

SIMPLE WORKS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



MASTER BUILDERS
AUSTRALIA

ABIC SW 2018 H SA

Information Statement for the Owner

**This document does not form part of the contract between the owner
and the contractor.**

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The Royal Australian Institute of Architects Ltd trading as Australian Institute of Architects and Master Builders Australia Ltd

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Information Statement for the Owner

1 Introduction

- .1 The Australian Institute of Architects and Master Builders Australia Ltd have jointly prepared this information statement to help the owner ("you") to understand your rights and responsibilities under the ABIC SW 2018 H SA building contract ("contract").
- .2 This information statement does not form part of the contract.
- .3 After reading this statement, if there is anything that you do not understand, you should ask your architect to explain the issues that concern you.
- .4 The contract is a lump sum building contract between you and the contractor that is administered by an architect or another person on your behalf.
- .5 The contract has been modified from the ABIC Simple Works 2018 base contract to comply with the *Building Work Contractors Act 1995* ("Act") and the *Building Work Contractors Regulations 2011* ("Regulations").
- .6 You should not use this contract unless you are using an architect or another person who is not the contractor to administer the contract.

2 Administration of the contract

- .1 The contract has been drafted for administration by an architect on your behalf. A person can only call themselves an architect where they are registered as an architect and have a registration number.
- .2 You can still use this contract where a person who is not an architect (a "non-architect") administers the contract instead of an architect, but you will not have the benefit of the skills for which an architect has attained registration. Also, you need to ensure that the non-architect:
 - a leaves **item 2 of schedule 1** blank and
 - b includes a special condition in **schedule 2a** stating that:

"Every reference to "architect" in the contract means {insert the name, address, telephone number and qualification of the non-architect} (non-architect). The non-architect is not qualified or registered as an architect."
- .3 If the non-architect does not alter the contract to make their status clear, the non-architect is potentially in breach of the *Architects Act 1939* and subject to penalty for holding themselves out to be an architect.

3 Contract documents

- .1 Under the Act, you must use a written building contract that complies with the Act for all domestic building work costing more than \$12,000, including:
 - a the construction of a new house
 - b renovations, alterations or additions, improvements or repairs to an existing house, townhouse, apartment or unit
 - c the construction of associated works such as a garage, carport, landscaping, paving, a driveway, fence, swimming pool or spa; or
 - d kitchen or bathroom refurbishment.
- .2 Your architect will prepare the contract for you and the contractor to sign.
- .3 The contract includes schedules that set out all the information about your building project. They include such things as the plans and specifications, any provisional and prime cost sums, site information and any items to be supplied by you.
- .4 Depending on the size and complexity of your project, additional schedules or other documents may be required. Your architect will advise you of the documents that are needed for your project.
- .5 You should examine the contract documents to ensure that they fully describe the work you wish to have built. If you have any questions or concerns, you should ask your architect to explain anything that you do not understand.

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- .6 The contract documents include the following documents:
 - a the contract, including the schedules
 - b special conditions to the contract, if applicable
 - c the specifications for the works
 - d the construction drawings for the works.
- .7 You and the contractor must sign the building contract and all contract documents **before** any building work starts.

4 Special conditions

- .1 Special conditions tailored to the particular circumstances of your project override, or add to, the standard printed terms or conditions of the contract. You and the contractor must first agree to the special conditions and insert them into the contract before signing it.
- .2 The contract already provides special conditions for where you continue to occupy your property while the building work is carried out. These special conditions are contained in **schedule 2b**. You and the contractor have to sign at **item 3** of **schedule 1** to include these conditions in the contract.
- .3 If you want to have additional special conditions in the contract, (e.g., the use of a non-architect, or a bill of quantities), you should have your lawyer draft the additional special conditions for inclusion in **schedule 2a**.

