

(Reprint No. 1)

SOUTH AUSTRALIA

BUILDING WORK CONTRACTORS REGULATIONS 1996

These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at 3 February 1997.

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REGULATIONS UNDER THE BUILDING WORK CONTRACTORS ACT 1995

BUILDING WORK CONTRACTORS REGULATIONS 1996

being

No. 73 of 1996: *Gaz.* 23 May 1996, p. 2547¹

as varied by

No. 259 of 1996: *Gaz.* 23 December 1996, p. 2262²

¹ Came into operation 1 June 1996: reg. 2.

² Came into operation 3 February 1997: reg. 2.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the regulations see Appendix.*

**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Building Work Contractors Regulations 1996*.

Commencement

2. These regulations will come into operation on the day on which the *Building Work Contractors Act 1995* comes into operation.

Revocation

3. The *Builders Licensing Regulations 1987* (see *Gazette* 26 March 1987 p. 752), as varied, are revoked.

Interpretation

4. (1) In these regulations, unless the contrary intention appears—

"**Act**" means the *Building Work Contractors Act 1995*;

"**repealed Act**" means the *Builders Licensing Act 1986*;

"**revoked regulations**" means the *Builders Licensing Regulations 1987*.

(2) For the purposes of these regulations, a reference to a qualification, course or subject conferred or offered by a particular institution includes a reference to a qualification, course or subject of a different name conferred or offered by that institution and certified by that institution to be an equivalent qualification, course or subject.

Definitions of building work, etc.

5. (1) For the purposes of the definition of "**building work**" in section 3 of the Act, "**building work**" includes—

- (a) the on-site construction, alteration, repair or improvement of a swimming pool or spa; and
- (b) paving; and
- (c) fencing (excluding post and wire fencing).

- (2) For the purposes of the definition of "**domestic building work**" in section 3 of the Act—

- (a) in relation to the period on or after the commencement of these regulations, "**domestic building work**" includes—
 - (i) the construction, alteration, repair or improvement of a swimming pool or spa within the external walls of a house or within the curtilage of a house; and
 - (ii) any other building work carried out within the curtilage of a house or on the boundary of the curtilage of a house;
- (b) in relation to the period before the commencement of these regulations, "**domestic building work**" includes any work included within the meaning of that term under the repealed Act and the revoked regulations.

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(3) For the purposes of the definition of "**house**" in section 3 of the Act—

- (a) in relation to the period on or after the commencement of these regulations, "**house**" does not include hotels, motels, youth hostels, residential camps, boarding or lodging houses, university halls of residence, boarding school dormitories, barracks, nurses homes, residential facilities for workers or for training purposes or other similar buildings;
- (b) in relation to the period before the commencement of these regulations, "**house**" does not include a building not included within the meaning of that term under the repealed Act or the revoked regulations.

(4) For the purposes of the definition of "**minor domestic building work**" in section 3 of the Act, the prescribed sum is \$5 000.

Exemptions

6. (1) A person who is authorised by licence under the *Plumbers, Gas Fitters and Electricians Act 1995* to carry on business as a plumbing contractor, a gas fitting contractor or an electrical contractor is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited to work authorised by the person's licence under the *Plumbers, Gas Fitters and Electricians Act 1995*.

(2) A person who is authorised by licence under the *Controlled Substances (Pesticide) Regulations 1988* (see *Gazette* 19 May 1988 p. 1267) to carry on business as a pest controller is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited to work authorised by the person's licence under the *Controlled Substances (Pesticide) Regulations 1988*.

(3) A person who is authorised by a security agents licence or a restricted security agents licence to install or maintain security alarm or surveillance systems under the *Security and Investigation Agents Act 1995* is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited to work authorised by the person's licence under the *Security and Investigation Agents Act 1995*.

(4) The South Australian Housing Trust and the South Australian Urban Projects Authority are exempt—

- (a) from the requirement to be licensed under Part 2 of the Act as a building work contractor;
- (b) from the application of Division 3 of Part 5 of the Act.

(5) Registered architects are exempt from the application of section 18 of the Act.

(6) A building work contractor is exempt from the application of Divisions 1, 3 and 4 of Part 5 of the Act in relation to a contract for the performance of domestic building work consisting solely of demolition work.

