Review of the Domestic Building Contracts Act 1995

Master Builders Victoria Submission

Executive Summary

Master Builders Victoria (MBV) is the leading voice and representative of the Victorian building and construction industry. In response to the request from the Hon. Gabrielle Williams MP, Minister for Consumer Affairs, MBV are pleased to provide a submission into the Domestic Building Contracts Act (DBC Act) review.

The current state of the DBC Act fails to meet the demands of contemporary building practices, consumer expectations, and market competitiveness. Key areas requiring attention include definitions, procedural alignment with financial institutions such as banks and insurance, and risk mitigation strategies for builders.

Furthermore, there is a pressing need for a regulatory framework that acknowledges the diverse requirements of volume building in greenfield developments, multi-unit projects and minor works, which differ significantly from single-dwelling constructions.

Builder cash flow remains a critical issue, exacerbated by high upfront costs, rigid distribution of stage payments, and inflexible fixed-price contracts. These challenges persist within a dynamic economic environment, underscoring the urgency for reforms to promote financial stability and flexibility within the industry.

About Master Builders Victoria (MBV)

MBV represents over 6,000 stakeholders from across the building and construction industry. They range from large and small builders, tradespeople across the domestic and commercial sectors, apprentices, suppliers and manufacturers.

The building and construction industry is one of the most important sectors of the Victorian economy. Our industry is the third-largest full-time employer in Victoria and supports 126,370 businesses, more than every other sector of the economy. The overwhelming majority of these businesses (98.8 per cent) are small, with less than 20 employees.

Building and construction activity has one of the largest multiplier effects on the economy. This is because the structure of activity requires high domestic content for our industry's inputs, such as building materials, labour, and professional services. As a result, it is estimated that every $1 million spent on residential building activity delivers $3 million worth of economic activity.

Our industry delivers housing, parks, infrastructure, schools, hospitals, and other important amenities for the liveability of all Victorians, critical to our community's well-being and the state's future prosperity.

Consultation Questions

Major domestic building contracts

Q 1: Should there be any changes to the monetary threshold for a MDBC?

A Major Domestic Building Contract (MDBC) encompasses a variety of different building work, from volume building in greenfield developments, multi-unit projects in urban cities to single-dwelling constructions, to renovations and minor works, including sheds and landscaping.

Currently, the legislation and regulations require the following:

- Domestic building works that exceed $10,000 must be completed under an MDBC.
- Domestic building works valued at *$16,000* or more will also require Domestic Building Insurance (DBI).
- Builders are permitted to demand a 5 per cent deposit when an MDBC is valued at *$20,000* or more.

MBV recommends an upward revision of the monetary thresholds that trigger the requirement for an MDBC and DBI to align with the current monetary threshold ($20,000) that allows for a 5 per cent deposit.

The monetary thresholds that trigger the requirement for an MDBC and DBI need to be raised to reflect the rising costs of building supplies, trades, and materials. MBV have supported the reforms to increase the DBI threshold to $20,000 in consultations with the Department of Energy, Environment and Climate Action (DEECA).

Aligning these monetary thresholds will also streamline the contracting process for domestic building works and prevent confusion about what contract values trigger what conditions.

Q 2: Should there be additional requirements for domestic building contracts that fall under the MDBC threshold? For example, extending any of the MDBC requirements to apply to all domestic building contracts.

Multi-storey Residential Buildings

The current regulatory framework does not adequately address the different contractual relationships arising from varying-scale construction projects. The DBC Act must distinguish between single, standalone dwellings and multi-storey residential buildings because the relationship between the consumer and builder is different.

In multi-storey residential buildings, builders are engaged by commercially experienced developers in a team of other specialists, such as structural, civil, mechanical, and electrical engineers, while being the sole stakeholder subject to the consumer protection framework of the DBC Act. Consumers, who are the eventual homeowners, lack direct contractual relationships with builders.

The inherently complex and risk-laden nature of multi-storey residential building developments necessitates a legislative shift in the traditional builder-centric approach towards a collaborative risk management framework. This collaborative framework should acknowledge the responsibilities of various specialists and commercially experienced parties and apportion consumer warranties appropriately.

[redacted]

The DBC Act should align with the National Construction Code (NCC) framework by distinguishing buildings based on building classification to ensure enhanced interpretability and proportionate regulatory burdens on builders and to accommodate the diverse risks associated with different building classes and heights.

The current regulatory landscape lacks a consistent definition for 'multi-storey residential building', creating potential confusion and inconsistencies in application across various legislative instruments. While previously defined in regulation 1807 of the Building Regulations 2006, this term is now absent from the Building Act, Building Regulations, DBC Act, and DBC Regulations.

This review could consider the following:

- Establishing a dedicated 'multi-storey residential building' class within relevant legislation.
- Aligning the definition with the established criteria within the NCC for consistency and clarity.
- Ensuring consistency in terminology and application across the different regulatory regimes.

Changes to this effect would mean that any building work in Victoria would be bound by the same requirements as those under MDBC.

Arguably, these smaller jobs are already bound by some sections of the DBC Act. If we consider the definition of 'domestic building work' – 'any work referred to in section 5 that is not excluded from the operation of this Act by section 6'. Section 8 warranties extend to any works completed under a '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'. This means any contract for any domestic building works, even those that are less than $10,000, are subject to implied warranties.

Preliminary work prior to a Major Domestic Building Contract

Builders are often required to perform preliminary work for a potential client before an MDBC can be finalised and entered into. The current legislative framework imposes significant burdens because builders will incur substantial upfront costs in time and expenses prior to entering into an MDBC.

The scope of preliminary work that attracts these upfront costs often falls within the ambit of section 5. Otherwise, they are not excluded in section 6.

Preliminary work can include, but is not limited to:

1. Obtaining foundation data (soil tests, site survey, contour reports)
2. Preparing preliminary designs and working drawings
3. Work by an architect, draftsperson, or engineer
4. Preparing and submitting building approvals
5. Preparing specifications and a contract price estimate.

Compounding financial risks for builders include a trend of project abandonments by consumers after the performance of such preliminary work, leading to builders incurring substantial out-of-pocket expenses. To safeguard this risk, builders often require clients to enter into an agreement for these preliminary works (a 'preliminary/preparatory work agreement') before an MDBC is entered into.

