

Queensland



DOMESTIC BUILDING CONTRACTS BILL 1999

Queensland



**DOMESTIC BUILDING CONTRACTS
BILL 1999**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	8
2	Commencement	8
3	Purpose of Act	8
4	Act binds all persons	8
PART 2—INTERPRETATION		
<i>Division 1—Dictionary</i>		
5	Definitions	9
<i>Division 2—Basic concepts</i>		
6	Meaning of “contract price”	9
7	Meaning of “domestic building contract”	9
8	Meaning of “domestic building work”	10
9	Meaning of “regulated contract”	12
<i>Division 3—Secondary concepts</i>		
10	Meaning of “associated third party amount”	12
11	Meaning of “cost escalation clause”	13
12	Meaning of “foundations data”	14
13	Meaning of “home”	14
14	Meaning of “provisional sum”	16
15	Meaning of “repair contract”	16
16	Meaning of “variation”	16
<i>Division 4—Other concepts</i>		
17	Domestic building work carried out in stages	17

Domestic Building Contracts

18	Effective completion date or period	17
19	Mixed-purpose contracts—amount referable to contracted services	19

Division 5—References to particular terms

20	Building contractors	20
21	Building owners	20
22	Contracted services	20
23	Contracts	20
24	Contract price	21
25	Subject work	21

PART 3—CONTRACTS AND RELATED DOCUMENTS*Division 1—The contract*

26	Contracts must be in writing	21
27	General contents of contracts	22
28	General contents—required matters	23
29	General contents—required things	24
30	Contracts must be signed	24
31	Parties to contract	24
32	Forms of contract	25

Division 2—Details in contracts about delays affecting time estimates

33	Calculable delays	25
34	Incalculable delays	26

Division 3—Contract price

35	Inclusion of fixtures and fittings in contract price	27
----	--	----

Division 4—Handling of contracts and related documents

36	Copy of contract for building owner	28
37	Imprinted copy of contract or schedule for building owner	28
38	Imprinted copy of contract or schedule for authority	28
39	Copies of contract related documents	29
40	Copy of contract information statement	29

PART 4—WARRANTIES*Division 1—Incorporation of warranties*

41	Implied warranties	30
----	------------------------------	----

Domestic Building Contracts

<i>Division 2—Implied warranties for all contracts</i>		
42	Suitability of materials	30
43	Compliance with legal requirements	32
44	Standard of work and exercise of care and skill	32
<i>Division 3—Implied warranties for particular contracts</i>		
45	Adherence to plans and specifications	32
46	Suitability of premises for occupation	32
47	Carrying out work with reasonable diligence	33
48	Calculation of provisional sums	33
<i>Division 4—General</i>		
49	Warranties run with building	33
50	Protection of rights given by warranties	34
51	Proceedings for breach of warranties	34
PART 5—RESTRICTIONS RELATING TO CONTRACTS		
<i>Division 1—Entering into contracts</i>		
52	Licensing requirement for building contractors	35
53	Foundations data	35
54	Mixed-purpose contracts	37
55	Cost plus contracts	37
56	Cost escalation clauses	38
57	Price change clauses	39
58	Arbitration clauses	40
<i>Division 2—Prime cost items and provisional sums</i>		
59	Stating amounts	40
60	Effect of improper statements	41
61	Schedule of details	41
62	Evidence of cost	42
63	Adjustments	43
<i>Division 3—Payments relating to contracts</i>		
64	Deposits	43
65	Progress payments for contracts other than designated stages contracts . .	44
66	Progress payments for designated stages contracts	44

Domestic Building Contracts

67	Completion payments	46
68	Associated third party amounts	47
	<i>Division 4—Consequences of contravening requirements relating to payments</i>	
69	Order to refund overpaid amounts	47
70	Ending of contract for contravention of order	48
71	Rights of building contractor if contract ended	49
	PART 6—COOLING-OFF PERIOD	
72	Right of building owner to withdraw from contract in cooling-off period . .	49
73	Restrictions affecting right of withdrawal in cooling-off period	50
74	Right of building owner to withdraw from contract if cooling-off warning not given	51
75	Withdrawal procedure	51
76	Rights and obligations of parties following withdrawal in cooling-off period	51
77	Rights of building contractor following withdrawal for failure to give warning	52
78	Waiving right of withdrawal	53
	PART 7—VARIATIONS OF CONTRACTS	
79	Variations must be in writing	53
80	General contents of variation document	54
81	General contents—appropriate provision for payments to reflect contract price changes	55
82	Variation document must be signed	57
83	Copy of variation document for building owner	57
84	Right of building contractor to recover amount for variation	58
	PART 8—BUILDING SITES	
85	Building contractor does not acquire interest in land	60
86	Control of building sites	60
87	Access to building sites	60
	PART 9—OTHER MATTERS RELATING TO CONTRACTS	
88	Display of documents at display homes	61
89	Construction of home based on display home	61

Domestic Building Contracts

90	Ending contract if completion time extended or contract price increased	62
91	Rights of building contractor if contract ended	63
92	Effect of failure by building contractor to comply with requirement	63
93	Contracting out prohibited	63
PART 10—MISCELLANEOUS		
94	Responsibility for acts or omissions of representatives	64
95	Executive officers must ensure corporation complies with Act	65
96	Treatment of partnerships	65
97	Fines payable to authority	66
98	Relationship with other Acts	66
99	Approval of information statements	66
100	Supply of copies of information statements	67
101	Regulation-making power	67
PART 12—TRANSITIONAL PROVISIONS		
102	Application of Act to contracts	68
103	Application of QBSA Act to contracts	68
PART 13—CONSEQUENTIAL AND OTHER AMENDMENTS		
104	Acts amended—sch 1	68
SCHEDULE 1 69		
CONSEQUENTIAL AND OTHER AMENDMENTS		
	COMMERCIAL ARBITRATION ACT 1990	69
	QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991	69
SCHEDULE 2 71		
DICTIONARY		

1999

A BILL

FOR

**An Act to regulate certain domestic building contracts, and for other
purposes**

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

1. This Act may be cited as the *Domestic Building Contracts Act 1999*.

4

Commencement

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2. This Act commences on a day to be fixed by proclamation.

6

Purpose of Act

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3. The purpose of this Act, in regulating domestic building contracts, is—

8

- (a) to achieve a reasonable balance between the interests of building contractors and building owners; and

9

10

- (b) to maintain appropriate standards of conduct in the building industry.

11

12

Act binds all persons

13

4. This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.¹

14

15

16

¹ See, however, section 7(2)(b) (Meaning of “domestic building contract”).

PART 2—INTERPRETATION

1

Division 1—Dictionary

2

Definitions

3

5. The dictionary in schedule 2 defines particular words used in this Act.

4

Division 2—Basic concepts

5

Meaning of “contract price”

6

6.(1) This section does not apply to a cost plus contract.

7

(2) The “**contract price**”, for a domestic building contract, is the total amount payable under the contract for the contracted services.

8

9

(3) The “**contract price**” includes—

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(a) the amount the building contractor is entitled to receive and keep under the contract; and

11

12

(b) the amount the building contractor is entitled to receive under the contract for payment to another person.

13

14

(4) However, the “**contract price**” does not include the following—

15

(a) an associated third party amount;

16

(b) an amount to which section 53(7) applies.²

17

(5) If a contract is varied, the reference in subsection (2) to the total amount payable under the contract is a reference to the total amount payable under the contract, as varied.

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19

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Meaning of “domestic building contract”

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7.(1) A “**domestic building contract**” is a contract—

22

(a) to carry out domestic building work; or

23

² Section 53 (Foundations data)

Domestic Building Contracts

- (b) to manage the carrying out of domestic building work. 1
- (2) However, a **“domestic building contract”** does not include— 2
 - (a) a contract between a building contractor and subcontractor; or 3
 - (b) a contract under which the building owner is the State, an entity 4
 - representing the State or a local government. 5

Meaning of “domestic building work” 6

- 8.(1) Each of the following is **“domestic building work”**— 7
 - (a) the erection or construction of a detached dwelling; 8
 - (b) the renovation, alteration, extension, improvement or repair of a 9
 - home; 10
 - (c) removal or resiting work for a detached dwelling. 11
- (2) However— 12
 - (a) removal work for a detached dwelling is **“domestic building 13
 work”** only if the dwelling is intended to be resited at another 14
 - place and used, at the place, as residential premises; and 15
 - (b) resiting work for a detached dwelling is **“domestic building 16
 work”** only if the dwelling is intended to be used at the place at 17
 - which it is being resited as residential premises. 18
- (3) **“Domestic building work”** includes— 19
 - (a) work (**“associated work”**) associated with the erection, 20
 - construction, removal or resiting of a detached dwelling; and 21
 - (b) work (**“associated work”**) associated with the renovation, 22
 - alteration, extension, improvement or repair of a home. 23
- (4) Without limiting subsection (3), associated work includes— 24
 - (a) landscaping; and 25
 - (b) paving; and 26
 - (c) the erection or construction of a building or fixture associated with 27
 - the detached dwelling or home. 28

Domestic Building Contracts

Examples of buildings and fixtures for subsection (4)(c)—

Retaining structures, driveways, fencing, garages, carports, workshops,
swimming pools and spas.

(5) For the erection or construction of a detached dwelling, “**domestic building work**” includes the provision of services or facilities to the dwelling or the property on which the dwelling is, or is to be, situated.

(6) For the renovation, alteration, extension, improvement or repair of a home, “**domestic building work**” includes the provision of services or facilities to the home or the property on which the home is situated.

Examples of services and facilities for subsections (5) and (6)—

Lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage.

(7) Also, “**domestic building work**” includes—

(a) site work relating to work mentioned in subsection (1), (3), (5) or (6); and

(b) work declared under a regulation to be domestic building work if there are reasonable grounds for considering the work to be domestic building work.

(8) However, “**domestic building work**” does not include excluded building work.

(9) In this section—

(a) a reference to a detached dwelling includes a reference to any part of a detached dwelling; and

(b) a reference to a home includes a reference to any part of a home; and

(c) a reference to site work includes a reference to work required to be carried out to gain access, or to remove impediments to access, to a site.

(10) In this section—

“**removal work**”, for a detached dwelling, means work relating to the dwelling carried out at the place at which the dwelling is located for relocating the dwelling to another place.

Domestic Building Contracts

“resiting work”, for a detached dwelling, means work relating to the dwelling carried out at a place for resiting the dwelling at the place following its removal from another place.

Meaning of “regulated contract”

9.(1) A **“regulated contract”** is a domestic building contract for which the contract price is more than the regulated amount.

(2) A **“regulated contract”** includes a cost plus contract under which the total amount payable for the contracted services is reasonably estimated to be more than the regulated amount.

(3) A **“regulated contract”** includes a mixed-purpose contract under which the amount referable to the contracted services is more than the regulated amount.

(4) However, a contract mentioned in subsection (3) is a **“regulated contract”** only to the extent to which the contract relates to the contracted services.

Division 3—Secondary concepts

Meaning of “associated third party amount”

10.(1) An **“associated third party amount”**, for a domestic building contract, is an amount a person, other than the building contractor, is entitled to receive directly from the building owner for—

- (a) conveying services to the building site; or
- (b) connecting or installing services for use at the building site; or
- (c) issuing a development approval or similar authorisation.

Examples of services for subsection (1)(a) and (b)—

Gas, electricity, telephone, water and sewerage.

(2) However, an amount is an **“associated third party amount”**, for a domestic building contract, only if the matter for which it is payable relates to the carrying out of the subject work.

