

DOMESTIC BUILDING CONTRACTS

GENERAL INFORMATION FOR OWNERS AND CONTRACTORS



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DISCLAIMER

This QBCC booklet is designed to provide general information, including a summary of key legislative requirements, regarding contracts for the construction, renovation or repair of a home or associated domestic building work. It is not intended, and cannot be relied upon, as legal advice for specific contracts or individual circumstances.

For detailed advice on your particular contract you should consult a practising solicitor before signing.

NOTE: Unless stated otherwise, all references to section numbers in this booklet refer to Schedule 1B of the *Queensland Building and Construction Commission Act 1991*.

1. QUEENSLAND LEGISLATION GOVERNING DOMESTIC BUILDING CONTRACTS

On 1 July 2015 Schedule 1B of the *Queensland Building and Construction Commission Act 1991* ('the QBCC Act') came into force. This legislation applies to domestic building contracts entered into from 1 July 2015. It sets out contract requirements for the erection or construction of a detached dwelling (i.e. a single, free-standing home or duplex) or the renovation, alteration, extension, improvement or repair of a home, and for other domestic building work associated with a home, such as building a driveway, fence or swimming pool.

NOTE: The previous legislation (*Domestic Building Contracts Act 2000*) still applies to domestic building contracts entered into before 1 July 2015. Domestic building contracts developed prior to July 2015, and many contracts developed interstate irrespective of date, are unlikely to comply with the QBCC Act requirements for domestic building contracts.

The cheapest and easiest way for contractors and owners to be sure their contract documentation complies with Queensland legislation is to use a standard form (pre printed) contract produced since 1 July 2015 by QBCC or one of the major industry associations. While each of these contracts will satisfy the minimum requirements of the legislation, it is important to note that they will vary in detail and in the apportionment of risk and responsibility between the homeowner and contractor.

Alternatively, **contractors or owners may develop their own contracts but it is strongly recommended that assistance be obtained from a practising lawyer** to ensure the contract complies with the Queensland legislation.

2. SUMMARY OF KEY DOMESTIC BUILDING CONTRACT REQUIREMENTS

While Schedule 1B of the QBCC Act sets out a range of provisions which must be included in domestic building contracts, it does NOT require contractors to use QBCC contracts or any particular contract. Contractors have a legal obligation to ensure that whatever contracts they use fully comply with the requirements of the Queensland legislation.

They may choose to use standard form, pre-printed contracts produced by QBCC or one of the industry associations or, alternatively, they may develop their own contract documents with assistance from a lawyer. **The key requirements for domestic building contracts, depending on the contract price, are summarised below:**

CONTRACTS PRICED AT \$3300 OR LESS (not regulated by domestic building legislation)

The form and content requirements for domestic building contracts set out in Schedule 1B of the QBCC Act only apply to contracts priced at more than \$3300 (including labour, materials and GST). Nevertheless, to avoid uncertainty and minimise the risk of disputes, **QBCC recommends that even contracts priced at \$3300 or less** (including labour, materials and GST) **should still be recorded in a brief written document** – the 2 page **QBCC Small Building Projects Contract** (available for free download from the QBCC website) is recommended for this purpose.

CONTRACTS PRICED AT \$3301 - \$19999 (Level 1 contracts)

Some of the key content requirements for contracts priced at from \$3301 to \$19 999 include:

- **Must be in writing, dated and signed** by or on behalf of the contractor and the owner
- **Must contain:**
 - » **names of the contracting parties** including the name and licence number of the building contractor as it appears on the contractor's licence,
 - » a **description of the contracted work**,
 - » the **contract price** (or the method for calculating it, including the contractor's reasonable estimate of the contract price),
 - » the **date for practical completion** or how the date is to be determined (e.g. *within 20 business days of work commencing on site*),
 - » a copy of any **plans and specifications** required for the contracted work, and
 - » **a conspicuous notice advising the owner of their cooling off period rights** (see separate section on 'Cooling-off Period').
- The contract should also clearly identify the site where the building work is to take place (e.g. house or unit number and street name, or lot and plan numbers if the work is in a new estate)
- The **contractor must give the owner a fully signed copy of the entire contract** (including any associated plans and specifications) **within 5 business days** after the contractor enters the contract
- **The maximum deposit** for level 1 contracts is **10%** of the contract price (**EXCEPTION:** a deposit of up to 20% is allowed if the value of work to be performed off-site is more than 50% of the contract price)
- There is no limit on the number and timing of **progress payments** (i.e. payments after the deposit) but they **must be directly related to progress of the work on site and proportionate to (or less than) the value of the work that relates to the claim** (e.g. the contractor can't claim a total of 50% of the contract price, including the deposit, until the total value of the work performed on site has reached at least 50% of the contract price)
- '**Variations**', or changes to the domestic building contract after it is signed (e.g. an increase, decrease or substitution in the scope of work or changes to the materials included in the contract), **must be set out in writing in a compliant variation document and approved in writing by the owner before the variation work commences, and the contractor cannot require payment for an increase in the contract price due to the variation before the variation work has started** (see separate section on 'Variations')

- **Extensions of time** (EOTs – section 42 of Schedule 1B) – a contractor may only claim an extension to the date for practical completion, or an extension to the construction period given in the original contract, if:

- » the need for an extension of time relates to a delay recognised in section 42(1)(a) of Schedule 1B. The recognised reasons for the delay causing the need for an extension of time are:
 - a delay not reasonably foreseeable and beyond the reasonable control of the contractor; or
 - a delay caused by the owner; or
 - a delay caused by a variation of the contract complying with section 40 of Schedule 1B and agreed by the owner in writing; and
- » the claim is presented to the owner in writing within 10 business days of the contractor becoming aware of the cause and extent of the delay or when they reasonably ought to have become aware of the cause and extent of the delay (see separate section on 'Delays During Construction and Extensions of Time'); and
- » the owner approves the claim in writing.

