions concerning building sites

17 Restrictions on builders' control of building sites

A domestic building contract does not give a builder a greater right to occupy a building site than that of a contractual licensee.

18 Contract does not entitle builder to put caveat on the title of building site land

A domestic building contract does not give a builder an estate or interest in any land for the purposes of section 89 of the **Transfer of Land Act 1958**.

19 Access to building site

- (1) A builder must permit the building owner (or a person authorised by the building owner) to have reasonable access to the building site and to view any part of the building works.

Penalty: 20 penalty units.

- (2) A person who is exercising a right of access granted under subsection (1) must not interfere with the carrying out of the building works.
- (3) A builder is not liable for any costs or delays—
- (a) that result from any failure by a person to comply with subsection (2); and
 - (b) that the builder notifies the building owner of in writing within 5 business days of the failure to comply occurring.

Division 4—Provisions concerning prime cost items or provisional sums

20 Warranty concerning provisional sums⁷

- (1) This section applies if a builder enters into a domestic building contract.
- (2) The builder warrants that any provisional sum included by the builder in the contract has been calculated with reasonable care and skill taking account of all the information reasonably available at the date the contract is made, including the nature and location of the building site.

21 Requirements concerning prime cost item and provisional sum estimates

- (1) A builder must not enter into a domestic building contract that contains an amount, or an estimated amount, for—
 - (a) a prime cost item that is less than the reasonable cost of supplying the item;
 - (b) a provisional sum that is less than the reasonable cost of carrying out the work to which the sum relates.

Penalty: 35 penalty units.

- (2) This section does not apply to items or sums that are to be supplied or specified by the building owner (or the building owner's agent).
- (3) In determining what is a reasonable cost, regard must be had to—
 - (a) the information that the builder had, or reasonably should have had, at the date the contract was made; and
 - (b) the nature and location of the building site⁸.

22 Details of prime cost items and provisional sums must be set out in writing

If a domestic building contract provides for any prime cost items or provisional sums, the builder must not enter into the contract unless—

- (a) in the case of a major domestic building contract, the contract contains a separate schedule for each item or sum that sets out—
 - (i) a detailed description of the item or of the work to which the sum relates; and
 - (ii) a breakdown of the cost estimate for each item or sum (showing at least the estimated quantities of materials that

will be involved and the unit cost to the builder of the item or sum); and

(iii) if the builder proposes to charge any amount in excess of the actual amount of any increase to the item or sum, how that excess amount is to be determined;

(b) in the case of any other contract, the builder gives the building owner before entering into the contract a written document that sets out for each item or sum the information required by paragraphs (a)(i), (ii) and (iii).

Penalty: 50 penalty units.

23 Builder must supply evidence of cost of prime cost items and provisional sums

A builder must give the building owner a copy of any invoice, receipt or other document that shows the cost to the builder of any prime cost item, or that relates to any provisional sum, in a domestic building contract and must do so as soon as practicable after receiving the invoice, receipt or document.

Penalty: 20 penalty units.

Division 5—Other matters

24 Builder may exclude certain items from contract price

(1) This section applies if a builder wishes to exclude from the contract price the amount any third person is to receive in relation to the work to be carried out under a domestic building contract—

(a) for the conveying, connection or installation of services such as gas, electricity, telephone, water and sewerage; or

(b) for the issue of planning or building permits.

- (2) The builder may exclude any such amount by stating in the contract immediately after the contract price first appears in the contract—
- (a) that the cost of the work or thing to which the amount relates is not included in the contract price; and
 - (b) a reasonable estimate of how much the amount is likely to be.

25 Builder must give copy of contract to building owner

As soon as is practicable, but no later than 5 clear business days, after entering into a domestic building contract, the builder must give the building owner—

- (a) in the case of a major domestic building contract, a readily legible signed copy of the contract;
- (b) in the case of any other contract, a readily legible copy of any document that forms part of the contract.

Penalty: 20 penalty units.

Default penalty: 1 penalty unit for each day.

26 Builder must supply copies of relevant reports etc.

- (1) A builder must give to a building owner a copy of any report, notice, order or other document that the builder is given in relation to the building work being carried out by the builder for the building owner by any public statutory authority, provider of services such as gas, electricity, telephone, water and sewerage or person registered under the **Building Act 1993**, and must do so as soon as practicable after receiving the report, notice, order or document.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the builder knows that the building owner already has a copy of the report, notice, order or document.

27 Effect of payments and non-payments to builders

- (1) If a building owner fails to pay a builder any amount due to the builder under a domestic building contract by the date it is due, a domestic building dispute exists between the builder and the building owner.
- (2) A building owner may still dispute any matter relating to work carried out under a domestic building contract even though the building owner has paid the builder in relation to the work.

28 Fixtures and fittings are included in contract price

The cost of any fixture or fitting shown in the plans and specifications included in a domestic building contract is to be taken as having been included in the contract price unless—

- (a) the contract states that the fixture or fitting is not included in the contract price; and
- (b) the building owner places her, his or its signature or seal next to the statement.

Part 3—Provisions that only apply to major domestic building contracts

Division 1—Provisions that apply before a contract is signed

29 Person must not enter into contract unless registered

**S. 29
substituted by
No. 21/2017
s. 101.**

- (1) A person must not enter into a major domestic building contract to carry out domestic building work for another person unless—
- (a) the person is a registered building practitioner; and
 - (b) the person's registration authorises the person to carry out the work.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (2) A person must not on behalf of a partnership enter into a major domestic building contract to carry out domestic building work for another person unless—
- (a) the person is a member of the partnership; and
 - (b) the person is a registered building practitioner; and
 - (c) the person's registration authorises the person to carry out the work.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (3) A person who enters into a major domestic building contract in contravention of this section is not entitled to consideration under the contract unless the amount claimed—
- (a) is not more than the amount of the costs reasonably incurred by the person in supplying materials and labour for carrying out work under the contract; and
 - (b) does not include—
 - (i) an amount for the supply of the person's own labour; or
 - (ii) an amount of profit by the person for carrying out work under the contract; and
 - (c) is not more than the builder would have been entitled to recover for carrying out work under the contract; and
 - (d) does not include any amount paid by the person that is for the person's own direct or indirect benefit.
- (4) A person may recover from another person in a court of competent jurisdiction, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of subsection (1) or (2).
- (5) In this section and section 31—

registered building practitioner means a building practitioner registered under Part 11 of the **Building Act 1993**.

Note

See section 241A of the **Building Act 1993** which provides that a failure to comply with this section may make a builder ineligible for registration under Part 11 of that Act for up to 3 years.

29A Contract information statement

S. 29A
inserted by
No. 15/2016
s. 5.

- (1) A builder must not enter into a major domestic building contract unless the builder has first given the building owner a contract information statement in a form approved by the Director under this section.

Penalty: 60 penalty units.

- (2) The Director, after consulting with the Authority, must approve the form of a contract information statement for the purposes of this section.

30 Builder must obtain information concerning foundations

- (1) This section applies if proposed domestic building work under a major domestic building contract will require the construction or alteration of the footings of a building, or may adversely affect the footings of a building.

- (2) Before entering into the contract, the builder must obtain foundations data in relation to the building site on which the work is to be carried out.

Penalty: 50 penalty units.

- (3) In this section *foundations data* means—
- (a) the information concerning the building site that a builder exercising reasonable care and skill would need to prepare—
- (i) a proper footings design for the site; and
- (ii) an adequate estimate of the cost of constructing those footings; and
- (b) any reports, surveys, test results, plans, specifications, computations or other information required by the regulations for the purposes of this section.

- (4) In deciding whether he, she or it has obtained all the information required by subsection (2), a builder must have regard to—
- (a) the relevant standards published by Standards Australia⁹; and
 - (b) the need for a drainage plan or engineer's drawings and computations; and
 - (c) the need for information on the fall of the land on the site.
- (5) It is not necessary for a builder to commission the preparation of foundations data under this section to the extent that such data already exists and it is reasonable for the builder to rely on that data.
- (6) A builder must give a copy of any foundations data obtained by the builder to the building owner (unless the building owner supplied the data to the builder) on payment by the building owner of the amount owing in relation to the obtaining of that data by the builder.
- Penalty: 10 penalty units.
- (7) After entering into a major domestic building contract, a builder cannot seek from the building owner an amount of money not already provided for in the contract if the additional amount could reasonably have been ascertained had the builder obtained all the foundations data required by this section.
- (8) Nothing in this section prevents a builder from exercising any right given by this Act to the builder to claim an amount of money not already provided for in the contract if the need for the additional amount could not reasonably have been ascertained from the foundations data required by this section.

Division 2—What contracts must, and must not, contain

31 General contents etc. of a contract

(1) A builder must not enter into a major domestic building contract unless the contract—

- (a) is in writing; and
- (b) sets out in full all the terms of the contract; and
- (c) has a detailed description of the work to be carried out under the contract; and
- (d) includes the plans and specifications for the work and those plans and specifications contain enough information to enable the obtaining of a building permit; and
- (e) states the names and addresses of the parties to the contract; and
- (f) states the registration number under the **Building Act 1993** of the registered building practitioner who entered into the contract; and
- (fa) if a registered building practitioner has entered into the contract on behalf of a partnership, states—
 - (i) the names and addresses of each other member of the partnership; and
 - (ii) the registration number of each other member of the partnership who is a registered building practitioner; and
- (fb) if the builder is a corporation or a foreign company, states the ACN or ARBN of the corporation or foreign company (as appropriate); and

S. 31(1)(f)
substituted by
No. 21/2017
s. 102.

S. 31(1)(fa)
inserted by
No. 21/2017
s. 102.

S. 31(1)(fb)
inserted by
No. 21/2017
s. 102.

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Part 3—Provisions that only apply to major domestic building contracts

- (g) states the date when the work is to start, or how that date is to be determined; and
- (h) if the starting date is not yet known, states that the builder will do everything that it is reasonably possible for the builder to do to ensure that the work will start as soon as possible; and
- (i) states the date when the work will be finished, or, if the starting date is not yet known, the number of days that will be required to finish the work once it is started¹⁰; and
- (j) states the contract price or, in the case of a cost plus contract, how the amount that the builder is to be paid is to be determined; and
- (k) states the date the contract is made; and
- (l) sets out details of the required insurance under the **Building Act 1993** that applies to the work to be carried out under the contract (including any details required by the Director); and
- (m) is in English and is readily legible; and
- (n) has a conspicuous notice in a form approved by the Director advising the building owner of the right the building owner may have to withdraw from the contract under section 34 (the 5 day cooling-off period); and
- (o) has a separate section that defines the key words and phrases used in the contract (for example, prime cost item and provisional sum); and
- (p) indicates whenever a defined word or phrase is used that that word or phrase is defined in the definition section; and

- (q) sets out the warranties implied into the contract by sections 8 and 20; and
- (r) contains a checklist in a form approved, and containing the details required, by the Director; and
- (s) complies with any other requirements set out in the regulations.

Penalty: 50 penalty units.

- (2) A major domestic building contract is of no effect unless it is signed by the builder and the building owner (or their authorised agents).

32 Builder must make allowance for delays in time estimates

- (1) In calculating the date when work will be finished (or how many days will be required once it is started) under section 31(1)(i), a builder must make the following allowances—
 - (a) an allowance for inclement weather and the effect of inclement weather that is reasonable having regard to the time of the year when the work is likely to be carried out; and
 - (b) a reasonable allowance for weekend days, public holidays, rostered days off and other foreseeable breaks in the continuity of the work; and
 - (c) an allowance for any other delays that is reasonable having regard to the nature of the contract.

Penalty: 50 penalty units.

- (2) A builder must ensure that the contract sets out how many days have been allowed under each category of allowance listed in subsection (1).

Penalty: 50 penalty units.

- (3) If it is not possible for a builder to adequately estimate the period of a particular likely delay for the purposes of subsection (1)(c), the builder may comply with that subsection with respect to that likely delay by identifying the likely cause of delay in the contract and stating in the contract that it is not possible to adequately estimate the period of the delay.

33 Contract must contain warning if price likely to vary

- (1) This section applies to a major domestic building contract that contains a provision—
- (a) that allows for the contract price to change; but
 - (b) that is not a cost escalation clause as defined in section 15.
- (2) A builder must not enter into such a major domestic building contract unless there is a warning that the contract price is subject to change and that warning—
- (a) is placed next to that price; and
 - (b) is in a form approved by the Director; and
 - (c) specifies the provisions of the contract that allow for the change.

Penalty: 50 penalty units.

- (3) If a warning is not included in a contract as required by subsection (2), any provision in the contract that enables the contract price to change only has effect to the extent that it enables the contract price to decrease.

Division 3—Cooling-off period after signing a contract

34 Building owner may end a contract within 5 days without penalty

(1) A building owner may withdraw from a major domestic building contract at any time before the expiration of 5 clear business days after the building owner receives a copy of the signed contract.

(2) To do this, the building owner must within that time—

(a) give the builder; or

(b) leave at the address shown as the builder's address in the contract; or

(c) serve on the builder in accordance with any notice or service provision in the contract—

a written notice signed by the building owner that states that the building owner withdraws from the contract.

(3) If a building owner withdraws from a contract under this section—

(a) the builder may retain out of any money already paid to the builder \$100 plus the cost of any other out-of-pocket expenses the builder incurred before the withdrawal with the approval of the building owner; and

(b) the builder must refund all other money paid to him, her or it under the contract by (or on behalf of) the building owner on or since the time the contract was made; and

(c) the building owner is not liable to the builder in any way for withdrawing from the contract.

- (4) A building owner cannot withdraw from a contract under this section if—
- (a) the building owner and the builder have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of work in relation to the same home or land; or
 - (b) the building owner received independent advice from an Australian legal practitioner concerning the contract before entering into the contract.

S. 34(4)(b)
amended by
Nos 35/1996
s. 453(Sch. 1
item 23.1),
102/1997
s. 49(Sch.
item 1),
substituted by
No. 18/2005
s. 18(Sch. 1
item 34),
amended by
No. 17/2014
s. 160(Sch. 2
item 33).

35 Building owner may withdraw from a contract if cooling-off warning not given

- (1) If a major domestic building contract does not contain a notice advising the building owner of the building owner's possible rights under section 34 (as required by section 31(1)(n)), the building owner may withdraw from the contract within 7 days of becoming aware that the contract should have contained such a notice.
- (2) To do this, the building owner must—
 - (a) give the builder; or
 - (b) leave at the address shown as the builder's address in the contract; or

- (c) serve on the builder in accordance with any notice or service provision in the contract—
a written notice signed by the building owner that states that the building owner withdraws from the contract under this section.
- (3) The Director may specify that the notice is to be given in a form approved by him or her¹¹. If the Director does this, the building owner must give the notice in that form.
- (4) If a contract is ended under this section, the builder is entitled to a reasonable price for the work carried out under the contract to the date the contract is ended.
- (5) However, a builder may not recover under subsection (4) more than the builder would have been entitled to recover under the contract.