Meaning of “cost escalation clause”

11.(1) A “cost escalation clause” is a provision of a domestic building contract under which the contract price may be increased to reflect—

- (a) increased costs of labour or materials; or
- (b) increased costs caused by delays—
 - (i) in providing the contracted services; or
 - (ii) if the contracted services consist of managing the carrying out of the subject work—in carrying out the subject work.

(2) However, a “cost escalation clause” does not include a provision providing for an increase of the contract price for labour or materials if—

- (a) the contract is entered into before 1 July 2000; and
- (b) the increase relates to labour or materials supplied on or after 1 July 2000; and
- (c) the increase results from the application of the New Tax System changes; and
- (d) the increase is worked out in the way prescribed under a regulation; and
- (e) the provision explains how, applying the provisions of the regulation made for paragraph (d), the increase is worked out.

(3) Also, a “cost escalation clause” does not include a provision allowing for an increase in the contract price to reflect—

- (a) cost increases resulting from the introduction of new, or changes to existing, government taxes or charges, other than increases resulting from the application of the New Tax System changes; or
- (b) prime cost items; or
- (c) provisional sums.

(4) In this section—

“**New Tax System changes**” has the meaning given by the *Trade Practices Act 1974* (Cwlth), section 75AT.³

Meaning of “foundations data”

12.(1) “Foundations data” is the information about a building site a building contractor exercising reasonable care and skill would need to have to prepare—

- (a) an appropriate footings design for the site and, if appropriate, an appropriate concrete slab design for the site; and
- (b) an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab.

(2) The information mentioned in subsection (1) includes—

- (a) relevant information contained in, or obtainable from, reports, surveys, test results, plans, specifications or computations prescribed under a regulation; and
- (b) other information prescribed under a regulation.

Meaning of “home”

13.(1) A “**home**” is any residential premises.

(2) A “**home**” includes a part of commercial or industrial premises used as residential premises.

(3) However, a “**home**” does not include the following—

- (a) premises not intended to be used for permanent habitation;

³ *Trade Practice Act 1974* (Cwlth), section 75AT—

“**New Tax System changes**” means the following:

- (a) the amendment of the *Sales Tax (Exemptions and Clarifications) Act 1992* made by the GST Transition Act;
- (b) the ending of sales tax, as provided for in the *A New Tax System (End of Sales Tax) Act 1999*;
- (c) the imposition of GST;
- (d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

Domestic Building Contracts

(b) a guesthouse, hostel or similar residential premises;	1
(c) a motel, residential club, residential hotel, residential part of licensed premises or serviced apartments;	2 3
(d) a hospital, nursing home, aged care home or hostel or retirement village;	4 5
(e) residential premises associated with a hospital or educational institution;	6 7
(f) residential premises specifically set aside as a place at which specialised care services are supplied to children or disabled persons residing at the place;	8 9 10
(g) a prison or similar establishment;	11
(h) a caravan;	12
(i) residential premises declared under a regulation not to be a home if there are reasonable grounds for considering the premises not to be a home.	13 14 15
(4) Subsection (3)(e) applies to residential premises associated with a hospital only if the premises—	16 17
(a) are used, or intended to be used, only or mainly by patients of, or staff employed at, the hospital; and	18 19
(b) are not a detached dwelling.	20
(5) Subsection (3)(e) applies to residential premises associated with an educational institution only if the premises—	21 22
(a) are used, or intended to be used, only or mainly by students of the institution; and	23 24
(b) are not a detached dwelling.	25
(6) In this section—	26
“caravan” means a caravan under the <i>Residential Tenancies Act 1994</i> .	27
“licensed premises” means licensed premises under the <i>Liquor Act 1992</i> .	28
“retirement village” means a retirement village under the <i>Retirement Villages Act 1988</i> .	29 30

Meaning of “provisional sum”

14.(1) A provisional sum, for a domestic building contract, is an amount that is an estimate of the cost of providing particular contracted services.

(2) However, subsection (1) applies only to contracted services for which the building contractor, after making all reasonable enquiries, can not state a definite amount when the contract is entered into.

(3) The reference in subsection (1) to the cost of providing the contracted services includes a reference to the cost of supplying materials needed for the subject work.

Meaning of “repair contract”

15.(1) A “**repair contract**” is a regulated contract under which the subject work is composed of any 1 or more of the following—

- (a) the repair of a home;
- (b) work associated with the repair of a home;
- (c) the provision, for the repair of a home, of services or facilities to the home or the property on which the home is situated;
- (d) site work relating to work mentioned in paragraph (a), (b) or (c).

(2) In this section—

“**repair**” includes an alteration, improvement or replacement that it is necessary or reasonable to carry out instead of effecting a repair.

Meaning of “variation”

16.(1) A “**variation**”, of a domestic building contract, is—

- (a) an addition of domestic building work to the subject work; or
- (b) an omission from the subject work.

(2) However, for a cost plus contract, an addition or omission is a “**variation**” only if the addition or omission is not reasonably contemplated by the contract.

Division 4—Other concepts**Domestic building work carried out in stages**

17.(1) This section applies if a building contractor and building owner enter into a series of separate domestic building contracts for the carrying out of domestic building work in stages.

(2) The separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

(3) In this section, a reference to the contract price for a contract includes, for a cost plus contract, a reference to the total amount the building contractor is likely to receive under the contract.

Effective completion date or period

18.(1) The “**effective completion date**”, for a regulated contract that has a stated completion date, is the stated completion date, as adjusted under this section.

(2) The “**effective completion period**”, for a regulated contract that has a stated completion period, is the stated completion period, as adjusted under this section.

(3) For an allowance mentioned in section 33⁴ for which a number of days is stated in the contract, the stated completion date or period must be adjusted to take account of any additional days required to be applied for the allowance for carrying out the subject work.

(4) If the carrying out of the subject work is affected by a delay that is not a delay of a kind for which an allowance is required to be made under section 33, the stated completion date or period must be adjusted to take account of the actual number of days involved in the delay.

(5) If the contract is varied and the building contractor has complied with the variation provisions for the variation, the stated completion date or period must be adjusted to take account of any additional days, or any reduction in the number of days, required to carry out the subject work.

⁴ Section 33 (Calculable delays)

Domestic Building Contracts

- (6)** If the contract is varied but the building contractor has not complied with a variation provision for the variation, the stated completion date or period—
- (a) must be adjusted to take account of any reduction in the number of days required to carry out the subject work; and
 - (b) may, with the tribunal’s approval given on an application made to the tribunal by the building contractor, be adjusted to take account of any additional days required to carry out the subject work.
- (7)** However, subsection (3) applies only if the need for an allowance for the additional days could not reasonably have been foreseen by the building contractor when the contract was entered into.
- (8)** Also, subsection (4) applies for a delay only if—
- (a) the contract contains a statement of the matters mentioned in section 34(2)⁵ for the delay; or
 - (b) the reason for the delay could not reasonably have been foreseen by the building contractor when the contract was entered into.
- (9)** Also, for subsection (5), if the variation is not a variation that was originally sought by the building owner, the subsection applies for an adjustment for additional days only if the ground of unforeseen circumstances applies.
- (10)** The tribunal may give an approval for subsection (6)(b) only if it is satisfied that—
- (a) either of the following applies—
 - (i) there are exceptional circumstances to warrant an allowance being made for the additional days;
 - (ii) the building contractor would suffer unreasonable hardship if an allowance for the additional days were not made; and
 - (b) it would not be unfair to the building owner to make an allowance for the additional days.
- (11)** For subsection (9), the ground of unforeseen circumstances applies if the relevant variation became necessary because of circumstances that

⁵ Section 34 (Incalculable delays)

Domestic Building Contracts

could not have been reasonably foreseen by the building contractor when the contract was entered into.	1 2
(12) In this section—	3
“variation provision” means section 79, 80, 82 or 83. ⁶	4
Mixed-purpose contracts—amount referable to contracted services	5
19.(1) For a mixed-purpose contract, the amount referable to the contracted services is the total of the following amounts—	6 7
(a) the amount the building contractor is entitled to receive under the contract for unmixed contracted services;	8 9
(b) an amount that is a reasonable estimate of the amount the building contractor is entitled to receive under the contract for mixed contracted services, based on a fair and reasonable apportionment of the contracted services and the additional element.	10 11 12 13
(2) The reference in subsection (1)(a) to unmixed contracted services is a reference to contracted services for which the amount the building contractor is entitled to receive under the contract is a distinguishable amount.	14 15 16
(3) The reference in subsection (1)(b) to mixed contracted services is a reference to contracted services—	17 18
(a) that are associated with the additional element; and	19
(b) for which the amount the building contractor is entitled to receive under the contract is not, because of the association, a distinguishable amount.	20 21 22
(4) In this section—	23
“distinguishable amount” , for a mixed-purpose contract, means an amount that—	24 25
(a) the building contractor is entitled to receive under the contract for the contracted services; and	26 27

⁶ Section 79 (Variations must in writing), 80 (General contents of variation document), 82 (Variation document must be signed) or 83 (Copy of variation document for building owner).

Domestic Building Contracts

- (b) is clearly identifiable and distinguishable from any amount the building contractor is entitled to receive for the additional element. 1
2

Division 5—References to particular terms 3

Building contractors 4

20.(1) In this Act, a reference to a building contractor in association with a reference to a domestic building contract is a reference to the building contractor under the contract. 5
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7

(2) A reference to a building contractor under a domestic building contract includes a reference to a building contractor who is a party to the contract because of section 31.⁷ 8
9
10

Building owners 11

21. In this Act, a reference to a building owner in association with a reference to a domestic building contract is a reference to the building owner under the contract. 12
13
14

Contracted services 15

22. In this Act, a reference to contracted services in association with a reference to a domestic building contract is a reference to the contracted services for the contract. 16
17
18

Contracts 19

23.(1) In this Act, if a reference is made to a domestic building contract and the contract's contract price, the reference to the contract does not include a reference to a cost plus contract. 20
21
22

⁷ Section 31 (Parties to contract)

Domestic Building Contracts

(2) However, subsection (1) does not apply to references in sections 17, 64 and 68.⁸ 1
2

Contract price 3

24.(1) This section applies to a reference in this Act to the contract price for a regulated contract in a context in which the reference is intended to refer to the actual amount of the contract price. 4
5
6

(2) The reference is a reference to the amount constituting the contract price, to the extent the amount is known at the relevant time. 7
8

Subject work 9

25. In this Act, a reference to subject work in association with a reference to a domestic building contract is a reference to the subject work for the contract. 10
11
12

PART 3—CONTRACTS AND RELATED DOCUMENTS

 13
14

Division 1—The contract

 15
Contracts must be in writing 16

26. A building contractor who enters into a regulated contract must ensure the contract— 17
18

(a) is in written form when it is entered into; or 19

(b) is put into written form— 20

(i) as soon as practicable (but within 5 business days) after it is entered into; and 21
22

⁸ Sections 17 (Domestic building work carried out in stages), 64 (Deposits) and 68 (Associated third party amounts)

(ii) before a start is made in carrying out the subject work.	1
Maximum penalty—20 penalty units.	2
General contents of contracts	3
27.(1) The building contractor under a regulated contract must ensure the contract, in written form, complies with the formal requirements for a regulated contract.	4 5 6
Maximum penalty—20 penalty units.	7
(2) A regulated contract complies with the formal requirements for a regulated contract if the contract—	8 9
(a) is in English and is readily legible; and	10
(b) sets out in full all the terms of the contract; and	11
(c) sets out the warranties that are part of the contract because of section 41; ⁹ and	12 13
(d) states the required matters; ¹⁰ and	14
(e) contains the required things; ¹¹ and	15
(f) includes any plans and specifications for the subject work forming part of the contract; and	16 17
(g) each time a word or phrase defined for the contract is used—indicates the word or phrase is defined in the contract’s definition provision; and	18 19 20
(h) complies with any other requirements prescribed under a regulation.	21 22
(3) If the formal requirement mentioned in subsection (2)(f) applies to a contract, and a development approval or similar authorisation is required for carrying out the subject work, the contract complies with the requirement only if the plans and specifications contain the appropriate information.	23 24 25 26

⁹ Section 41 (Implied warranties)

¹⁰ See section 28 (General contents—required matters).