(7) A building work contractor is exempt from the application of sections 28, 29 and 30 and Division 4 of Part 5 of the Act in relation to a contract for the performance of domestic building work if—

- (a) the work is performed by a building work contractor as a contractor for the South Australian Housing Trust or the South Australian Urban Projects Authority; or

- (b) the building owner is a body corporate that is a public company within the meaning of the *Corporations Law* or that is a subsidiary within the meaning of the *Corporations Law* of such a public company.

Fees

7. (1) The fees fixed by Schedule 1 are payable to the Commissioner for the purposes set out in that schedule.

(2) The Commissioner may waive, reduce or refund a fee (or part of a fee) payable under these regulations if satisfied that it is appropriate to do so in a particular case.

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**PART 2
LICENSED BUILDING WORK CONTRACTORS**

Entitlement to be licensed as building work contractor—qualifications

8. (1) For the purposes of section 9(1) of the Act, to be entitled to be granted a building work contractors licence authorising—

- (a) plumbing; or
- (b) gas fitting; or
- (c) electrical work,

(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*), a natural person must have the same qualifications or experience, or qualifications and experience, as would be required for the person to be granted a licence under the *Plumbing, Gas Fitters and Electricians Act 1995* for the kind of work that would be authorised by the building work contractors licence.

(2) For the purposes of section 9(1) of the Act, to be entitled to be granted a building work contractors licence authorising work other than work of a kind referred to in subregulation (1), a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in Part A of Schedule 2 to the satisfaction of the Commissioner in relation to that kind of work.

(3) The kinds of work in relation to which qualifications or experience, or qualifications and experience, are to be determined by the Commissioner under subregulation (2) are to be as set out in Part C of Schedule 2.

(4) If the kind of work to be authorised by the licence is—

- (a) —
 - (i) plumbing; or
 - (ii) gas fitting; or
 - (iii) electrical work,

(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*); and

(b) in addition, other building work,

the person must have qualifications or experience, or qualifications and experience, such that the person meets the requirements of subregulations (1) and (2).

Periodic fees and returns

9. (1) For the purposes of section 11(2) of the Act, the fee must be paid and a return lodged on or before the last day of the month in each year that is the same month as the month in which the licence was granted.

(2) For the purposes of section 11(3) of the Act, the penalty for default in paying the fee or lodging the return is \$90.

Notification of changes in circumstances

10. (1) If there is any change in—

- (a) the residential address of a licensed building work contractor; or
- (b) the business or trading name under which a licensed building work contractor carries on business; or
- (c) the address at which a licensed building work contractor carries on business; or
- (d) the address of the registered corporate office of a licensed building work contractor that is a body corporate,

the contractor must, within 14 days after that change, give written notice to the Commissioner of the new address or name (as the case may be).

Maximum penalty: \$2 500

Expiation fee: \$160.

(2) A licensed building work contractor must, within 14 days after ceasing to carry on business as a building work contractor, give written notice to the Commissioner of that fact.

Maximum penalty: \$2 500

Expiation fee: \$160.

Return of licence

11. If a building work contractor's licence is suspended or cancelled, the contractor must, at the direction of the District Court or the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500

Expiation fee: \$160.

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**PART 3
REGISTERED BUILDING WORK SUPERVISORS**

Entitlement to be registered as building work supervisor—qualifications

12. (1) For the purposes of section 16 of the Act, to be entitled to be granted registration as a building work supervisor authorising the supervision of—

- (a) plumbing; or
- (b) gas fitting; or
- (c) electrical work,

(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*), a natural person must have the same qualifications or experience, or qualifications and experience, as would be required for the person to be granted registration under the *Plumbing, Gas Fitters and Electricians Act 1995* for the kind of work that the building work supervisor's registration would authorise the person to supervise.

(2) For the purposes of section 16 of the Act, to be entitled to be granted registration as a building work supervisor authorising the supervision of work other than work of a kind referred to in subregulation (1), a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in Part B of Schedule 2 to the satisfaction of the Commissioner in relation to that kind of work.

(3) The kinds of work in relation to which qualifications or experience, or qualifications and experience, are to be determined by the Commissioner under subregulation (2) are to be as set out in Part C of Schedule 2.

