

Building (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY MATTERS

Clause 1 states the purpose of the Act.

Clause 2 states:

- (1) Part 1 comes into operation upon receiving the Royal Assent;
- (2) Parts 2 and 3 come into operation on 24 March 1997;
- (3) Part 4 comes into operation on 29 November 1998.

PART 2—TRANSFER OF PLUMBING PROVISIONS

Clause 3 inserts a new definition of "business day" into the **Building Act 1993**.

Clause 4 amends section 4 of the **Building Act 1993**, which sets out the objects of the Act, to include references to plumbing.

Clause 5 inserts a new Part into the **Building Act 1993**. The new Part is Part 12A.

PART 12A—PLUMBING WORK

Division 1—Preliminary Matters

Proposed section 221A states the purpose of Part 12A.

Proposed section 221B contains the definitions.

Proposed section 221C states that what constitutes "plumbing work" for the purposes of Part 12A is set out in the regulations. References in the Part to plumbing are to be read as including gasfitting and draining work.

Division 2—Restrictions Concerning the Carrying Out of Plumbing Work

Proposed section 221D makes it an offence, subject to certain exceptions, for a person who is not licensed or registered under the Part to carry out plumbing work.

Proposed section 221E makes it an offence, subject to certain exceptions, for a person who is not licensed under the Act to carry out plumbing work for which a compliance certificate is required.

Proposed section 221F makes it an offence for a person to carry out specialised plumbing work unless he or she is licensed by the Board to carry out that work.

Proposed section 221G makes it an offence for a licensed plumber to permit plumbing work to be carried out for him or her by persons who are not permitted by the Part to carry out the work.

Proposed section 221H exempts persons involved in plumbing businesses from the requirement to be licensed or registered under the Part as long as plumbing work carried out by or for the business is carried out by persons permitted by the Part to carry out the work.

Proposed section 221I makes it an offence to use the terms "plumber", "licensed plumber" or "registered plumber" unless the person using the term is appropriately licensed or registered under the Part.

Proposed section 221J makes it an offence to use the terms "drainer", "licensed drainer" or "registered drainer" unless the person using the term is appropriately licensed or registered under the Part.

Proposed section 221K makes it an offence to use the terms "gasfitter", "licensed gasfitter" or "registered gasfitter" unless the person using the term is appropriately licensed or registered under the Part.

Proposed section 221L provides certain exceptions to proposed sections 221I-221K.

Division 3—The Licensing and Registration of Plumbers

Proposed section 221M sets out the requirements a person must satisfy to be licensed by the Plumbing Industry Board as a plumber.

Proposed section 221N sets out the requirements a person must satisfy to be licensed by the Board to carry out specialised plumbing work.

Proposed section 221O sets out the requirements a person must satisfy to be registered by the Board as a plumber.

Proposed section 221P sets out the requirements a person must satisfy to be provisionally registered by the Board to carry out plumbing work or specialised plumbing work.

Proposed section 221Q provides for the Board to give restricted licences to persons to carry out limited kinds of plumbing work.

Proposed section 221R provides for the Board to give restricted registration to persons to carry out limited kinds of plumbing work.

Proposed section 221S allows the Board to refuse to licence or register persons who have been convicted of certain offences.

Proposed section 221T sets out the method by which a natural person may apply to the Board to be licensed or registered under the Part.

Proposed section 221U allows the Board to require applicants to give further information concerning the application to the Board, and to refuse the application if the information is not given.

Proposed section 221V makes it an offence to give false information to the Board.

Proposed section 221W allows the Registrar of the Board to license or register a person temporarily pending the Board's approval or rejection of an application for a licence or registration.

Proposed section 221X provides for the Board to impose conditions on a person's licence or registration.

Proposed section 221Y allows the Registrar to issue duplicate licences or certificates of registration if the original is lost, mutilated or destroyed.

Proposed section 221Z sets out the time periods for which licensing and registration last. Generally, licensing lasts for one year, and registration lasts for three years.

Proposed section 221ZA requires plumbers to notify the Board of changes in business address and telephone number.

Proposed section 221ZB sets out the method by which persons licensed or registered under the Part may renew their licence or registration.

Proposed section 221ZC allows the Board to require applicants for renewal of a licence or registration to give further information concerning the application to the Board, and to refuse the application if the information is not given.