¹¹ See section 29 (General contents—required things).

(4) For subsection (3), the plans and specifications contain the appropriate information if they contain enough information to enable a development approval or similar authorisation to be obtained for the subject work. 1
2
3
4

General contents—required matters 5

28.(1) This section sets out the required matters for a regulated contract for section 27(2)(d). 6
7

(2) The required matters are as follows— 8

(a) the names and addresses of the parties to the contract; 9

(b) the building contractor’s licence number, as it appears on the building contractor’s licence card; 10
11

(c) the date the contract is made; 12

(d) the location (including a lot-on-plan, or similar, description) of the building site for the subject work; 13
14

(e) the date the subject work is to start, or how the date is to be decided; 15
16

(f) if the starting date for the subject work is not yet known—that the building contractor will do everything it is reasonably possible for the building contractor to do to ensure the work starts as soon as possible; 17
18
19
20

(g) except for a cost plus contract—the date the subject work is to be finished or, if the starting date for the work is not yet known, the number of days that will be required to finish the work once it is started; 21
22
23
24

(h) the contract price or, for a cost plus contract, how the amount the building contractor is to receive under the contract is to be calculated. 25
26
27

(3) A cost plus contract may state the matter mentioned in subsection (2)(g). 28
29

General contents—required things	1
29.(1) This section sets out the required things for a regulated contract for section 27(2)(e).	2 3
(2) The required things are as follows—	4
(a) a detailed description of the subject work;	5
(b) if the subject work is residential construction work—either of the following—	6 7
(i) an imprint of the licence card for the contractor’s licence held by the building contractor;	8 9
(ii) a conspicuous notice advising the building owner of the requirements imposed on the building contractor under section 37; ¹²	10 11 12
(c) a conspicuous notice advising the building owner of the right the owner may have to withdraw from the contract under section 72; ¹³	13 14 15
(d) a separate provision defining the key words and phrases used in the contract.	16 17
<i>Example of phrases for paragraph (d)—</i>	18
Prime cost item and provisional sum.	19
 Contracts must be signed	 20
30. A regulated contract has effect only if it is signed by the building contractor and building owner (or their authorised agents).	21 22
 Parties to contract	 23
31.(1) This section applies to a regulated contract for which—	24
(a) the subject work is residential construction work; and	25

¹² Section 37 (Imprinted copy of contract or schedule for building owner)

¹³ Section 72 (Right of building owner to withdraw from contract in cooling-off period)

Domestic Building Contracts

(b) the building owner receives either—	1
(i) an imprinted copy of the contract under section 36 or 37; ¹⁴ or	2 3
(ii) an imprinted copy of a contract summary schedule for the contract under section 37.	4 5
(2) The building contractor who holds the contractor’s licence to which the imprint on the contract or contract summary schedule relates is taken to be a party to the contract.	6 7 8
(3) Subsection (2) applies even if the building contractor does not comply with a requirement of this division or division 4.	9 10
(4) In a prosecution of a building contractor for an offence against this Act arising because of the operation of this section, it is a defence for the building contractor to prove—	11 12 13
(a) the building contractor’s licence card was imprinted on the contract or contract summary schedule without the building contractor’s authority; and	14 15 16
(b) the building contractor took all reasonable steps to try to ensure the licence card was imprinted on contracts or contract summary schedules only with the building contractor’s authority.	17 18 19
 Forms of contract	 20
32. The authority may prepare and publish suggested forms of domestic building contracts.	21 22
 <i>Division 2—Details in contracts about delays affecting time estimates</i>	 23
 Calculable delays	 24
33.(1) This section applies to the building contractor under a regulated contract in calculating, for section 28(2)(g)—	25 26

¹⁴ Section 36 (Copy of contract for building owner) or section 37 (Imprinted copy of contract or schedule for building owner)

Domestic Building Contracts

(a) the date the subject work is to be finished; or	1
(b) if the starting date for the work is not known—the number of days that will be required to finish the work once it is started.	2 3
(2) The building contractor must make the following allowances—	4
(a) an allowance for the effect of inclement weather that is reasonable, having regard to the time of the year when the subject work is likely to be carried out;	5 6 7
(b) a reasonable allowance for days that are non-working days for the subject work;	8 9
(c) for any other matter that is reasonably likely to delay the carrying out of the subject work—an allowance that is reasonable, having regard to the nature of the contract.	10 11 12
Maximum penalty—20 penalty units.	13
(3) However, the building contractor is required to comply with subsection (2) only if—	14 15
(a) for an allowance mentioned in subsection (2)(a)—there is a reasonable likelihood the time required to carry out the subject work will be affected by inclement weather; or	16 17 18
(b) for an allowance mentioned in subsection (2)(b)—there is a reasonable likelihood the time required to carry out the subject work will be affected by the occurrence of non-working days; or	19 20 21
(c) for an allowance mentioned in subsection (2)(c)—it is possible for the building contractor to adequately estimate the period of likely delay.	22 23 24
(4) For each type of allowance required to be made by the building contractor under this section, the building contractor must ensure the contract states the number of days allowed by the building contractor.	25 26 27
Maximum penalty for subsection (4)—20 penalty units.	28
Incalculable delays	29
34.(1) This section applies if—	30
(a) the building contractor under a regulated contract reasonably	31

Domestic Building Contracts

believes—	1
(i) the carrying out of the subject work will be delayed; and	2
(ii) that there is, or will be, a specific reason for the delay attributable to specific circumstances the building contractor reasonably believes exist, or will exist; and	3 4 5
(b) it is not possible for the building contractor to adequately estimate the period of likely delay.	6 7
(2) The building contractor must ensure the contract states—	8
(a) the likely cause of the delay; and	9
(b) that it is not possible for the building contractor to adequately estimate the period of likely delay; and	10 11
(c) the general effect the delay is likely to have on the carrying out of the subject work.	12 13
Maximum penalty—40 penalty units.	14
(3) Subsection (1) does not apply for a delay caused by—	15
(a) inclement weather; or	16
(b) the occurrence of non-working days.	17

Division 3—Contract price 18**Inclusion of fixtures and fittings in contract price** 19

35.(1) The cost of any fixture or fitting shown in plans and specifications forming part of a regulated contract is taken to be included in the contract price. 20
21
22

(2) However, subsection (1) does not apply to a fixture or fitting if— 23

 (a) the contract states the cost of the fixture or fitting is not included in the contract price; and 24
25

 (b) the building owner places the owner's signature or initials, or seal, next to the statement. 26
27

<i>Division 4—Handling of contracts and related documents</i>	1
Copy of contract for building owner	2
36. As soon as practicable (but within 5 business days) after entering into a regulated contract, the building contractor must give the building owner a readily legible signed copy of the contract.	3 4 5
Maximum penalty—20 penalty units.	6
Imprinted copy of contract or schedule for building owner	7
37.(1) This section applies if—	8
(a) the subject work for a regulated contract is residential construction work; and	9 10
(b) the building contractor does not give the building owner an imprinted copy of the contract under section 36.	11 12
(2) Before a start is made in carrying out the subject work, the building contractor must give the building owner—	13 14
(a) an imprinted copy of the contract; or	15
(b) if the contract has a contract summary schedule—an imprinted copy of the schedule.	16 17
Maximum penalty—20 penalty units.	18
Imprinted copy of contract or schedule for authority	19
38.(1) If the subject work for a regulated contract is residential construction work, the building contractor must, before a start is made in carrying out the work, give the authority, or a designated entity—	20 21 22
(a) an imprinted copy of the contract; or	23
(b) if the contract has a contract summary schedule—an imprinted copy of the schedule.	24 25
Maximum penalty—40 penalty units.	26
(2) In this section—	27

“designated entity” means an entity designated in the board’s policies as an entity authorised to receive, for the authority, documents to which subsection (1) applies. 1
2
3

Copies of contract related documents 4

39.(1) This section applies if the building contractor under a regulated contract receives a contract related document for the contract. 5
6

(2) If the contract related document is given or issued by an assessment manager, the building contractor must give a copy of the document to the building owner as soon as practicable after receiving the document. 7
8
9

Maximum penalty—20 penalty units. 10

(3) If the contract related document is given or issued by an entity other than an assessment manager, the building contractor must give a copy of the document to the building owner as soon as practicable after the completion of the subject work. 11
12
13
14

Maximum penalty—20 penalty units. 15

(4) Subsection (1) or (2) does not apply to a building contractor if the building contractor reasonably believes the building owner already has a copy of the contract related document. 16
17
18

(5) In this section— 19

“contract related document”, for a regulated contract, means a report, notice, order or other document about the subject work given or issued by— 20
21
22

(a) an assessment manager; or 23

(b) a supplier of services, including, for example, electricity, gas, telephone, water or sewerage. 24
25

Copy of contract information statement 26

40.(1) The building contractor under a regulated contract must, as required under this section, give the building owner a copy of the appropriate contract information statement for the contract. 27
28
29

Maximum penalty—20 penalty units. 30

Domestic Building Contracts

- (2) Subsection (1) does not apply to a building contractor if the building contractor gave a copy of the statement to the building owner before the contract was entered into. 1
2
3
- (3) The statement must be given to the building owner— 4
- (a) when the contract is entered into; or 5
- (b) as soon as practicable (but within 5 business days) after the contract is entered into. 6
7
- (4) The statement may be given to the building owner separate from, or attached to, the contract. 8
9

PART 4—WARRANTIES 10*Division 1—Incorporation of warranties* 11**Implied warranties** 12

41.(1) The warranties mentioned in division 2 are part of every regulated contract. 13
14

(2) A warranty mentioned in a section of division 3 is part of each regulated contract that is a contract of the type to which the section applies. 15
16

Division 2—Implied warranties for all contracts 17**Suitability of materials** 18

42.(1) The building contractor warrants that all materials to be supplied for use in the subject work— 19
20

(a) will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and 21
22

(b) unless otherwise stated in the contract, will be new. 23

(2) Subsection (1) applies to the building contractor for materials only if 24

Domestic Building Contracts

- the materials are supplied by the responsible person for the contract. 1
- (3) Despite subsection (2), if the contract is being administered by an architect engaged by the building owner, subsection (1) does not apply to the building owner for materials if the responsible person is subject to the direction of the architect for supplying the materials. 2
3
4
5
- (4) Also, despite subsection (2), subsection (1) does not apply to the building contractor for materials if— 6
7
- (a) the building owner is responsible for nominating the materials for use in the subject work; and 8
9
 - (b) either— 10
 - (i) there are no reasonable grounds for not using the materials; or 11
12
 - (ii) if there are reasonable grounds for not using the materials—the building owner insists on the materials being used despite written advice to the contrary given to the building owner by the building contractor. 13
14
15
16
- (5) A building owner is responsible for nominating materials for use in the subject work only if— 17
18
- (a) the building owner nominates the materials specifically; and 19
 - (b) the nomination is made without any recommendation, representation, suggestion or other approach being made to the building owner by the building contractor— 20
21
22
 - (i) supporting, or approving, the use of the materials; or 23
 - (ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the building owner are to be used. 24
25
26
27
- (6) In this section— 28
- “relevant criteria”**, for materials, means— 29
- (a) generally accepted practices or standards applied in the building industry for the materials; or 30
31
 - (b) specifications, instructions or recommendations of manufacturers 32

