

Schedule – Variances in definitions



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Scope of application to ‘construction contracts’

NSW Section 4

Construction contract is defined to mean a contract or other arrangement under which one party undertakes to carry out construction work, or to supply related goods and services, for another party.

Section 7

The Act applies to any construction contract (written or oral), even if the contract is expressed to be governed by the law of another jurisdiction. The Act does not apply to construction contracts:

- that form part of a loan agreement, contract of guarantee or contract of insurance under which a recognised financial institution undertakes to:
 - lend money or to repay money lent
 - guarantee payment of money owing or repayment of money lent
 - provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the construction contract
- for the carrying out of residential building work (within the meaning of the *Home Building Act 1989* (NSW)) on a site (or part of a site) used or proposed to be used as a residence by the party for whom the work is carried (an exempt residential construction contract: s4)
- under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of the work carried out or the value of the goods and services supplied.

Section 7(3)

The Act also does not apply to a construction contract to the extent to which it contains provisions under which a party undertakes to:

- lend money or to repay money lent;
- guarantee payment of money owing or repayment of money lent; or
- provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the construction contract.

VIC Section 7

Substantially the same as NSW. The Act does not apply to contracts governed by the *Domestic Building Contracts Act 1995* (Vic), except:

- contracts where the building Owner is in the business of building residences and the contract is entered into during the course of that business; or
- contract is incidental to work carried out under another construction contract.

QLD Section 3

Substantially the same as NSW. The Act does not apply to contracts governed by the *Domestic Building Contracts Act 2000* (Qld).

Note: In Queensland subContractors may choose between the Act and the *SubContractors’ Charges Act 1974* (Qld). This legislation enables subContractors to secure a statutory charge over money payable (or to be paid in the future) to them by their Contractor without having first obtained a court judgment for the alleged debt. The giving of a notice of claim of charge under this legislation effectively suspends any rights that a subContractor may have under the *Building and Construction Industry Payments Act 2004* and prevents them from taking any steps to recover outstanding money under that Act.

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SA Section 7

Identical drafting to NSW. The Act does not apply to contracts governed by the *Building Work Contractor Act 1995* (SA).

ACT Section 9

Substantially the same as NSW except as stated below. The Act does not apply to contracts governed by the *Building Act 2004* (ACT).

TAS Section 7

Substantially the same as NSW except that:

the Act applies to a supply in Tasmania, even though the construction work is being performed outside Tasmania; and

the Act also applies to residential structures and resident Owners.

WA Section 3

Construction Contract is defined to mean a contract or other agreement, whether in writing or not, under which the Contractor has one or more of the following obligations:

- carry out construction work;
- supply to the site any goods that are related to the construction work;
- provide (on or off site) professional services which are related to the construction work; and
- provide onsite services that are related to the construction work.

Section 7(2)

The Act applies to any construction contract (written or oral or part thereof), irrespective of where the contract was entered into or whether it is expressed to be governed by the law of another jurisdiction.

Section 7(3)

The Act does not apply to construction contracts to the extent to which it contains provisions under which a party undertakes to carry out construction work, or supply related goods and services, as an employee of the party for whom the work is to be carried out or to whom the related goods and services are to be supplied.

NT Sections 5 and 9: Identical drafting to WA.

Scope of definition of ‘construction work’

NSW Section 5(1)

Construction work means any of the following work:

- the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of land (whether permanent or not)
- the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, power-lines
- telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage or coast protection
- the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems
- the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension
- any operation which forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in the above paragraphs including:
 - site clearance, earth-moving, excavation, tunnelling and boring
 - the laying of foundations

Scope of application to ‘construction contracts’

- the erection, maintenance or dismantling of scaffolding
- the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site
- site restoration, landscaping and the provision of roadways and other access works
- the painting or decorating of the internal or external surfaces of any building, structure or works
- any other work of a kind prescribed by the regulations for the purposes of this subsection.

Section 5(2)

Construction work does not include:

- the drilling for, or extraction of, oil or natural gas;
- the extraction of minerals, including tunnelling or boring, or constructing underground works, for that purpose; or
- any other work of a kind prescribed by the Regulations. Currently, the Regulations do not prescribe any other kind of excluded work.

Section 6

Related Goods and Services means any of the following goods and services:

- materials and components to form part of any building, structure or work arising from construction work
- plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work
- the provision of labour to carry out construction work
- architectural, design, surveying or quantity surveying services in relation to construction work
- building, engineering, interior or exterior decoration or landscape advisory services in relation to construction work
- goods and services of a kind prescribed by the regulations for the purposes of this subsection.

VIC Section 5

Identical to the NSW definition.