Division 4—Provisions applying after the contract is signed

36 Builder must give copy of other documents to building owner

- (1) The Minister may, by Order published in the Government Gazette, require builders to give anyone with whom they enter, or are about to enter, into a major domestic building contract a copy of any document relating to building work specified in the Order.
- (2) A builder must comply with any such requirement within the time specified in the Order.
- Penalty: 20 penalty units.
- Default penalty: 1 penalty unit for each day.
- (3) Subsection (2) does not apply if the builder knows that the building owner already has a copy of the document.

37 Variation of plans or specifications—by builder

- (1) A builder who wishes to vary the plans or specifications set out in a major domestic building contract must give the building owner a notice that—
- (a) describes the variation the builder wishes to make; and
 - (b) states why the builder wishes to make the variation; and
 - (c) states what effect the variation will have on the work as a whole being carried out under the contract and whether a variation to any permit will be required; and
 - (d) if the variation will result in any delays, states the builder's reasonable estimate as to how long those delays will be; and
 - (e) states the cost of the variation and the effect it will have on the contract price.
- (2) A builder must not give effect to any variation unless—
- (a) the building owner gives the builder a signed consent to the variation attached to a copy of the notice required by subsection (1); or
 - (b) the following circumstances apply—
 - (i) a building surveyor or other authorised person under the **Building Act 1993** requires in a building notice or building order under that Act that the variation be made; and
 - (ii) the requirement arose as a result of circumstances beyond the builder's control; and

- (iii) the builder included a copy of the building notice or building order in the notice required by subsection (1); and
 - (iv) the building owner does not advise the builder in writing within 5 business days of receiving the notice required by subsection (1) that the building owner wishes to dispute the building notice or building order.
- (3) A builder is not entitled to recover any money in respect of a variation unless—
- (a) the builder—
 - (i) has complied with this section; and
 - (ii) can establish that the variation is made necessary by circumstances that could not have been reasonably foreseen by the builder at the time the contract was entered into; or
 - (b) VCAT is satisfied—
 - (i) that there are exceptional circumstances or that the builder would suffer a significant or exceptional hardship by the operation of paragraph (a); and
 - (ii) that it would not be unfair to the building owner for the builder to recover the money.
- (4) If subsection (3) applies, the builder is entitled to recover the cost of carrying out the variation plus a reasonable profit.
- (5) This section does not apply to contractual terms dealing with prime cost items or provisional sums.

S. 37(3)(b)
amended by
No. 15/2016
s. 10(1).

38 Variation of plans or specifications—by building owner

- (1) A building owner who wishes to vary the plans or specifications set out in a major domestic building contract must give the builder a notice outlining the variation the building owner wishes to make.
- (2) If the builder reasonably believes the variation will not require a variation to any permit and will not cause any delay and will not add more than 2% to the original contract price stated in the contract, the builder may carry out the variation.
- (3) In any other case, the builder must give the building owner either—
 - (a) a notice that—
 - (i) states what effect the variation will have on the work as a whole being carried out under the contract and whether a variation to any permit will be required; and
 - (ii) if the variation will result in any delays, states the builder's reasonable estimate as to how long those delays will be; and
 - (iii) states the cost of the variation and the effect it will have on the contract price; or
 - (b) a notice that states that the builder refuses, or is unable, to carry out the variation and that states the reason for the refusal or inability.
- (4) The builder must comply with subsection (3) within a reasonable time of receiving a notice under subsection (1).

- (5) A builder must not give effect to any variation asked for by a building owner unless—
- (a) the building owner gives the builder a signed request for the variation attached to a copy of the notice required by subsection (3)(a); or
 - (b) subsection (2) applies.
- (6) A builder is not entitled to recover any money in respect of a variation asked for by a building owner unless—
- (a) the builder has complied with this section; or
 - (b) VCAT is satisfied—
 - (i) that there are exceptional circumstances or that the builder would suffer a significant or exceptional hardship by the operation of paragraph (a); and
 - (ii) that it would not be unfair to the building owner for the builder to recover the money.
- (7) If subsection (6) applies, the builder is entitled to recover the cost of carrying out the variation plus a reasonable profit.
- (8) This section does not apply to contractual terms dealing with prime cost items or provisional sums.

S. 38(6)(b)
amended by
No. 15/2016
s. 10(1).

39 Effect of a variation on the contract price

Unless the contrary intention appears, if the plans or specifications set out in a major domestic building contract are varied in accordance with section 37 or 38, any reference in this Act, the regulations or the contract to—

- (a) those plans or specifications is to be read as a reference to them as varied; and

- (b) the contract price is to be read as a reference to the contract price as adjusted to take account of the variation; and
- (c) the completion date, or the number of days required to finish the work, is to be read as a reference to that date, or number of days, as adjusted to take account of the variation.

40 Limits on progress payments

- (1) In this section—

base stage means—

- (a) in the case of a home with a timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level;
- (b) in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed;
- (c) in the case of a home with a suspended concrete slab floor, the stage when the concrete footings are poured;
- (d) in the case of a home with a concrete floor, the stage when the floor is completed;
- (e) in the case of a home for which the exterior walls and roof are constructed before the floor is constructed, the stage when the concrete footings are poured;

frame stage means the stage when a home's frame is completed and approved by a building surveyor;

lock-up stage means the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary);

fixing stage means the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position.

- (2) A builder must not demand or recover or retain under a major domestic building contract of a type listed in column 1 of the Table more than the percentage of the contract price listed in column 2 at the completion of a stage referred to in column 3.

Penalty: 50 penalty units.

TABLE

Column 1	Column 2	Column 3
<i>Type of contract</i>	<i>Percentage of contract price</i>	<i>Stage</i>
Contract to build to lock-up stage	20%	Base stage
"	25%	Frame stage
Contract to build to fixing stage	12%	Base stage
"	18%	Frame stage
"	40%	Lock-up stage
Contract to build all stages	10%	Base stage
"	15%	Frame stage
"	35%	Lock-up stage
"	25%	Fixing stage

(3) In the case of a major domestic building contract that is not listed in the Table, a builder must not demand or receive any amount or instalment that is not directly related to the progress of the building work being carried out under the contract.

Penalty: 50 penalty units.

(4) Subsections (2) and (3) do not apply if the parties to a contract agree that it is not to apply and do so in the manner set out in the regulations.

(5) If a court finds proven a charge under subsection (2) or (3) against a builder, it may order the builder to refund to the building owner some or all of the amount the building owner has paid the builder under the contract.

(6) This power is in addition to the power the court has to impose any other penalty.

(7) Despite section 7, this section does not apply to a contract between a builder and the Crown or a public statutory authority.

Division 5—End of the contract

41 Ending a contract if completion time or cost blows out for unforeseeable reasons

(1) A building owner may end a major domestic building contract if—

(a) either—

(i) the contract price rises by 15% or more after the contract was entered into; or

(ii) the contract has not been completed within 1½ times the period it was to have been completed by; and

- (b) the reason for the increased time or cost was something that could not have been reasonably foreseen by the builder on the date the contract was made.
- (2) For the purposes of subsection (1), any increased time or cost that arises as a result of a prime cost item or a provisional sum or that is caused by a variation made under section 38 is to be ignored in calculating any price rise or increase in time.
- (3) To end the contract, the building owner must give the builder a signed notice stating that the building owner is ending the contract under this section and giving details of why the contract is being ended.
- (4) The Director may specify that the notice is to be given in a form approved by him or her¹². If the Director does this, the building owner must give the notice in that form.
- (5) If a contract is ended under this section, the builder is entitled to a reasonable price for the work carried out under the contract to the date the contract is ended.
- (6) However, a builder may not recover under subsection (5) more than the builder would have been entitled to recover under the contract.
- (7) Section 39 does not apply to this section.

42 When work is to be considered to have been completed

A builder must not demand final payment under a major domestic building contract until—

- (a) the work carried out under the contract has been completed in accordance with the plans and specifications set out in the contract; and

- (b) the building owner is given either—
 - (i) a copy of the occupancy permit under the **Building Act 1993**, if the building permit for the work carried out under the contract requires the issue of an occupancy permit; or
 - (ii) in any other case, a copy of the certificate of final inspection.

Division 6—Other matters

43 Requirements concerning display home contracts

- (1) In this section *display home* means a home that is made available for inspection to encourage people to enter into contracts for the construction of similar homes.
- (2) A person who makes a display home available for inspection must ensure that the following documents are prominently displayed in the display home—
 - (a) a copy of the plans and specifications used for its construction; and
 - (b) a draft copy of the major domestic building contract that the builder on whose behalf the display home is displayed would be prepared to enter to construct a similar home.

Penalty: 50 penalty units.

Default penalty: 1 penalty unit for each day.

- (3) If—
 - (a) a display home is made available for inspection by or on behalf of a builder; and

(b) a building owner enters into a contract with the builder for the construction of a similar home—

the builder must construct the home using the same plans and specifications and to at least the same standards of work quality and quality of materials as were used for the construction of the display home.

Penalty: 50 penalty units.

- (4) However, subsection (3) does not apply to the extent that the contract specifically identifies how the construction of the home will differ from that of the display home.
- (5) This section applies to any building suitable for use as a home, regardless of whether it is being used as a home at the time it is displayed.

Domestic Building Contracts Act 1995
No. 91 of 1995

Pt 3A
(Heading and
ss 43A–43F)
inserted by
No. 36/2002
s. 3,
amended by
Nos 30/2003
s. 84, 108/2004
s. 117(1)(Sch,
3 item 58),
34/2013
s. 35(Sch. 2
item 2.2),
repealed by
No. 15/2016
s. 6.

* * * * *

Part 4—Domestic building work disputes

Division 1—Preliminary

Pt 4 (Heading and ss 44–50) amended by Nos 36/2002 ss 4–6, 34/2013 s. 35(Sch. 2 items 2.3–2.5), substituted as Pt 4 (Headings and ss 44–52) by No. 15/2016 s. 6.

44 What is a domestic building work dispute?

S. 44 substituted by No. 15/2016 s. 6.

- (1) In this Part, a *domestic building work dispute* is a domestic building dispute arising between a building owner and—
- (a) a builder; or
 - (b) a building practitioner (as defined in the **Building Act 1993**); or
 - (c) a sub-contractor; or
 - (d) an architect—

in relation to a domestic building work matter.

- (2) In this Part, *domestic building work matter* means any matter relating to a domestic building contract or the carrying out of domestic building work, including any of the following—
- (a) an alleged breach of a warranty set out in section 8;
 - (b) an alleged failure to maintain the standard or quality of building work specified in a domestic building contract;
 - (c) an alleged failure to complete the domestic building work required by a domestic building contract;

- (d) an alleged failure to complete the domestic building work required by a domestic building contract within the times specified in the contract;
 - (e) an alleged failure to pay money for domestic building work performed under the contract.
- (3) A reference to a building owner in this section includes a reference to any person who is the owner for the time being of the building or land in respect of which a domestic building contract was made or domestic building work was carried out.

Division 2—Referral of domestic building work disputes

45 Referral of domestic building work dispute to chief dispute resolution officer

S. 45
substituted by
No. 15/2016
s. 6.

- (1) A party to a domestic building work dispute (the *referring party*) may refer the dispute to the chief dispute resolution officer.
- (2) A referral of a domestic building work dispute must—
 - (a) be in writing in a form (if any) approved by the Director; and
 - (b) be signed by the referring party or the referring party's representative; and
 - (c) identify any other party to the dispute and that party's contact details (if known); and
 - (d) identify the relevant domestic building contract; and
 - (e) specify the particulars of the dispute.
- (3) A domestic building work dispute must be referred to the chief dispute resolution officer within—

- (a) 10 years after the date of issue under the **Building Act 1993** of the occupancy permit in relation to the domestic building work (whether or not the occupancy permit is subsequently cancelled or varied); or
 - (b) if an occupancy permit is not issued, 10 years after the date of issue under Part 4 of the **Building Act 1993** of the certificate of final inspection for the domestic building work; or
 - (c) if neither an occupancy permit nor a certificate of final inspection is issued or required in relation to the domestic building work, 10 years after the date of practical completion of the domestic building work; or
 - (d) if neither an occupancy permit nor a certificate of final inspection is issued or required in relation to the domestic building work and a date of practical completion cannot be ascertained, 10 years after the domestic building contract was entered into.
- (4) It is to be presumed (unless an earlier date of practical completion can be ascertained) that the date of practical completion of domestic building work was the earlier of the following dates that can be ascertained for the work—
- (a) the date on which the builder handed over possession of the work to the building owner;
 - (b) the date on which the builder last attended the building site to carry out work (other than work to remedy any defect that does not affect practical completion).

(5) A party may not refer a domestic building work dispute under this section if proceedings in relation to the matter in dispute have commenced in VCAT or in a court.

(6) In this section—

date of practical completion, in relation to domestic building work, means the date when the domestic building work is completed except for any omissions or defects that do not prevent the domestic building work from being reasonably capable of being used for its intended purpose.

S. 45A
inserted by
No. 15/2016
s. 6.

45A Initial assessment of referral

On a referral being made under section 45, a conciliation officer nominated by the chief dispute resolution officer must make an initial assessment to determine whether—

- (a) the dispute referred is a domestic building work dispute; and
- (b) the referral was made within the required time; and
- (c) at least one of the parties to the dispute appears willing to participate in conciliation in good faith; and
- (d) proceedings in relation to the matter in dispute have commenced in VCAT or in a court.

S. 45B
inserted by
No. 15/2016
s. 6.

45B Powers of conciliation officer in making assessment

- (1) For the purpose of making an initial assessment of a referral, a conciliation officer may—
 - (a) make any inquiries or obtain any information the conciliation officer considers necessary; and

- (b) ask the referring party to provide further information or documents relating to the dispute; and
 - (c) require the referring party to provide evidence that the referring party has taken reasonable steps to resolve the dispute with the other parties to the dispute.
- (2) A conciliation officer may fix a time for compliance with a request or requirement under subsection (1) and may extend that time at the request of the referring party.
- (3) A conciliation officer may ask any other party to the domestic building work dispute to participate in a conciliation of the dispute if the conciliation officer considers it appropriate to do so.

45BA Withdrawal of referral

S. 45BA
inserted by
No. 48/2018
s. 43.

- (1) A referring party may withdraw a referral under section 45 by giving written notice to the chief dispute resolution officer at any time before a conciliation officer makes a recommendation under section 45C(1) in respect of that referral.
- (2) The chief dispute resolution officer must give written notice to any party to a referred dispute of a withdrawal under this section.

45C Acceptance or rejection of referral

S. 45C
inserted by
No. 15/2016
s. 6.

- (1) After making an initial assessment of a referral under section 45A, the conciliation officer must recommend to the chief dispute resolution officer to accept or reject the referral.
- (2) After considering the recommendation made by the conciliation officer, the chief dispute resolution officer may—
 - (a) accept the referral; or

(b) reject the referral if the chief dispute resolution officer assesses that the dispute is not suitable for conciliation.