Domestic Building Contracts

or suppliers of the materials.	1
“responsible person” , for a regulated contract, means—	2
(a) if the contract is a contract for carrying out the subject work—the building contractor; or	3 4
(b) if the contract is a contract for managing the carrying out of the subject work—the person responsible for carrying out the work.	5 6
Compliance with legal requirements	7
43. The building contractor warrants the subject work will be carried out in accordance with all relevant laws and legal requirements, including, for example, the <i>Building Act 1975</i> .	8 9 10
Standard of work and exercise of care and skill	11
44. The building contractor warrants the subject work will be carried out—	12 13
(a) in an appropriate and skilful way; and	14
(b) with reasonable care and skill.	15
<i>Division 3—Implied warranties for particular contracts</i>	16
Adherence to plans and specifications	17
45.(1) This section applies to a regulated contract if plans and specifications form part of the contract.	18 19
(2) The building contractor warrants the subject work will be carried out in accordance with the plans and specifications.	20 21
Suitability of premises for occupation	22
46.(1) This section applies to a regulated contract if the subject work—	23
(a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or	24 25

Domestic Building Contracts

(b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.	1 2
(2) The building contractor warrants the detached dwelling or home will be suitable for occupation when the work is finished.	3 4
Carrying out work with reasonable diligence	5
47.(1) This section applies to a regulated contract if—	6
(a) the contract is a cost plus contract; and	7
(b) the contract does not have a stated completion date or period.	8
(2) The building contractor warrants the subject work will be carried out with reasonable diligence.	9 10
Calculation of provisional sums	11
48.(1) This section applies to a regulated contract providing for a provisional sum.	12 13
(2) The building contractor warrants the provisional sum has been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract is entered into (including information about the nature and location of the building site).	14 15 16 17
<i>Division 4—General</i>	18
Warranties run with building	19
49.(1) An associated person for a regulated contract has the same rights for a breach of a warranty mentioned in division 2 or section 45 or 46 as if the person were the building owner.	20 21 22
(2) However, subsection (1) applies to the associated person—	23
(a) only if, at the relevant time, the person did not know, and could not reasonably have known, of the existence of the breach; and	24 25
(b) only to the extent the rights are rights that, immediately before the person became an associated person for the contract, were held	26 27

by—	1
(i) the building owner; or	2
(ii) another associated person for the contract.	3
(3) In this section—	4
“associated person” , for a regulated contract, means a person, other than the building owner, who is the owner for the time being of the building in relation to which, or land on which, the subject work was carried out.	5 6 7 8
“relevant time” , for an associated person, for a regulated contract, means the time the person entered into the agreement under which the person became an associated person for the contract.	9 10 11
Protection of rights given by warranties	12
50. A provision of an agreement or other document that purports to restrict or take away the rights of a person for a breach of a warranty mentioned in this part is void.	13 14 15
Proceedings for breach of warranties	16
51.(1) A proceeding for a breach of a warranty under this part for a regulated contract must be started within 6 years and 6 months after—	17 18
(a) the subject work is finished; or	19
(b) if the subject work is not finished—the stated completion date or period.	20 21
(2) In a proceeding for a breach of a warranty mentioned in this part, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the building owner contrary to the defendant’s written advice.	22 23 24 25

PART 5—RESTRICTIONS RELATING TO CONTRACTS

Division 1—Entering into contracts

Licensing requirement for building contractors

52.(1) This section applies if—

- (a) under the QBSA Act, a building contractor is required to hold a contractor’s licence for carrying out a particular kind of domestic building work; or
- (b) under another law of the State, including, for example, the *Electricity Act 1994*, a building contractor is required to hold a licence, permit or other authorisation for carrying out a particular kind of domestic building work.

(2) The building contractor must not enter into a regulated contract to carry out, or manage the carrying out of, domestic building work of the particular kind, unless the building contractor is appropriately licensed for that kind of domestic building work.

Maximum penalty—80 penalty units.

(3) A building contractor is appropriately licensed for a particular kind of domestic building work if the building contractor—

- (a) holds a contractor’s licence authorising the building contractor to carry out that kind of domestic building work; or
- (b) holds a licence, permit or other authorisation under a law of the State, other than the QBSA Act, authorising the building contractor to carry out that kind of domestic building work.

Foundations data

53.(1) This section applies if the subject work proposed for a regulated contract—

- (a) requires the construction or alteration of footings, or a concrete slab, for a building; or

Domestic Building Contracts

(b) may adversely affect the footings of a building or a concrete slab forming part of a building. 1
2

(2) Before entering into the contract, the building contractor must obtain the foundations data that is appropriate for the building site, having regard to the following— 3
4
5

(a) the Building Code of Australia; 6

(b) the need for a drainage plan; 7

(c) the need for engineer's drawings and computations; 8

(d) the need for information on the fall of the land at the building site. 9

Maximum penalty—100 penalty units. 10

(3) Nothing in subsection (2) requires a building contractor to commission the preparation of foundations data to the extent the data already exists and it is reasonable for the building contractor to rely on the data. 11
12
13
14

(4) The building contractor must give a copy of any foundations data obtained by the building contractor for this section to the building owner on payment by the building owner of the costs incurred by the building contractor in obtaining the data. 15
16
17
18

Maximum penalty—10 penalty units. 19

(5) Subsection (4) does not apply to a building contractor for foundations data if— 20
21

(a) the data is given to the building contractor by the building owner; or 22
23

(b) the building contractor reasonably believes the building owner already has a copy of the data. 24
25

(6) The building contractor under a regulated contract can not seek from the building owner an amount not already provided for in the contract if— 26
27

(a) the building contractor entered into the contract before obtaining the foundations data under subsection (2); and 28
29

(b) the need for the additional amount could reasonably have been established, and the amount calculated, had the building contractor complied with the subsection. 30
31
32

- (7) Nothing in this section prevents the building contractor from claiming an amount not provided for in the contract if—
- (a) the building contractor has complied with subsection (2); and
 - (b) the need for the additional amount can not be established from the foundations data obtained by the building contractor.

Mixed-purpose contracts

54. A building contractor must not enter into a mixed-purpose contract that would be a regulated contract unless the contract—
- (a) clearly describes the contracted services; and
 - (b) clearly distinguishes the contracted services from the additional element; and
 - (c) states the amount referable to the contracted services.

Maximum penalty—20 penalty units.

Cost plus contracts

- 55.(1) A building contractor must not enter into a cost plus contract that would be a regulated contract unless—
- (a) the contract is included in a class of contracts prescribed under a regulation; or
 - (b) the cost of a substantial part of the subject work can not reasonably be calculated without some of the work being carried out.

Maximum penalty—100 penalty units.

- (2) A building contractor must not enter into a cost plus contract that would be a regulated contract unless the contract contains a fair and reasonable estimate by the building contractor of the total amount the building contractor is likely to receive under the contract.

Maximum penalty—100 penalty units.

- (3) If a building contractor enters into a cost plus contract in contravention of this section, the building contractor can not enforce the

Domestic Building Contracts

contract against the building owner. 1

(4) However, the tribunal may, on an application made to the tribunal by the building contractor, award the building contractor the cost of providing the contracted services plus a reasonable profit if the tribunal considers it would not be unfair to the building owner to make the award. 2
3
4
5

Cost escalation clauses 6

56.(1) A cost escalation clause in a regulated contract is void unless— 7

(a) the building owner’s signature or initials, or seal, is placed next to the clause; and 8
9

(b) either— 10

(i) the contract satisfies a cost escalation requirement; or 11

(ii) the clause satisfies the cost escalation requirements. 12

(2) For subsection (1)(b)(i), a regulated contract containing a cost escalation clause satisfies a cost escalation requirement if— 13
14

(a) the contract price is more than the set amount; or 15

(b) the contract is to be administered by an architect engaged by the building owner. 16
17

(3) For subsection (1)(b)(ii), a cost escalation clause in a regulated contract satisfies the cost escalation requirements if the clause— 18
19

(a) is a cost escalation clause because of the operation of section 11(1)(b);¹⁵ and 20
21

(b) is limited by condition to cases of delay satisfying the requirements of this section; and 22
23

(c) provides for an increase of the contract price under this section. 24

(4) For subsection (3)(b), the delay must be a delay— 25

(a) for a delay happening before the subject work is started— 26

(i) that is longer than 4 weeks; and 27

(ii) for which the building contractor is not responsible; or 28

¹⁵ Section 11 (Meaning of “cost escalation clause”)

Domestic Building Contracts

(b) for a delay happening after the subject work is started—	1
(i) for which the building owner is responsible; or	2
(ii) if the contract is being administered by an architect engaged by the building owner—for which the architect is responsible.	3 4 5
(5) For subsection (3)(c), the increase must not be more than the lesser of the following amounts—	6 7
(a) the amount of the costs incurred by the building contractor because of the delay;	8 9
(b) the formula amount for the delay.	10
(6) In this section—	11
“formula amount” , for a delay, means—	12
(a) if the delay happens before the subject work is started—the amount representing 0.125% of the contract price for each week, or part of a week, of the delay after the first 4 weeks of the delay; or	13 14 15 16
(b) if the delay happens after the subject work is started—the amount representing 0.05% of the contract price for each day of the delay.	17 18
“set amount” means—	19
(a) the amount, above \$200 000, prescribed under a regulation as the set amount; or	20 21
(b) if an amount is not prescribed for paragraph (a)—\$200 000.	22
Price change clauses	23
57.(1) A building contractor must not enter into a regulated contract containing a price change clause unless the contract contains a warning complying with this section.	24 25 26
Maximum penalty—20 penalty units.	27
(2) The warning must—	28
(a) state the contract price is subject to change; and	29

Domestic Building Contracts

(b)	state the provisions of the contract that allow for the contract price to be changed; and	1 2
(c)	appear as near as practicable to the first reference in the contract to the contract price.	3 4
(3)	If a warning is not included in a regulated contract as required under this section, any price change clause included in the contract has effect only to the extent it allows the contract price to decrease.	5 6 7
(4)	In this section—	8
“price change clause”	means a provision of a domestic building contract allowing for a change to be made to the contract price, but does not include a cost escalation clause.	9 10 11
Arbitration clauses		12
58.(1)	A provision of a regulated contract, or other agreement, requiring that a dispute under the contract be referred to arbitration is void.	13 14
(2)	Subsection (1) does not apply to a provision of an agreement, other than a regulated contract, if the agreement is entered into after a dispute under the contract arises.	15 16 17
<i>Division 2—Prime cost items and provisional sums</i>		18
Stating amounts		19
59.(1)	A building contractor must not enter into a regulated contract stating—	20 21
(a)	an amount for a prime cost item that is less than the reasonable cost of supplying and delivering the item; or	22 23
(b)	a provisional sum that is less than the reasonable cost of providing the contracted services to which the sum relates.	24 25
Maximum penalty—50 penalty units.		26
(2)	Subsection (1) does not apply to a building contractor for an item to be supplied, or a sum stated, by the building owner.	27 28

- (3) In deciding, for subsection (1), what is a reasonable cost, regard must be had to—
- (a) the information the building contractor had, or reasonably should have had, when the contract was entered into; and
 - (b) the nature and location of the building site.

