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

TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART 1—PRELIMINARY</td>
<td>1</td>
</tr>
<tr>
<td>1. Purposes</td>
<td>1</td>
</tr>
<tr>
<td>2. Commencement</td>
<td>2</td>
</tr>
<tr>
<td>PART 2—AMENDMENTS TO DOMESTIC BUILDING CONTRACTS ACT 1995</td>
<td>4</td>
</tr>
<tr>
<td>3. New Part 3A inserted</td>
<td>4</td>
</tr>
<tr>
<td>PART 3A—CONCILIATION OF DISPUTES</td>
<td>4</td>
</tr>
<tr>
<td>43A. Definitions</td>
<td>4</td>
</tr>
<tr>
<td>43B. Making a complaint</td>
<td>4</td>
</tr>
<tr>
<td>43C. Conciliation</td>
<td>5</td>
</tr>
<tr>
<td>43D. Powers of the Director to institute and defend proceedings</td>
<td>5</td>
</tr>
<tr>
<td>43E. Proceedings and costs</td>
<td>6</td>
</tr>
<tr>
<td>43F. Director may ask for inspector to be appointed</td>
<td>7</td>
</tr>
<tr>
<td>4. Role of inspector</td>
<td>8</td>
</tr>
<tr>
<td>5. Appointment of inspectors</td>
<td>8</td>
</tr>
<tr>
<td>6. Reporting the results of an examination</td>
<td>9</td>
</tr>
<tr>
<td>7. New section 123A inserted</td>
<td>10</td>
</tr>
<tr>
<td>123A. Director may provide information to the Commission</td>
<td>10</td>
</tr>
<tr>
<td>8. Domestic Builders Fund</td>
<td>10</td>
</tr>
</tbody>
</table>

<p>| PART 3—AMENDMENTS TO BUILDING ACT 1993 | 11 |
| 9. Order requiring insurance | 11 |
| 10. Modification of insurance requirements for registration | 11 |
| 11. Inquiry into conduct | 12 |
| 12. New section 196A inserted | 12 |
| 196A. Commission may provide information to the Director of Consumer and Business Affairs | 12 |
| 13. Building Administration Fund | 13 |
| 14. Building permit levy | 14 |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.</td>
<td>14</td>
</tr>
<tr>
<td>New section 241B inserted</td>
<td>14</td>
</tr>
<tr>
<td>241B.</td>
<td>14</td>
</tr>
<tr>
<td>Report of inspector is evidence</td>
<td>14</td>
</tr>
<tr>
<td><strong>PART 4—AMENDMENT OF VICTORIAN CIVIL AND</strong></td>
<td>15</td>
</tr>
<tr>
<td><strong>ADMINISTRATIVE TRIBUNAL ACT 1998</strong></td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>15</td>
</tr>
<tr>
<td>New clause 12A inserted in Part 6 of Schedule 1</td>
<td>15</td>
</tr>
<tr>
<td>12A.</td>
<td>15</td>
</tr>
<tr>
<td>Tribunal may request information about domestic</td>
<td></td>
</tr>
<tr>
<td>building dispute</td>
<td></td>
</tr>
<tr>
<td><strong>ENDNOTES</strong></td>
<td>16</td>
</tr>
</tbody>
</table>
Domestic Building Contracts (Conciliation and Dispute Resolution) Act 2002†

[Assented to 18 June 2002]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

(a) to amend the Domestic Building Contracts Act 1995 in relation to—
Domestic Building Contracts (Conciliation and Dispute Resolution) Act 2002

Act No. 36/2002

(i) the powers of the Director of Consumer and Business Affairs to conciliate domestic building disputes; and

(ii) the carrying out of building inspections in the event of domestic building disputes; and

(iii) the provision of information in relation to domestic building disputes; and

(b) to amend the Building Act 1993—

(i) to provide for an increased building permit levy; and

(ii) to provide for the giving of information in relation to domestic building disputes; and

(iii) to increase the grounds on which disciplinary proceedings can be brought against a builder; and

(iv) to provide for certain reports to be evidence in proceedings against an unregistered builder; and

(v) to clarify the power to amend an insurance order; and

(c) to amend the Victorian Civil and Administrative Tribunal Act 1998 to allow the Tribunal to request information concerning domestic building disputes.

2. Commencement

(1) Subject to sub-section (2), this Act (except section 10(4)) comes into operation on a day or days to be proclaimed.
(2) If a provision of this Act (other than section 10(4)) does not come into operation before 1 July 2002, it comes into operation on that day.

(3) Section 10(4) comes into operation on 31 May 2003.
PART 2—AMENDMENTS TO DOMESTIC BUILDING CONTRACTS ACT 1995

3. New Part 3A inserted


'PART 3A—CONCILIATION OF DISPUTES

43A. Definitions

In this Part—

"building owner" includes a 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;

"domestic building dispute" does not include a dispute or claim referred to in section 54(1)(b).