5 Deposit may be payable

- .1 If you and the contractor have agreed that you will pay the contractor a deposit before the contractor commences work, you should strike out 'No' in **item 30a** of **schedule 1**. If so, the dollar amount of the deposit (including GST) should be written into **item 30a** of **schedule 1**. If no amount is written in, no deposit will be payable. Note that the deposit amount is capped in many states and territory by the applicable domestic or residential building legislation.
- .2 Under ABIC SW H SA, the deposit is pre-payment towards the cost of the project. It is not a "security" deposit. Your architect will assess and where appropriate certify the deposit in your favour, in the certificate that is issued after practical completion. Your architect will decide and give you and the contractor a notice when practical completion has been reached.
- .3 The Regulations set out maximum limits on the amount of the deposit that can be paid to the contractor:
 - a if the **contract price* shown in **item 4** of **schedule 1** is \$20,000 or more: the deposit must not be more than 5% of the contract price, or
 - b if the **contract price* shown in **item 4** of **schedule 1** is less than \$20,000: the deposit must not be more than \$1,000.

6 Other documents you must read and sign

- .1 Attached at **schedules 9** and **10** are Forms 1 and 2 from the Act that you should read before you sign the contract.
- .2 Your architect can help you if you do not understand something.
- .3 **When you are signing the contract, use the checklist at part 19 of this statement to ensure that you sign everything that you must sign.**

7 Cooling-off period

- .1 The legislation concerning domestic building work provides you with the opportunity to withdraw from the contract within a period of **5 business days** after you and the contractor have both signed the contract and you have received your signed copy. This is known as a 'cooling off' period.

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- .2 If you are considering withdrawing from the contract you should first discuss your decision with your architect (and your lawyer).
- .3 To withdraw from the contract you must give to the contractor or deliver by certified mail to the contractor's address shown on the contract, a written notice stating your decision not to be bound by the contract.

8 Building approvals and permits

- .1 Under the contract you must arrange for and obtain all the statutory building approvals (permits) to enable commencement of your project, except those official documents set out in **item 29a of schedule 1**, which the contractor must obtain. Your architect will assist you in obtaining these. A building surveyor who is accredited by the relevant authority must provide the building approval. If you are to obtain this, your architect will engage a suitable building surveyor or assist you to engage one.
- .2 You must also obtain any easements from neighbours or other statutory authorities or service providers, if they are necessary. Again, your architect can assist you.
- .3 If **item 29b of schedule 1** sets out any approvals or other official documents you are required to obtain during construction, your architect can also assist you.

9 Mandatory inspections

- .1 During construction, the building surveyor inspects the building work to ensure that the work conforms to all statutory requirements. Generally, these inspections are undertaken at the footings, slab, frame and final stages of the work and a written certificate of approval will be provided. It is the contractor's responsibility to arrange for these inspections and provide your architect with a copy of the certificate of approval, after each inspection.
- .2 It is your architect's responsibility to work with the contractor to ensure that the building work is approved at each of these stages.
- .3 It is the contractor's responsibility to provide you with copies of all reports, notices or approvals that have been obtained relating to the work. These important documents will usually be given to your architect who will provide you with copies of each document on completion. In turn, if you receive official documents relating to the project, you should give them to your architect, who will give them to the contractor.

10 Insurance

- .1 Four different types of insurance are required for residential domestic building projects:
 - a **Public liability insurance** – provides coverage in respect of personal injury, death or property damage, which results from the work being undertaken. See part 16.7 for information on your public liability insurance risks after practical completion when your dwelling is handed over to you.
 - b **Contract works insurance** – provides coverage in respect of damage to the building works from causes such as fire, storm, flood, vandalism and theft. See part 16.7 for information on your property insurance risks after practical completion when your dwelling is handed over to you.
 - c **Worker's compensation insurance** – this insurance must be taken out by the contractor and protects the contractor against claims for injury to workers on the site.
 - d **Building indemnity insurance** – this is required by law for most residential contracts. It provides limited coverage in relation to defective building work and work not completed by the contractor. Your contractor must take out this insurance before commencing work. When you receive your certificate of insurance, you should check the terms and conditions.
- .2 Your entitlements under the warranty insurance may be affected by, among other things:
 - a termination of the contract under **clauses Q1 or Q2** of the contract
 - b claims on the policy not made within time limits set out in the policy

