

Everything you need to know about... *Becoming a Domestic Owner Builder*

The Building Act 1993 (the Act) requires all building practitioners to be registered and carry the required insurance, except for a person who is not in the business of building and constructs a building on their own land (an owner builder).

Domestic owner builders do however have most other responsibilities required under the Act and other relevant legislation that would apply to registered building practitioners. The following information has been co-ordinated to assist owner builders in assessing all the relevant requirements.

Obligations and Responsibilities

If you are an owner builder then you can either contract parts of the work to a registered builder, contract individually to the relevant registered building practitioners (as applicable) in each sub trade, or do some of the work yourself (exceptions include plumbing and electrical work which must only be done by registered or licensed persons).

There are a number of key responsibilities that you must be aware of before and during the building work.

Planning Permit

A planning permit may be required for the work. Examples include alterations to dwellings (units) on multi unit allotments, construction of houses on land subject to heritage control, but may also include single residence in regards to overshadowing, overlooking and tree removal. The planning department of the relevant local council must be consulted prior to the commencement of any building work and in any case, a building permit cannot be issued without the necessary planning permit being issued first.

Building Permit

A building permit is required for most building work. This can be obtained from either the Municipal Building Surveyor (local council) or a Private Building Surveyor. Recent legislation changes have introduced additional requirements for owner builders, which will be administered through the Building Practitioners Board.

An Owner Builder will be required to apply for, and obtain a 'Certificate of Consent' after establishing that the mandatory requirements under the Act & new Regulations have been complied with. This will include the provision of a Statutory Declaration acknowledging that they have read the "Information Statement" published in the Government Gazette as prescribed by section 25 I of the Building Act 1993. The relevant Building and Occupancy Permits will need to be produced if you sell the property and are required to be declared as part of a Section 32 certificate (under the Sale of Land Act 1962).

Protection of adjoining property

If the building work is close to adjoining property boundaries then an owner may be required to carry out protection work in respect of the adjoining property. This is to ensure that the adjoining property is not affected by the proposed building work.

The Relevant Building Surveyor will determine if this is necessary and, if so, before commencing any protection work, an owner must enter into a contract of insurance against damage by the proposed protection work to the adjoining property and against any liabilities likely to be incurred to adjoining occupiers and members of the public during the carrying out of the work. This insurance must extend for a period of 12 months after the building work is completed. Refer also to Consumer Advice Sheet No. 3.

Using registered building practitioners

The Building Act 1993 requires an owner builder to engage registered practitioners for the major parts of a project where the works are valued over \$5000 (including labour and materials). In relation to the construction of a new house this may typically mean that the owner must employ registered concretors, carpenters, bricklayers etc as these contracts may exceed \$5000. In addition the owner must only employ registered or licensed plumbers and electricians in accordance with the separate relevant legislation.

Under the Domestic Building Contracts Act 1995, the following persons do not require to be registered if they do work for you listed below, as a separate contract:

- Plumbing*
- Electrical**
- Insulation
- Plastering
- Tiling (wall and floor)
- Painting
- Draining work
- Glazing
- Floor coverings

Attached external fixtures (security screens, awnings, balustrades)

* Any plumbing work such as sewerage, gas, water, septic tanks and storm water drainage must be undertaken by a plumber licensed or registered with the Plumbing Industry Commission.

** Any electrical work must be undertaken by an electrician licensed with the Office of the Chief Electrical Inspector.

Contractors employed for work over \$12000, other than those above must use a contract complying with the Domestic Building Contracts Act 1995, and provide you with a certificate of warranty insurance to cover you for such things as death, disappearance and non completion within the mandatory six years structural defects period.

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At the time of applying for an Occupancy Permit, you may be required to declare all practitioners who have undertaken work over \$12000, including details of registration and insurance. Failure to do so may result in purchasers insurers recovering any subsequent claim payment for any defects as a civil debt against you as the owner builder.

Appointing a builder

If you have obtained the Building Permit and/or commenced the project as an owner builder, but decide to appoint a builder, you must advise the Relevant Building Surveyor of the name of the new builder within 14 days. The building surveyor must receive details of the registration of the practitioner and a copy of the required warranty insurance policy for that work.

Insurance during construction

Whilst insurance during construction is not mandatory it is strongly recommended that consideration be given to the typical insurances that a registered builder would use to protect the asset being constructed and the risk of injury to persons working on the site and the public. A typical construction and public liability policy will cover malicious damage, public liability to \$5m, theft, and damage from natural causes (such as wind, water, storm and fire). It may be possible to obtain additional cover for injury to workers on the site caused by negligence of other workers (you should check details with insurers). Refer also to Consumer Advice Sheet No. 1.

Be aware that many domestic house and contents insurance policies may not fully cover building work and will only apply once the work is completed and the necessary certificates have been issued by the building surveyor. This is particularly important if an owner builder is doing an alteration to an existing building, as some policies may not cover the existing building during construction either.

A typical owner builder construction and public liability policy will probably cost between \$1000 and \$2000. These policies may not be renewable and therefore the work should be completed within the policy period if you wish it to be fully covered.

Insurance if you sell the building

The exemption from warranty insurance only applies to owner builders who subsequently do not sell the building, and therefore if it becomes necessary to sell within the prescribed period of six years six months from completion, then an inspection report and possibly warranty insurance is required for the balance of that period. As an owner builder it is an offence to sell a building without the required report and insurance. (The penalty specified is \$ 10,000).

A report must be prepared by certain prescribed practitioners and is likely to cost between \$300 and \$600. Insurance costs may vary depending on the outstanding period of insurance but will likely cost between \$500 to \$2100. Refer also to Consumer Advice Sheet No 2.

Selling the building prior to completion

It is an offence under the Act (section 137E) for an owner builder to sell a building prior to completion if you intend to complete the works prior to settlement of the Contract. Penalties of up to \$ 10,000 apply. If you think this may be necessary you should consider using a registered builder.

Occupational Health and Safety (Workcover)

As an owner builder you will be responsible for providing and ensuring a safe workplace. Any action for failure to do so will most likely be brought against the owner builder and not the relevant contractor. For further details contact Workcover on 9641 1555.

Australian Taxation Office

Owner builders have certain obligations under the Taxation Act. Obligations under the G.S.T. provisions also apply. For further details contact 13 28 66.

Protection of an owner builder

As an owner builder you are agreeing to step outside of certain of the contractual and consumer protection provisions set out in the Building Act 1993 and the Domestic Building Contracts Act 1995. For example you will be responsible for quality of workmanship and documentation. Don't let a builder talk you into being an owner builder. As the owner builder you are taking full responsibility for the project and if anything goes wrong then it is your responsibility to take action against those persons who were engaged in the project. This is often a costly option.

Checklist for Dealing with Tradespersons

Check the registration and insurance details of the building practitioners for all work over \$ 12,000.

Obtain different quotes for the job, ensuring to specify exactly the same requirements.

FOR MORE INFORMATION

Building Commission website: www.buildingcommission.com.au
Building Practitioners Board Freecall: 1300 360 320
Office of Business & Consumer Affairs (03) 9627 6100

Other Consumer Advice Sheets in this series

- Construction & Public Liability Insurance
- Selling an Owner Built Dwelling
- Protection of Adjoining Properties
- Risk & Cost Reduction Strategies During Construction

This advice sheet is a guide only, and is not intended to be a substitute for legal or other advice. The information is of a general nature, and may be subject to change. No responsibility is accepted for reliance on the information.

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