Effect of improper statements 6

60.(1) This section applies if a building contractor enters into a regulated contract in contravention of section 59(1). 7
8

(2) The contravention does not make any provision of the contract illegal or void. 9
10

(3) However, the tribunal may, on an application made to the tribunal by the building owner, reduce the building owner’s liability, for the item or contracted services to which the stated amount or sum relates, to the extent the tribunal considers appropriate. 11
12
13
14

Schedule of details 15

61.(1) A building contractor must not enter into a regulated contract providing for prime cost items or provisional sums unless the contract contains a separate schedule stating the required details for each item or sum. 16
17
18
19

Maximum penalty—50 penalty units. 20

(2) For subsection (1), the required details for a prime cost item are as follows— 21
22

- (a) a detailed description of the item; 23
- (b) a breakdown of cost estimates provided for in the allowance for the item; 24
25
- (c) if the building contractor proposes to charge an amount (the “**excess amount**”) above the actual amount of any increase in the cost of the item—how the excess amount is to be calculated. 26
27
28

(3) For subsection (1), the required details for a provisional sum are as follows— 29
30

Domestic Building Contracts

(a) a detailed description of the contracted services to which the sum relates;	1 2
(b) a breakdown of cost estimates provided for in the sum;	3
(c) if the building contractor proposes to charge an amount (the “ excess amount ”) above the actual amount of any increase in the sum—how the excess amount is to be calculated.	4 5 6
(4) For subsection (2)(b) or (3)(b), the breakdown must, if appropriate, show, at least, the estimated quantities of materials involved and the unit cost to the building contractor.	7 8 9
Evidence of cost	10
62.(1) This section applies if—	11
(a) a regulated contract provides for a prime cost item or provisional sum; and	12 13
(b) the building contractor receives a supporting document for the item or sum.	14 15
(2) The building contractor must give a copy of the supporting document to the building owner before, or when, seeking payment under the contract of—	16 17 18
(a) if the contract provides for progress payments—the related progress payment; or	19 20
(b) if the contract does not provide for progress payments—the amount of the contract price.	21 22
Maximum penalty—20 penalty units.	23
(3) In this section—	24
“ supporting document ”, for a prime cost item or provisional sum included in a regulated contract, means an invoice, receipt or other document showing the cost to the building contractor of the item, or relating to the sum.	25 26 27 28

*Domestic Building Contracts***Adjustments**

63.(1) A building contractor must not enter into a regulated contract providing for a prime cost item or provisional sum unless the contract complies with subsection (2).

Maximum penalty—20 penalty units.

(2) The contract must be to the effect that any prime cost or provisional sum adjustment is to be allowed for in an increase or decrease in—

- (a) if the contract provides for progress payments—the related progress payment; or
- (b) if the contract does not provide for progress payments—the payment of the amount of the contract price.

*Division 3—Payments relating to contracts***Deposits**

64.(1) The building contractor under a regulated contract must not, before starting to provide the contracted services, demand or receive a deposit under the contract of more than—

- (a) if the contract price is equal to or more than the set amount—5% of the contract price; or
- (b) if the contract price is less than the set amount—10% of the contract price.

Maximum penalty—100 penalty units.

(2) In this section, a reference to the contract price for a contract includes, for a cost plus contract, a reference to the contract estimated amount for the contract.

(3) In this section—

“set amount” means—

- (a) the amount, above \$20 000, prescribed under a regulation as the set amount; or
- (b) if an amount is not prescribed for paragraph (a)—\$20 000.

Progress payments for contracts other than designated stages contracts

65.(1) This section does not apply to a designated stages contract.

(2) The building contractor under a regulated contract must not demand or receive an amount under the contract, other than a deposit, unless the amount is directly related to the progress of the subject work.

Maximum penalty—50 penalty units.

(3) Subsection (2) does not apply to a building contractor if—

- (a) the parties to the contract agree the subsection is not to apply; and
- (b) the agreement is made in the way, and satisfies any requirements, prescribed under a regulation.

Progress payments for designated stages contracts

66.(1) This section only applies to designated stages contracts.

(2) This section has effect for a contract's original contract price.

(3) For a contract to build only to the enclosed stage, the building contractor must not demand or receive, at the completion of a stage specified in column 1 of the following table, an amount that is more than the percentage of the original contract price specified in column 2 of the table opposite the stage—

Table—Contracts to build to enclosed stage	
Column 1 Stage	Column 2 Percentage of original contract price
Base stage	20%
Frame stage	25%

Maximum penalty—50 penalty units.

(4) For a contract to build only to the fixing stage, the building contractor must not demand or receive, at the completion of a stage specified in column 1 of the following table, an amount that is more than the percentage

Domestic Building Contracts

of the original contract price specified in column 2 of the table opposite the stage—

Table—Contracts to build to fixing stage	
Column 1 Stage	Column 2 Percentage of original contract price
Base stage	12%
Frame stage	18%
Enclosed stage	40%

Maximum penalty—50 penalty units.

(5) For a contract to build all the stages mentioned in this section, the building contractor must not demand or receive, at the completion of a stage specified in column 1 of the following table, an amount that is more than the percentage of the original contract price specified in column 2 of the table opposite the stage—

Table—Contracts to build to all stages	
Column 1 Stage	Column 2 Percentage of original contract price
Base stage	10%
Frame stage	15%
Enclosed stage	35%
Fixing stage	20%

Maximum penalty—50 penalty units.

(6) Subsection (3), (4) or (5) does not apply to a building contractor if—

- (a) the parties to the contract agree the subsection is not to apply; and
- (b) the agreement is made in the way, and satisfies any requirements, prescribed under a regulation.

(7) In this section—

“**original contract price**”, for a regulated contract, means the contract price for the contract before any adjustment of the price is made because

Domestic Building Contracts

of—	1
(a) a prime cost, or provisional sum, adjustment; or	2
(b) a variation of the contract.	3
Completion payments	4
67.(1) This section only applies to a regulated contract for which the subject work consists of—	5
	6
(a) the erection or construction of a detached dwelling to a stage suitable for occupation; or	7
	8
(b) the renovation, alteration, extension, improvement or repair of a home to a stage suitable for occupation.	9
	10
(2) The building contractor under a regulated contract must not demand or receive all or part of the completion payment unless—	11
	12
(a) the practical completion stage has been reached; and	13
(b) if the stage has been reached with minor omissions or minor defects—a reasonable amount is deducted from the payment to cover the costs of carrying out work, or doing something else, to eliminate the omissions or rectify the defects.	14
	15
	16
	17
Maximum penalty—100 penalty units.	18
(3) In this section—	19
“completion payment” , for a regulated contract, means a payment required to be made under the contract by the building owner to the building contractor for the practical completion stage.	20
	21
	22
“practical completion stage” , for a regulated contract, means the stage when—	23
	24
(a) the subject work has been completed in accordance with the contract and all relevant statutory requirements, either—	25
	26
(i) without any omissions or defects; or	27
(ii) apart from minor omissions or minor defects; and	28
(b) the detached dwelling or home is reasonably suitable for habitation.	29
	30

Associated third party amounts	1
68.(1) A building contractor must not enter into a regulated contract for which there is an associated third party amount unless—	2 3
(a) the contract states that the cost of the work or thing to which the amount relates is not included in the contract price; and	4 5
(b) the statement appears as near as practicable to the first reference in the contract to the contract price.	6 7
Maximum penalty—40 penalty units.	8
(2) In this section, a reference to the contract price for a contract includes, for a cost plus contract, a reference to the contract estimated amount for the contract.	9 10 11
<i>Division 4—Consequences of contravening requirements relating to payments</i>	12 13
Order to refund overpaid amounts	14
69.(1) This section applies if—	15
(a) a court finds a charge against a building contractor for an offence against a payment section proven; and	16 17
(b) the offence involves the receipt of an amount by the building contractor.	18 19
(2) The court may order the building contractor—	20
(a) to refund to the building owner—	21
(i) the amount paid to the building contractor that the building contractor was not, under the payment section, entitled to receive; or	22 23 24
(ii) a part of the amount mentioned in paragraph (a); and	25
(b) if the building contractor contravenes the order—to pay the building owner interest on the amount to which the contravention relates, calculated at the rate, and on the basis, the court considers appropriate.	26 27 28 29

Domestic Building Contracts

- (3) The power of the court under subsection (2) is additional to any other power the court has to impose a penalty. 1
2
- (4) The refund of an amount by the building contractor to the building owner under an order mentioned in subsection (2) does not stop the building contractor from later demanding and receiving payment of the amount under the contract as part of— 3
4
5
6
- (a) for a fixed price contract—the contract price; or 7
- (b) for a cost plus contract—the total amount the building contractor is entitled to receive. 8
9
- Ending of contract for contravention of order** 10
- 70.(1)** The building owner under a regulated contract may end the contract if the building contractor contravenes a payment order. 11
12
- (2) To end the contract, the building owner must give the building contractor a notice under this section. 13
14
- (3) The notice must— 15
- (a) be in writing; and 16
- (b) be signed by the building owner; and 17
- (c) state the building owner is ending the contract under this section; and 18
19
- (d) state the ground on which the building owner is ending the contract; and 20
21
- (e) give details of the ground. 22
- (4) In this section— 23
- “payment order”** means an order made by a court or the tribunal requiring the building contractor under a regulated contract— 24
25
- (a) to refund to the building owner an amount paid to the building contractor by the building owner that the building contractor was not, under a payment section, entitled to receive; or 26
27
28
- (b) to pay to the building owner interest on the amount, or a part of the amount, mentioned in paragraph (a). 29
30

Rights of building contractor if contract ended	1
71.(1) This section applies if a building owner ends a regulated contract under section 70.	2 3
(2) The building contractor is entitled to receive a reasonable amount for the contracted services provided to the time the contract is ended.	4 5
(3) However, the building contractor is not entitled to receive an amount that is more than the amount the building contractor would have been entitled to receive under the contract.	6 7 8

PART 6—COOLING-OFF PERIOD

Right of building owner to withdraw from contract in cooling-off period	10 11
72.(1) The building owner under a regulated contract may withdraw from the contract under this section.	12 13
(2) The building owner may withdraw from the contract within 5 business days after the receipt day for the contract.	14 15
(3) If 5 business days have elapsed since the contract was entered into and there is no receipt day for the contract, the building owner may withdraw from the contract.	16 17 18
(4) Nothing in subsection (3) affects the right of the building owner to withdraw from the contract under subsection (2) if a receipt day subsequently applies to the contract.	19 20 21
(5) In this section—	22
“receipt day” , for a regulated contract, means—	23
(a) the day on which the building owner receives the following documents from the building contractor—	24 25
(i) a copy of the signed contract;	26
(ii) a copy of the appropriate contract information statement for the contract; or	27 28

Domestic Building Contracts

- (b) if the documents mentioned in paragraph (a) are received by the building owner from the building contractor on different days—the later of the days.

Restrictions affecting right of withdrawal in cooling-off period

73.(1) This section applies despite section 72.

(2) A building owner may not withdraw from a regulated contract (the “**current contract**”) under section 72 if—

- (a) the building owner and building contractor previously entered into a regulated contract (the “**previous contract**”); and
- (b) the terms of the previous contract and current contract are substantially the same; and
- (c) the contracted services for the previous contract and current contract—
- (i) are substantially the same; and
- (ii) relate to the same detached dwelling, home or land.

(3) Also, a building owner may not withdraw from a regulated contract under section 72 if—

- (a) before entering into the contract, the building owner received formal legal advice about the contract; or
- (b) when, or after, the contract is entered into, the building owner tells the building contractor that the building owner received formal legal advice about the contract before entering into the contract.

