

FAIR TRADING

FT301

HOME BUILDING CONTRACTS ACT 1991

HOME BUILDING CONTRACTS AMENDMENT REGULATIONS 1997

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Home Building Contracts Amendment Regulations 1997*.

Commencement

2. These regulations come into operation on 1 February 1997.

Principal regulations

3. In these regulations the *Home Building Contracts Regulations 1992** are referred to as the principal regulations.

[* *Published in Gazette 3 April 1992, pp. 1465-68.*
For amendments to 2 January 1997 see 1995 Index to Legislation of Western Australia, Table 4, p. 146 and Gazette 8 November 1996.]

Regulations 5 and 6 inserted

4. After regulation 4 of the principal regulations the following regulations are inserted —

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Home indemnity insurance maximum excess

5. A policy of insurance under Part 3A of the Act may provide for an amount of \$500 or a lesser amount for which the insurer is not liable on a claim under the policy.

Home indemnity insurance exemption

6. (1) Subject to subregulation (2), residential building work carried out by or on behalf of the State Housing Commission which relates to a dwelling for letting or leasing is exempt from the requirements of Part 3A of the Act.

(2) If, within 6 years from the day of practical completion of a dwelling referred to in subregulation (1), the State Housing Commission proposes to enter into a contract to sell or otherwise dispose of the dwelling or the land on which the dwelling is constructed it is to ensure that, prior to entering into the contract —

- (a) a policy of insurance that complies with subregulation (3) is in force in relation to the residential building work; and
- (b) the purchaser is furnished with a certificate, in a form approved by the Minister, which evidences the taking out of that policy.

(3) The policy of insurance referred to in subregulation (2) is to —

- (a) insure the purchaser and the purchaser's successors in title against the risk of being unable to take advantage of an entitlement to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* by reason of the insolvency or death of the builder who carried out the residential building work or by reason of the fact that, after due search and enquiry, that builder cannot be found;
- (b) provide that claims may be made under it at any time before the expiration of a period of 6 years from the day of practical completion;
- (c) provide for insurance cover of —
 - (i) at least \$100 000 or such other amount as is prescribed; or
 - (ii) the cost of the building work, whichever is the lesser; and
- (d) be issued by or on behalf of an insurer who is —
 - (i) authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister.

(4) Where the policy of insurance referred to in subregulation (2) relates to work described in paragraph (b) of the definition of "home building work" in section 3 of the Act, the cost of the building work for the purposes of subregulation (3) (c) (ii) is only the cost of —

- (a) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and
- (b) any building work to the dwelling after placement.

(5) In this regulation —

"practical completion" has the same meaning as in section 11 of the Act;

"State Housing Commission" means The State Housing Commission continued under the *Housing Act 1980*.

Schedule 1 amended

5. Schedule 1 to the principal regulations is amended by inserting after the item headed "**Building Disputes Committee**" the following —

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Home Indemnity Insurance

It is compulsory for all home building work except associated work alone (e.g. swimming pools, carports, pergolas and landscaping), the cost of which is above \$10 000, to be covered by home indemnity insurance.

Home indemnity insurance is also compulsory for associated work if that work is performed under a contract which includes construction or renovation of a residence and the total cost of all the building work is above \$10 000.

Before commencing work or demanding any payment (including a deposit) from you the builder must take out insurance and give you a certificate confirming the existence of the insurance cover.

This insurance will protect you and successive owners for a period of 6 years from the day of practical completion of the building works against financial loss due to the insolvency, death or disappearance of the builder which results in —

- (a) loss of deposit (up to a limit of \$13 000);
- (b) the non-completion of the building work; or
- (c) the failure to rectify faulty or unsatisfactory building work.

[Note that claims under the insurance policy must be made within a period of 6 years from the day of practical completion.]

You should check with your builder to ensure that home indemnity insurance has been taken out or is not required.

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By His Excellency's Command,

J. PRITCHARD, Clerk of the Council.