



Home indemnity insurance reminder

This Industry Bulletin serves as a reminder to residential builders and permit authorities about their obligations and duties under the *Home Building Contracts Act 1991* and related legislation, regarding home indemnity insurance (HII).

HII is intended to protect owners against financial losses if the builder cannot complete the work, or meet a valid claim for faulty or unsatisfactory building work, because of death, disappearance or insolvency. Those respective obligations are outlined below.

For builders

Before undertaking residential building work valued over \$20,000 builders must:

- obtain a HII certificate of insurance for the proposed work before claiming any payment from the owners or commencing work under the contract; and
- provide a copy of the HII certificate of insurance to the owner, and the permit authority as part of the building approval process.

Where there is a change of builder during construction, and the owner enters into a new contract for the remainder of the building work, the replacement builder must obtain HII and provide a copy of the HII certificate of insurance to the owner.

It is suggested the replacement builder also provides a copy of the HII certificate of insurance to the permit authority.

Builders who fail to obtain HII as required risk substantial penalties and disciplinary proceedings.

For permit authorities

Before granting a building permit for residential building work valued over \$20,000, the permit authority must be satisfied that:

- a valid HII certificate of insurance for the proposed residential building work has been submitted (see example of a HII certificate of insurance attached). Check that the builder hasn't inadvertently provided other insurance documents, such as a certificate of HII eligibility or construction/public liability insurance certificate, instead of a HII certificate of insurance; or
- where it is the builder's principal place of residence, that the builder has made a statutory declaration to the Building Commissioner and has complied with section 25B(3) of the *Home Building Contracts Act 1991*); or
- where applicable, an exemption under the Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002 is appropriate in the circumstances. (If there is any uncertainty in this regard, the permit authority should seek appropriate advice).

Further information

For more information on home indemnity insurance including:

- what constitutes residential building work;
- owner-builder obligations; and
- exemptions;

refer to the Building Commission's [Home indemnity insurance fact sheet](#) (copy attached) available at www.dmirs.wa.gov.au/building-commission.

Disclaimer

The information contained in this bulletin is provided as general information only and should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.


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**Building
Commission**

HII CERTIFICATE OF INSURANCE (EXAMPLE)

The following is an example of what a valid HII certificate of insurance would look like. It should be noted that approved insurance providers began watermarking these certificates in 2016 as a security measure.

Residential Builders' Warranty Insurance Certificate of Insurance		QBE Insurance (Australia) Ltd 628 BOURKE STREET MELBOURNE VIC 3000 Phone: (03) 9246 2666 Fax: (03) 9246 2611 ABN: 78 003 191 035 AFS License No: 239545	
Policy Number 780069014BWI-2			
JOHN SMITH 1 HAY STREET PERTH 6000	Name of Intermediary AON RISK SERVICES PO BOX 7026 CLOISTERS SQUARE PERTH W A 6850	Account Number 78BWAON00 Date Issued 11/05/2017	
Policy Schedule Details			
Certificate in Respect of Insurance Residential Building Work by Builder A contract of insurance complying with the Home Building Contracts Act 1991 and Regulations has been issued by QBE Insurance (Australia) Limited ABN 78 003 191 035, in respect of Residential Building Work as described in the Schedule herein.			
In Respect of At Carried Out By	NEW SINGLE DWELLING CONSTRUCTION CONTRACT 1 ST GEORGES TERRACE PERTH WA 6000 BUILDER NOT REAL BUILDERS PTY LTD ABN: NOT KNOWN		
Declared Contract Price Contract Date Builders Registration No. Building Owner / Beneficiary	\$250,000.00 01/05/2017 U 12345 JOHN SMITH		
Subject to the Act and the Home Building Contracts Act 1991 and Regulations and the conditions of the insurance contract, cover will be provided to the Building Owner/Beneficiary named in the domestic building contract and to the successors in title to the Building Owner/Beneficiary or the immediate successor in title to the builder or developer who did the work and subsequent successors in title.			
For and behalf of QBE Insurance (Australia) Limited.			
IMPORTANT NOTICE: This Certificate must be read in conjunction with the Policy Wording and kept in a safe place. These documents are very important and must be retained by you and any successive owners of the property for the duration of the statutory period of cover.			



Home indemnity insurance

Residential building work contracts in Western Australia 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 take out home indemnity insurance in the name of the owner before accepting payment or commencing work.

What is home indemnity insurance?

Home indemnity insurance (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 in the 'Owner-builder requirements' section of this fact sheet.

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

Residential building work is defined in the law to mean:

- construction of a new dwelling;
- 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.

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 provide cover for 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.

Subject to the Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002, home indemnity insurance cover is not required for the following types of residential building work:

- multi-storey multi-unit developments, as defined by the regulations; or
- retirement villages that are intended to be leased.

Residential building work is required to be covered by HII, however it 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 protects subsequent owners, if the property is sold during construction or during the period of indemnity insurance.

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?

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.

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.

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

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 the insurers criteria. 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 on **1300 489 099**.

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) e.g. 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 or email bcinfo@dmirs.wa.gov.au.

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.

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: 1300 650 620
Consumer line: 1902 973 555 (calls charged at \$2.75 per minute, higher rates from mobiles or payphones)
Email: enquiry@hia.com.au
Website: www.hia.com.au

Master Builders Association (WA)

Level 4
35-37 Havelock Street
West Perth WA 6005
Telephone: (08) 9476 9800
Email: mba@mbawa.com
Website: www.mbawa.com



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