(3) The chief dispute resolution officer may assess a referred dispute as not suitable for conciliation if—

S. 45C(3)(a)(b)
repealed by
No. 48/2018
s. 44.

* * * * *

(c) the referring party has not provided any information, documents or evidence requested or required under section 45B or has not provided them within the time required by the conciliation officer; or

(d) the referring party has failed without reasonable excuse to take reasonable steps to resolve the dispute before the referral; or

S. 45C(3)(e)
repealed by
No. 48/2018
s. 44.

* * * * *

(f) there is no reasonable likelihood of the dispute being settled by conciliation for any reason other than because no other party is willing to engage in the conciliation; or

(g) the referral—

(i) is frivolous or otherwise lacking in substance; or

(ii) is vexatious; or

(iii) was not made in good faith; or

(h) the dispute has been resolved.

45D Where more than one matter referred

S. 45D
inserted by
No. 15/2016
s. 6.

- (1) If more than one matter in dispute is referred, the chief dispute resolution officer may sever from the referral any matter that the chief dispute resolution officer would reject under section 45C if it were the only matter referred.
- (2) If a referral relates to more than one matter or the matter referred relates to more than one circumstance, the chief dispute resolution officer may separate the referral into 2 or more referrals if—
 - (a) a conciliation officer's inquiries into some of the matters have not been completed and it is convenient to separate them; or
 - (b) it is in the public interest to do so.
- (3) If the chief dispute resolution officer accepts more than one referral in relation to the same or related domestic building work, the chief dispute resolution officer may decide to deal with the referrals together as if they were one referral.

45E Notice of decision

S. 45E
inserted by
No. 15/2016
s. 6.

- (1) The chief dispute resolution officer must give written notice of a decision under section 45C or 45D to accept a referral, or any matter referred, to each party to the referred dispute within 10 business days after making the decision.
- (2) If the chief dispute resolution officer decides to accept a referral, the notice must—
 - (a) include an outline of the referring party's stated reasons for the dispute; and
 - (b) state that the dispute has been referred to a conciliation officer.

S. 45E(1)
amended by
No. 48/2018
s. 45(1).

S. 45E(3)
repealed by
No. 48/2018
s. 45(2).

* * * * *

- (4) If the chief dispute resolution officer decides to sever any matter from a referral or to separate or combine referrals, the notice must include the reasons for the decision.

S. 45F
inserted by
No. 15/2016
s. 6.

45F Certificate of conciliation—dispute not suitable for conciliation

- (1) If the chief dispute resolution officer assesses a domestic building work dispute or a matter as not suitable for conciliation, the officer must issue a certificate of conciliation certifying that—
- (a) the dispute or matter was referred under section 45; and
 - (b) the chief dispute resolution officer has assessed the dispute or matter as not suitable for conciliation.

S. 45F(2)
repealed by
No. 48/2018
s. 46(1).

* * * * *

- (3) The certificate of conciliation must specify the chief dispute resolution officer's reasons for assessing the domestic building work dispute or matter as not suitable for conciliation.
- (4) The chief dispute resolution officer must give a certificate of conciliation as soon as practicable to each party to the dispute.
- (5) A party to a domestic building work dispute may apply to VCAT for review of a failure by the chief dispute resolution officer to issue a certificate of conciliation under this section.

S. 45F(4)
amended by
No. 48/2018
s. 46(2).

45G Withdrawal of referral or matter referred

S. 45G
inserted by
No. 15/2016
s. 6.

- (1) A referring party whose referral, or any matter referred, is accepted under section 45C or 45D may seek to withdraw the referral or any matter referred by giving notice to the chief dispute resolution officer before the dispute is finally dealt with under this Part.
- (2) The chief dispute resolution officer may—
 - (a) accept the withdrawal; or
 - (b) refuse to accept the withdrawal.
- (3) Without limiting subsection (2), the chief dispute resolution officer may refuse to accept a withdrawal if the chief dispute resolution officer considers that the dispute has disclosed evidence of a contravention of—
 - (a) this Act or the regulations; or
 - (b) the **Building Act 1993** or the regulations under that Act.
- (4) The chief dispute resolution officer must give written notice to each party to a referred dispute of a decision accepting or refusing a withdrawal under this section within 10 business days after receiving the notice under subsection (1).
- (5) A certificate of conciliation cannot be issued in respect of a dispute or matter if the chief dispute resolution officer has accepted the withdrawal of the referral of that dispute or matter under this section.

S. 45G(1)
amended by
No. 48/2018
s. 47.

Division 3—Conciliation of domestic building work disputes

46 Referral of dispute to conciliation officer

S. 46
substituted by
No. 15/2016
s. 6.

If the chief dispute resolution officer accepts a domestic building work dispute for conciliation, the chief dispute resolution officer must refer the dispute to a conciliation officer for conciliation under this Division.

46A How may conciliation be conducted?

S. 46A
inserted by
No. 15/2016
s. 6.

- (1) This section applies if a conciliation officer decides to conduct a conciliation conference.
- (2) The conciliation conference may be conducted—
 - (a) by attendance of the parties in person at a place that is reasonably convenient for the parties, which may be the building site at which the domestic building work that is the subject of the dispute is being or was carried out or elsewhere; or
 - (b) by post or by teleconference or other electronic communication; or
 - (c) by a combination of the methods in paragraphs (a) and (b).
- (3) The conciliation officer must give written notice of the conciliation conference to each party to the dispute.
- (4) The notice must specify—
 - (a) the date and time of the conference; and
 - (b) if the conference is to be conducted at a particular place, that place; and
 - (c) if the conference is to be held by post, the address or addresses to which written communications are to be sent; and

- (d) if the conference is to be held by electronic communication, the method by which participation in the conference is to be effected.
- (5) The notice must also include a statement advising the parties to the dispute that the chief dispute resolution officer may take the actions set out in sections 46E, 48B and 49 (and specified in the statement) if—
 - (a) the parties do not participate in the conciliation at the date, time and place and in the manner specified in the notice; and
 - (b) the matter in dispute concerns defective building work or an alleged failure to complete domestic building work.

46B Conciliation rules

S. 46B
inserted by
No. 15/2016
s. 6.

- (1) A conciliation officer must conduct a conciliation in accordance with the conciliation rules.
- (2) A conciliation officer may issue directions to the parties to a dispute in accordance with the conciliation rules.
- (3) The Director may approve conciliation rules for the conduct of conciliations under this Part.
- (4) The Director must publish approved conciliation rules on the Consumer Affairs Victoria website.

46C Statements made during conciliation

S. 46C
inserted by
No. 15/2016
s. 6.

- (1) Evidence of anything said or done by the parties or the conciliation officer during conciliation under this Division is not admissible in any proceeding before VCAT under Part 5 or in any other legal proceeding unless all the parties to the dispute agree in writing to the giving of the evidence.

- (2) Subsection (1) does not apply to—
- (a) any written communication from the conciliation officer to any of the parties to the dispute; or
 - (b) anything said or done by an assessor appointed under Division 5; or
 - (c) any report produced for the purpose of the conciliation by an assessor appointed under Division 5.
- (3) Nothing in this section prevents the use of any information or document disclosed in a conciliation for the purposes of—
- (a) determining whether to make a dispute resolution order under this Part; or
 - (b) any disciplinary proceedings under Part 11 of the **Building Act 1993** in relation to a contravention of—
 - (i) this Act or the regulations; or
 - (ii) the **Building Act 1993** or the regulations under that Act.

Note

Clause 12A(3) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** places limits on the power of VCAT to request information that is inadmissible because of section 46C.

S. 46D
inserted by
No. 15/2016
s. 6.

46D Notice if dispute not resolved by conciliation

- (1) This section applies if the chief dispute resolution officer has accepted a domestic building work dispute for conciliation and the dispute is not resolved.
- (2) The chief dispute resolution officer must give each party to the dispute written notice that the chief dispute resolution officer proposes to issue a certificate of conciliation in relation to the dispute.

- (3) The notice must include a copy of the proposed certificate of conciliation that must state—
- (a) that the dispute was not resolved by conciliation; and
 - (b) if, in the chief dispute resolution officer's opinion an identified party did not participate in the conciliation or did not participate in good faith, a statement of that opinion.
- (4) The notice must state that each party may make submissions to the chief dispute resolution officer in relation to the contents of the proposed certificate within the period (not being less than 10 business days) specified in the notice.

S. 46D(3)(b)
substituted by
No. 48/2018
s. 48.

46E Certificate of conciliation—dispute accepted for conciliation

S. 46E
inserted by
No. 15/2016
s. 6.

- (1) The chief dispute resolution officer must issue a certificate of conciliation in relation to the domestic building work dispute after considering any submissions received within the time required under section 46D if the chief dispute resolution officer is satisfied that the dispute has not been resolved.
- (2) The certificate of conciliation must state that—
- (a) the chief dispute resolution officer had received a referral of a domestic building work dispute; and
 - (b) the chief dispute resolution officer had accepted the dispute for conciliation; and
 - (c) the dispute was not resolved by conciliation.
- (3) The certificate of conciliation must include a statement of the reasons why the dispute was not resolved which may include a statement by the chief dispute resolution officer that in the chief dispute resolution officer's opinion an identified

party did not participate in the conciliation or did not participate in good faith.

- (4) The chief dispute resolution officer must give a copy of the certificate of conciliation as soon as practicable to each party to the domestic building work dispute.
- (5) A party to a domestic building work dispute may apply to VCAT for review of a failure by the chief dispute resolution officer to issue a certificate of conciliation under this section if a certificate of conciliation is not issued within the period of 20 business days after the end of the period specified in the notice under section 46D(4).

S. 46F
inserted by
No. 15/2016
s. 6.

46F Record of agreement if dispute resolved by conciliation

- (1) This section applies if the domestic building work dispute is resolved by conciliation under this Division.
- (2) The conciliation officer must prepare a written record of agreement setting out the terms of the agreement for the resolution of the dispute, including—
 - (a) the action, if any, to be taken by each party to the dispute, which may include the making of a payment; and
 - (b) the time within which the action is to be taken.
- (3) The chief dispute resolution officer must—
 - (a) keep the record of agreement; and
 - (b) give a copy of the record of agreement to each party to the dispute.
- (4) A party to the dispute may give written notice to the chief dispute resolution officer of any error or omission at any time before the end of the time

specified in the record of agreement for taking action.

- (5) The chief dispute resolution officer—
 - (a) may make any corrections to the record of agreement the chief dispute resolution officer considers appropriate to rectify an error or omission; and
 - (b) must give written notice to each party to the dispute of each correction made under paragraph (a).
- (6) A record of agreement is evidence of the terms of the agreement for the resolution of the domestic building work dispute to which it relates.

46G Notice of failure to comply with conciliated agreement

S. 46G
inserted by
No. 15/2016
s. 6.

- (1) A party to a domestic building work dispute may give written notice to the chief dispute resolution officer if an action recorded in a record of agreement for the dispute has not been taken within the time specified in the record of agreement.
- (2) The notice must state the extent of any partial compliance with the required action.

46H Notice of non-compliance with conciliated agreement

S. 46H
inserted by
No. 15/2016
s. 6.

- (1) If, on receiving a notice under section 46G, the chief dispute resolution officer determines that the action was not taken within the specified time—
 - (a) the record of agreement ceases to have effect; and
 - (b) the chief dispute resolution officer must give written notice of that non-compliance to each party to the domestic building work dispute.

- (2) The notice must state the extent of any partial compliance with the required action.

Division 4—Requirement to stop domestic building work

47 Application of Division

S. 47
substituted by
No. 15/2016
s. 6.

This Division applies if a domestic building work dispute is referred to the chief dispute resolution officer under Division 2.

47A Requirement to stop domestic building work

S. 47A
inserted by
No. 15/2016
s. 6.

- (1) At any time after the referral, the chief dispute resolution officer may, by written notice given to the builder, require the builder to stop—
- (a) all domestic building work under the domestic building contract; or
 - (b) the domestic building work under the domestic building contract that is specified in the notice.
- (2) The notice (a *stop work notice*) may be given if the chief dispute resolution officer considers that—
- (a) there is a reasonable possibility that evidence relevant to the matters in dispute may be lost or become impractical to obtain if the domestic building work were to continue; or
 - (b) it is appropriate for any other reason to give the notice.
- (3) A stop work notice has effect for the period, not exceeding 30 days, specified in the notice.

47B Extension or cancellation of stop work notice

S. 47B
inserted by
No. 15/2016
s. 6.

- (1) If the chief dispute resolution officer considers that it is appropriate to do so, the chief dispute resolution officer may, by written notice given to the builder, extend the period that a stop

work notice has effect for a further period not exceeding 30 days.

- (2) A notice under subsection (1) may vary the requirements in the stop work notice.
- (3) The chief dispute resolution officer may cancel a stop work notice at any time by written notice given to the builder.

47C Effect of stop work notice

- (1) The chief dispute resolution officer must give a copy of each stop work notice to all parties to the domestic building work dispute.
- (2) A stop work notice takes effect on the notice being given to the builder.
- (3) The stop work notice ceases to have effect on the issuing of a certificate of conciliation under section 45F in relation to the domestic building work dispute.
- (4) If a stop work notice is given in relation to domestic building work, the period during which the notice is in effect is not to be counted in any period within which the domestic building work must be completed under the domestic building contract.

S. 47C
inserted by
No. 15/2016
s. 6.

47D Builder must comply with stop work notice

- (1) A builder must comply with a stop work notice given to the builder under this Division.
Penalty: 60 penalty units.
- (2) Subsection (1) does not apply if the building work carried out after the receipt of the stop work notice was reasonably necessary to protect the safety of any person or property.

S. 47D
inserted by
No. 15/2016
s. 6.

Division 5—Assessment of domestic building work

S. 48
substituted by
No. 15/2016
s. 6.

48 Who may be appointed as an assessor?

- (1) The Director, on the recommendation of the chief dispute resolution officer, may appoint as an assessor—
 - (a) an architect registered under the **Architects Act 1991**;
 - (b) a building practitioner registered under the **Building Act 1993** in a prescribed category or class;
 - (c) a person in a prescribed class of persons.
- (2) A person appointed under subsection (1) may be—
 - (a) a person employed under Part 3 of the **Public Administration Act 2004**; or
 - (b) a person engaged for that purpose by the Director.

S. 48A
inserted by
No. 15/2016
s. 6.

48A Functions of assessor

An assessor has the following functions—

- (a) to assess whether domestic building work is defective or incomplete where required under this Act;
- (b) to carry out any other function conferred on an assessor under this Act or the regulations or any other Act or the regulations under that Act.

S. 48B
inserted by
No. 15/2016
s. 6.

48B Directions to assessor

- (1) The chief dispute resolution officer may direct an assessor to inquire into a domestic building work dispute.

- (2) The direction must be in writing and may require the assessor—
 - (a) to examine the domestic building work to determine whether the domestic building work performed by the builder is defective or incomplete; and
 - (b) if the assessor believes that the domestic building work is defective or incomplete, to estimate the number of business days required to rectify or complete the work.