[redacted]erised as preliminary work agreements that deal with works in preparation for the construction [redacted]nd specification work, have been regarded by some builders as being outside the

scope of section 5. However, in a 2009 decision, the Supreme Court of Victoria determined that preliminary work agreements are building contracts under the DBC Act.

The scope of work outlined in section 5 is excessively broad, and the scope of exclusions described in s 6 contain ambiguities, so builders risk contravening the DBC Act when entering into such preliminary works agreements.

Builders may mitigate their cash flow by using the $10,000 threshold as a reference point to cost their preliminary works regardless of project size and complexity. Our industry will use the same sub-$10,000 preliminary works agreement for both standard-build homes (e.g., $200,000) and large custom homes (e.g., $1,000,000). This inadvertently leads builders to undervalue the cost of preliminary works, particularly for larger and more complex projects, and builders can only recoup their losses if owners eventually decide to sign up to a major domestic building contract.

MBV would like to see clarity around the works that are identified as preliminary/preparatory work. We believe this work should not require an MDBC. The DBC Act should be amended to more accurately reflect the risks and financial burdens that preliminary work imposes on builders. This amendment should include a more precise definition of what constitutes a preliminary agreement, thereby providing greater clarity and protection for both builders and consumers. MBV proposes that work that would ordinarily/reasonably be performed by a builder to prepare and cost an MDBC ready for execution should not require an MDBC. At a minimum, the scope of the current section 6 should be expanded to consider the work required of a builder to competently get an MDBC ready for a consumer to sign.

This includes extending the exclusion in section 6(1)(e) to apply in the circumstances where a builder engages an architect, registered draftsperson or endorsed building engineer to carry out design work for a consumer.

Limitations on deposit amounts

Q 3: Should there be any changes to the requirements around deposits, including to the monetary thresholds?

MBV supports changes to deposit requirements, including reconsidering the monetary thresholds. This is due to the inadequacy of current limits in covering the initial costs associated with building contracts, especially for larger, more complex projects.

The current economic climate, characterised by labour and material shortages, has resulted in significant price escalations. The $20,000 ceiling that permits a builder to collect a larger 10 per cent deposit is no longer suitable as this encompasses a very limited range of building work.

Considering the prevalence of residential construction projects exceeding the designated threshold of $20,000, the current restriction on deposits (5 per cent of the contract sum) may exacerbate liquidity challenges within the residential building sector where subcontractors demand between 50 per cent deposits to total upfront payments from builders.

If preliminary/preparatory work is not required to be completed under an MDBC, increasing the deposit allowed for projects that exceed $20,000 to 6.5 per cent would assist builders in managing the increasing front-end costs associated with building projects prior to completing the building stages. This is consistent with Western Australia's approach.

[redacted]

Q 4: Should there be any changes to requirements around insurance as it relates to deposits or other payments taken prior to the commencement of domestic building work?

Recent events have highlighted instances where DBI was not obtained prior to taking payment of deposits. The requirements for compliance are located in various legislative documents and orders that do not support or promote compliance. MBV advocates for clarity in the DBC Act to ensure confidence.

Since the collapse of a large-volume builder, more consumers and builders have become aware of their roles and responsibilities. However, there is a misunderstanding within our industry regarding when builders need to apply for DBI.

The Ministerial Order No. S 98 Friday 23 May 2003 allows a builder to enter into an insurable domestic building contract without DBI if no money (including deposit money) is payable under the contract before that policy is issued and requires the builder to ensure that a copy of the policy is provided to the building owner within seven days after it is issued.

MBV believes clarification on when a deposit should be paid after the issuance of DBI will assist builders and consumers in understating their obligations. MBV recommends that it is expressly stated to consumers in the positive that a deposit is payable when a copy of the policy is provided to the building owner.

MBV also proposes, above, that work that would ordinarily/reasonably be performed by a builder in order to prepare and cost a MDBC ready for execution should not require a MDBC. This preliminary work exemption, outlined in Q2 above, should logically extend to the requirement to obtain or DBI.

Volume builders frequently encounter challenges due to the extended lead times before construction begins, often spanning 1 to 2 years after contract signing. This delay poses significant issues in terms of their insurance coverage, particularly concerning their maximum insurance limitations. These limitations, as they stand, may not adequately accommodate the unique timeframes and risks associated with volume building projects.

Given these circumstances, it is imperative to conduct a thorough review of the DBI framework to ensure its relevance and effectiveness for volume builders. The review should focus on aligning the insurance provisions with the practical realities of construction timelines in the volume building sector. The goal is to ensure that the DBI remains fit for purpose, adequately protecting builders and their consumers in a manner that reflects the specific needs and challenges of large-scale, long-term construction projects.

Cost escalation clauses

Q 5: Should cost escalation clauses be permitted in Victoria? Please provide further information about your answer.

MBV supports the introduction of a cost escalation clause in Victoria. Throughout uncertain and unprecedented times within the building and construction industry, suppliers and trades have been able to adapt to the changing costs. They have reduced their financial risk by increasing costs and seeking payment before completing work. Many suppliers and subcontractors seek deposits of 50 per cent or greater. In comparison, builders have not been afforded the same flexibilities and are instead expected to absorb these costs.

C[redacted]auses should be permitted in all MDBCs. These should operate similarly to Prime Cost and [redacted]at builders must be required to demonstrate the increases in costs since the signing of

the contracts. Additionally, the clause can be drafted in a way that limits the ability of builders to make claims under such clauses.

Section 41(1)(i) of the DBCA currently provides a statutory entitlement to the building Owner to terminate a major domestic building contract 'if the contract price rises by 15 per cent or more after the contract was entered into.' MBV proposes that a cost escalation clause could be paired with a reciprocal clause, which would afford the builder an identical entitlement. This would impose a more significant administrative burden on the builder, ensuring transparency and protecting the rights of the building owner.

Suggested clause:

If the cost of the contract was to increase by 15 per cent or more and 'the reason for the increased cost was not something that could have been reasonably foreseen by the builder on the date the contract was made, then the builder may end the contract. Prior to ending the contract, the builder may propose reliance on a cost escalation clause in which the building owner can decide to pay the additional costs incurred (with proof) or accept the end of the contract.'

