

CN309

HOME BUILDING CONTRACTS ACT 1991
HOME BUILDING CONTRACTS REGULATIONS 1992

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Home Building Contracts Regulations 1992*.

Commencement

2. These regulations come into operation on the day on which the *Home Building Contracts Act 1991* comes into operation.

Form of notice prescribed

3. The form of notice set out in Schedule 1 is prescribed for the purpose of section 4 (2) of the Act.

Schedule 1

(reg. 3)

HOME BUILDING CONTRACTS ACT 1991

NOTICE FOR THE HOME OWNER

This Notice

A builder must give a copy of this notice to you, as the owner, before you sign a contract for home building work that is covered by the *Home Building Contracts Act 1991*.

This notice summarizes relevant provisions of that Act as required by section 4 (2). The Act itself should be referred to for the exact text. A copy can be obtained from the State Law Publisher† or the State Government Bookshop*.

Who are "owners" and "builders"?

In this notice "owner" means the person for whom the home building work is to be done and "builder" means the person who, in the course of business, is to do the work or arrange for it to be done.

What the Act covers

The Act deals with contracts for home building work where the contract price is above \$6 000 and below \$200 000. The Act also applies to contracts, within that price range, for associated work (e.g. swimming pools, carports and landscaping) and for alterations. It makes some provisions that are implied in all contracts, and also states what is not allowed in any contract.

Under the Act a builder has a legal duty not to do anything in connection with a contract that is "unconscionable, harsh or oppressive".

The Act deals with "cost plus" contracts only to the extent that special rules apply to them—see later in this notice.

A builder may be prosecuted and fined for not complying with some provisions of the Act.

Rights conferred by the Act cannot be taken away, diminished or waived and it is forbidden to make any agreement or arrangement to by-pass the Act.

Building Disputes Committee

A Building Disputes Committee has been set up with power to deal with disputes between owners and builders about contracts that fall within the Act. There is a monetary limit on the Committee's powers. It cannot (unless the parties agree to it doing so) order work to be done exceeding \$100 000 in value, or order the making of a payment above that amount.

There is provision for regulations to be made which would allow certain powers of the Building Disputes Committee to be delegated to the registrar of the Committee.

Contract—steps to be followed

Everything agreed to between you and the builder must be set out in a written contract which must be dated and signed by both you and the builder or by your representatives. If this is not done you may terminate the contract—see later in this notice under "Termination of contract".

You must be given a copy of the contract as soon as is practicable after it has been signed and before the building work starts.

It is the builder's duty to see that all these steps are taken.

Special rules for cost plus contracts

A "cost plus" contract is one under which the builder is entitled to recover actual costs incurred plus an extra amount for profit. The following rules apply to these contracts—

- (a) the contract must be headed "cost plus contract"; and
- (b) it must contain a statement in which both you and the builder acknowledge that it is a cost plus contract and that the Act does not apply to it.

If not, the owner may terminate the contract—see later in this notice.

Provisions that are not allowed

Before work begins, the builder can require you to pay a deposit of no more than 6.5% of the contract price. After work begins, the builder can only require you to make progress payments for work done or goods supplied. Any payment other than these must be authorized by regulation.

†Address at time of printing: State Print, 22 Station Street, Wembley.

*Address at time of printing: Ground Floor, Supply House, 815 Hay Street, (cnr. King St.), Perth.

The builder cannot include in a contract a requirement for you to make any payment other than as set out above. If any such provision is included you may terminate the contract—see later in this notice.

Where a contract refers to “prime costs” it means fittings or equipment which may vary in price e.g. bathroom tiles. The builder must estimate the cost of such items at or above the lowest amount that they could reasonably cost and the cost must not be understated in the contract. If it is, the builder may be prosecuted and fined. This also applies to estimates for “provisional sums” such as site works.

The builder must not include in the contract provisions that are “unconscionable, harsh or oppressive”. If you think this has occurred, you may refer the matter to the Building Disputes Committee.