(4) If the kind of work that the registration would authorise the person to supervise is—

- (a) —
 - (i) plumbing; or
 - (ii) gas fitting; or
 - (iii) electrical work,

(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*); and

- (b) in addition, other building work,

the person must have qualifications or experience, or qualifications and experience, such that the person meets the requirements of subregulations (1) and (2).

Periodic fees and returns

13. (1) For the purposes of section 18(2) of the Act, the fee must be paid and a return lodged on or before the last day of the month in each year that is the same month as the month in which the registration was granted.

(2) A natural person who is a licensed building work contractor is exempt from the requirement to pay a fee or lodge a return as referred to in subregulation (1).

(3) For the purposes of section 18(3) of the Act, the penalty for default in paying the fee or lodging the return is \$90.

Notification of changes in circumstances

14. If there is any change in the name or residential address of a registered building work supervisor, the building work supervisor must, within 14 days after that change, give written notice to the Commissioner of the new name or address (as the case requires).

Maximum penalty: \$1 250
Expiation fee: \$80.

Return of certificate of registration

15. If registration of a person as a building work supervisor is suspended or cancelled, the building work supervisor must, at the direction of the District Court or the Commissioner, return the certificate of registration to the Commissioner.

Maximum penalty: \$1 250
Expiation fee: \$80.

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**PART 4
REQUIREMENTS RELATING TO DOMESTIC BUILDING WORK CONTRACTS**

Forms

- 16.** (1) The forms in Schedule 3 are prescribed for use for the purposes indicated in the form.
- (2) A form must—
- (a) contain information and be completed as required or indicated by the form; and
 - (b) not contain any particulars or statements other than those required or indicated by the Act or these regulations; and
 - (c) be printed in characters not smaller than the corresponding characters in that form as set out in Schedule 3; and
 - (d) not include any printing or handwriting (other than a signature) that is not clear and legible.

Unliquidated amounts under contracts

- 17.** (1) For the purposes of section 29(5)(a) of the Act, 15 per cent is prescribed.
- (2) For the purposes of section 29(5)(b) of the Act, a domestic building contract may include a provision entitling the building work contractor to recover, if the contract specifies an hourly rate of charge, the amount determined by applying the rate to the work actually performed.

Authorised payments under s. 30(1)(b)

- 18.** For the purposes of section 30(1)(b), a payment—
- (a) to a third party for engineering, drawing, surveying or other professional services; or
 - (b) to reimburse the cost of building indemnity insurance or the amount of any fee required to be paid under an Act in respect of the work performed or to be performed under the contract; or
 - (c) of not more than \$1 000 as a deposit,

is an authorised payment.

Limitations on insurers' liability (s. 35)

- 19.** (1) The following are the only permissible limitations on the liability of the insurer under a policy of insurance under Division 3 of Part 5 of the Act:
- (a) a limitation under which the insurer is not liable for the first \$400 (or some stipulated lesser amount) of each claim;
 - (b) a limitation under which the total amount that the insurer is liable to pay in relation to building work or the non-completion of building work at a particular site is fixed at not less than \$80 000.
- (2) A policy of insurance under Division 3 of Part 5 of the Act—
- (a) must contain a clause allowing a claimant at least 90 days (from the date on which the claimant becomes aware of the grounds for the claim) in which to make the claim; and

- (b) must not confer any right on the insurer to avoid liability on the ground of misrepresentation or non-disclosure on the part of the building work contractor or on any similar ground.

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**PART 5
ADVISORY PANEL**

Establishment of advisory panel

20. (1) The advisory panel to be established by the Minister under Part 6 of the Act is to be called the *Building Work Advisory Panel*.

(2) The panel is to consist of at least four members appointed by the Minister after consulting the following:

- (a) the Housing Industry Association Limited—South Australia Division;
- (b) the Master Builders Association South Australia Incorporated;
- (c) the Building Industry Specialist Contractors Association;
- (d) the Building Industry Specialist Contractors Organisation of South Australia Incorporated;
- (e) the Commissioner;
- (f) other relevant organisations representing the interests of building work contractors, employees of contractors and consumers.

(3) One member will be appointed by the Minister to chair meetings of the panel.

(4) The appointment of a member will be for a term, not exceeding three years, specified in the term of appointment and a member will, at the expiration of a term of appointment, be eligible for reappointment.

(5) The Minister may appoint an appropriate person to be a deputy of a member and that person, while acting in the absence of that member, has all the powers, rights and duties of that member.

