



# A guide on price increases to home building work contracts

***This information relates to home building work contracts that fall within the scope of the Home Building Contracts Act 1991 (the Act) – that is, contracts for home building work valued between \$7,500 and \$500,000.***

The Act sets out the minimum contract terms and provides circumstances when a builder may apply a price increase to a contract.

If the home building work contract value does not fall within the Act, owners will need to review the particular clauses of their contract and seek independent legal advice if required.

## **In what situations can a builder pass on an increase in labour and material costs once a fixed price contract has been entered into?**

Once a fixed price contract has been entered into, a builder cannot increase the contract without the owner's prior consent, **except in the limited circumstances set out in the Act.**

Such circumstances include, but are not limited to, a delay in the commencement of home building work beyond 45 working days after the date of the contract, being a delay:

- that is caused solely by the failure of the owner to comply with a condition imposed under the contract – including the satisfactory production of evidence of the owner's ability to pay the contract price (finance approval) or the owner's title to the land; or
- that occurs without any failure on the part of either the owner or the builder, such as a natural disaster.

A delay in obtaining a building permit within 45 working days of signing the contract, which is not the fault of the builder, will also entitle the builder to seek a price increase to cover any additional costs incurred.



## **What are my options if I am unable to pay the increased cost that has been requested by my builder?**

If the builder increases the price in response to the above, and the amount of the increase exceeds 5 per cent of the price stipulated in the contract, the owner has a right to terminate the contract.

However, the owner may be liable to compensate the builder for the reasonable costs incurred by the builder up to the date of the termination.

## **My builder has informed me that the building work is unlikely to be completed within the timeframe specified in the contract. What should I do?**

The Act does not prescribe a timeframe for completion of building work. Timeframes are generally agreed at the time of entering into contracts and are specified in the building contract. In addition, most contracts will include specific clauses dealing with delays.

If the building work is not completed within the time specified in the contract and the parties are unable to reach an acceptable arrangement, home owners may be able to lodge a home building work contract (HBWC) complaint with Building and Energy.

## What can I do if I believe a price increase is excessive or unjustified?

Home owners should speak to their builder in the first instance and discuss their concerns. Owners should ask their builders to confirm the clause of their contract or the section of the Act under which they are claiming a price increase and, if relevant, who they believe has caused the delay.

If an owner considers that the amount of a price increase that has been imposed – due to delays in commencement or building approvals not being granted within 45 working days – is excessive or unjustified and is not able to satisfactorily resolve the issue with the builder, they can lodge a HBWC complaint with Building and Energy within three years of the contract being entered into or the cause of the action arising.

If an owner makes a complaint, their builder will be required to show Building and Energy that the price has been increased to reflect actual increases in costs incurred.

If a finding is made that the price increase was unjustified or excessive, an order may be issued varying or disallowing the price increase.

## My builder has informed me I only have 10 working days to lodge a complaint with Building and Energy. Why is this different to the normal three years?

Under the Act, a builder is required to submit a written variation to an owner and seek their consent prior to proceeding with the variation.

However, if the builder claims the variation is due to circumstances that could not reasonably have been foreseen by the builder at the time when the contract was entered into, the builder is not required to seek the prior consent of the home owner.

### Such circumstances cannot include increases to the costs of labour, materials or both.

The builder is also required to give the home owner a written statement setting out the reason for the variation and the cost to be incurred within 10 working days of becoming aware of the circumstances regarding the increase.\*

If the home owner wishes to dispute the variation, under the Act the home owner has 10 working days to lodge a HBWC complaint with Building and Energy.

The requirement to lodge a complaint within 10 working days overrides the ability for home owners to lodge a HBWC complaint within the usual three years of the cause for the dispute.

If a builder is claiming a variation due price increases that were not foreseeable at the time the contract was entered into, Building and Energy recommends that home owners inform the builder of their dissatisfaction immediately upon being notified in writing of the variation at the same time as they lodge a HBWC complaint.

*\*This requirement does not include variations due to the 45 working days for building approvals and delays by the owner as discussed previously.*

## What can I do if I agreed to a price increase before I understood my rights under the Act?

If a home owner agreed to a price increase due to increased costs of labour, materials or both which they now believe was unjustified or excessive they may still lodge a HBWC complaint with Building and Energy.

Further information on home owners' rights under the Act and how to lodge a HBWC complaint is available at the Building and Energy website ([www.commerce.wa.gov.au/building-and-energy/building-service-and-home-building-work-contract-complaints](http://www.commerce.wa.gov.au/building-and-energy/building-service-and-home-building-work-contract-complaints)) or by calling Building and Energy on 1300 489 099.

**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.

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