

# CONTRACT INFORMATION STATEMENT FOR NEW HOME CONSTRUCTION CONTRACTS

*This document is the Contract Information Statement approved by the QBCC for use with contracts for the construction of a new home or other domestic building projects involving 'designated stages' (i.e. base, frame, enclosed and fixing stages). **The Contract Information Statement** is not part of the contract but **should be read before you sign the contract, or at least before the 'cooling-off' period of 5 business days expires**, as it provides helpful general information about your contract and the building process.*

## DISCLAIMER

This Contract Information Statement contains information of a general nature and should not be interpreted or relied upon as providing specific legal advice. **For advice on particular circumstances, especially contractual matters, you should consult a practising lawyer.**

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## WARNING

### AGAINST USING COST PLUS CONTRACTS

The QBCC strongly recommends against the use of cost plus contracts for domestic building work. Their use frequently results in large cost blowouts, reduced QBCC insurance protection, a high risk of disputes, and a reduction in your legal rights and protection in the event a dispute arises.

Cost plus contracts are easily identified because they do not state a total price for the work to be done. Instead the amount you have to pay is the actual cost incurred by the contractor plus a percentage of that cost, or the costs incurred plus an hourly rate for the contractor.

**NOTE:** Cost plus contracts have added risks for homeowners and contractors and their use for domestic building projects is not permitted under the *Domestic Building Contracts Act 2000* unless certain strict conditions set out in section 55 of the Act are met.

**Because of the uncertainty about the total price homeowners will pay under cost plus contracts, and the high risks associated with their use, QBCC strongly recommends homeowners obtain formal legal advice before signing any cost plus contract.**

# PART 1 – BEFORE YOU START

## PURPOSE OF THIS CONTRACT INFORMATION STATEMENT

The *Domestic Building Contracts Act 2000* (the 'DBC Act') requires the contractor to provide you with a 'Contract Information Statement' to accompany all contracts for domestic building work where the contract price exceeds \$3,300.

This Contract Information Statement covers all the information contractors are required to provide in an Information Statement. It is designed to inform you about domestic building contracts and the building process generally. The contractor must give you a copy of either this booklet or an alternative Information Statement approved by the QBCC before you sign a contract or within 5 business days after entering the contract. This booklet contains important information, including a checklist of items you should go through before you sign any contract for construction of a home or for alterations, extensions, renovations or repairs where the contract price exceeds \$3,300.

## WHAT IS THE QBCC?

The Queensland Building and Construction Commission ('QBCC') is a statutory authority established under the *Queensland Building and Construction Commission Act 1991* with primary responsibility for regulating domestic building work in Queensland.

## HOW CAN THE QBCC HELP YOU?

### INFORMATION

The QBCC provides information and advice to consumers and contractors throughout Queensland. This assistance is provided through:

- Customer Service Centres in all QBCC offices;
- media releases and articles;
- information booklets and fact sheets for homeowners and contractors;
- the Building Links magazine for contractors;
- seminars in Brisbane and regional centres;
- participation in trade and industry shows; and
- the QBCC website – [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au).

The QBCC produces a useful booklet for homeowners called *Facts for Smart Building and Renovating*. This booklet contains information you should know before building or renovating in Queensland.

Topics covered include:

- project homes;
- display homes;
- individually designed homes;
- reducing the risk of things going wrong;
- dealing with your QBCC-licensed contractor;
- about your building contract;
- QBCC insurance;
- termite management and treatment;
- recommended deposits and progress payments;
- dispute prevention and resolution;
- the *Domestic Building Contracts Act 2000*; and
- information for owner builders.

This information is available free of charge from QBCC offices and the QBCC website at [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au).

Customer Service Officers at all QBCC offices are able to provide information ranging from licence checks and details about licence holders, to information about QBCC's Queensland Home Warranty Scheme, dispute handling procedures, and requirements for building contracts. Telephone 1300 272 272 statewide if you need information or advice on any of these matters.

### LICENSING

The QBCC is also responsible for licensing all builders, building designers and most trade contractors in Queensland. A licence is required where building work is valued at more than \$3,300 (or any value in the case of building design, site classification, plumbing and draining, gas fitting, termite management or fire protection).

**Ask to see the contractor's QBCC licence card.**

### HOME WARRANTY INSURANCE

The QBCC operates the Queensland Home Warranty Scheme which offers you protection when you use a QBCC-licensed contractor for insurable residential construction work with a commercial value exceeding \$3,300, including the construction or renovation of a home. The insurance policy provides protection against non-completion of the work covered by the contract, defective construction, and subsidence or settlement of the footings.

**WARNING!** Some domestic building projects are not covered by the Queensland Home Warranty Scheme. Examples include the construction of a swimming pool or the repainting of an existing home where this work is carried out as a separate project. If you are unsure whether the home warranty protection applies to your building project, check the QBCC booklet titled 'Insurable

Residential Construction Work' (link: [http://www.qbcc.qld.gov.au/SiteCollectionDocuments/Builders\\_Contractors/Publications/Insurable%20Residential%20Construction%20Work.pdf](http://www.qbcc.qld.gov.au/SiteCollectionDocuments/Builders_Contractors/Publications/Insurable%20Residential%20Construction%20Work.pdf)) or contact the QBCC.

## HELP WITH DISPUTES

The QBCC also has a Resolution Services Division which provides information and assistance in dealing with disputes between consumers and contractors regarding defective or incomplete building work. If you have a problem or concern about some aspect of the work that has been done for you, you should follow the steps under the heading 'Dispute Resolution' in Part 3 of this Contract Information Statement.

**NOTE:** Time limits apply for the lodgement of disputes with the QBCC, so make sure you act promptly.

## CONTRACTS

The QBCC publishes and sells five different contracts which, together, cover the full range of domestic building and demolition projects. These include: the **QBCC New Home Construction Contract** (recommended for the construction of a new home and other projects involving 'designated stages' – i.e. base, frame, enclosed and fixing stages); the **QBCC Renovation, Extension and Repair Contract** (recommended for non-designated stages contracts including renovations, extensions and routine repairs of a home, duplex or home unit); the **QBCC Natural Disaster Repairs Contract** (specifically intended for repairs arising from damage caused by natural disasters); the **QBCC Small Building Projects Contract** (recommended for small renovation, maintenance and repair jobs with a contract price up to \$3,300), and the **QBCC Demolition Contract for Residential Premises** (recommended for the demolition of homes severely damaged by a natural disaster). **With the exception of the Demolition Contract which is only available online, these contracts may be purchased in hard copy from your nearest QBCC office or downloaded for free from the QBCC website.**

## QBCC LICENCE

Under the *Queensland Building and Construction Commission Act 1991*, all builders, building designers and most trade contractors must be licensed by QBCC to carry out building work (there are a few exceptions e.g. electricians who have their own licensing system). For your own protection, **you should deal only with someone who has a current and appropriate QBCC licence card.** Ask to see the contractor's licence card (note that some trades, such as electricians, are licensed by a different authority but you should still ask to see their licence card).

**You can confirm whether the licence is current and appropriate** for your particular building work **by visiting the QBCC website and using the free Online Licence Search facility.** Alternatively you may obtain the same information by telephoning the QBCC on 1300 272 272.

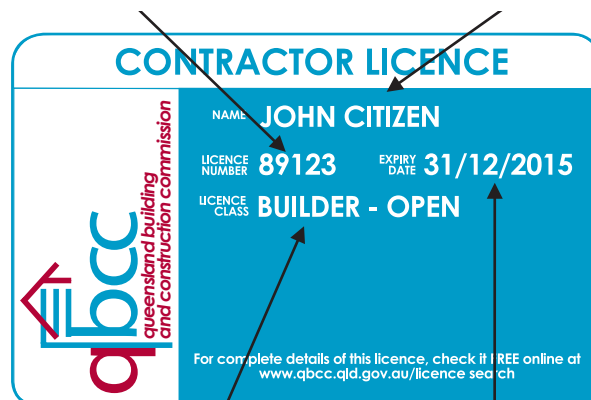
This facility will give you access to a report containing details of the contractor's past performance which you may download. It includes the number and value of QBCC-insured projects completed in recent years and some information about the contractor's dispute history, including the number of 'directions' – orders to rectify defective work – if any, issued by the QBCC against the contractor. You can also obtain a certified copy of the report from the QBCC.

### LICENCE NUMBER

*Identifies the licensee and allows you to check their history by visiting QBCC's website or calling QBCC.*

### LICENSEE'S NAME

*Ensure the name of the person or company you are contracting with appears on the licence card and on the contract.*



### EXPIRY DATE

*The licence holder must not undertake work if their licence has expired.*

### LICENCE CLASS

*Indicates the work the holder is allowed to undertake. If the type of work you want done is not listed here, DO NOT PROCEED. Check immediately with the QBCC or find a licensee who has your type of work listed.*

## CONTRACT CHECKLIST

The QBCC produces a range of domestic building contracts which are fair to both parties. If you don't use one of these QBCC contracts, check that your contract has similar terms and complies with the requirements set out in this section. The QBCC contract documents are available for comparison on the QBCC website.

