

Authorised Version No. 002
Domestic Building Contracts Regulations
2007

S.R. No. 25/2007

Authorised Version as at
27 February 2013

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1 Objectives

The objectives of these Regulations are—

- (a) to prescribe certain work as building work to which the Act does not apply;
- (b) to allow certain contracts to be cost plus contracts for the purposes of section 13 of the Act;
- (c) to prescribe, with regard to progress payments, the manner in which parties to a contract may agree that sections 40(2) and (3) of the Act do not apply;
- (d) to exempt certain persons and contracts from various provisions of the Act; and
- (e) to prescribe other matters necessary for the purposes of the **Domestic Building Contracts Act 1995**.

2 Authorising provision

These Regulations are made under section 135 of the **Domestic Building Contracts Act 1995**.

3 Revocation

The following regulations are **revoked**—

- (a) the Domestic Building Contracts and Tribunal (General) Regulations 1996¹;
- (b) the Domestic Building Contracts and Tribunal (General) (Amendment) Regulations 1999²;
- (c) the Domestic Building Contracts and Tribunal (General) (Amendment) Regulations 2004³.

4 Commencement

These Regulations come into operation on 28 April 2007.

5 Definitions

In these Regulations—

public construction has the same meaning as in section 3(1) of the **Project Development and Construction Management Act 1994**;

subdivision has the same meaning as in the **Subdivision Act 1988**;

the Act means the **Domestic Building Contracts Act 1995**.

6 Building work to which Act does not apply—work to be carried out under a contract for one type of work only

For the purposes of section 6(a) of the Act, work is not building work to which the Act applies if the work is to be carried out under a contract in relation to one only of the following types of work—

- (a) attaching external fixtures (including awnings, security screens, insect screens and balustrades);

- (b) electrical work;
- (c) glazing;
- (d) installing floor coverings;
- (e) insulating;
- (f) painting;
- (g) plastering;
- (h) plumbing work as defined in section 221C of the **Building Act 1993**;
- (i) tiling (wall and floor);
- (j) erecting a chain wire fence to enclose a tennis court;
- (k) erecting a mast, pole, antenna, aerial or similar structure.

7 Building work to which the Act does not apply

For the purposes of section 6(a) of the Act, work carried out in relation to any of the following is not building work to which the Act applies—

- (a) the official residence of the Governor of Victoria;
- (b) premises that are used or intended to be used at a school, university or other educational or training institution as accommodation for students or staff;
- (c) premises that are used or intended to be used as—
 - (i) a community service established under section 57 of the **Children and Young Persons Act 1989**; or
 - (ii) a community service approved under section 58 of that Act and that are situated on Crown land or land in relation to which the Secretary to the

- Department of Human Services or the Director of Housing is registered as proprietor; or
- (iii) a remand centre within the meaning of that Act; or
 - (iv) a secure welfare service within the meaning of that Act; or
 - (v) a youth residential centre within the meaning of that Act; or
 - (vi) a youth training centre within the meaning of that Act;
- (d) premises that are used or intended to be used as—
- (i) a prison established under section 10 of the **Corrections Act 1986**; or
 - (ii) a community corrections centre established under Part 9 of that Act;
- (e) premises that are used or intended to be used as—
- (i) a residential institution within the meaning of the **Intellectually Disabled Persons' Services Act 1986**; or
 - (ii) a residential program within the meaning of that Act;
- (f) premises that are used or intended to be used to provide accommodation within the Parliamentary reserve within the meaning of the **Parliamentary Precincts Act 2001**;
- (g) movable units within the meaning of the **Housing Act 1983** that are constructed for Kids Under Cover Inc. that are used or intended to be used to provide accommodation on a non-profit basis.

**8 Building work to which the Act does not apply—
subdivisions**

For the purposes of section 6(a) of the Act, work is not building work to which the Act applies if it is work for the design, construction, extension, repair, replacement, maintenance, demolition or removal of all or any of the following works in relation to a subdivision of land—

- (a) the provision of roads, access ways, footpaths, bridges, dams, reserves, open spaces, or ornamental or decorative works associated with such works, within the subdivision;
- (b) works for sewerage, drainage, water supply, power, gas or telecommunications to connect the subdivision to the system serving properties outside it, excluding works to connect any particular property to the system for the subdivision;
- (c) engineering works, fencing works, landscaping works or retaining structures required under the planning scheme or the permit under the **Planning and Environment Act 1987** for the subdivision;
- (d) works required for the issuing of any certificate or statement of environmental audit under the **Environment Protection Act 1970** for the subdivision.