MBV drafted an example clause in 2021 to assist our industry with the supply increases experienced as a result of the pandemic. This clause is still relevant in today's climate.

Here is the suggested cost escalation clause. The recommendation is that this clause would operate independently to the clause suggested above and would not be linked to a 15 per cent increase.

> *"Act"* means the *Domestic Building Contracts Act* 1995
>
> *"cost escalation clause"* has the same meaning as in section 15 of the *Act*; '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'.
>
> *"materials"* means all items (not being work or equipment) supplied by the *Builder* or the *Owner* for the purpose of carrying out the *Works*.
>
> *"supply chain shortage"* refers to the global scarcity in building *materials*, namely timber, which has been triggered by the COVID-19 pandemic and associated issues which has resulted in difficulties in obtaining *materials* and an ongoing increase in cost of these *materials*.
>
> The following special condition (SP) constitutes a *cost escalation clause* to which Section 15 of the *Act* applies. This clause has been approved by the Director of Consumer Affairs Victoria, pursuant to Section 15(2)(b) of The *Act*. The *Owner* acknowledges receipt of the warning given by the *Builder* explaining the effects of this clause.
>
> SP 1 - If the cost of *Builder* supplied *materials* shall increase, between the time of signing the *Contract* and the time of purchase, due to the *supply chain shortage*, the *Builder* is entitled to adjust the *Contract Price* accordingly. The *Contract Price* shall increase only by the amount of the price increase of *Materials*. The *Builder* will not be entitled to an increase in *Builder's* margin. The *Builder* will adjust the *Contract* via variation and will be required to substantiate the claim with proof of purchase, demonstrating the increased cost.

There are international examples where countries have a government authority/ombudsman that can validate price increases in fixed-priced contracts. For instance, if price increases were generally 4 per cent year on year but suddenly increased by 20 per cent, builders should be able to increase their contract prices by 16 per cent. Having a government authority in place allows for a level playing field and protects consumers by not allowing individual [redacted]reases across the board.

MBV believes this clause provides protection and fairness to both the consumer and builder.

Q 6: Is the current $500,000 contract price threshold for cost escalation clauses appropriate? Please provide further information about your answer.

MBV recommends the removal of section 15(2)(a) of the Domestic Building Contracts Act (DBC Act), which mandates a monetary threshold for triggering the use of cost escalation clauses. It is MBV's position that the existing safeguards, being sections 15(2)(b) and 15(3), offer sufficient consumer protection.

Currently, section 15 of the Act is as follows:

Section 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 charges; 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

Section 15(2)(b) addresses key consumer concerns by requiring a Director-approved prescribed form for cost escalation clauses. This ensures transparency and clarity regarding cost escalation clauses through a prescribed form.

Section 15(3) addresses key consumer concerns by rendering such clauses void if the Director's approval notice explaining their effects is not provided. This ensures informed consumer consent through mandatory Director-approved notices.

Notably, the Director has not yet approved either the form or the notice, effectively prohibiting the use of cost-escalation clauses. Of particular concern to industry is the Director's strong reservations against their use as demonstrable in the context of recent, exceptional, and substantial price increases.

The recent unprecedented price increases and supply chain disruptions highlight the need for flexible mechanisms within domestic building contracts to facilitate equitable cost and risk distribution between builders [redacted]ring extraordinary circumstances.

Q 7: Should any changes be made to the operation of cost escalation clauses? Please provide further information about your answer.

As above.

Fixed price contracts

Q 8: Should there be any changes to the restrictions on cost-plus contracts, prime cost items or provisional sums? Please provide further information about your answer.

MBV proposes revising the threshold for Cost Plus contracts from $1 million to $750,000, an increase from the previous threshold of $500,000 set until 2017.

Industry feedback suggests a growing consumer preference for Cost Plus contracts, driven by the desire for greater transparency in builder pricing. This proposed reform seeks to expand the availability of Cost Plus arrangements to consumers, thereby enhancing transparency through mandatory substantiation of all direct costs by builders.

Lowering the threshold down to $750,000 presents an opportunity for consumer choice, granting consumers the flexibility to opt for Cost Plus contracts.

To enact this change, consumers would need to sign a consumer statement along with the contract, outlining the proper utilisation of Cost Plus contracts, including guidelines for reasonable estimates, the risk of cost increases and other essential details. This approach not only empowers consumers with options but also ensures clarity in contract terms, potentially reducing costs as builders won't feel compelled to include unnecessary contingencies.

MBV does not have any recommendations for changes to restrictions on prime cost items or provisional sums.

Q 9: Should there be any changes to the requirement for domestic building contracts to be a fixed price? Please provide further information about your answer.

The requirement for fixed-price contracts in domestic building contracts merits a comprehensive review to assess its suitability and potential alternatives including the assessing the benefits and drawbacks of fixed-price contracts, the specific needs of stakeholders involved, and the prevailing market conditions.

Fixed-price contracts provide homeowners with certainty regarding the total cost of the project, helping them budget effectively and avoid unexpected expenses. However, fixed-price contracts typically place the risk of cost overruns on the builder, incentivising them to manage costs efficiently and complete the project within budget.

Builders can face risks associated with unexpected cost increases, such as material price fluctuations or unforeseen site conditions, which could erode their profit margins. We saw this risk occur during the pandemic; when the market is volatile, there is an increased risk to builders, which is why MBV will continue to advocate for cost escalation clauses.

[redacted]

Progress payment stages

Q 10: Are the progress payment provisions in the DBC Act fit for purpose for all types of construction methods? Please provide further information about your answer.

The progress payment provisions in the DBC Act are no longer fit for purpose across most contemporary methods of construction. While the Act's rigid, staged payment structure may have once aligned with traditional sequential construction approaches, it no longer effectively accommodates the diverse and dynamic methods employed in contemporary building practices. MBV recommends a review of the stages' definitions, their rigid mechanism and the percentage payment allocated to these stages is required.

By way of example, section 40(1) of the Act currently defines **Fixing stage** as '*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.*' However, common modern building practices are reported to exclude the addition of some of these items until the final stages prior to completion to protect the finishes. Baths, basins, troughs and sinks are a common example of this.

Modular Construction

The provisions are less suited for modular construction. In modular construction, a significant portion of the work (and associated costs) occurs off-site, which the current progress payment structure does not fully accommodate. This mismatch can cause cash flow issues for builders and may prevent investment into modular construction.

