

Consumer Affairs Victoria New Homes Contract: Fast Facts

Building a new home in Victoria? First step is to go over your contract and pay special attention to the terms that affect essential risks. This article shows you how.

Consumer Affairs Victoria Contract: Advantages

These contracts are standard form and are issued by the local government of Victoria, specifically Consumer Affairs Victoria.

Because these contracts are not issued by industry associations like Master Builders Association, Housing Industry association, or ABIC, you can expect Consumer Affairs Victoria domestic building contracts to be more objective and fair to the parties, than industry-issued contracts which tend to skew more towards the Builder's favor.

Important Clauses

Nonetheless, it still pays to take a closer look at clauses that affect your risk to time, cost, and quality.

The following are the essential terms to watch out for:

Cooling Off Period

What it is : Sets out the five day period within which the owner may opt out of the contract after signing

Purpose : Allows the owner leeway to terminate the contract without penalty Risk minimised :
Time, Cost

Cooling-off period notice

Domestic Building Contracts Act 1995
 Director of Consumer Affairs Victoria
 Approved Notice

The following notice is hereby approved by the Director of Consumer Affairs Victoria. This version of the notice replaces the version published in the Victorian Government Gazette of 18 May 1996. The notice must be included in major domestic building contracts in substantially the same form or to the same effect as follows:

Notice pursuant to Section 31(1)(c)
 Cooling off period

Notice to Building Owner: You may end this contract within five clear business days after receipt by you of a signed copy of the contract by filling in the notice below and giving it to the Builder in one of the following ways:

(1) Personally
 (2) Leaving it at his or her address set out in the contract with a person who appears to be at least 18 years old
 (3) Sending it by pre-paid certified mail to the address set out in this contract
 (4) Sending it by facsimile to the facsimile number (if any) set out in this contract.

Detach along dotted line

[Form begins]

Notice that contract is ended

A Building Owner cannot withdraw from a contract under the Act if:

1. The **Builder** and the **Building Owner** have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of the Work in relation to the same home or land, OR
2. The **Building Owner** received independent legal advice from an Australian legal practitioner concerning the contract before entering into the contract.

To (Builder):	
From (Building Owner):	
give notice under our contract with you that the contract is ended. Please refund the deposit less \$100 and any out of pocket expenses incurred by you which I have previously approved.	
Building Owner's signature:	
Date:	

[Form ends]

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Progress Payments

What it is : Sets out the progress payments under the contract Purpose : To concretise the owner's obligation to pay and the builder's right to claim payment

Risk minimised : Time, Cost, Quality

Clause 7: Progress payments

Section 40 – Limits on progress payments

[Form begins]

Initial here that you have read Clause 40(1)

Building Owner:	
Builder:	

[Form ends]

(1) In this section –

base stage means –

- (a) in the case of a home with a timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level;
- (b) in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed;
- (c) in the case of a home with a suspended concrete slab floor, the stage when the concrete footings are poured;
- (d) in the case of a home with a concrete floor, the stage when the floor is completed;
- (e) in the case of a home for which the exterior walls and roof are constructed before the floor is constructed, the stage when the concrete footings are poured.

frame stage means the stage when a home's frame is completed and approved by a building surveyor.

lock-up stage means the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary).

fitting stage means the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position.

[Form begins]

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Commencement of work

What it is : Sets out the date when works are to be begun Purpose : States how the date of commencement of the work is determined. Risk minimised : Time, Cost

13. Commencement of Work

Clause function: This clause states how the date of commencement of the Work is determined.

13.1 The Builder:

- a) will start the Work on the date (if any) specified in [Clause 4](#); or
- b) will start the Work within 10 Business Days of whichever is the latest of:
 - i) the date the Builder receives the building permit for the Work
 - ii) if the Lender's approval is required before the Work may proceed, the date the Builder receives notice of that approval.

13.2 If the commencement date is to be determined under [Clause 13.1\(b\)](#), the Builder will do everything that it is reasonably possible for the Builder to do to ensure that the Work will start as soon as possible.

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Finish Date

What it is : Sets out the deadline for the building project Purpose : States how the finish date is determined. Risk minimised : Time, Cost

14. Finish Date

Clause function: This clause states how the *Finish Date* is determined.

- 14.1 The *Builder* will perform the *Work* diligently and at a reasonable speed.
- 14.2 The *Builder* must complete the *Work* on or before the *Finish Date*.
- 14.3 If the *Builder* is entitled to an *Extension of Time* under [Clause 22](#), the *Finish Date* will be adjusted by that *Extension of Time*.

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Extension of Time

What it is : Sets out the process for builder to claim extension of time Purpose : Apprises owner of when a claim for extension of time may be allowed, and the procedure for making a valid claim

Risk minimised : Time, Cost, Quality

22. Extension of Time

Clause function: This clause sets out the process for a *Builder* to claim for an *Extension of Time*.