- **Implied warranties** (sections 19 – 26 of Schedule 1B) – the legislation sets out a number of warranties which are deemed to be part of all regulated domestic building contracts (although they only need to be stated in the contract if the contract price is \$20000 or more). A breach of these warranties is effectively a breach of contract and may give rise to various remedies, including monetary compensation. In summary, the key warranties are:

- » **Materials** must be **new and suitable for purpose** (unless otherwise stated in the contract)
- » **Work** must be **carried out in accordance with all relevant laws, legal requirements and the plans and specifications** (if plans and specifications form part of the contract)
- » **Work** must be **carried out in an appropriate and skilful way** and with reasonable care and skill
- » **Work** must be **carried out with reasonable diligence**
- » If the contracted work consists of the construction, renovation, improvement or repair of a home to a stage suitable for occupation – the home will in fact be **suitable for occupation when the contracted work is finished**
- » If the contract price includes any allowances for *Prime Cost Items* (e.g. fixtures and fittings such as tiling, kitchen appliances, bathroom fittings, etc.) and/or *Provisional Sums* (e.g. contracted services such as rock or termite removal), such **allowances will be calculated with reasonable care and skill.**

Any legal action for breach of these warranties must be commenced within the *warranty period* or a further 6 months if the breach becomes apparent within the last 6 months of the warranty period. The warranty period is 6 years for a breach resulting in a structural defect, or 1 year in any other case, starting from the date the contracted work was completed or ceased or the contract was terminated or, if the contract is not terminated and the contracted work was not started, the date the contract was entered.

CONTRACTS PRICED AT \$20000 OR MORE (Level 2 contracts)

The requirements for these contracts include all those listed above for Level 1 contracts, plus the following additional points:

- The **QBCC Consumer Building Guide** (2 pages) must be given to the owner before the owner signs the building contract
- **The Start Date** (in addition to a date for practical completion), or how it is to be determined (e.g. *within 10 business days of building approval being issued*), must be stated
- **Relevant Statutory/Implied Warranties must be stated** in the contract (see the section on 'Contracts priced at \$3301 - \$19999' for more details on the implied warranties)
- **The contract price** (if a fixed amount, without allowances) **and a price change warning** (setting out any contract provisions which could cause the contract price to increase or decrease e.g. because of agreed variations) **must be stated on the first page of the contract schedule**
- **If the contract price is not fixed, the method for calculating the price including any allowances** (e.g. for Prime Cost Items or Provisional Sums) **must be stated in the contract schedule**
- **The contractor must, within 10 business days of work commencing on site, give the owner a Commencement Notice** stating the date work commenced on site and the date for practical completion (see separate section on the 'Commencement Notice')

WARNING: DO NOT SIGN the contract until you have read it and confirmed that it meets the above requirements. If unsure, you should obtain formal legal advice. **Please note**, however, that these are **minimum requirements**. There are other matters, such as provision for *liquidated damages* (see separate section on 'Liquidated Damages'), which may not be required by the legislation but which may be important for your protection.

It is important to remember that even between domestic building contracts which fully comply with the legislative requirements there will be differences in the apportionment of risk and responsibility.

Because the building contract is the main source of the rights and obligations of both parties, it is recommended that, before owners sign a contract and commit to a particular contractor, they should ask the contractor for a blank copy of the full contract documents they intend to use for their domestic building project.

Owners should read the contract (especially the Contract Schedule and the General Conditions/Terms and Conditions) **carefully in their own time and obtain legal advice on any matters of concern before signing**. Some contractors will be willing to use a range of contracts, while others may insist on using a particular contract (especially if they are members of one of the major industry associations that produces domestic building contracts for its members).

Owners may wish to refer to the relevant QBCC contract (depending on the nature and value of your project) on the Commission's website qbcc.qld.gov.au for comparison if they will be using another form of contract.

3. WARNING REGARDING COST PLUS AND CONSTRUCTION MANAGEMENT CONTRACTS

Cost plus contracts and construction management contracts are two types of contracts which, although more commonly associated with commercial building projects, may legally be used for domestic building work in Queensland. However, because both of these contracts involve added responsibility and risk for both parties, and reduced protection for owners under the Queensland Home Warranty Scheme, **QBCC strongly recommends owners and contractors obtain formal legal advice before agreeing to use either of these contracts for domestic building work.**

Cost plus contracts

A cost plus contract is defined in section 1 of Schedule 1B of the QBCC Act as “... a domestic building contract under which the amount the building contractor is to receive under the contract cannot be accurately calculated when the contract is entered into, even if prime cost items and provisional sums are ignored”. Typically under this type of contract the amount the owner will have to pay will be the actual costs incurred by the contractor (e.g. the amount a builder pays for materials and to their subcontractors) plus a percentage of that total figure, hence “cost plus 20% [for example]”. Cost plus contracts are particularly dangerous for owners because of the total lack of certainty regarding the final cost of the project. In fact, because the contractor’s payment claims are proportionate to the total cost of materials and subcontractor’s charges, there is actually a disincentive for the contractor to minimise those costs. The high incidence of serious disputes associated with the use of this contract format is also a risk for both parties.

Reports to QBCC over many years suggest that the final costs under a cost plus contract are often considerably more than the owners anticipated (sometimes 50 – 100% greater than their expectation).

