



Building Indemnity Insurance

Protects the building owner (and any future owner) from the non-completion of the building work and/or failure to fix the work by the contractor if they die, disappear or become insolvent, within five years from the date of completion and may have a maximum value of \$80,000.

Contractors must take out indemnity insurance where the domestic building work is \$12,000 and over (\$5,000 and over prior to 15 October 2001), and council approval is required.

Contractors must give a copy of the Certificate of Insurance (a **Form 2**) to the building owner (i.e. the consumer or client) before any work begins.

Contractors can purchase building indemnity insurance from the Housing Industry Association, Master Builders Association, or the Swimming Pool and Spa Association.

Payments Allowed Under the Contract

Licensed contractors can ask for payments in advance of up to \$1,000 deposit for contracts between \$12,000 and \$20,000 or 5% of the contract price for contracts \$20,000 or more, plus costs for payments to third parties e.g. building plans, council development approvals, building indemnity insurance, soil, engineering and/or survey or reports.

Licensed contractors can ask for genuine progress payments (in writing only) when building work has been performed (which includes materials and labour).

The Act does not specify when you can charge for work completed. However, the contract must show payment terms and when payments are due.

Allowable Payment Under the Contract (example only)

A progress payment (PP) is made when work is completed

Maximum Deposit: \$1,000

plus costs e.g. plans, council approvals, building indemnity insurance, soil, engineer's or surveyor's report.

Footings completed (PP1)

Framing completed (PP2)

Progress payments continue until completion

compliance

The Office of Consumer and Business Affairs investigates breaches of the *Building Work Contractors Act 1995*, including unlicensed operators.

SUBSTANTIAL PENALTIES MAY BE IMPOSED

We strongly recommend that you obtain a copy of the *Building Work Contractors Act 1995* and Regulations from: Service SA Government Legislation Outlet
108 North Terrace,
Adelaide SA 5000
Telephone **13 23 24**
or visit
www.parliament.sa.gov.au

Office of Consumer and Business Affairs

Business and Occupational Services

Level 3, Chesser House
91-97 Grenfell Street
Adelaide SA 5000
Telephone 131 882

Regional Centres

Berri, Mount Gambier,
Naracoorte, Port Augusta,
Port Lincoln, Port Pirie,
Telephone **131 882**

Translating and Interpreting Services (TIS)

Telephone **131 450**

www.ocba.sa.gov.au

Aug 2011

Building Work Contractors

Getting it right under the *Building Work Contractors Act 1995*

Business and Occupational Services



www.ocba.sa.gov.au



Building work is associated with:

constructing, erecting, underpinning, repairing, altering, improving, adding to or demolishing a building or structure and excavation filling work associated with preparing a building site.

Common examples include:

- house construction
- renovations, additions and alterations
- construction or repairs of on-site swimming pools or spas
- paving
- carpentry and joinery
- painting and tiling
- fencing (excluding post and wire fencing)
- installing in-built robes and kitchen cabinets
- construction of retail shops and office buildings, and
- installation of air-conditioners.

Plumbing, Gas Fitting or Electrical Work

Any plumbing, gas fitting or electrical work (including work done on your own home) must be performed by a person holding a worker's registration under the *Plumbers, Gas Fitters and Electricians Act 1995*. A building work contractor's licence may allow you to contract for this work but you must engage a suitably registered worker to perform it.

Contracting for Building Work

All contractors and sub-contractors must be licensed under the Act (commercial, industrial and residential building work). A company must hold its own contractor's licence.

Each partner in the building business (e.g. husband and wife) must hold their own contractor's licence.

Employees of contractors don't need to be licensed or registered unless supervising building work (see below).

Supervising Building Work

All building work must be properly supervised by the contractor's registered building work supervisor, who has been approved by the Commissioner for Consumer Affairs for this purpose. Call (08) 8204 9644 for an approval form or for further information.

If a person holds both a contractor's licence and a supervisor's registration, they are taken as being approved to supervise their own work. If they don't, they must lodge a form to nominate a supervisor with the Commissioner (a fee applies).

The nominated supervisor must personally supervise all building work. It is not sufficient for them to be nominated 'in name only'.

Conditions and Endorsements

Contractors and supervisors are only permitted to operate within the conditions or endorsements shown on their licence/registration.

Statutory Warranties

By law, a contractor must provide certain warranties when they perform domestic building work. These cover issues such as:

- the quality of materials and workmanship,
- compliance with plans, specifications and legal requirements,
- completing the work within a reasonable time,
- meeting the end result that was requested, and
- if constructing a house, the house must be reasonably fit for human habitation.

Claims against these warranties can be made up to five years after the building work was completed.

You are also liable for defective building work under the *Development Act 1993* for ten years.

Advertising

In any advertisement, contractors must state their name as it appears on the licence (or registered business name) and licence number, including each partner's licence number (if applicable) unless the advertisement is only offering employment or is directed solely at other building work contractors.

Signage

Contractors must place a sign in a prominent position on every building site on which they are working, unless they are working as a sub-contractor and the principal contractor has their sign on display. The sign must show the same name and licence details as required on advertisements.

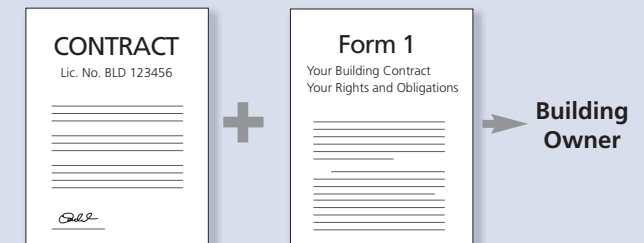
Changes to Details

Contractors must advise the Commissioner of changes to their residential or business addresses, business name, partnerships, company directors and the termination of the employment of their building work supervisor. Supervisors must advise of changes to their addresses.

Domestic Building Work

Domestic Building Work Contract

You must have a written contract if the value of the building work is \$12,000 and over (\$5,000 and over prior to 15 October 2001).



A building contract must :

- be in writing and legible
- set out all terms
- show the business name of the contractor and licence number and the names and licence numbers of business partners (if applicable)
- be signed by the contractor and owner (or their agents), and
- stipulate a fixed price (can include a 'rise and fall clause'), and payment terms.

Form 1 must be attached to the contract. It is available from Service SA (see contact details overleaf). The contractor must give the building owner a signed copy of the contract and **Form 1**.

Always seek independent legal advice before signing any contract. Your industry association may offer a written contract to suit your business needs.