48C Request to chief dispute resolution officer for assessor

S. 48C
inserted by
No. 15/2016
s. 6.

- (1) This section applies if a dispute was referred to the chief dispute resolution officer under Division 2 and—
 - (a) the referral was rejected by the chief dispute resolution officer; or
 - (b) the referral was accepted for conciliation but was not resolved by conciliation and an assessor has not already been directed by the chief dispute resolution officer to inquire into the dispute.
- (2) A party to the domestic building contract may ask the chief dispute resolution officer to direct an assessor to inquire into whether work performed under the contract is defective or incomplete.
- (3) A request under subsection (2) must be accompanied by the prescribed fee (if any).
- (4) On receiving that request and any prescribed fee, the chief dispute resolution officer may direct an assessor to inquire into the domestic building work.

S. 48D
inserted by
No. 15/2016
s. 6.

48D Assessor may enter building site

- (1) An assessor who is directed under section 48B to inquire into a domestic building work dispute may at any reasonable time enter and examine any relevant part of the building site at which the work that is the subject of the dispute is being, or has been, carried out.
- (2) However, if the relevant part of the building site where the work is being carried out is being used as a residence, an assessor may only enter and examine that part of the building site with the consent of the occupier.
- (3) An assessor who is seeking to enter a part of a building site that is being used as a residence must inform the occupier—
 - (a) that the consent of the occupier is required before the assessor may enter that part of the site; and
 - (b) that the failure of the occupier to provide the consent may be a ground for the issue of a certificate of conciliation that the dispute was not resolved by conciliation; and
 - (c) if the occupier is the owner, that the certificate of conciliation referred to in paragraph (b) may include a statement that the owner did not participate in the conciliation in good faith.
- (4) A failure by the occupier of a residence on a building site to provide consent under this section is a ground for—
 - (a) the issue of a certificate of conciliation stating that the dispute was not resolved by conciliation; and

- (b) if the occupier is also the owner, the inclusion in the certificate of conciliation of a statement that the owner did not participate in the conciliation in good faith.

48E Powers in relation to examination of work

S. 48E
inserted by
No. 15/2016
s. 6.

- (1) An assessor may cause any domestic building work to be demolished, opened or cut into if this is reasonably required to facilitate an examination of the work.
- (2) An assessor may take photographs (including video recordings) or make sketches of the building site or the domestic building work being examined.

48F Power to require production of documents

S. 48F
inserted by
No. 15/2016
s. 6.

- (1) An assessor who enters a building site under section 48D may, to the extent that it is reasonably necessary to determine whether domestic building work is defective or incomplete, require a person at the building site—
- (a) to give information to the assessor, orally or in writing; and
- (b) to produce documents to the assessor; and
- (c) to give reasonable assistance to the assessor.
- (2) If a person produces a document to an assessor in accordance with a requirement under this section, the assessor may make copies of, or take extracts from, the document.

48G Refusal or failure to comply with requirement

S. 48G
inserted by
No. 15/2016
s. 6.

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an assessor under this Division.

Penalty: 60 penalty units.

S. 48H
inserted by
No. 15/2016
s. 6.

48H Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Division, if the production of the document would tend to incriminate the person.

S. 48I
inserted by
No. 15/2016
s. 6.

48I Offence to hinder or obstruct assessor

A person must not, without reasonable excuse, hinder or obstruct an assessor exercising any power conferred by this Division.

Penalty: 60 penalty units.

S. 48J
inserted by
No. 15/2016
s. 6.

48J Assessor may conduct tests and obtain expert advice

- (1) This section is subject to sections 48K and 48M.
- (2) In carrying out an examination of domestic building work, the assessor may—
 - (a) conduct any test authorised by the regulations; and
 - (b) obtain expert advice.
- (3) No costs are payable by a party for the conduct of a test or for obtaining expert advice.

S. 48K
inserted by
No. 15/2016
s. 6.

48K Costs to be paid by non-participating party

The costs of the preparation of a report (including any examination, test or advice obtained) by an assessor in relation to domestic building work are payable by a party to a domestic building work dispute that was subject to conciliation if—

- (a) written notice of a conciliation conference was given to the party; and
- (b) the party, without reasonable excuse, failed to participate in the conciliation conference; and
- (c) a dispute resolution order is issued against the party because the building work was defective or incomplete.

48L Agreement of requesting party required for test or expert advice

S. 48L
inserted by
No. 15/2016
s. 6.

- (1) This section applies if an assessor is directed to inquire into domestic building work at the request of a party to a domestic building contract under section 48C.
- (2) The assessor must give written notice to the party if the assessor considers a test or expert advice is needed for the purpose of an examination of domestic building work, and ask the party to agree to the conduct of the test or the obtaining of the expert advice.
- (3) The assessor may discontinue the examination if the party does not agree to the conduct of the test or the obtaining of the expert advice.

48M Requesting party liable for costs

S. 48M
inserted by
No. 15/2016
s. 6.

The requesting party referred to in section 48L is liable for the costs of—

- (a) any tests conducted, or the obtaining of any expert advice, under section 48J that are agreed to by the party; and
- (b) making good any damage caused by any tests conducted under section 48J that are agreed to by the party.

S. 48N
inserted by
No. 15/2016
s. 6.

48N Recovery of costs

- (1) The Director may recover any costs payable by a party under this Division in any court of competent jurisdiction as a debt due to the State.
- (2) The Director must pay any costs recovered under this section into the Domestic Builders Fund.

S. 48O
inserted by
No. 15/2016
s. 6.

48O Reporting the results of an examination

- (1) After conducting an examination of domestic building work, the assessor must give a report of the results of the examination to—
 - (a) each party to the dispute; and
 - (b) the chief dispute resolution officer.
- (2) The report must be in writing in a form approved by the Director.
- (3) Subject to subsection (4), the assessor is not required to give a report under this section if—
 - (a) the examination was for the purposes of a conciliation conference; and
 - (b) a record of agreement was made as a result of the conciliation conference.
- (4) The chief dispute resolution officer may direct an assessor to prepare a report under this section if the chief dispute resolution officer has been given notice under section 46G of non-compliance with an action required in a record of agreement.
- (5) On being given a direction under subsection (4), the assessor must—
 - (a) prepare the report within the time required in the direction; and
 - (b) give a copy of the report, without delay, to—
 - (i) each party to the dispute; and
 - (ii) the chief dispute resolution officer.

(6) A party to a dispute may make a written submission to the chief dispute resolution officer in relation to a report within the prescribed period after the report is given to the party under this section.

(7) In this section—

prescribed period means the longer of—

- (a) the period prescribed by the regulations (if any); or
- (b) 5 business days.

48P Report if building work not defective or incomplete

S. 48P
inserted by
No. 15/2016
s. 6.

If, as a result of an examination, the assessor considers that the domestic building work examined is not defective or incomplete, the report under section 48O must include a statement to that effect.

48Q Report if building work defective or incomplete

S. 48Q
inserted by
No. 15/2016
s. 6.

(1) This section applies if, as a result of an examination, the assessor considers that the domestic building work examined is defective or incomplete.

(2) The report under section 48O must—

- (a) specify the building work that is defective or incomplete; and
- (b) if required by the chief dispute resolution officer under section 48B, include an estimate of the number of business days required to rectify or complete the building work.

S. 48Q(2)(a)
substituted by
No. 48/2018
s. 49.

(3) In the report the assessor may—

- (a) specify the cause of the defective or incomplete building work; and

- (b) recommend a preferred method by which the defective or incomplete work may be rectified or completed.
- (4) In making a recommendation under subsection (3), the assessor must have regard to—
 - (a) the relevant domestic building contract, including the plans and specifications set out in that contract; and
 - (b) any other matters the assessor considers relevant.
- (5) If the assessor is of the opinion that the building work is so defective that it would not be appropriate to allow the builder to rectify or complete the work, the report may include a statement to that effect.

S. 48R
inserted by
No. 15/2016
s. 6.

48R Report of non-compliance with building legislation

- (1) If, as a result of an examination, the assessor is of the opinion that there has been a contravention of the **Building Act 1993** or any regulations made under that Act in relation to any domestic building work, the assessor must—
 - (a) state that opinion in a written report; and
 - (b) provide a copy of the report to the Authority within 5 business days after preparing that report.
- (2) The Authority may refer details of the alleged contravention to—
 - (a) the relevant council; and
 - (b) the relevant building surveyor in relation to the building work.

48S Effect of complying with assessor's recommendations

S. 48S
inserted by
No. 15/2016
s. 6.

The carrying out by a builder of the recommendations contained in a report pursuant to section 48Q(3) does not absolve the builder from completing the domestic building contract in accordance with the plans and specifications set out in the contract.

48T Assessor's report admissible in evidence

S. 48T
inserted by
No. 15/2016
s. 6.

A report of an assessor under section 48O is admissible in evidence in proceedings before VCAT or any other legal proceedings.

Division 6—Dispute resolution orders

Subdivision 1—Issue of dispute resolution orders

49 When can a dispute resolution order be issued?

S. 49
substituted by
No. 15/2016
s. 6.

- (1) The chief dispute resolution officer may issue a dispute resolution order to a builder or building owner who is a party to a domestic building work dispute if—
 - (a) the dispute was referred to the chief dispute resolution officer under Division 2 for conciliation; and
 - (b) the chief dispute resolution officer is satisfied that the parties have not resolved the dispute; and
 - (c) the dispute relates to one or more of the following—
 - (i) an alleged breach of a warranty set out in section 8;
 - (ii) an alleged failure to maintain the standard or quality of building work specified in a domestic building contract;

- (iii) an alleged failure to complete the domestic building work required by a domestic building contract;
 - (iv) an alleged failure to complete the domestic building work required by a domestic building contract within the times specified in the contract;
 - (v) an alleged failure to pay money for domestic building work performed under the contract;
 - (vi) any other prescribed matter.
- (2) If the chief dispute resolution officer receives a copy of an assessor's report under Division 5 in relation to a domestic building work dispute, the chief dispute resolution officer must not issue a dispute resolution order earlier than 10 business days after the last of the parties to the dispute is given a copy of the assessor's report in relation to that dispute.
- (3) Despite subsection (1), the chief dispute resolution officer may issue a dispute resolution order even if a record of agreement exists in relation to the domestic building work dispute if the assessor's report states that there has been a contravention of—
- (a) this Act or the regulations; or
 - (b) the **Building Act 1993** or the regulations under that Act.
- (4) Subject to subsections (5) and (6), a dispute resolution order takes effect immediately on being served on the person to whom it is issued.
- (5) Subsection (4) does not apply to a dispute resolution order referred to in section 49D.

- (6) If an application for review is made under section 63 within the period set out in that section, the dispute resolution order is stayed pending the outcome of the review.

49A Matters to be considered by chief dispute resolution officer before issuing dispute resolution order

S. 49A
inserted by
No. 15/2016
s. 6.

- (1) In determining whether to issue a dispute resolution order, the chief dispute resolution officer may consider the following matters—
- (a) any change in the nature of the domestic building work dispute or the circumstances of the parties since the copy of the assessor's report was given to the chief dispute resolution officer under Division 5, including the extent of any partial performance of an action specified in a record of agreement;
 - (b) the conduct of the parties during the conciliation (if applicable);
 - (c) any direction to fix building work given under Division 2 of Part 4 of the **Building Act 1993** in relation to the building work that is the subject of the dispute;
 - (d) any other matter the chief dispute resolution officer considers relevant.
- (2) In addition to the matters in subsection (1), the chief dispute resolution officer may consider whether the issuing of a dispute resolution order to a person would be unfair or unreasonable in the circumstances.

49B What can a dispute resolution order require?

S. 49B
inserted by
No. 15/2016
s. 6.

- (1) A dispute resolution order may require a builder to whom it is issued to take any action or the action specified in the order to do one or more of the following—

- (a) rectify any defective domestic building work;
 - (b) rectify any damage caused in the carrying out of the domestic building work or by the defective domestic building work;
 - (c) complete the domestic building work under the domestic building contract.
- (2) A dispute resolution order may require a building owner to whom it is issued to comply with specified conditions if the builder is required to comply with a dispute resolution order.
- (3) Without limiting subsection (2), the conditions may include the following—
- (a) a condition to refrain from doing anything that would prevent or restrict the builder from satisfying a term or condition of the domestic building contract or carrying out domestic building work to meet the requirements of a warranty set out in section 8;
 - (b) a condition requiring a building owner to pay money into the Domestic Building Dispute Resolution Victoria Trust Fund.
- (4) A dispute resolution order under subsection (1) must specify a reasonable period within which the requirements for the rectification or completion of work must be complied with.
- (5) A person required to comply with a dispute resolution order issued under subsection (1) must—
- (a) carry out the work, if the person is a registered building practitioner under the **Building Act 1993** whose registration authorises the person to carry out that work;
- or

- (b) cause the work to be carried out by a person who is a registered building practitioner under the **Building Act 1993** whose registration authorises the person to carry out that work.

49C Requirements for the payment of money

S. 49C
inserted by
No. 15/2016
s. 6.

- (1) A dispute resolution order may require—
 - (a) a building owner to pay an amount to the builder for completion of the domestic building work under the contract or any part of the contract; or
 - (b) a building owner to pay an amount of money into the Domestic Building Dispute Resolution Victoria Trust Fund to be paid to the builder on completion of the domestic building work under the contract or any part of the contract; or
 - (c) the builder to pay the reasonable cost of domestic building work to be carried out by another builder appointed by the building owner if a dispute resolution order—
 - (i) requires a builder to rectify or complete the domestic building work; and
 - (ii) includes a finding that the domestic building work carried out by the builder is so defective that it would not be appropriate to allow the builder to rectify or complete the work.
- (2) A dispute resolution order issued under this section may impose conditions that must be met by another party to the domestic building work dispute before the requirement to pay money takes effect.

S. 49D
inserted by
No. 15/2016
s. 6.

49D Dispute resolution order may include findings

- (1) A dispute resolution order may include a finding by the chief dispute resolution officer that the domestic building work that is the subject of the domestic building work dispute is not incomplete or defective.
- (2) A dispute resolution order may include a finding that the domestic building work is so defective that it would not be appropriate to allow the builder to rectify or complete the work.
- (3) A finding referred to in subsection (1) or (2) in a dispute resolution order—
 - (a) is evidence in any proceedings by the builder for the recovery of money from a party to the domestic building work dispute; and
 - (b) may be taken into account in any proceedings in VCAT or a court in determining costs or damages.

S. 49E
inserted by
No. 15/2016
s. 6.

49E Effect of complying with dispute resolution order

The rectification or completion of domestic building work in compliance with a dispute resolution order does not absolve the builder from completing the domestic building contract in accordance with the plans and specifications set out in the contract.

S. 49F
inserted by
No. 15/2016
s. 6.

49F Notice to insurer

- (1) If a dispute resolution order is issued to a builder, the chief dispute resolution officer must notify the insurer who provided the builder with the required insurance under the **Building Act 1993** of—
 - (a) the dispute resolution order; and
 - (b) the builder's compliance with or failure to comply with the dispute resolution order.

- (2) The notice must be given after the time for the builder to comply with the dispute resolution order has expired.
- (3) For the purposes of subsection (1)(b), the chief dispute resolution officer may determine that the builder has complied with the dispute resolution order if—
- (a) the builder has not given notice of rectified or completed domestic building work under section 49P before the time for the builder to comply with the dispute resolution order has expired; or
 - (b) the building owner has not given notice of a failure to rectify defective domestic building work under section 49R before the time for the builder to comply with the dispute resolution order has expired.
- (4) If the chief dispute resolution officer determines the builder's compliance with the dispute resolution order in accordance with subsection (3), the chief dispute resolution officer must include in the notice a statement of that determination.