Construction management contracts

The main distinguishing feature of these contracts is that whereas under a normal domestic building contract an owner signs a single contract with a builder who then contracts with trade contractors and manages and supervises their work on the owner’s behalf, under the construction management model in addition to engaging a construction manager (who must be a licensed builder) the owner may also be required to contract directly with a multitude of trade contractors (e.g. plumbers, carpenters, electricians, etc.) and the owner will ultimately be responsible for their performance.

A breakdown in the construction management contract, or one of the trade contracts, may have a collateral impact on other trade contracts, potentially leaving the owner exposed to delays and costly legal action. There are also added risks for builders when acting as construction managers.

WARNING: As a consequence of the uncertainty surrounding the final contract price for both of these types of contracts, **protection for non-completion under the Queensland Home Warranty Scheme is generally not available to owners when these contracts are used.**

4. QUEENSLAND HOME WARRANTY SCHEME (ss67WA-68I of QBCC Act)

WHAT IS COVERED?

Residential construction work performed in Queensland valued at more than \$3,300 (including labour, materials and GST) is subject to protection under the Queensland Home Warranty Scheme operated by QBCC.

Examples of the type of work covered include:

- construction of a new home, related roofed building (e.g. a garage), townhouse or multiple unit dwelling (no more than 3 storeys)
- the extension, addition, alteration, renovation or repair of any of the above buildings
- replacement or refit of fixtures or fittings in a kitchen or bathroom
- work on a deck or verandah, attached to a residence
- building work that affects the structural integrity of the building
- From 28 October 2016, in addition to the above, the following work is also covered:
 - » building work on or in the home or related roofed building (e.g. painting)
 - » building work on a deck or verandah attached to a related roofed building
 - » building work for anything attached to the home or related roofed building that requires building or plumbing approval
 - » building work for a structure attached to the external part of a home or related roofed building which has no other supporting structure (e.g. awning, handrail)
 - » stairs or ramp which provide access, and are permanently attached to the home or related roofed building
 - » construction/installation of residential swimming pools
 - » installation of a manufactured home in a residential park

The examples below do not require QBCC Home Warranty cover if done on their own:

- driveways and paths
- fences.

Queensland Home Warranty Scheme cover provides protection where:

- a licensed contractor does not complete the contracted residential construction work and the owner has correctly terminated the contract
- the contractor fails to rectify defective work
- the building suffers from subsidence or settlement.

PAYMENT OF THE PREMIUM

Under the QBCC Act, the building contractor is required to collect the premium from the homeowner and pay it to the QBCC within 10 business days after the date the contract was entered into or before the contracted work is started (whichever is earlier). The premium is linked to the insurable value of the work and is commonly included in the deposit amount payable when the owner signs the contract (see separate section on 'Deposits').

If QBCC pays out on a claim, QBCC will seek to recover the claim amount from the responsible building contractor.

CALCULATION OF THE PREMIUM

The premium is based on the "insurable value" of the work. The term insurable value is the amount which represents the reasonable cost of having the work carried out by a licensed contractor on the basis that all materials are to be supplied by the contractor – whether or not the work is actually carried out on this basis.

OPTIONAL ADDITIONAL COVER

The standard insurance cover is a maximum of \$200,000. However, an owner may increase this cover to \$300,000 by paying an additional premium to QBCC. Also, coverage for accommodation, removal and storage costs is \$5,000 increasing to \$10,000 if optional additional cover is obtained. Both of these amounts are included in the maximum entitlements noted above.

In order to be eligible for this additional cover, the standard premium for the work must first be collected from the owner and paid to QBCC by the licensed contractor, and the owner must then pay the additional premium direct to QBCC within 30 business days of entering the contract, or prior to the work starting (whichever is earlier).

A premium table for owners wishing to purchase this cover is available on the QBCC website.

OBTAINING ASSISTANCE UNDER THE QUEENSLAND HOME WARRANTY SCHEME

If an owner's complaint regarding non-completion, defective work or subsidence involves residential construction work and is not able to be satisfactorily resolved through QBCC's dispute resolution process, the application will be assessed to determine whether the owner may be eligible for assistance under the Queensland Home Warranty Scheme. The owner will not be required to lodge a separate form for this to occur.

TIME LIMITS FOR LODGING CLAIMS

- For non-completion the contract must end:
 - » if no work has commenced, within 2 years of the contract date; or
 - » if work has commenced, within 2 years of the date work commenced on site, and the claim must be lodged within 3 months of the contract ending
- For structural defects the complaint form must be lodged within 3 months of the owner noticing the defect
- For non-structural defects the owner must lodge the complaint form within 7 months of the completion date which insurance policy is applicable?

Insurance Policy Conditions Edition 8 applies to contracts signed between 1 July 2009 and 27 October 2016

The new Terms of Cover http://qbcc.qld.gov.au/sites/default/files/QBCC_QHWS_-_Product_Disclosure_A4_-_Oct_2016.pdf apply to contracts signed on or after 28 October 2016. For the full terms of cover see *Queensland Building and Construction Commission Regulation 2018*, Schedule 6.

MAKE SURE YOU HAVE A WRITTEN CONTRACT

It's important that owners have a signed contract with their contractor. Apart from being a legal requirement, it ensures that owners have access to the benefits under the Queensland Home Warranty Scheme. As mentioned elsewhere in this booklet, the use of a Cost Plus or Construction Management form of contract will lead to the loss of non-completion cover.

HOW LONG DOES A HOME WARRANTY POLICY LAST?