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- c engagement of alternative contractors under **clause M12** of the contract, either after termination, or to rectify defects.
- .3 You should seek advice from your architect and your lawyer before taking any action in relation to point 2, above.
- .4 The contract allows either the contractor or you to take out the public liability and contract works insurance that is required for the work. The insurance is necessary to protect both you and the contractor if loss occurs. You should obtain advice from an insurance broker or insurance company to ensure that the insurance arrangements are consistent with the contract requirements and appropriate for the project. Usually, the contractor arranges the insurance.
- .5 Alterations and additions, or renovations to an existing house are circumstances in which you may decide to take out the public liability insurance or extend existing cover. You should not do so without taking your broker or insurance company's advice that this is appropriate for the project, and that the insurance arrangements are consistent with the contract requirements. If not consistent with the contract requirements, not only may you not be adequately protected by it, but you will have breached the contract with the contractor.

11 Progress payments

- .1 The contract provides for monthly progress payments following a claim for payment by the contractor. The amount of each payment is the architect's assessment of the value of the work completed since the previous payment, determined by the value of the work completed as a proportion of the contract price. Your architect will issue a progress certificate to you and the contractor triggering your obligation to pay.
- .2 The contractor will then give you the certificate and a tax invoice. You must pay the contractor the amount on the certificate within the time stated in **item 10 of schedule 1** in the contract.
- .3 In unusual, but possible circumstances, the certificate may be in your favour, requiring the contractor to pay you.

12 Adjustments to the contract price

- .1 In **item 4 of schedule 1** to the contract, where the contract price is stated, there is a warning that the contract price may be varied due to a number of provisions in the contract. You must sign the contract at the bottom of this warning. These provisions are:
 - a **clause B2** – discrepancies in the contract documents – where a discrepancy or inconsistency is discovered in the contract documents and the resolution required is contrary to the 'order of precedence' in **schedule 3**
 - b **clause E5** – failure to insure – where you are going to provide the insurance for the works and you do not, the contractor will arrange the insurance and claim the cost from you (or vice versa)
 - c **clause F7** – for latent conditions or valuable items found – where the actual site conditions are different to the conditions described in the site information that you have given to the contractor.
 - d **clause G8** – for opening up and testing the work – where your architect instructs the contractor to open up the work or conduct tests on the work but no defective work is found
 - e **clause J1** – variations – where you instruct or agree to variations to the works
 - f **clause J8** – official document – where an authorised person (an official person) issues a notice instructing the contractor to do something and it is beyond your architect's or the contractor's control
 - g **clause K4** – provisional sums and prime cost sums – where the actual cost of an item or the work for which a provisional/prime cost sum has been allowed is greater than the amount allowed

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- h **clause L1** – adjustment of time with costs – where there is a delay which entitles the contractor to compensation for the delay
 - i **clause M7** – failure to issue the notice of practical completion on time – where your architect fails to issue the notice of practical completion on time and the contractor is entitled to compensation
 - j **clause M8** – possession before practical completion – if you occupy or take possession of the works before your architect issues the notice of practical completion and the contractor is entitled to compensation
 - k **clause N8** – failure to issue a certificate on time – where your architect fails to issue a progress payment certificate on time and the contractor is entitled to suspend work under **clause Q12** and claim compensation under **clause N9**
 - l **clause N15** – interest on overdue amounts – where you fail to pay a certificate within the required time
 - m **clause R10** – change in the relevant legislation – where there are changes to the project caused by changes to the law after the project begins.
- .2 You should discuss these provisions with your architect before you sign the contract to ensure that you understand each of them.
 - .3 Another way in which the eventual cost to you of the project may be different to the contract price is where liquidated damages are applied when the contractor does not finish the work by the date for practical completion, after taking account of any adjustments to the date (see **clause M9** and **item 24 of schedule 1**). **Item 24** sets out the rate (usually per day) at which liquidated damages will be paid to you in compensation for any delay in practical completion by the contractor when that delay is attributable to the contractor. The rate will have been set by you and agreed with the contractor before the contract is signed. **Clause M9** requires you to decide at the time of a delay occurring, whether you wish to apply liquidated damages against the contractor. If so, your architect will notify the contractor and when certifying payments you would make to the contractor, your architect offsets the rate against those payments according to the amount of the delay.

