

# Home Building Contracts Act 1991

A Guide for those undertaking Home Building  
Work and Associated Work for Others



**BRB** BUILDERS'  
REGISTRATION  
BOARD  
OF WESTERN AUSTRALIA

September 2009



## What is the Home Building Contracts Act?

The *Home Building Contracts Act 1991* (the Act) provides protection for both owners and anyone contracted to undertake home building work. The Act sets out the minimum requirements for certain contracts, prohibits certain arrangements, and operates in conjunction with the *Builders' Registration Act 1939*. This brochure sets out some of the requirements of the Act. To gain a full understanding it is recommended you obtain a copy of the Act.

## When does the Act Apply?

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 contract is between \$7,500 and \$500,000 (excluding cost plus contracts). 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.

The Act regulates contracts between any person undertaking home building or associated work for a homeowner, including owner-builders. It excludes contracts between trades/subcontractors and a builder, where that builder has a contract with the owner for the performance of the work.

## Are only Registered Builders covered by the Act?

Under the Act a 'builder' is any person who performs home building work or associated work for others. That person may or may not be a registered builder.

## Notice for the Home Owner

Before a home building work contract is signed 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 and can be purchased from the State Law Publisher.



## **What Do You Need To Know?**

### **What should be in a home building work contract?**

Contracts must be in writing, contain all the terms, conditions and provisions of the agreement, and be dated and signed by both parties.

An oral agreement or an agreement based on a quote that does not set out all the terms and conditions of the agreement reached between the parties, is not sufficient.

### **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. 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.

### **Deposits and Progress Payments**

A home building work contract cannot provide for a payment (i.e. a deposit) prior to the commencement of work that exceeds 6.5% 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 can not demand a progress payment for the purchase and delivery of bricks until the bricks have been delivered to site.

### **Contract Variations**

Any variation to a home building work contract must be signed and dated by both parties, with a copy given to the home owner before the variation work commences. Exceptions include changes resulting from directions given by a building surveyor or from circumstances which 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. This protection is in addition to the right under the *Builders' Registration Act 1939* to apply to the Building Disputes Tribunal, within a period of six years from completion of the building work, to have any faulty or unsatisfactory work remedied.

# What Happens if there is a Dispute?

The Building Disputes Tribunal can deal with contractual disputes relating to lump sum home building work contracts valued between \$7,500 and \$500,000, provided that the complaint is lodged within three years from when the breach occurred. Complaints about the standard of workmanship can be lodged regardless of the value of the works, provided that the complaint is lodged within six years after the completion of the works. For more information, visit [www.buildingdisputes.wa.gov.au](http://www.buildingdisputes.wa.gov.au) or call (08) 9476 1222.

## 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 advice about complying with your obligations under the Act.

## Further Information

If you wish to obtain further information relating to the content of this pamphlet contact:

Builders' Registration Board

Level 1, 31 Troode Street, WEST PERTH WA 6005

Postal Address: Locked Bag 12, WEST PERTH WA 6872

Phone: (08) 9476 1200

Facsimile: (08) 9476 1276

Website: [www.builders.wa.gov.au](http://www.builders.wa.gov.au)

If you have a query or complaint of a contractual nature where the building contract is valued at \$7,500 or less, or \$500,000 or more, you can contact the Department of Commerce on 1300 304 054.

Copies of the *Builders' Registration Act 1939* and *Home Building Contracts Act 1991* and *Notice to the Home Owner* are available from the State Law Publisher, on (08) 9426 0000 or visit [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

### Disclaimer

*The information contained in this pamphlet is intended as a guide to the provisions of the Home Building Contracts Act 1991 and should not be relied upon as a substitute for legal advice. If you are unsure as to any matters concerning your complaint or procedures, it may be appropriate to seek legal advice.*