The work is covered for a period of 6 years 6 months from the date (whichever is earliest):

- the premium is paid
- a contract is entered, or
- work is commenced

The period of cover is extended where the work takes longer than 6 months to complete.

CHECKING YOUR QUEENSLAND HOME WARRANTY SCHEME COVER

After an owner signs a contract for residential construction work valued at more than \$3300, QBCC will send them a notice of cover which provides details of the work, the contractor and the premium paid. This notice should arrive before the work begins. To check your home warranty cover, contact QBCC with the property details (e.g. address, lot and plan number).

Note: If you are a subsequent owner of the property and didn't contract with the builder for the work, or you intend purchasing the property, you should complete the Insurance Search Request form (PDF) on the QBCC website.

For further information on the Queensland Home Warranty Scheme visit the QBCC website or contact QBCC on 139 333.

5. PRELIMINARY AGREEMENTS

(see definition of ‘excluded building work’, s1 of Schedule 1B)

Preliminary agreements are quite common in the domestic building industry, especially where the building work will involve the construction of a home. These agreements are simple contracts entered into in advance of a domestic building contract to enable the builder to obtain payment up front for preliminary work they will perform or arrange on the owner’s behalf.

This preliminary work (especially tests to obtain foundations data) will often be essential to enable the builder to calculate an accurate price for the building contract.

The work most commonly covered by preliminary agreements includes design work, the preparation of plans and specifications for carrying out domestic building work and the work involved in obtaining foundations data about a building site (e.g. soil tests and contour surveys to determine the soil classification and earthwork costs).

These activities all fall under the definition of excluded building work in section 1 of Schedule 1B of the QBCC Act – this means that the builder is able to take full payment up front to cover their costs in arranging this work on the owner’s behalf.

The legislation governing domestic building contracts, Schedule 1B of the QBCC Act, does not specifically address preliminary agreements – the rights and obligations of the parties under these simple agreements are therefore governed by general principles of contract law. As with any contract, you should carefully read the terms of any preliminary agreement before signing it to ensure you are clear on exactly what you are paying for, and seek formal legal advice if you are unsure of your rights and obligations under the agreement.

WARNING: Some preliminary agreements seek to impose penalties or extra charges if the owner, having received the final contract price, decides not to proceed with the building contract. Such provisions may be illegal. Owners should seek formal legal advice before signing any agreement which contains such penalty provisions.

6. CONSUMER BUILDING GUIDE (CBG)

(ss18 & 46 of Schedule 1B)

The Consumer Building Guide (CBG), developed by the QBCC replaces what was previously called a ‘Contract Information Statement’. It contains some basic building and contractual information for homeowners and **must be given to the homeowner by the contractor before the homeowner signs any level 2 domestic building contract (i.e. a domestic building contract priced at \$20,000 or more).**

The Guide, which can be downloaded for free from the QBCC website, is already included in most common industry contracts.

Only the QBCC version of the Guide, without amendment, is acceptable under the legislation.

7. PLANS AND SPECIFICATIONS

(ss13 – 15 & 23 of Schedule 1B)

Most significant building projects will require the contractor to produce and adhere to plans and specifications. Under section 15 of Schedule 1B the contractor must give the homeowner a copy of these plans and specifications together with the other contract documents within 5 business days of both parties signing the contract.

NOTE: It is very important that the description of the contracted work in the contract schedule specifically refers to the plans and specifications, including their date and/or version number, and that they are attached to the contract for ease of reference during the building process. Section 23 of Schedule 1B requires that the contractor must carry out the contracted work in accordance with any plans and specifications included in the contract.

8. ALLOWANCES FOR PRIME COST (PC) ITEMS AND PROVISIONAL SUMS (PS)

(ss 1, 10 & 26 of Schedule 1B)

Sometimes a contractor may not be able to provide an exact fixed price in the contract for fixtures and fittings or contracted services which form part of the contracted work. These items may be covered by an allowance instead of being included in the fixed price component of the contract.

A prime cost (PC) item allowance is defined in section 1 of Schedule 1B as “...an item, including, for example, a fixture or fitting—

- (a) that has not been selected, or the price of which is not known, when the contract is entered into; and
- (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”.

Common examples of PC items are the supply of tiles, tap fittings or in-built kitchen appliances (e.g. ovens, cook tops, dishwashers, etc.) **A provisional sum (PS) allowance is defined in section 10 of Schedule 1B as:**

- “(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, cannot 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”.*

Common examples of PS items are allowances for the cost of rock removal, asbestos removal or earthworks.

Because the final price of any item covered by an allowance could be far more than what has been allowed in the contract, wherever possible **owners should try to obtain a fixed price for all, or as much as possible, of the work they intend to contract for.**

Sometimes, however, a fixed price may not be available, for example where the tiles the owner has chosen are sourced from overseas and temporarily out of stock and the contractor is not yet able to obtain a fixed price for the new stock when it arrives.

Contracts which have a high proportion of the total contract price covered by allowances (e.g. 30% or more) carry added risk for owners, especially for those on a tight budget, because of the level of uncertainty about the final amount payable under the contract. Section 26 of Schedule 1B requires contractors to calculate PC and PS allowances with “...reasonable care and skill...”.

It is very important that, before signing a domestic building contract, owners carefully check the documentation to be sure what proportion of the total contract price is fixed and what proportion is covered by PC and PS allowances and therefore variable. When it comes time to pay for these allowances, some contracts, such as those produced by QBCC, require the contractor to provide supporting documentation (e.g. tax invoices or receipts) to evidence the costs they have incurred for the items supplied, or contracted services provided, which were covered by allowances in the contract. The legislation does not, however, require this.

