

# Disputes Procedures Manual

Resolution Services

V3.2 August 2020



QUEENSLAND BUILDING AND  
CONSTRUCTION COMMISSION

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# Document Control

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## Document Approvals

Role	Name	Signature	Date
Commissioner			01/12/2013 01/07/2014 (EDR)
Executive Director Compliance and Regulatory Services			01/12/2013 01/07/2014 (EDR)
Director Industry Quality			May 2018
Manager Resolution Services (Strategic)			August 2019

# 1 Complaints Overview

## 1.1 Resolution Services Role

QBCC provides a resolution service for complaints involving building work in Queensland in relation to defective or incomplete building work.

Complaint Type	Complaint Resolution Under QBCC Act 1991	Rectify Defects or Complete Work
Residential Building (Insurable work)	<ul style="list-style-type: none"> <li>- Licensee encouraged to rectify</li> <li>- QBCC inspection</li> <li>- Direction to Rectify recorded on public record – Complied With or Not</li> <li>- Can recover cost of rectification from licensee</li> </ul>	Yes - subject to claim assessment
Residential Building (Not insurable work)	<ul style="list-style-type: none"> <li>- Licensee encouraged to rectify</li> <li>- QBCC inspection</li> <li>- Direction to Rectify recorded on public record – Complied With or Not</li> </ul>	No - Claimant to pursue own legal remedy through the Tribunal
Commercial Building (Not insurable work)	<ul style="list-style-type: none"> <li>- Licensee encouraged to rectify</li> <li>- QBCC inspection</li> <li>- Direction to Rectify recorded on public record – Complied With or Not</li> </ul>	No - Claimant to pursue own legal remedy through the Tribunal
Completed Building Inspections, Termite Inspections (including annual inspections) and Designer Complaints	<ul style="list-style-type: none"> <li>- Auditing role (QBCC inspection, report provided to claimant)</li> <li>- Reprimand</li> </ul>	No - Claimant to pursue own legal remedy through the Tribunal
Certifier	<ul style="list-style-type: none"> <li>- Auditing role (QBCC Inspection, report provided to claimant)</li> <li>- Reprimand</li> </ul>	No - Claimant to pursue own legal remedy through the Tribunal
Residential Construction Work Performed by Unlicensed Contractor	<ul style="list-style-type: none"> <li>- QBCC inspection</li> <li>- Cause Direction to Rectify issued</li> <li>- Can recover cost of rectification from unlicensed contractor</li> </ul>	Dependant if there was Fraudulent Misrepresentation by the ULC

Building Type / Constructed By	QBCC Can Investigate Defects	Insurable	QBCC Cannot Assist
Commercial - Licensed Contractor	Yes	No	Rectification of defect if contractor does not rectify
Residential - Licensed Contractor	Yes	Yes – claim assessed if contractor does not rectify	Property sold before defect is rectified - check insurance claim
Owner-builder	Yes	No	Rectification of defect if contractor does not rectify
Work not requiring a QBCC licence	No	No	If work is not licensed by QBCC a direction cannot be issued. Claimant will have to seek resolution via other means
Unlicensed Contractor	Yes – also refer to Compliance to investigate Unlicensed Contracting	Yes - only if the work undertaken is RCW and ULC purported to be licensed	Rectification of defect if unlicensed contractor does not engage a licensed contractor to rectify  The claimant will have to seek resolution via other means

## 1.2 Defective or Incomplete Building Work Complaints

QBCC provides an equitable and effective dispute resolution service for disputes between QBCC licensees and consumers during and after construction. Both parties are encouraged to resolve any issue/s amicably at all times. During construction both the owner and principal contractor can seek assistance via the Early Dispute Resolution (EDR) service. Post construction it is only the owner that can lodge a complaint.

Owners or occupiers of a property adjacent to where building work is being carried out are able to lodge a complaint for consequential damage that is a result of the building work.