(6) The Minister may remove a member from office on the grounds of—

- (a) mental or physical incapacity; or
- (b) dishonourable conduct; or
- (c) neglect of duty.

(7) The office of a member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office; or
- (c) resigns by notice in writing to the Minister; or
- (d) is removed from office by the Minister under subregulation (6).

(8) A quorum of the panel consists of a number of members equal to half of the members (ignoring any fraction) plus one and no business may be transacted at a meeting unless a quorum is present.

(9) The member appointed to chair the panel will preside at meetings of the panel or, in the absence of that member, a member chosen by those present.

(10) Subject to these regulations, the panel may determine its own procedures.

(11) The panel must have accurate minutes kept of its proceedings.

Prescribed functions

21. For the purposes of section 41(2)(e) of the Act, the following functions of the panel are prescribed:

- (a) advising the Commissioner in relation to the recognition of overseas and interstate qualifications and the adoption of national and international standards and agreements;
- (b) advising the Commissioner in respect of—
 - (i) the classes of licences or registration that should be established by conditions limiting the work that can be performed or carried out under the authority of licences or registration;
 - (ii) the qualifications, assessment procedures, training and other requirements for the various classes of licences or registration.

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SCHEDULE 1

Fees

1. S. 8(1)(b) of the Act: Application fee for licence	\$100
2. S. 11(2)(a) of the Act: Periodic fee for licence—	
(a) for a body corporate for the following kinds of building work (as described in Schedule 2 Part C):	
(i) any building work	\$487
(ii) light commercial/industrial and residential building work	\$487
(iii) residential building work	\$487
(iv) specified building work	\$244
(b) for a natural person for the following kinds of building work (as described in Schedule 2 Part C):	
(i) any building work	\$216
(ii) light commercial/industrial and residential building work	\$216
(iii) residential building work	\$216
(iv) specified building work	\$108
3. S. 7(2)(b) of the Act: Application fee to vary or revoke a licence condition	\$80
4. S. 15(b) of the Act: Application fee for registration	\$100
5. S. 18(2)(a) of the Act: Periodic fee for registration	\$97
6. S. 13(2)(b) of the Act: Application to vary or revoke a condition of registration	\$80
7. S. 19(3)(b) of the Act: Application for approval as a building work supervisor in relation to a building work contractor's business	\$60
8. S. 45(1) of the Act: Application for exemption	\$50
9. Fee for replacement of licence or certificate of registration	\$30

SCHEDULE 2*Performance Criteria and Kinds of Work***PART A—BUILDING WORK CONTRACTORS LICENCES PERFORMANCE CRITERIA**

Regulation 8(2) provides that for the purposes of section 9(1) of the Act, to be entitled to be granted a building work contractors licence, a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in the table below to the satisfaction of the Commissioner in relation to the kind of work to be authorised by the licence.

UNIT	
1. Business Management Applying the principles of business management in relation to a contracting business.	
ELEMENT	PERFORMANCE CRITERIA
1.1 Applying the principles of economics, finance and management of a business organisation.	1.1.1 Prepare and apply a business plan. 1.1.2 Prepare a cash flow budget. 1.1.3 Implement financial strategies. 1.1.4 Apply basic accounting principles to financial transactions. 1.1.5 Understand and prepare— · journals and ledgers; · balance sheets and revenue statements. 1.1.6 Assess earning capacity and financial stability. 1.1.7 Prepare income and expenditure projections. 1.1.8 Identify and use sources of costing information. 1.1.9 Monitor financial performance.
1.2 Applying appropriate legislation to address the administrative and legal requirements of a business organisation.	1.2.1 Understand the legal structures of a business. 1.2.2 Understand the significant features of the law relating to employment, dispute resolution procedures and professional liability. 1.2.3 Demonstrate a working knowledge of the law relating to occupational health and safety and workers compensation. 1.2.4 Demonstrate a working knowledge of the law relating to conservation of the environment. 1.2.5 Demonstrate a knowledge of the law relating to independent contractors.