**NOTE:** A more detailed Contract Checklist is also provided on the QBCC website.

### WHAT DOES THE DBC ACT COVER?

If your building work has a contract price exceeding \$3,300 (including labour, materials and GST) and involves:

- the erection or construction of a detached dwelling (including a single detached dwelling or duplex), or associated work;
- removal or resiting of a detached dwelling intended to be used as a residence, or associated work;

- the renovation, alteration, extension, improvement or repair of a home (including a single detached dwelling, duplex or home unit), or associated work (including, for example, kitchen or bathroom refurbishment);
- other associated work including landscaping, paving, and the erection or construction of any building or fixture associated with a detached dwelling or home such as a garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
- the provision of services or facilities (e.g. lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage) relating to the erection or construction of a detached dwelling or the renovation, alteration, extension, improvement or repair of a home; or
- site work relating to any of the domestic building work referred to above,

then your project comprises 'domestic building work' under the DBC Act and you must put your contract in writing.

**The DBC Act requires that your contractor provide a complete copy of the written, signed contract to you as soon as practicable (but within 5 business days) after entering into the contract and before commencing work.**

Throughout this Contract Information Statement any reference to 'domestic building work' includes all of the above types of building activities where the contract price for the work is more than \$3,300.

#### **BEFORE SIGNING THE CONTRACT, CHECK FOR EACH OF THE FOLLOWING:**

- The contract contains a conspicuous notice advising you, the building owner, of the right you may have to withdraw from the contract under the 'cooling-off' provisions of the DBC Act.
- The contract should state whether or not you are a 'resident owner' (i.e. intend to live in the house within 6 months of completion of the contracted works).
- The contract is in English and legible.
- The names and addresses of you and your contractor are included.
- The contractor's licence number is noted on the contract before work starts.
- The contract sets out in full all of the terms of your agreement with your contractor together with a detailed description of the contracted work.
- The date the contract is made is stated.
- The date the subject work is to start, or how the date is to be decided, is stated.
- If the starting date is not yet known, the contract must state that the building contractor will ensure that the work starts as soon as is reasonably possible.

- The contract states the date the contracted work is to be finished or, if the start date is not yet known, the number of days required to finish the work once it is started.
- The contract details the allowances made by the contractor for any likely delays (e.g. for non-working days, inclement weather, etc.).
- The precise location of the building site, including lot-on-plan or similar description, is stated.
- The total price and payment provisions (including the deposit and progress payments) are clearly stated and in accordance with the DBC Act (refer to the section in Part 2 of this Contract Information Statement titled '*Payments – When and How Much?*').
- **If your total contract price is less than \$20,000, the deposit cannot exceed 10% of the total contract price. If your contract price is \$20,000 or more, the maximum deposit you have to pay is 5%.**

**NOTE:** Any fixtures or fittings shown in plans and specifications for the work are taken to be included in the contract unless they are listed as being excluded and you have signed or initialled next to the exclusion list.

**WARNING!** If you instruct the contractor to do something and the contractor has advised against it in writing, then you may lose your right to have a defect corrected.

**NOTE:** If you appoint an architect to administer the project and the architect stipulates materials, you may not be entitled to the warranties relating to those materials. Similarly, if you choose to nominate materials yourself you may not be entitled to these warranties.

- If the contract price is subject to change, there must be a warning located near the contract price referring you to any clause in the contract which may have the effect of changing the price (e.g. variation clauses and prime cost item or provisional sum clauses).
- Prime cost items and provisional sums, if included in the contract, are listed on separate schedules.
- Definitions of key terms are included.
- Appropriate plans and specifications are included if required for the contracted work. These must be sufficiently detailed to enable you to obtain any necessary approvals or authorisations from building certifiers or other relevant authorities. Any special requirements you may have (for example the number of coats of paint required) should be stated in the specifications.
- The contract lists and describes any fixtures or fittings which are not included (e.g. because you are supplying them separately).
- If the work includes, alters or may adversely affect footings or a concrete slab, the contractor must obtain appropriate 'foundations data' before entering the contract. This includes soil test data, contour surveys and other geotechnical information. The

contractor must provide you with a copy of this information on payment of their costs. The cost for this is normally covered by a **Preliminary Agreement** or included in your deposit payment (check with the contractor).

- The relevant statutory warranties are set out (please refer to the section titled 'Warranties' in Part 4 of this Contract Information Statement for further details).  
**NOTE:** These statutory warranties expire in 6½ years from the date of completion.

## WARNING – 'SPECIAL CONTRACTS'

The contract formats listed below, which are becoming increasingly common, involve added responsibility and risk and reduced QBCC insurance protection for homeowners. **The QBCC strongly recommends you obtain formal legal advice before agreeing to use either of these contracts for domestic building work.**

### CONSTRUCTION MANAGEMENT CONTRACTS

The main distinguishing feature of these contracts is that whereas under a normal domestic building contract to build a home you would sign a single contract with a builder who then contracts with trade contractors and manages and supervises their work on your behalf, under the construction management method in addition to engaging a construction manager you will also be required to contract directly with a multitude of trade contractors (e.g. plumbers, carpenters, electricians, etc.) and you will ultimately be responsible for their performance. A breakdown in your construction management contract or one of the trade contracts may impact on your other contracts, potentially leaving you exposed to delays and legal action.

For more details on the differences and risks associated with construction management contracts, **read the Contract Information Statement for Construction Management Contracts on the QBCC website.**

### COST PLUS CONTRACTS

The use of these contracts for domestic building work is prohibited under the DBC Act unless certain strict conditions set out in section 55 of that Act are met. **Cost plus contracts are especially dangerous for homeowners because of the total lack of certainty regarding the final cost of their project and the very high incidence of cost blow-outs and serious disputes associated with their use.** In addition, the QBCC's ability to assist you in the event of a dispute is greatly reduced where a cost plus contract is involved, especially if the builder takes you to the Queensland Civil and Administrative Tribunal (QCAT) (e.g. for allegedly underpaying).

**NOTE:** Insurance protection under the QBCC's Queensland Home Warranty Scheme is less comprehensive, especially for non-completion, under construction management and cost plus contracts than it is for a normal domestic building contract.

## LIQUIDATED DAMAGES

**The QBCC strongly recommends that homeowners include provision for appropriate 'liquidated damages' in their domestic building contracts.**

The term 'liquidated damages' refers to an amount per day written into the contract that is intended to compensate the owner for any costs/losses they are likely to suffer if the work is not completed by the contractor within the time allowed for in the contract. Normally liquidated damages would only be relevant to full home construction and fairly major renovations and extensions, especially those affecting occupancy of the house.

Liquidated damages may apply to a rental property (e.g. if the delay may result in lost rent) as well as an owner's main place of residence.

It is very important for your protection that before you sign the contract you carefully consider and discuss with your contractor whether liquidated damages are relevant to your building project and, if so, what amount is appropriate to cover your anticipated costs/losses in the event of a blowout in the construction period. In some circumstances (e.g. pool construction) no liquidated damages may be justifiable, in which case you should insert the word 'NIL' in the space provided in the Contract Schedule (e.g. in Item 12 of the QBCC New Home Construction Contract Schedule).

**NOTE:** The relevant Queensland legislation (the *Domestic Building Contracts Act 2000*) does not deal with liquidated damages or set any maximum or minimum amounts.

The appropriate amount for liquidated damages will vary from contract to contract depending on the nature of the work and the owner's individual circumstances. The owner must be able to substantiate the figure and it must not be punitive (i.e. it must represent the owner's genuine estimate, at the date of signing the contract, of the actual costs/losses they believe they are likely to suffer, without adding any extra cost to 'punish' the contractor).

The liquidated damages calculation would typically include a daily allowance for any additional rent charges (if the project involves home construction or major renovations which necessitate moving out), or loss of rental income (in the event of an investment property), storage of furniture/personal effects, finance costs, etc. which are directly attributable to the delay in the completion date. **It is important that something is written into the relevant section of the Contract Schedule** (even if just the word 'NIL' in circumstances where no loss/cost for the owner is anticipated).

**Several industry contracts**, including those produced by the QBCC, MBA and HIA, **contain a default provision whereby if the liquidated damages section of the Contract Schedule is left blank an amount (currently \$50**

**per day) is deemed to apply to the delay period** (i.e. the period in calendar days between the Date for Practical Completion provided for under the contract, including any legitimate extensions of time, and the final Date of Practical Completion when the work is finally handed over to you).

You will not normally be entitled to deduct liquidated damages from the final payment due under the contract at the Practical Completion Stage unless your contract specifically authorises you to do so. Some contracts produced by the QBCC, MBA and HIA clearly authorise such deductions. It is very important, however, that you **check your contract carefully, and if necessary obtain formal legal advice, before seeking to deduct liquidated damages** from a payment required under the contract.

**Great care should be taken when calculating the number of days for liquidated damages as you will need to allow for any legitimate extensions of time (EOT)** which may have extended the Date for Practical Completion beyond the date stated in the original contract. If the builder was seeking an extension of time (e.g. for more than normal wet weather or for delays caused by authorised variations to the contracted work) they should have presented you with an EOT claim in writing on an EOT form soon after the cause of the delay.

If you have questions or concerns about your liquidated damages entitlements under your contract you should obtain formal legal advice from a practising lawyer.

