

Legal Update: Building Legislation Amendment (Buyer Protections) Bill 2025

The *Building Legislation Amendment (Buyer Protections) Bill 2025* (**Bill**) that was introduced to parliament by the Victorian Government in March 2025 proposes significant reforms in the domestic building sector, with a key focus on improving consumer protection.

Further, the Bill proposes to expand the role of the Victorian Building Authority (**VBA**) to oversee a wider range of functions related to building regulation. This includes taking over responsibilities presently managed by Domestic Building Disputes Resolution Victoria (**DBDRV**) and the Victorian Managed Insurance Authority (**VMIA**).

The Bill proposes to replace the current Domestic Building Insurance Scheme with the introduction of a new **Statutory Insurance Scheme** that will allow Owners to make claims on the insurance policy at any time prior to or after completion of the Works rather than waiting for the Builder to become insolvent.

The Bill also provides the **VBA** with much broader powers to issue **Rectification Orders** and **Rectification Costs Orders** to Builders and Developers and will require Developers to provide security bonds as part of a new **Developer Bond Scheme** with the security bond to be available to Owners Corporations for the rectification of defects.

Further details of the changes proposed by the Bill and their implications for the building industry are set out below.

1. Statutory Insurance Scheme (SIS)

- The current **Domestic Building Insurance Scheme** will be replaced by a new **Statutory Insurance Scheme (SIS)**, managed by the **VBA**.
- Under the new scheme, Owners will be able to make claims at any time before or after the completion of work, instead of waiting for the Builder to become insolvent.
- The VBA will be the sole provider of domestic building insurance, which will cover domestic building works of **3 storeys or less** as per the current domestic building insurance scheme.
- Claims can be made by Owners for defective, incomplete, or non-compliant work, and both current Owners and subsequent Owners of the property will be eligible to claim.
- Key points to note about the SIS:
 - It does **not apply** to residential developments over **3 storeys**, or to people who have entered into contracts for the construction of 3 or more homes, or to commercial developments.
 - Owners can claim under the SIS even if they have made a claim against another person (e.g., the Builder), provided the claim is made within the 'prescribed time' (yet to be specified by Parliament).
 - The VBA can recover payments made under the SIS from the Builder or other responsible parties.

- Builders must pay insurance premiums prior to the commencement of the domestic building work or within 10 business days after the date of signing the relevant building contract (whichever is the earlier). If the value of the work increases by \$5,000 or more due to variations, an additional premium may be required. Builders who fail to pay on time may face penalties.
 - Either an Owner or Builder will be entitled to appeal to VCAT if they are not satisfied with a decision of the VBA in relation to a claim under the SIS.
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2. Rectification Orders

- The Bill provides the **VBA** with greater powers to issue **Rectification Orders** to any person who carried out the work (which will presumably include Builders and possibly subcontractors) as well as Developers of residential apartment buildings that are higher than 3 storeys.
 - Further, where the VBA considers that there is a **serious defect** that will cause the dwelling to be uninhabitable, unsafe or at risk of collapse, then the VBA must give the Registrar of Titles a copy of the Rectification Order so that it may be recorded on the title of the affected dwelling.
 - Currently, the VBA cannot issue Rectification Orders after an occupancy permit is issued, and it has no power to require Developers of residential apartment buildings to rectify defects.
 - If the Bill is passed, the VBA will be able to issue a Rectification Order at any time from the date of commencement of works until **10 years** after the date that the relevant occupancy permit was issued. Further, the VBA will be able to apply to **VCAT** to extend the 10-year limit if justifiable reasons are provided (though criteria for such extensions have not been defined).
 - The VBA may prior to issuing a Rectification Order require an Owner to participate in a dispute resolution process (which would include a DBDRV conciliation) if the VBA is not satisfied that the Owner made reasonable efforts to resolve the dispute.
 - In addition, the VBA can also issue **Rectification Costs Orders**, requiring any person to whom a Rectification Costs Order was issued to pay the VBA for costs incurred by the VBA in relation to:
 - Investigations, preparation, and issuance of the Rectification Order.
 - Monitoring compliance with the Rectification Order; and/or
 - Actions taken by the VBA to rectify the defective work referred to in the Rectification Order.
 - If a Rectification Order or Rectification Costs Order is issued to both the Developer and the Builder, the Developer and Builder will be **jointly and severally liable** to comply with the Rectification Order or the Rectification Costs Order.
 - Builders or Developers who fail to comply may face penalties, and Builders may also face disciplinary actions or suspension of their registration for non-compliance.
 - Any party that is not satisfied with a decision of the VBA in connection with a Rectification Order or Rectification Costs Order may appeal the decision to VCAT.
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3. Developer Bond Scheme