Off-site Construction Work

The Act does not adequately address payments for off-site construction work. This is a significant issue for Modern Methods of Construction like prefabrication, where payment is required upfront because a considerable amount of work is done off-site. The lack of provision for off-site work in the progress payment schedule can create financial strain for builders, as they need to fund the construction without receiving corresponding payments.

Custom Projects and High-Value Contracts

For custom projects and high-value contracts, the Act's provisions may not provide sufficient flexibility. These types of projects often have unique requirements and payment schedules that do not fit neatly into the standard progress payment framework.

The prescribed staged payment workflow in section 40 lacks flexibility and may not adequately accommodate unforeseen on-site changes or broader economic and environmental factors, potentially impacting the builder's ability to progress work and make timely payment claims.

MBV suggests a review and adaptation of the progress payment provisions to better accommodate a wider range of construction methods, especially those involving significant off-site construction work.

[redacted]

Q 11: Should any changes be made to the limitations on progress payments including the per cent paid for each stage? Please provide further information about your answer.

The definitions of progress payment stages, as prescribed in section 40(1) of the DBC Act, no longer reflect current building practices and the contemporary economic backdrop of the building and construction industry. The percentages no longer align with best practice.

The existing provisions under section 40 of the DBC Act, which govern the payment schedules for builders, are increasingly misaligned with the evolving practices and costs in the building industry. Specifically, section 40(2) and section 40(3) stipulate that consumer payments are tied to either the completion of a stage of work or the direct progress of work under the contract. However, this framework does not adequately accommodate the financial realities of sourcing specialised materials for modern construction, such as high-energy rating homes.

For example, the cost of performance windows, which are essential for achieving higher energy ratings, has risen from traditionally being 2 per cent of the total build cost to now constituting around 4 per cent. Additionally, suppliers of these windows are now requiring a 50 per cent deposit and need to be ordered at least six months in advance. These changes in market dynamics and supplier requirements pose a significant financial challenge for builders under the current payment structure mandated by the Act.

Therefore, revising the payment provisions in section 40 is necessary to reflect the changing cost structures and upfront financial commitments required in contemporary building practices. This revision should aim to provide more flexibility in payment schedules, allowing builders to recover costs in a manner that aligns with the current demands and timelines of sourcing specialised, high-cost building materials.

Additionally, suppliers, manufacturers, and subcontractors, have more flexibility to demand payment terms with builders, and they are asking builders for payments upfront, larger deposits, or they are giving builders shorter payment timeframes in response to supply chain issues, volatile pricing, and insolvency concerns, effectively transferring risks on to builders (e.g., managing cost escalations and builder insolvencies).

Builders, limited by section 40, cannot transfer these upfront payments to owners. They end up having to finance their own projects and expand their overdraft to keep themselves solvent.

Increased flexibility, potentially through additional payment stages, is crucial to strengthen builders' cash flow and mitigate insolvency risks.

Issues relating to Section 40(4) (Method B)

Despite both payment structures (Method A and Method B) being lawful, banks often characterise Method A as an "industry standard contract" because it is prescribed in legislation. This characterisation suggests that Method B is aberrant and, as a result, banks are reluctant to finance contracts using Method B because they may assign an excessive amount of risk to "non-standard contracts" in their evaluation.

Anecdotal reports from members indicate that consumers are content to have a series of smaller payments throughout the contract cycle. However, members noted that the resistance to a customised payment schedule originates, only from financial institutions.

Section 40(4) of the DBC Act and regulation 13(1) of the DBC Regulations 2017 require major domestic building contracts that do not comply with sections 40(2) and 40(3) (i.e., Method B) to include a warning sign prescribed [redacted] of the Regulations, and a clause prescribed in Form 2 in Schedule 1 of the Regulations.

The prescribed warning sign in Form 1 of Schedule 1 of the Regulations is excessively cautionary, potentially raising undue alarm among consumers regarding potential builder misconduct. MBV recommends a review of the current language of the Form 1 warning sign to achieve greater clarity and accuracy, ensuring proper consumer awareness without inadvertently fostering negative perceptions of builder integrity.

Given the anticipated persistence of Method A as a reference point for both CAV and the banking sector, a re-evaluation of the current stages in section 40(2) is warranted.

MBV suggests the following progress payment percentages;

	Method A	Suggestion 1	Suggestion 2	Suggestion 3
Deposit	5%	5%	5%	6.5%
Base	10%	20% **(+10%)**	15% **(+5%)**	15% **(+5%)**
Frame	15%	25% **(+10%)**	30% **(+15%)**	25% **(+10%)**
Lock Up	35%	20% **(-15%)**	25% **(-10%)**	25% **(-10%)**
Fixing	25%	20% **(-5%)**	15% **(-10%)**	20% **(-5%)**
Final	10%	10%	10%	8.5%

Considering MDBC's are not just utilised by new home builders, MBV encourages tailored payment schedules to be developed for renovations, minor works and modular construction. Further, the recommendation would be that the Banking Association is provided with these schedules and has the opportunity to endorse them. This would provide clarity and confidence to builders and consumers.

Q 12: Should any changes be made to the building stages, including to their definitions? Please provide further information about your answer.

The current definitions for building stages do not accurately reflect modern building practices.

In particular, the definition of **Fixing stage** is no longer fit for purpose.

> *'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.'*

Practically, many of these items, such as baths and basins, are installed in the later stage of building as close as possible to completion so as to limit potential damage and theft. This means that despite completing works above and beyond what the definition includes, the builder is unable to invoice for fixing stage until much later. This increases the risk and liability the builder is holding financially.

The definition of **Lock Up** stage is also no longer fit for purpose.

> *'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).'*

The current definition fails to distinguish different types of flooring.

Vulnerable flooring (such as carpet) is not laid at Lock Up stage, but at Final stage. This ambiguity was raised in [redacted] *Fairhaven Homes v Fidone* (Domestic Building) [2011] VCAT 1774 where the Tribunal

distinguished “vulnerable floor coverings” from “structural flooring” for the purposes of defining what flooring means under “Lock Up stage.” The Tribunal decided that vulnerable floor coverings, such as carpet, need not be installed before, for example, architraves and skirtings are installed.