- 22.1 The *Builder* will be entitled to an *Extension of Time* if, for any one or more of the following reasons, the *Builder* is delayed in achieving *Completion of Work* by the *Finish Date*:
- Inclement Weather* and its effect over and above the amount of days estimated by the *Builder* in [Clause 14.4\(a\)](#)
 - an industrial dispute that is not limited to the *Building Site* or to employees of the *Builder*
 - anything else that is beyond the reasonable control of the *Builder* and is not the result of the *Builder's* fault

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Completion of work

What it is : Sets out the instance when the work is to be deemed completed Purpose : Directs the builder to give notice to owner, by way of Opinion, that Completion of Work has been achieved

Risk minimised : Time, Cost, Quality

31. Completion of Work

Clause function: This clause sets out when *Completion of Work* is achieved.

31.1 The Work will be complete when:

- a) it has been fully performed in accordance with this contract, including the plans and specifications forming part of this contract
- b) the Builder has made good any damage of the kind referred to in [Clause 21.3](#)
- c) the Builder has removed all the Builder's rubbish, surplus material and demolished or dismantled structural material from the Building Site.

31.2 When the Builder is of the opinion that *Completion of Work* has been achieved, the Builder must give a notice to the Building Owner stating that opinion. Thereafter, the parties will follow the *Opinion Procedure*.

32. Completion notifications – *Opinion Procedure*

Clause function: This clause states the process the parties will follow when giving an opinion about *Completion of Work*.


32.1 The Building Owner must give a notice to the Builder within 10 *Business Days* of receiving the Builder's opinion that *Completion of Work* has been achieved, that the Building Owner:

- a) accepts the opinion, or

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Dispute Resolution

What it is : Sets out the process to be followed when a matter under this contract is in dispute

Purpose : To apprise the parties of their rights and obligations in relation to dispute settlement

Risk minimised : Time, Cost, Quality

34. Dispute Resolution Procedure

Clause function: This clause sets out the process to be followed when a matter under this contract is in dispute.

34.1 If a dispute arises, the Builder and the Building Owner will take the following steps before resorting to the procedures set out in Part 3A (Conciliation of Disputes) and Part 4 (Inspectors) of the Act:

- a) If the Building Owner or Builder considers that a dispute has arisen about any matter covered by this contract, that party must promptly give the other notice of the dispute. The notice should identify both the matter and the claim being made. Matters can be those that arose during the progress of the Work, arose after Completion of Work or arose after the contract was terminated.

Form N in Part D of the contract can be used to give this notice.

- b) The Builder and the Building Owner will then arrange a meeting and will negotiate in an honest and genuine attempt to resolve the dispute. The Builder's Representative or the Building Owner's Representative can represent their principal for that purpose only if they have been authorised in writing.

34.2 If the dispute is not resolved within 10 Business Days, the parties may lodge a complaint with Building Advice and Conciliation Victoria or ask for an inspector to be appointed under the Act.

34.3 Where a dispute exists, each of the parties must continue to perform its obligations under this contract unless the other party evinces an intention not to comply with this clause.

Clause 34 note

See the [Consumer Affairs Victoria website](#) or call 1300 55 75 59 for details of the Building Advice and Conciliation Victoria process.

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Suspension of work by the builder

What it is : States the process to be followed when the Builder intends to suspend the work

Purpose : To establish the proper procedure in suspending the works, and the ramifications in case of breach

Risk minimised : Time, Cost, Quality

35. Suspension of Work by the Builder

Clause function: This clause states the process to be followed when the Builder intends to suspend the Work.

35.1 After giving five Business Days' notice (called here 'Suspension notice') of its intention to do so, the Builder may suspend the Work if the Building Owner fails to do any of the following things in accordance with the terms of this contract:

- a) provide satisfactory evidence of title to the Building Site after being required to do so under [Clause 12.4](#)
- b) pay any amount due and payable to the Builder
- c) provide satisfactory evidence of its capacity to pay the Contract Price, including any Variations, after being required to do so under [Clause 12.10](#)
- d) provide the Builder or the Builder's sub-contractors access to the Building Site.

35.2 The Suspension notice must specify clearly the failure or failures that caused the Builder to give it.

35.3 If the Building Owner remedies the failure or failures specified in the Suspension notice after the Builder has suspended the Work, unless the Builder has already terminated this contract, the Builder will recommence the Work within 10 Business Days after the remedy of the failure or failures.

