

South Australia

Building Work Contractors Regulations 2011

under the *Building Work Contractors Act 1995*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Building Work Contractors Regulations 2011*.

3—Interpretation

- (1) In these regulations—

Act means the *Building Work Contractors Act 1995*.

- (2) For the purposes of these regulations, a reference to a **qualification, course or subject conferred or offered** by a particular institution includes a reference to a qualification, course or subject of a different name conferred or offered by that institution and certified by that institution to be an equivalent qualification, course or subject.

4—Definitions of building work etc (section 3 of Act)

- (1) For the purposes of paragraph (c) of the definition of **building work** in section 3(1) of the Act, the following is **building work**:
- (a) the on-site construction, alteration, repair or improvement of a swimming pool or spa;
 - (b) paving;
 - (c) fencing (excluding post and wire fencing);
 - (d) the installation, maintenance, repair and removal of insulation;
 - (e) painting a building or part of a building;
 - (f) the installation of air-conditioning in relation to a building;
 - (g) the installation of solar panels in relation to a building;
 - (h) plumbing, gas fitting and electrical work within the meaning and application of the *Plumbers, Gas Fitters and Electricians Act 1995*.
- (2) For the purposes of paragraph (c) of the definition of **domestic building work** in section 3(1) of the Act, the following is **domestic building work**:
- (a) the construction, alteration, repair or improvement of a swimming pool or spa within the external walls of a house, within the curtilage of a house or on the boundary of the curtilage of a house;
 - (b) any other building work carried out within the curtilage of a house or on the boundary of the curtilage of a house;
 - (c) the installation, maintenance, repair and removal of insulation;

- (d) painting a house or part of a house;
 - (e) the installation of air-conditioning in relation to a house;
 - (f) the installation of solar panels in relation to a house;
 - (g) plumbing, gas fitting and electrical work within the meaning and application of the *Plumbers, Gas Fitters and Electricians Act 1995* in relation to a house.
- (3) For the purposes of the definition of **house** in section 3(1) of the Act—
- (a) in relation to the period before 1 June 1996, **house** does not include a building not included within the meaning of that term under the repealed *Builders Licensing Act 1986* or regulations made under that Act;
 - (b) in relation to any period commencing on or after 1 June 1996, **house** does not include hotels, motels, youth hostels, residential camps, boarding or lodging houses, university halls of residence, boarding school dormitories, barracks, nurses homes or residential facilities for workers or for training purposes.
- (4) For the purposes of paragraph (a) of the definition of **minor domestic building work** in section 3(1) of the Act, the prescribed sum is—
- (a) in respect of a domestic building work contract made before 15 October 2001—\$5 000;
 - (b) in respect of a domestic building work contract made on or after 15 October 2001—\$12 000.
- (5) For the purposes of paragraph (b) of the definition of **minor domestic building work** in section 3(1) of the Act, the prescribed sum is \$12 000.

5—Exemptions

- (1) A person who is authorised by licence under the *Plumbers, Gas Fitters and Electricians Act 1995* to carry on business as a gas fitting contractor or an electrical contractor is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited to work authorised by the person's licence under the *Plumbers, Gas Fitters and Electricians Act 1995*.
- (2) A person who is authorised by licence under the *Plumbers, Gas Fitters and Electricians Act 1995* to carry on business as a plumbing contractor is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited—
- (a) to work authorised by the person's licence under the *Plumbers, Gas Fitters and Electricians Act 1995*; or
 - (b) if the person's licence under the *Plumbers, Gas Fitters and Electricians Act 1995* is not subject to conditions limiting the work that may be performed under the authority of the licence—to minor roof plumbing work.
- (3) A person who is authorised by licence under the *Controlled Substances (Pesticides) Regulations 2003* to carry on business as a pest controller is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited to work authorised by the person's licence under the *Controlled Substances (Pesticides) Regulations 2003*.

- (4) A person who is authorised by a security agents licence or a restricted security agents licence to install or maintain security alarm or surveillance systems under the *Security and Investigation Agents Act 1995* is exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor subject to the condition that any building work performed by the person is limited to work authorised by the person's licence under the *Security and Investigation Agents Act 1995*.
- (5) The following are exempt from the requirement to be licensed under Part 2 of the Act as a building work contractor:
 - (a) the Minister responsible for the administration of the *South Australian Housing Trust Act 1995*;
 - (b) South Australian Housing Trust.
- (6) The South Australian Housing Trust and the Minister responsible for the administration of the *South Australian Housing Trust Act 1995* are exempt from the application of Part 5 Division 3 of the Act.
- (7) Registered architects are exempt from the application of section 18 of the Act.
- (8) A building work contractor is exempt from the application of Part 5 Divisions 1, 3 and 4 of the Act in relation to a contract for the performance of domestic building work consisting solely of demolition work.
- (9) A building work contractor is exempt from the application of Part 5 Division 3 of the Act in relation to—
 - (a) a contract for the construction of a multi-storey residential building in respect of the performance of domestic building work for the construction of that building;
 - (b) a contract for the performance of domestic building work if the work is performed by a building work contractor as a contractor for the South Australian Housing Trust.
- (10) A building work contractor is exempt from the application of sections 28, 29 and 30 and Part 5 Division 4 of the Act in relation to a contract for the performance of domestic building work if—
 - (a) the work is performed by a building work contractor as a contractor for the South Australian Housing Trust or the Minister responsible for the administration of the *South Australian Housing Trust Act 1995*; or
 - (b) the building owner is a body corporate that is a public company within the meaning of the *Corporations Act 2001* of the Commonwealth or that is a subsidiary within the meaning of the *Corporations Act 2001* of the Commonwealth of such a public company.
- (11) The Act does not apply to the installation, maintenance, repair or removal of a floating floor under a contract entered into on or after 1 April 2010.
- (12) The Act does not apply to the installation, maintenance, repair or removal of carpet or of vinyl floor covering in circumstances in which it is not used for water proofing.
- (13) In this regulation—