13 The site

- .1 Your contractor is entitled to take possession of the site for the building work for the purposes of carrying out the work, unless you remain in occupation and the contractor is instead granted access to the site.
- .2 The contractor must give you and your architect and any other authorised person reasonable access to the site while the work is being undertaken for the purposes of inspections and approvals. It is your responsibility not to impede the contractor's building activity. If you do, the contractor may be entitled to extra costs.

14 Dispute prevention

- .1 It is important for the successful completion of your project that differences or disputes between you and your contractor are avoided.
- .2 Your architect will endeavour to maintain good communications with you and the contractor throughout the progress of the works, usually including regular site meetings with the contractor to resolve construction issues as they arise and periodically checking on the quality of construction and general compliance with the contract documents.
- .3 Your architect will assess claims impartially as the law and the contract require.
- .4 Your architect will keep you informed of progress and assist with all other matters of concern to you, throughout the construction of your home.

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15 Resolving disputes

- .1 Contact your architect
If communication fails to resolve an issue and you still have concerns about any aspect of the building work during its progress until final completion, you should contact your architect immediately. Your architect will investigate and advise you. If the problem is the contractor's responsibility, your architect will write to the contractor requesting that the matter be rectified. The contractor will be given a reasonable amount of time to rectify the problem or offer another solution.
- .2 Further options under the contract
Your contract provides a number of options for dealing with disputes with the contractor. These include:
 - a dispute resolution – a process requiring the parties to the contract to first meet to try to resolve the dispute and, if this fails, to choose mediation or expert determination to help resolve the matter (**Section P**).
 - b termination of the contract – applicable where the contractor seriously breaches the contract or becomes insolvent. (This option should only be considered after taking legal advice.) (**Section Q**).
- .3 If a dispute arises between you and the contractor and you are considering any of the above options, you should seek assistance and advice from your architect, and possibly a lawyer. Your architect will advise you if the services of a lawyer are required
- .4 If the dispute is of a serious nature, your lawyer may also advise direct legal action. You should notify your architect immediately, if you are considering such a course of action.

16 Handover and completion of the works

- .1 When the contractor considers that the works are sufficiently complete and ready for you to occupy, the contractor will request the architect to carry out a handover inspection. The contractor will usually be keen to reach practical completion on time to avoid the reduction of payment your decision to impose liquidated damages provides (if you have provided for liquidated damages when you signed the contract). Your architect will inspect the works and prepare a list of defects and missing items and any other things needing to be completed or installed before the architect will be able to issue the notice of practical completion.
- .2 For practical completion, the contractor must also provide copies of the following documents:
 - a any certificate or notice required under relevant legislation
 - b final approval of the works by the relevant authority or authorised inspector
 - c any warranties and guarantees required under relevant legislation or in the contract documents.
- .3 When the works have been completed and are ready for you to occupy and the defects and other items on the list of things needing to be completed before occupation are finished, the architect will issue the notice of practical completion, stating the date of practical completion. There may be minor items which can reasonably be completed or rectified after practical completion, so these will not prevent the architect issuing the notice. The date of the notice may be a date which has already passed. The defects liability period commences on the date of practical completion and is further explained in the following section.
- .4 When the notice of practical completion is issued, you may take possession and occupy the project.
- .5 You should not take possession of the house before your architect has issued the notice of practical completion. If you do, the contract treats this as practical completion being reached, even if the work was not sufficiently complete or free of defects, and the contractor may also be entitled to be compensated for any inconvenience and disruption your occupation may have caused.