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Variations

What it is : Sets out when changes may be made by either party Purpose : To apprise parties of when a variation is allowable and the conditions thereof

Risk minimised : Time, Cost, Quality

Section 37 – Variation of plans or specifications – by builder

[Form begins]

Initial here that you have read section 37

Building Owner:	
Builder	

[Form ends]

- (1) A builder who wishes to vary the plans or specifications set out in a major domestic building contract must give the building owner a notice that –
- (a) describes the variation the builder wishes to make; and
 - (b) states why the builder wishes to make the variation; and
 - (c) states what effect the variation will have on the work as a whole being carried out under the contract and whether a variation to any permit will be required; and
 - (d) if the variation will result in any delays, states the builder's reasonable estimate as to how long those delays will be; and
 - (e) states the cost of the variation and the effect it will have on the contract price.
- (2) A builder must not give effect to any variation unless –
- (a) the building owner gives the builder a signed consent to the variation attached to a copy of the notice required by subsection (1); or
 - (b) the following circumstances apply –
 - (i) a building surveyor or other authorised person under the Building Act 1993 requires in a building notice or building order under that Act that the variation be made; and
 - (ii) the requirement arose as a result of circumstances beyond the builder's control; and
 - (iii) the builder included a copy of the building notice or building order in the notice required by subsection (1); and
 - (iv) the building owner does not advise the builder in writing within five business days of receiving the notice required by subsection (1) that the building owner wishes to dispute the building notice or building order.
- (3) A builder is not entitled to recover any money in respect of a variation unless –
- (a) the builder –
 - (i) has complied with this section; and
 - (ii) can establish that the variation is made necessary by circumstances that could not have been reasonably foreseen by the builder at the time the contract was entered into; or
 - (b) the Tribunal is satisfied –
 - (i) that there are exceptional circumstances or that the builder would suffer a significant or exceptional hardship by the operation of paragraph (a); and
 - (ii) that it would not be unfair to the building owner for the builder to recover the money.
- (4) If subsection (3) applies, the builder is entitled to recover the cost of carrying out the variation plus a reasonable profit.
- (5) This section does not apply to contractual terms dealing with prime cost items or provisional sums.

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Termination

What it is : Sets out the owner's right to terminate the construction contract Purpose : To inform owner of their rights should they decide to terminate the contract, and to lay out the procedure to be followed for a valid

termination

Risk minimised : Time, Cost

41. Consequences of termination by the *Building Owner*

Clause function: This clause sets out the *Building Owner's* rights if the *Building Owner* terminates the contract.

41.1 If the *Building Owner* terminates this contract, the *Building Owner* is entitled to recover from the *Builder* the amount of all cost, loss and damage incurred by the *Building Owner* as a result of the termination and the act or default that gave rise to it. The *Building Owner* may set off any such amount against any money owing by the *Builder* to the *Building Owner* under this contract.

[Form P](#) (*Builder*) or [Form Q](#) (*Building Owner*) in Part D of the contract can be used for the purpose of terminating the contract.

41.2 If the *Building Owner* terminates this contract, the *Building Owner* may, by itself, or by others, complete the Work and take and use all unfixed materials, goods, plant and equipment that the *Building Owner* has previously provided at the *Building Site*.

41.3 If the *Building Owner* terminates this contract, the *Builder* may:

- a) remove from the *Building Site* and retain all unfixed materials, goods, plant and equipment provided by the *Builder*. In the event that any unfixed materials, goods, plant or equipment provided by the *Builder* are not collected, the *Building Owner* must dispose of such materials, goods, plant or equipment according to law
- b) recover from the *Building Owner* the amount of all cost, loss and damage incurred by *Builder* as a result of the termination and the act or default that gave rise to it. The *Builder* may set off any such amount against any money owing by the *Builder* to the *Building Owner* under this contract.

Note re [Clause 40.1\(a\)](#) and [Clause 41.3 \(a\)](#) – Uncollected or abandoned goods: Situations can arise where the *Builder* does not collect the unfixed materials, goods, plant and equipment provided by the *Builder* and the unfixed materials, goods, plant and equipment could be considered to be abandoned. There are specific laws relating to the disposal of uncollected goods. These laws require the *Building Owner* to take care of the unfixed materials, goods, plant and equipment provided by the *Builder* until they are collected by the *Builder*, delivered to the *Builder*, or disposed of according to law. The law outlines procedures for the disposal of uncollected goods. A *building owner* who fails to follow these procedures may be liable for the loss of the uncollected goods. It is best if the *Building Owner* seeks professional advice at their own cost, before disposing of or taking possession of the uncollected goods.

41.4 The *Builder* must submit to the *Building Owner* any claim for Work performed by it prior to the termination of this contract for which the *Builder* has not been paid within 20 Business Days of being notified by the *Building Owner* that the contract is terminated. The *Builder's* entitlement to claim for Work performed by it prior to the termination of this contract and for which the *Builder* has not been paid is identified in [Clause 39.1](#) and [Clause 39.2](#).

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How We Can Help

The terms mentioned above are not an exhaustive list of clauses. For a more thorough, complete Contract Review by a specialist construction lawyer in Victoria, feel free to reach out to us. Your first consult is free.