

Becoming an owner-builder

An owner-builder is an individual who does owner-builder work and holds a permit for that work under the authority of a permit issued by NSW Fair Trading.

What is owner builder work?

Owner-builder work is any work (including supervision and co-ordination) involved in the construction of, or alterations, repairs or additions to, a dwelling (which includes a house, terrace, town-house, garage, swimming pool and certain other structures and improvements):

- where the reasonable market cost (including labour and materials) exceeds \$5,000, and
- which relates to a single dwelling or dual occupancy:
 - that requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or
 - that is a complying development within the meaning of that Act.

What are my responsibilities as an owner builder?

As an owner-builder, you are responsible for:

- overseeing and supervising all tradespeople
- ordering of materials and management of the building site
- obtaining all necessary council and authority approvals
- ensuring that the financial, taxation and insurance requirements of the building work are met and fully comply with all laws
- being aware of your obligations under the *Workers Compensation Act 1987* and *Occupational Health and Safety Act 2000* and providing a safe work environment that complies with WorkCover requirements
- ensuring any contractor engaged is appropriately licensed and insured to do the work contracted for
- warranting that the work and materials will be fit for the purpose and that the work results in a dwelling fit for occupation.

Do your sums before you start and ask yourself if any saving you will make is worth the time and responsibility it will take. As an owner-builder you are guaranteeing the work you undertake.

It is an offence under the Home Building Act (maximum penalty \$22,000) for the holder of an owner-builder permit to:

- knowingly engage an unlicensed contractor
- lend your permit to another person
- refuse to disclose to an authorised officer the names and addresses of contractors working on the site.

If you don't want the responsibility of being an owner-builder, you should be wary of a builder who suggests you obtain an owner-builder permit while they do all the building work for you. This may be a ploy where the builder is shirking responsibility, is unlicensed, or is unable to get necessary insurance.

Warning! - As an owner-builder you are guaranteeing the work you undertake. The next immediate owner of the property is entitled to the benefit of statutory warranties set out in the *Home Building Act 1989*.

How do I get an owner builder permit?

To get an owner-builder permit, you must lodge a completed owner-builder permit application in person at a Fair Trading Centre or Service NSW.

To determine whether you require an owner-builder permit, your eligibility and which application form you need to use, please view the Owner-builder self assessment tool page on the Fair Trading website.

The application for owner-builder forms can also be downloaded from the Australian Business and Licence Information Service website. However, it is strongly recommended that you first complete the self assessment tool before completing an application.

When lodging your application form you must also attach copies of the following documents, together with the owner-builder permit application fee:

1. Development consent (development application (DA) approval or complying development certificate (CDC) approval) from a certifying authority (council or private certifier) for the subject building site and
2. Certificate in Owner Builder Compliance 91509NSW.

The following pages on the Fair Trading website provide more information regarding course 91509NSW and if an applicant is eligible to be exempted from the approved course. These pages are also available as factsheets:

- *Owner-builder approved education course*
- *Owner-builder equivalent accreditation.*

What are my limitations under an owner builder permit?

An owner-builder permit is not a building licence. It does not allow you to:

- do work other than the project covered by the development application or complying development certificate
- do specialist work such as electrical, plumbing, gasfitting, air-conditioning and refrigeration work (unless you hold a licence for such work).

Only one owner-builder permit can be issued within any 5-year period, unless the application and any earlier permit relate to the same land, or unless special circumstances exist.

Approvals needed for building work

Most building work needs the following approvals before work can start.

Development consent or Complying Development Certificate (CDC)

Your local council can issue a development consent. If a CDC is permitted for the type of development you propose under the council's local plan, it can be issued by your local council or an accredited certifier.

Construction approval

Approval for the work (a construction certificate) can be given by either your local council or an accredited certifier.

Note: You do not need a construction certificate if you have a CDC.

During construction, the building work must also be inspected by council or an accredited certifier to check that it meets national building standards (the Building Code of Australia).

A certificate to allow occupation or use of the completed building work (occupation certificate) can only be issued if the work generally meets these standards.

For more information about building work approvals and choosing a certifying authority go to the *Consumer building guide* page of the Fair Trading website to view or download Fair Trading's *Consumer building guide* booklet.

You can also get more information about the approvals process and choosing a certifying authority from the Building Professionals Board, at www.bpb.nsw.gov.au or by calling 9895 5950.

Use licensed tradespeople

All tradespeople (whether contracting directly with home owners or sub-contracted through a builder), who undertake residential building work costing over \$1,000 (labour and materials), must hold a licence from NSW Fair Trading for the type of work they are to do. Specialist tradespeople who carry out any of the following must be licensed regardless of the cost of the work:

- electrical wiring
- plumbing, draining and gasfitting work
- air conditioning and refrigeration work (except plug-in appliances).

Once you find a tradesperson and before you sign any contract, don't forget to:

- ask to see their licence
- go to the online licence check on the Fair Trading website to make sure it is current, valid and suitable for the work you want done, or call Fair Trading and do a licence check over the phone.