## BEFORE SIGNING

- Be wary of clauses allowing for price or cost increases. These are known as 'cost escalation clauses'. Legislation makes some of these types of clauses invalid.
- If your contract states that any disputes are to be referred to arbitration, that clause is invalid. For more information on disputes refer to Part 3 of this Contract Information Statement titled What To Do If Problems Develop.
- You are entitled to receive a reasonable estimate of the cost of any items not given a fixed price in the contract. For example:
  - you have not finally selected the specific tiles that you want in the bathroom, but you know the general quality and style of the tile you would like. Alternatively, the contractor may not be able to give you a fixed price for the tiles when the contract is signed because they may be temporarily out of stock and the price of new stock is uncertain. In both of these cases the tiles should be included in the contract as a **prime cost item**. The contractor must make a reasonable estimate of the cost of supplying the tiles. That estimate must be stated in the contract. Prime

cost items do not include labour as this should already be included in the contract price.

- sometimes, it may not be possible for the contractor to provide a definite price for a particular contracted service at the time the contract is entered into. For example, it might be the case that the contractor is expecting (based on a geotechnical report) to encounter rock when he/she does the excavation work for footings, but it is not possible in advance to say how much rock will be struck. In that case, the contractor should price that work as a **provisional sum**, stating in the contract a reasonable estimate for the cost of doing that work.
- **Prime cost items and provisional sums must be listed in a separate schedule.** These schedules are included in contracts produced by the QBCC and some industry associations. For each item on the schedule there must be an estimated cost, an amount for the contractor's margin (or an indication of the method to be used to calculate the contractor's margin, for example, the cost of the item plus 10%) and a total dollar amount. This total amount is an estimate only. The contractor must prepare such an estimate carefully, taking into account the information reasonably available at the time of contracting. But when the price for the item or work is finally determined, it may be higher or lower than the original estimate in the contract.

## PRIME COST ITEMS AND PROVISIONAL SUMS

### Evidence before payment

If the contractor receives any evidence of the amount actually expended on prime cost items or provisional sums, such as invoices or receipts, the contractor must give you copies of these documents before seeking payment for the items from you. Any adjustment to the price of a prime cost item or provisional sum (due to the final cost being more or less than the original allowance) must be reflected in an increase or decrease in the related progress payment. You should only pay for these items when the particular progress payment falls due.

### OTHER DOCUMENTS THAT SHOULD BE INCLUDED IN YOUR CONTRACT

- *Prime Cost Items Schedule* and/or *Provisional Sums Schedule* (where relevant).
- Plans and specifications detailing dimensions, fittings and inclusions and the work that is to be done (the construction work must be carried out in accordance with these plans and specifications).

## THE COOLING-OFF PERIOD

### WITHDRAWING FROM THE CONTRACT

**Under section 72 of the DBC Act** you may have a right to withdraw from the contract during what is known as a cooling-off period. Time limits apply and a written notice

has to be given to the building contractor if you exercise this right. You should be sure that you understand your rights before you exercise them. If in doubt contact a practising lawyer or the QBCC. Be aware too that there will be certain costs in withdrawing. **You may withdraw from the contract within 5 business days of receiving from the contractor a copy of both:**

- **the signed, complete contract** (including any associated plans and specifications); **and**
- **the QBCC approved Contract Information Statement.**

### REPAIR CONTRACTS

In the case of repair contracts only, you and your contractor may agree to sign a notice waiving your cooling-off rights.

If you agree to waive your rights in this way you will not be entitled to the cooling-off period. The QBCC advises you not to do this unless the work is urgent and you have carefully read and understood your contract.

### OTHER RIGHTS TO TERMINATE

In addition to the right to withdraw during the cooling-off period, you may have the right to terminate the contract at a later date under certain circumstances. Refer to the section titled *Other Options* under 'Dispute Resolution' in Part 3 of this Contract Information Statement.

### IF YOU DON'T RECEIVE A COPY OF THE CONTRACT AND INFORMATION STATEMENT

Once the contract is made, you must allow the contractor 5 business days to provide you with signed copies of the contract and a QBCC-approved Contract Information Statement. If after 5 business days you still have not received your copies, you may withdraw from the contract under section 72 of the DBC Act.

**NOTE:** If your contractor later provides you with the copies of these items, you may still withdraw from the contract but you have only 5 business days from the date you receive both documents in which to exercise this right.

### IF NO COOLING-OFF PERIOD NOTICE

**If your contract does not contain a notice** advising you of your right to withdraw during the cooling-off period, **then under section 74 of the DBC Act you are entitled to withdraw** from the contract **within 7 calendar days** after you become aware that the contract should have contained a cooling-off notice.

### COST OF WITHDRAWING

Under the DBC Act if you exercise your right to withdraw during the cooling-off period, the contractor is entitled to receive \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the date of withdrawal. If, at the time of withdrawal, the contractor has already received a deposit greater than this entitlement, the excess must be promptly refunded to the homeowner.

### HOW TO WITHDRAW

You don't have to provide any reason for withdrawing but you must notify the contractor by delivering a written notice to the contractor or to the contractor's address as shown on the contract before the cooling-off period expires. **The notice must state under which section of the DBC Act you are withdrawing** (i.e. section 72 or 74).

### EXAMPLE OF NOTICE OF WITHDRAWAL:

<b>Withdrawal Notice</b>	
To	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <p style="text-align: center; margin: 0;"><i>[insert the full name of the contractor as it appears on the contract]</i></p>
<p>Please be advised that I am withdrawing from my contract with you signed on <i>[insert date]</i> under section <i>[insert the appropriate section number, section 72 or 74]</i> of the <i>Domestic Building Contracts Act 2000</i>. The withdrawal is effective from the date of this notice.</p> <p>Please provide evidence of your out-of-pocket expenses to date in relation to my contract and kindly refund any excess money, beyond your entitlement under section 76(8) of the <i>Domestic Building Contracts Act 2000</i>, by cheque to my address as given in the contract.</p>	
Signed by Owner/s:	<div style="border-bottom: 1px solid black; width: 90%;"></div>
Name of Owner/s: (print)	<div style="border-bottom: 1px solid black; width: 90%;"></div>
Address of building work:	<div style="border-bottom: 1px solid black; width: 90%;"></div> <div style="border-bottom: 1px solid black; width: 90%;"></div>
Date:	<div style="border-bottom: 1px solid black; width: 90%;"></div>

### YOU MAY NOT WITHDRAW UNDER THE COOLING-OFF PROVISIONS IF:

- you and your contractor had a previous contract on similar terms, for similar work, and relating to the same detached dwelling, home or land; or
- before entering the contract, you received formal legal advice about the contract; or
- when or after entering into the contract, you tell the contractor that before entering the contract you received formal legal advice about the contract.

## BUILDING APPROVALS & INSPECTIONS

### WHO CAN DO BUILDING APPROVALS AND INSPECTIONS?

Approvals for building work must be obtained from a *building certifier*, who can be either a local government building certifier or a private certifier.

Building inspections to ensure the construction complies with the building approval and the Building Code of Australia (BCA), which are required at certain stages (see details later in this section), must be carried out by a building certifier or a competent person authorised by them. All building certifiers must be licensed by the QBCC. Check their licence by calling the QBCC or using the Online Licence Search facility at [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au).

## WHAT IS A 'PRIVATE CERTIFIER' AND WHAT IS THEIR ROLE?

A *private certifier* is a building certifier who is licensed with the QBCC to operate anywhere in Queensland. Whilst the building contractor has statutory and contractual obligations regarding the approval and inspection process, if a contractor fails in this capacity, the homeowner is ultimately responsible for ensuring that approvals are obtained and inspections carried out. You should discuss and agree on arrangements for certification with your building contractor and record your agreement in your contract.

Normally the builder will engage the building certifier on your behalf. If you wish to engage a private certifier you should check their accreditation details with the QBCC, ask them about their past experience, and contact past clients. The *Building Act 1975* requires that the engagement must be in writing and must state the certification fee.

There are 3 different levels of accreditation for building certifiers related to the size of projects they can undertake. Within these levels building certifiers are able to perform the following work:

- assessing building applications;
- issuing building approvals;
- inspecting and certifying construction;
- issuing notices (e.g. stop work or rectification notices) on building work they are directly involved with; and
- issuing certificates to allow the lawful occupation of certain classes of buildings.

Private certifiers are required to have at least \$1 million Professional Indemnity insurance. There are a number of matters over which private certifiers have no authority and which can only be decided by the local government. These matters include:

- assessing town planning matters;
- reviewing the capacity and location of public utilities (e.g. sewer mains, water supply, etc.);
- exercising discretion on the siting of buildings (e.g. reducing the setback requirements); and
- granting exemptions to the installation of swimming pool fences.

It is unlawful for any building certifier to certify or approve work with which they are personally involved as a contractor or designer, or from which they are able to derive a profit.

## APPROVED PLANS

Plans and specifications should be included in the contract documents. Make sure that, along with a signed copy of the contract itself, you obtain a copy of the plans from the contractor when they are ready for submission to the building certifier. **Check the plans for accuracy ensuring any changes you may have made are included** and advise the contractor immediately of any errors or omissions.

**Obtain a copy of the final approved plans and keep it in a safe place** (this is very important if you later wish to sell the house).