Contract price must be fixed

A contract must not contain a “rise and fall” clause i.e. one which allows the builder to pass on price increases for labour or materials that occur *after* the contract is signed.

However the builder can include a clause in the contract which allows for a price increase to cover an increase in actual costs—

- (a) if government taxes or charges increase after the contract is signed or if the builder has to comply with a State or Commonwealth law; or
- (b) if work does not start within 45 working days after the contract is signed and the delay is not caused by the builder.

If (b) applies and the price rise is more than 5% you may terminate the contract within 10 working days—see later in this notice. In any case you can apply to the Building Disputes Committee to assess whether the price rise is justified.

Varying the contract

1. Steps to be followed

All changes to a contract, including the cost of the change, must be put in writing which must be dated and signed by both you and the builder or your representatives.

A copy must be given to you as soon as is possible after both you and the builder have signed, and before the start of the work that results from the change.

The builder must ensure that these steps are taken.

2. Exceptions

Certain changes may be made without these steps being taken, namely—

- (a) changes resulting from directions given by a building surveyor or other person acting under a written law;
- (b) changes arising from unforeseen circumstances (but this does not include unforeseen labour or material cost increases).

Note also the changes by way of price increase that are referred to above under the heading “Contract price must be fixed” and below under the heading “Where approvals are delayed”.

3. Protection that you have

Where any change coming under paragraph (a) or (b) above occurs the builder must give you certain information in writing—see section 8 (1), (2) and (3) of the Act. Note that if you and the builder have a dispute about “unforeseen circumstances” and you wish to apply to the Building Disputes Committee you must do so within 14 days.

Where approvals are delayed

A contract is conditional on a building licence and the Water Authority’s approval being obtained within 45 working days on conditions that both you and the builder accept. However contracts that are only for associated work (e.g. swimming pools, carports and landscaping) or for a type of work prescribed by regulations are not subject to this time limit.

Both you and the builder must do what you reasonably can to ensure that these conditions are met. If they are not met, the rights of the parties depend on whose fault prevented the condition being met within the 45 day period.

Builder at fault

Contract remains in force on the same terms and conditions unless you and the builder agree otherwise

Owner at fault or neither party or both parties at fault

Contract remains in force on the same terms and conditions until you and the builder agree otherwise or either party terminates the contract under section 19 but—

- (i) the builder may by notice increase the contract price;

- (ii) if the increase exceeds 5% you may terminate the contract within 10 working days—see below under “Termination of contract”—provided you compensate the builder for costs incurred;
- (iii) you may apply, within 10 working days of the notice of increase, to have the increase reviewed by the Disputes Committee.

Making good defects

Any defect in work done or materials supplied under a contract must be made good by the builder if the builder is notified of the defect within 120 days of practical completion of the building work.

However you and the builder may agree in the contract that particular defects are excluded from this provision.

Inspection

A builder must not prevent you or a person representing you or your lending institution from inspecting the building work as allowed by the contract or by regulations. A contract cannot restrict inspections except by limiting them to normal working hours or forbidding inspections that cause unreasonable interference.

Termination of contract

In various places above it is stated that you can terminate the contract for a particular reason. To do this you must give notice in writing to the builder *before* the building work is finished.

Where a contract is terminated, the Building Disputes Committee can make financial adjustments between you and the builder.

Disputes

Before you or the builder apply to the Building Disputes Committee, a notice must be given to the other outlining the complaint and asking that it be put right or that a settlement be agreed to.

A claim under the *Home Building Contracts Act* must be brought within 3 years of the time when it first arose.

Parties to proceedings before the Building Disputes Committee are not to be represented by legal practitioners except as set out in the Act.

Note that disputes about building work may also be brought before the Building Disputes Committee under section 12A of the Builders' Registration Act within 6 years of practical completion of the work.

Advice on how a dispute may be placed before the Building Disputes Committee and related matters may be obtained from the Registrar of the Committee**.

By His Excellency's Command,

D. G. BLIGHT, Clerk of the Council.

**Address at time of printing: 18 Harvest Terrace Perth, Tel. No. 321 6891.