- The Bill introduces a new **Developer Bond Scheme** for Developers of residential apartment buildings that exceed **3 storeys**.
- Developers will need to provide a Developer Bond for an amount equal to **3% of the total estimated construction costs** of the project to the VBA, which will be held by the VBA for up to **2 years** after the occupancy permit is issued.
- Key features of the Developer Bond Scheme:
 - Developers must provide the **Developer Bond** before applying for an occupancy permit, in the form of a bank guarantee or an insurance bond from an approved institution.
 - It will be an **offence** for a Developer to apply for an occupancy permit without providing the necessary security.
 - Developers must appoint an **Assessor** to inspect the building and prepare reports on any defects.
 - The Assessor must undertake an inspection and prepare a **Preliminary Inspection Report** within 18 months after the issue of the occupancy permit. The inspection for the Preliminary Inspection Report cannot be undertaken earlier than 15 months after the date issue of the occupancy permit;
 - The Assessor must then undertake a final inspection and prepare a **Final Inspection Report** within 24 months after the date of issue of the occupancy permit. The purpose of the final inspection and final inspection report is to confirm whether the defects in the Preliminary Inspection Report have been rectified. The final inspection cannot be undertaken earlier than 21 months after the date of issue of the occupancy permit.
 - The **Owners Corporation** can apply to the VBA to use the Developer Bond to cover the costs of rectifying defects identified in the **Final Inspection Report**.
 - The Owners Corporation **must** use any money it receives from a Developer Bond for the purpose of rectifying the defects that the money received from the Developer Bond was paid for.
 - If there are no defects listed in the Preliminary Inspection, the VBA may waive the requirement for a Final Inspection and return of the Developer Bond.
 - If there were defects identified in the Preliminary Report, then the Developer can only apply for the return of the Developer Bond if the Owners Corporation consents to its return or in prescribed circumstances (that will be contained in regulations which are yet to be issued). Presumably if the Final Inspection Report confirms that all of the defects identified in the Preliminary Defects Report were rectified, then the Developer will be entitled to seek the return of the Developer Bond.

Impact of Developer Bond Scheme on Developers and Builders:

- Presently, Builders of residential apartment projects will generally provide security (around 2.5% of the contract price) for a 12-month defect liability period after occupancy permits have been issued. However, the effect of the Bill is that both Developers and Builders will be required to provide security for up to **2 years** after the date of issue of an occupancy permit increasing costs for both Builders and Developers and ultimately buyers of residential apartments.
- The Bill as presently drafted will potentially apply **retrospectively** to any existing projects where an occupancy permit will not be obtained after the implementation of the Bill (which is expected

to be **July 2026**). If Developers are unable to raise the capital required for the Developer Bond this could leave Developers, Builders (and their buyers), with apartments that are otherwise ready for immediate use and occupation but unable to be legally occupied as the Developers are unable to apply for and obtain the necessary occupancy permit.

4. **Minimum Financial Requirements**

- The Bill proposes to introduce **minimum financial requirements** for Builders to be eligible for registration as building practitioners. The specific financial requirements will be set out in regulations (yet to be published).
 - Failure to meet these requirements could lead to disciplinary action or suspension of a Builder's registration.
 - It is difficult to assess the impact that this change will have without details of the financial requirements that will be contained in the regulations, but this change will potentially also have a major impact on the domestic building industry.
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Conclusion

The Bill will fundamentally change the domestic building industry, placing significant additional obligations on Builders and Developers of residential apartment buildings.

Whilst intended to improve **buyer protections** for new residential homes and apartment buildings, there is a real risk that Bill may ultimately cause a reduction in the number of residential apartment projects that Developers are prepared to undertake as some projects may become unviable if the Developer is required to set aside 3% of total construction costs for the Developer Bond.

It will be interesting to see whether introduction of the buyer protection measures in the Bill will have an adverse impact on an already subdued domestic building industry in Victoria and whether the Government can achieve its stated goal of procuring the construction of **800,000 new homes** over the next decade.

This article is intended for information only. For specific advice in relation to your circumstances please call Melbourne Construction Lawyers on 03 9606 0661.