S. 49F(3)
inserted by
No. 48/2018
s. 50.

S. 49F(4)
inserted by
No. 48/2018
s. 50.

49G Payment out of Domestic Building Dispute Resolution Victoria Trust Fund

S. 49G
inserted by
No. 15/2016
s. 6.

- (1) The Director may pay out of the Domestic Building Dispute Resolution Victoria Trust Fund an amount paid into the Fund in compliance with a dispute resolution order.
- (2) In determining whether a dispute resolution order or part of an order has been complied with, the Director may rely on a statement by the party who paid the amount into the Fund that the dispute resolution order or the part of the order has been complied with.

- (3) If the Director proposes to pay an amount out of the Fund in accordance with subsection (1), the Director must give written notice to the parties to the domestic building work dispute of the intention to pay the amount out of the Fund.
- (4) The notice must state that a party to the domestic building work dispute may apply to VCAT within 10 business days after receiving the notice for review of the decision to pay the amount out of the Fund.
- (5) The party to the dispute who paid the money into the Fund may give written consent to the payment of the amount out of the Fund to the other party to the dispute or a person authorised by the other party.
- (6) The Director must pay the amount out of the Fund on the first of the following to occur—
 - (a) the receipt by the Director of the written consent under subsection (5);
 - (b) the end of the prescribed period.
- (7) In this section—

prescribed period means the later of—

 - (a) the period for making an application for review of the decision to pay the amount from the Fund; or
 - (b) if an application for review is made, the period until a determination is made affirming that decision.

Subdivision 2—Amendment or cancellation of dispute resolution order

49H Decision by chief dispute resolution officer on own volition

S. 49H
inserted by
No. 15/2016
s. 6.

- (1) The chief dispute resolution officer may at any time, of the chief dispute resolution officer's own volition, amend or cancel a dispute resolution order.
- (2) In making a decision under subsection (1), the chief dispute resolution officer may consider any of the following—
 - (a) any change in the nature of the dispute or the circumstances of the parties since the dispute was referred under Division 2;
 - (b) the conduct of the parties;
 - (c) any other matter the chief dispute resolution officer considers relevant.

49I Cancellation of dispute resolution order on failure to comply with order

S. 49I
inserted by
No. 15/2016
s. 6.

The chief dispute resolution officer may cancel a dispute resolution order if a condition of that order is not complied with.

49J Request to amend or cancel dispute resolution order

S. 49J
inserted by
No. 15/2016
s. 6.

- (1) A party to a domestic building work dispute may, in writing, ask the chief dispute resolution officer to amend or cancel a dispute resolution order relating to the domestic building work that is the subject of the dispute.
- (2) A request may only be made on the ground that there has been a substantial change in the nature of the dispute or the circumstances of the parties since the assessor gave a copy of the assessor's report to the chief dispute resolution officer under Division 5.

- (3) A request must be made within 10 business days after the dispute resolution order is served on the party.
- (4) The party making the request must give written notice of the request to each other party to the dispute within 2 business days after making the request.

S. 49K
inserted by
No. 15/2016
s. 6.

49K Powers of chief dispute resolution officer in considering amending or cancelling dispute resolution order

- (1) For the purpose of deciding whether to amend or cancel a dispute resolution order, the chief dispute resolution officer may—
 - (a) make any inquiries or obtain any information the chief dispute resolution officer considers necessary; and
 - (b) ask any party to the dispute to provide any information or documents the chief dispute resolution officer considers necessary.
- (2) The chief dispute resolution officer may fix a period for compliance with a request or requirement under subsection (1) and may extend that period at the request of any party.
- (3) Any period fixed under section 49L for determining a request under section 49J ceases to run during the period for compliance fixed under this section.

S. 49L
inserted by
No. 15/2016
s. 6.

49L Decision of chief dispute resolution officer on request

- (1) The chief dispute resolution officer must consider a request under section 49J and, within 5 business days after receiving the request, decide—
 - (a) to amend or cancel the dispute resolution order; or

- (b) to refuse to amend or cancel the dispute resolution order.
- (2) The chief dispute resolution officer is taken to have refused the request if the chief dispute resolution officer does not make a decision within 5 business days after the request.

49M Matters to be considered in deciding on request

S. 49M
inserted by
No. 15/2016
s. 6.

- (1) In making a decision on a request under section 49J, the chief dispute resolution officer—
 - (a) must consider—
 - (i) the extent to which any defective or incomplete domestic building work specified in the dispute resolution order has been rectified or completed; and
 - (ii) any change in the nature of the dispute or the circumstances of the parties since the assessor gave a copy of the assessor's report to the chief dispute resolution officer under Division 5; and
 - (b) may consider—
 - (i) the conduct of the parties; and
 - (ii) any other matter the chief dispute resolution officer considers relevant.

49N Amendment or cancellation of other relevant dispute resolution orders

S. 49N
inserted by
No. 15/2016
s. 6.

- (1) This section applies if the chief dispute resolution officer decides to amend or cancel a dispute resolution order under section 49L.
- (2) The chief dispute resolution officer may also amend or cancel a dispute resolution order issued to any other party to the domestic building work dispute after giving 5 business days notice to the parties to the dispute.

S. 49O
inserted by
No. 15/2016
s. 6.

49O Notice of decision of chief dispute resolution officer

- (1) The chief dispute resolution officer must give written notice of a decision under section 49L or 49N to the parties to the domestic building work dispute within 2 business days after making the decision.
- (2) If the chief dispute resolution officer amends a dispute resolution order under section 49L, 49N, or 49T, the chief dispute resolution officer must give a copy of the amended order to each party to the domestic building work dispute without delay.

Subdivision 3—Compliance with a dispute resolution order

S. 49P
inserted by
No. 15/2016
s. 6.

49P Notice of compliance with work under dispute resolution order

- (1) A builder who has rectified or completed domestic building work in accordance with a dispute resolution order must give written notice to—
 - (a) the chief dispute resolution officer; and
 - (b) the building owner.
- (2) The notice must be given within 2 business days after the domestic building work is carried out.
- (3) The chief dispute resolution officer may direct an assessor to examine the domestic building work for which notice has been given under this section to confirm whether it complies with the dispute resolution order.

49Q Notice of compliance with payment under dispute resolution order

S. 49Q
inserted by
No. 15/2016
s. 6.

- (1) A person who has paid money in accordance with a dispute resolution order must give written notice to the chief dispute resolution officer and the builder or the building owner (as the case requires).
- (2) The notice must be given within 2 business days after the payment is made.

49R Notice of failure to rectify or complete work

S. 49R
inserted by
No. 15/2016
s. 6.

- (1) A building owner may give written notice to the chief dispute resolution officer that the builder has failed to rectify defective domestic building work or complete domestic building work in accordance with a dispute resolution order.
- (2) A notice under subsection (1) must be given—
 - (a) within 5 business days after the building owner is given notice under section 49P in relation to the domestic building work; or
 - (b) if no notice is received under section 49P, within 5 business days after the end of the period specified in the dispute resolution order for the carrying out of the rectification or completion work.

49S Chief dispute resolution officer to direct assessor to examine work

S. 49S
inserted by
No. 15/2016
s. 6.

- (1) If a building owner gives notice to the chief dispute resolution officer under section 49R, the chief dispute resolution officer must direct an assessor to examine the work required to be carried out under the dispute resolution order.
- (2) The assessor must prepare a written report stating whether or not the dispute resolution order has been complied with.

- (3) The assessor must give a copy of the written report to the chief dispute resolution officer and each party to the domestic building work dispute.

S. 49T
inserted by
No. 15/2016
s. 6.

49T Chief dispute resolution officer may extend period for compliance

On receiving a report under section 49S, the chief dispute resolution officer may amend the dispute resolution order to extend the period for compliance with the order if the chief dispute resolution officer is satisfied that the failure to comply with the dispute resolution order was due to factors outside the control of the party required to comply with the order.

S. 49U
inserted by
No. 15/2016
s. 6.

49U Breach of dispute resolution order notice

- (1) Subject to section 49T, the chief dispute resolution officer must issue a breach of dispute resolution order notice if the chief dispute resolution officer receives an assessor's report under section 49S that states that the builder has failed to comply with a dispute resolution order.
- (2) The chief dispute resolution officer must serve a copy of the notice on each party to the domestic building work dispute without delay after it is issued.
- (3) A breach of dispute resolution order notice must state that the builder may apply to VCAT for a review of the decision to issue the notice and the time within which the application may be made.
- (4) A breach of dispute resolution order notice takes effect in relation to the builder immediately on being served on the builder.
- (5) The chief dispute resolution officer must give written notice to the Authority of the issue of a breach of dispute resolution order notice at the end of the prescribed period.

S. 49U(5)
amended by
No. 21/2017
s. 103.

- (6) The chief dispute resolution officer may recover the costs of an examination and report by an assessor under section 49S from the builder in any court of competent jurisdiction as a debt due to the State.
- (7) Any amount recovered under subsection (6) must be paid into the Domestic Builders Fund.
- (8) In this section—
prescribed period means the later of—
 - (a) the period for making an application for review of the decision to issue the breach of dispute resolution order notice; or
 - (b) if an application for review is made, the period until a determination is made affirming that decision.

49V Cancellation of breach of dispute resolution order notice

S. 49V
inserted by
No. 15/2016
s. 6.

- (1) The chief dispute resolution officer may cancel a breach of dispute resolution order notice if the parties to the domestic building work dispute to which the dispute resolution order applies have notified the officer of the settlement of the dispute.
- (2) The notice to the chief dispute resolution officer must be signed by each party to the dispute.
- (3) The chief dispute resolution officer must give each party to the domestic building work dispute written notice of the cancellation of the breach of dispute resolution order notice.
- (4) The chief dispute resolution officer must give the Authority notice in writing of the cancellation of the breach of dispute resolution order notice.

S. 49V(4)
inserted by
No. 46/2018
s. 77.

S. 49W
inserted by
No. 15/2016
s. 6.

49W Right of building owner to end domestic building contract

- (1) A building owner may, by written notice to the chief dispute resolution officer and the builder, end a domestic building contract for domestic building work that is the subject of a dispute resolution order if—
 - (a) a copy of a breach of dispute resolution order notice has been served on the building owner and the builder in relation to a failure by the builder; and
 - (b) either—
 - (i) the period within which the builder could apply to VCAT for review of the decision to issue the notice has ended and an application for review has not been made; or
 - (ii) the builder has applied to VCAT for review of the decision to issue the notice and the decision has been affirmed; and
 - (c) the building owner has complied with any dispute resolution order issued to the building owner in relation to the domestic building work dispute; and
 - (d) the building owner has complied with any conditions required to be complied with by the building owner before the builder is required to comply with the dispute resolution order.
- (2) If a building owner ends a domestic building contract under this section, the building owner is released from any further performance of the contract.

- (3) If a contract is ended under this section, the builder is entitled to a reasonable price for the work carried out under the contract to the date the contract is ended.
- (4) However, a builder may not recover under subsection (3) more than the builder would have been entitled to recover under the contract.

49X Right of builder to end domestic building contract

S. 49X
inserted by
No. 15/2016
s. 6.

- (1) A builder may, by written notice to the chief dispute resolution officer and the building owner, end a domestic building contract for domestic building work that is the subject of a dispute resolution order issued to the building owner if—
 - (a) the period within which the building owner could apply to VCAT for a review of the decision to issue the dispute resolution order has ended without an application for review being made; and
 - (b) the date by which the dispute resolution order was required to be complied with has passed and the building owner has failed to comply with the order; and
 - (c) the builder has complied with any conditions required to be complied with by the builder before the building owner is required to comply with the order; and
 - (d) the dispute resolution order included a finding that the building work was not defective or incomplete; and
 - (e) the builder has complied with any dispute resolution order issued to the builder in relation to the domestic building work dispute.

- (2) If a builder ends a domestic building contract under this section, the builder is released from any further performance of the contract.

Division 7—Powers of Director in relation to domestic building work dispute proceedings

50 Powers of Director to institute and defend proceedings

S. 50
substituted by
No. 15/2016
s. 6.

- (1) If a building owner is involved in a domestic building work dispute, the Director may institute proceedings on behalf of, or defend proceedings brought against the building owner if the Director is satisfied—
- (a) that the building owner has a good cause of action or a good defence to an action relating to the dispute; and
 - (b) that it is in the public interest to institute or defend proceedings on behalf of the building owner.
- (2) The Director must not institute or defend proceedings on behalf of a building owner unless that building owner has given written consent.
- (3) After consent has been given under subsection (2), the Director may institute or continue with a proceeding or defence on behalf of a building owner even if the building owner revokes the consent.

50A Proceedings and costs

S. 50A
inserted by
No. 15/2016
s. 6.

- (1) If the Director institutes or defends proceedings on behalf of a building owner under section 50—
- (a) the Director may settle the proceedings either with or without obtaining judgment in the proceedings; and

- (b) if a judgment is obtained in the proceedings in favour of the building owner, the Director may take any steps that are necessary to enforce the judgment; and
 - (c) subject to subsections (2) and (3), an amount (other than an amount in respect of costs) recovered in the proceedings is payable to the building owner; and
 - (d) an amount in respect of costs recovered in the proceedings is payable to the Director; and
 - (e) subject to subsection (2), the building owner is liable to pay an amount (not being an amount of costs) awarded against the building owner in the proceedings; and
 - (f) the Director is liable to pay the costs of, or incidental to, the proceedings that are payable by the building owner.
- (2) If the Director institutes, defends or continues proceedings on behalf of a building owner after the building owner withdraws the consent to the proceedings—
- (a) the Director must compensate the building owner for—
 - (i) any loss suffered as the result of the loss of any settlement offer made to the building owner; and
 - (ii) out-of-pocket expenses incurred by the building owner during the proceedings after the withdrawal of consent; and
 - (b) the Director is liable to pay any amount awarded against the building owner in the proceedings.

- (3) If the Director institutes, defends or continues proceedings on behalf of a building owner after the building owner withdraws the consent to the proceedings or defence, any amount recovered in the proceedings (including any amount for costs) that exceeds the amount payable to the building owner under subsection (2) may be applied to the payment of the costs of and incidental to the proceedings for which the Director is liable or that are incurred by the Director in relation to the proceedings.
- (4) If, in proceedings instituted or defended on behalf of a building owner under section 50—
- (a) a party to the proceedings files a counterclaim; or
 - (b) the building owner is entitled to file a counterclaim—
- and the counterclaim is not or would not be related to the proceedings and to the interests of the building owner in the dispute, the Director may apply to the court hearing the proceedings or to VCAT for an order that the counterclaim not be heard in the course of those proceedings.
- (5) If the court or VCAT makes an order under subsection (4), the court or VCAT may make any ancillary or consequential orders that it considers fair.