Garage roller doors or panel doors are not installed generally until after paint stage.

Garage door openings cannot be temporarily locked up. This definition must exclude Garages (class 10a) and only apply to Dwellings (class 1a)

To make the stages work, builders will add amendments to their contracts to state ‘*Lock-up Stage – means when the home’s external wall cladding and roof covering is fixed, and the external doors and external windows are fixed “even if those doors or windows are only temporary”.*’

Considering MDBC are not just utilised by new home builders, MBV encourages tailored payment schedules to be developed for renovations, minor works and modular construction. Further, the recommendation would be that the Banking Association is provided with these schedules and has the opportunity to endorse them. This would provide clarity and confidence to builders and consumers.

What is domestic building work?

Q 13: Should single trades work (or certain types of single trades work) be considered domestic building work, and be made subject to DBC Act restrictions?

A review of the Victorian Registration Framework is needed to align registration classes with modern day practices, apprenticeships and certificate III framework and skill set. However, until a review is conducted, MBV does not see a need to make any changes and include single trades work to be considered domestic building work.

Q 14: Should there be any changes to what is considered domestic building work under the DBC Act?

The current framework for identifying “domestic building work” within the DBC Act and its associated regulations relies on a combination of the following key provisions:

- The scope of work in section 5 of the DBC Act;
- The definition of “home” in section 3 of the DBC Act; and
- There are specific exclusions in section 6 of the DBC Act and regulation 8 of the DBC Regulations.

MBV expresses concern regarding the ambiguities within each individual provision. The complexity of their combined interpretation compounds misunderstanding. MBV believes the definition of “domestic building work” needs to be clearer and more prescriptive to avoid confusion.

We seek clarity in the following definitions:

Section 3: The definition of “home” in s 3 needs to be less ambiguous

Section 3 of the DBC Act defines “**home**” as “any residential premises […]” excluding, inter alia, section 3(b) “any [redacted]*ot intended for permanent habitation*.” The meaning of “home” is then often interpreted as “a [redacted]d for permanent habitation.” In their analysis of whether a premise is a “home”, Courts

have looked at indicia of long-term residences, such as kitchen and laundry facilities, indicating that without further legislative clarity, one would only need to identify characteristics of “permanent habitation” to classify a premise as a “home”.

Under section 5, the DBC Act applies very broadly to, inter alia:

> section 5(1)(a)(i) *any work* associated with the erection or construction of a home; and
>
> section 5 (1)(c) *any work* carried out in conjunction with the renovation, alteration, extension, improvement or repair of a home.

The current definition of "home" within section 3 of the DBC Act presents a challenge to the industry due to its lack of clarity. This ambiguity fosters the potential for misinterpretations and inconsistencies in the application section 5.

One member mentioned during consultations that a preliminary adjudication had classified a 140-bed student accommodation for a commercial client has been deemed to fall under the DBC Act even though reg 8(b) of the DBC Regulations expressly exclude “premises that are used or intended to be used at a school, university or other educational or training institution as accommodation for students or staff.”

The Victorian Court of Appeal has found that whether a multi-unit student accommodation development falls under the ambit of the exclusion in reg 8(b) requires evidence of a close association or connection between the accommodation in question and the educational institution (i.e., a student accommodation agreement made between the developer and the educational institution at the time the building contract was entered into).

The current approach to determining whether a multi-unit student accommodation falls under the DBC Act, based on a judge's interpretation of a “close association or connection” with an educational institution, presents inefficiencies and potential inconsistencies. This approach burdens the judicial system and creates uncertainty for building stakeholders.

Aligning the definitions within the DBC Act with the established building classification system of the NCC offers an avenue for enhancing regulatory efficiency and predictability. This alignment would leverage a well-defined system, reducing reliance on subjective interpretations and minimising legal disputes.

This alignment would also mirror the language employed in the Building Act 1993, e.g., “home” could mean “a prescribed building or building in a prescribed class of buildings which is used or intended to be used for the purposes of a residential premise/permanent habitation.”

This, in turn, would contribute to a streamlined regulatory process and increased certainty for both builders and developers.

Section 5: **The scope of work described in s 5 is worded too broadly**

The scope of work that the Act applies to is described using very broad language in the following subsections:

- Section 5(1)(a)(i) *any work associated with* the erection or construction of a home.
- Section 5(1)I *any work that is to be carried out in conjunction with* the renovation, alteration, extension, improvement or repair of a home.
- Section 5(1)(e) *any work associated with* the construction or erection of a building on land that is zoned for residential purposes under a planning scheme under the Planning and Environment Act 1987; and in [redacted] building permit is required under the Building Act 1993.

- Section 5(1)(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) I(e).
- Section 5(1)(g) *the preparation of plans or specifications for the carrying out of work referred to in paragraphs (a) to (f).*

In *Tambassis v Andrew Gribbin t/as Inner Melbourne Landscapes* (Building and Property) [2019] VCAT 540, the Tribunal accepted the Respondent's argument that the construction of a driveway on residentially zoned land with an existing dwelling did not fall within the ambit of section 5 as it was not "in conjunction with" the erection or construction of a home, nor the renovation, alteration, extension, improvement or repair of a home.

The Member Edquist in *Tambassis* accepted a narrow interpretation of "home" as being the actual built form of dwelling itself, when it could be argued that the intention of this sections 3 and 5 were not to exclude works such as landscaping/driveways. This decision demonstrates the ambiguity created by sections 3 and 5.

Section 6: Scope of work described in s 6 contains ambiguities that require clarification

The following subsections of section 6, prescribe that the DBC Act does not apply to the following work:

- Section (1)(e) design work carried out by an architect or a building practitioner registered under the Building Act 1993 as a draftsperson or an endorsed building engineer within the meaning of the Professional Engineers Registration Act 2019; and
- Section 6(1)(f) any work involved in obtaining foundation data in relation to a building site.

The plain reading of section 6(1)(e) implies that the exclusions apply when a consumer directly engages an architect, registered draftsperson or endorsed building engineer to carry out design work. There is a stark omission of registered builders in section 6(1)(e) when builders also carry out design work.

There is also confusion as to whether these exclusions apply when a builder engages an architect, registered draftsperson or endorsed building engineer to carry out design work for a consumer under a preliminary work agreement.

