



Government of **Western Australia**  
Department of **Commerce**

*Building*  
**Commission**

# Home indemnity insurance



A consumer guide to the requirements of the *Home Building Contracts Act 1991*

November 2012

This publication is available in alternative formats upon request.

If you require an interpreter, call the Translating and Interpreting Service (TIS) on 131 450 and ask for connection to the Building Commission on 1300 489 099.

### **Disclaimer**

The information in this booklet is intended as an explanatory guide to the Western Australian legislation.

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## **What is home indemnity insurance (HII)?**

In Western Australia, residential building work contracts are governed by the *Home Building Contracts Act 1991* (the Act). If residential building work valued over \$20,000 is to be undertaken, the Act requires that a builder must take out HII in the name of the owner before accepting payment or commencing work.

HII protects owners against financial loss if a builder cannot complete residential building work or meet a valid claim for faulty or unsatisfactory building work because of death, disappearance or insolvency.

In most instances, the insurance policy must cover the residential building work during the construction period and for six years from the date of 'practical completion' (the six year insurance period). Practical completion is when the building, extensions or renovations are completed and ready for occupation.

The Act applies to all areas of the State. However, the provisions of the Act are different when a person builds, extends or renovates their own home as an owner-builder or a builder seeks exemption to build their principal place of residence. This is explained on pages 6 and 7 of this brochure.

## **Is all residential building work over \$20,000 required to have HII?**

Residential building work is defined in the law to mean:

- the construction of a new dwelling;
- the extension or renovation of an existing dwelling;
- placing a dwelling on land; or
- construction, extension or renovation of multi-unit grouped homes (except for some multi-storey developments and fully leased retirement villages).

Residential building work includes pergolas, fences, swimming pools, landscaping and similar work when that work forms part of the building contract (associated work).

HII cover is required for all residential building work contracts including:

- **A “cost plus contract”.** HII must be taken out prior to any payment or building work commencing and cover the cost of any remedial building work for up to six years from practical completion.
- **Building or buying a “spec” home.** A home built by a registered builder on their own behalf and then sold as a completed home (usually by offer and acceptance). The builder must take out HII prior to the building permit being granted to protect purchasers and any subsequent owners for six years following practical completion.
- **Placing a dwelling on land for the first time.** The cover must include the cost of the residence as well as placement and any work to the dwelling after placement. An example of this might be a transportable home.
- **Relocating an existing dwelling to a new site.** HII must cover work connected with the relocation, placing the dwelling on the land and work to the dwelling after placement.

Multi-storey and multi-unit developments and fully leased retirement villages are exempt under the Regulations.

Residential building work is required to be covered by HII. However, HII is not required in the following circumstances:

- building work under \$20,000; and
- associated work performed alone under separate contracts such as installation of a swimming pool, fence, pergola or landscaping.

## **Who is responsible for obtaining HII?**

A builder carrying out residential building work on behalf of an owner is responsible for taking out HII and for giving the owner a copy of the certificate of insurance BEFORE:

- starting any residential building work;
- asking the home owner to pay a deposit; or
- asking the home owner to pay any other money under a residential building contract.

This is to ensure that, if the property is sold during construction or during the period of indemnity insurance, subsequent owners are protected.

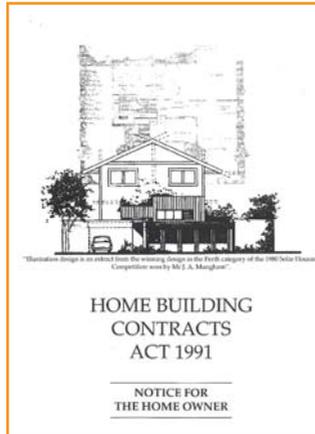
The insurance premium is paid by the builder. Builders need to make provision in the contract price for the cost of the insurance policy and apply to the insurer to have the work covered. The premium is a one off payment.

The policy will be in the name of the owner so that if the owner sells the residence within the six year insurance period, the benefit of the policy will pass to a subsequent owner(s).

## **How should builders inform owners about HII?**

The Act also requires that before a contract for home building work is signed, or a deposit is paid, the builder must provide the owner with a copy of the 'Notice for the Home Owner' which summarises the main requirements of the Act, including the requirement to take out HII.

A copy of the certificate of HII policy together with the application for a building permit is lodged with the permit authority. The permit authority is able to refuse the application if evidence of HII is not provided.



## **What does the policy cover and how long does it last?**

The HII policy covers the completion of the residential building work at no additional cost to the owner to a limit of \$100,000 if the builder dies, disappears or becomes insolvent. In relation to cost plus contracts the policy must cover the rectification of building work in similar circumstances.

The policy must also cover claims for defective workmanship made up to six years from practical completion of that work should the builder die, disappear or become insolvent.

