

10/9/12

I would like to follow up on our recent meeting regards clause 88 of the Domestic Building Contracts Act (DBCA) with yourself and [REDACTED] from the HIA.

I did further research and reading of the Act because I was not satisfied by the response from the BSA on this matter. Clause 88 reads as follows:

***Display of documents at display homes***

***Other matters relating to contracts***

*A person who makes a display home available for inspection must ensure the following documents are prominently displayed in the home—*

- . *(a) a copy of the plans and specifications used for the home's construction;*
- . ***(b) a draft copy of the domestic building contract that the building contractor by or for whom the display home is made available for inspection would be prepared to enter into to construct a similar home.***

88 (b) states that a draft copy of the domestic building contract is made available for a similar home including the plans and specification. Very clear and concise requirements.

Below are extracts from Section 27 & 28, they refer to the general contents and required matters, as the contract is a draft and there is no actual owner the draft copy should be prepared with the information available and the only details that cannot be completed would be the site location, owner's details and the date of the contract, all the other information required to form the contract should form part of the draft contract including the price, time frames for building, the contractor's details and any items that would be known subject to the site to be built on.

For your guidance I have noted in red the items that I believe would not be required in the draft contract or need clarification.

***27 General contents of contracts***

- . *(1) The building contractor under a regulated contract must ensure the contract, in written form, complies with the formal requirements for a regulated contract. Maximum penalty—20 penalty units.*
- . *(2) A regulated contract complies with the formal requirements for a regulated contract if the contract—*

- . (a) is in English and is readily legible; and
- . (b) sets out in full all the terms of the contract; and
- . (c) sets out the warranties that are part of the contract because of section 41; and
- . (d) states the required matters; and Editor's note— See section 28 (General contents— required matters).
- . (e) contains the required things; and Editor's note— See section 29 (General contents— required things).
- . (f) includes any plans and specifications for the subject work; and
- . (g) each time a word or phrase defined for the contract is used—indicates the word or phrase is defined in the contract's definition provision; and
- . (h) complies with any other requirements prescribed under a regulation.
- . (3) If the formal requirement mentioned in subsection (2)(f) applies to a contract, and a development approval or similar authorisation is required for carrying out the subject work, the contract complies with the requirement only if the plans and specifications contain the appropriate information.
- . (4) For subsection (3), if a detailed footing or slab design is required for obtaining the development approval or similar authorisation for the subject work, the plans contain the appropriate information if they contain—
 

(For 27 (4) above a slab design for the specification allowed by the builder should be included as the minimum for the draft contract)
- . (a) a detailed footing or slab design suitable for inclusion in the development approval or similar authorisation; and
- . (b) a floor plan drawn to scale; and
- . (c) front and side elevation drawings drawn to scale.
- . (5) For subsection (3), if a detailed footing or slab design is not required for obtaining the development approval or similar authorisation for the subject work, the plans contain the appropriate information if they contain—
  - . (a) a floor plan drawn to scale; and
  - . (b) a front elevation drawing drawn to scale; and
  - . (c) a side elevation drawing drawn to scale.
- . (6) However, subsection (5) applies to a floor plan or drawing only if the plan or drawing is required for obtaining the development approval or similar authorisation for the subject work.

- . (7) For subsection (3), the specifications contain the appropriate information if they contain the specification details for the contract, to the extent the specification details are not included in plans for the contract, or otherwise included in the contract.
- . (8) In this section— **specification details**, for a regulated contract, means—
  - . (a) details of the subject work, including details of fixtures and fittings involved in the subject work; and
  - . (b) details of materials and products to be used for the subject work; and
  - . (c) details of finishes required for the subject work; and
  - . (d) other details prescribed by regulation.

**General contents—required matters**

(1) This section sets out the required matters for a regulated contract for section 27(2)(d).

- . (2) The required matters are as follows—
  - . (a) the names and addresses of the parties to the contract;
  - . (b) whether or not the building owner is a resident owner;
  - . (c) the building contractor's licence number, as it appears on the building contractor's licence card;
  - . (d) the date the contract is made;
  - . (e) the location (including a lot-on-plan, or similar, description) of the building site for the subject work;
  - . (f) the date the subject work is to start, or how the date is to be decided;
  - . (g) if the starting date for the subject work is not yet known—that the building contractor will ensure that the work starts as soon as it is reasonably possible for it to be started;
  - . (h) except for a cost plus contract—the date the subject work is to be finished or, if the starting date for the work is not yet known, the number of days that will be required to finish the work once it is started;
  - . (i) the contract price or, for a cost plus contract, how the amount the building contractor is to receive under the contract is to be calculated.
- . (3) A cost plus contract may state the matter mentioned in subsection (2)(h).

I am sure you can clearly see the “draft contract” meaning would be the requirements set out in the DBCA for all the items required to satisfy the provisions of the Act and that the purpose of clause 88 is to ensure a draft copy of the contract for the home on display includes all the known information for the home on display which includes price, plans and specification as defined in Section 27 & 28 of the Act as requirements of a contract.

Section 88 requires a draft contract for a similar home, sections 27 and 28 state the required matters so therefore those requirements should be included in the draft if known including the plans and specification. It also states that the contract would be the what the builder would be prepared to enter into, that would no doubt include a price with inclusions and or exclusions.

Any home design to be built by a builder can be specified on a hypothetical site, the price, inclusions and plans can be detailed subject to the intended site and investigation. This is called a “Variation” as you are no doubt aware.

It is an obvious error in clarification of the DBCA to clarify the meaning of a draft contract and solely rely on clauses 27 & 28 which if applied cannot be satisfied as I have detailed so this leaves us in a slight predicament.

What is the BSA’s requirement for a Draft contract? Can you urgently clarify this taking into account the requirements set out in Sections 27 & 28 and my comments enclosed. I will assume that the BSA will follow the legislation as I have and that all items stipulated in Section 27 & 28 that can be prepared in draft form be the minimum requirement for a draft contract.

As you know [REDACTED] I am very determined to address this issue and breaches of the Act to ensure the rights of consumers are protected and they are not misled. The BSA operates to enforce this Act and both consumers and contractors deserve the Act to be adhered to and enforced. The recent penalties applied by the ACCC against [REDACTED] is a clear indication that our industry has some significant failings and that representation of our product can be significantly better for the consumer to make a qualified decision. Clause 88 is designed to protect consumers as detailed below:

. **Purpose of Act** *The purpose of this Act, in regulating domestic building contracts, is—*

*(a) to achieve a reasonable balance between the interests of building contractors and building owners; and*

*(b) to maintain appropriate standards of conduct in the building industry.*

I await your urgent response to the enclosed, the penalties applied to this Section are significant for areason and no doubt the intention of the Author.

Kind Regards,

Rob Thomson  
[REDACTED]