Proposed section 221ZD provides grounds upon which the Board may refuse to renew a licence or registration, and provides for the Board to require applicants for renewal to demonstrate their competency to carry out plumbing work.

Proposed section 221ZE allows the Board to permit late renewals in certain circumstances.

Proposed section 221ZF requires the Board to give written reasons if it refuses to licence or register a person or refuses to renew a licence or registration.

Division 4—Compliance Certificates

Proposed section 221ZG provides that Division 4 does not apply to plumbing work involving Type B gas installations. Type B gas installations are to be defined in the regulations made under the **Gas Industry Act 1994**. Generally speaking, Type B gas installations are large or complex installations. Such installations will continue to be regulated under the **Gas Industry Act 1994**.

Proposed section 221ZH requires licensed plumbers completing—

- (a) plumbing work of a total value of \$500 or more; or
- (b) the installation of any gas using appliance; or
- (c) the construction or installation or alteration of a sanitary drain—

to give the person for whom the work was done a signed compliance certificate in respect of the work and to notify the Board that the compliance certificate has been given, both within 5 days of the completion of the work.

Plumbing work of a total value of \$500 or more includes repair or maintenance to a total value of \$500 or more of a gas using appliance. However sub-section (1)(b) requires a compliance certificate to be given when a gas-using appliance is installed, whatever the value of the appliance and associated materials and labour

Proposed section 221ZI sets out the details that must appear on a compliance certificate.

Proposed section 221ZJ makes it an offence for a licensed plumber to sign a compliance certificate if the plumber knows, or ought reasonably to know that the certificate contains any misstatement of fact.

Proposed section 221ZK makes it an offence for anyone other than a licensed plumber to sign a compliance certificate.

Proposed section 221ZL defines the "total value of plumbing work" for the purposes of the Division.

Proposed section 221ZM requires a person to keep for at least 10 years a copy of every compliance certificate signed by him or her.

Proposed section 221ZN sets out the manner in which the Board may sell compliance certificates to licensed plumbers, and the manner in which licensed plumbers may purchase compliance certificates.

Proposed section 221ZO makes further provision in respect of compliance certificates if a licensed plumber constructs, installs or alters a sanitary drain.

Division 5—Provisions Applying to Particular Plumbing Work

Proposed section 221ZP make provision for the inspection of sanitary drainage work before the work is covered.

Division 6—Insurance Orders

Proposed section 221ZQ provides for the Minister responsible for the Act to require licensed plumbers to be covered by insurance.

Proposed section 221ZR makes it an offence for a licensed plumber to carry out plumbing work if he or she is not covered by the required insurance.

Proposed section 221ZS makes it an offence for a person who carries out plumbing work and who is not covered by the required insurance to claim that he or she is covered by that insurance.

Proposed section 221ZT sets out certain matters to which a requirement under proposed section 221ZQ may extend.

Proposed section 221ZU requires the Board to suspend the licence of a licensed plumber if it becomes aware that he or she has ceased to be covered by the required insurance.

Proposed section 221ZV allows an insurer to apply to the Board for the suspension of the licence of a licensed plumber if the plumber fails to comply with certain directions of the insurer.

Division 7—Rectification of Defective Plumbing Work

Proposed section 221ZW allows a plumbing inspector or compliance auditor to serve a rectification notice on a plumber requiring the plumber to rectify his or her faulty plumbing work.

Proposed section 221ZX allows a plumber who has received a rectification notice to apply to the Administrative Appeals Tribunal for review of the decision to issue the notice.

Proposed section 221ZY allows a plumbing inspector to serve a plumbing notice on an owner or occupier of land or a building, requiring the owner or occupier to show cause why he or she should not rectify faulty plumbing work on the land or in the building.

Proposed section 221ZZ allows an owner or occupier who has been given a plumbing notice to make representations about any matter set out in the notice to the inspector who issued the notice.

Proposed section 221ZZA states that a plumbing inspector who gave a plumbing notice may cancel it at any time.

Proposed section 221ZZB provides for a plumbing inspector to issue a plumbing order to an owner or occupier of land or a building, requiring the owner or occupier to rectify faulty plumbing work on the land or in the building. Such an order may only be issued after a plumbing notice has been issued and the owner or occupier has had time to make representations about the matters contained in the notice.