Contracts

By law, all building trade contractors doing residential building or any specialist work valued over \$1,000 must provide a contract in writing to the home owner. As an owner-builder, you will probably be entering into several contracts with different tradespeople.

Once you decide to go ahead with a tradesperson, they should give you a written contract. You should make sure you understand it fully before signing. For more information, refer to the Contracts page on the Fair Trading website.

Fair Trading building contracts

NSW Fair Trading has developed the following home building contracts:

- *Home building contract for work between \$1,001 and \$5,000*
Suitable for trade work, maintenance and repair work as well as smaller alterations or improvements likely to cost less than \$5,000.
- *Home building contract for work over \$5,000*
Suitable for new homes, major alterations and additions.

These contracts, which are fair to both parties and written in plain English, are available free of charge and can be accessed from the Fair Trading contracts page on the Fair Trading website.

Home warranty insurance

Each licensed contractor (builder, tradesperson or project manager) who contracts directly with an owner-builder to undertake residential building work must provide home warranty insurance from one of the approved insurance providers when the total contract sum exceeds \$20,000

(including material supplied by the contractor). The certificate of insurance should be provided to the owner-builder before taking any money on the contract and before starting any work. For more information, refer to the Home warranty insurance page on the Fair Trading website.

Selling an owner-builder built home

Should an owner-builder decide to sell their home within 6 years after completion of the work, the owner-builder will need to take out home warranty insurance where the market value of the whole project (including labour and materials) was of a certain value.

For contracts of sale entered into after 1 February 2012, home warranty insurance needs to be taken out for work valued at over \$20,000.

For contracts of sale entered into prior to 1 February 2012, home warranty insurance needs to be taken out if the value of the project was more than \$12,000.

All owner builder work is taken to be complete 18 months after the issue of the owner builder permit, unless the work is practically complete earlier than this, that is, the work is reasonably capable of being used for its intended purpose other than minor defects or omissions. (Note: a different definition of completion applies to owner builder work where legal proceedings were underway or were finalised before 25 October 2011.)

The contract for sale must:

- include a note that an owner-builder permit was issued in relation to the work carried out
- have the home warranty insurance certificate attached.

If home warranty insurance is not arranged, the purchaser can void the sale contract before settlement. The home warranty insurance scheme provides protection to a subsequent purchaser (successor in title) of a property where the purchaser is unable to have any defective owner-builder work (not apparent at the time of purchase) rectified because of the death, disappearance or insolvency of the owner-builder.

From 1 February 2012, home warranty insurance policies must provide cover of at least \$340,000. Between 28 February 2007 and 31 January 2012, the minimum cover that had to be provided was \$300,000.

Approved insurance agents and their brokers that provide home warranty insurance to owner-builders are listed under the Approved insurance agents page on the Fair Trading website.

Warning! - As an owner-builder you are guaranteeing the work you undertake. The next immediate owner of the property is entitled to the benefit of statutory warranties set out in the *Home Building Act 1989*, and can take you, the owner builder, to the Tribunal to enforce their statutory warranty rights. This may result in a money order against you.

If you should decide to sell within the 6-year period, make sure you contact the insurers well in advance of marketing your property to check their requirements.

Other insurances

The following are some other insurances owner-builders might need to take when doing home building work.

Workers compensation insurance

Owner-builders should take out a workers compensation insurance policy and ensure that they are fully covered in respect of persons they engage to carry out work. Any contractors engaged by an owner-builder may be deemed to be a worker of that owner-builder.

For more information about workers compensation insurance, contact WorkCover at www.workcover.nsw.gov.au or call 13 10 50.

Contract works insurance

This insurance should be obtained by builders and trade contractors. It is for your protection and covers loss or damage to materials and work. If the builder or trade contractor does not have this type of insurance, you may risk inconvenience, time delays and disputes if materials are damaged or stolen.

Public liability insurance

If you intend to be an owner-builder or to contract out any type of building work (for which you remain responsible for co-ordinating), it is strongly recommended that you take out a public liability insurance policy.

This covers you if a family member or member of the public is injured as a result of the building work. You could be liable because you own the property.

False or misleading information with your application

Prosecution under the following sections of the *Crimes Act 1900* may occur if you make a false statement or omit information in an application for an owner-builder permit:

Under s.307A of the *Crimes Act 1900* a person is guilty of an offence if she/he makes a false or misleading statement in an application for an authority or benefit. The penalty for false or misleading application is imprisonment for 2 years, or a fine of \$22,000 or both.

Under s.43(1) of the *Home Building Act 1989* the Commissioner may cancel a permit if it is later discovered that a permit holder misrepresented information in their permit application

Dispute handling

Fair Trading offers a range of services that can help you avoid or resolve disputes with your contractors. Refer to the Resolving building disputes page on the Fair Trading website for more information or call 13 32 20.

Sources of information

For more information about becoming an owner-builder, contact Fair Trading on 13 32 20 or visit our website.

Other sources of information include:

- your local council or government agencies such as the Department of Planning and Infrastructure and the Building Professionals Board
- building centres and professional builders
- useful books, magazines and websites dedicated to owner-building
- the approved owner-builder course.

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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