

# LEGISLATIVE ASSEMBLY

Read 1<sup>o</sup> 8 December 1981

*(Brought in by Mr Lieberman and Mr Wood)*

## A BILL

To further amend Division 1A. of part XLIX. of the  
*Local Government Act 1958.*

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Local Government (House Builders' Liability Further Amendment) Act 1981.* Short title.

(2) In this Act the *Local Government Act 1958* is referred to as the Principal Act. Principal Act No. 6299. Reprinted to No. 8781.

Subsequently amended by Nos. 8794, 8811, 8862, 8875, 8893, 8958, 8970, 9019, 9022, 9078, 9079, 9116, 9126, 9129, 9143, 9148, 9159, 9162, 9178, 9180, 9182, 9212, 9224, 9225, 9254, 9283, 9354, 9356, 9385, 9390, 9402, 9425, 9512, 9537, 9539, 9544, 9552, 9567, 9573, 9574, 9575, 9576 and 9590.

10 (3) This Act shall come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette.* Commencement.

Amendment of  
No. 6299  
s. 918A.

**2. Section 918A of the Principal Act is amended as follows:**

- (a) In sub-section (1) in the interpretation of "Contract price"—
- (i) for the expression "\$40,000" (wherever occurring) there shall be substituted the expression "\$48 000"; 5  
and
- (ii) in paragraphs (c) and (d) for the expression "the unimproved capital value of that land within the meaning of section 254" there shall be substituted the expression— 10  
"the site value of that land within the meaning of section 315A";
- (b) In sub-sections (3) and (5) after the word "appurtenances" there shall be inserted the expression "(except bathing wading and swimming pools)"; 15
- (c) After sub-section (3) there shall be inserted the following sub-section:
- "(3A) A reference in this Division to a contract for the construction of a dwelling-house includes—
- (a) a reference to a contract for the sale of a 20  
dwelling-house construction of which has begun but has not been completed at the date of the contract; and
- (b) a reference to a contract for the completion of the construction of a dwelling-house."; and 25
- (d) For sub-section (4) there shall be substituted the following sub-section:
- "(4) A reference in this Division to defects or major defects in a dwelling-house includes—
- (a) a reference to subsidence and settlement of 30  
the foundations of the dwelling-house other than subsidence or settlement caused by earthquake; and
- (b) a reference to upward movement of the soil beneath the dwelling-house other than upward 35  
movement caused by earthquake.".

Amendment of  
No. 6299 s. 918C.

**3. Section 918C of the Principal Act is amended as follows:**

- (a) In sub-section (1) for the words "subsidence or settlement of the foundations of the dwelling-house other than subsidence or settlement caused by earthquake" 40  
there shall be substituted the following expression:
- "(a) subsidence or settlement of the foundations of the dwelling-house other than subsidence or settlement caused by earthquake; or
- (b) upward

(b) upward movement of the soil beneath the dwelling-house other than upward movement caused by earthquake.”;

5 (b) In sub-section (2) (a) for the words “that year” there shall be substituted the words “the period of fifteen months after the issue of the certificate of occupancy”;

(c) After sub-section (2) there shall be inserted the following sub-section:

10 “(3) Nothing in sub-section (1) makes a person liable for loss or damage suffered by a person which he proves was caused by an act or omission of a person other than—

(a) the first-mentioned person; or

15 (b) a person employed by or under contract to the first-mentioned person.”.

4. In section 918D (a) of the Principal Act for the words “that year” there shall be substituted the words “the period of fifteen months after the issue of the certificate of occupancy”.

Amendment of  
No. 6299  
s. 918D.

20 5. Section 918K of the Principal Act is amended as follows:

Amendment of  
No. 6299  
s. 918K.

(a) In sub-section (1) (a) for the expression “\$2,000 or 10 per cent.” there shall be substituted the expression “\$5000 or 15 per cent.”;

25 (b) In sub-section (1) (c)—

(i) after the word “dwelling-house” there shall be inserted the words “before the end of the first year after the issue of the certificate of occupancy”;

(ii) for the words “first year” there shall be substituted the words “period of fifteen months”; and

30 (iii) the words “and to the approved guarantor” shall be repealed;

(c) In sub-section (1) (d)—

(i) after the word “workmanship” there shall be inserted the words “of the builder”; and

35 (ii) the words “and to the approved guarantor” shall be repealed;

(d) After sub-section (1A) there shall be inserted the following sub-section:

40 “(1B) Nothing in paragraph (a) of sub-section (1) shall prevent a person from also claiming loss or damage under paragraphs (c) or (d) or both (c) and (d) of that sub-section.”;

(e) After

- (e) After sub-section (3A) there shall be inserted the following sub-sections:
- “(3B) A claim for loss or damage under paragraph (a) of sub-section (1) may not be brought after the expiration of the period of two years after— 5
- (a) in the case of a builder being a natural person, the date on which the builder became a bankrupt or committed the act of bankruptcy; or
- (b) in the case of a builder being a body corporate, 10 the date on which it is commenced to be wound up.
- (3C) A claim for loss or damage under paragraph (b) of sub-section (1) may not be brought after the expiration of the period of three years after the date of 15 the contract.”;
- (f) In sub-section (5) paragraph (a) shall be repealed.