	1.2.6	Understand recording and maintenance of wage and employment records.
	1.2.7	Demonstrate a working knowledge of mandatory taxes and insurances.
	1.2.8	Understand basic contract administration.
	1.2.9	Understand accident, injury and dangerous occurrence reports and obligations.
1.3 Planning, directing and controlling tasks, people and resources in a business organisation.	1.3.1	Determine and implement objectives and priorities of a business.
	1.3.2	Determine and implement operational strategies and methods.
	1.3.3	Prepare estimates of time, resource and cost implications.
	1.3.4	Implement work strategies.
	1.3.5	Organise work groups for specific tasks.
	1.3.6	Monitor operational performance.
	1.3.7	Apply occupational health and safety standards within a business.
	1.3.8	Apply mechanisms for effective employer/employee relationships.
1.4 Addressing customer requirements.	1.4.1	Identify customer requirements.
	1.4.2	Apply principles of business management to meet customer needs.
UNIT		
2. Building Work Management Applying the principles of building work to the operation of a contracting business.		
ELEMENT	PERFORMANCE CRITERIA	
2.1 Applying the law relating to building work practice.	2.1.1	Demonstrate a working knowledge of contract law relevant to the building industry.
	2.1.2	Understand the issues involved in the licensing and registration of builders.
	2.1.3	Apply the statutory requirements for the regulation of building work.
	2.1.4	Demonstrate a knowledge of the application of Australian Standards relating to building work.
	2.1.5	Interpret building specifications requirements.
2.2 Preparing and evaluating tenders.	2.2.1	Estimate costs.
	2.2.2	Evaluate risks.
	2.2.3	Prepare tender documentation.

<p>2.3 Determining required strategies, resources and operational requirements for construction.</p>	<p>2.3.1 Determine resources that need to be hired, leased or purchased.</p> <p>2.3.2 Determine the best course of action from various options for obtaining and using resources.</p> <p>2.3.3 Determine the requirements for temporary structures and facilities.</p> <p>2.3.4 Prepare schedules for building work.</p> <p>2.3.5 Update progress schedules.</p> <p>2.3.6 Assess the need for and select measures to overcome delays.</p>
<p>2.4 Establishing and operating costing systems.</p>	<p>2.4.1 Identify and classify costs.</p> <p>2.4.2 Prepare a cost control system.</p> <p>2.4.3 Prepare a project budget.</p> <p>2.4.4 Plan the sequencing of trades.</p>
<p>2.5 Applying Contract Management.</p>	<p>2.5.1 Select and apply the various standard forms of building contract in common use.</p> <p>2.5.2 Determine the requirements of the contract.</p> <p>2.5.3 Demonstrate a knowledge of progress payments, contract claims and variations.</p>

Building Work Contractors Regulations 1996**PART B—BUILDING WORK SUPERVISORS REGISTRATION PERFORMANCE CRITERIA**

Regulation 12(2) provides that for the purposes of section 16 of the Act, to be entitled to be granted registration as a building work supervisor, a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in the table below to the satisfaction of the Commissioner in relation to the kind of work that the registration would authorise the person to supervise.

UNIT	
1. Building Work Management Applying the principles of building work management in relation to the supervision of a building site.	
ELEMENT	PERFORMANCE CRITERIA
1.1 Planning and organising on-site building work.	1.1.1 Translate building designs and specifications into operational requirements. 1.1.2 Develop strategies for implementing building operations. 1.1.3 Determine appropriate resources required including personnel, materials and equipment.
1.2 Determining the need for coordination and installation of temporary structures and facilities for building work.	1.2.1 Determine the requirements for temporary structures and facilities. 1.2.2 Demonstrate a working knowledge of the most appropriate methods for provision of site facilities and preparation of detailed site layouts. 1.2.3 Coordinate the on-site approvals of temporary structures. 1.2.4 Arrange for and supervise the supply, erection, maintenance and removal of temporary structures and facilities.
1.3 Preparing project schedules	1.3.1 Prepare schedules for building work. 1.3.2 Update schedules. 1.3.3 Prepare reports on current status. 1.3.4 Assess the need for and select measures to overcome delays.
1.4 Managing on-site building work.	1.4.1 Supervise on-site operations. 1.4.2 Administer subcontracts. 1.4.3 Administer progress claims. 1.4.4 Organise the supply and installation of materials and equipment. 1.4.5 Manage appropriate operational systems including occupational health and safety, accident and injury reporting, and industrial relations.
	1.4.6 Plan, develop and oversee safe working systems for all site work.
	1.4.7 Communicate effectively with personnel on and off the site.