QLD Section 10

Identical to the NSW definition save for some minor wording and syntax changes and the express inclusion of the testing of soils and road making materials.

Also includes building work within the meaning of the *Queensland Building and Construction Commission Act 1991* (QLD), namely:

- the erection or construction of a building
 - the renovation, alteration, extension, improvement or repair of a building
 - the provision of lighting, heating, ventilation, air conditioning, water supply, sewerage or drainage in connection with a building
 - any site work (including the construction of retaining structures) related to work of a kind referred to above
 - the preparation of plans or specifications for the performance of building work
 - contract administration carried out by a person in relation to the construction of a building designed by the person
 - fire protection work
 - carrying out site testing and classification in preparation for the erection or construction of a building on the site
 - carrying out a completed building inspection
 - the inspection or investigation of a building, and the provision of advice or a report, for termite management systems for the building, and termite infestation in the building.
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Scope of application to ‘construction contracts’

SA Section 5

Substantially the same as the NSW definition and includes fencing work.

ACT Section 7

Substantially the same as the NSW definition.

Also includes building work within the meaning of the Building Act 2004 (ACT), namely:

- work in relation to the erection, alteration or demolition of a building, and includes disposal of waste materials generated:
 - by the alteration of a building other than a building excluded under the regulations
 - by the demolition of a building (but not part of the building)
- work in relation to repairs of a structural nature to a building.

TAS Section 5

Incorporates most of the elements of NSW definition but with the addition of passenger and goods lifts, plumbing installations, and alterations in terminology (“docks and harbours” has been replaced by “marine infrastructure” and “power lines” has been replaced by “energy infrastructure”).

WA Section 4(2)

Construction work means any of the following work on a site in Western Australia, whether on land or off-shore:

- reclaiming, draining, or preventing the subsidence, movement or erosion of, land
- installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing, or removing, any works, apparatus, fittings, machinery, or plant, associated with any work referred to above
- constructing the whole or a part of any civil works, or a building or structure, that forms or will form, whether permanently or not and whether in WA or not, part of land or the sea bed whether above or below it
- fixing or installing on or in any thing referred above and any fittings forming, or to form, whether permanently or not, part of the thing, including:
 - fittings for electricity, gas, water, fuel oil, air, sanitation, irrigation, telecommunications, air-conditioning, heating, ventilation, fire protection, cleaning, the security of the thing, and the safety of people
 - lifts, escalators, insulation, furniture and furnishings
- altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing any thing referred to above or any fittings that form part of that thing
- any work that is preparatory to, necessary for, an integral part of, or for the completion of, any work referred to above, including:
 - site or earth works, excavating, earthmoving, tunnelling or boring
 - laying foundations
 - erecting, maintaining or dismantling temporary works, a temporary building, or a temporary structure including a crane or other lifting equipment, and scaffolding
 - cleaning, painting, decorating or treating any surface
 - site restoration and landscaping
- any work that is prescribed by regulations to be construction work for the purposes of this Act.

Civil works includes:

- a road, railway, tramway, aircraft runway, canal, waterway, harbour, port or marina
- a line or cable for electricity or telecommunications
- a pipeline for water, gas, oil, sewage or other material
- a path, pavement, ramp, tunnel, slipway, dam, well, aqueduct, drain, levee, seawall or retaining wall
- any works, apparatus, fittings, machinery or plant associated with any works referred to above.

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Section 4(3)

Construction work does not include any of the following work on a site in Western Australia, whether on land or off-shore:

- drilling for the purposes of discovering or extracting oil or natural gas, whether on land or not
- constructing a shaft, pit or quarry, or drilling, for the purposes of discovering or extracting any mineral bearing or other substance
- constructing any plant for the purposes of extracting or processing oil, natural gas or any derivative of natural gas, or any mineral bearing or other substance
- constructing, installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing, or removing, wholly artistic works, including sculptures, installations and murals
- work prescribed by the regulations not to be construction work for the purposes of this Act.

Section 5

Goods and services are related to the construction work if they are:

- materials or components (whether pre-fabricated or not) that will form part of any thing referred to in ss4(2)(b) or 4(2)(c) or of any fittings referred to in s4(2)(d)
- any fittings referred to in s4(2)(d) (whether pre-fabricated or not)
- plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of the construction work at the site of the construction work
- services that are provided by a profession and that relate directly to construction work or to assessing its feasibility (whether or not it proceeds):
 - including surveying, planning, costing, testing, architectural, design, plan drafting, engineering, quantity surveying, and project management, services; but
 - not including accounting, financial, or legal, services.

NT Section 6

Identical drafting to WA.

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