## INSURANCE OF THE WORK AND SITE

### CONTRACTOR'S INSURANCE

Check the contractor's insurance obligations under your contract. The contract should require the contractor to produce evidence before work commences that they have arranged and paid for appropriate construction insurance (including insurance for Contract Works and Public Liability) for the duration of the construction (i.e. up to the Date of Practical Completion). In addition to Public Liability protection, this insurance should cover your building site against such things as fire, storm and tempest, flood, theft, vandalism, etc. while the contractor is in control of the site.

### INSURANCE FOR CONSTRUCTION OF A NEW HOME

Ensure that you have adequate Public Liability insurance in place prior to any work commencing on site. Before completion of your new home, you must arrange Home Property and Contents insurance effective from the date of Practical Completion.

### INSURANCE FOR RENOVATIONS OR EXTENSIONS TO AN EXISTING HOME

Before work commences on site, advise your existing home and contents insurer of the details of the work to be done, including the total value of the work, the approximate start and completion dates, etc.

Your normal home property insurance policy may be inoperative while renovations or extensions are in progress. Discuss this with your insurance company. If this is the case make sure your contractor insures the renovation and/or extension work and, if necessary, the pre-existing home for the duration of the building work.

## QUEENSLAND HOME WARRANTY SCHEME

For residential construction work valued at more than \$3,300 (inclusive of GST), the Queensland Home Warranty Scheme operated by the QBCC provides up to \$400,000 cover (i.e. up to \$200,000 up to Practical

Completion and up to a further \$200,000 for defective work or subsidence) for a period of up to 6 years and 6 months from the date of the contract or the date the insurance is paid, whichever is earlier, provided a licensed contractor performs the work.

The Queensland Home Warranty Scheme insures *residential construction work* which is primarily:

- the construction of a dwelling or unit (provided the building is not over 3 storeys in height) and residential outbuildings (e.g. garage, pool change room, etc.); and
- certain replacements of, or extensions to, part or all of a residential building (including refitting bathrooms and kitchens).

The policy insures homeowners when:

**a. during the course of the contract:**

- the licensed contractor becomes bankrupt or goes into liquidation; or
- the licensed contractor fails to complete the contracted works for reasons that are not the homeowner's fault.

**b. after completion of the work:**

- the licensed contractor fails to fix defects that have been the subject of a QBCC direction, or, for various reasons (e.g. bankruptcy or liquidation, death, etc.), the licensed contractor can't attend to rectification.

**c. the building suffers from the effects of subsidence or settlement.**

For non-completion claims, the policy also includes additional cover for events such as vandalism, forcible removal, fire and storm or tempest. **Further details of the insurance cover are provided in the policy booklet which you will receive in the mail with your Certificate of Insurance soon after the contractor has paid the premium. You should read the policy booklet carefully.**

The contractor is required to pay the premium directly to the QBCC before the plans can be approved by the building certifier. **When you receive your Certificate of Insurance** from the QBCC (normally within 2 weeks of signing the contract), **check that the Notified Contract Value agrees with your contract price.** If these amounts vary you should contact the QBCC to amend your cover.

**WARNING!** If you pay before the contract requires and in advance of work progress, you may not be covered for those pre-payments under the Queensland Home Warranty Scheme. **Do not pay a progress payment for a contract stage until that stage of construction has been completed and never pay more than the contract obligates you to pay at that time.**

## SUSTAINABLE DESIGN CONSIDERATIONS

If your project involves major renovation or extension of an existing property, it is important to consider

sustainability principles when making decisions regarding energy efficient building design, heating and cooling, water conservation, choice of appliances, etc. These choices will ultimately enhance your comfort and can considerably reduce the cost of maintaining your home and its environmental impact. Attention to detail on these matters may also improve your home's efficiency and increase its future resale value. Where relevant to your renovation project, it is also recommended that your design considerations include an allowance for any mobility difficulties you, your relatives or visitors have now or may have in the foreseeable future (relevant considerations might include minimising the use of steps, increasing the width of doorways and corridors, allowing for wheelchair access to bathrooms, installing switches and handrails at appropriate places, etc.).

When addressing these design considerations, the objective is to avoid or minimise the need for expensive home modifications, or in the worst case to have to sell your home, in the event you or someone in your family experiences a change in their mobility through injury or illness.

It is generally much cheaper to address these sustainability considerations and incorporate them in the design at the point of construction or renovation than it is to retrofit them or modify your home after the event. You should carefully consider these matters and discuss them with prospective builders before making a final choice of contractor. Builders' awareness and capabilities in relation to these matters will vary greatly and may be an important consideration in your final choice of who will do the work. Before signing the contract you should carefully check to ensure that your preferences and choices with regard to sustainability and mobility considerations are accurately incorporated and fully detailed in the contract documents, including the plans and specifications.

Further information on sustainable design for domestic projects is available from the following websites:

**Re: sustainable building and design** (incl. government incentives/rebates) see the following Qld Government websites:

[http://www.ehp.qld.gov.au/sustainability/sustainable\\_housing.html](http://www.ehp.qld.gov.au/sustainability/sustainable_housing.html) and

<http://www.hpw.qld.gov.au/construction/Sustainability/SmartSustainableHomes/Pages/Default.aspx> and

the publication "Smart & Sustainable Homes" at

<http://www.hpw.qld.gov.au/SiteCollectionDocuments/SmartDesignQldClimate.pdf>

**Re: mobility considerations** (sometimes referred to as 'accessible' or 'universal' design) visit the following Qld Government website:

<http://www.qld.gov.au/disability/community/accessible-places/>

**Re: energy ratings** visit the Commonwealth Government website: <http://www.energyrating.gov.au/>

## PART 2 – DURING CONSTRUCTION

### COMMENCEMENT NOTICE

In domestic building contracts uncertainty about the precise Commencement Date, which often determines the Date for Practical Completion (i.e. the scheduled date for completion of the contracted work), is a common cause of dispute between homeowners and building contractors. To address this problem, some industry contracts, including those produced by the QBCC, MBA and HIA, now require the building contractor to provide you with a written Commencement Notice which must state both the Commencement Date (the date work actually commenced on site) and the Date for Practical Completion.

**NOTE:** The Date for Practical Completion shown in the Commencement Notice may still be subject to change due to legitimate extension of time (EOT) claims from the building contractor for such things as abnormal wet weather (above and beyond the reasonable allowance for inclement weather stated in the contract) and variations you have authorised which increase the work to be done. You should be mindful of this when, for example, you make accommodation arrangements for the construction period.

### PAYMENTS – WHEN & HOW MUCH?

It is important to know what rights you have under the DBC Act with respect to when you should make payments and how much they should be. Check the following list to make sure your contract complies:

- **Deposit of no more than 5% where the total contract price** (including labour, materials and GST) **is \$20,000 or more. If the contract price is between \$3,300 and \$20,000 the deposit may be up to 10%** of the total contract price.
- If your contract is to be paid in instalments, the amount of each instalment ('progress payment') is directly related to the work completed when you are requested to pay.
- For the construction of a home the DBC Act sets out the following instalment schedules:

PAYMENT SCHEDULES FOR BUILDING A NEW HOME			
Type of Contract		Stage	Maximum percentage of original contract price payable
1	Contracts to build to enclosed stage	Deposit	5%
		Base Stage	20%
		Frame Stage	25%
		Completion of Contract	Balance
2	Contracts to build to fixing stage	Deposit	5%
		Base Stage	12%
		Frame Stage	18%
		Enclosed Stage	40%
		Completion of Contract	Balance
3	Contracts to build all stages	Deposit	5%
		Base Stage	10%
		Frame Stage	15%
		Enclosed Stage	35%
		Fixing Stage	20%
		Practical Completion	Balance

**NOTE:** The QBCC recommends that for home construction you stick to the progress payment schedules outlined in the above table. Unless you intend to complete the house yourself, under an Owner-Builder Permit, **the third schedule above is the one applicable to you for full home construction.** You and your contractor may agree to vary this payment schedule (but not the maximum deposit amounts) but there should be a good reason for doing so (e.g. the nature of the site and construction involves greater than normal costs for the builder in the early stages). **If you do vary the standard schedule, the agreed alternative schedule must be clearly noted in the contract and should not require payments in advance of work progress.** Progress payments must be linked to identifiable stages of construction. Never pay in advance of, or more than, what the contract authorises.

## SUMMARY OF CONSTRUCTION STAGES

(For more detail, refer to the DBC Act).

**Base stage** is:

1. For buildings with a timber floor with base brickwork, when:
  - concrete footings for the floor are poured;
  - base brickwork is built to floor level; and
  - bearers and joists are installed.

**OR**

2. For buildings with a timber floor without base brickwork, when:
  - stumps, piers or columns are finished; and
  - bearers and joists are installed.

**OR**

3. For buildings with a suspended concrete slab floor, when:
  - concrete footings are poured; and
  - formwork and reinforcing for the suspended slab are installed.

**OR**

4. For a building with a concrete floor (not suspended), when the floor is finished.

**Enclosed stage** is when:

- external wall cladding is fixed;
- the roof covering is fixed;
- structural flooring is laid;
- external doors are fixed (even if only temporarily); and
- external windows are fixed (even if only temporarily).

**Final stage** is when:

- all internal lining, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet-area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed in position.