The law sets out the lowest level of HII cover that must be provided. The policy must require the insurer to pay up to \$100,000 or the value of the contract work (if it is less than that amount) and no more than \$20,000 for loss of deposit. This is the maximum amount that the insurer must agree to pay out while the policy is in force.

The insurer is allowed to charge a \$500 excess which means that the owner or their successors in title may have to pay the first \$500 of any claim.

## **Who provides HII and who chooses the insurer?**

HII is provided by private insurers that have been approved by the Minister for Commerce. The builder has the option of which insurer to select, provided that the insurer agrees to supply the cover.

Contact the Building Commission or a building industry association for the name of insurers who provide HII.

Owners can obtain details of the insurance company or 'Approved Fund' providing the insurance cover from the HII certificate or by contacting their permit authority.

## **What if the builder cannot obtain HII or fails to take it out?**

Builders will be able to obtain HII provided they satisfy an insurer that they meet the legislative requirements for registration. If insurance is refused, the builder should seek advice from their industry association.

A builder who does not take out indemnity insurance as required or fails to comply with any other of the provisions of the Act can be prosecuted and fined up to \$50,000, and may risk losing their builder's registration.

If HII cannot be obtained, the owner should engage another builder who can or if an owner finds that the insurance is not in place when a claim is made, the matter should be referred to the Building Commission.

## **Does HII cover reduce a builder's liability?**

No. The cover does not reduce the liability of a builder during the six year insurance period. The policy will come into effect only if a builder dies, cannot be located, or becomes insolvent. In all other cases a builder will remain responsible for claims made by an owner or successive owners during the six year period following practical completion.

## **Does HII apply to everyone who builds?**

Owner-builders are not required to take out HII before they build, but must do so if they sell within seven years from the date the building permit was granted.

A registered builder may seek exemption from obtaining HII when building their own principal place of residence but must do so if they sell within seven years from the date the building permit was granted.

If the work is associated work alone (so not forming part of building contract for a new home) eg a swimming pool, carport, fence, pergola or landscaping, HII is not required even if the work is over \$20,000.

HII is also not required for a subcontractor who performs building work under a contract with a registered builder as it is the builder who obtains HII.

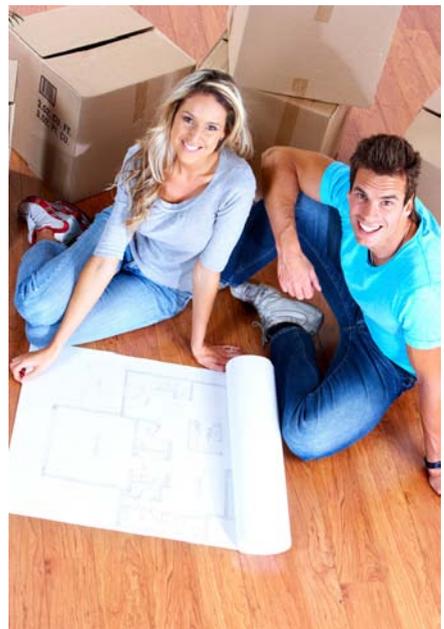
### **Owner-builder requirements**

A person who has owner-builder approval from the Building Commission and is granted a building permit, is the person responsible for the building work to his/her own home and is not required to take out HII cover.

However, if the residence is sold or otherwise disposed of within seven years of the date the building permit is granted, the cover must be in place. The policy must be from an approved insurer and cover the new home owner(s) for the remainder of the seven year period.

The prospective purchaser should be provided with a valid certificate of insurance before the sale contract is finalised. Failure to do so can lead to prosecution and a \$10,000 fine.

If HII cannot be obtained, the property cannot be sold within seven years of obtaining the building permit.



## **Builder's principal place of residence requirements**

The Act provides for a registered building contractor to build their own principal place of residence once every six years without having to obtain HII. A builder may seek exemption under section 25B(3) of the Act by making a statutory declaration they have not obtained an exemption in the previous six years and undertaking to provide HII to a subsequent owner(s) for seven years from the date the building permit was granted.

## **Further information**

For further information or advice about HII, contact the Building Commission on 1300 489 099 for the cost of a local call from anywhere in the State.

The *Home Building Contracts Act 1991* sets out what is legally required of builders and owners entering into a contract for residential building work. Copies of this Act can be viewed online at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

An industry association, or insurer may also be able to assist.

## **Useful contacts**

### **Housing Industry Association**

22 Parkland Road, Osborne Park WA 6017

Member Line: (08) 9492 9200 | Consumer Line 1902 973 555 (calls charged at \$2.75 per minute)

### **Master Builders Association of Western Australia**

Level 4, 35-37 Havelock Street, West Perth WA 6005

Telephone: (08) 9476 9800

### **State Law Publisher**

Ground Floor, 10 William Street, Perth WA 6000

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