There needs to be legislative clarity on:

- Why design work carried out by registered builders are not included in section 6(1)(e); and
- Whether the exclusion section 6(1)(e) applies when a builder engages an architect, registered draftsperson or endorsed building engineer to carry out design work for a consumer.

MBV believes that builders should be included in section 6(1)(e)

Regulation 8: Building work to which the DBC Act does not apply – certain buildings premises

Regulation 8(e)(i) states that 'For the purposes of section 6(2) of the Act, work carried out in relation to any of the following is not building work to which the Act applies – Premises that are used or intended to be used as a residential institution with the meaning of the *Disability Act 2006*.'

The definition of 'residential institution' was repealed from the *Disability Act* in 2019, rendering this exclusion inoperative and obsolete. This is yet another example of the difficulties and ambiguities created in contemplating what is considered Domestic Building work.

Should the intention remain to exclude such buildings from the operation of the Act, we recommend inserting a definition for 'Residential institution'.

[redacted]

Statutory warranties

Q 15: Do the implied warranties need to be updated, including through the removal or addition of any warranties, or expanding their application to all developers? Please provide further information about your answer.

Updating implied warranties in domestic building contracts requires careful consideration of various factors, including the need for updates, the potential impact of removing or adding warranties, expanding their application to all developers, regulatory considerations, and stakeholder input. Any changes should aim to strike a balance between protecting homeowners and promoting a fair and efficient construction industry.

DBC Act section 8(a) states '*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*;' MBV suggests this warranty should exclude those works which are included in the plans but for which the Builder is not responsible. For example, in instances when an owner is directly engaging with a particular trade or supplier.

A wider review of the Victorian Registration Framework is needed.

MBV believes that the DBC Act should distinguish between regular consumer-building owners from commercially experienced developer-building owners. MBV advocates for introducing a distinct category of commercially experienced building owner i.e., "developer" within the DBC Act, and a review conducted on how a developer fits into the registration framework.

Under the current DBI regime, insurers have discretionary power to exclude developers from claiming for non-completion of domestic building work. MBV acknowledges that the Victorian Government is currently investigating potential reforms to insurance arrangements in Victoria's domestic building industry, inter alia, the expansion of this discretionary power to allow insurers to exclude all developers from any claims against DBI and introducing a first-resort product such as a developer bond scheme.

MBV emphasises the need for alignment between any forthcoming reforms to the DBC Act and the DBI framework. In particular, the DBC Act should establish a consistent and transparent definition of "developer" that applies uniformly across both the legislative and insurance regulatory environments. This will foster a more transparent, efficient, and predictable regulatory environment for all stakeholders.

This can be achieved by aligning the definition of "developer" with section 7(2) of the Building and Construction Industry Security of Payment Act 2002 (SOP Act).

The SOP Act's underlying rationale is to ensure fair and efficient payment practices between parties who are assumed to possess a certain level of commercial experience and understanding of construction contracts.

Sections 7(2)(b) and (ba) of the SOP Act excludes domestic building contracts and construction contracts for the carrying out work referred to in section 6 of the DBC Act from the SOP regime, with one key exception. The section 7(2)(b) and (ba) exclusions do not apply where "the building owner is in the business of building residences" and the contract relates directly or indirectly to that business.

Section 7(2) of the SOP Act recognises the relevance of a domestic building owner's commercial experience and commercial intention when applying the SOP regime. MBV believes that the DBC Act should also recognise the relevance of a building owner's commercial experience and commercial intention when apportioning responsibilities for the provision of consumer warranties.

[redacted]

There is a need for clarity and a re-evaluation of the responsibilities and liabilities of developers concerning builders and consumers. The current warranty framework outlined in section 8 of the DBC Act places an undue burden on builders despite the inherently commercial nature of the contractual relationship between developers and builders. This imbalance in risk allocation, where the onus falls solely on builders, necessitates a more equitable distribution of responsibility among commercial stakeholders involved in the construction process.

This review also presents an opportunity to clarify the current jurisdictional conflict arising from sections 7(2)(b) and (ba) of the SOP Act and section 45 of the DBC Act – in the circumstances where the exception in sections 7(2)(b) and (ba) applies and a dispute about payment arises, does a party make an application for adjudication under the SOP Act or for conciliation at Domestic Building Disputes Resolution Victoria (DBDRV) under the DBC Act?

Consumer information products

Q 16: Are the consumer information products effective? If not, how can they be improved?

Builders have reported producing their own guidance material to help consumers navigate the complexities of building as the consumer information products that the government have released are not meeting the needs of consumers.

Consumer information products should exhibit consistency in content and presentation, potentially housed within a centralised point of access and easily available to all stakeholders, including homeowners, builders, and developers. This means ensuring that materials are available in multiple formats (print, digital, etc.) and languages and disseminated through various channels such as government websites, community centres, and industry associations.

Information should be presented in clear, simple language that is easy for consumers to understand, especially considering that not all homeowners may have a background in construction or legal terminology. Avoiding jargon and providing practical examples can enhance comprehension.

Consumer information products should cover various topics relevant to the construction process, including contract negotiation, building permits, warranties, dispute resolution mechanisms, and tips for hiring reputable trades. Providing comprehensive guidance can help consumers navigate the complexities of the construction process more effectively.

In addition to consumers' rights, consumer information products should also include consumers' obligations. Outlining the obligations of an owner within such information products may also assist in reducing ambiguity and lessening the number of disputes.

Consider using interactive tools, checklists, infographics, and videos to make the information more engaging and user-friendly. Visual aids can help convey complex concepts more effectively and keep consumers actively engaged with the material.

[redacted]

Q 17: Should there be a requirement for a standard form contract to be used for some or all domestic building contracts? For an example, see the prescribed residential rental agreements made under the Residential Tenancies Act 1997.

MBV does not believe standard form contracts need to be prescribed. MBV and other industry bodies offer a standard contract that industry and consumers can access and use, and they are provided at a nominal fee in both print and digital.

Q 18: Are there other changes or requirements that would help consumers and builders understand their legal obligations and rights? Please provide further information about your answer.

Further targeted education and outreach campaigns are needed to raise awareness about the availability of consumer information products and encourage their use among homeowners and other stakeholders.

