



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 against financial loss if a builder cannot complete residential building work or meet a valid claim for faulty or unsatisfactory building work because a 'relevant circumstance' exists in relation to the builder.

A relevant circumstance can occur if:

- the builder is an individual and the builder dies, disappears or becomes insolvent; or
- the builder is not an individual, such as a corporation, and the builder ceases to exist or becomes insolvent.

A 'relevant circumstance' can arise if the State Administrative Tribunal (SAT) cancels a building services contractor registration or the Building Services Board (BSB) does not renew such a registration. In this 'relevant circumstance', cancellation by the SAT or non-renewal by the BSB must have occurred because the builder failed to satisfy the financial requirements prescribed in regulations under the *Building Services (Registration) Act 1991 (WA)*.

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:

- where the work is valued at less than \$20,000;
- associated work performed alone under separate contracts, such as installation of a swimming pool, fence, pergola or landscaping; and
- non-structural work such as cabinet making, tiling and painting which does not require a building permit or is not required to be carried out by a registered builder.

Who is responsible for obtaining HII?

A builder carrying out residential building work is responsible for taking out HII on behalf of the owner 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.

If a 'relevant circumstance' exists in relation to the builder, the HII policy covers the completion of the residential building work at no additional cost to the owner:

- up to a limit of \$100,000; or
- the value of the contract work (if it is less than that amount).

If a 'relevant circumstance' exists, the \$100,000 payout limit also includes any potential claims for defective work made up to six years from the date of practical completion.

HII also covers the policy holder for loss of deposit up to the value of \$20,000.

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 Building and Energy or a building industry association for the name of insurers who provide HII.

Owners can obtain details of the insurance company 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 insurer's 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 Building and Energy 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 'relevant circumstance' exists. 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 principal place of residence but must obtain HII 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 Building and Energy 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 Building and Energy on **1300 489 099** for the cost of a local call from anywhere in the state or email **be.info@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.legislation.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
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**



Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It 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.

Building and Energy | Department of Mines, Industry Regulation and Safety
1300 489 099

8.30am – 4.30pm
Level 1 Mason Bird Building
303 Sevenoaks Street (entrance Grose Avenue)
Cannington Western Australia 6107
M: **Locked Bag 100, East Perth WA 6892**
W: **www.dmirs.wa.gov.au/building-and-energy**
E: **be.info@dmirs.wa.gov.au**

Regional Offices

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Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
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