Proposed section 221ZZC requires an owner or occupier to comply with any plumbing order he or she has received.

Proposed section 221ZZD allows a plumbing inspector who issued a plumbing order to cancel it at any time.

Proposed section 221ZZE provides for a person who has received a plumbing order to apply to the Administrative Appeals Tribunal for review of the decision to issue the order.

Proposed section 221ZZF allows a plumbing inspector to issue an emergency plumbing order requiring immediate rectification of faulty plumbing work that poses an immediate threat to the safety of any person, or poses an immediate risk of significant damage to property.

Proposed section 221ZZG makes it an offence not to comply with an emergency plumbing order without reasonable excuse.

Proposed section 221ZZH allows a plumbing inspector who issued an emergency plumbing order to cancel it in limited circumstances.

Proposed section 221ZZI requires plumbing inspectors to issue emergency plumbing orders only as a last resort.

Proposed section 221ZZJ requires a person who is required by a plumbing order or emergency plumbing order to rectify faulty plumbing work to notify the plumbing inspector who issued the order when the work has been rectified.

Proposed section 221ZZK provides for the Board or a plumbing inspector to carry out plumbing work where a person fails to comply with a plumbing order or emergency plumbing order. The Board may recover the costs of carrying out the work from the person who should have carried out the work.

Proposed section 221ZZL provides for a plumbing inspector to obtain police assistance in enforcing a plumbing order or emergency plumbing order.

Division 8—Interpretation and Modification of Plumbing Regulations

Proposed section 221ZZM defines "plumbing regulations" for the purposes of Division 8. For the purposes of this Division, plumbing regulations do not include regulations applying to gasfitting.

Proposed section 221ZZN provides for the Board to resolve disputes between owners, occupiers, plumbers and officers of the Board concerning the interpretation of plumbing regulations. Persons may apply to the Administrative Appeals Tribunal for review of Board decisions under this proposed section.

Proposed section 221ZZO provides for the Board to declare that a provision of the plumbing regulations does not apply to individual cases of specific plumbing work.

Proposed section 221ZZP requires the Board to declare that a provision of the plumbing regulations does not apply to individual cases of specific plumbing

work only when it would be inappropriate in the circumstances to require compliance with the plumbing regulations, and only when a declaration would not be detrimental to the public interest.

Proposed section 221ZZQ specifies the procedure for hearings under Division 8.

Division 9—The Plumbing Industry Board

Proposed section 221ZZR establishes a Plumbing Industry Board.

Proposed section 221ZZS states that the Board is a body corporate.

Proposed section 221ZZT sets out the membership of the Board.

Proposed section 221ZZU details the functions of the Board.

Proposed section 221ZZV sets out the general powers of the Board.

Proposed section 221ZZW provides for the conditions of appointment of Board membership and for the procedures of the Board.

Proposed section 221ZZX provides for the Board to establish and dissolve sub-committees.

Division 10—Enforcement

Proposed section 221ZZY provides for the Board to appoint or employ compliance auditors and plumbing inspectors.

Proposed section 221ZZZ details the functions of compliance auditors.

Proposed section 221ZZZA sets out the powers of compliance auditors.

Proposed section 221ZZZB requires plumbers to give information to compliance auditors except where the information may incriminate the plumber.

Proposed section 221ZZZC sets out entry powers of compliance auditors and plumbing inspectors in addition to those in Part 13 of the Act.

Proposed section 221ZZZD requires the Board to inspect plumbing work if GASCOR or a water authority requests the Board to do so.

Proposed section 221ZZZE provides for authorised officers of the Board to serve infringement notices on licensed plumbers who do not comply with the

requirements relating to compliance certificates in proposed section 221ZH. The Proposed section sets out the information that must be contained in infringement notices, and the procedure by which the offender may expiate the offence and pay the fine. A person may decline to pay the fine and may defend the charges in the Magistrates' Court.

Division 11—Inquiries and Disciplinary Action

Proposed section 221ZZZF provides for the Board to inquire as to whether a licensed or registered plumber should be disciplined under this Division.

Proposed section 221ZZZG sets out the grounds on which a licensed or registered plumber may have disciplinary action taken against him or her.

Proposed section 221ZZZH sets out the procedure by which an inquiry must be commenced.

Proposed section 221ZZZI sets out the procedure by which an inquiry must be conducted.