Amendment of  
No. 6299  
s. 918L.

6. Section 918L of the Principal Act is amended as follows:

- (a) In sub-section (1) (a)—
- (i) after the word “dwelling-house” (where secondly 20 occurring) there shall be inserted the words “before the end of the first year after the issue of the certificate of occupancy”;
- (ii) the words “and to the approved guarantor” shall 25 be repealed; and
- (iii) for the words “first year” there shall be substituted the words “period of fifteen months”;
- (b) In sub-section (1) (b) the words “and to the approved guarantor” shall be repealed.
- (c) In sub-section (4) paragraph (a) shall be repealed. 30

Amendment of  
No. 6299.  
New sections  
918LA and  
918LB.  
Offer by builder  
to rectify.

7. After section 918L of the Principal Act there shall be inserted the following sections:

“918LA. (1) Where—

- (a) a person has made a claim for loss or damage under paragraph (c) or (d) of sub-section (1) of section 918K 35 or paragraph (a) or (b) of sub-section (1) of section 918L;

(b) the

(b) the builder in respect of whom the claim has been made has by an offer in writing addressed to that person offered to rectify the defect in respect of which the claim was made; and

5 (c) that person during the period of six months after the receipt of that offer has not permitted the builder to rectify the defect—

the builder may, at the end of that period, refer the matter to the Minister for his consideration together with particulars of the offer  
10 and such other information as the Minister may require.

(2) If, after considering any matter referred to him under sub-section (1), the Minister is of the opinion that the person making the claim may be behaving unreasonably in not permitting the builder to rectify the defect, he may—

15 (a) by writing under his hand give notice to that person that unless he shows cause within one month why he should not permit the builder to rectify the defect, the Minister may determine that the claim lapses; or

(b) direct the builder to take the matter to arbitration.

20 (3) Where a person to whom notice is given under sub-section (2) (a) does not show cause within the prescribed period why the builder should not be permitted to rectify the defect, the Minister may determine that the claim lapses.

918LB. (1) Where an approved guarantor has made an offer in writing to a person in respect of a claim by that person for loss or damage under section 918K or 918L and the person making the claim has not accepted or rejected the offer within the period of three months after the receipt of the offer, the approved guarantor may at the end of that period refer the matter to the Minister together  
30 with particulars of the offer and such other information as the Minister may require.

Offer made  
by approved  
guarantor.

(2) If, after considering any matter referred to him under sub-section (1), the Minister is of the opinion that the person making the claim may be behaving unreasonably in not advising the  
35 approved guarantor of its acceptance or rejection of the offer, he may—

(a) by writing under his hand, give notice to that person that unless he advises the approved guarantor of his acceptance or rejection of the offer within one month, the Minister may determine that the person shall be deemed to have accepted the offer; or

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(b) direct the approved guarantor to take the matter to arbitration.

(3) Where

(3) Where a person to whom a notice has been given under sub-section (2) (a) does not advise the approved guarantor within the prescribed time of his acceptance or rejection of the offer, the Minister may determine that the person shall be deemed to have accepted the offer.”.

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Amendment of  
No. 6299  
s. 918M.

8. Section 918M of the Principal Act is amended as follows:

(a) In sub-section (2) (a) for the expression “\$2,000 or 10 per cent.” there shall be substituted the expression “\$5000 or 15 per cent.”;

(b) In sub-section (2) (c)— 10  
for the words “that year” there shall be substituted the words “the period of fifteen months after the issue of the certificate of occupancy”;

(c) After sub-section (2A) there shall be inserted the following sub-sections: 15

“(2B) Nothing in paragraph (a) of sub-section (2) shall prevent a person from claiming loss or damage under paragraphs (c) or (d) or both (c) and (d) of that sub-section.

(2C) A claim for loss or damage under paragraph (a) 20  
of sub-section (2) may not be brought after the expiration of the period of two years after—

(a) in the case of a builder being a natural person, the date on which the builder became a bankrupt or committed the act of bankruptcy; 25  
or

(b) in the case of a builder being a body corporate, the date on which it is commenced to be wound up.

(2D) A claim for loss or damage under paragraph (b) 30  
of sub-section (2) may be not brought after the expiration of the period of three years after the date of the contract.”;

(d) Sub-section (3) shall be repealed.

Amendment of  
No. 6299  
s. 918N.

9. Section 918N of the Principal Act is amended as follows: 35

(a) In sub-section (2) (a) for the words “that year” there shall be substituted the words “the period of fifteen months after the issue of the certificate of occupancy”;

(b) Sub-section (3) shall be repealed.