UNIT	
2. Building Technology Applying the principles of building technology to on-site building work.	
ELEMENT	PERFORMANCE CRITERIA
2.1 Applying the principles of building work practice.	2.1.1 Select and apply building principles and methods including— <ul style="list-style-type: none"> · appraisal of site conditions; · erection and construction techniques; · sequencing of trades; · control of plant and equipment. 2.1.2 Demonstrate a working knowledge of— <ul style="list-style-type: none"> · the use of basic measuring techniques; · the setting up and use on instruments to determine heights and levels; · demolition methods; · formwork design. 2.1.3 Interpret plans and specifications. 2.1.4 Produce simple working drawings suitable for on-site application. 2.1.5 Identify and select suitable materials. 2.1.6 Control the movement of materials on-site and their safe handling and storage. 2.1.7 Apply a basic understanding of— <ul style="list-style-type: none"> · properties and behaviours of structural materials; · sectional properties of structural elements; · structural load calculations; · performance of beams, columns and bracing; · utilisation of roof truss systems. 2.1.8 Apply the basic principles of estimating and demonstrate a working knowledge of take-off quantities for— <ul style="list-style-type: none"> · site works; · structure; · fit-out and finish. 2.1.9 Demonstrate a general knowledge of the process of the coordination of specialist services on-site.
UNIT	
3. Legislative requirements Applying a detailed knowledge of legislative requirements in respect of on-site building work.	
ELEMENT	PERFORMANCE CRITERIA
3.1 Applying the requirements of legislation, standards and codes relevant to on-site building work.	3.1.1 Identify the range of legislation applying to building work. 3.1.2 Apply the requirements of legislation and relevant standards and codes to the coordination and supervision of on-site building work. 3.1.3 Understand the requirements of relevant legislation, standards and codes to the performance of residential, commercial and industrial building work.

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PART C—KINDS OF WORK

Regulations 8(3) and 12(3) provide that the kinds of work in relation to which qualifications or experience, or qualifications and experience, are to be determined by the Commissioner are to be as set out below.

Any Building Work

Any commercial, industrial, residential and other building work.

Light Commercial/Industrial and Residential Building Work

Divided into the following kinds of building work:

- Building work limited to—
 - (a) houses not exceeding 3 storeys; and
 - (b) other buildings not exceeding 2 storeys.
- Building work limited to—
 - (a) houses not exceeding 3 storeys; and
 - (b) other buildings of a single storey.
- Building work limited to additions and alterations to buildings of any kind.

Residential Building Work

Divided into the following kinds of building work:

- Building work limited to houses not exceeding 3 storeys.
- Building work limited to houses of a single storey.
- Building work limited to additions and alterations to houses.

Other Specified Building Work

Divided into the following kinds of building work:

- Other specified building work.
- Other specified building work to be performed only—
 - (a) on a subcontract basis for a licensed building work contractor; or
 - (b) as a principal contractor working on a building project in association with other building work contractors where the building work comprised in the project is organised or supervised or both by a project manager who is a licensed building work contractor or a registered building work supervisor authorised to organise or supervise work of all of the kinds comprised in the project.

SCHEDULE 3

Forms

FORM 1

NOTICE UNDER SECTION 28(1)(f) OF BUILDING WORK CONTRACTORS
ACT 1995

YOUR BUILDING CONTRACT: YOUR RIGHTS AND OBLIGATIONS

THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS
AND OBLIGATIONS. YOU SHOULD READ IT CAREFULLY AND KEEP IT FOR
FUTURE REFERENCE.

Your domestic building work contract is a binding legal agreement. You have rights and obligations under the agreement. You also have certain rights guaranteed under the *Building Work Contractors Act 1995* in relation to the agreement. In particular, you have certain "cooling off" rights, which may enable you to cancel your contract if you are not satisfied with it, and you act quickly.

1. *What does the Act require?*

You must have a written contract with your building work contractor, setting out all the terms and conditions of your agreement. You must be given a copy of the signed contract, together with a copy of this notice. Both documents must be readily legible.

2. *What are my "cooling off" rights?*

You may cancel your building contract, if you act before the "prescribed time".