(4) In this section—

“**formal legal advice**” means independent advice—

- (a) given by a practising legal practitioner; and
- (b) for the giving of which an amount is paid, or is payable, to the legal practitioner by the person to whom the advice is given.

“**practising legal practitioner**” means a lawyer authorised under a law of the State to practise as a lawyer for purposes including the giving, for reward, of advice, including, for example, advice about domestic building contracts.

Right of building owner to withdraw from contract if cooling-off warning not given	1
	2
74.(1) This section applies if a regulated contract does not contain a notice, as required under section 29(2), ¹⁶ advising the building owner of the right the owner may have to withdraw from the contract under section 72.	3 4 5
(2) The building owner may withdraw from the contract within 7 days of becoming aware that the contract should have contained the notice.	6 7
Withdrawal procedure	8
75.(1) To withdraw from a regulated contract under section 72 or 74, the building owner must, within the time allowed under the section for the withdrawal—	9 10 11
(a) give a withdrawal notice to the building contractor; or	12
(b) leave a withdrawal notice at the address shown as the building contractor’s address in the contract; or	13 14
(c) serve a withdrawal notice on the building contractor in accordance with any provision in the contract providing for service of notices on the building contractor by the building owner.	15 16 17
(2) In this section—	18
“withdrawal notice” means a written notice signed by the building owner under a regulated contract stating—	19 20
(a) that the building owner withdraws from the contract; and	21
(b) the section of this Act under which the withdrawal is made.	22
Rights and obligations of parties following withdrawal in cooling-off period	23 24
76.(1) This section applies if a building owner withdraws from a regulated contract under section 72.	25 26
(2) If there is a pre-paid amount for the contract that is not less than the retainable amount, the building contractor—	27 28

¹⁶ Section 29 (General contents—required things)

Domestic Building Contracts

- (a) may keep an amount equal to the retainable amount out of the prepaid amount; and 1
2
- (b) must refund any balance of the prepaid amount to the building owner. 3
4
- (3) If there is a pre-paid amount for the contract that is less than the retainable amount, the building owner must pay the building contractor an amount equal to the difference between the retainable amount and the prepaid amount. 5
6
7
8
- (4) If there is no pre-paid amount for the contract, the building owner must pay the building contractor an amount equal to the retainable amount. 9
10
- (5) If an amount is not paid by a person as required under this section, the person to whom it is payable may recover the amount from the other person as a debt. 11
12
13
- (6) Except as provided under subsection (3) or (4), the building owner is not liable to the building contractor in any way for withdrawing from the contract. 14
15
16
- (7) In this section, a reference to the pre-paid amount for the contract is a reference to the amount paid to the building contractor under the contract by the building owner before the building owner withdrew from the contract. 17
18
19
- (8) Also, in this section, a reference to the retainable amount for the contract is a reference to the sum of— 20
21
- (a) \$100; and 22
- (b) an amount equal to any out-of-pocket expenses reasonably incurred by the building contractor before the building owner withdrew from the contract. 23
24
25
- Rights of building contractor following withdrawal for failure to give warning** 26
27
- 77.(1)** This section applies if a building owner withdraws from a regulated contract under section 74. 28
29
- (2) The building contractor is entitled to receive a reasonable amount for the contracted services provided to the time of withdrawal. 30
31
- (3) However, the building contractor is not entitled to receive an amount 32

that is more than the amount the building contractor would have been
entitled to receive under the contract. 1
2

Waiving right of withdrawal 3

78.(1) The building owner under a repair contract may waive the building
owner’s right to withdraw from the contract. 4
5

(2) To waive the right, the building owner must— 6

(a) give a waiver notice to the building contractor; or 7

(b) leave a waiver notice at the address shown as the building
contractor’s address in the contract; or 8
9

(c) serve a waiver notice on the building contractor in accordance
with any provision in the contract providing for service of notices
on the building contractor by the building owner. 10
11
12

(3) This section has effect despite section 93.¹⁷ 13

(4) In this section— 14

“waiver notice” means a written notice signed by the building owner under
a repair contract stating that the building owner waives the building
owner’s right to withdraw from the contract. 15
16
17

PART 7—VARIATIONS OF CONTRACTS 18

Variations must be in writing 19

79.(1) The building contractor under a regulated contract must ensure any
variation of the contract agreed to between the building contractor and
building owner is put into written form— 20
21
22

(a) within the shortest practicable time; and 23

(b) for a variation consisting of an addition to the subject 24

¹⁷ Section 93 (Contracting out prohibited)

Domestic Building Contracts

work—before any domestic building work the subject of the variation is carried out.	1 2
Maximum penalty—20 penalty units.	3
(2) Subsection (1) does not apply to a building contractor for a variation of a contract if—	4 5
(a) the variation is for domestic building work that is required to be carried out urgently; and	6 7
(b) it is not reasonably practicable, in the particular circumstances, to produce a variation document before carrying out the work.	8 9
General contents of variation document	10
80.(1) The building contractor under a regulated contract must ensure a variation document for the contract complies with the formal requirements for a variation document.	11 12 13
Maximum penalty—20 penalty units.	14
(2) A variation document complies with the formal requirements for a variation document if the document—	15 16
(a) is in English and is readily legible; and	17
(b) describes the variation; and	18
(c) if the variation was sought by the building contractor—states the reason for the variation; and	19 20
(d) states the effect the variation will have on the subject work as a whole; and	21 22
(e) if the variation will result in a delay affecting the subject work—states the building contractor’s reasonable estimate for the period of delay; and	23 24 25
(f) for a fixed price contract—states the change of the contract price because of the variation, or how the change of the contract price is to be worked out; and	26 27 28
(g) for a cost plus contract—states a fair and reasonable estimate of the costs associated with the addition or omission the subject of the variation; and	29 30 31

- (h) if the contract provides for progress payments—makes appropriate provision for payments under the contract to reflect any change of the contract price caused by the variation. 1
2
3

General contents—appropriate provision for payments to reflect contract price changes 4
5

81.(1) This section sets out how a variation document complies with the requirement mentioned in section 80(2)(g) (the “**payment requirement**”). 6
7

(2) For this section, a variation is classified as being either a type 1, 2, 3 or 4 variation. 8
9

(3) A type 1 or 2 variation may also be a major variation. 10

(4) A type 1 variation is a variation consisting of an addition to the subject work the whole of which is carried out— 11
12

(a) before any progress payment is to be made; or 13

(b) after a progress payment is made and before the next progress payment is to be made. 14
15

(5) A type 2 variation is a variation— 16

(a) consisting of an addition to the subject work different parts of which are carried out at different times; and 17
18

(b) that satisfies the progress payment test mentioned in subsection (13). 19
20

(6) A type 3 variation is a variation consisting of an omission, from the subject work, of work the whole of which would, if it had been carried out, reasonably have been expected to have been carried out— 21
22
23

(a) before any progress payment was made; or 24

(b) after a progress payment was made and before the next progress payment was to have been made. 25
26

(7) A type 4 variation is a variation— 27

(a) consisting of an omission, from the subject work, of work different parts of which would, if it had been carried out, reasonably have been expected to have been carried out at different times; and 28
29
30
31

Domestic Building Contracts

- (b) that satisfies the progress payment test mentioned in subsection (14). 1
2
- (8) For a type 1 variation, a variation document complies with the payment requirement if the document is to the effect that the addition to which the variation relates must be allowed for in an increase in the relevant progress payment. 3
4
5
6
- (9) For a type 2 variation, a variation document complies with the payment requirement if the document is to the effect that a part of the addition to which the variation relates must be allowed for in an increase in the relevant progress payment. 7
8
9
10
- (10) For a major variation, a variation document complies with the payment requirement if the document, instead of being to the effect mentioned in subsection (8) or (9), states other terms for payment of the amount of the increase. 11
12
13
14
- (11) For a type 3 variation, a variation document complies with the payment requirement if the document is to the effect that the omission to which the variation relates must be allowed for in a decrease in the relevant progress payment. 15
16
17
18
- (12) For a type 4 variation, a variation document complies with the payment requirement if the document is to the effect that work forming a part of the omission to which the variation relates must be allowed for in a decrease in the relevant progress payment. 19
20
21
22
- (13) A variation mentioned in subsection (5)(a) satisfies the progress payment test if the first progress payment to be made after the different parts of the addition are carried out is not the same in each case. 23
24
25
- (14) A variation mentioned in subsection (7)(a) satisfies the progress payment test if, had the work been carried out, the first progress payment to be made after the different parts of the work had been carried out would not reasonably have been expected to have been the same in each case. 26
27
28
29
- (15) In this section— 30
- “major variation”**, for a regulated contract, means a variation consisting of an addition to the subject work that results in an increase in the contract price of more than the larger of the following— 31
32
33
- (a) the set amount; 34

Domestic Building Contracts

(b) the amount represented by the percentage prescribed under a regulation of the contract price.	1 2
“relevant progress payment” means—	3
(a) for subsection (8)—the first progress payment to be made after the addition is carried out; or	4 5
(b) for subsection (9)—the first progress payment to be made after the part of the addition is carried out; or	6 7
(c) for subsection (11)—the first progress payment to be made after the work to which the omission relates would, apart from the omission, reasonably have been expected to have been carried out; or	8 9 10 11
(d) for subsection (12)—the first progress payment to be made after the work would, apart from the omission, reasonably have been expected to have been carried out.	12 13 14
“set amount” means—	15
(a) the amount, above \$10 000 prescribed under a regulation; or	16
(b) if an amount is not prescribed for paragraph (a)—\$10 000.	17
Variation document must be signed	18
82. As soon as practicable after an appropriate variation document is made, the building contractor must—	19 20
(a) sign the document; and	21
(b) take all reasonable steps to try to ensure the document is signed by the building owner.	22 23
Maximum penalty—20 penalty units.	24
Copy of variation document for building owner	25
83.(1) As soon as practicable (but within 5 business days) after a variation of a regulated contract is agreed to between the building contractor and building owner, the building contractor must give the building owner—	26 27 28

Domestic Building Contracts

(a)	a readily legible signed copy of an appropriate variation document for the variation; or	1 2
(b)	if acceptable circumstances apply to the building contractor—a readily legible copy of an appropriate variation document for the variation, signed by the building contractor.	3 4 5
	Maximum penalty—20 penalty units.	6
(2)	For subsection (1)(b), acceptable circumstances apply to the building contractor if the building contractor has taken all reasonable steps to try to ensure an appropriate variation document for the variation is signed by the building owner, but the building owner has not signed the document.	7 8 9 10
	Right of building contractor to recover amount for variation	11
84.(1)	This section applies if—	12
(a)	the building contractor under a regulated contract gives effect to a variation of the contract; and	13 14
(b)	the variation consists of—	15
(i)	an addition to the subject work; or	16
(ii)	an omission from the subject work that results in the building contractor incurring additional costs.	17 18
(2)	If the variation was originally sought by the building owner, the building contractor may recover an amount for the variation—	19 20
(a)	only if the building contractor has complied with sections 79, 80, 82 and 83; or	21 22
(b)	only with the tribunal’s approval given on an application made to the tribunal by the building contractor.	23 24
(3)	If the variation is not a variation that was originally sought by the building owner, the building contractor may recover an amount for the variation—	25 26 27
(a)	only if—	28
(i)	the building contractor has complied with sections 79, 80, 82 and 83; and	29 30
(ii)	the ground of unforeseen circumstances applies; or	31

Domestic Building Contracts

- (b) only with the tribunal's approval given on an application made to the tribunal by the building contractor. 1
2
- (4) The tribunal may approve the recovery of an amount by a building contractor for a variation only if the tribunal is satisfied that— 3
4
- (a) either of the following applies— 5
- (i) there are exceptional circumstances to warrant the conferring of an entitlement on the building contractor for recovery of an amount for the variation; 6
7
8
- (ii) the building contractor would suffer unreasonable hardship by the operation of subsection (2)(a) or (3)(a); and 9
10
- (b) it would not be unfair to the building owner for the building contractor to recover an amount. 11
12
- (5) For subsection (3)(a)(ii), the ground of unforeseen circumstances applies if the variation became necessary because of circumstances that could not have been reasonably foreseen by the building contractor when the contract was entered into. 13
14
15
16
- (6) If the building contractor is entitled to recover an amount for the variation of a fixed price contract, the amount is— 17
18
- (a) the increase in the contract price stated, or worked out in the way stated, in the appropriate variation document for the variation; or 19
20
- (b) if paragraph (a) does not apply—the cost of carrying out the variation plus a reasonable profit. 21
22
- (7) If the building contractor is entitled to recover an amount for the variation of a cost plus contract, the amount is the amount worked out in the way stated in the contract. 23
24
25

PART 8—BUILDING SITES**Building contractor does not acquire interest in land**

85. A domestic building contract does not give the building contractor an interest in land for the *Land Title Act 1994*, section 122.¹⁸

Control of building sites

86. A domestic building contract does not give the building contractor a greater right to occupy a building site than that of a contractual licensee.