floating floor means a floor covering comprised of boards designed to be laid over a floor without being fixed to the floor;

minor roof plumbing work means building work connected with the installation, renovation, replacement, alteration, repair or maintenance of flashings, guttering, downpipes, roof flashings or roof coverings on a building, where the cost of the work is less than \$3 000;

multi-storey residential building means a building that—

- (a) has a rise in storeys of more than 3; and
- (b) contains 2 or more separate dwellings;

storey means a space within a building situated between 1 floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—

- (a) a space that contains only—
 - (i) a lift shaft, stairway or meter room; or
 - (ii) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
 - (iii) accommodation intended only for vehicles; or
 - (iv) a combination of any of the facilities referred to in 1 or more of the above subparagraphs; or
- (b) a mezzanine.

(14) For the purposes of subregulation (13)—

- (a) the cost of roof plumbing work is to be determined as if—
 - (i) the work were performed under a contract between the plumbing contractor and another person; and
 - (ii) the contract included the supply by the plumbing contractor of all materials necessary for the work; and
- (b) if a plumbing contractor and a person make an arrangement under which roof plumbing work at a site is to be performed in stages by the contractor, the cost of the roof plumbing work will be the sum of the cost of the work performed at each stage.

6—Fees

- (1) The fees fixed by Schedule 1 are payable to the Commissioner for the purposes set out in that Schedule.
- (2) The Commissioner may waive, reduce or refund a fee (or part of a fee) payable under these regulations if satisfied that it is appropriate to do so in a particular case.

Part 2—Licensed building work contractors

7—Entitlement to be licensed as building work contractor—qualifications (section 9 of Act)

- (1) For the purposes of section 9(1) of the Act, to be entitled to be granted a building work contractors licence authorising—
 - (a) plumbing; or

- (b) gas fitting; or
- (c) electrical work,

(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*), a natural person must have the same qualifications or experience, or qualifications and experience, as would be required for the person to be granted a licence under the *Plumbers, Gas Fitters and Electricians Act 1995* for the kind of work that would be authorised by the building work contractors licence.

- (2) For the purposes of section 9(1) of the Act, to be entitled to be granted a building work contractors licence authorising work other than work of a kind referred to in subregulation (1), a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in Schedule 2 Part 1 to the satisfaction of the Commissioner in relation to that kind of work.
- (3) The kinds of work in relation to which qualifications or experience, or qualifications and experience, are to be determined by the Commissioner under subregulation (2) are to be as set out in Schedule 2 Part 3.
- (4) If the kind of work to be authorised by the licence is—
 - (a) —
 - (i) plumbing; or
 - (ii) gas fitting; or
 - (iii) electrical work,(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*); and
 - (b) in addition, other building work,

the person must have qualifications or experience, or qualifications and experience, such that the person meets the requirements of subregulations (1) and (2).

8—Annual fee and return (section 11 of Act)

- (1) For the purposes of section 11(2) of the Act, a licensed building work contractor must pay the fee and lodge the return on or before—
 - (a) the last day of the month in each year nominated in writing to the contractor by the Commissioner; or
 - (b) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the contractor's licence was granted.

9—Notification of change in circumstances

- (1) If there is any change in—
 - (a) the residential address of a licensed building work contractor; or
 - (b) the business or trading name under which a licensed building work contractor carries on business; or
 - (c) the address at which a licensed building work contractor carries on business; or

- (d) the address of the registered corporate office of a licensed building work contractor that is a body corporate,

the contractor must, within 14 days after that change, give written notice to the Commissioner of the new address or name (as the case may be).

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (2) A licensed building work contractor must, within 14 days after ceasing to carry on business as a building work contractor, give written notice to the Commissioner of that fact.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (3) If a person is appointed as a director of a body corporate that is a licensed building work contractor, the contractor must, within 14 days after the appointment—

- (a) notify the Commissioner in the manner and form approved by the Commissioner of the appointment of the new director; and
- (b) provide the Commissioner with any information required by the Commissioner for the purposes of determining whether the new director meets the requirements for directors under section 9(2) of the Act.

Maximum penalty: \$2 500.

Expiation fee: \$160.

10—Return etc of licence

- (1) If a building work contractor's licence is surrendered, suspended or cancelled, the contractor must, at the direction of the District Court or the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (2) If, on an application under section 8 of the Act, a licence has been issued to a building work contractor but the fee payable in respect of the application has not been paid (whether because of the dishonouring of a cheque or otherwise), the contractor must, at the direction of the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (3) The Commissioner may issue to a licensed building work contractor a licence in replacement of a current licence if satisfied that—

- (a) the current licence has been lost, destroyed or damaged; or
- (b) any photograph of the contractor on the current licence should be replaced with a more recent photograph of the contractor; or
- (c) any particulars appearing on the current licence are incorrect.