If you wish to cancel, you must give your building work contractor written notice of your intention not to be bound by the contract. You must serve that notice on the building work contractor either personally or by certified mail in an envelope addressed to the contractor. You must do this—

- (a) before five clear business days have expired after the making of the contract; or
- (b) if your building work contractor has not complied with relevant provisions of the Act, before the contractor completes the building work under the contract.

CANCELLATION IS A SERIOUS STEP AND SHOULD NOT BE TAKEN LIGHTLY. YOU MAY NEED TO SEEK LEGAL ADVICE, OR THE ADVICE OF THE OFFICE OF CONSUMER AND BUSINESS AFFAIRS, BEFORE EXERCISING THIS RIGHT OF CANCELLATION. WHEREVER POSSIBLE, YOU SHOULD FIRST DISCUSS YOUR PROBLEM WITH THE BUILDING WORK CONTRACTOR.

3. *What should I do?*

First, read this notice carefully. Then read the documents that you have signed. If you are not happy about any aspect, or have any questions, then ask your building work contractor to explain. If you are not satisfied with the explanation you have received, then seek advice from a lawyer or from the Office of Consumer and Business Affairs.

4. *Is there anything I should look for in particular?*

Most importantly, check to see that the work you want your building work contractor to do has been fully and accurately set out in the contract (including the plans and specifications). Do not rely on verbal promises or agreement. If you want to change the work to be done at a later stage, you will have to reach agreement with your building work contractor, and your contractor will usually be entitled to make a separate, additional charge as a *variation* to your contract. Not checking *now* could be very expensive.

Building Work Contractors Regulations 1996

5. *What about the price I have been quoted? Can it change?*

Some building contracts provide for a "fixed price". Others include a "rise and fall" clause. If your contract includes a rise and fall clause, then the price you have been quoted (even if it is referred to in your contract) will most probably NOT be the total amount you will have to pay. Your contract price can also change due to any variations to the building work in accordance with your contract.

Note: Most variations require your written approval in advance, but others may be unforeseen. You should refer to your particular contract. Certain items in your contract may be designated "prime cost" or "provisional sums", which may also lead to a change in the total sum you can be charged.

If your contract includes a rise and fall clause, or other provisions as a result of which a price set out in your contract may change, or is an estimate only, then the contract must contain "THIS PRICE MAY CHANGE" or "ESTIMATE ONLY" adjacent to the price subject to change. If there is more than one such price, then they must be set out in a single list in the contract.

Those prices that are only estimates *must* be fair and reasonable estimates.

6. *What is a rise and fall clause?*

A rise and fall clause entitles your building work contractor to pass onto you increases (or reductions) in the cost of performing your building work after you have signed your contract, whether those costs relate to labour (including relevant overhead) or materials.

The formulae used in building contracts to determine the amount of the additional costs that can be passed onto you vary. Check your contract carefully. If you have any questions, ask your building work contractor to explain, or seek advice.

7. *What are "prime cost" items?*

Your building work contract may include the supply of certain goods and services, *eg.*, kitchen stoves, bathroom tiling. These items may be designated "prime cost", so that if the standard of goods you select is higher than that provided for by your building work contractor, then you may have to pay an additional cost over and above that provided for, plus a surcharge, which may be up to 15 per cent of the cost of the item.

8. *What are "provisional sums"?*

These are amounts your building work contractor has determined as "best estimates" of the cost of doing certain building work under your contract.

For example, if your building site slopes and no contour survey has been carried out, your building work contractor may not be able to prepare a final price for the earthworks needed to provide a level site for your domestic building work. The building work contractor may include an estimated figure which is subject to change when a survey plan is provided. That estimated figure is a "provisional sum".

Provisional sums must be fair and reasonable estimates in the circumstances in which they are provided.

9. *Are there any special problems with package land and building deals?*

Yes.

If you have entered into a package deal for land *and* building work, then it is likely you have signed a number of documents. The information contained in this notice relates only to the domestic building work contract you have signed. It does not apply to your contract for the purchase of land, which is subject to different rules. You probably have *less* time to consider those documents than your building contract.

Be particularly careful about package deals where your building work contractor is unable to start work immediately because necessary approvals have not been granted, or services connected, or legal titles granted. Your building work contractor may be entitled to make additional charges arising from delays which are the fault of neither yourself or the contractor. If in doubt, talk to your building work contractor or seek advice.

10. *What other rights do I have?*

The Act implies certain warranties on the part of your building work contractor, and these apply regardless of what your contract says.