Access to building sites

87.(1) The building contractor under a regulated contract must permit the building owner, or a person authorised by the building owner (the **“building owner’s representative”**)—

- (a) to have reasonable access to the building site under the building contractor’s supervision; and
- (b) to view any part of the subject work.

Maximum penalty—20 penalty units.

(2) A building owner or building owner’s representative exercising a right of access under subsection (1) must not interfere with the subject work.

(3) If additional costs are incurred, or a delay happens, in carrying out the subject work because the building owner or building owner’s representative contravenes subsection (2), the building owner is liable for the costs or delay.

(4) However, the building owner is liable for the costs or delay only if, within 5 days after the contravention comes to the building contractor’s knowledge, the building contractor gives the building owner written notice of the costs or delay.

¹⁸ *Land Title Act 1994*, section 122 (Lodging a caveat)

PART 9—OTHER MATTERS RELATING TO CONTRACTS	1 2
Display of documents at display homes	3
88. A person who makes a display home available for inspection must ensure the following documents are prominently displayed in the home—	4 5
(a) a copy of the plans and specifications used for the home’s construction;	6 7
(b) a draft copy of the domestic building contract that the building contractor by or for whom the display home is made available for inspection would be prepared to enter into to construct a similar home.	8 9 10 11
Maximum penalty—100 penalty units.	12
Construction of home based on display home	13
89.(1) This section applies if—	14
(a) a display home is made available for inspection by or for a building contractor; and	15 16
(b) a building owner enters into a regulated contract with the building contractor for the construction of a similar home (the “ contract home ”).	17 18 19
(2) In constructing the contract home, the building contractor must—	20
(a) carry out the construction in accordance with the same plans and specifications as were used for the construction of the display home; and	21 22 23
(b) carry out the construction to at least the same standards of work quality as the display home; and	24 25
(c) use materials that are at least the same quality as the materials used in the construction of the display home.	26 27
Maximum penalty—100 penalty units.	28

Domestic Building Contracts

-
- (3) Subsection (2) does not apply to a building contractor to the extent the contract—
- (a) provides for the construction of the contract home to differ from the display home; and
 - (b) specifically identifies the differences.
- Ending contract if completion time extended or contract price increased**
- 90.(1) The building owner under a regulated contract may end the contract if—
- (a) the contract price rises by 15% or more after the contract is entered into because of the operation of a cost escalation clause contained in the contract; or
 - (b) the subject work is not finished within a period that is 1.5 times—
 - (i) if the contract has an effective completion date—the period starting on the starting date for the contract and ending on the effective completion date; or
 - (ii) if the contract has an effective completion period—the period.
- (2) However, the building owner may end the contract only if—
- (a) the reason for the rise in price, or increase in time, could reasonably have been foreseen by the building contractor when the contract was entered into; and
 - (b) for a rise in price—the rise is not caused by a delay for which the building owner is responsible.
- (3) To end the contract, the building owner must give the building contractor a notice under this section.
- (4) The notice mentioned in subsection (3) must—
- (a) be in writing; and
 - (b) be signed by the building owner; and
 - (c) state the building owner is ending the contract under this section; and

-
- (d) state the ground on which the building owner is ending the contract; and 1
2
- (e) give details of the ground. 3
- (5) In this section— 4
- “**starting date**”, for a regulated contract, means the date stated in the contract as the date the subject work is to start. 5
6

Rights of building contractor if contract ended 7

91.(1) This section applies if a building owner ends a regulated contract under section 90. 8
9

(2) The building contractor is entitled to receive a reasonable amount for the contracted services provided to the time the contract is ended. 10
11

(3) However, the building contractor is not entitled to receive an amount that is more than the amount the building contractor would have been entitled to receive under the contract. 12
13
14

Effect of failure by building contractor to comply with requirement 15

92. Unless the contrary intention appears in this Act, a failure by a building contractor to comply with a requirement under this Act in relation to a domestic building contract does not make the contract illegal, void or unenforceable. 16
17
18
19

Contracting out prohibited 20

93.(1) A domestic building contract is void to the extent to which it— 21

(a) is contrary to this Act; or 22

(b) purports to annul, exclude or change a provision of this Act. 23

(2) An agreement (other than a domestic building contract) is void to the extent to which it seeks to exclude, change or restrict a right conferred under this Act in relation to a domestic building contract. 24
25
26

(3) Nothing in this section prevents the parties to a domestic building contract from including provisions in the contract that impose greater or more onerous obligations on a building contractor than are imposed under 27
28
29

this Act.	1
(4) Subsections (1) and (2) apply subject to any contrary intention in this Act.	2 3

PART 10—MISCELLANEOUS

Responsibility for acts or omissions of representatives

94.(1) This section applies for a proceeding for an offence against this Act.

(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person.

(4) However, subsection (3) does not apply to the person if the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(5) In this section—

“representative” means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

“state of mind”, of a person, includes—

(a) the person’s knowledge, intention, opinion, belief or purpose; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

Executive officers must ensure corporation complies with Act

95.(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Treatment of partnerships

96.(1) Subject to this section, this Act applies to a partnership as if the partnership were a person.

(2) An obligation or liability that, apart from this subsection, would be imposed by this Act on a person that is a partnership is imposed on each partner, but may be discharged by any of the partners.

(3) An amount that, apart from this subsection, would be payable under this Act by a person that is a partnership is jointly and severally payable by the partners.

(4) If, because of the operation of subsection (1), an offence against a provision of this Act is taken to have been committed by a partnership, the offence is taken to have been committed by each of the partners.

Domestic Building Contracts

- (5) However, it is a defence for a partner to prove— 1
- (a) if the partner was in a position to influence the conduct of the 2
partnership in relation to the offence—the partner exercised 3
reasonable diligence to ensure the partnership complied with the 4
provision; or 5
 - (b) the partner was not in a position to influence the conduct of the 6
partnership in relation to the offence. 7

Fines payable to authority 8

97.(1) This section applies if, in a proceeding for an offence against this 9
Act, a court imposes a fine for the offence. 10

(2) The fine must be paid to the authority. 11

(3) However, if a person other than the authority prosecutes the offence, 12
subsection (2) does not apply to any part of the fine the court orders be paid 13
to the person prosecuting. 14

Relationship with other Acts 15

98.(1) The *Commercial Arbitration Act 1990* does not apply to domestic 16
building work unless the relevant arbitration agreement under that Act— 17

- (a) is an agreement other than a domestic building contract; and 18
- (b) is entered into after the dispute to which it relates arises. 19

(2) The *Subcontractors' Charges Act 1974* does not apply to domestic 20
building work relating to a detached dwelling if the work— 21

- (a) is carried out by a building contractor for an individual; and 22
- (b) is not for a business carried on by the individual, either alone or as 23
a member of a partnership. 24

Approval of information statements 25

99.(1) The authority must approve a statement containing general 26
information about regulated contracts for the benefit of building owners. 27

Domestic Building Contracts

-
- (2) Without limiting subsection (1), the statement may contain information about the following—
- (a) the rights and duties of building owners and building contractors under regulated contracts;
 - (b) the procedures for resolving disputes under regulated contracts.
- (3) The authority may approve different statements for different classes of contracts.

Supply of copies of information statements

100.(1) The chief executive must keep copies of the contract information statements available for supply to persons and permit a person to obtain a copy of the statements on payment of the fee prescribed under a regulation.

- (2) For subsection (1)—
- (a) copies of the contract information statements—
 - (i) must be kept at the head office and any regional office of the department; and
 - (ii) must be kept at the head office and any regional office of the authority; and
 - (iii) may be kept at any other place the chief executive considers appropriate; and
 - (b) the copies of the statements kept at a place must be available for supply during office hours on business days for the place.

Regulation-making power

101. The Governor in Council may make regulations under this Act.

PART 12—TRANSITIONAL PROVISIONS

1

Application of Act to contracts

2

102. This Act only applies to domestic building contracts entered into after the commencement of this section.

3

4

Application of QBSA Act to contracts

5

103. The QBSA Act, as in force immediately before the commencement of this section, continues to apply to domestic building contracts entered into before the commencement.

6

7

8

**PART 13—CONSEQUENTIAL AND OTHER
AMENDMENTS**

9

10

Acts amended—sch 1

11

104. Schedule 1 amends the Acts it mentions.

12

13

SCHEDULE 1	1
CONSEQUENTIAL AND OTHER AMENDMENTS	2
section 104	3
COMMERCIAL ARBITRATION ACT 1990	4
1. Section 3(1)—	5
<i>omit, insert—</i>	6
‘ 3.(1) This Act does not apply to domestic building work unless the relevant arbitration agreement—	7
(a) is an agreement other than a domestic building contract under the <i>Domestic Building Contracts Act 1999</i> ; and	9
(b) is entered into after the dispute to which it relates arises. ¹⁹	10
2. Section 4, definition “domestic building work”—	11
<i>omit, insert—</i>	12
‘ “domestic building work” means domestic building work under the <i>Domestic Building Contracts Act 1999</i> .’.	13
14	14
15	15
QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991	16
1. Part 4—	17
<i>omit.</i>	18
	19

¹⁹ This subsection mirrors the effect of the *Domestic Building Contracts Act 1999*, section 98 (Relationship with other Acts).