43B. Making a complaint

(1) A building owner who is a party to a domestic building dispute may complain to the Director about any matter concerning that dispute.

(2) The complaint must be in writing.

(3) The Director may ask a building owner who has made a complaint to give more information about the complaint within the time fixed by the Director.

(4) A building owner who has made a complaint must give his or her name to the Director and such other information relating to his or her identity as the Director may require.
(5) A building owner may not make a complaint under this section in respect of a domestic building dispute if an application has been made to the Tribunal to determine the domestic building dispute.

43C. Conciliation

(1) If a complaint is made under section 43B, the Director may refer the dispute to a domestic building dispute conciliator for conciliation if the dispute is reasonably likely to be settled.

(2) In this section—

"domestic building dispute conciliator"

means—

(a) a person employed under Part 3 of the Public Sector Management and Employment Act 1998 in the administration of this Act; or

(b) a person or body authorised by the Director for the purposes of this section.

43D. Powers of the Director to institute and defend proceedings

(1) If a building owner is involved in a domestic building dispute, the Director may, subject to this section, 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 under sub-section (1) institute or defend proceedings on behalf of a person unless—

(a) the Minister has given his or her consent in writing, subject to any conditions that the Minister determines; and

(b) the building owner has given consent in writing, and has not revoked that consent before the proceedings or the defence is instituted.

43E. Proceedings and costs

(1) If the Director institutes or defends proceedings on behalf of a building owner under section 43D—

(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 such steps as are necessary to enforce the judgment; and

(c) 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) 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, in proceedings instituted or defended on behalf of a building owner under section 43D—

(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 or the Tribunal hearing the proceedings for an order that the counterclaim not be heard in the course of those proceedings.

(3) If the court or the Tribunal makes an order under sub-section (2), the court or the Tribunal may make those ancillary or consequential provisions (if any) that it thinks just.

43F. Director may ask for inspector to be appointed

(1) The Director may ask the Commission to appoint an inspector to examine any building work or any aspect of building work that is the subject of a domestic building dispute if—

(a) the Director considers it necessary to resolve the dispute; or

(b) the Director is not able to resolve the dispute by conciliation.
(2) A request under sub-section (1) may include a request for the appointment of an inspector to examine whether or not the domestic building work performed by the builder is defective.

(3) A request under sub-section (1) must—

(a) be in writing; and

(b) be accompanied by a copy of all documents held by the Director that relate to the request.

4. Role of inspector

In section 44 of the Domestic Building Contracts Act 1995, for sub-section (2) substitute—

"(2) Any person who is a party to a dispute may ask the Commission to appoint an inspector to examine whether or not the domestic building work performed by the builder is defective.".

5. Appointment of inspectors

(1) In section 45(1) of the Domestic Building Contracts Act 1995 for "section 44" substitute "section 43F or 44".

(2) In section 45(2) of the Domestic Building Contracts Act 1995 for "The Commission must not" substitute "If a request is made under section 44, the Commission must not".

(3) After section 45(3) of the Domestic Building Contracts Act 1995 insert—

"(4) No fee is payable in respect of the appointment of an inspector at the request of the Director under section 43F.".
(4) In section 47(2) of the Domestic Building Contracts Act 1995 for "The person" substitute "If a request is made under section 44, the person".

(5) After section 47(2) of the Domestic Building Contracts Act 1995 insert—

"(3) No costs are payable under this section if the inspector conducting the test was appointed at the request of the Director under section 43F.".

6. Reporting the results of an examination

(1) In section 48 of the Domestic Building Contracts Act 1995 for sub-section (2) substitute—

"(2) The report must be in writing and the inspector must give a copy of the report to each party to the dispute.

(2A) If an inspector has been appointed at the request of the Director under section 43F, the inspector must also give a copy of the report to the Director and the Commission.

(2B) A report must contain the prescribed information (if any).".

(2) In section 48 of the Domestic Building Contracts Act 1995, for sub-section (3) substitute—

"(3) If the inspector believes that the building work is defective, he or she must include in the report recommendations as to what should be done to rectify the defective work.".
7. New section 123A inserted

After section 123 of the Domestic Building Contracts Act 1995 insert—

"123A. Director may provide information to the Commission

The Director may provide the Commission 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."

8. Domestic Builders Fund

After section 124(2)(c) of the Domestic Building Contracts Act 1995 insert—

"(ca) all money paid to the Fund out of the domestic building dispute account in the Building Administration Fund under section 200(7E) of the Building Act 1993; and".
PART 3—AMENDMENTS TO BUILDING ACT 1993

9. Order requiring insurance

(1) In section 135(2) of the Building Act 1993 after "sub-section (1)" insert "or sub-section (4)".