These warranties are as follows:

- (a) your building work must be performed in a proper manner to accepted trade standards and in accordance with the agreed plans and specifications; and
- (b) the materials supplied by the building work contractor will be good and proper materials; and
- (c) the building work will be performed in accordance with all statutory requirements; and
- (d) unless the contract stipulates a period within which the work must be completed—the work will be performed with reasonable diligence; and
- (e) if your contract is for the construction of a house—the house will be reasonably fit for human habitation; and
- (f) if you have made known to your building work contractor the purpose for which the work is required, or the result you want to achieve in a way that demonstrates that you are relying on your contractor's skill and judgment, then your contractor warrants that the work and the materials will be fit for your purposes, or of a nature and quality that they might reasonably be expected to achieve that result.

If your building work contractor does work or provides materials which do not comply with those warranties, then your rights have been infringed, and you may have a right to take legal action before the courts. If you are not satisfied, talk to your building work contractor. If you are still not satisfied, seek advice from a lawyer or the Office of Consumer and Business Affairs.

11. *What about Building Indemnity Insurance?*

Your building work contractor must take out a policy of building indemnity insurance before work commences. The insurance protects you from some of the losses you may suffer if your building work contractor dies, disappears or becomes insolvent. Your building work contractor must provide you with a copy of the certificate of insurance. Keep it for your protection.

12. *Am I obliged to pay a deposit in advance of work done?*

As a general rule, your building work contractor is entitled only to genuine progress payments for work done. Your building work contractor may ask you to pay in advance for money that has to be paid to a third party (eg: a council for planning approval, building indemnity insurance or to an engineer or surveyor for a report). Apart from money in advance for such fees, the law prohibits the taking of any deposit on a domestic building work contract in excess of \$1 000. If in doubt, seek advice *before* making any payments.

13. *When should I make a progress payment?*

The law requires that your building work contractor make a *written* demand for a progress payment, so payment should not be made without such a demand. Progress payments should *not* be made in advance of the performance of the building work to which the demand relates. If you have borrowed money from a recognised lending institution, it is likely to make progress payments on your behalf.

14. *What if I have a dispute with my building work contractor?*

First, talk to your building work contractor. Many potentially serious disputes can be avoided by good communication between building owner and contractor. Your contract may have clauses relevant to dispute resolution which may assist both parties in resolving the dispute.

If that does not work, you may need independent advice. You may wish to seek legal advice, or the advice of the Office of Consumer and Business Affairs. Some disputes can be resolved by negotiation. Others can only be resolved by legal proceedings, whether before the courts or by private arbitration as provided in many building contracts.

Before commencing any legal action over building work, you should seek advice from a lawyer or from the Office of Consumer and Business Affairs.

Building Work Contractors Regulations 1996

15. *Where should I go for advice?*

First, talk to your building work contractor. If you want or need independent advice about your building work contract, talk to a lawyer or the Office of Consumer and Business Affairs. A list of lawyers appears in the telephone directory under the heading of "Solicitors".

Building Work Contractors Regulations 1996

FORM 2

BUILDING INDEMNITY INSURANCE CERTIFICATE

(Building Work Contractors Act 1995, section 34)

Certificate No.:

A policy of insurance that complies with Division 3 of Part 5 of the *Building Work Contractors Act 1995* has been issued by:

. *(insert name of insurer)*

in favour of:

. *(insert name of building owner)*

in respect of:

.

. *(insert brief description of domestic building work)*

at:

.

. *(insert the address at which or description of the land on which the work is to be performed)*

to be carried out by:

.

. *(insert name of building work contractor and the contractor's licence number)*

Signed: *(to be signed by employee or agent of the insurer)*

Building Work Contractors Regulations 1996

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Regulation No. 259 of 1996, reg. 4)

4. A regulation varied or revoked by these regulations will continue to apply (as in force immediately prior to the variation or revocation coming into operation) to an expiation notice issued under the varied or revoked regulations.

Legislative History

Regulation 10(1) and (2):	varied by 259, 1996, reg. 3 (Sched. cl. 5)
Regulation 11:	varied by 259, 1996, reg. 3 (Sched. cl. 5)
Regulations 14 and 15:	varied by 259, 1996, reg. 3 (Sched. cl. 5)