

## The *Domestic Building Contracts Act 1995* (Vic) and Developers

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### Background

The previous newsletter on the *Domestic Building Contracts Act 1995* (Vic) ('Act') identified that the broad interpretation given to the terms under the Act will likely impact multiple developments. This inevitably necessitates the question of who will bear the responsibilities and liabilities under the Act. When the Act was assented to, the Minister for Housing stated that the Act "will be of significant assistance to home owners and builders alike".<sup>1</sup> Whilst this comment may suggest that builders are the sole targets of the Act, judges have struggled to conclusively determine whether developers may also have a role to play.

### Case Law

In a 2004 case, the Victorian Court of Appeal held that the Act was "enacted to regulate the rights of home owners and buildings and was not intended to apply to developers".<sup>2</sup> This sentiment was echoed in another matter before the Supreme Court.<sup>3</sup> Similarly, a few years later before the Victorian County Court, Judge Shelton also stated that the Act "was not intended to, and does not apply to, the owner-developers".<sup>4</sup>

However, in the recent case of *Burbank* Justice McDonald undermined the efficacy of this line of thinking.<sup>5</sup> Her Honour claimed that it was a misconception "to frame the question concerning the application of the DBC Act by reference to the identity of a contracting party."<sup>6</sup> Moreover, Justice McDonald identified that section 5 of the Act "which prescribes the work covered by the Act, directs attention to the **nature** of the work undertaken rather than the parties to the contract governing the work in question".<sup>7</sup> Helpfully, her Honour noted, having regard to the exclusions under section 6 of the Act, that "there are instances in which a contract to which a developer is a party will not contain the warranties implied by s 8 of the DBC Act."<sup>8</sup> These instances include a construction of building

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<sup>1</sup> Victoria, *Parliamentary Debates*, Legislative Council, 22 November 1995, 743 (Barry Thomas Pullen).

<sup>2</sup> *Winslow Constructors Pty Ltd v Mt Holden Estates Pty Ltd* [2004] VSCA 159, [110].

<sup>3</sup> *Kane Constructions Pty Ltd v Sopov* [2005] VSC 237, [891]- [893].

<sup>4</sup> *Glenrich Builders Pty Ltd v 1-5 Grantham Street Pty Ltd* [2008] VCC 1170, [28].

<sup>5</sup> *Burbank Australia Pty Ltd v Owners Corporation PS 447493* [2015] VSC 237, [3].

<sup>6</sup> *Ibid* [32].

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid* [33].