9. THE COOLING-OFF PERIOD (ss 35 – 38 of Schedule 1B)

Under section 35 of Schedule 1B, homeowners generally have the right to withdraw from the contract during the cooling-off period of 5 business days. The cooling-off period commences on the day after the owner receives a signed copy of the entire contract (including any plans and specifications) and, for contracts priced at \$20,000 or more, a copy of the QBCC Consumer Building Guide. Any delay by the contractor in providing these documents to the owner prolongs the period within which the owner may withdraw from the contract.

Section 36 of Schedule 1B sets out some restrictions on the owner’s right to withdraw under the cooling-off provisions (e.g. where the owner and the contractor have previously entered into a contract which is ‘substantially the same’, or where the owner, before entering the contract, has already received formal legal advice about that specific contract).

The **procedure for withdrawing is set out in section 37** of Schedule 1B. If an owner wishes to withdraw under the cooling-off provisions they must, before the expiry of the cooling-off period, give the contractor a written and signed withdrawal notice stating that they are withdrawing from the contract under the cooling-off provisions in section 35 of Schedule 1B of the QBCC Act.

Section 38 of Schedule 1B sets out the amount a contractor is entitled to receive from an owner who withdraws under the cooling-off provisions in section 35 (or to retain if the owner has already paid more than the contractor’s entitlement). This entitlement is usually \$100 plus “an amount equal to any out-of-pocket expenses reasonably incurred by the building contractor before the owner withdrew”.

10. FOUNDATIONS DATA (s31 of Schedule 1B)

Under section 31 of Schedule 1B of the QBCC Act foundations data (e.g. soil tests, contour surveys) is required where a building contractor is contracting to perform domestic building work that:

- requires the construction or alteration of footings, or a concrete slab, for a building; or
- may adversely affect the footings of a building or a concrete slab forming part of a building.

In practice, foundations data will almost always be required for the construction of a new home or an associated building requiring footings or a concrete slab, major extensions to an existing home, and the construction or installation of an inground swimming pool.

Because foundations data is important in determining the cost of earthworks and building foundations, and therefore in providing an accurate total contract price, section 31(2) of Schedule 1B of the QBCC Act requires contractors to obtain any foundations data necessary for the work before they enter the building contract. The contractor usually covers the costs of obtaining the foundations data up front via a simple contract called a preliminary agreement which the parties sign before finalising the main building contract (see Part 5 of this booklet titled ‘Preliminary Agreements’). Section 31(5) of Schedule 1B of the QBCC Act requires the building contractor to provide a copy of the foundations data to the owner once the owner has paid for the costs incurred in obtaining the data.

In determining what is the appropriate foundations data for the particular project the contractor must have regard to the following:

- the Building Code of Australia;
- the need for a drainage plan;
- the need for engineer’s drawings and computations; and
- the need for information on the fall of the land at the building site.

The only exceptions to the general requirement for a contractor to commission and obtain the foundations data prior to entering the building agreement are:

- a) where the contractor is not lawfully entitled to enter the building site to obtain the foundations data before the contract is signed AND the contract guarantees there will be no increase in the contract price because of the foundations data when it is later obtained [see section 31(3) of Schedule 1B]; or
- b) where appropriate foundations data already exists (e.g. the data has already been obtained by the owner and given to the contractor) and it is reasonable for the contractor to rely on it [see section 31(4) of Schedule 1B].

11. DEPOSITS

(s33 of Schedule 1B)

CONTRACTS PRICED AT \$3,300 OR LESS

(unregulated contracts)

Although a written contract is **not** required under Queensland legislation for domestic building work priced at up to \$3,300, and the legislation does not stipulate maximum deposits for these smaller building projects, **QBCC recommends that owners should never pay more than 20% deposit** before work commences and **not pay the full price until they have checked that all the agreed work has been completed.**

CONTRACTS PRICED AT MORE THAN \$3,300

Section 33 of Schedule 1B of the QBCC Act sets out the following maximum deposits:

- **For contracts priced at \$3,301 - \$19,999 (level 1 contracts)** – a maximum of 10% of the total contract price
- **For contracts priced at \$20,000 or more (level 2 contracts)** – a maximum of 5% of the total contract price.

EXCEPTION: Section 33 of Schedule 1B of the QBCC Act also provides for **a new maximum deposit of 20%** - an exception to the general rule of 5% or 10% - **in cases where** (irrespective of the contract price) **“..the value of off-site work is more than 50% of the contract price”**.

It is intended that the new special deposit of 20% only applies in limited circumstances where substantial customised building work or prefabrication is performed away from the building site (e.g. where kitchen modules, or customised windows, sheds, pergolas or cladding are made to measure off-site and the total value of this off-site work – including labour, materials and GST – is more than 50% of the total contract price).

12. COMMENCEMENT NOTICE

(s16 of Schedule 1B)

For all contracts priced at \$20,000 or more (i.e. level 2 contracts), contractors are now required to give owners a commencement notice within 10 business days of the contracted work commencing on site. The notice must state the exact date work commenced on site and the date for practical completion. Some contracts, including those produced by QBCC, contain a commencement notice ready for the contractor to fill out and give to the owner.

Owners should retain and refer to this notice (together with any extension of time claims they may have approved) when assessing if, and from what date, they may be entitled to liquidated damages (i.e. payments from the contractor to compensate the owner in the event the contractor fails to complete the contracted work by the date for practical completion – see the section of this booklet titled ‘Liquidated Damages’).

13. PROGRESS PAYMENTS

(s34 of Schedule 1B)

Before signing a building contract it is very important that owners discuss with their contractor, and fully understand, what progress payments the contractor proposes for their project (i.e. how much and at what stages they will be required to pay the contractor after work has commenced on site).