## PROGRESS CLAIMS

At each stage when a progress payment is required under the contract, the contractor will give you a progress claim which you must pay within a certain number of days stated in the contract (in the QBCC New Home Construction Contract, Form 3 – *Progress Claim* is for documenting progress claims). **You should familiarise yourself with the documentation your contractor is required under the contract to give you with each progress claim** (e.g. the QBCC contracts require contractors to present all relevant certificates of inspection with each progress claim).

If you dispute all or part of the contractor's progress claim, you will need to respond quickly in writing (in the QBCC New Home Construction Contract, Form 4 – *Notice of Dispute of Progress Claim* is for this purpose).

## FINAL PAYMENT

When your contract is to build a new home to a stage suitable for occupation or to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, you should not make the final payment until:

- all of the contracted work is completed in accordance with the contract, plans and specifications and all relevant laws and legal requirements;
- the contractor has provided you with a signed 'defects document' listing any minor defects and minor omissions (preferably the list should be compiled by you and the builder during the handover inspection);
- the home is reasonably suitable for habitation; and
- the contractor has provided you with all documentation required under the contract (e.g. the Form 7 – *Certificate of Practical Completion* of the QBCC New Home Construction Contract requires the contractor to give you all relevant certificates of inspections before the contractor can demand the final contract payment).

If you are not using a QBCC contract, check the terms and conditions of your contract to find out what documentation the builder must provide to you before you are obliged to make the final payment under the contract.

## CHANGING THE CONTRACT ('VARIATIONS')

Any change to the scope of the work to be done under a contract, which may involve an increase, decrease or substitution in the contracted work, is known as a **variation**.

Examples of variations include:

- your contract might provide for 2 power points to be installed in each room. If this is changed to 1 power point in each room, this is a variation for the omission of work; or
- your contract might not provide for any built-in cupboards to the laundry. If this is changed so that a cupboard is to be built into the laundry, this is a variation for the addition of work; or
- your contract might provide that a window is to be installed on the northern wall of the family room. If this is changed to the southern wall, this is a variation that is a change to the work.

You should note that just because a variation may involve deleting some work that was included in the original contract, it doesn't automatically follow that the price will go down, or that there won't be extra costs involved.

Unfortunately, **variations are frequently the cause of disputes (particularly where there is a lack of adequate documentation to support them).**

Certain requirements have been set down by legislation to help prevent these disputes. These requirements are summarised below.

### **THERE MUST BE A WRITTEN VARIATION DOCUMENT**

If you wish to request a variation, you should put your request in writing to the contractor.

**The DBC Act requires contractors to record all variations (whether initiated by the contractor or owner) in writing as soon as practicable and, if the variation means additional work, it must be documented before the work is carried out. The contractor must give you a copy of the variation document as soon as practicable but within 5 business days of when the variation is agreed to.**

### **REQUIREMENTS FOR A VARIATION DOCUMENT**

Ensure all documentation detailing contract variations is clear, complete and signed and dated by both parties. The variation document must:

- be in English and legible;
- describe the variation;
- state the reason for the variation (if the variation is being sought by the contractor);
- provide a reasonable estimate of any delay to the work which may result from implementing the variation;
- state the change to the contract price or at least set out the method for calculating the price change. If this is not stated the contractor may still be entitled to the cost of carrying out the variation plus a reasonable profit;
- indicate when any increase in the price as a result of the variation is to be paid or when any decrease is to be taken into account. For example, if the price is decreased due to the variation, the variation document must indicate which progress payment is to be reduced as a result. When the progress payment falls due, make sure that you only pay the decreased amount; and
- be signed by the contractor. The contractor must also take reasonable steps to have you sign the document. If you agree with the contents of the document, you should sign it. If you do not understand it, or it does not contain sufficient information, you should ask the contractor to clarify the document in writing or provide further information in writing.

You may not receive the variation in writing before work commences if the work is urgent and it is not practicable to get it in writing first. However, in these cases the variation must still be documented and copied to you afterwards. **A building contractor may not be able to enforce payment for an unauthorised variation.**

### **WHEN THE CONTRACTOR REQUESTS A VARIATION**

If the contractor asks you to agree to a variation and it involves additional work, you are only liable to pay for that extra work if it is work the contractor could not reasonably have foreseen at the time of contracting. In any case, the contractor must still provide the written documentation as detailed above and must not demand payment before the work is commenced.

If the variation involves an increase in the work to be performed, do not make any additional payment until:

- the variation is fully recorded in a variation document which you and the contractor have signed; and
- work has commenced on the variation.

## **CAVEATS**

The contractor cannot lodge a caveat on your property if you are a 'resident owner' (i.e. if you live in the house or intend to live in the house within 6 months of completion of the work). A caveat is a notice on the register of land titles. Caveats have the effect of preventing the owner of the land from selling the land or transferring it into someone else's name.

## **ACCESS TO THE SITE**

The contractor is entitled to occupy the site for the purposes of carrying out the contracted work. Bear in mind that the contractor has important responsibilities under the *Work Health and Safety Act 2011* which include ensuring that all persons at the site comply with the requirements of that Act. For this and other reasons, under most contracts the contractor is entitled to exclude people from the site other than the owner or any person authorised by the owner to be on site. Depending on the provisions of the contract, other people who may be entitled to visit the site include bank officers (if you have taken out a loan for the work), the certifier, local authority officers and QBCC staff. You and your authorised representative are entitled to reasonable access to the site to view the work under the contractor's supervision but you must not interfere with the work. Any interference could mean that you become liable to the contractor for resulting costs or delays.

You may want to view the works as they progress. You should contact the contractor or their supervisor several days in advance to arrange a mutually convenient time to visit the site accompanied by the building contractor or

their supervisor. For your own safety, you should not go on site unaccompanied when work is underway, particularly if heavy plant and equipment is being used. Remember, a construction site is a potentially dangerous place. Appropriate clothing (including protective footwear) should be worn and care taken at all times.

## DISPUTE PREVENTION

### WHAT CAUSES DISPUTES?

Disputes between builders, trade contractors, building designers and consumers occur for many reasons including:

- inaccurate or incomplete documentation (especially for variations);
- poor communication;
- unsatisfactory work;
- delays; and
- lack of knowledge of building practices.

### HOW TO AVOID DISPUTES

You should ensure that:

- the builder, trade contractor or building designer has a current licence for the work to be done (check the QBCC website [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au) for a free Online Licence Search);
- the builder, trade contractor or building designer's work is recommended by past customers (ask for names) and, where possible, you have inspected past work;
- the contract clearly specifies the extent and timing of work to be done, total price and payment details (including deposit amount and the timing and amount of any progress payments – refer to the section in Part 2 of this Contract Information Statement titled '*Payments – When and How Much?*');
- your rights and responsibilities are detailed in the contract and understood;
- you have received and read carefully this QBCC Contract Information Statement (or other QBCC-approved Contract Information Statement);
- the contract and any variations are signed by both parties (and copies kept on file);
- regular contact is maintained with the contractor (**Note:** ask your contractor about anything you are unsure of or don't understand); and
- you are aware of upcoming progress payment requirements as detailed in your contract.

**Carefully follow the payment arrangements in your contract making sure that you never pay in advance of, or more than, the agreed amount.**

**NOTE:** It is important that you seek formal legal advice before signing if you are uncertain or concerned about any contract provisions.

### KEEP A 'CONSTRUCTION DIARY'

Record key events, for example dates and details of meetings, phone calls, etc. in a diary. These notes, together with photos, can be very useful in avoiding or resolving disputes.

## MANDATORY BUILDING INSPECTIONS

### WHAT IS THE PURPOSE OF THESE INSPECTIONS?

The primary function of the mandatory on-site building inspections performed by the building certifier is to ensure that construction work complies with approved plans and recognised building standards including the Building Code of Australia (BCA).

It is not the role of the certifier to ensure compliance with the terms of the contract or specifications, or to assess the quality of the work.

### WHEN MUST THE INSPECTIONS BE PERFORMED?

Building inspections for the construction of a complete dwelling must be performed at the following stages:

- footings;
- slab;
- frame; and
- final.

In addition to these building inspections, there are also mandatory plumbing and drainage inspections which are carried out by inspectors from the local government. For renovations and alterations some of the inspections above may not be required. Check the requirements for your building project with your local government or building certifier.

**Where the building contractor has engaged the building certifier, the contractor must provide you with copies of each certificate of inspection as soon as practicable after the building contractor receives them.** As soon as is practicable after the work is completed, the contractor must also provide you with copies of other contract-related documents such as reports, notices or orders issued by suppliers of services, including, for example, electricity, gas, telephone, water or sewerage.

**NOTE:** It is important for you to retain copies of certificates of inspection and other contract-related documents in a safe place. These documents will help you establish that all building work has been properly performed when you sell your home.

## QUALITY CONTROL

### WHO IS RESPONSIBLE FOR SUPERVISION AND QUALITY CONTROL?

While the contractor has the obligation to ensure that all building work is carried out in accordance with all laws and legal requirements (including the Building Code), it is the responsibility of the contractor and the owner, working together, to ensure that the dwelling is constructed to an acceptable standard of quality and finish.

