



Home Building Contracts Act

A guide for those entering into a contract for home building and associated works.

When does the home building contracts act apply?

The *Home Building Contracts Act 1991* (the Act) regulates contracts between any person undertaking home building or associated work for a home owner, including owner-builders. It excludes contracts between trades people/subcontractors and a builder, if the builder has a contract with the owner for the performance of the work.

The Act applies to parties entering into a 'home building work contract', being a contract for the performance of 'home building work' or 'associated work', where the value of the fixed price contract is between \$7,500 and \$500,000.

Home building and/or associated work includes:

- erecting a new home or making additions to an existing home;
- installing a swimming pool;
- cabinetry or tiling work for a kitchen or bathroom;
- constructing a garage, shed or pergola;
- performing landscaping work; and
- other similar work.

Limited provisions apply to cost plus contracts. These are set out in section 14 of the Act.

Notice for the home owner

Before a home building work contract is signed by the owner, the Act requires the builder to provide the owner with a copy of the 'Notice for the Home Owner', which summarises the requirements of the Act. The notice is Schedule 1 of the Home Building Contracts Regulations 1992, which is available on and the Building and Energy website www.dmirs.wa.gov.au/building-and-energy and the Parliamentary Counsel's Office website www.legislation.wa.gov.au

What should be in a home building work contract?

Contracts must be in writing, contain all the terms, conditions and provisions of the agreement, show the date and be signed by both parties. An oral agreement is not sufficient to comply with the Act.

Are only registered builders covered by the Act?

Under the Act a 'builder' is any person(s) who carries on a business which performs home building work or associated work for others. That person may or may not be a registered builder.



- New homes / renovations
- Patios / pergolas
- Pools / landscaping
- Cabinet making / tiling
- Sheds

Deposits and progress payments

A home building work contract cannot provide for a payment a deposit prior to the commencement of work that exceeds 6.5 per cent of the total cost of the work. Once work has commenced, any progress payment must only be for work actually performed or materials already supplied. For example, a builder cannot demand a progress payment for the purchase and delivery of bricks until the bricks have been delivered to the site.

Price rises

'Rise and fall' clauses are prohibited under the Act, meaning that the price agreed to between the parties should as far as possible be fixed and final. Generally, a clause is not considered to be a rise and fall clause if it allows the builder to pass on costs incurred as a result of increased taxes or duty.

Contract variations

Usually, any variation to a home building work contract is to be in writing, show the date and be signed by both parties, with a copy given to the home owner before the variation work commences. Exceptions can include changes resulting from directions given by a building surveyor or from circumstances that could not have been foreseen when the contract was entered into.

Workmanship defects

Builders are liable to make good, at no cost to the owner, defects in home building work where notified in writing within four months of practical completion.

Home indemnity insurance

Home indemnity insurance (HII) covers the home owner, and subsequent owners, against the loss of deposit (up to \$20,000) or the completion or rectification of the building work (up to \$100,000) should the builder die, disappear or become insolvent within six years from the date of practical completion.

It is compulsory for all residential building work above \$20,000 to be covered by HII, except associated work alone (e.g. swimming pools, carports, pergolas and landscaping).

HII is generally only compulsory for associated work if that work is performed under a contract that also includes construction or renovation of a residence and the building work is above \$20,000.

Before commencing work or demanding any payment including a deposit, the builder must take out HII and give the home owner a certificate confirming the existence of the insurance cover.

Further information and a list of approved HII providers is available on the Building and Energy website www.buildingcommission.wa.gov.au.

What happens if there is a dispute?

Building and Energy can deal with contractual disputes relating to lump sum home building work contracts between \$7,500 and \$500,000, provided the complaint is lodged within three years from when the cause of the dispute arose. Complaints about the standard of workmanship can be lodged regardless of the value of the works, provided the complaint is lodged within six years after the completion of the works.

Penalties

The provisions of the Act are for the protection of both consumers and builders. Where a builder fails to comply with the provisions of the Act, penalties of up to \$10,000 in the case of an individual and \$50,000 in the case of a company can be imposed. If you are contemplating performing home building or associated work or carrying on a business to perform such work, you should seek independent legal advice about complying with your obligations under the Act.

Further information

Copies of the Home Building Contracts Act 1991 and the Home Building Contracts Regulations 1992 (includes Schedule 1 – Notice for the Home Owner) are available on the Parliamentary Counsel's Office website www.legislation.wa.gov.au or contact Building and Energy for assistance on 1300 489 099 or be.info@commerce.wa.gov.au.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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