It is recommended that the payment stages be linked to clearly defined construction stages (so the owner can inspect the work and confirm that the payment stage has been reached) and **that these stages, and the payment required at each, are fully described in the contract.**

If, instead of construction stages, the contract provides for payment at regular intervals (e.g. every month), it is very important that the builder’s payment claims are supported by detailed evidence of the amount and value of work performed during the period covered by the claim. **Uncertainty about when a progress payment is due, or the amount payable, are common causes of disputes.**

Under Schedule 1B of the QBCC Act contractors and homeowners are now free to determine how many progress payments, if any, are appropriate for their particular project and when they are payable (irrespective of whether the project involves construction of a new home or work on, or associated with, an existing home). There is, however, one over-arching requirement for all progress payments which is set out in section 34(1) of Schedule 1B of the QBCC Act. Under this provision, the building contractor must not claim an amount under the contract, other than the deposit, unless the amount is:

- **directly related to the progress of carrying out the contracted domestic building work at the building site** (so, for example, a progress claim cannot include a claim for costs incurred by the contractor before work commenced on site or for work not yet performed); and
- **proportionate to** (or less than) **the value of the contracted work covered by the claim** (i.e. the dollar amount claimed must be proportionate to (or less than) the value of the contracted domestic building work described in the claim).

NOTE: After the deposit, no progress payments may be demanded or taken until work has actually commenced on site. Payments sought before work commences on site may be treated by QBCC as further deposit payments and if the total exceeds the maximum deposit set out in section 33 of Schedule 1B (i.e. 5%, 10% or 20%, as the case may be – see the section in this booklet titled ‘Deposits’), QBCC may take action against the contractor for breaching the QBCC Act.

An important change under Schedule 1B of the QBCC Act is that contractors can no longer contract out of the obligation for progress payment claims to be ‘proportionate’ to the value of the work that relates to the claim.

WARNING: Homeowners should be careful to never pay more than the amount required under the contract for a progress payment, or make the payment before it is due under the contract, as this may reduce the protection available to them under the Queensland Home Warranty Scheme administered by QBCC.

14. VARIATIONS

(ss40 & 41 of Schedule 1B)

Full and accurate documentation of variations (changes to the original contract) is vital for both homeowners and contractors to ensure they are 'on the same page' with regard to exactly what work has been agreed. **Failure to properly document variations is one of the most common causes of confusion on site and disputes** which are costly for both homeowners and contractors.

THE VARIATION DOCUMENT

The variation document may be given by the contractor to the owner personally, by post, fax or email or in accordance with any provision in the contract providing for service of notices.

It must be dated (and signed) by the contractor, describe the variation and state the change to the contract price because of the variation (increase, decrease or no change) or the method for calculating the change (e.g. \$50 per square metre for the supply and laying of tiles to a balcony), and when the increase/decrease due to the variation is to be paid or credited.

In addition, if the proposed variation is likely to delay the completion of the contracted work, the document must also include the contractor's reasonable estimate of the period of delay. The variation document must be copied to the owner within 5 business days of agreement on the variation and before the variation work is started.

The contractor must not commence work on a variation before the owner agrees to the variation in writing, and the contractor cannot require extra payment for a variation before the variation work is started.

15. DELAYS DURING CONSTRUCTION AND EXTENSIONS OF TIME (EOTS)

(ss13, 14 and 42 of Schedule 1B)

Section 14 of Schedule 1B of the QBCC Act requires that all level 2 domestic building contracts (i.e. those priced at \$20,000 or more) must state:

- the date for the start of the work at the building site; or
- If a date is not stated, then how the start date is to be determined (e.g. *within 20 business days from the date of approval of the plans*).

In addition, under sections 13 and 14 of Schedule 1B all regulated domestic building contracts (i.e. both level 1 and level 2 contracts) must state the date for practical completion of the contracted work or how the completion date is to be determined (e.g. *180 days from the Start Date*).

The domestic building legislation no longer requires contractors to state in their contracts the number of days they have allowed for likely delays (e.g. for wet weather and non-working days) when calculating the date for practical completion.

Contractors should note, however, that the legislation still requires them to make a reasonable allowance for such likely delays because an extension of time (EOT) claim will not be valid if the cause of the delay was reasonably foreseeable or within the reasonable control of the contractor. In the interests of transparency, and to ensure the contractor turns their mind to the issue of likely delays and factors them in, where relevant, to their calculation of the date for practical completion, some contracts (including those produced by QBCC) still require contractors to state the number of days they have allowed for each likely delay (including wet weather and non-working days).

For a contractor to validly claim for an extension of time (EOT), the delay giving rise to the claim must be:

- due to something which is beyond the contractor's control and which the contractor could not reasonably have anticipated when the contract was signed; or
- a delay caused by the owner; or
- a delay caused by a variation of the contract which complies with the legislation and is agreed in writing by the owner.

In addition, the **EOT claim must be given to the owner in writing within 10 business days** of when the contractor becomes aware of, or reasonably ought to have become aware of, the cause and extent of the delay. The contractor may only claim an EOT if the owner approves the claim in writing. The contractor must give the owner a fully signed copy of the claim for the extension of time within 5 business days of the owner approving the claim.