Building certifiers are required to act in the public interest and do not perform an ongoing supervisory role on behalf of individual homeowners. Day-to-day supervision on site is the responsibility of the building contractor.

### HOW CAN CONSTRUCTION STANDARDS AND QUALITY BE CONFIRMED?

If you have specific requirements with regard to quality and finish (e.g. type and number of coats of paint, materials to be used, etc.), these details should be discussed and written into the contract. The next step is to carry out regular on-site inspections, by appointment, with the contractor or contractor's supervisor (not an individual tradesperson as they cannot speak with authority about the whole job). Any concerns should be raised directly with the contractor with whom you have contracted or their supervisor and, if necessary, confirmed in writing.

Do not give instructions direct to the subcontractors because this will cause confusion.

If you are going to be away during construction, or you are not confident that you have the experience or time to sufficiently safeguard quality, then you may wish to engage a Building Consultant.

If you intend to engage a Building Consultant, you should advise the contractor in writing and check the Consultant's relevant experience and qualifications, fees and services, and past clients.

Discuss and write down exactly what role the Consultant is to play (e.g. accompany you on fortnightly building inspections and provide a written report on quality of work performed within 7 days of the inspection, etc.), as well as precise payment arrangements.

## ON COMPLETION / HANDOVER

When your contractor advises you of the handover date (usually 2 or 3 weeks in advance) it is recommended that you arrange a final pre-handover inspection about a week before handover to identify any last minute issues. On the actual day of handover you should:

- check the house thoroughly for defective or missing items;

- make sure you and your contractor prepare a list of minor defects and minor omissions (a 'defects document') including details of any items missing, damaged or unfinished (refer to the heading '*Defects Document*' in Part 2 of this Contract Information Statement);
- obtain copies of any outstanding documents (e.g. certificates of inspection, warranties relating to appliances, etc.);
- receive a Practical Completion Certificate from the contractor where this is required under the contract (**Note:** Form 7 is the *Certificate of Practical Completion* required under the QBCC New Home Construction Contract); and
- if all the above points are satisfied, immediately hand over the final progress payment.

## DEFECTS DOCUMENT

**Do not withhold the final payment without first obtaining formal legal advice.** If you believe there are minor defects or minor omissions at the practical completion stage then the contractor should provide you with a list of these (called a 'defects document') when you conduct your final inspection. The list must state by when the contractor is to correct each agreed minor defect or minor omission. You and the contractor must sign the list. **Do not make the final payment until the defects document has been provided to you.**

The defects document must also list separately any minor defects or minor omissions which you believe exist but that are not agreed by the contractor to exist. See the section headed '*Dispute Resolution*' in Part 3 of this Contract Information Statement for details of what to do if your contractor fails to address the matters listed in your defects document or which become apparent in the first 6 months after handover.

# PART 3 – WHAT TO DO IF PROBLEMS DEVELOP

## DISPUTE RESOLUTION

### ADVISE THE CONTRACTOR

If during the work or upon completion of the work you become concerned about a problem relating to the contracted work, you should first convey your concern to the contractor in writing asking them to address the matter within a reasonable timeframe (say 7 to 14 days) and provide you with a written response. Ensure you date, sign and retain a copy of your letter/s and the responses from the contractor.

Your contract may provide legal remedies for breaches of the contract which occur during construction. You may need formal legal advice from a practising lawyer to explore these options.

For larger domestic building projects, including full home construction and major renovations or additions, the DBC Act requires building contractors to provide you with a signed defects document at practical completion before you hand over the final payment under the contract. The defects document (such as the Form 6 – *Defects Document* associated with the QBCC New Home Construction Contract) must include a list of any agreed minor defects and minor omissions and state by what date the building contractor will correct those listed minor defects and minor omissions.

If the listed matters are not addressed within the timeframe stated by the building contractor in the defects document you should follow up with a letter to the contractor referring specifically to the unresolved minor defects and minor omissions and asking them to address the matters promptly, by a particular date, and provide you with a written response (as detailed in the first paragraph above).

In addition to addressing these minor defects and minor omissions which were identified at handover, building contractors must positively respond to complaints relating to minor defects (referred to by the QBCC as 'Category 2' defects – see definition below) which become apparent during the first 6 months after the building work was completed. **If the building contractor is still operating, complaints relating to minor defects during this initial period of 6 months after completion of the contracted work should be addressed to the contractor in writing.**

Except for urgent matters, it is suggested that rather than approaching the contractor week-by-week you should compile a list of minor defects as they arise and submit the list to the contractor just prior to the 6 months deadline (say 5½ months after practical completion). **Be sure you diarise and do not miss the 6 month deadline for notifying the builder or the QBCC may be unable to assist you under the Queensland Home Warranty Scheme.**

**Please note:** Because the contractor has responsibility for defects during this period, the QBCC does not normally progress complaints relating to minor defects until this 6 month period has expired.

### CONTACT THE QBCC

The QBCC is generally able to assist with domestic building disputes concerning defective work, subsidence or the contractor's inability or unwillingness to complete the contracted work. **Please note, however, the QBCC is not able to assist where the contract is still afoot or where the dispute is of a purely contractual nature or before the QCAT.**

With regard to the rectification of defective building work (e.g. where the work has failed to meet objective standards of construction or workmanship, such as the Building Code), the QBCC's Rectification of Building Work Policy classifies defective building work as either being Category 1 or Category 2 defective work.

**Category 1 defects** are more significant building defects that generally require prompt attention as they are of a structural nature, or could allow water penetration, etc. At any time in the first 6 years after practical completion you may contact the QBCC to assist with Category 1 defects provided you have first advised the contractor in writing (as per the above section headed *Advise the Contractor*) and they have failed to promptly address the matter. If the contractor is uncontactable or no longer operating you may contact the QBCC immediately about these more serious Category 1 defects.

**Category 2 defects** are, in broad terms, those of a minor or cosmetic nature related to poor finish or workmanship. As mentioned in the above section headed *Advise the Contractor*, these minor defects which occur during the first 6 months should be taken up with the building contractor who performed your work (if they are still operating). Matters which are unresolved after this period should be referred to the QBCC using the Complaint Form available from the QBCC website. However, if the contractor is unavailable or ceases to operate during this initial 6 month period, you should document all minor defects which arise during the first 6 months after practical completion and submit details to QBCC no later than 7 months after practical completion.

After you have completed and lodged a QBCC Complaint Form together with supporting documentation including a copy of all contract documents, including any variations, a QBCC technical representative may meet you and your contractor on site to inspect the work. Prior to the site inspection, you and your contractor will have further opportunity to resolve the dispute. The QBCC representative will make a determination as to who is responsible for the defects and, where appropriate, direct your contractor to rectify or complete the works. If your contractor is directed to rectify the works you must allow them reasonable access to do so.

To contact the QBCC, call 1300 272 272 statewide or visit the QBCC website at [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au). Address and fax details for the QBCC offices throughout Queensland are available on the QBCC website under 'Contact Us'.

#### **QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL**

You are also entitled to take any disputes in relation to your domestic building project to the Queensland Civil and Administrative Tribunal (QCAT). The QCAT provides cost effective resolution for domestic building disputes, particularly those of a contractual nature. Further information about the QCAT and its procedures can be obtained by visiting [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au), or calling 1300 753 228.

#### **OTHER OPTIONS**

Depending on the terms of your contract, other options may be available to you, including:

##### ***Liquidated damages***

The contract may give you other rights such as liquidated damages (there is provision for these in most industry contracts including those produced by the QBCC, MBA and HIA). You should read your contract carefully and if unsure of your rights or obligations, seek legal advice from a practising lawyer.

##### ***Contract termination generally***

Under certain circumstances you may have the right to terminate the contract. This is a serious decision to make and would usually be a last resort. It will involve some costs to you. **Formal legal advice is essential if you are considering ending the contract for any reason.** If you terminate the contract without being entitled to do so, you may create serious difficulties for yourself (e.g. you could be sued by the contractor for breach of contract and you may lose some protection under the Queensland Home Warranty Scheme).

##### ***Contract termination under section 90 of the DBC Act***

Under section 90 of the DBC Act homeowners may, under certain circumstances, have the right to terminate the contract in the event of blowouts in:

- the cost (if the contract price rises by 15% or more after the contract is entered into because of the operation of a cost escalation clause in the contract); or
- the duration of the contracted work (if it is not finished within a period that is 1.5 times the period allowed for in the contract) provided that –
  - a) the reason for the rise in price, or increase in time, could reasonably have been foreseen by the 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.

**WARNING:** There are significant complexities and risks associated with section 90 of the DBC Act. Before taking any steps to terminate your contract under this provision it is essential that you first obtain formal legal advice from a practising lawyer to ensure that the proposed termination is lawful and that you do not compromise your insurance protection under the QBCC's Queensland Home Warranty Scheme.

**Termination under this statutory provision will usually be a last resort** for lawyers who will generally want to first explore other possible grounds for termination under the provisions of the contract itself.

**Formal legal advice is essential if you are considering ending the contract for any reason.** If you terminate the contract without being entitled to do so, you may create serious difficulties for yourself (e.g. you could be sued by the contractor for breach of contract and you may compromise your protection under the Queensland Home Warranty Scheme).

##### ***Court Action***

As an alternative to the QCAT, you may be able to take action in an appropriate court. You should obtain formal legal advice to explore this option.