Division 8—Domestic Building Dispute Resolution Victoria Trust Fund

51 Establishment of Domestic Building Dispute Resolution Victoria Trust Fund

- (1) The Director must establish and maintain a trust fund to be called the Domestic Building Dispute Resolution Victoria Trust Fund.

New s. 51
inserted by
No. 15/2016
s. 6.

- (2) The Director must establish an account with an ADI for the investment of the Fund.
- (3) There may be paid into the Fund all amounts required or permitted to be paid into the Fund under this Act.
- (4) There may be paid out of the Fund all amounts required or permitted to be paid from the Fund under this Act.
- (5) The proceeds of the investment of the Fund are to be paid into the Domestic Builders Fund.

51A Parties may agree to pay amounts into and out of Domestic Building Dispute Resolution Victoria Trust Fund

S. 51A
inserted by
No. 15/2016
s. 6.

- (1) The parties to a domestic building work dispute may agree that a party is to pay an amount into the Domestic Building Dispute Resolution Victoria Trust Fund.
- (2) The agreement must—
 - (a) be in writing; and
 - (b) set out the conditions for payment of the amount into and out of the Fund.
- (3) The agreement must not—
 - (a) be inconsistent with any dispute resolution order issued in relation to the work that is the subject of the dispute; or
 - (b) relate to money paid into the Fund in compliance with a dispute resolution order.
- (4) If a party to a domestic building work dispute has paid money into the Fund under this section, the parties to the dispute may by agreement give written notice to the Director to pay some or all of that money out of the Fund.

- (5) The Director may pay money out of the Fund in accordance with the directions in the notice.

Division 9—Domestic Building Dispute Resolution Victoria

52 Domestic Building Dispute Resolution Victoria

Domestic Building Dispute Resolution Victoria is established.

New s. 52
inserted by
No. 15/2016
s. 6.

52A Composition

Domestic Building Dispute Resolution Victoria consists of—

S. 52A
inserted by
No. 15/2016
s. 6.

- (a) the chief dispute resolution officer appointed under section 52C; and
- (b) the conciliation officers appointed under section 52E; and
- (c) the assessors appointed under section 48.

52B Functions of Domestic Building Dispute Resolution Victoria

The functions of Domestic Building Dispute Resolution Victoria are—

S. 52B
inserted by
No. 15/2016
s. 6.

- (a) to administer the scheme under this Part for the resolution of domestic building work disputes; and
- (b) any other functions conferred on Domestic Building Dispute Resolution Victoria by or under this Act.

52C Appointment of chief dispute resolution officer

The Director must appoint a person employed under Part 3 of the **Public Administration Act 2004** as the chief dispute resolution officer.

S. 52C
inserted by
No. 15/2016
s. 6.

52D Functions of chief dispute resolution officer

S. 52D
inserted by
No. 15/2016
s. 6.

The functions of the chief dispute resolution officer are—

- (a) to perform the functions of Domestic Building Dispute Resolution Victoria; and
- (b) to assess referrals of domestic building work disputes for conciliation; and
- (c) to assess and inquire into domestic building work disputes; and
- (d) to conduct the conciliation of domestic building work disputes; and
- (e) to issue dispute resolution orders; and
- (f) any other function conferred on the chief dispute resolution officer by or under this Act.

52E Appointment of conciliation officers

S. 52E
inserted by
No. 15/2016
s. 6.

The Director may appoint as a conciliation officer—

- (a) any person employed under Part 3 of the **Public Administration Act 2004**; or
- (b) any other person.

52F Delegation

S. 52F
inserted by
No. 15/2016
s. 6.

The chief dispute resolution officer may by instrument delegate any of the chief dispute resolution officer's powers and functions under this Act to another conciliation officer.

52G Conciliation officers not subject to direction of Director

S. 52G
inserted by
No. 15/2016
s. 6.

A conciliation officer is not subject to the direction of the Director in relation to any decision that may be made or discretion that may be exercised by the conciliation officer

in relation to a particular domestic building work dispute.

S. 52H
inserted by
No. 15/2016
s. 6.

52H Protection against liability for conciliation officers

- (1) A conciliation officer is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a conciliation officer attaches instead to the State.

S. 52I
inserted by
No. 15/2016
s. 6.

52I Confidentiality

- (1) Subject to this Part, a conciliation officer or an assessor must not disclose to any person any information obtained in the course of carrying out any function under this Part.
Penalty: 60 penalty units.
- (2) A conciliation officer may disclose information obtained in the course of carrying out a function under this Part if the disclosure is made—
 - (a) for the purpose of carrying out that function; or
 - (b) to the Director; or
 - (c) to the Authority; or
 - (d) to the Victorian Managed Insurance Authority; or
 - (e) with the written consent of each person to whom the information relates.

Part 5—VCAT jurisdiction

Pt 5 (Heading)
substituted by
Nos 52/1998
s. 38(1)(a),
15/2016
s. 10(10).

* * * * *

Pt 5 Div. 1
(Heading and
ss 51, 52)
repealed by
No. 52/1998
s. 38(1)(b).

Division 2—Proceedings before VCAT

Pt 5 Div. 2
(Heading)
substituted by
No. 15/2016
s. 10(11).

Subdivision 1—Domestic building disputes

53 Settlement of building disputes

- (1) VCAT may make any order it considers fair to resolve a domestic building dispute.
- (2) Without limiting this power, VCAT may do one or more of the following—
 - (a) refer a dispute to a mediator appointed by VCAT;
 - (b) order the payment of a sum of money—
 - (i) found to be owing by one party to another party;
 - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
 - (iii) by way of restitution;

S. 53(1)
amended by
No. 15/2016
s. 10(2).

S. 53(2)
amended by
No. 15/2016
s. 10(1).

S. 53(2)(a)
amended by
No. 15/2016
s. 10(1).

Domestic Building Contracts Act 1995
No. 91 of 1995
Part 5—VCAT jurisdiction

S. 53(2)(ba)
inserted by
No. 101/1998
s. 6.

(ba) order the payment of a sum of money representing a part payment under a major domestic building contract if—

(i) the requirement in paragraph (b) of section 42 has been met but the requirement in paragraph (a) of that section has not; and

S. 53(2)(ba)(ii)
amended by
No. 15/2016
s. 10(1).

(ii) VCAT is satisfied that the work required to complete the contract (including rectifying any defects) is minor in nature and not such as would prevent the owner from occupation and quiet enjoyment of the building;

S. 53(2)(bb)
inserted by
No. 101/1998
s. 6.

(bb) order payment of a sum of money representing the amount of any money in dispute (including an amount on account of costs) to be paid into the Domestic Builders Fund pending the resolution of the dispute;

S. 53(2)(bc)
inserted by
No. 101/1998
s. 6.

(bc) order payment of a sum of money to be paid out of the Domestic Builders Fund representing the amount of any sum paid into the Domestic Builders Fund in accordance with an order under paragraph (bb);

(c) vary any term of a domestic building contract (including the completion date, the contract price, a provisional sum or the amount to be paid for any prime cost item);

(d) declare that a term of a domestic building contract is, or is not, void under section 132;

(e) declare void any unjust term of a domestic building contract, or otherwise vary a domestic building contract to avoid injustice;

(f) order the refund of any money paid under a domestic building contract or under a void domestic building contract;

- (g) order rectification of defective building work;
- (h) order completion of incomplete building work.
- (3) In awarding damages in the nature of interest, VCAT may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate it thinks appropriate. S. 53(3)
amended by
No. 15/2016
s. 10(1).
- (4) In determining whether a term of a contract is unjust under subsection (2)(e), VCAT may have regard to—S. 53(4)
amended by
No. 15/2016
s. 10(1).
 - (a) the intelligibility of the contract generally, and of the term in particular;
 - (b) the extent to which the term, and its legal and practical effect, was accurately explained to the building owner before the term was agreed to and the extent to which the building owner understood the term and its effect;
 - (c) the relative bargaining power of the parties to the contract;
 - (d) the consequences to the parties to the contract if the term is complied with or not complied with and the relative hardship of those consequences to each party;
 - (e) whether or not it was reasonably practicable for the building owner to reject, or negotiate for a change in, the term before it was agreed to;
 - (f) the relationship of the term to the other terms of the contract;
 - (g) whether the building owner obtained independent legal or other expert advice before agreeing to the term;

- (h) whether unfair pressure, undue influence or unfair tactics were used to obtain the building owner's consent to the contract or the term;
- (i) whether at the time the term was agreed to the builder knew, or could probably have found out by asking, that the term would cause the building owner hardship;
- (j) the conduct of the parties to the contract after the term was agreed to;
- (k) whether the term is usually found in domestic building contracts;
- (l) the justification for the term;
- (m) whether the term is unconscionable, harsh or oppressive;
- (n) any other factor VCAT thinks is relevant.

S. 53(4)(n)
amended by
No. 15/2016
s. 10(1).

S. 53(5)
amended by
No. 15/2016
s. 10(1).

- (5) Despite anything to the contrary in this section, in determining whether a term of a contract is unjust, VCAT is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the term was agreed to.

54 What is a domestic building dispute?

- (1) A *domestic building dispute* is a dispute or claim arising—
 - (a) between a building owner and—
 - (i) a builder; or
 - (ii) a building practitioner (as defined in the **Building Act 1993**); or
 - (iii) a sub-contractor; or

- (iv) an architect—
in relation to a domestic building contract or
the carrying out of domestic building work;
or
- (b) between a builder and—
- (i) another builder; or
 - (ii) a building practitioner (as defined
in the **Building Act 1993**); or
 - (iii) a sub-contractor; or
 - (iv) an insurer—
in relation to a domestic building contract or
the carrying out of domestic building work;
or
- (c) between a building owner or a builder and—
- (i) an architect; or
 - (ii) a building practitioner registered under
the **Building Act 1993** as an engineer
or draftsman—
in relation to any design work carried out
by the architect or building practitioner in
respect of domestic building work; or
- (d) between a lot owner or an owners
corporation and an initial owner (within the
meaning of section 68 of the **Owners
Corporations Act 2006**) of land in a plan of
subdivision in relation to an obligation
imposed on the initial owner under
section 68(2) of the **Owners Corporations
Act 2006**.
- (2) For the purposes of subsection (1), a dispute or
claim includes any dispute or claim in negligence,
nuisance or trespass but does not include a dispute
or claim related to a personal injury.

S. 54(1)(c)
amended by
No. 69/2006
s. 221(a).

S. 54(1)(d)
inserted by
No. 69/2006
s. 221(b).

- (3) A reference to a building owner in this section includes a reference to any person who is the owner for the time being of the building or land in respect of which a domestic building contract was made or domestic building work was carried out.

S. 55
(Heading)
inserted by
No. 15/2016
s. 10(3).

55 Who can ask VCAT to resolve a domestic building dispute?

VCAT may only make an order to resolve a domestic building dispute on the application of—

S. 55
amended by
No. 15/2016
s. 10(2).

- (a) a party to the dispute; or
(b) the Director acting on behalf of one or more building owners who are parties to the dispute.

S. 56
repealed by
No. 52/1998
s. 38(1)(c),
new s. 56
inserted by
No. 15/2016
s. 7.

56 Certificate of conciliation required to bring proceeding in VCAT to resolve domestic building work dispute

- (1) A party to a domestic building work dispute must not make an application to VCAT in relation to the dispute unless the chief dispute resolution officer has issued a certificate of conciliation to the party certifying that the dispute—
(a) was not suitable for conciliation; or
(b) was not resolved by conciliation.
- (2) An application to VCAT to commence proceedings in relation to a domestic building work dispute must be accompanied by a copy of the certificate of conciliation.
- (3) This section does not apply to proceedings for an order in the nature of an injunction.

S. 56(4)
inserted by
No. 48/2018
s. 51.

- (4) This section does not affect the validity of any decision made by VCAT any time before, on or after the commencement of Part 6 of the **Justice Legislation Miscellaneous Amendment Act 2018**.

57 VCAT to be chiefly responsible for resolving domestic building disputes

(1) This section applies if a person starts any action arising wholly or predominantly from a domestic building dispute in the Supreme Court, the County Court or the Magistrates' Court.

S. 57
(Heading)
inserted by
No. 15/2016
s. 10(4).

(2) The Court must stay any such action on the application of a party to the action if—

S. 57(2)
amended by
No. 52/1998
s. 38(1)(d)(f).

(a) the action could be heard by VCAT under this Subdivision; and

S. 57(2)(a)
amended by
No. 15/2016
s. 10(1).

(b) the Court has not heard any oral evidence concerning the dispute itself.

(3) This section does not apply to any matter dismissed by VCAT under section 77 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 57(3)
amended by
Nos 52/1998
s. 38(1)(d)(ii),
15/2016
s. 10(1).

(4) If an action is stayed under this section, any party to the action may apply to VCAT for an order with respect to the dispute on which the action was based.

S. 57(4)
amended by
Nos 52/1998
s. 38(1)(d)(iii),
15/2016
s. 10(1).

(5) If a person applies to VCAT under subsection (4) VCAT must notify the Court and on such notification the Court must dismiss the action.

S. 57(5)
inserted by
No. 52/1998
s. 38(2),
amended by
No. 15/2016
s. 10(1).

(6) Subsection (5) does not apply if VCAT refers the matter to the Court under section 77(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 57(6)
inserted by
No. 52/1998
s. 38(2),
amended by
No. 15/2016
s. 10(1).

S. 57A
inserted by
No. 15/2016
s. 8.

57A Certain actions not to proceed in a court without certificate of conciliation or leave

- (1) A party to a domestic building work dispute may not commence an action in a court arising wholly or predominantly from the dispute unless—
 - (a) the chief dispute resolution officer has issued a certificate of conciliation to the party certifying that the dispute—
 - (i) was not suitable for conciliation; or
 - (ii) was not resolved by conciliation; or
 - (b) the party has been granted leave by the court to bring the proceedings.
- (2) This section does not apply to proceedings for an order in the nature of an injunction.

S. 58
(Heading)
inserted by
No. 15/2016
s. 10(5).

58 VCAT may hear disputes while contract still in operation

VCAT may make an order to resolve a domestic building dispute even though the domestic building contract under which the dispute arises is still in operation.

S. 58
amended by
No. 15/2016
s. 10(2).

S. 59
(Heading)
inserted by
No. 15/2016
s. 10(6).

59 VCAT may hear dispute regardless of related criminal proceedings

If a domestic building dispute involves the failure, or the alleged failure, of a builder to comply with this Act or any other Act (or any regulations made under this Act or any other Act), VCAT may make an order to resolve the dispute even though the builder—

S. 59
amended by
No. 15/2016
s. 10(1).

- (a) has not been charged with the offence; or
- (b) has been charged with the offence, but has not had the charge heard; or

- (c) has had the charge heard, but was not convicted of committing the offence; or
- (d) has had the charge heard and was convicted of committing the offence; or
- (e) has been sentenced in relation to the offence; or
- (f) is the subject of pending disciplinary action; or
- (g) may be, or has been, subject to disciplinary action.

Subdivision 2—Disputes involving insurance claims and insurers' decisions

Pt 5 Div. 2
Subdiv. 2
(Heading)
substituted by
No. 52/1998
s. 38(3).