- (4) If the Commissioner issues to a licensed building work contractor a replacement licence, the contractor must, at the direction of the Commissioner, return the original (or previous duplicate) licence to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

Part 3—Registered building work supervisors

10A—Certain people registered under other Acts taken to be registered

The building work supervisors registration of a person who is, under section 14(b) of the Act, taken to hold that registration for the purposes of Part 3 of the Act is limited to the supervision of the type of work for which the person is registered (without a condition requiring supervision or technical direction) under Part 3 of the *Plumbers, Gas Fitters and Electricians Act 1995*.

11—Entitlement to be registered as building work supervisor—qualifications (section 16 of Act)

- (1) For the purposes of section 16 of the Act, to be entitled to be granted registration as a building work supervisor authorising the supervision of—
- (a) plumbing; or
 - (b) gas fitting; or
 - (c) electrical work,

(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*), a natural person must have the same qualifications or experience, or qualifications and experience, as would be required for the person to be granted registration under the *Plumbers, Gas Fitters and Electricians Act 1995* for the kind of work that the building work supervisor's registration would authorise the person to supervise.

- (2) For the purposes of section 16 of the Act, to be entitled to be granted registration as a building work supervisor authorising the supervision of work other than work of a kind referred to in subregulation (1), a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in Schedule 2 Part 2 to the satisfaction of the Commissioner in relation to that kind of work.
- (3) The kinds of work in relation to which qualifications or experience, or qualifications and experience, are to be determined by the Commissioner under subregulation (2) are set out in Schedule 2 Part 3.
- (4) If the kind of work that the registration would authorise the person to supervise is—
- (a) —
 - (i) plumbing; or
 - (ii) gas fitting; or
 - (iii) electrical work,(as defined in the *Plumbers, Gas Fitters and Electricians Act 1995*); and
 - (b) in addition, other building work,

the person must have qualifications or experience, or qualifications and experience, such that the person meets the requirements of subregulations (1) and (2).

12—Annual fee and return (section 18 of Act)

- (1) For the purposes of section 18(2) of the Act, a registered building work supervisor must pay the fee and lodge the return on or before—
 - (a) the last day of the month in each year nominated in writing to the building work supervisor by the Commissioner; or
 - (b) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the building work supervisor's registration was granted.
- (2) However, a registered building work supervisor who is also a licensed building work contractor—
 - (a) must, instead of lodging the return as required by subregulation (1), lodge the return at the same time that he or she lodges a return under regulation 8; and
 - (b) is, on payment of a fee under regulation 8, exempt from paying the fee referred to in subregulation (1).

13—Notification of changes in circumstances

If there is any change in the name or residential address of a registered building work supervisor, the building work supervisor must, within 14 days after that change, give written notice to the Commissioner of the new name or address (as the case requires).

Maximum penalty: \$1 250.

Expiation fee: \$80.

14—Return etc of certificate of registration

- (1) If registration of a person as a building work supervisor is surrendered, suspended or cancelled, the building work supervisor must, at the direction of the District Court or the Commissioner, return the certificate of registration to the Commissioner.

Maximum penalty: \$1 250.
Expiation fee: \$80.
- (2) If, on an application under section 15 of the Act, a certificate of registration has been issued to a building work supervisor but the fee payable in respect of the application has not been paid (whether because of the dishonouring of a cheque or otherwise), the building work supervisor must, at the direction of the Commissioner, return the certificate of registration to the Commissioner.

Maximum penalty: \$2 500.
Expiation fee: \$160.
- (3) The Commissioner may issue to a registered building work supervisor a certificate of registration in replacement of a current certificate of registration if satisfied that—
 - (a) the current certificate has been lost, destroyed or damaged; or
 - (b) any photograph of the building work supervisor on the current certificate should be replaced with a more recent photograph of the building work supervisor; or

- (c) any particulars appearing on the current certificate are incorrect.
- (4) If the Commissioner issues to a registered building work supervisor a replacement certificate of registration, the building work supervisor must, at the direction of the Commissioner, return the original (or previous duplicate) certificate to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

Part 4—Requirements relating to domestic building work contracts

14A—Requirements for domestic building work contracts that contain a charging clause

- (1) For the purposes of section 28(1)(d) of the Act, a domestic building work contract that contains a charging clause must include the following information:
 - (a) that the clause seeks to establish an interest in the property to which the contract relates for which a right to lodge a caveat over the property will exist;
 - (b) that, in the event that a caveat is lodged over the property, the rights of the owner of the property to deal with the property and have such dealings registered in the Lands Titles Office will be restricted;
 - (c) that the interest in the property created by the clause entitles the building work contractor to apply to a court for the sale of the property for the purposes of recovering any debt that may be outstanding in relation to the contract;
 - (d) that the person entering into the contract is advised to seek independent legal advice in relation to the clause.

- (2) In this regulation—

charging clause means a clause in a domestic building work contract that gives the building work contractor the party to the contract a legal right to lodge a caveat over the property on which the building work contractor is performing work under the contract.

15—Forms

- (1) The forms in Schedule 3 are prescribed for use for the purposes indicated in the form.
- (2) A form must—
 - (a) contain information and be completed as required or indicated by the form; and
 - (b) not contain any particulars or statements other than those required or indicated by the Act or these regulations; and
 - (c) be printed or typewritten in a type that is not smaller than 10 point Times New Roman font; and

- (d) not include any printing or handwriting (other than a signature) that is not clear and legible.