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- .6 Before you occupy your home you should consider insurance that would apply to an existing home in accordance with your broker or insurance company's advice:
- a Firstly, although the 'public liability' insurance covering the risks arising from construction activity continues through to final completion, it does not cover public liability risks associated with occupation and the ordinary activities of living in your home.
 - b Secondly, at practical completion of the works, the risk of the works sustaining damage from non-construction related causes passes to you, and it is important that you take out customary 'property insurance' against these risks, again in accordance with broker or insurance company's advice.
 - c Thirdly, although the contract requires the contract works insurance to continue until final completion, the purpose of the continuing contract works insurance is to cover consequential damage arising from a defect or incomplete work which remains unrectified or incomplete for some period during the defects liability period. The property insurance you hold will not ordinarily insure you for that consequential damage caused by defective or incomplete work, nor will the contract works insurance cover loss or damage that is not the consequence of defective or incomplete work, or else attributed to construction activity. Therefore, while the contractor is required to continue its contract works insurance until completion, this is not a substitute for you insuring your home for the risks not related to construction activity you are liable for after practical completion, including loss of your possessions.

17 After you move into your house

- .1 When your project is complete and your architect has issued the notice of practical completion, you will also be given copies of all the manufacturer's or installer's warranties that are required under the contract. Warranties for appliances vary, but all warranties should be carefully stored, as they are valuable documents.
- .2 The defects liability period is 12 months under this contract or as stated in **item 25 of schedule 1** of the contract. During the defects liability period, which begins on the date of practical completion, the contractor is required to return to the site to rectify any work that is found to be incomplete or defective and is the contractor's responsibility. However, from the time that you occupy, you are generally responsible for maintenance. Your architect will advise you of the things that you should pay particular attention to. Such things may include:
 - a Ensuring that the foundations and footings are not disturbed such that structural problems arise.
 - b Ensuring that other work that you may undertake after you move in is not detrimental or likely to cause damage.
- .3 If you become aware of a problem during the defects liability period, you should contact your architect promptly. The architect will investigate and, if it is the contractor's responsibility, arrange for the contractor to fix the problem. At the end of the defects liability period or when any defects found during that time which are the contractor's responsibility are rectified, the architect will assess the contractor's final claim and issue the final certificate. Depending on the circumstances, you may have to pay or may be entitled to payment.

18 Conclusion

- .1 If you have any questions that have not been answered in this information statement or if you do not understand something in the statement or the contract, you should ask your architect to assist you to understand the issues or answer your questions.

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19 Checklist

What to do and sign	Where
.1 Have you read the Form 1 Notice – <i>Your building contract rights and obligations</i> in the contract?	schedule 9 page 19
.2 Have you received a completed Form 2 – <i>Building Indemnity Insurance certificate</i> from the contractor?	schedule 10 page 23
.3 If you have financed the project using a lending institution, have you provided details of the institution?	item 1 of schedule 1 page 4
.4 Have you agreed to give the contractor a deposit? If so, is the amount in item 30a of schedule 1 not more than the applicable limit?	item 30a of schedule 1 page 9
.5 Are there any special conditions? If yes, you must strike out the word ‘no’ and include the special conditions in schedule 2a .	item 3 of schedule 1 page 4 schedule 2a page 10
.4 Are you a resident owner staying in occupation during the works? If yes, you (or your architect) must strike out the word ‘no’ before you sign in the place shown in item 3 of schedule 1 ?	item 3 of schedule 1 page 4 schedule 2b page 11
.5 Have you and the contractor initialed the bottom of each page of the contract, including the schedules?	Yes No
.6 Have you read this Information Statement and initialed each page?	Yes No
.7 Has your architect answered all of your questions satisfactorily?	Yes No
.8 You are now ready to sign the contract.	item 1 of schedule 1 page 3