9 Certain contracts exempt from provisions of Act

- (1) Section 15 of the Act does not apply to a domestic building contract for public construction.
- (2) Sections 31(1)(b), (c), (d), (i), (n) and (r), 31(2), 33, 34 and 35 of the Act do not apply to a major domestic building contract for public construction.

10 Certain persons exempt from requirement to make allowance for delays in time estimates

Section 32 of the Act does not apply to a builder performing work under a major domestic building contract for public construction.

11 Type of cost plus contract allowed

For the purposes of section 13(1)(a) of the Act, the following classes of cost plus contracts are allowed—

- (a) contracts for work that it is reasonably estimated will cost \$500 000 or more;
- (b) domestic building contracts for public construction where the Crown or a public statutory authority is a party to the contract.

12 Progress payments

For the purposes of section 40(4) of the Act, when parties to a major domestic building contract agree that sections 40(2) and (3) of the Act do not apply to that contract, the manner of agreement is to include in the major domestic building contract—

- (a) a warning in the form of Form 1 in the Schedule which is signed by the building owner before the execution of the contract; and
 - (b) a clause in the form of Form 2 in the Schedule.
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SCHEDULE

FORM 1

Regulation 12(a)

WARNING TO OWNER—CHANGE OF LEGAL RIGHTS

Section 40 of the **Domestic Building Contracts Act 1995** provides that a builder cannot charge more than a fixed percentage of the total contract price at the completion of each stage of building a home.

The Act also allows the parties to a contract to agree in writing to change the stages and the percentage of the contract price to be paid at the completion of each stage.

There are several ways in which a particular contract can vary from the normal, and it is these exceptional cases which have caused the law to allow for these changes.

Examples would include—

- where it is very expensive to prepare the land for building for example, where the site is steep or rocky;
- where the house is so large that it will take a long time to complete, and intermediate progress payments are therefore required;
- where exceptionally expensive finishes are required, meaning that the final stage will represent a much larger proportion of the whole price;
- where an architect is engaged to independently assess the value of completed work for progress payments.

You should not agree to progress payments different from that provided in the Act unless your house is unusual in some way and you are SURE THAT DIFFERENT PROGRESS PAYMENTS ARE NECESSARY and you understand clearly why the change is needed in the case of your particular house.

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If you have any doubts, you could contact

Housing Industry Association

The Master Builders' Association of Victoria

Consumer Affairs Victoria

Royal Australian Institute of Architects

.....
I acknowledge that I have read this warning before signing the contract

Signature of Building Owner

FORM 2

Regulation 12(b)

PROGRESS PAYMENTS

The parties agree—

- (i) that the progress payments fixed by section 40 of the **Domestic Building Contracts Act 1995** do not apply; and
- (ii) that instead the percentages of the contract price and amounts payable are as follows—

Name of stage	If this stage is not the same as a stage defined in section 40(1) of the Domestic Building Contracts Act 1995 , what does this stage mean?	Percentage of total contract price	\$

ENDNOTES

1. General Information

The Domestic Building Contracts Regulations 2007, S.R. No. 25/2007 were made on 23 April 2007 by the Governor in Council under section 135 of the **Domestic Building Contracts Act 1995**, No. 91/1995 and came into operation on 28 April 2007: regulation 4.

The Domestic Building Contracts Regulations 2007 will sunset 10 years after the day of making on 23 April 2017 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Domestic Building Contracts Regulations 2007 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

¹ Reg. 3(a): S.R. No. 32/1996. Reprint No. 1 at 20 November 1997, and amending S.R. Nos 126/1999 and 146/2004.

² Reg. 3(b): S.R. No. 126/1999.

³ Reg. 3(c): S.R. No. 146/2004.