16—Unliquidated amounts under contracts (section 29(5) of Act)

- (1) For the purposes of section 29(5)(a) of the Act, 15% is prescribed.
- (2) For the purposes of section 29(5)(b) of the Act, a domestic building contract may include a provision entitling the building work contractor to recover, if the contract specifies an hourly rate of charge, the amount determined by applying the rate to the work actually performed.

17—Authorised payments (section 30(1)(b) of Act)

For the purposes of section 30(1)(b) of the Act, the following payments are authorised:

- (a) payments to a third party for engineering, drawing, surveying or other professional services;
- (b) payments to reimburse the cost of building indemnity insurance or the amount of any fee required to be paid under an Act in respect of the work performed or to be performed under the contract;
- (c) in the case of a domestic work building contract made before 1 September 2011—a payment as a deposit of not more than \$1 000;
- (d) in the case of a domestic building work contract made on or after 1 September 2011—
 - (i) if the price stipulated in the contract for the performance of the building work is less than \$20 000—a payment as a deposit of not more than \$1 000;
 - (ii) if the price stipulated in the contract for the performance of the building work is \$20 000 or more—a payment as a deposit of not more than 5% of the price.

18—Limitations on insurers' liability (section 35 of Act)

- (1) The following are the only permissible limitations on the liability of the insurer under a policy of insurance under Part 5 Division 3 of the Act:
 - (a) a limitation under which the insurer is not liable for the first \$400 (or some stipulated lesser amount) of each claim;
 - (b) a limitation under which the total amount that the insurer is liable to pay in relation to building work or the non-completion of building work by the building work contractor in respect of a single dwelling is fixed at not less than \$80 000.
- (2) A policy of insurance under Part 5 Division 3 of the Act—
 - (a) must contain a clause allowing a claimant at least 90 days (from the date on which the claimant becomes aware of the grounds for the claim) in which to make the claim; and

- (b) must not confer any right on the insurer to avoid liability on the ground of misrepresentation or non-disclosure on the part of the building work contractor or on any similar ground.

Schedule 1—Fees

1	Application fee for licence (section 8(1)(b) of the Act)	\$205.00
2	Licence fee—payable before the granting of a licence under Part 2 of the Act—	
	(a) for a natural person for the following kinds of building work (as described in Schedule 2 Part 3):	
	(i) any building work	\$440.00
	(ii) light commercial/industrial and residential building work	\$440.00
	(iii) residential building work	\$440.00
	(iv) other specified building work	\$227.00
	(b) for a body corporate for the following kinds of building work (as described in Schedule 2 Part 3):	
	(i) any building work	\$970.00
	(ii) light commercial/industrial and residential building work	\$970.00
	(iii) residential building work	\$970.00
	(iv) other specified building work	\$500.00

If the period between the grant of the licence and the next date for payment of a fee under section 11 of the Act is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the additional fee by applying the proportion that the length of that period bears to 12 months.

3	Periodic fee for licence (section 11(2)(a) of the Act)—	
	(a) for a natural person for the following kinds of building work (as described in Schedule 2 Part 3):	
	(i) any building work	\$440.00
	(ii) light commercial/industrial and residential building work	\$440.00
	(iii) residential building work	\$440.00
	(iv) other specified building work	\$227.00
	(b) for a body corporate for the following kinds of building work (as described in Schedule 2 Part 3):	
	(i) any building work	\$970.00
	(ii) light commercial/industrial and residential building work	\$970.00
	(iii) residential building work	\$970.00
	(iv) other specified building work	\$500.00

If the period between a date for payment of a fee under section 11 of the Act and the next date for payment of the fee under that section (as nominated by the Commissioner) is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the fee by applying the proportion that the length of that period bears to 12 months.

5	Application fee to impose, vary or revoke a licence condition (section 7(2) of the Act)	\$159.00
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6	Application fee for registration (section 15(1)(b) of the Act)	\$205.00
7	Registration fee—payable before registration under Part 3 of the Act	\$196.00
	If the period between the grant of the registration and the next date for payment of a fee under section 18 of the Act is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the additional fee by applying the proportion that the length of that period bears to 12 months.	
8	Periodic fee for registration (section 18(2)(a) of the Act)	\$196.00
	If the period between a date for payment of a fee under section 18 of the Act and the next date for payment of the fee under that section (as nominated by the Commissioner) is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the fee by applying the proportion that the length of that period bears to 12 months.	
10	Application fee to impose, vary or revoke a condition of registration (section 13(2) of the Act)	\$159.00
11	Application fee for approval as a building work supervisor in relation to a building work contractor's business (section 19(3)(b) of the Act)	\$123.00
12	Application fee for exemption (section 45(1) of the Act)	\$104.00
13	Fee for replacement of licence or certificate of registration	\$27.00

Schedule 2—Performance criteria and kinds of work

Part 1—Building work contractors licences performance criteria

1—Building work contractors licences performance criteria

Regulation 7(2) provides that for the purposes of section 9(1) of the Act, to be entitled to be granted a building work contractors licence, a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in the table below to the satisfaction of the Commissioner in relation to the kind of work to be authorised by the licence.

UNIT

1 Business Management

Applying the principles of business management in relation to a contracting business.