59A Disputes concerning insurance claims

S. 59A
inserted by
No. 52/1998
s. 39.

- (1) VCAT has jurisdiction to hear and determine any dispute concerning an insurance claim concerning domestic building work or an insurer's decision on such a claim.
- (2) VCAT may make any order it considers fair to resolve a dispute referred to in subsection (1).
- (3) VCAT may hear and determine a dispute under this section on the application of—
 - (a) a party to the dispute; or
 - (b) the Director acting on behalf of one or more building owners who are parties to the dispute.

S. 59A(1)
amended by
No. 15/2016
s. 10(2).

S. 59A(2)
amended by
No. 15/2016
s. 10(2).

S. 59A(3)
amended by
No. 15/2016
s. 10(2).

S. 60
(Heading)
inserted by
No. 15/2016
s. 10(7).

60 VCAT may review and change an insurer's decision

S. 60(1)
amended by
Nos 26/2001
s. 16(2),
37/2016
s. 4(3),
15/2016
s. 10(2).

(1) VCAT may review any decision of an insurer with respect to anything arising from any required insurance under the **Building Act 1993** that a builder is covered by in relation to domestic building work.

S. 60(2)
amended by
No. 15/2016
s. 10(1).

(2) Despite subsection (1), VCAT does not have any power to review a decision of an insurer—

- (a) to refuse to insure, or to refuse to renew or extend the insurance of, a builder; or
- (b) concerning premiums or charges to be paid for any insurance or the conditions under which any insurance will be offered, renewed or extended.

S. 60(3)
amended by
No. 15/2016
s. 10(1).

(3) After conducting a review, VCAT may confirm, annul, vary or reverse the decision, and may make any order necessary to give effect to its decision.

S. 61
(Heading)
inserted by
No. 15/2016
s. 10(8).

61 Who can ask VCAT to review an insurer's decision?

S. 61(1)
amended by
Nos 52/1998
s. 40(a),
26/2001
s. 16(3),
37/2016
s. 4(4),
15/2016
s. 10(1).

(1) Any person whose interests are affected by a decision of an insurer with respect to anything arising from any required insurance under the **Building Act 1993** that covers a builder in relation to domestic building work may apply to VCAT for a review of the decision.

(2) If the decision contains a direction that must be complied with within 27 days of the date the person receives notice of the decision, the application must be made before the date the decision must be complied with.

S. 61(2)
amended by
No. 52/1998
s. 40(b).

(3) In all other cases, the application must be made within 28 days of the date the person receives notice of the decision.

S. 61(3)
amended by
No. 52/1998
s. 40(b).

62 VCAT may make decision if an insurer fails to make it in time

S. 62
(Heading)
inserted by
No. 15/2016
s. 10(9).

VCAT may decide any claim made by a building owner with respect to any insurance or guarantee or indemnity referred to in section 60 if the insurer fails or refuses to decide the claim within a reasonable time of the claim being made and the building owner applies to VCAT to decide the claim.

S. 62
amended by
Nos 52/1998
s. 40(c),
26/2001
s. 16(4),
15/2016
s. 10(1)(2).

* * * * *

S. 63
repealed by
No. 52/1998
s. 40(d).

Subdivision 3—Matters relating to dispute resolution orders

Pt 5 Div. 2
Subdiv. 3
(Heading and
ss 64–67)
repealed by
No. 52/1998
s. 40(e), new
Pt 5 Div. 2
Subdiv. 3
(Heading and
ss 63–67A)
inserted by
No. 15/2016
s. 9.

63 Application for review of decision to issue or amend dispute resolution order

New s. 63
inserted by
No. 15/2016
s. 9.

(1) A person who is required to comply with a dispute resolution order may apply to VCAT for review of the decision to issue or amend the dispute resolution order.

- (2) An application under subsection (1) must be made within 20 business days after the later of—
- (a) the day on which the applicant was given a copy of the dispute resolution order or the amendment to the dispute resolution order (as the case requires); or
 - (b) if under the **Victorian Civil and Administrative Tribunal Act 1998** the applicant requests a statement of reasons, the day on which the applicant receives that statement of reasons or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (3) An application under subsection (1) must be made on the ground that—
- (a) the description in the dispute resolution order of the domestic building work that is defective or incomplete is incorrect; or
 - (b) the period specified in the dispute resolution order for carrying out the rectification or completion work is not reasonable; or
 - (c) a requirement in the dispute resolution order to take a specific action or to refrain from taking action is not necessary or is not reasonable.
- (4) In determining an application for review of a dispute resolution order, VCAT may also make any order it considers fair in relation to the domestic building contract to which the dispute relates.

- (5) Without limiting subsection (4), VCAT may do one or more of the following—
- (a) vary any term of the domestic building contract (including the completion date, the contract price, a provisional sum or the amount to be paid for a prime cost item);
 - (b) declare that a term of the domestic building contract is, or is not, void under section 132;
 - (c) declare void any unjust term of the domestic building contract, or otherwise vary the domestic building contract to avoid injustice.

64 Effect of withdrawal of application for review

If, with the leave of VCAT, a party withdraws an application made under section 63 for review of a dispute resolution order, the dispute resolution order takes effect and for that purpose any period for which the order is stayed is not to be counted in calculating the period for compliance with the order.

New s. 64
inserted by
No. 15/2016
s. 9.

65 Application for review of decision to pay money out of Domestic Building Dispute Resolution Victoria Trust Fund

- (1) A party to a domestic building work dispute may apply to VCAT for review of a decision by the Director under section 49G to pay money out of the Domestic Building Dispute Resolution Victoria Trust Fund.
- (2) An application under subsection (1) must be made within 10 business days after the party received written notice of the Director's decision under section 49G.

New s. 65
inserted by
No. 15/2016
s. 9.

New s. 66
inserted by
No. 15/2016
s. 9.

66 Application for review of decision to issue breach of dispute resolution order notice

- (1) A builder may apply to VCAT for review of a decision of the chief dispute resolution officer to issue a breach of dispute resolution order notice under Part 4.
- (2) An application under subsection (1) must be made within 20 business days after the later of—
 - (a) the day on which the applicant was served with a copy of the notice; or
 - (b) if under the **Victorian Civil and Administrative Tribunal Act 1998** the applicant requests a statement of reasons, the day on which the applicant receives that statement of reasons or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (3) An application under subsection (1) must be made on the ground that the assessment made in the assessor's report on which the notice was based that the dispute resolution order has not been complied with—
 - (a) was not correct; or
 - (b) is no longer correct because the dispute resolution order has since been complied with.
- (4) In addition to the parties, the building owner may make submissions to the proceedings on the application for review in relation to—
 - (a) whether there has been a failure to comply with the dispute resolution order; and
 - (b) the nature of the failure to comply with the dispute resolution order.

- (5) If an application for review is made under this section, any disciplinary action against the builder under the **Building Act 1993** as a result of the failure to comply with the dispute resolution order is stayed pending the outcome of the review.

67 Application by building owner for order following ending of domestic building contract

New s. 67
inserted by
No. 15/2016
s. 9.

- (1) This section applies if a building owner ends a domestic building contract in accordance with Division 6 of Part 4.
- (2) The building owner may apply to VCAT for an order against the builder.
- (3) VCAT—
- (a) must consider—
 - (i) the domestic building contract, including any plans and specifications set out in it; and
 - (ii) any assessor's report provided to the chief dispute resolution officer under Division 6 of Part 4 in relation to the work to which the contract applies; and
 - (b) may make any order it considers fair in the circumstances.
- (4) Without limiting subsection (3)(b), VCAT may order the builder to pay a sum of money to the building owner in one or more of the following circumstances—
- (a) if the money is found to be owing to the building owner by the builder;
 - (b) by way of damages;
 - (c) by way of restitution;

(d) to refund money paid under the domestic building contract, including any money paid by the building owner in excess of the requirements of the contract.

(5) An order under this section must provide for a builder to receive a reasonable price for work carried out under the domestic building contract, not being more than the builder would be entitled to recover under the contract.

S. 67A
inserted by
No. 15/2016
s. 9.

67A Application by builder for order following ending of domestic building contract

- (1) This section applies if a builder ends a domestic building contract in accordance with Division 6 of Part 4.
- (2) The builder may apply to VCAT for an order against the building owner.
- (3) VCAT may make any order it considers fair in the circumstances.
- (4) Without limiting subsection (3), VCAT may order the building owner to pay a sum of money to the builder—
 - (a) for work performed under the contract; and
 - (b) by way of damages for loss of work as a result of the ending of the contract.

Subdivision 4—Miscellaneous matters

68 Exemptions from owner-builder restrictions on sale

- (1) A person may apply to VCAT to have a building exempted from the operation of section 137B of the **Building Act 1993**. S. 68(1)
amended by
No. 15/2016
s. 10(1).
- (2) VCAT may exempt a building from the operation of section 137B of the **Building Act 1993** if it is satisfied that— S. 68(2)
amended by
No. 15/2016
s. 10(2).
- (a) there are exceptional circumstances; or
- (b) full compliance with section 137B is impossible or would cause undue hardship.
- (3) In granting an exemption VCAT may impose any conditions it considers appropriate. S. 68(3)
amended by
No. 15/2016
s. 10(1).

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Pt 5 Div. 3
(Heading and
ss 69, 70)
repealed by
No. 52/1998
s. 40(f).

* * * * *

Pt 5 Div. 4
(Heading and
ss 71–86)
amended by
No. 35/1996
s. 453(Sch. 1
item 23.2),
repealed by
No. 52/1998
s. 40(f).

* * * * *

Pt 5 Divs. 5, 6
(Headings
and
ss 87–106)
repealed by
No. 52/1998
s. 40(f).

Domestic Building Contracts Act 1995
No. 91 of 1995
Part 5—VCAT jurisdiction

Pt 5 Div. 7
(Heading and
ss 107–110)
amended by
No. 2/1996
s. 4(1)(2),
repealed by
No. 52/1998
s. 40(f).

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Pt 5 Div. 8
(Heading and
ss 111, 112)
repealed by
No. 52/1998
s. 40(f).

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Pt 5 Div. 9
(Heading and
ss 113–121)
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 40(f).

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Part 6—General

122 Publication of directions

**S. 122
substituted by
No. 48/2018
s. 52.**

- (1) The Director must publish on an Internet site specified in subsection (2)—
 - (a) any details which the Director requires under this Act to be provided in a domestic building contract; and
 - (b) the approved form of any document or provision which is required under this Act to be in a form approved by the Director.
- (2) For the purposes of subsection (1), the following are specified—
 - (a) in relation to any matter arising under Part 4, Domestic Building Dispute Resolution Victoria's Internet site;
 - (b) in relation to any other matter arising under the Act, the Consumer Affairs Victoria Internet site.

123 Additional functions of the Director

The Director may—

- (a) provide information and advice concerning the operation of this Act and other matters of relevance to builders and building owners in any manner the Director considers appropriate; and
- (b) prepare and publish suggested domestic building contracts, or terms suitable for inclusion in domestic building contracts.

S. 123A
(Heading)
amended by
No. 34/2013
s. 35(Sch. 2
item 2.6).

S. 123A
inserted by
No. 36/2002
s. 7,
amended by
No. 34/2013
s. 35(Sch. 2
item 2.7).

123A Director may provide information to the Authority

The Director may provide the Authority with any information held by the Director in relation to a domestic building dispute if the Director considers that the provision of the information will assist in the resolution of the dispute.

124 Domestic Builders Fund

(1) The Director must establish a fund to be called the Domestic Builders Fund.

(2) There must be paid into the Fund—

S. 124(2)(a)
amended by
Nos 52/1998
s. 41(a),
15/2016
s. 10(1).

(a) all fees received or recovered by or on behalf of VCAT in respect of proceedings under this Act; and

(b) all fines and penalties recovered under this Act; and

S. 124(2)(c)
amended by
No. 34/2013
s. 35(Sch. 2
item 2.8(a)).

(c) all money paid out of the domestic building account in the Building account of the Victorian Building Authority Fund under section 205B(1)(d) of the **Building Act 1993**; and

S. 124(2)(ca)
inserted by
No. 36/2002
s. 8,
amended by
No. 34/2013
s. 35(Sch. 2
item 2.8(b)).

(ca) all money paid to the Fund out of the domestic building dispute account in the Building account of the Victorian Building Authority Fund under section 205B(5) of the **Building Act 1993**; and

(d) money appropriated by Parliament for the purposes of the Fund; and

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Part 6—General

- (da) money ordered by VCAT to be paid into the Fund; and
- (e) all other money authorised to be paid to the Fund by any body or person; and
- (f) income from the investment of the Fund.
- (3) There may be paid out of the Fund—
- (a) the costs and expenses incurred in the administration and enforcement of this Act and the regulations; and
- (b) the costs and expenses of VCAT in respect of proceedings under this Act; and
- (ba) money ordered by VCAT to be paid out of the Fund; and
- (c) the costs and expenses incurred by the Director in carrying out his or her functions under this Act; and
- (ca) amounts determined by the Director for the purpose of providing advocacy services in relation to domestic building contracts and domestic building disputes; and
- (d) amounts determined by the Director for the purpose of providing education programs and advice to building owners and builders in relation to the carrying out of domestic building work and the operation of this Act.

S. 124(2)(da) inserted by No. 101/1998 s. 7(a), amended by No. 15/2016 s. 10(1).

S. 124(3)(b) substituted by No. 52/1998 s. 41(b), amended by No. 15/2016 s. 10(1).

S. 124(3)(ba) inserted by No. 101/1998 s. 7(b), amended by No. 15/2016 s. 10(1).

S. 124(3)(ca) inserted by No. 15/2016 s. 72.

- (4) The Director may invest any part of the Fund not immediately required for the purposes of the Fund in any manner approved by the Treasurer.

S. 124A
inserted by
No. 17/1999
s. 31,
amended by
Nos 103/2004
s. 81(1) (ILA
s. 39B(1)),
17/2007
s. 36(Sch.
item 3), 2/2008
s. 60(Sch.
item 3),
72/2010
s. 48(Sch.
item 7),
substituted by
No. 21/2012
s. 239(Sch. 6
item 14.2).

124A Application of provisions of Australian Consumer Law and Fair Trading Act 2012

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 152 and 153) extends and applies (with any necessary modifications) to this Act as if any reference in that Part to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (2) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act.
- (3) For the purposes of subsection (2)—
- (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2);
- (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
- (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—

- (i) proceedings for an offence against a provision of this Act (except an offence applied by subsection (1)); or
 - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act (except an offence applied by subsection (1)); or
 - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)).
- (4) In this section—
this Act includes the regulations.

S. 124A(4)
inserted by
No. 12/2015
s. 21(Sch. 1
item 3).

125 Infringement notice

- (1) An inspector appointed under the **Australian Consumer Law and Fair Trading Act 2012** may serve an infringement notice on any person that the inspector has reason to believe has committed an offence listed in column 1 of Schedule 2.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of subsection (1), an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional information approved by the Director.

