



Home Building Amendment (Contracts) Regulation 2003

under the

Home Building Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Home Building Act 1989*.

REBA PAIGE MEAGHER, M.P.,
Minister for Fair Trading

Explanatory note

The objects of this Regulation are as follows:

- (a) to exempt certain building contracts (including contracts between builders and between builders and developers or subcontractors) from the application of provisions conferring the right to rescind a building contract during a 5-day cooling off period and other provisions requiring consumer information to be given to persons entering building contracts,
- (b) to require certain building contracts to include a condition that variations must be in writing (replacing a requirement that those building contracts include a condition that makes any variations that are not in writing automatically ineffective),
- (c) to require certain building contracts to contain a checklist of matters of concern to a consumer, including an acknowledgement by a person contracting to have building work done that the checklist has been checked off,
- (d) to clarify obligations under building contracts to comply with statutory and other requirements and to enable liability to be limited in relation to designs and specifications provided by owners or required by owners.

This Regulation is made under the *Home Building Act 1989*, including sections 7AA, 7BA, 7E, 16DE and 140 (the general regulation-making power).

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Clause 1 Home Building Amendment (Contracts) Regulation 2003

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Home Building Act 1989

1 Name of Regulation

This Regulation is the *Home Building Amendment (Contracts) Regulation 2003*.

2 Commencement

This Regulation commences on 16 February 2004.

3 Amendment of Home Building Regulation 1997

The *Home Building Regulation 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clauses 13C and 13D

Insert in appropriate order in Division 1 of Part 3:

13C Exemptions relating to provision of consumer information

Section 7AA (Consumer information) of the Act does not apply to the following classes of contract:

- (a) a contract referred to in clause 13,
- (b) a contract for residential building work entered into between the holder of a contractor licence and a developer who is taken under section 3A (1) of the Act to be a developer who does the work,
- (c) a contract for residential building work that is required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of persons or to prevent substantial damage to property.

13D Exemptions relating to cooling-off periods in contracts

Section 7BA (Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty) of the Act does not apply to the following classes of contract:

- (a) a contract referred to in clause 13 (a) or (b),
- (b) a contract for residential building work entered into between the holder of a contractor licence and a developer who is taken under section 3A (1) of the Act to be a developer who does the work,
- (c) a contract for residential building work that is required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of persons or to prevent substantial damage to property,
- (d) a contract for residential building work that is supplied and prepared by or on behalf of the person who contracts with the holder of the contractor licence and not by or on behalf of the holder,

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Schedule 1 Amendments

- (e) a contract for residential building work for a contract price not exceeding \$12,000 or, if the contract price is not known, for the provision of labour and materials by the contractor the reasonable market cost of which does not exceed \$12,000.

[2] Clause 68

Insert after clause 67:

68 Requirements for contracts for residential building work

- (1) A contract between a person and the holder of a contractor licence for residential building work to be done by the holder must include a checklist in the form set out in Form 1 in Schedule 5.
- (2) This clause does not apply to a contract of a class referred to in clause 13B (a), (b), (c) or (d).

[3] Schedule 3A Conditions to be included in certain contracts

Omit “agreement” wherever occurring in clauses 1 (1), 2, 3 (1) and 4.

Insert instead “contract”.

[4] Schedule 3A, clause 1 (2)

Omit “agreement” where secondly, thirdly and fourthly occurring.

Insert instead “contract”.

[5] Schedule 3A, clauses 1 (2) and 3 (2)

Omit “does not have effect unless it is” wherever occurring.

Insert instead “must be”.

[6] Schedule 3A, clause 2 (a)

Insert “(to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act)” after “*Building Code of Australia*”.

[7] Schedule 3A, clause 2 (b)

Insert “that the work is required to comply with under any law” after “specifications”.

[8] Schedule 3A, clause 2 (2)

Insert at the end of clause 2:

- (2) Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause (1) if the failure relates solely to:
 - (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
 - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subclause (1).

[9] Schedule 3A, clause 3 (2)

Omit “agreement” where secondly, thirdly and fourthly occurring.

Insert instead “contract”.

[10] Schedule 3A, clause 4 (a)

Insert “(to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act)” after “*Building Code of Australia*”.

[11] Schedule 3A, clause 4 (b)

Insert “that the work is required to comply with under any law” after “specifications”.

[12] Schedule 3A, clause 4 (2)

Insert at the end of clause 4:

- (2) Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause (1) if the failure relates solely to:
 - (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
 - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subclause (1).

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Schedule 1 Amendments

[13] Schedule 5

Insert after Schedule 4:

Schedule 5 Additional contract provisions

(Clause 68 (1))

Form 1 Checklist for owners entering building contracts

1 Checklist

- 1 Does the contractor hold a current contractor licence? Yes No
- 2 Does the licence cover the type of work included in the contract? Yes No
- 3 Is the name and number on the contractor's licence the same as on the contract? Yes No
- 4 Is the work to be undertaken covered in the contract, drawings or specification? Yes No
- 5 Is the contract price clearly stated? Yes No
- 6 If not, is there a warning that the contract price is not known? Yes No
- 7 If the contract price may be varied, is there a warning and an explanation about how it may be varied? Yes No
- 8 Are you aware of the cooling off provisions relating to the contract? Yes No
- 9 Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000. Yes No
- 10 Is the procedure for variations understood? Yes No
- 11 Are you aware of who is to obtain any council or other approval for the work? Yes No

- 12 Do you understand that the contractor must have a policy of home warranty insurance under the *Home Building Act 1989* and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$12,000? Yes No
- 13 Has the contractor given you a document that explains the operation of the *Home Building Act 1989* and the procedures for the resolution of contract and insurance disputes? Yes No

2 Signatures

Do not sign this contract unless you have read and understand the clauses as well as the notes and explanations contained in this document.

If you have answered “no” to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of this contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

3 Signed copy of contract

Under the *Home Building Act 1989* a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

4 Home warranty insurance

The contractor must provide the owner with a certificate of home warranty insurance (for work over \$12,000) before commencement of work and before demanding or receiving any payment.

5 Owners acknowledgement

I/we have been given a copy of the Consumer Building Brochure and I/we have read and understand it.

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Schedule 1 Amendments

I/we have completed the check list and answered “**Yes**” to all items on it.

Note. Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted.

Signature

Name *[print]*

Capacity *[print]*

Signature

Name *[print]*

Capacity *[print]*

BY AUTHORITY