Drawing on the expertise and insights of industry stakeholders can enhance the quality and credibility of the materials. This may involve partnering with community organisations, hosting workshops, and leveraging social media platforms.

Contents of a major domestic building contract

Q 19: Should there be any changes to what must be included in a MDBC? If yes, please provide further information about your answer.

The DBC Act needs to distinguish between single, standalone dwellings, and multi-storey residential buildings because the nature of the relationship between the consumer and builder is different. The current regulatory framework does not adequately address the different contractual relationships arising from construction projects of varying scales.

In addition, a MDBC should incorporate emerging practices like modern methods of construction, along with minor works such as sheds, landscaping, and renovations. Given the increasing demand for housing, it is crucial that MDBC remains flexible and adaptable to modern construction methods such as prefabricated bathroom pods, cross-laminated timber, off-site construction (prefab/modular construction), and hybrid construction. These modern methods offer distinct advantages in terms of speed, efficiency, sustainability, and design flexibility. It's imperative that legislation keeps pace with these innovations to ensure adaptability and effectiveness.

Furthermore, with the growing trend of homeowners renovating their properties, the MDCA must encompass a comprehensive framework to address the needs and complexities of renovation projects.

Q 20: What else can be provided to a consumer to help them to understand a contract including the rights and obligations of the parties to the contract?

Providing consumers with comprehensive and accessible information about their contracts, including the rights [redacted] the parties involved, is crucial for ensuring clarity and preventing misunderstandings.

Alongside the formal contract, a summary written in plain, non-legal language can help consumers understand the key points, rights, and obligations without getting overwhelmed by legal jargon. MBV has a document called 'Take out a building contract' that was developed for this purpose.

Consumer Affairs could provide the following resources:

- A Frequently Asked Questions (FAQ) document that addresses common queries related to the contract can be helpful. This may include explanations of technical terms, the process to follow in various scenarios, and clarification of responsibilities.
- Brochures or flyers that outline the stages of the contract, timelines, payment schedules, and what each party is responsible for can be effective, especially if they include diagrams or infographics.
- Online resources, such as interactive guides or webinars, can provide an engaging way for consumers to understand the contract. These tools can include examples, scenarios, and even quizzes to test understanding.
- Providing a checklist that guides the consumer through each part of the contract, ensuring they understand each section before moving on to the next.
- Short videos explaining different parts of the contract and the responsibilities of each party can be an effective way to engage consumers who prefer audio-visual learning.
- A dedicated phone line or online support system where consumers can ask specific questions about the contract.
- Real-life examples or case studies that illustrate how certain clauses in the contract have been applied in the past can provide practical understanding.

Allowances for delays

Q 21: Should any changes be made to the allowances a builder must make for delays in time estimates?

Nil

Cooling-off period

Q 22: Should the number of days allowed for a cooling-off period be amended? Please provide further information about your answer.

MBV believe, efforts should be made to improve consumer education and awareness about their rights and responsibilities when entering construction contracts, rather than potential amendments to the cooling-off period.

Access to educational resources and guidance can empower consumers to make informed decisions and navigate the construction process more effectively.

[redacted]

Q 23: Are the outcomes when a building owner withdraws from a MDBC during the cooling-off period fair? If not, why and what changes could be made?

When an owner withdraws from a MDBC, the practice only permits the builder to retain previously received money. However, MBV would like to see the addition of provisions for cases in which a deposit has not yet been paid but the builder has incurred costs.

Variations to plans and specifications

Q 24: Should any changes be made to the requirements for variations to a MDBC? Please provide further information about your answer.

Specifying when payment is due for variations entered into by the builder and the owner is crucial for ensuring clarity and fairness in the contract terms. Ideally, payment for variations should align with the completion of the varied works to ensure that both parties fulfil their obligations in a timely manner and avoid disputes. Introducing precise and explicit payment terms in the DBC Act for variations, outlining when payments are expected, would enhance clarity for all involved parties, including consumers, builders, and financial institutions.

Ending the contract

Q 25: Should any changes be made to when or how a building owner can end a MDBC?

Section 41 currently provides the statutory entitlement to a building owner to end a major domestic building contract if either:

Section 41(1)(a)(i): the contract price rises by 15% or more after the contract was entered into; or

Section 41(1)(a)(ii): the contract has not been completed within 1.5 times the period it was to have been competed by

MBV recommends that an increase of 15 per cent is not substantial considering the costs to operate in the current market and would therefore suggest raising this threshold to 20 per cent. Should this recommendation be adopted, MBV contends that the reciprocal clause mentioned above (Q 5) would also reflect an increase of 20 percent.

Q 26: Should any changes be made to when or how a builder can end a MDBC?

As mentioned in question 5, MBV recommends that a reciprocal clause similar to that in section 41 (see question 25) be inserted to the builder's benefit. We contend that this would include an optional cost escalation element in which an owner can opt to assume the cost increases.

[redacted]

Dispute resolution framework

Q 27: Is the current dispute resolution framework fit for purpose? Please provide further information about your answer.

In instances where a building owner and a builder cannot resolve a dispute independently, either party is permitted to submit an application to the Domestic Building Dispute Resolution Victoria (DBDRV). This application and subsequent mediation are prerequisites to attending VCAT should the situation require it.

MBV supports the DBDRV and recognises its benefits and place in the dispute resolution process. The original intention of the DBDRV was to facilitate faster resolution of disputes and reduce the caseload on VCAT. There is continued value in such an approach.

MBV recommends additional resources within the DBDRV to maintain such original intentions and to ensure access to dispute resolution is as prompt as possible.

Q 28: What improvements, if any, could be made to strengthen domestic building dispute resolution?

As mentioned above, increased access to dispute resolution allows for faster processes for the benefit of both parties. Additionally, greater consumer information products to facilitate understanding of the building industry and the options to proceed.

Additional comments on the DBC Act

Q 29: Do you have any other comments on Parts 1, 2, 3, 4 or 6 of the DBC Act? Is the Act achieving its purposes, and is it flexible enough to apply to protect consumers in the context of modern construction practices?

Upfront payments demanded by subcontractors and suppliers

If a supplier/trade is seeking a substantial payment before the commencement of works, the builder should be able to pass this cost onto the owner.

Currently, the builder is only allowed to charge the owner for works once they have been completed. For example, window suppliers seek a 50 per cent deposit at the time of ordering.