# PART 4 – AFTER MOVING IN

## WARRANTIES

### MANUFACTURERS' WARRANTIES

As mentioned in the section in Part 2 of this Contract Information Statement titled '*On Completion/Handover*', you should obtain from your contractor, at handover, copies of the manufacturers' warranties for each of your new household appliances (these warranties are commonly of 12 months duration). Keep these documents in a safe place.

### STATUTORY WARRANTIES

The DBC Act provides homeowners with a number of implied warranties that cover domestic building work for 6 years and 6 months from the date of completion.

The QBCC's ability to direct rectification by a contractor ceases if the defect is not notified to the QBCC within 6 years and 3 months of completion.

These statutory warranties must be stated in the contract. If you believe the contractor has breached any of these warranties and you have been unable to resolve the issue with them, you may be entitled to take legal action against the contractor.

If you instruct the builder to use a particular material or product and the builder has advised against it in writing, then you may lose your right to have a defect corrected.

Refer to the section in Part 1 of this Contract Information Statement titled '*Contract Checklist*' for an explanation of what is included in 'domestic building work'.

## STATUTORY WARRANTIES

### MATERIALS - SUITABLE FOR PURPOSE

All materials will be good and suitable for the purpose for which they are used.

#### **Applies to:**

All domestic building work where contract price exceeds \$3,300. Only applies where the contractor is responsible for supplying the materials. Be aware that the warranty does **not** apply where:

- (a) You have engaged an architect to administer the contract and the building contractor is subject to the direction of the architect regarding the supply of the materials; or
- (b) The contract states that you are responsible for nominating the materials and, without any recommendation, suggestion or other approach being made to you by the contractor, you specifically nominate certain materials and either:
  - i. there are no reasonable grounds for not using those materials; or
  - ii. there are reasonable grounds for not using those materials but you insist on using them despite written advice to the contrary from the contractor.

In determining the suitability of materials regard must be had to the generally accepted practices or standards applied in the building industry for the materials and the specifications, instructions or recommendations of manufacturers or suppliers of the materials.

### MATERIALS – NEW

Unless otherwise stated in the contract, all materials used in the work will be new.

#### **Applies to:**

All domestic building work where contract price exceeds \$3,300. This warranty will **not** apply if you state in your contract that the particular materials do not have to be new.

## COMPLIANCE WITH LAW

The contractor will comply with all relevant laws and legal requirements, including the *Building Act 1975*.

**Applies to:**

All domestic building work where contract price exceeds \$3,300.

## SKILL AND REASONABLE CARE

The work will be carried out in an appropriate and skilful way and with reasonable care and skill.

**Applies to:**

All domestic building work where contract price exceeds \$3,300.

## PLANS AND SPECIFICATIONS

The work will be carried out in accordance with the plans and specifications.

**Applies to:**

All domestic building work where contract price exceeds \$3,300 if plans and specifications form part of the contract.

## SUITABILITY FOR OCCUPATION

The home must be suitable for occupation when the work is finished.

**Applies to:**

All domestic building work where contract price exceeds \$3,300 if the work:

- (a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or
- (b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.

## REASONABLE DILIGENCE

The work will be carried out with reasonable diligence.

**Applies to:**

All domestic building work where contract price exceeds \$3,300, if:

- (a) the contract is a cost plus contract; and
- (b) the contract does not have a stated completion date or period.

## CALCULATION OF PROVISIONAL SUMS

The contractor warrants that the provisional sum has been calculated with reasonable care and skill.

**Applies to:**

All domestic building work where the contract price exceeds \$3,300 and includes provisional sum items.

Reasonable care and skill requires consideration by the contractor of all information reasonably available when the contract is entered into (including information about the nature and location of the building site).

## HOME MAINTENANCE

### FOUNDATIONS AND FOOTINGS

Many serious foundation problems are caused by reactive soil types and trees and gardens being planted too close to the house. Most clay soils are reactive soils but you should seek professional advice from either your contractor or soil engineer on this point. Your local government building section may also be able to advise you about soil characteristics in your area.

Large trees use huge amounts of water and can very quickly draw moisture out of the ground during dry periods. This may result in destabilised moisture content of the soils around your home which can eventually cause foundation problems.

Over-watering gardens around your home can also change the moisture content of clay, resulting in heaving of foundations adjacent to the garden. When watering around your home you should avoid 'ponding' of water in a particular area as this also affects the moisture content of the soil, which in turn can cause damage to footings and foundations.

Remember, too much or too little water near the perimeter of your home can cause serious problems with foundations and footings. Damage to foundations and footings can cause major structural problems, resulting in costly repairs.

### HINTS FOR AVOIDING PROBLEMS AND COSTLY REPAIRS

- water evenly around your home and don't over-water;
- ensure the ground is graded away from the walls of your home and that your property has adequate drainage;
- promptly repair broken downpipes, leaking taps, sewerage pipes and other water services;
- toilet cistern overflows and hot water system overflows should be directed away from the immediate area adjacent to the foundations and those services maintained to ensure excessive leakage does not occur;
- ensure garden beds are not located up against the house; and
- to minimise the risk of future foundation damage, obtain professional advice when selecting and planting trees according to their mature height and root structure (on normal suburban blocks of 600 to 800 sq. metres, trees that grow higher than about 8 to 9 metres would usually be inappropriate).

### SOURCES OF FURTHER ADVICE

- licensed builders;
- architects and soil engineers;
- landscape gardeners; and
- your local government building section.

You can also obtain the CSIRO information sheet titled *Foundation Maintenance and Footing Performance: A Homeowner's Guide* (Building Technology File 18).

**WARNING!** Home warranty protection may not apply if your action or lack of maintenance has contributed to any foundation problems.

## TERMITE MANAGEMENT

**NOTE:** This subject is covered in more detail in the Termite Management Fact Sheets on the QBCC website.

If you are building a new home, it is very important that you discuss the termite management options with your builder and that your requirements (together with any cost implications) are accurately and fully detailed in your contract.

The Building Code of Australia (BCA), which applies throughout Queensland, requires that 'primary building elements' of all new buildings at risk of attack from termites be protected. Primary building elements include roof, ceiling, floor, stairway or ramp and wall framing members including bracing and door jambs, window frames and reveals, architraves and skirtings.

The BCA sets out the minimum requirements only and you may wish to seek a higher level of protection. If you do, talk to your contractor or designer during the planning stage and ensure that your building contract provides for, and includes the cost of, the higher level of protection. Your contractor will then be obliged to provide that protection.

### TERMITE MANAGEMENT METHODS

(see the diagrams provided later in this section)

A number of options are available at variable costs including:

- using a monolithic concrete slab as the barrier and another approved method to protect any penetration such as waste pipes, etc. (the slab edge may be exposed in this method);
- where chemicals are used they must be regularly replenished or have an expected life similar to that of the building. Generally where chemicals are used under a concrete slab, path or driveway a reticulation system will be required;
- reticulation of an approved chemical under the slab with chemical perimeter treatment covered by a concrete mowing strip;
- graded stone barrier under the slab either full area or penetrations only and protection at the perimeter;
- stainless steel mesh, either full or partial installation with perimeter protection;
- use of termite resistant or treated timbers; or

- a combination of the above, especially with composite construction.

It is recommended that you have your house inspected at least annually by a QBCC-licensed termite management contractor (check the contractor's licence before engaging them). More frequent inspections may be necessary in high risk areas. High risk areas include:

- virgin bush nearby;
- large number of trees nearby;
- anywhere north of the Tropic of Capricorn; and
- infestations in other houses nearby.

Chemical systems have a limited life and therefore require a higher degree of maintenance and replenishment. Physical systems (concrete slabs, exposed slab edge, metal shielding, stainless steel mesh or graded stone) are generally designed to last for the lifetime of the building but require more frequent inspection.

### **FACTORS CONSIDERED BY THE QBCC IN ASSESSING A TERMITE COMPLAINT**

In the case of complaints about termite damage to a building, consideration will be given to issues such as the means of entry, the method of protection used, whether or not the builder advised the owner about the different methods and the maintenance requirements for each, and whether the owner observed the necessary maintenance and inspection procedures.

### **KEYS TO AVOIDING DAMAGE BY SUBTERRANEAN TERMITES**

- choose a method to suit your needs;
- determine if you want whole or partial protection;
- understand the method of protection chosen for your individual building and observe maintenance requirements; and
- inspect the home regularly yourself, and each 12 months (more often in high hazard areas) have a QBCC-licensed termite management contractor inspect and re-treat if necessary.

The most frequent cause of termite infestation is where a chemical system has been breached thus rendering it ineffective.

Be aware that you may compromise or disturb the system around the home by:

- placing turf, paving, concrete paths, bark/mulch and garden beds up against the house wall;
- obstructing 'weep' holes (vertical joints between bricks close to ground level that are left open to allow any moisture to escape outside the house). 100mm clearance is recommended from the bottom of any weep hole to the top of the garden bed, or 75mm clearance in the case of concrete or unit paving;

- leaving loose timber stacked up or leaning against the house;
- the installation of new services involving underground connections to the house (e.g. pay TV) after the original termite protection has been applied;
- construction of a pergola (75mm clearance is recommended between the finished ground or pavement level and the bottom of the timber posts); or
- construction of fences, carports, or garages attached to the house after the termite protection has been installed.