16. LIQUIDATED DAMAGES (LD)

(not dealt with in the legislation)

Most, but not all, domestic building contract schedules contain some provision for liquidated damages (i.e. an amount per day which the contractor agrees to pay the owner to compensate them in the event the contractor fails to complete the contracted work by the date for practical completion). **Check your contract before signing to see if it includes a provision for liquidated damages (LDs) and the amount is reasonable.**

CALCULATION OF LD

The LD figure should be an amount per calendar day (not business day) and be written into the contract. The amount should be the owner's genuine estimate at the time of signing the contract of the extra costs or losses (in the case of a rental property) they will incur per day if the contractor fails to complete the contracted work by the date for practical completion. The appropriate amount will depend on individual circumstances but commonly includes an allowance for such things as:

- extra rent and storage costs incurred due to the delay;
- lost rent (in the case of an investment property); and
- additional interest charges and fees payable to a financier, but only if the extra costs become payable if the contractor fails to complete the contracted work by the date for practical completion, and not otherwise.

The domestic building legislation does not refer to or deal with liquidated damages. This means that **it is up to the contracting parties to consider whether LDs are relevant to the particular project and, if so, what amount per calendar day is appropriate in the circumstances**. There may be some circumstances in which no liquidated damages may be applicable.

NOTE: Some of the more commonly used domestic building contracts (including those produced by QBCC, Master Builders and HIA) contain a default amount per calendar day (currently \$50 per day but subject to change) which will apply when the liquidated damages provision in the contract schedule is left blank. **It is very important that owners carefully consider what, if any, extra costs or losses they will suffer if the contracted work is not completed by the date for practical completion and ensure that an appropriate daily amount for liquidated damages is recorded in the contract schedule before signing the contract.** Failure to do so may prove to be very costly, particularly if the contractor has written 'NIL', 'N/A' or an inadequate amount for liquidated damages in the contract schedule.

NOTE: The date for practical completion, after which any liquidated damages will be payable, may be different from the date stated in the contract when it was signed. That is because the date for practical completion can be pushed back by, for example, an extension of time (EOT) claimed by the contractor and approved by the owner.

If the contract expressly provides for this, the total amount of liquidated damages may be deducted from the final amount payable under the contract by the owner to the contractor. Such a deduction is generally allowed in the contracts produced by QBCC, HIA and Master Builders.

NOTE: Deducting any amount from an amount due to the contractor (including for liquidated damages) may constitute a breach of the contract unless the deduction is expressly authorised by the contract. Owners should carefully check the General Conditions of their contract regarding this matter and if in doubt obtain formal legal advice. Where a deduction is authorised, **it is very important that owners correctly calculate the number of days of liquidated damages** (i.e. the number of days the project has overrun the date for practical completion, as adjusted for any approved extensions of time).

17. DISPUTES – Before the Contract is completed/terminated

If owners are concerned about any aspect of their domestic building project they should, in the first instance, contact their contractor to discuss the matter. If this does not promptly resolve the issue, owners should set out their concerns clearly in writing to their contractor and request that they respond within a reasonable time (say 14 days). **Both parties should keep a copy of all correspondence relating to the contract.**

QBCC'S EARLY DISPUTE RESOLUTION (EDR) SERVICE

If the dispute is still unresolved, QBCC's EDR process may be of assistance. This free service offers a facilitation-based approach to resolving disputes while the contract is still on foot (see the section in this booklet headed '*DISPUTES – After the Contract is Completed/Terminated*' for information on what to do if you have problems **after** completion of your project or after your contract has been terminated).

For further details of the EDR process, refer to information titled 'Complaints before your contract has been completed' on our website.

LEGAL ACTION

The EDR process does not prevent either party from seeking legal advice or taking legal action. Legal proceedings for domestic building disputes may be initiated by either party in the [Queensland Civil and Administrative Tribunal \(QCAT\)](#) or an appropriate court. In practice, most domestic building disputes are commenced in QCAT, principally because legal representation is not essential and the costs are generally less than would apply in a court. QCAT's jurisdiction includes most legal disputes arising from domestic building work done in Queensland, and commercial building disputes involving work of a value up to \$50,000 (or more if both parties agree). For further information on QCAT's jurisdiction and procedures contact QCAT on 1300 753 288 or visit their website at qcat.qld.gov.au.

PLEASE NOTE: Under section 77(2) of the QBCC Act, a person involved in a building dispute "...may not apply to the tribunal unless the person has complied with a process established by the commission to attempt to resolve the dispute". QCAT will require written confirmation that this has been complied with.

If QBCC is unable to resolve a dispute through the EDR process, the Commission recommends the parties obtain formal legal advice from a solicitor familiar with Queensland building legislation before taking further legal action, including making an application to the Tribunal. If you do not have a solicitor, you may locate one by contacting the [Queensland Law Society](#) on 1300 367 757.

18. DISPUTES – After the Contract is completed/terminated

If your building issue or dispute arises after your contract is completed/terminated, the QBCC's EDR process will not be available to you. Instead, you should follow the process applicable to your situation as set out in the links below on the QBCC website which provide information for:

- [Complaints about defective building work](#)
- [Complaints about building design](#)
- [Complaints about building non-completion](#)
- [Complaints about pre-purchase or termite inspections.](#)

19. CONTRACT TERMINATION (not dealt with in the legislation)

WARNING: Terminating a building contract for any reason is a very serious matter which may, if not done properly, cause major financial and legal problems for a party wrongly terminating. For a homeowner, failure to properly terminate their contract may also reduce the amount of cover available to them under the Queensland Home Warranty Scheme administered by QBCC (e.g. cover for non-completion will not be available). It is STRONGLY RECOMMENDED that owners and contractors obtain formal legal advice before taking steps to terminate their domestic building contract.