Foundations Data - Sections 6(1)(f) and 30(2), 30(7) and 30(8)

The current requirements under Section 30 of the DBC Act, particularly concerning foundation data, are misaligned with the operational realities of the greenfield development sector, especially for volume builders. Section 30 mandates that builders obtain comprehensive foundation data before entering into a major domestic building contract, which includes not seeking additional funds not covered in the contract unless unforeseeable from the required data.

However, the intensely competitive greenfield sector often compels volume builders to enter into fixed-price [redacted]ompleting all the mandated soil and foundation assessments, as stipulated in section 30. This

practice, driven by market pressures to secure work and meet the demands of consumers and financiers for fixed-price contracts, results in builders taking on significant risks. These risks are often assumed without complete foundation data, which can take 12 to 18 months to acquire – a timeline incompatible with the urgency of securing contracts in this competitive market.

Furthermore, builders with prior experience or familiarity with specific development areas may leverage their knowledge to circumvent the comprehensive data requirements, creating an uneven playing field. This scenario particularly disadvantages those who strictly adhere to section 30, as they face competition from builders willing to take risks by entering contracts without full compliance.

Given these market dynamics, it is evident that the stipulations of section 30 are increasingly impractical and out of step with the practices of volume builders in greenfield developments. Therefore, a revision of Section 30 is necessary to better align the DBC Act with the greenfield building sector's current practices and competitive environment. This revision should balance the need for thorough site analysis with the realities of market competition and project timelines.

Banks and Consumer Confidence

DBC Act needs to consider the actions and decision-making processes of financiers due to their substantial influence on domestic building work, and their potential impact on builder behaviour and risk profiles within domestic building projects.

Some financial institutions require builders to obtain a building permit and DBI before issuing a decision on an owner's application for finance. Builders have found themselves in a position where they have expended significant amounts of time and money to obtain the necessary permits and DBI, only to have the project fall through because a client failed to get finance approval.

Banks are obliged to provide financial approval within 7-14 days of signing. There is a disconnect between what should happen contractually and in reality.

This issue can be particularly pertinent in the volume-building space, as banks will not provide financial approval until the land is titled. Although clients may get an initial indicative financial approval, this can change by the time the final decision is made. Sometimes, banks will also not approve the contract under Method B and will push for a Method A contract. This puts builders who have been waiting over a year for this project to decide if they want to pursue the contract or cancel it, after already spending money to prepare for the work.

It was raised that banks only hold pre-approvals for three months. Consumers who continuously seek pre-approval when this times out are receiving poor credit ratings.

Modern methods of construction

Modern methods of construction are significantly disadvantaged as the provisions are not well-suited for modular construction. In modular construction, a considerable amount of work (and its associated costs) takes place off-site, which the current progress payment structure fails to adequately address. This discrepancy can lead to cash flow challenges for builders and could deter investment in modular construction.

[redacted]

Definition of 'builder'

As of 27 February 2024, various changes were made to the DBC Act by way of the Building Legislation Amendment (Domestic Building Insurance New Offences) Bill 2023.

Prior to these changes, section 3 of the DBC Act defined 'builder' as:

> ***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;

As per the most recent changes, section 3 of the DBC Act now defines 'builder' as:

> ***builder*** means a person who, or a partnership which, carries out or intends to carry out domestic building work;

As discussed throughout this submission, there is currently confusion and ambiguity by builders who are, at times, unsure as to what constitutes as domestic building work and where the line should be drawn in terms of their obligations.

The definition in place before 27 February, which references 'manages or arranges carrying out of domestic building work', goes some of the way in lessening that confusion and ambiguity. In many projects, the 'builder' is not physically carrying out works. Rather they are responsible for the managing and arranging of the various works which take place. By way of example, a builder who engages a glazier to perform works onsite, can clearly understand that they are liable for these works, despite the fact they themselves have not carried them out.

We note the addition of (ag) in section 5(1):

> This Act applies to the following work—
> (ga) the managing or arranging of the carrying out of work referred to in paragraphs (a) to (g);

We do not contend that this addition should be removed. Rather, this, in addition to, the original definition of builder, works towards limiting ambiguity.

Definition of 'major domestic building contract'

As of 27 February 2024, various changes were made to the DBC Act by way of the Building Legislation Amendment (Domestic Building Insurance New Offences) Bill 2023.

Prior to these changes, section 3 of the DBC Act defined 'major domestic building contract' as:

> ***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);

As per the most recent changes, section 3 of the DBC Act now defines 'major domestic building contract' as:

[redacted]

> ***Major domestic building contract*** means a domestic building contract under which the amount of money that a builder will receive for the carrying out of domestic building work is more than the amount fixed by the regulations;

The removal of the words 'contract price' is likely to create ambiguity and the impression that builder's obligations and liabilities are diluted. By way of example, builders may understand this to mean that monies received for trades or materials are not to be taken into consideration as they are not monies which 'the builder will receive'. MBV contends that the definition be amended as follows:

> ***Major domestic building contract*** means a domestic building contract under which the contract price for the carrying out of domestic building work is more than the amount fixed by the regulations;

Summary

The Domestic Building Contracts Act is currently not in sync with the modern realities of the building industry, falling short in addressing the complexities of today's construction practices, evolving consumer expectations, and the competitive pressures of the market. There is a critical need to update the Act to include clearer definitions and procedures that align with the operational practices involving financial institutions such as banks and insurance companies. Additionally, the Act should incorporate effective risk mitigation strategies for builders, an aspect currently underrepresented.

Equally, the regulatory framework established by the Act requires significant expansion to adequately cover the diverse spectrum of building projects. This includes large-scale volume building in greenfield developments, multi-unit projects, minor works and modern methods of construction each presenting unique challenges and requirements vastly different from those encountered in single-dwelling constructions.

One of the most pressing issues builders face under the current Act is financial instability, driven by high upfront costs, rigid stage payment structures, and the limitations imposed by fixed-price contracts. These challenges are further amplified by the dynamic and often unpredictable economic environment. To address these issues, there is an urgent need for regulatory reforms aimed at promoting financial resilience and flexibility for builders. Such reforms will not only support the sustainability of the building industry but also ensure it continues to meet the demands and expectations of consumers effectively.

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