Proposed section 221ZZZJ sets out the ways in which the Board may discipline a licensed or registered plumber.

Proposed section 221ZZZK states that the Board must, unless there is good reason for not doing so, suspend the licence of a licensed or registered plumber who has contravened the requirements relating to compliance certificates on at least 2 separate occasions within a 3 year period.

Proposed section 221ZZZL allows the Board to revoke a suspension or cancellation of a licence or registration at any time.

Proposed section 221ZZZM allows the Board to transfer some or all of any amount that a licensed or registered plumber is fined under the disciplinary provisions to person who suffered loss because of the plumber's misconduct.

Proposed section 221ZZZN sets out certain procedural matters applying when a sub-committee of the Board conducts an inquiry or takes disciplinary action.

Proposed section 221ZZZO provides for disciplinary hearings to continue even though one of the members of the Board who are hearing the matter cannot continue to hear the matter.

Division 12—Review of decisions

Proposed section 221ZZZP provides for a person affected by a decision of the Board to apply to the Administrative Appeals Tribunal for review of the decision.

Proposed section 221ZZZQ states that the **Building Act 1993** prevails over the **Administrative Appeals Tribunal Act 1984** in the case of inconsistency.

Division 13—Administrative Matters

Proposed section 221ZZZR requires the Board to establish a general fund.

Proposed section 221ZZZS allows the Board to appoint or employ staff.

Proposed section 221ZZZT requires the Registrar to keep a register containing details of licensed and registered plumbers.

Proposed section 221ZZZU provides for the Minister to declare by publication in the Gazette that specified plumbing work is specialised plumbing work for the purposes of the Part, and to declare the qualifications, knowledge and experience required to be licensed to carry out the specialised plumbing work.

Proposed section 221ZZZV gives the Governor in Council the power to make regulations with respect to matters under Part 12A.

Proposed section 221ZZZW prescribes fees to be paid under the Part. This provision will be repealed when Proposed section 26 of the Bill comes into operation, which will occur on 1 January 1998 under clause 1(4). From that date regulations made under the Part will prescribe fees.

Clause 6 inserts section 134A into the **Building Act 1993**, preventing the bringing of an action for damages for loss arising out of defective plumbing work more than 10 years from the date the compliance certificate was issued. This provision is a trade-off for the compulsory insurance scheme. All consumers are protected for 10 years by the insurance that all plumbers must hold, but there must be a time limit on the insurance cover, otherwise insurance premiums, the cost of which is passed on to consumers, will be too high. The bar on bringing actions after 10 years means insurance need not apply to plumbing work beyond that time.

- Clause 7 amends section 217 of the **Building Act 1993**, which specifies which provisions of the Act apply to the Crown and public bodies, to ensure that Part 12A binds the Crown.
- Clause 8 makes amendments to certain enforcement provisions of the **Building Act 1993**, to provide for enforcement-related matters arising from the new Part 12A.
- Clause 9 inserts a new sub-section (2) into section 260 of the **Building Act 1993**, the effect of which is to prevent the Supreme Court from hearing an action of the kind referred to in section 134A (inserted by clause 6 of the Bill). The Minister's second reading speech contains an explanation of the reasons for this provision, as required by section 85(5) of the **Constitution Act 1975**. The reasons are outlined in the explanatory memorandum to clause 6 above.
- Clause 10 makes amendments to the regulation-making powers in the **Building Act 1993**, to extend certain existing regulation-making powers to plumbing work.
- Clause 11 makes consequential amendments to the **Water Act 1989**.
- Clause 12 amends section 160(1)(c) of the **Water Act 1989** to remove the power of water authorities to make by-laws setting technical standards for plumbing. A new section 160(1)(c) is substituted, giving water authorities the power to make by-laws relating to sanitary drainage plans.
- Clause 13 amends section 50(c) of the **Water Act 1989** to remove the power to make regulations under that Act setting technical standards for plumbing. A new section 50(c) is substituted, providing a power to make regulations relating to sanitary drainage plans. The clause makes further provision to ensure that the **Water Industry Act 1994** does not conflict with Part 12A of the **Building Act 1993**.
- Clause 14 makes provision for the Plumbing Industry Board to carry out inspections of certain water supply or sewerage work which would, but for the proclamation of this Bill, be carried out by water agencies and which the water agencies are obliged to carry out.