	ELEMENT	PERFORMANCE CRITERIA
1.1	Applying the principles of economics, finance and management of a business organisation.	1.1.1 Prepare and apply a business plan. 1.1.2 Prepare a cash flow budget. 1.1.3 Implement financial strategies. 1.1.4 Apply basic accounting principles to financial transactions.

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Schedule 2—Performance criteria and kinds of work

		1.1.5 Understand and prepare— (a) journals and ledgers; (b) balance sheets and revenue statements.
		1.1.6 Assess earning capacity and financial stability.
		1.1.7 Prepare income and expenditure projections.
		1.1.8 Identify and use sources of costing information.
		1.1.9 Monitor financial performance.
1.2	Applying appropriate legislation to address the administrative and legal requirements of a business organisation.	1.2.1 Understand the legal structures of a business.
		1.2.2 Understand the significant features of the law relating to employment, dispute resolution procedures and professional liability.
		1.2.3 Demonstrate a working knowledge of the law relating to occupational health and safety and workers compensation.
		1.2.4 Demonstrate a working knowledge of the law relating to conservation of the environment.
		1.2.5 Demonstrate a knowledge of the law relating to independent contractors.
		1.2.6 Understand recording and maintenance of wage and employment records.
		1.2.7 Demonstrate a working knowledge of mandatory taxes and insurances.
		1.2.8 Understand basic contract administration.
		1.2.9 Understand accident, injury and dangerous occurrence reports and obligations.
1.3	Planning, directing and controlling tasks, people and resources in a business organisation.	1.3.1 Determine and implement objectives and priorities of a business.
		1.3.2 Determine and implement operational strategies and methods.
		1.3.3 Prepare estimates of time, resource and cost implications.
		1.3.4 Implement work strategies.
		1.3.5 Organise work groups for specific tasks.
		1.3.6 Monitor operational performance.
		1.3.7 Apply occupational health and safety standards within a business.
		1.3.8 Apply mechanisms for effective employer/employee relationships.
1.4	Addressing customer requirements.	1.4.1 Identify customer requirements.

1.4.2 Apply principles of business management to meet customer needs.

UNIT

2 Building Work Management

Applying the principles of building work to the operation of a contracting business.

ELEMENT	PERFORMANCE CRITERIA
2.1 Applying the law relating to building work practice.	2.1.1 Demonstrate a working knowledge of contract law relevant to the building industry.
	2.1.2 Understand the issues involved in the licensing and registration of builders.
	2.1.3 Apply the statutory requirements for the regulation of building work.
	2.1.4 Demonstrate a knowledge of the application of Australian Standards relating to building work.
	2.1.5 Interpret building specifications requirements.
2.2 Preparing and evaluating tenders.	2.2.1 Estimate costs.
	2.2.2 Evaluate risks.
	2.2.3 Prepare tender documentation.
2.3 Determining required strategies, resources and operational requirements for construction.	2.3.1 Determine resources that need to be hired, leased or purchased.
	2.3.2 Determine the best course of action from various options for obtaining and using resources.
	2.3.3 Determine the requirements for temporary structures and facilities.
	2.3.4 Prepare schedules for building work.
	2.3.5 Update progress schedules.
	2.3.6 Assess the need for and select measures to overcome delays.
2.4 Establishing and operating costing systems.	2.4.1 Identify and classify costs.
	2.4.2 Prepare a cost control system.
	2.4.3 Prepare a project budget.
	2.4.4 Plan the sequencing of trades.
2.5 Applying Contract Management.	2.5.1 Select and apply the various standard forms of building contract in common use.
	2.5.2 Determine the requirements of the contract.
	2.5.3 Demonstrate a knowledge of progress payments, contract claims and variations.

Part 2—Building work supervisors registration performance criteria

2—Building work supervisors registration performance criteria

Regulation 11(2) provides that for the purposes of section 16 of the Act, to be entitled to be granted registration as a building work supervisor, a natural person must have qualifications or experience, or qualifications and experience, such that the person meets the performance criteria set out in the table below to the satisfaction of the Commissioner in relation to the kind of work that the registration would authorise the person to supervise.

		UNIT
1	Building Work Management	
Applying the principles of building work management in relation to the supervision of a building site.		
ELEMENT		PERFORMANCE CRITERIA
1.1	Planning and organising on-site building work.	1.1.1 Translate building designs and specifications into operational requirements. 1.1.2 Develop strategies for implementing building operations. 1.1.3 Determine appropriate resources required including personnel, materials and equipment.
1.2	Determining the need for coordination and installation of temporary structures and facilities for building work.	1.2.1 Determine the requirements for temporary structures and facilities. 1.2.2 Demonstrate a working knowledge of the most appropriate methods for provision of site facilities and preparation of detailed site layouts. 1.2.3 Coordinate the on-site approvals of temporary structures. 1.2.4 Arrange for and supervise the supply, erection, maintenance and removal of temporary structures and facilities.
1.3	Preparing project schedules.	1.3.1 Prepare schedules for building work. 1.3.2 Update schedules. 1.3.3 Prepare reports on current status. 1.3.4 Assess the need for and select measures to overcome delays.
1.4	Managing on-site building work.	1.4.1 Supervise on-site operations. 1.4.2 Administer subcontracts. 1.4.3 Administer progress claims. 1.4.4 Organise the supply and installation of materials and equipment.

- 1.4.5 Manage appropriate operational systems including occupational health and safety, accident and injury reporting, and industrial relations.
- 1.4.6 Plan, develop and oversee safe working systems for all site work.
- 1.4.7 Communicate effectively with personnel on and off the site.

UNIT

2 Building Technology

Applying the principles of building technology to on-site building work.

ELEMENT	PERFORMANCE CRITERIA
2.1 Applying the principles of building work practice.	<p>2.1.1 Select and apply building principles and methods including—</p> <ul style="list-style-type: none"> (a) appraisal of site conditions; (b) erection and construction techniques; (c) sequencing of trades; (d) control of plant and equipment. <p>2.1.2 Demonstrate a working knowledge of—</p> <ul style="list-style-type: none"> (a) the use of basic measuring techniques; (b) the setting up and use of instruments to determine heights and levels; (c) demolition methods; (d) formwork design. <p>2.1.3 Interpret plans and specifications.</p> <p>2.1.4 Produce simple working drawings suitable for on-site application.</p> <p>2.1.5 Identify and select suitable materials.</p> <p>2.1.6 Control the movement of materials on-site and their safe handling and storage.</p> <p>2.1.7 Apply a basic understanding of—</p> <ul style="list-style-type: none"> (a) properties and behaviours of structural materials; (b) sectional properties of structural elements; (c) structural load calculations; (d) performance of beams, columns and bracing; (e) utilisation of roof truss systems.

- 2.1.8 Apply the basic principles of estimating and demonstrate a working knowledge of take-off quantities for—
- (a) site works;
 - (b) structure;
 - (c) fit-out and finish.
- 2.1.9 Demonstrate a general knowledge of the process of the coordination of specialist services on-site.

UNIT

3 Legislative requirements

Applying a detailed knowledge of legislative requirements in respect of on-site building work.

ELEMENT	PERFORMANCE CRITERIA
3.1 Applying the requirements of legislation, standards and codes relevant to on-site building work.	<p>3.1.1 Identify the range of legislation applying to building work.</p> <p>3.1.2 Apply the requirements of legislation and relevant standards and codes to the coordination and supervision of on-site building work.</p> <p>3.1.3 Understand the requirements of relevant legislation, standards and codes to the performance of residential, commercial and industrial building work.</p>

Part 3—Kinds of work

3—Kinds of work

Regulations 7(3) and 11(3) provide that the kinds of work in relation to which qualifications or experience, or qualifications and experience, are to be determined by the Commissioner are to be as follows:

(a) **Any building work**

Any commercial, industrial, residential and other building work.

(b) **Light commercial/industrial and residential building work**

Divided into the following kinds of building work:

(i) Building work limited to—

- (A) houses not exceeding 3 storeys; and
- (B) other buildings not exceeding 2 storeys.

(ii) Building work limited to—

- (A) houses not exceeding 3 storeys; and
- (B) other buildings of a single storey.

- (iii) Building work limited to additions and alterations to buildings of any kind.
- (c) **Residential building work**
Divided into the following kinds of building work:
 - (i) Building work limited to houses not exceeding 3 storeys.
 - (ii) Building work limited to houses of a single storey.
 - (iii) Building work limited to additions and alterations to houses.
- (d) **Other specified building work**
Divided into the following kinds of building work:
 - (i) Other specified building work.
 - (ii) Other specified building work to be performed only—
 - (A) on a subcontract basis for a licensed building work contractor; or
 - (B) as a principal contractor working on a building project in association with other building work contractors where the building work comprised in the project is organised or supervised or both by a project manager who is a licensed building work contractor or a registered building work supervisor authorised to organise or supervise work of all of the kinds comprised in the project.

Schedule 3—Forms

Form 1—Notice under section 28(1)(f) of *Building Work Contractors Act 1995*

YOUR BUILDING CONTRACT: YOUR RIGHTS AND OBLIGATIONS

This notice contains important information about your rights and obligations. You should read it carefully and keep it for future reference.

Your domestic building work contract is a binding legal agreement. You have rights and obligations under the agreement. You also have certain rights guaranteed under the *Building Work Contractors Act 1995* in relation to the agreement. In particular, you have certain "cooling off" rights, which may enable you to cancel your contract if you are not satisfied with it, and you act quickly.

1—What does the Act require?

You must have a written contract with your building work contractor, setting out all the terms and conditions of your agreement. You must be given a copy of the signed contract, together with a copy of this notice. Both documents must be readily legible.

2—What are my "cooling off" rights?

You may cancel your building contract, if you act before the "prescribed time".

If you wish to cancel, you must give your building work contractor written notice of your intention not to be bound by the contract. You must serve that notice on the building work contractor either personally or by certified mail in an envelope addressed to the contractor.

You must do this—

- (a) before 5 clear business days have expired after the making of the contract; or
- (b) if your building work contractor has not complied with relevant provisions of the Act, before the contractor completes the building work under the contract.

Cancellation is a serious step and should not be taken lightly. You may need to seek legal advice, or the advice of the Office of Consumer and Business Affairs, before exercising this right of cancellation. Wherever possible, you should first discuss your problem with the building work contractor.

3—What should I do?

First, read this notice carefully. Then read the documents that you have signed. If you are not happy about any aspect, or have any questions, then ask your building work contractor to explain. If you are not satisfied with the explanation you have received, then seek advice from a lawyer or from the Office of Consumer and Business Affairs.

4—Is there anything I should look for in particular?

Most importantly, check to see that the work you want your building work contractor to do has been fully and accurately set out in the contract (including the plans and specifications). Do not rely on verbal promises or agreement. If you want to change the work to be done at a later stage, you will have to reach agreement with your building work contractor, and your contractor will usually be entitled to make a separate, additional charge as a variation to your contract. Not checking now could be very expensive.

5—What about the price I have been quoted? Can it change?

Some building contracts provide for a "fixed price". Others include a "rise and fall" clause. If your contract includes a rise and fall clause, then the price you have been quoted (even if it is referred to in your contract) will most probably NOT be the total amount you will have to pay. Your contract price can also change due to any variations to the building work in accordance with your contract.

Note—

Most variations require your written approval in advance, but others may be unforeseen. You should refer to your particular contract. Certain items in your contract may be designated "prime cost" or "provisional sums", which may also lead to a change in the total sum you can be charged.

If your contract includes a rise and fall clause, or other provisions as a result of which a price set out in your contract may change, or is an estimate only, then the contract must contain "THIS PRICE MAY CHANGE" or "ESTIMATE ONLY" adjacent to the price subject to change. If there is more than one such price, then they must be set out in a single list in the contract.

Those prices that are only estimates must be fair and reasonable estimates.

6—What is a rise and fall clause?

A rise and fall clause entitles your building work contractor to pass onto you increases (or reductions) in the cost of performing your building work after you have signed your contract, whether those costs relate to labour (including relevant overhead) or materials.

The formulae used in building contracts to determine the amount of the additional costs that can be passed on to you vary. Check your contract carefully. If you have any questions, ask your building work contractor to explain, or seek advice.

7—What are "prime cost" items?

Your building work contract may include the supply of certain goods and services, eg kitchen stoves, bathroom tiling. These items may be designated "prime cost", so that if the standard of goods you select is higher than that provided for by your building work contractor, then you may have to pay an additional cost over and above that provided for, plus a surcharge, which may be up to 15% of the cost of the item.

8—What are "provisional sums"?

These are amounts your building work contractor has determined as "best estimates" of the cost of doing certain building work under your contract.

For example, if your building site slopes and no contour survey has been carried out, your building work contractor may not be able to prepare a final price for the earthworks needed to provide a level site for your domestic building work. The building work contractor may include an estimated figure which is subject to change when a survey plan is provided. That estimated figure is a "provisional sum".

Provisional sums must be fair and reasonable estimates in the circumstances in which they are provided.

9—What is a charging clause?

A charging clause in a building work contract is a clause that gives your building work contractor the right to lodge a caveat over the property on which the building work contractor is performing building work under the contract. If a caveat is lodged over the property, you (as owner of the property) may be restricted from dealing with and registering dealings with the property at the Land Titles Office.

The interest created by the clause would entitle your building work contractor to apply to the court for the sale of the property to recover any debt owed by you for building work performed under the contract.

Check your contract carefully, and, if you are not certain about whether your building work contract contains a charging clause or the implications of a charging clause, you should seek independent legal advice.

10—Are there any special problems with package land and building deals?

Yes.

If you have entered into a package deal for land and building work, then it is likely you have signed a number of documents. The information contained in this notice relates only to the domestic building work contract you have signed. It does not apply to your contract for the purchase of land, which is subject to different rules. You probably have less time to consider those documents than your building contract.

Be particularly careful about package deals where your building work contractor is unable to start work immediately because necessary approvals have not been granted, or services connected, or legal titles granted. Your building work contractor may be entitled to make additional charges arising from delays which are the fault of neither yourself or the contractor. If in doubt, talk to your building work contractor or seek advice.

11—What other rights do I have?

The Act implies certain warranties on the part of your building work contractor, and these apply regardless of what your contract says.

These warranties are as follows:

- (a) your building work must be performed in a proper manner to accepted trade standards and in accordance with the agreed plans and specifications; and
- (b) the materials supplied by the building work contractor will be good and proper materials; and
- (c) the building work will be performed in accordance with all statutory requirements; and
- (d) unless the contract stipulates a period within which the work must be completed—the work will be performed with reasonable diligence; and
- (e) if your contract is for the construction of a house—the house will be reasonably fit for human habitation; and
- (f) if you have made known to your building work contractor the purpose for which the work is required, or the result you want to achieve in a way that demonstrates that you are relying on your contractor's skill and judgment, then your contractor warrants that the work and the materials will be fit for your purposes, or of a nature and quality that they might reasonably be expected to achieve that result.

If your building work contractor does work or provides materials which do not comply with those warranties, then your rights have been infringed, and you may have a right to take legal action before the courts. If you are not satisfied, talk to your building work contractor. If you are still not satisfied, seek advice from a lawyer or the Office of Consumer and Business Affairs.

12—What about building indemnity insurance?

Your building work contractor must take out a policy of building indemnity insurance before work commences. The insurance protects you from some of the losses you may suffer if your building work contractor dies, disappears or becomes insolvent. Your building work contractor must provide you with a copy of the certificate of insurance. Keep it for your protection.

Important note—

From 1 September 2002, building work contractors have not been required to take out a policy of building indemnity insurance in respect of contracts for the construction of multi-storey residential buildings.

