



QBCC REFORMS: HAVE YOU BEEN PAYING ATTENTION?

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OVERVIEW

Over the last couple of years, the regulation of the construction industry has been going through an overhaul as a result of the inquiry into the operation and performance of the Queensland Building Services Authority (“**QBSA**”) in 2012.

In mid 2013, the Government published its response to that inquiry including a 10 point plan to overhaul the regulator, including replacing the QBSA with the Queensland Building & Construction Commission (“**QBCC**”). The Queensland government announced that the reforms would pave the way for significant change to the regulation of the building and construction industry in Queensland with a focus on licensing, certification, and dispute avoidance and management. The government was keen to reduce the number of homeowner complaints that end up in the Queensland Civil & Administrative Tribunal (“**QCAT**”).

The QBCC came into existence on 1 December 2013. The QBCC reforms have been rolled out progressively since the end of 2013, with some reforms coming into effect on 1 July 2015. It remains to be seen how these reforms will play out in the long term for industry participants in Queensland. However, anecdotal evidence suggests that the QBCC is taking a much stricter and more diligent approach to the investigation and resolution of residential building complaints. Those engaged in residential building disputes have found there are fewer leniencies being shown by the QBCC than was the case in the past.

Below is a summary of the major issues that have been addressed:

DISPUTE RESOLUTION

On 1 July 2014, the QBCC introduced an early dispute resolution service. It applies to contracts for domestic building work in excess of \$3,300 where concerns regarding defective building work, non completion and contractual issues arise between builders and home owners before the contract had been terminated or completed. The service is free and the QBCC acts as mediator, with the mediation occurring within 28 days of either party applying to it.

In the first year, QBCC reported it had 1097 dispute cases lodged by builders and home owners. 83% of cases were resolved within 28 working days.

From 1 June 2015, the service has been expanded to help principal contractors resolve defective or incomplete building work issues which can arise with their subcontractors.

DISCIPLINARY PROCEEDINGS

Since early 2015, disciplinary proceedings under the QBCC Act which were previously heard by the QCAT, are now heard by the QBCC. The process allows for an internal review by QBCC if the licensee is not happy with the outcome of the proceeding. Ultimately, a licensee can apply for a review to QCAT if they are not satisfied with the review decision.

The QBCC can take disciplinary action against a licensee or former licensee for many reasons, including if they contravene the QBCC Act or the Building Act 1975, are not a fit and proper person to exercise control over a company with a licence, or if they contravene a condition of the licence.

REQUIREMENTS

In October 2014, the licence renewal process was simplified and streamlined so that:

1. licences will be renewed every three years rather than 12 months, and
2. licensees will no longer be required to provide financial reports to the QBCC when renewing their licences.

The QBCC has indicated that the requirement to provide financial reports was a significant cost saving for both licensees and the QBCC. However, the QBCC may go direct to other sources to find out whether or not licensees are in fact compliant by, for example, accessing Australian Taxation Office information.

The Qld Building and Construction Board Policy sets out the minimum financial requirements for licencing under the QBCC Act. The objectives of the minimum financial requirements in this policy are to promote financially viable businesses.

SUBCONTRACTOR ACCOUNTABILITY FOR DEFECTIVE WORK POLICY

From 1 June 2015, subcontractors are accountable for any defective work they do. Previously, principal contractors were held responsible for the defective work. QBCC has said these changes have been requested by industry members for some time and it makes sense for subcontractors to take more responsibility for their work and to be held accountable if they perform defective work.

The subcontractor responsible for the defective work must rectify it or face disciplinary action which could result in suspension or cancellation of their licence. Under the policy, if a subcontractor fails to comply with a direction to rectify a defect, the principal contractor will be required to rectify the defect or have another subcontractor rectify it, at the principal contractor's cost.

The QBCC would then take disciplinary action against the subcontractor, while the principal contractor would be required to take action against the subcontractor to recoup their costs.

CHANGES TO BUILDING LICENSING

Some of the key changes to licensing laws that came into effect on 1 July 2015 are as follows:

• REDUCTION OF 5 YEAR EXCLUSION TO 3 YEARS

Under the old system, the QBCC would cancel the license of an individual for 5 years if a company of which they were a director (within 1 year of liquidation), was wound up, or the individual went bankrupt.

Under the new system, the QBCC will cancel the license of an individual for only 3 years. The penalty for two defaults (for example liquidation of a company and then bankruptcy of the individual) will remain unchanged. In other words, a life ban for two defaults will still result under the new system.

• ONLY APPLIES TO BUILDING COMPANIES

A banning for being a director of a liquidated company will only apply if the company "*directly or indirectly carries out building work or building work services*". Just what this definition extends to will be interesting. For instance, a director of a company that provides site cleaning services may be caught.

• NO PERMITTED INDIVIDUAL APPLICATIONS.

Previously, affected licensees were able to make an application to become a "Permitted Individual". Essentially, if the licensee could demonstrate the event of default (bankruptcy or liquidation) was out of their control and they did everything possible to prevent the default, their license could be reinstated. Under the new provisions, this option is not available.

INCREASED PENALTIES

Tougher penalties were introduced from 1 July 2015 for contractors who commit building offences. QBCC is hoping increased penalties will help boost compliance with building standards and provide more options for removing recalcitrant licensees. Some key points to keep in mind are:

- there is an increased number of demerit offences;

- there is an increase in the demerit points attached to some offences. For example, a contractor who carries out defective work and then fails to rectify the work when directed will be penalised 10 points instead of the current 2;
- QBCC has indicated the changes will target activities where non compliance can have significant impacts on homeowners. It considers that inadequate supervision is the main contributor to defective building work and so there is a focus on applying demerit points to supervision offences. In that way, contractors will be encouraged to closely supervise work and ensure it complies with relevant standards; and
- a person accumulating 30 demerit points within 3 years will have their licence cancelled and be disqualified from holding a licence for 3 years.

If the person accumulates another 30 demerit points within 10 years of the first ban, then they will be disqualified for life.

DOMESTIC BUILDING CONTRACTS

From 1 July 2015, reforms to the mandatory requirements for domestic building contracts will come into effect. The QBCC has indicated that the residential construction contracts will be more flexible and easier to use.

Different contractual requirements for domestic building work will apply, based on the work's value, including:

1. **“Level 1 Renovation, Extension and Repair Contract”** will apply to lower value domestic building work (under \$20,000);

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2. **“Level 2 Renovation, Extension and Repair Contract”** will be used for work of \$20,000 and over; and
3. a revised **“New Home Construction Contract”**.

For Level 2 contracts and the “New Home Construction Contract”, a Consumer Building Guide must be provided by the contractor to the client prior to signing a contract.

The guide replaces the Contract Information Statement and provides key information about the rights and obligations of the parties. Within 10 days of the work commencing, the contractor must also provide the owner with a commencement notice to the owner confirming the start date and the date for practical completion.

On the positive side, contractors are now able to charge a maximum deposit of 20% where the value of work performed offsite is more than 50 per cent of the total contract price, such as with prefabricated homes or kitchen construction.

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