### **CHECKING FOR TERMITES AFTER YOU MOVE IN**

You should be particularly vigilant in checking:

- skirting boards;
- architraves;
- timber door and window frames;
- for blistered and bubbled paint, rippled or bulging wall skirting and architraves, and coarse, sandy pellet residues known as 'frass' (termite excreta); and
- outside the house look for mud galleries (small mud tunnels) against the walls, and tell-tale paths leading up foundation posts into the home.

**NOTE:** If you find any sign of termite activity in your regular checks, contact a QBCC-licensed termite management contractor.

### **WHAT TO DO IF YOUR HOME IS INFESTED BY TERMITES**

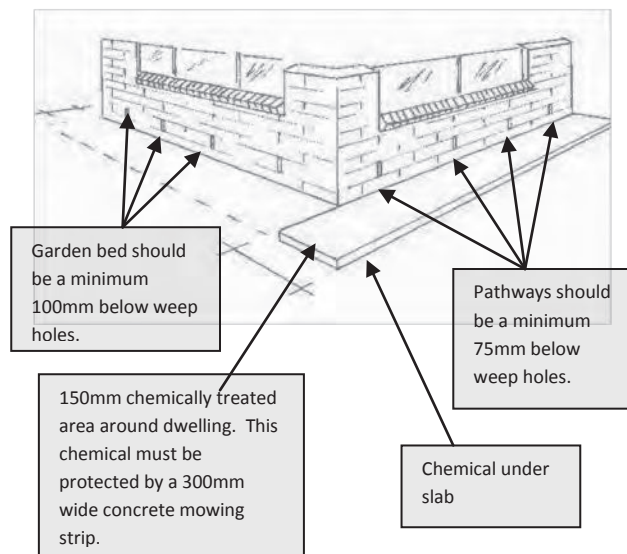
- do not disturb the nest;
- immediately arrange a thorough inspection by a licensed pest controller (ask them to locate the point of entry);
- inform your neighbours because one termite colony can affect several homes; and
- if the pest controller indicates there may be a fault in the installation of the barrier, contact the contractor and if your contractor does not respond to the termite infestation, contact the QBCC on 1300 272 272 regarding the Queensland Home Warranty Scheme operated by the QBCC. The Scheme provides protection against defective building work (including faulty termite barrier installation) for 6 years and 6 months from the date the building contract is signed or the premium paid, whichever is earlier. For 'spec' homes, the 6 years and 6 months insurance period applies from the date when work commenced on site. Home warranty protection does not apply if your action or lack of maintenance has contributed to the infestation.

**NOTE:** If an infestation occurs more than 6 years and 3 months after completion, and the problem can be traced to faulty installation, you may be able to take legal action against the builder. Formal legal advice is required. There are three basic methods of protecting buildings from termite damage.

1. Chemical systems
2. Termite resistant materials
3. Physical systems

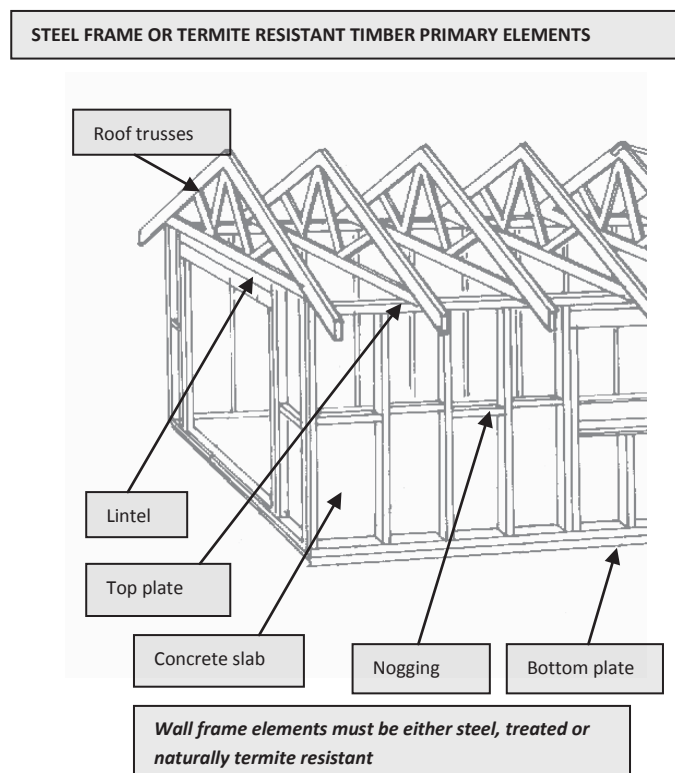
## CHEMICAL SYSTEMS

Chemical systems are generally installed beneath and around a building.



## TERMITE RESISTANT MATERIALS

All primary building elements consist of masonry (brick or concrete block), steel, naturally resistant timber or treated timber.



'Primary building element' means: (a) a structural element of a building designed specifically to take part of the building loads and includes roof, ceiling, floor, stairway or ramp and wall framing members including bracing members designed for the specific purpose of acting as a brace to those members; and (b) door jambs, window frames and reveals, architraves and skirtings.

Termite resistant materials will not deter termite entry, but they will minimise damage to the treated elements.

## PHYSICAL SYSTEMS

Physical systems can consist of:

### Concrete slab

A concrete slab can, under certain circumstances, be used as a termite management system e.g. if the edge of the slab is exposed for a minimum of 75mm and the slab has been constructed to Australian Standards.

### Termite shielding

Generally most recognisable, this form of protection consists of a continuous metal barrier along the walls and on top of piers under a house.

### Stainless steel mesh

This is installed in various locations including under an on-ground concrete slab or around penetrations to the slab and around the perimeter wall cavity.

### Graded stone

Used under and around buildings. The size and shape of the stones prevents the transportation of particles by termites as well as termite activity in the void spaces between the particles.

Termite management systems are designed to deter concealed termite entry into buildings.

It is important for you to know what method or combination of methods has been used on your property to enable you to schedule appropriate maintenance and inspections.

In any building there should be two durable labels fixed in prominent locations, usually in the electrical meter box and one other location such as the kitchen cupboard. The label describes the life expectancy of chemicals and the manufacturer's recommendations for the scope and frequency of inspections. Competent inspections should be carried out at least on an annual basis by a QBCC-licensed termite management contractor.

The most common cause of termite infestation is where a building owner or occupier has inadvertently breached or bridged a perimeter system.

For example, placing brick or concrete paving up against a building where a chemical system has been installed may bridge the system unless additional control elements were installed as part of the paving process. If bridging has occurred there is an open highway for termites to gain entry to the building.

Similarly, if gardens are installed or turf placed up against a building without consideration or reinstatement of the system, an opportunity will exist for termites to enter the building.

The addition of a fence, carport or pergola against an existing building can also provide an opportunity to bridge or breach the termite management system.

## **IN SUMMARY**

- Know what system is in place;
- Have a QBCC-licensed termite management contractor inspect at least on an annual basis;
- If gardens, turf or paving has been or is to be placed against the building, ensure that reinstatement of the termite management system/s forms part of the work; and
- If a concrete mowing strip has been installed to protect a chemical system, do not disturb it without consulting a QBCC-licensed termite management contractor.

## **OBTAINING MORE INFORMATION ABOUT TERMITES**

### **Australian Environmental Pest Managers Association (AEPMA)**

**Phone:** 02 9232 8929 or 1800 252 772

**Web:** [www.aepma.com.au](http://www.aepma.com.au)

### **Timber Queensland**

**Phone:** 07 3254 1989

**Web:** [www.timberqueensland.com.au](http://www.timberqueensland.com.au)

### **Queensland Master Builders Association**

**Phone:** 07 3225 6444

**Web:** [www.masterbuilders.asn.au](http://www.masterbuilders.asn.au)

### **Housing Industry Association**

**Phone:** 07 3846 1298

**Web:** [www.hia.com.au](http://www.hia.com.au)

### **Department of Employment, Economic Development and Innovation**

**Phone:** 13 25 23

**Web:** [www.deedi.qld.gov.au](http://www.deedi.qld.gov.au)

### **Building Codes Queensland**

**Phone:** 07 3239 6369

**Web:** [www.dip.qld.gov.au](http://www.dip.qld.gov.au)

### **Standards Australia (AS3660.1)**

**Phone:** 1300 654 646

**Web:** [www.saiglobal.com/store](http://www.saiglobal.com/store)

## CONTACT LIST

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Make sure you keep copies of all important papers regarding your project in a safe place.

### YOUR PERSONAL CONTACTS FOR GENERAL INFORMATION REGARDING YOUR BUILDING PROJECT:

Contact	Name	Contact Details
Solicitor		P:
		F:
		E:
Finance Provider		P:
		F:
		E:
Building Designer or Architect		P:
		F:
		E:
Contractor		P:
		F:
		E:
Site Supervisor		P:
		F:
		E:
Building Certifier		P:
		F:
		E:
Local Government		P:
		F:
		E:
Building Consultant		P:
		F:
		E:
Insurance Company		P:
		F:
		E:
Neighbours (if relevant)		P:
		F:
		E: