



This Information Statement is approved by the Building Services Authority (BSA) pursuant to Section 99(1) of the Domestic Building Contracts Act 2000 (DBC Act) as satisfying the requirements of a Contract Information Statement for the purposes of the DBC Act.

Disclaimer: This Information Statement contains information of a general nature and is to be read in conjunction with SPASA Queensland's Recommended Contracts for Swimming or Spa Pool Installation/Construction/Other Works and Renovation. It is not to be used with contracts for full house construction. Nothing in this Information Statement should be interpreted or relied upon as providing specific legal advice. For advice on particular circumstances, especially contractual matters, you should consult a practising solicitor.

CONTRACT CHECK LIST

If your project comprises domestic building work regulated by the DBA Act (i.e. almost any domestic building work with a contract price exceeding \$3,300), your agreement with the contractor must be recorded in a written contract as soon as practical (but within 5 business days) after it is entered into and before the work commences.

You should carefully read and ensure that you fully understand the contract before signing it. It is important to obtain formal legal advice regarding any contract provisions which you don't understand or are concerned about. The DBC Act sets out a number of requirements concerning the form and content of the contract.

The pre-printed SPASA Queensland recommended contracts comply with the form and content requirements of the DBC Act.

Before signing the contract you should check it carefully to ensure that:

- 1. it is in English and is readily legible;
2. it includes a detailed description of the subject works;
3. it displays a conspicuous notice advising you or your right to withdraw from the contract under the cooling-off provisions of the DBC Act;
4. all agreed terms have been incorporated into the contract (including the/your special requirements, equipment or finishes);
5. all relevant statutory warranties are included in the contract (these statutory warranties are summarised later in this Information Statement);
6. it includes the names and addresses of all parties to the contract and the precise location of the subject work, including lot-on-plan, or similar description;
7. the contract states whether or not you are a "resident owner" (i.e. someone who intends to live in the building within 6 months of completion of the contracted work);
8. the contractor's licence number is stated in the contract;
9. the date the subject work is to start, or how the date is to be decided, is stated in the contract;
10. if the starting date is not yet known, the contract must state that the contractor will ensure that the work starts as soon as is reasonably possible;
11. the contract states the date the subject work is to be finished, or if the start date is not yet known, the number of days required to finish the work once it is started;
12. allowances made by the contractor for any likely delays (e.g. for non-working days, inclement weather, etc) are detailed in the contract;
13. the contract price and payment provisions (including the deposit and progress payments, if any) are clearly stated in the contract and in compliance with relevant DBC Act provisions;
14. if the contract price is subject to change, there must be a warning located near the contract price referring to any clause in the contract which may have the effect of changing the contract price;
15. any Provisional Sums or Prime Cost Items are listed on a separate schedule in the contract and the rates and estimated quantities clearly understood;
16. key technical words or phrases used in the contract are defined;
17. the contract makes reference to appropriate plans and specifications if these are required for the subject work;
18. if the subject work includes or alters, or may adversely affect, footings or a concrete slab for a building, the contractor must obtain appropriate "foundation data" (including soil tests, contour surveys and other geotechnical information). Where foundation data is required for the subject work, the contractor must provide you with a copy of this information on payment of costs, unless you already have a copy or the contractor reasonably believes you already have a copy. If termite barriers are disturbed in performing the subject work, they should be re-instated and the obligation to do so should be clearly stated in the contract;
19. the procedure for extension of time and variations is clearly stated in the contract;
20. you are aware of your own obligations in relation to proof of ownership of land, fencing, capacity to pay, and provision of work and materials to be provided by you;
21. approval from a Local Government or Private Certifier has been obtained for the subject works, and if not, the cost of obtaining approval has been included in the contract price;
22. the procedure is understood if defects need to be rectified after completion of the subject works;
23. the procedure to resolve disputes is understood;
24. the "Datum Point" is clearly identified and understood;
25. attachments to the contract have been identified and signed by both you and the contractor;
26. arrangements have been made for your own insurance on the day of handover, when the completed work is at your risk;
27. the contractor is a current SPASA Queensland Member;
28. an application for "Watertight Contract Benefits" has been completed;
29. Public Liability & Contract Works Insurances (or, WaterWorks) have been placed;
30. the requirements in respect to the disposal of excavated material is clearly stated in the contract, and understood;
31. you understand your responsibility as the land owner to install and maintain a compliant pool fence;
32. You are aware that additional information regarding pool and spa construction/renovation is available on SPASA Queensland's website www.spasa.com.au including Pre-Contract Consumer Information.

If your answer is "NO to any of the above questions, you may not be ready to sign the Contract.

Take the time to read and understand all of the various documents, and make sure that the Contract reflects the needs and requirements of both parties, so that misunderstandings do not occur later.

For both the Customer and the Contractor this is an important investment and a good relationship between the parties is essential.



SPASA Queensland recommends you read this Information Statement carefully BEFORE paying a deposit or signing the accompanying Contract.

PURPOSE OF THIS INFORMATION STATEMENT

The DBC Act requires a building contractor performing domestic building work with a contract price exceeding \$3,300 to provide the homeowner with a written "Contract Information Statement".

The Information Statement must contain general information about the contractual process and related matters, including the rights and duties of building owners and building contractors under contracts regulated by the DBC Act, and dispute resolution procedures.

PRE CONSTRUCTION

BSA Licence

Queensland legislation requires that all builders, building designers and most trade contractors must be licensed by the BSA to carry out building work (there are a few exceptions e.g. electricians who have their own licensing system).

For your own protection,

You should only deal with someone who has an appropriate BSA Licence.

Ask to see the Contractor's License Card.

You can confirm, free of charge, if the contractor's licence is current and appropriate for your particular project by phoning 1300 272 272 from anywhere in Queensland or by visiting the BSA website at www.bsa.qld.gov.au.

NOTE:

a written report containing details of the contractor's past performance is also available free of charge from any BSA Office. Information contained in this written report includes details of any action taken against them by the BSA or the Queensland Civil and Administrative Tribunal (QCAT).

WHAT WORK DOES THE DBC ACT COVER?

Generally, all domestic building work with a contract price exceeding \$3,300 (including labour, materials and GST) is regulated by the DBC Act.

The term "domestic building work" is very broadly defined under the DBC Act and includes:

- other associated work including landscaping, paving and the erection or construction of any building or fixture associated with a detached dwelling or home such as a garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
- site work relating to any of the domestic building work referred to above.

DEPOSITS AND PROVISIONAL ALLOWANCES

The deposit under the contract must not exceed 10% of the total contract price for contracts equal to, or less than \$20,000. For contracts in excess of \$20,000, the deposit must not exceed 5%.

Under the DBC Act these deposit maximums cannot be exceeded, even if both parties agree.

If the contract includes prime cost items or provisional sums, the contractor is required to give you copies of any invoices or receipts evidencing their costs before seeking payment. All prime cost items or provisional sums within a contract must be recorded on a separate schedule which sets out the estimated cost of the item, the amount of the contractor's margin either by percentage or actual amount, and the total amount for the item. This total amount is an estimate only.

The final cost may be more or less than the allowance.

THE "COOLING OFF" PERIOD

The DBC Act provides homeowners with the protection of a cooling-off period.

Under s.72 of the DBC Act you are entitled to withdraw from the contract within 5 business days of receiving from the contractor a copy of both:

- the signed contract; and
- this contract Information Statement.

If both of the documents are not received at the same time then the cooling-off period commences when you receive the second document.

If you don't receive a copy of both the signed contract and the contract information statement- Once the contract is made, the contractor has 5 business days in which to provide you with copies of both the signed contract and the information statement. If after the expiry of the 5 business days you have still not received your copies of both of these documents, then you may withdraw at any time after that.

Note: If the contractor later provides you with copies of both of these documents, you may still withdraw from the contract but you have only 5 business days from the date you received both documents in which to exercise this right.

When you may not withdraw under the cooling-off provisions- You may not withdraw during the cooling-off period, if:

- You and your contractor had a previous contract on similar terms, for similar work, and relating to the same property; or

- You have received formal legal advice about the contract before entering into the contract; or
- You tell the contractor that you have received formal legal advice about the contract before entering the contract.

How to withdraw- You may withdraw from the contract under s.72 or s.74 of the DBC Act by **providing a notice in writing** to the contractor advising that you are withdrawing and **stating the section of the DBC Act** (i.e. s.72 or s.74) under which the withdrawal is made. You do not need to give a reason for your decision to withdraw.

The notice may be:

- Given to the contractor; or
- Left at their address stated on the contract; or
- Served on the contractor in accordance with any provision in the contract providing for service of notices

NOTE:

All SPASA Queensland recommended contracts impose time constraints on the contractor within which they must lodge plans and commence work on site once the plans are approved.

INSURANCE

Insurance of the work and site during construction- Contact your home property insurer before work commences to ensure that your existing insurance policy will be operative while the works are occurring, and to organise an endorsement to your current policy to allow for any increase in the property value following the work. You must also check with your contractor to ensure they have taken out the appropriate insurance (including for Contract Works and Public Liability).

NOTE:

the BSA's Home Warranty Scheme does not apply to new swimming pool or spa construction or renovations to an existing swimming pool or spa. The members of SPASA Queensland have established a mutual discretionary trust (Watertight Contract Benefits) to provide certain benefits (including contract completion and defective work rectification) to their customers on the happening of certain defined events (including contractor's death or insolvency).

Full details of the Watertight Contract Benefits can be found at SPASA Queensland's website www.spasa.com.au.

DURING CONSTRUCTION

Progress Payments

If the contract price is to be paid by instalments (i.e. progress payments), the payments should not be in advance of work progress (i.e. when 50% of the work has been completed, you should not be required to pay more than 50% of the total contract price).

Having agreed to a written progress schedule contained in the contract, stick to it and do not pay before the progress payment is required under the contract.

Variations

A change to the original contract – which may involve an increase, decrease or substitution in the contracted work – is generally known as a "variation". If you wish to request a variation, you should put your request in writing to the contractor.

The contractor must put any agreed variations in writing as soon as practicable and, if the variation means additional work, it is to be done **before the variation work is carried out**.

The contractor must give you a copy of the variation document as soon as practicable but within 5 business days of when the variation is agreed to. An exception is where the variation is for domestic building work that is required to be carried out urgently and it is not reasonably practicable, in the particular circumstances, to produce a variation document before carrying out the work.

Requirements for a variation document-

The DBC Act sets out the requirements for a variation document. The variation document must:

- Be in English and readily legible;
- Describe the variation;
- State the reason for the variation if sought by the contractor;
- Give a reasonable estimate of any delay to the work which may result from implementing the variation;
- State any change in the contract price due to the variation or how the change is to be worked out;
- Advise when the extra cost or refund for the variation will be paid or credited (*NOTE: the contractor cannot require payment of any cost increase before the work involved in the variation is started*); and
- Be signed by the Contractor and, if possible, by the homeowner

If the contractor asks you to agree to a variation and it involves extra work, you are only liable to pay for that extra work if it is work the contractor could not reasonably have foreseen at the time of entering the contract. In any event, do not make any payment for a variation until the variation is in writing and has been signed by the contractor, and work has commenced on the variation.



BUILDING INSPECTIONS

If mandatory building inspections are required for your building project (if in doubt check with your local government Building Section or a Private Certifier), they must be carried out by either a local government Building Certifier or a Private Certifier or a competent person authorised by them.

If the contractor has engaged the certifier, the contractor must provide you with a copy of each certificate of inspection as soon as practicable after they receive it from the certifier.

As soon as practicable after the work is completed the contractor must also provide you with copies of other contract-related documents such as reports, notices or orders issued by suppliers of services, including for example, electricity, gas, telephone, water or sewerage.

The primary function of these mandatory on-site building inspections is to ensure that the construction work complies with the approved plans and recognised building standards, including the Building Code of Australia (BCA).

NOTE:

It is not the role of the certifier to ensure compliance with the terms or specifications of the contract, or to assess or supervise the quality of the work.

ACCESS TO THE SITE AND LOCATION

The contractor is to be given control of and access to the building site to carry out the contracted work. The building owner (or a person authorised by the building owner) is entitled to reasonable access to the site to view the work under the contractor's supervision but must not interfere with the carrying out of the contracted work.

If you, as building owner (or your representative), interfere with the contracted work in exercising your right of access you may become liable for any additional costs or delays which result from your interference.

If you are going to live at the site of the contracted work within 6 months of completion, then you are a "resident owner" under the DBC Act and your contractor has not right to lodge a caveat over your land.

You and the contractor should carefully discuss the access to the site, and materials handling, and if there are any special site conditions which may present a problem (e.g. wet weather or neighbours' considerations), agreements should be reached and clearly understood by all parties concerned as to how to deal with these matters.

With the construction/installation of a pool/spa there is a need to ensure site boundaries are accurately known and clearly defined, and that the work is accurately located within them.

If there is any doubt about the boundaries, the contractor can arrange for a boundary survey at your cost.

At the commencement of construction, you should attend the site with the contractor to ensure that the work is commenced in your preferred location.

Construction sites are dangerous places, and you should take extra care at all times in respect to children, visitors and pets.

Bear in mind that the contractor has important responsibilities under the Workplace Health and Safety Act 1995, which includes ensuring that all persons at the site comply with the requirements of that Act.

For this and other reasons, the contractor is entitled to exclude unauthorised people from the site, and can reasonably expect that you will exercise reasonable care at all times during the period of construction.

DISPUTE PREVENTION

There are many causes of disputes between consumers and contractors.

Apart from faulty workmanship, the most common causes relate to poor communication and inadequate documentation.

Both parties must accept responsibility for this.

A key step in preventing disputes is to ensure that you carefully read and fully understand the contract before signing it.

Do not hesitate to seek formal legal advice if you are uncertain or have concerns about any of the contract provisions.

Make sure that the contract documents, including and plans and specifications, **fully detail all aspects of your agreement with the contractor** regarding the building work to be performed.

Maintain good communication with the contractor and monitor the progress of the work while being careful not to interfere.

Record brief details and dates of all meetings and significant conversations with the contractor and key events which occur in relation to the work. Always date and retain a copy of all correspondence with your contractor (especially correspondence regarding payments, variations and problems).

NOTE:

To protect your rights if a dispute does arise it is very important that you keep copies of all contract documents (including schedules, terms and conditions, and plans and specifications, forms etc).

QUALITY CONTROL

It is the responsibility of the contractor and you, working together, to ensure that the standard or quality and finish is acceptable.

If you have specific requirements with regard to quality and finish these details should, as far as possible, be discussed beforehand with the contractor and written into the contract. The next step is to carry out regular inspections of the work with the contractor or contractor's supervisor. Try to give the contractor reasonable notice of your inspections to ensure they will definitely be on site to speak with you when you arrive.

If you lack the expertise or knowledge required, or are likely to be absent for much of the building work, you may consider engaging a suitably qualified and experienced building consultant to assist you in monitoring work progress and quality.

FENCING

The fencing of outdoor swimming pools/spas is a mandatory requirement in Queensland.

You (as the land owner) are responsible for the erection and continuing maintenance of appropriate fences and gates.

If not included in the contract, fencing must be arranged separately by you, and be properly installed prior to the pool or spa being filled.

Fencing and Final Approvals by Authorities is your responsibility.

MATERIALS, WORK, EQUIPMENT AND ACCESSORIES

You should ensure that the contractor is aware of any special finishes, materials or requirements and that the contract Schedule, Specifications and Plans incorporate those requirements.

Additional items or work (landscaping, fencing, surrounds, water features etc), if they are to be included in the contract, must be included under the "Special Conditions/Other Works" Schedule.

Equipment and Accessories should be clearly discussed to ensure that specified items (such as filters, heaters, pumps etc) are suitable for the pool/spa and anticipated bather load, and have an appropriate service life.

All inclusions agreed between the parties must be clearly identified in the contract.

EXCAVATION AND REMOVAL OF EXCAVATED MATERIALS

The contractor will arrange for suitable equipment for the excavation required for the placing of the structural shell.

You must provide a suitable location for the placement of the excavated materials (either on-site or off-site).

In the event that you are unable to provide a location for the excavated materials, the contractor will arrange for the materials to be relocated to a suitable tip site at your cost.

UPON COMPLETION/HANDOVER

On completion/handover, the contractor will arrange with you for a final handover inspection, at which time you can:

- Check the works thoroughly for defective or missing items, or any damaged or unfinished works;
- Where necessary, agree and document with the contractor a list of minor defects, omissions, or items damaged or unfinished;
- Provide the final progress payment (do not withhold this payment without first obtaining formal legal advice or you could be sued for breach of contract); and
- Be instructed in the correct procedures for your ongoing responsibility for maintenance of the pool/spa and equipment.

On completion/handover the contractor will advise the building certifier that the works are completed, and you must contact the building certifier (within 10 business days) and request an inspection to obtain "Final Approval" of the works.

DISPUTE RESOLUTION

Advise the Contractor

If during the works or upon completion you encounter a problem relating to the contracted work, you should first convey your concerns to the contractor in writing asking them to address the matter within a reasonable time frame (say 7 to 14 days) and provide you with a written response. (Ensure you date, sign and retain a copy of your letter/s and the contractor's response).



Contact SPASA Queensland

If the works are in progress and you are not happy with the outcome or the matter is not resolved within reasonable time, you should notify SPASA Queensland.

SPASA Queensland provides assistance in dealing with concerns and disputes by facilitating a mediation service as a "cost free" benefit to customers of SPASA Queensland Member contractors.

Contact BSA

If the works are completed, the BSA is generally able to assist with domestic building disputes concerning defective work, subsidence or non-completion of the contracted work.

Please NOTE: however, the BSA is not able to assist where the contract is still on foot or where the dispute is of a purely contractual nature or before the Queensland Civil and Administrative Tribunal (QCAT).

With regard to the rectification of defective building work (e.g. where the work has failed to meet objective standards of construction or workmanship, such as the Building Code of Australia), the BSA Rectification of Building Work Policy classifies defective building work as either being Category 1 or Category 2 defective work.

Category 1 defects are more significant building defects that generally require prompt attention as they are of a structural nature, or could allow water penetration, etc.

At any time in the first 6 years after practical completion you may contact the BSA to assist with Category 1 defects provided you have first advised the contractor in writing and they have failed to promptly address the matter.

If the contractor is uncontactable or no longer operating you may contact the BSA immediately about these more serious Category 1 defects.

Category 2 defects are, in broad terms, those of a minor or cosmetic nature related to poor finish or workmanship.

As mentioned in the above section headed Advise the Contractor, these minor defects which occur during the first 6 months should be taken up with the contractor who performed your work (if they are still operating).

Matters which remain unresolved after this period should be referred to the BSA using the Complaint Form available from the BSA website.

However, if the contractor is unavailable or ceases to operate during this initial 6 month period, you should document all minor defects which arise during the first 6 months after practical completion and submit to the BSA no later than 7 months after practical completion.

After you have lodged a completed BSA Complaint Form together with supporting documentation including a copy of all of your contract documents, including any variations, a BSA technical representative may meet you and your contractor on site to inspect the work.

At the inspection the BSA will determine who is responsible for the defects and, where appropriate, direct your contractor to rectify any defects or complete the works.

If your contractor is directed to rectify the works, you must allow them reasonable access to the site.

To contact the BSA, call 1300 272 272 state-wide or visit the BSA website at www.bsa.qld.gov.au.

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (QCAT)

You are also entitled to take any disputes in relation to your domestic building project to the QCAT.

The QCAT provides cost effective resolution for domestic building disputes, particularly those of a contractual nature.

Further information about the QCAT and its procedures can be obtained by visiting www.qcat.qld.gov.au, or calling 1300 753 228.

OTHER OPTIONS

Depending on the terms of the contract, other options may be available to you, including:

Contract Termination- Under certain circumstances you may have the right to terminate the contract. This is a serious decision to make and would usually be a last resort.

Formal legal advice is essential if you are considering ending the contract for any reason. If you terminate the contract without being entitled to do so, you may create serious difficulties for yourself (e.g. you could be sued by the contractor for breach of contract).

Court Action- As an alternative to the QCAT, you may be able to take action in an appropriate court. You should obtain formal legal advice to explore this option.

AFTER COMPLETION

Maintenance

Obviously it is important, for both aesthetic and financial reasons, to properly maintain your pool or spa after the work has been completed.

You should discuss specific cleaning and maintenance requirements, if any, with the contractor when the work is completed. Information from the suppliers of materials or products may also be valuable.

MANUFACTURERS' WARRANTIES

Manufacturers' warranties for materials, equipment or accessories (e.g. a warranty for a pool pump if this is supplied and installed by the contractor) should be obtained from your contractor.

You should be aware that the shapes and colours of some coping finishes, tiles, internal linings, equipment, accessories and other items may vary from samples inspected, due to the nature of natural materials, manufacturing and installing processes or supply.

STATUTORY WARRANTIES

The DBC Act provides homeowners with a number of Statutory Warranties that are required to be stated in the Contract. These warranties are summarised below:

Materials-Suitability

All materials will be good and suitable for the purpose for which they are used.

Materials – New

Unless otherwise stated in the contract, all materials used will be new.

Compliance with the Law

The contractor will comply with all relevant laws and legal requirements including, for example, the Building Act 1975.

Skill and Reasonable Care

The work will be carried out in an appropriate and skilful way and with reasonable care and skill.

Plans and Specifications

The work will be carried out in accordance with the plans and specifications if they form part of the contract.

Calculation of Provisional Sums

Any provisional sums have been calculated with reasonable care and skill, having regard to information reasonably available when the contract is entered into.

Because of rights or services that others may have over the property, the Customer should check if easements, rights of way, or services such as water, sewer, gas, electricity, telephone etc are located on the property, and advise the Contractor, as they may interfere with the Customer's preferences. Many of these rights or services will be noted on the certificate of title for the property, or boundary survey or drainage diagram etc.