S. 125(1)
amended by
Nos 17/1999
s. 30(2)(a),
21/2012
s. 239(Sch. 6
item 14.3).

S. 125(2)
substituted by
No. 32/2006
s. 94(Sch.
item 10(1)).

S. 125(3)
inserted by
No. 32/2006
s. 94(Sch.
item 10(1)).

S. 125(4)
inserted by
No. 32/2006
s. 94(Sch.
item 10(1)).

- (4) The infringement penalty for an offence referred to in subsection (1) is the penalty specified in column 2 of Schedule 2 in relation to that offence.

S. 126
repealed by
No. 32/2006
s. 94(Sch.
item 10(2)).

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127 Further proceedings concerning infringement notices

S. 127(1)
repealed by
No. 32/2006
s. 94(Sch.
item 10(2)).

* * * * *

- (2) If proceedings are taken against a person in respect of an offence for which an infringement notice was served on the person and a court finds the person guilty of the offence, the finding is not to be taken as a conviction for any purpose except—
- (a) the making of the finding itself; and
 - (b) any later proceedings that may be taken in respect of the finding itself (including proceedings by way of appeal or review).
- (3) Subsection (2) does not apply to proceedings taken after the withdrawal of an infringement notice.

128 Continuing offences—default penalty

- (1) If a person is convicted of an offence against this Act in respect of which a default penalty is provided, or is served with an infringement notice in relation to such an offence, the person is guilty of a further offence in respect of each day the offence continues after the conviction or service

of the notice and is liable to be fined up to the amount specified as the default penalty.

- (2) If an offence in respect of which there is a default penalty is committed by failing to comply with a provision of this Act within a period of time specified in the provision, for the purposes of this section the offence is deemed to continue even though that period of time has elapsed.
- (3) Subsection (1) does not apply if, owing to a circumstance such as the loss of a document needed to comply with this Act, it is not possible for a person to comply with the provision in respect of which the offence was committed.
- (4) Subsection (1) also does not apply if—
 - (a) an infringement notice is served; and
 - (b) one of the following occurs—
 - (i) the infringement notice is withdrawn and no further proceedings are taken; or
 - (ii) the offence in respect of which the infringement notice was issued is tried or heard before a court and the court does not find the offence proven.
- (5) If an infringement notice may be served in respect of an offence in respect of which there is a default penalty, it may also be served in respect of the continuing offence if an infringement notice default penalty is listed in column 2 of Schedule 2 with respect to the offence.
- (6) If an infringement notice may be served with respect to a continuing offence—
 - (a) there is no limit to the number of infringement notices that may be served with respect to the offence; and

S. 128(4)(b)(ii)
amended by
No. 68/2009
s. 97(Sch.
item 46).

(b) an infringement notice may be served with respect to a period of more than 1 day.

(7) This section applies despite anything to the contrary in the **Infringements Act 2006**.

S. 128(7)
inserted by
No. 32/2006
s. 94(Sch.
item 10(3)).

S. 129
repealed by
No. 103/2004
s. 81(2).

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130 Offences by partners

If this Act or a regulation made under this Act provides that a builder is guilty of an offence, that reference to a builder must be read as a reference to each member of a partnership if the builder is a partnership.

131 Time limit for criminal proceedings

Despite anything to the contrary in any Act, proceedings for an offence against this Act may be started within 3 years after the commission of the alleged offence.

132 Contracting out of this Act prohibited

(1) Subject to any contrary intention set out in this Act—

- (a) any term in a domestic building contract that is contrary to this Act, or that purports to annul, vary or exclude any provision of this Act, is void; and
- (b) any term of any other agreement that seeks to exclude, modify or restrict any right conferred by this Act in relation to a domestic building contract is void.

- (2) However, the parties to a domestic building contract may include terms in the contract that impose greater or more onerous obligations on a builder than are imposed by this Act.

133 Effect of failure to comply with a requirement of this Act

A failure by a builder to comply with any requirement in this Act in relation to a domestic building contract does not make the contract illegal, void or unenforceable, unless the contrary intention appears in this Act.

134 Supreme Court—limitation of jurisdiction

It is the intention of section 57, as amended by section 38 of the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 134
substituted by
No. 52/1998
s. 42.

135 Regulations

- (1) The Governor in Council may make regulations for or with respect to—

* * * * *

S. 135(1)(a)
repealed by
No. 52/1998
s. 43.

- (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;

S. 135(1)(aa)
inserted by
No. 2/1996
s. 5.

- (b) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance.

New s. 136
inserted by
No. 15/2016
s. 11.

136 Transitional provisions

Schedule 1 has effect.

Pt 7
(Heading and
ss 136–156)
repealed by
No. 74/2000
s. 3(Sch. 1
item 37.3).

* * * * *

Pt 8
(Heading and
ss 157–168)
amended by
No. 52/1998
s. 44,
repealed by
No. 28/2007
s. 3(Sch.
item 17).

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Pt 9
(Heading and
s. 169)
repealed by
No. 17/1999
s. 30(2)(b).

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Schedules

Schedule 1—Transitional provisions

1 Commencement day

In this Schedule, *commencement day* means the day on which Part 2 of the **Building Legislation Amendment (Consumer Protection) Act 2016** comes into operation.

2 Complaints and conciliation

- (1) This Act as in force immediately before the commencement day continues to apply in relation to any complaint made to the Director under Part 3A before the commencement day.
- (2) For the purposes of subclause (1), the **Victorian Civil and Administrative Tribunal Act 1998** applies as if the amendments made by Division 2 of Part 2 of the **Building Legislation Amendment (Consumer Protection) Act 2016** had not been made.

3 Assessors and examinations

Part 4, as in force before its substitution by Part 2 of the **Building Legislation Amendment (Consumer Protection) Act 2016**, continues to apply in relation to any examination by an inspector appointed under that Part 4—

- (a) that commenced before the commencement day; or
- (b) that commences on or after the commencement day as a result of a request under section 43F as continued by clause 2.

Sch. 1
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 45,
new Sch. 1
inserted by
No. 15/2016
s. 12.

4 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of Part 2 of the **Building Legislation Amendment (Consumer Protection) Act 2016**, including any repeals and amendments made as a result of the enactment of that Part.
- (2) Regulations made under this clause may have a retrospective effect to a day on or from a date not earlier than the date on which the **Building Legislation Amendment (Consumer Protection) Act 2016** receives the Royal Assent.
- (3) Regulations made under this clause have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (4) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to regulations made under this clause that expire on or before 1 July 2017.
- (5) This clause is **repealed** on 1 July 2019.

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Schedule 2—Offences for which infringement notices may be served

Schedule 2—Offences for which infringement notices may be served

Sch. 2
amended by
No. 50/2014
s. 29.

<i>Column 1</i> <i>Offences under section—</i>	<i>Column 2</i> <i>Infringement notice penalty</i>
12(2)	10 penalty units
22	25 penalty units
23	10 penalty units
25	10 penalty units ½ penalty unit per day (default)
26(1)	10 penalty units
29	50 penalty units
31	25 penalty units
32(1)	25 penalty units
36(2)	10 penalty units ½ penalty unit per day (default)
43(2)	25 penalty units ½ penalty unit per day (default)

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 24 October 1995

Legislative Council: 15 November 1995

The long title for the Bill for this Act was "A Bill to regulate domestic building contracts and to establish a Domestic Building Disputes Tribunal and to amend the **House Contracts Guarantee Act 1987** and the **Building Act 1993** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 24 October 1995

Legislative Council: 15 November 1995

Absolute majorities:

Legislative Assembly: 14 November 1995

Legislative Council: 23 November 1995.

The **Domestic Building Contracts and Tribunal Act 1995** was assented to on 5 December 1995 and came into operation as follows:

Part 1 (sections 1–7) on 5 December 1995: section 2(1); section 158 on 1 May 1996: section 2(1A); Parts 4 (sections 44–50), 5 (sections 51–121), 8 (*except* section 158), Schedule 1 on 1 April 1996; rest of Act on 1 May 1996: Government Gazette 29 February 1996 page 445.

The name of this Act was changed from the **Domestic Building Contracts and Tribunal Act 1995** to the **Domestic Building Contracts Act 1995** by section 36 of the **Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998**, No. 52/1998.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

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- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Domestic Building Contracts Act 1995** by Acts and subordinate instruments.

Domestic Building Contracts and Tribunal (Amendment) Act 1996, No. 2/1996

Assent Date: 18.6.96
Commencement Date: 18.6.96: s. 2
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 23.1, 23.2) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch. item 1) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Residential Tenancies Act 1997, No. 109/1997

Assent Date: 23.12.97
Commencement Date: S. 533(Sch. 2 item 2.1) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 35–45 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

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Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: Pt 3 (ss 6, 7) on 1.2.99: Government Gazette 24.12.98
p. 3204
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
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Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: Ss 30, 31 on 1.9.99: Government Gazette 19.8.99
p. 1901
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

Domestic Building Contracts (Amendment) Act 2000, No. 2/2000

Assent Date: 28.3.00
Commencement Date: 29.3.00: s. 2
Current State: All of Act in operation

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 37) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

House Contracts Guarantee (HIH) Act 2001, No. 26/2001

Assent Date: 7.6.01
Commencement Date: S. 16 on 8.6.01: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

Building (Amendment) Act 2001, No. 68/2001

Assent Date: 7.11.01
Commencement Date: S. 17 on 1.7.02: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

**Domestic Building Contracts (Conciliation and Dispute Resolution) Act 2002,
No. 36/2002**

Assent Date: 18.6.02
Commencement Date: Ss 3–8 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
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Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: S. 84 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Architects (Amendment) Act 2004, No. 35/2004

Assent Date: 8.6.04
Commencement Date: S. 38 on 14.6.05: Government Gazette 5.5.05 p. 851
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Domestic Building Contracts (Amendment) Act 2004, No. 37/2004

Assent Date: 8.6.04
Commencement Date: 1.5.96: s. 2
Current State: All of Act in operation

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: S. 81 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 58) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 34) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

House Contracts Guarantee (Amendment) Act 2005, No. 52/2005

Assent Date: 13.9.05
Commencement Date: S. 30 on 1.2.06: Government Gazette 25.1.06 p. 108
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

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Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 10) on 1.7.06: Government Gazette
29.6.06 p. 1315
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
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Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 221 on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 3) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
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Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 17) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 60(Sch. item 3) on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

**Criminal Procedure Amendment (Consequential and Transitional Provisions)
Act 2009, No. 68/2009**

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 46) on 1.1.10: Government Gazette
10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 7) on 1.1.11: Special Gazette
(No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s
amending the **Domestic Building Contracts
Act 1995**

Domestic Building Contracts Act 1995
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Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 14) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013, No. 34/2013

Assent Date: 18.6.13
Commencement Date: S. 35(Sch. 2 item 2) on 1.7.13: s. 2
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 33) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Consumer Affairs Legislation Amendment Act 2014, No. 50/2014

Assent Date: 12.8.14
Commencement Date: S. 29 on 13.8.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Veterans and Other Acts Amendment Act 2015, No. 12/2015

Assent Date: 21.4.15
Commencement Date: S. 21(Sch. 1 item 3) on 22.4.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Building Legislation Amendment (Consumer Protection) Act 2016, No. 15/2016

Assent Date: 19.4.16
Commencement Date: Ss 4, 72 on 4.7.16: Special Gazette (No. 194) 21.6.16 p. 1; s. 5 on 1.9.16: Special Gazette (No. 261) 23.8.16 p. 1; ss 3, 6–12 on 26.4.17: Special Gazette (No. 94) 27.3.17 p. 1
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

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House Contracts Guarantee Repeal Act 2016, No. 37/2016

Assent Date: 28.6.16
Commencement Date: S. 4 on 29.6.16: s. 2
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Building Amendment (Enforcement and Other Measures) Act 2017, No. 21/2017

Assent Date: 23.5.17
Commencement Date: S. 103 on 24.5.17: s. 2(1); ss 101, 102 on 1.7.18: s. 2(3)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Building Amendment (Registration of Building Trades and Other Matters) Act 2018, No. 46/2018

Assent Date: 25.9.18
Commencement Date: S. 77 on 26.9.18: s. 2(1)
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

Justice Legislation Miscellaneous Amendment Act 2018, No. 48/2018

Assent Date: 25.9.18
Commencement Date: Ss 43–52 on 28.10.18: Special Gazette (No. 480) 16.10.18 p. 1
Current State: This information relates only to the provision/s amending the **Domestic Building Contracts Act 1995**

3 Amendments Not in Operation

This publication does not include amendments made to the **Domestic Building Contracts Act 1995** by the following Act/s.

Domestic Building Contracts Act 1995, No. 91/1995

<i>Assent Date:</i>	5.12.95
<i>Commencement Date:</i>	Sch. 1 cl. 4(5) inserted on 26.4.17 by No. 15/2016 s. 12: Special Gazette (No. 94) 27.3.17 p. 1
<i>Note:</i>	Sch. 1 cl. 4(5) repeals Sch. 1 cl. 4 on 1.7.19
<i>Current State:</i>	This information relates only to the provision/s amending the Domestic Building Contracts Act 1995

At the date of this publication, the following provisions amending the **Domestic Building Contracts Act 1995** were Not in Operation:

Amending Act/s:

Domestic Building Contracts Act 1995, No. 91/1995

Schedule 1—Transitional provisions

4 Regulations dealing with transitional matters

(5) This clause is **repealed** on 1 July 2019.

4 Explanatory details

¹ S. 5: As a result of the definition of *domestic building work* in section 3, this Act does not apply to anything listed in this section that is also listed in section 6.

² S. 6(1)(e): Although such design work is not domestic building work for the purposes of this Act, as a result of paragraph (1)(c) of the definition of *domestic building dispute* in section 54, disputes concerning such design work may be dealt with by VCAT.

³ Pt 2 Div. 1: A warranty is a term of a contract that enables a person to seek compensation from the person who does not comply with the warranty for any loss that results from the failure to comply with the warranty. (Please note that this is not intended as an exhaustive definition.)

⁴ S. 8(c): Examples of laws that this provision applies to include the Building Regulations 2006 made under the **Building Act 1993** which in turn incorporate most of the Building Code of Australia which in turn incorporates a number of Australian Standards.

⁵ S. 9: Section 134 of the **Building Act 1993** imposes a 10 year limit on the bringing of building actions. It will apply to actions brought under section 9. The 10 years begins to run from the date the occupancy permit is issued. If no occupancy permit is issued, the 10 years runs from the date the certificate of final inspection is issued.

⁶ S. 15(1)(a): Section 33 imposes requirements on provisions such as those referred to in this paragraph if the provisions are in major domestic building contracts.

⁷ S. 20: See note 3.

⁸ S. 21(3)(b): The failure of a builder to comply with this section gives the building owner a right to apply to VCAT under section 53(2)(c) for a reduction in the amount asked for a prime cost item or provisional sum.

⁹ S. 30(4)(a): Examples of relevant standards include AS 1726—1993 and AS 2870—1996.

¹⁰ S. 31(1)(i): Section 32 imposes requirements on how these estimates are to be made.

¹¹ S. 35(3): Section 122 requires the Director to publish in the Government Gazette the form of any such notice.

¹² S. 41(4): See note 11.