(A multi-storey residential building is a building that has a rise in storeys of more than 3 and contains 2 or more separate dwellings. A storey does not include a mezzanine or a space within a building if it is intended that the space contain only a lift shaft, stairway, meter room, laundry, bathroom, shower room, water closet, car park or combination of any of the above.)

13—Am I obliged to pay a deposit in advance of work done?

As a general rule, your building work contractor is entitled only to genuine progress payments for work done. Your building work contractor may ask you to pay in advance for money that has to be paid to a third party (eg a council for planning approval, building indemnity insurance or to an engineer or surveyor for a report). Apart from money in advance for such fees, the law prohibits the taking of any deposit on a domestic building work contract in excess of \$1 000, or if the contract price is over \$20 000, 5% of the contract price. If in doubt, seek advice before making any payments.

14—When should I make a progress payment?

The law requires that your building work contractor make a written demand for a progress payment, so payment should not be made without such a demand. Progress payments should not be made in advance of the performance of the building work to which the demand relates. If you have borrowed money from a recognised lending institution, it is likely to make progress payments on your behalf.

15—What if I have a dispute with my building work contractor?

First, talk to your building work contractor. Many potentially serious disputes can be avoided by good communication between building owner and contractor. Your contract may have clauses relevant to dispute resolution which may assist both parties in resolving the dispute.

If that does not work, you may need independent advice. You may wish to seek legal advice, or the advice of the Office of Consumer and Business Affairs. Some disputes can be resolved by negotiation. Others can only be resolved by legal proceedings, whether before the courts or by private arbitration as provided in many building contracts.

Before commencing any legal action over building work, you should seek advice from a lawyer or from the Office of Consumer and Business Affairs.

16—Where should I go for advice?

First, talk to your building work contractor. If you want or need independent advice about your building work contract, talk to a lawyer or the Office of Consumer and Business Affairs. A list of lawyers appears in the telephone directory under the heading of "Solicitors".

Form 2—Building indemnity insurance certificate

Building Work Contractors Act 1995, section 34

Certificate No:

A policy of insurance that complies with Part 5 Division 3 of the *Building Work Contractors Act 1995* has been issued as follows:

Name of insurer:

Name of building owner:

Brief description of domestic building work:

Address or description of premises at which work to be carried out:

Name of building work contractor:

Licence number of building work contractor:

Signature of employee or agent of the insurer:

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Building Work Contractors Regulations 2011* revoked the following:

Building Work Contractors Regulations 1996

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2011	197	<i>Gazette 18.8.2011 p3496</i>	1.9.2011: r 2
2012	109	<i>Gazette 31.5.2012 p2430</i>	1.7.2012: r 2
2013	89	<i>Gazette 6.6.2013 p2197</i>	1.7.2013: r 2
2014	111	<i>Gazette 19.6.2014 p2592</i>	1.7.2014: r 2
2015	65	<i>Gazette 18.6.2015 p2563</i>	1.7.2015: r 2
2015	221	<i>Gazette 29.10.2015 p4749</i>	21.11.2015: r 2
2016	114	<i>Gazette 23.6.2016 p2303</i>	1.7.2016: r 2
2017	88	<i>Gazette 22.6.2017 p2229</i>	1.7.2017 immediately after 129/2017: r 2
2017	129	<i>Gazette 22.6.2017 p2345</i>	1.7.2017: r 2
2018	140	<i>Gazette 21.6.2018 p2381</i>	1.7.2018: r 2
2019	77	<i>Gazette 13.6.2019 p1873</i>	1.7.2019: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2012</i>
r 4		
r 4(1)	varied by 221/2015 r 4(1)	21.11.2015

Building Work Contractors Regulations 2011—1.7.2018 to 30.6.2019

Legislative history

r 4(2)	varied by 221/2015 r 4(2)	21.11.2015
Pt 2		
r 8		
r 8(2)	<i>deleted by 88/2017 r 4</i>	1.7.2017
Pt 3		
r 12		
r 12(3)	<i>deleted by 88/2017 r 5</i>	1.7.2017
r 10A	inserted by 221/2015 r 5	21.11.2015
Pt 4		
r 14A	inserted by 221/2015 r 6	21.11.2015
<i>Sch 1 before substitution by 140/2018</i>	<i>substituted by 109/2012 r 4</i>	1.7.2012
	<i>substituted by 89/2013 r 4</i>	1.7.2013
	<i>substituted by 111/2014 r 4</i>	1.7.2014
	<i>substituted by 65/2015 r 4</i>	1.7.2015
	<i>varied by 221/2015 r 7(1), (2)</i>	21.11.2015
	<i>substituted by 114/2016 r 4</i>	1.7.2016
	<i>substituted by 129/2017 r 4</i>	1.7.2017
cl 4	<i>deleted by 88/2017 r 6(1)</i>	1.7.2017
cl 9	<i>deleted by 88/2017 r 6(2)</i>	1.7.2017
Sch 1	substituted by 140/2018 r 4	1.7.2018
Sch 3		
Form 1		
cl 9	inserted by 221/2015 r 8(1)	21.11.2015
cll 10—16	cll 9—15 redesignated as cll 10—16 by 221/2015 r 8(2)	21.11.2015
<i>Sch 4</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2012

Historical versions

1.7.2012
1.7.2013
1.7.2014
1.7.2015
21.11.2015
1.7.2016
1.7.2017