PART 3—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

- Clause 15 states that in this Part, "former Act" means the **Building Control (Plumbers Gasfitters and Drainers Act) 1981**, and "new Act" means the **Building Act 1993**.

- Clause 16 provides for the **Building Control (Plumbers Gasfitters and Drainers Act) 1981** to be repealed.
- Clause 17 provides for the Plumbing Industry Board to be the successor in law of the Plumbers Gasfitters and Drainers Registration Board established under the **Building Control (Plumbers Gasfitters and Drainers Act) 1981**.
- Clause 18 extinguishes on 23 March 1997 all endorsements of the register under section 93 of the former Act, but provides that any person who is a licensed plumber or drainer when the endorsements are extinguished is deemed to be a registered plumber under the new Act. Clauses 15 and 16 describe how a licensed plumber under the former Act can become a licensed plumber under the new Act.
- Clause 19 provides that a person licensed to carry out gasfitting work under the former Act can become provisionally licensed under the new Act if he or she obtains the required insurance. However he or she need not comply with the provisions relating to compliance certificates. The inspection provisions in the Gas and Fuel Corporation (Gas Installations) Regulations 1992 will continue to apply to gas installation work carried out by such provisionally licensed persons until 23 March 1998. By that date a provisionally licensed person must have gained a full licence if he or she wishes to continue carrying out gasfitting work. The provisionally licensed person will be required to demonstrate to the Board that he or she has sufficient skill and knowledge to move to the system of 'self-certification' provided for in the new Part 12A before he or she can obtain a full licence under the new Act.
- Clause 20 provides that person licensed under the former Act in classes of plumbing work other than gasfitting can obtain a licence under the new Act by obtaining the required insurance.
- Clause 21 provides that persons who are registered under the former Act in the classes of Draining Work, Plumbing (Duct Fixing) and Plumbing (Roofing); and hold the required insurance are deemed to be licensed under the new Act until 23 June 1997, or, if the person applies for a licence under the new Act, until their application for a licence has been determined.
- Clause 22 provides that persons who were registered plumbers under the former Act are deemed to be registered plumbers under the new Act, and any conditions that applied to their registration under the former Act apply to their registration under the new Act.

- Clause 23 provides that permit holders under the former Act are deemed to be provisionally registered, under the new Act, and any conditions that applied to their permit under the former Act apply to their registration under the new Act.
- Clause 24 provides for a refund of \$35 to holders of contractors' authorities under the former Act, being that portion of the fee paid by them for the contractor's authority corresponding to the unused portion of their contractor's authority when the former Act is repealed.
- Clause 25 sets out what happens to any appeals under section 100J of the former Act in respect of which the County Court has not delivered a decision before the former Act is repealed. Section 100J of the former Act relates to appeals against decisions of the former Board not to grant or renew licences or registration.
- Clause 26 sets out what happens to any appeals under section 106 of the former Act in respect of which the County Court has not delivered a decision before the former Act is repealed. Section 106 of the former Act relates to appeals against decisions of the former Board to discipline licensed or registered plumbers.
- Clause 27 states how applications for licences and registration under the former Act, which have not been decided by the Board when the former Act is repealed, are to be treated under the new Act.
- Clause 28 provides that the Victorian Water Supply and Sewerage Plumbing Regulations 1994 (made under the **Water Act 1989**) and the Plumbers Gasfitters and Drainers Registration Board Regulations 1988 (made under the **Building Control (Plumbers Gasfitters and Drainers Act) 1981**) are deemed to have been made under the **Building Act 1993**.

The Plumbers Gasfitters and Drainers Registration Board Regulations 1988 will be revoked on 29 November 1998, if they are not revoked before that date. That date is the date on which the Regulations would be revoked by operation of the **Subordinate Legislation Act 1994** if the **Building Control (Plumbers Gasfitters and Drainers Act) 1981** was not repealed.

PART 4—PROVISION WITH DELAYED IMPLEMENTATION

- Clause 29 repeals clause 221ZZZW of the **Building Act 1993**. Clause 221ZZZW prescribes fees to be paid under the new Part 12A, and will be repealed when

clause 26 comes into operation on 29 November 1998 under clause 2(3). From that date regulations made under the Part will prescribe fees.