(2) In section 135 of the Building Act 1993 for sub-section (4) substitute—

"(4) The Minister may, by order published in the Government Gazette, amend or revoke an order made under sub-section (1).".

10. Modification of insurance requirements for registration

(1) In section 172(2)(b) of the Building Act 1993, before "give written proof" insert "if under Part 9 the applicant is required to be covered by insurance, ".

(2) In section 172 of the Building Act 1993 for sub-sections (8) and (9) substitute—

"(8) Despite sub-section (3), the Board is not required to suspend the registration of a person for a failure to comply with sub-section (2)(b) if the Board is satisfied that—

(a) the person has applied for the required insurance; and

(b) the only reason for the person not being covered by the required insurance is that the insurer has not made a decision on the application.".
(3) In section 174 of the **Building Act 1993** for sub-sections (4) and (5) **substitute**—

"(4) Despite sub-section (1), the Board is not required to suspend the registration of a person who has ceased to be covered by the required insurance if the Board is satisfied that—

(a) the person has applied for the required insurance; and

(b) the only reason for the person not being covered by the required insurance is that the insurer has not made a decision on the application.".

(4) In the **Building Act 1993**—

(a) in section 172, sub-section (8) is **repealed**;

(b) in section 174, sub-section (4) is **repealed**.

11. **Inquiry into conduct**

After section 179(1)(fa) of the **Building Act 1993** insert—

"(fb) has failed to carry out a recommendation contained in an inspector's report under section 48 of the **Domestic Building Contracts Act 1995**; or".

12. **New section 196A inserted**

After section 196 of the **Building Act 1993** insert—

"196A. **Commission may provide information to the Director of Consumer and Business Affairs**

The Commission may provide the Director of Consumer and Business Affairs with any information held by the Commission in relation to a domestic building dispute (within the meaning of section 3 of the
Domestic Building Contracts Act 1995) if the Commission considers that the provision of the information will assist in the resolution of the dispute.”.

13. Building Administration Fund

(1) In section 200(2)(e) of the Building Act 1993 for "account." substitute "account; and".

(2) After section 200(2)(e) of the Building Act 1993 insert—

"(f) the domestic building dispute account.".

(3) After section 200(3C) of the Building Act 1993 insert—

"(3D) Amounts paid into the fund on account of the building permit levy payable under section 201(1C) must be credited to the domestic building dispute account.".

(4) In section 200(5)(d) of the Building Act 1993 for "sub-section (7D)." substitute "sub-section (7D); or".

(5) After section 200(5)(d) of the Building Act 1993 insert—

"(e) out of the domestic building dispute account in accordance with sub-section (7E).".

(6) After section 200(7D) of the Building Act 1993 insert—

"(7E) Amounts may be paid out of the domestic building dispute account to the Domestic Builders Fund established under the Domestic Building Contracts Act 1995 and to the building permit levy account in the proportions determined from time to time by the Minister and the Minister administering the Domestic Building Contracts Act 1995.".
14. Building permit levy

(1) In section 201(1B) of the Building Act 1993 for "or (1A)" substitute ", (1A) or (1C)".

(2) After section 201(1B) of the Building Act 1993 insert—

"(1C) There is imposed by this Act, in addition to the levy imposed by sub-sections (1) and (1A), a building permit levy of .064 cents in every dollar of the cost of building work for which a building permit is sought."

(3) After section 201(10) of the Building Act 1993 insert—

"(11) The additional building levy imposed by sub-section (1C) is not payable in respect of an application for a building permit made before 1 July 2002."

15. New section 241B inserted

After section 241A of the Building Act 1993 insert—

"241B. Report of inspector is evidence

A copy of a report of an inspector given to the Commission under section 48 of the Domestic Building Contracts Act 1995 relating to an unregistered builder, is evidence in any proceeding against the builder under this Act or the regulations."
PART 4—AMENDMENT OF VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998

16. New clause 12A inserted in Part 6 of Schedule 1

In Part 6 of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998, after clause 12 insert—

"12A. Tribunal may request information about domestic building dispute

(1) The Tribunal may request the Director or the Building Commission to provide the Tribunal with any information held by the Director or the Commission that relates to a proceeding under the Domestic Building Contracts Act 1995 in relation to a domestic building dispute within the meaning of section 3 of that Act.

(2) The Director or the Commission (as the case requires) must comply with a request under sub-clause (1).".
ENDNOTES

† Minister’s second reading speech—
Legislative Assembly: 16 May 2002
Legislative Council: 11 June 2002

The long title for the Bill for this Act was "to amend the Domestic Building Contracts Act 1995 to provide for the conciliation of domestic building disputes, to amend the Building Act 1993 to increase the building permit levy and to further regulate domestic builders, to amend the Victorian Civil and Administrative Tribunal Act 1998 and for other purposes."