If there is a written contract (as required under Queensland legislation), **proper termination will usually require strict adherence to the documentation and procedures for termination set out in the General Conditions/Terms and Conditions of the contract** itself (The domestic building legislation does not deal with the procedures for terminating a contract). Most domestic building contracts require that, in most circumstances, 2 written notices must be sent to the other party:

- (a) Notice of breach:** an initial notice calling upon the other party to remedy the breach or breaches described in the notice, with a warning that the contract will be terminated unless the breaches are remedied within the period prescribed by the contract (commonly 10 business days) or a longer period if the prescribed period is insufficient; and
- (b) Termination notice:** a second written notice (sent after the time stipulated in the first notice has passed) referring to the first notice and stating that as the breach or breaches have not been remedied, the contract is now terminated.

There are some rare circumstances where a written contract may be terminated by a single written notice. An example is where a party becomes bankrupt or, being a company, goes into liquidation (a situation which cannot be quickly rectified).

Any correspondence relating to termination of a building contract should be written by, or at least checked by, a practising lawyer experienced in building disputes. Not all lawyers have such experience. Unfortunately QBCC is unable to provide legal advice.

20. PRACTICAL COMPLETION AND FINAL PAYMENT

(s1 of Schedule 1B)

Under section 1 of Schedule 1B, *practical completion* is defined as the day when the subject work is completed-

- (a) in compliance with the contract, including all plans and specifications for the work, and all statutory requirements applying to the work; and
- (b) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect occupation; and
- (c) if the building owner claims there are minor defects or minor omissions—the building contractor gives the building owner a defects document for the minor defects or minor omissions.

In addition to these statutory requirements, **it is important for owners to check the General Conditions of their contract to see if they impose any additional contractual obligations on the contractor** over and above those in the legislation.

If an owner believes the work is not complete when the contractor requests the practical completion payment (i.e. the contracted work has not reached practical completion as defined in the contract and the legislation), the owner should inform their contractor in writing and check the contract to be sure of their obligations concerning the final payment. **The final payment is not due until practical completion has been reached.**

CERTIFICATES OF INSPECTION

Not all domestic building projects require building inspections or the issuing of certificates by a building certifier. While house construction and most major renovations and extensions will require building inspections and certification, some minor building projects, especially those not involving structural work, may not require inspection or certification.

Owners should discuss the certification requirements for their particular project with their building contractor and, if still unsure, check with a building certifier.

OBTAINING CERTIFICATION DOCUMENTS

Before the work reaches the final stage

If the contractor engages the building certifier, the contractor is responsible for giving the owner a copy of each inspection certificate as soon as practicable after receiving it. A penalty of up to 20 penalty units (\$2,669) may apply if the contractor does not comply.

Alternatively, an owner can request inspection documents from the building certifier for any stages they have certified. This can be done at any time before the final stage inspection. To make the request, the owner needs to give the building certifier a [Request for Inspection Documents](#) notice. The building certifier is obligated to provide the requested inspection documentation within 5 business days. A penalty of up to 20 penalty units (\$2,669) may apply if the building certifier does not comply.

Once the final stage is complete

The owner of a class 1a dwelling (or associated class 10 structure) will be given the final inspection certificate, plus a copy of any other inspection documentation. The building certifier is responsible for ensuring these documents are provided within 5 business days. Failing to do so may result in a penalty of up to 40 penalty units (\$5,338).

Some contracts, such as those produced by the QBCC, require all certificates of inspection relevant to the contracted work (including the 'Final' certificate, where relevant) to be copied to the owner before the contractor demands the final payment.

Failure to receive the final certificate can significantly disadvantage the building owner, especially if they are seeking to on-sell the house soon after practical completion, as a potential purchaser is likely to want written proof that all building work has been approved and certified. This risk is largely avoided if the building owner has directly engaged the building certifier, instead of asking or allowing the contractor to engage the certifier, or if the contract addresses this issue. Both parties should carefully check what their contract requires them to do at practical completion.

ADDITIONAL CERTIFYING FUNCTIONS

If the contractor engages the building certifier, the owner can instruct the certifier (via the contractor) to perform additional certifying functions if required. These additional functions are at the owner's expense and the certifier is required to carry them out within the agreed timeframes.

DEFECTS DOCUMENT (s1 of Schedule 1B)

When the contracted work is finished (i.e. at practical completion) the building contractor and owner (or their authorised representative) should inspect the work and, if the owner believes there are any minor defects or minor omissions, compile a 'defects document'. The defects document must:

1. List all minor defects and minor omissions in the work that BOTH the owner and contractor agree exist;
2. State when the building contractor is to remedy the minor defects and minor omissions mentioned in the above list;
3. List any minor defects and minor omissions in the work that the owner believes exist but the contractor does not agree exist (i.e. which the contractor does not agree with); and
4. Be signed by the contractor and the owner or the owner's authorised representative.

21. DEFECTS LIABILITY PERIOD IN THE CONTRACT

Most of the domestic building contracts commonly used in Queensland (including those currently produced by QBCC, HIA and Master Builders Queensland) include a 'defects liability period' which is set out in the General Conditions of the contract (usually towards the end of the document).

The defects liability period is the period within which the contractor is contractually obligated to rectify defects in the contracted building work which the owner has identified and referred to the contractor in writing. The defects liability period is commonly 12 months from the date of practical completion.

QBCC recommends that owners carefully check the contracted work, and notify the contractor in writing of any defects they identify, well before the expiry of the defects liability period.

It may be wise for owners to diarise a reminder to check the work and document any problems a month or so before the expiry of the defects liability period set out in the contract.

Need more information?

Visit qbcc.qld.gov.au or call us on 139 333.