SCHEDULE 1 (continued)

2. Section 72(5)—	1
<i>insert—</i>	2
‘(e) a person who, under the <i>Domestic Building Contracts Act 1999</i> ,	3
is a building contractor under a domestic building contract who	4
managed the carrying out of the building work.’.	5
3. Section 72—	6
<i>insert—</i>	7
‘(5A) In subsection (2), a reference to a contract for carrying out building	8
work includes a reference to a domestic building contract for managing the	9
carrying out of building work.’.	10
4. Section 110—	11
<i>omit.</i>	12
5. Schedule 2, definitions “cost escalation clause”, “display home”,	13
“domestic building contract”, “domestic building work”, “home”,	14
“home-building contract” and “major domestic building work”—	15
<i>omit.</i>	16
6. Schedule 2—	17
<i>insert—</i>	18
‘ “ domestic building contract ” means a domestic building contract under	19
the <i>Domestic Building Contracts Act 1999</i> .’.	20
7. Schedule 2, definition “building work”, paragraph (d)—	21
<i>omit.</i>	22

SCHEDULE 2	1
DICTIONARY	2
section 5	3
“additional element” , for a mixed-purpose contract, means the matter for which the building contractor is entitled to be paid under the contract, excluding—	4 5 6
(a) the carrying out of domestic building work; and	7
(b) the managing of the carrying out of domestic building work.	8
“amount referable to the contracted services” , for a mixed-purpose contract, see section 19.	9 10
“appropriate contract information statement” , for a regulated contract, means—	11 12
(a) if there is only 1 contract information statement—the statement; or	13 14
(b) if there is more than 1 contract information statement—the contract information statement that relates to the class of regulated contracts in which the particular contract is included.	15 16 17
“appropriate variation document” means a variation document complying with the formal requirements for a variation document. ²⁰	18 19
“architect” means an architect under the <i>Architects Act 1985</i> .	20
“assessment manager” means an assessment manager under the <i>Integrated Planning Act 1997</i> , and includes a private certifier under that Act acting as an assessment manager.	21 22 23
“associated third party amount” , for a domestic building contract, see section 10.	24 25

²⁰ Section 80 (General contents of variation document) deals with the formal requirements for a variation document.

SCHEDULE 2 (continued)

“authority” means the Queensland Building Services Authority under the QBSA Act.	1 2
“base stage” means—	3
(a) for a building with a timber floor with base brickwork—the stage when—	4 5
(i) the concrete footings for the building’s floor are poured; and	6
(ii) the building’s base brickwork is built to floor level; and	7
(iii) the bearers and joists for the building are installed; or	8
(b) for a building with a timber floor without base brickwork—the stage when—	9 10
(i) the building’s stumps, piers or columns are finished; and	11
(ii) the bearers and joists for the building are installed; or	12
(c) for a building with a suspended concrete slab floor—the stage when—	13 14
(i) the building’s concrete footings are poured; and	15
(ii) the formwork and reinforcing for the suspended slab are installed; or	16 17
(d) for a building with a concrete floor, other than a suspended concrete slab floor—the stage when the building’s floor is finished.	18 19 20
“board’s policies” means board’s policies under the QBSA Act.	21
“brickwork” includes blockwork.	22
“building” includes—	23
(a) a structure, including a temporary building and other temporary structure; and	24 25
(b) a part of a structure.	26
“Building Code of Australia” means the Building Code of Australia within the meaning of the <i>Building Act 1975</i> .	27 28
“building contractor” means a person who—	29

SCHEDULE 2 (continued)

(a) carries out domestic building work; or	1
(b) manages the carrying out of domestic building work; or	2
(c) has carried out, or managed the carrying out of, domestic building work; or	3 4
(d) intends to carry out, or to manage the carrying out of, domestic building work.	5 6
“building owner” means the person for whom domestic building work has been, is being, or is to be, carried out.	7 8
“building site” means a place where domestic building work has been, is being, or is to be, carried out.	9 10
“contracted services” , for a domestic building contract, means the thing done, being done or to be done by the building contractor under the contract in relation to domestic building work, being either—	11 12 13
(a) the carrying out of the work; or	14
(b) the managing of the carrying out of the work.	15
“contract estimated amount” , for a regulated contract that is a cost plus contract, means the amount stated in the contract as the building contractor’s fair and reasonable estimate of the total amount the building contractor is likely to receive under the contract.	16 17 18 19
“contract information statement” means a statement approved by the authority under section 99.	20 21
“contractor’s licence” means a contractor’s licence under the QBSA Act.	22
“contract price” , for a domestic building contract, see section 6.	23
“contract summary schedule” , for a domestic building contract, means a separate schedule in the contract that—	24 25
(a) states the matters mentioned in section 28(2)(a), (c), (d), (e) and (h); ²¹ and	26 27
(b) contains a general description of the subject work; and	28

²¹ Section 28 (General contents—required matters)

SCHEDULE 2 (continued)

(c) is signed by the building contractor and building owner (or their authorised agents).	1 2
“cost escalation clause” see section 11.	3
“cost plus contract” means a domestic building contract under which the amount the building contractor is to receive under the contract can not be calculated when the contract is entered into, even if prime cost items and provisional sums are ignored.	4 5 6 7
“designated stages contract” means a regulated contract that is—	8
(a) a contract to build only to the enclosed stage; or	9
(b) a contract to build only to the fixing stage; or	10
(c) a contract to build all stages, including the base, frame, enclosed and fixing stages.	11 12
“detached dwelling” means—	13
(a) a single detached dwelling; or	14
(b) a duplex.	15
“development approval” means a development approval under the <i>Integrated Planning Act 1997</i> .	16 17
“display home” means a home (including a building suitable for use as a home, regardless of whether it is being used as a home) available for inspection to encourage persons to enter into contracts for the construction of similar homes.	18 19 20 21
“domestic building contract” see section 7.	22
“domestic building work” see section 8.	23
“draftsperson” means a person who holds a contractor’s licence authorising the person to prepare plans and specifications for domestic building work.	24 25 26
“effective completion date” , for a regulated contract, see section 18.	27
“effective completion period” , for a regulated contract, see section 18.	28
“enclosed stage” , for a building, means the stage when—	29

SCHEDULE 2 (continued)

(a) the external wall cladding is fixed; and	1
(b) the roof covering is fixed, but without—	2
(i) soffit linings necessarily having been fixed; or	3
(ii) for a tile roof—pointing necessarily having been done; or	4
(iii) for a metal roof—scribing and final screwing off necessarily having been done; and	5 6
(c) the structural flooring is laid; and	7
(d) the external doors are fixed (even if only temporarily), but, if a lockable door separating the garage from the rest of the building has been fixed, without the garage doors necessarily having been fixed; and	8 9 10 11
(e) the external windows are fixed (even if only temporarily).	12
“engineer” means a registered professional engineer under the <i>Professional Engineers Act 1988</i> .	13 14
“excluded building work” means any of the following work—	15
(a) work relating to any of the following buildings—	16
(i) a farm building, or proposed farm building, that is not a home;	17 18
(ii) a building intended to be used only for business purposes;	19
(iii) a building intended to be used only to accommodate animals;	20
(b) design work carried out by an architect, engineer or draftsman;	21
(c) the preparation of plans, specifications or bills of quantity for the carrying out of domestic building work;	22 23
(d) work involved in obtaining foundations data about a building site;	24
(e) transporting a building;	25
(f) work declared under a regulation to be excluded building work if there are reasonable grounds for considering the work to be excluded building work.	26 27 28
“executive officer” , of a corporation, means a person who—	29

SCHEDULE 2 (continued)

(a) is a director or the secretary of the corporation; or	1
(b) is concerned with, or takes part in, the corporation's management, whether or not—	2 3
(i) the person is a director or the secretary of the corporation; or	4
(ii) the person's position is given the name of executive officer.	5
“farm building” means a building that—	6
(a) is constructed on land used entirely or mainly for agricultural or pastoral purposes; and	7 8
(b) is used, or intended to be used, for agricultural or pastoral purposes.	9 10
“fixed price contract” means a domestic building contract that is not a cost plus contract.	11 12
“fixing stage” means the stage when all internal lining, architraves, cornice, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards of a building are fitted and fixed in position.	13 14 15 16
“foundations data” see section 12.	17
“frame stage” means the stage when a building's frame is finished.	18
“home” see section 13.	19
“imprinted copy” , of a contract summary schedule, for a regulated contract, means a copy of the schedule bearing an imprint of the licence card for the contractor's licence held by the building contractor.	20 21 22
“imprinted copy” , of a regulated contract, means a copy of the contract bearing an imprint of the licence card for the contractor's licence held by the building contractor.	23 24 25
“manage” , the carrying out of domestic building work, includes provide supervisory, advisory or administrative services for carrying out the work.	26 27 28
“mixed-purpose contract” means a contract entered into between a building contractor and building owner that entitles the building contractor to be paid both for carrying out, or managing the carrying	29 30 31

SCHEDULE 2 (continued)

out of, domestic building work and for 1 or more of the following—	1
(a) carrying out work that is not domestic building work;	2
(b) managing the carrying out of work that is not domestic building work;	3 4
(c) another matter.	5
“non-working days” , for carrying out domestic building work, means—	6
(a) weekend days; or	7
(b) public holidays; or	8
(c) rostered days off; or	9
(d) other days not generally available for carrying out the work.	10
“payment section” means section 64, 65, 66 or 67. ²²	11
“prime cost adjustment” , for a prime cost item in a regulated contract, means an adjustment for the item to reflect a difference in the following—	12 13 14
(a) the amount payable under the contract for the item;	15
(b) the amount provided for in the allowance stated in the contract for the item.	16 17
“prime cost item” , for a domestic building contract, means an item, including, for example, a fixture or fitting—	18 19
(a) that has not been selected, or the price of which is not known, when the contract is entered into; and	20 21
(b) for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the contract by the building contractor.	22 23 24
“progress payment” , for a domestic building contract, means a payment of an amount that is a part of the contract price for the contract, but	25 26

²² Sections 64 (Deposits), 65 (Progress payments for contracts other than designated stages contracts), 66 (Progress payments for designated stages contracts) and 67 (Completion payments)

SCHEDULE 2 (continued)

does not include a payment of an amount that is, or is in the nature of, a deposit under the contract.	1 2
“provisional sum” , for a domestic building contract, see section 14.	3
“provisional sum adjustment” , for a provisional sum in a regulated contract, means an adjustment for the provisional sum to reflect a difference in the following—	4 5 6
(a) the amount payable under the contract for providing the contracted services to which the sum relates;	7 8
(b) the provisional sum.	9
“QBSA Act” means the <i>Queensland Building Services Authority Act 1991</i> .	10
“reasonably believes” means believes on grounds that are reasonable in all the circumstances.	11 12
“regulated amount” means—	13
(a) the amount, above \$3 000, prescribed under a regulation; or	14
(b) if an amount is not prescribed for paragraph (a)—\$3 000.	15
“regulated contract” see section 9.	16
“related progress payment” means—	17
(a) for a prime cost item in a regulated contract—the progress payment in which an amount for the prime cost item is included; or	18 19 20
(b) for a provisional sum in a regulated contract—the progress payment in which an amount for the contracted services to which the sum relates is included.	21 22 23
“repair contract” see section 15.	24
“residential construction work” means residential construction work under the QBSA Act.	25 26
“stated completion date” , for a regulated contract, means, if applicable, the date stated in the contract as the date by which the subject work is to be finished.	27 28 29
“stated completion period” , for a regulated contract, means, if applicable,	30

SCHEDULE 2 (continued)

the number of days stated in the contract as the number of days that will be required to finish the subject work once it is started.	1 2
“subcontractor” means a person who enters into a contract with a building contractor to carry out domestic building work to be carried out under a domestic building contract.	3 4 5
“subject work” , for a domestic building contract, means—	6
(a) the domestic building work carried out, being carried out or to be carried out under the contract; or	7 8
(b) the domestic building work the carrying out of which has been, is being or is to be managed under the contract.	9 10
“tribunal” means the Queensland Building Tribunal established under the <i>Queensland Building Tribunal Act 1999</i> .	11 12
“variation” , of a domestic building contract, see section 16.	13
“variation document” means the written form into which a variation of a regulated contract is put.	14 15
“written form” , for a regulated contract, or a variation of a regulated contract, means—	16 17
(a) in handwritten or typewritten form; or	18
(b) in a combination of handwritten and typewritten forms.	19 20