The owner generally contacts QBCC because of the following reasons:

- there is a breakdown or lack of communication
- the works are not progressing as desired/expected by the owner



- there is a misunderstanding/disagreement regarding the contract specifications/conditions
- the contractor strongly feels there is no defect/s and is unwilling to rectify the defect/s
- no response from the contractor about the alleged defect/s after either writing or phoning about rectifying the alleged defects
- contractor promises to rectify the defect/s but there is no action
- rectification attempts have been made but the problem keeps reoccurring
- contractor is deceased or bankrupt
- building company has gone into liquidation or is deregistered.

QBCC does not provide a dispute resolution service for disputes between contractors and subcontractors once the contract is complete. Owners can lodge a complaint against a contractor if:

- they are the owner of the property at the time of lodgement and continue to have ownership until the matter is resolved by QBCC
- they can provide sufficient documentary evidence confirming who performed the defective work
- the alleged defect is a result of the work carried out by the contractor.

**From 15 December 2014, before lodging a building dispute with QCAT it became mandatory to undertake the appropriate QBCC dispute resolution process. If our process is unsuccessful or unresolved, the QBCC closure letter will then be sufficient evidence for either party to proceed with lodging a building dispute with QCAT.**



### Resolution Services Reforms as at 15 December 2014

#### What QBCC Cannot Assist With

Generally QBCC cannot investigate complaints concerning:

- work that is not building work as defined by Section 5 of the *Queensland Building and Construction Commission Regulation 2018*
- work carried out valued at less than \$3,300. Note - plumbing, drainage, gas fitting, chemical termite management system installation, building design, site classification, fire protection and completed building inspections are exempt from this threshold and can be investigated regardless of the value of work and hydraulic design work valued over \$1,100.

**NOTE:** QBCC can however investigate complaints where a contractor has performed building work where the quoted value and/or payments received are less than \$3,300.00, but QBCC would estimate that the value of work is in excess of \$3,300.

The *Queensland Building and Construction Commission Act 1991* states:

*“value of building work means an amount representing the reasonable cost to a consumer of having the work carried out on the basis that all building materials are to be supplied by the contractor (whether or not the work is in fact carried out by a licensed contractor on that basis).”*

Therefore, the value of building work is taken to include the value of materials, labour and GST, regardless of who provides the elements.

- for EDR only, building work other than Domestic Building Work, in accordance with Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (e.g. commercial work, industrial work etc.)
- contractual issues within QCAT jurisdiction (e.g. prolongation claims, extension of time claims, variation cost escalations, ordering of damages, compensation etc.)
- damage caused due to owner maintenance or lack of maintenance
- damage caused by natural disasters (owner should consult their Home and Contents Insurance Policy)
- damage where an owner is unable to identify the person responsible for the work
- a product purchased is defective even where it has been installed by a licensed contractor (e.g. malfunctioning oven purchased by the contractor).

### What QBCC Can Assist With

The *Queensland Building and Construction Commission Act 1991* and the Queensland Building and Construction Board 'Rectification of Building Work' Policy stipulate and provide information on the types of defective building work QBCC is able to investigate and the time limits that apply for the investigation and action such.

### Tier 1 Defective Work

The formal definition of Tier 1 defective work is grossly defective building work that:

Falls below the standard reasonably expected of a licensed contractor for the type of building work and either:

- adversely affects the structural performance of a building to the extent that a person could not reasonably be expected to use the building for the purpose for which it was, or is being, erected or constructed
- is likely to cause the death of or grievous bodily harm to a person.

An example of tier 1 defective work would be manifestly inadequate construction practices resulting in the potential for loss of life or amenity.

## Structural Defective Work

Structural defects are those defects which may:

- allow water penetration into a building
- adversely affect the health and/or safety of the occupants
- adversely affect the structural adequacy of the building
- adversely affect the serviceability, performance or functional use of the building or works (e.g. leaking showers, subsidence or settlement of footings, incomplete or inadequate termite protection).

Examples of Structural defects include but are not limited to:

- leaks in roofs, showers, doors, windows or walls
- faulty or inadequate flashing
- faulty or inadequate damp proof course
- fretting or spalling masonry
- inadequate strength mortar
- extensive cracking or distortion of wall or ceiling lining beyond normal frame settlement
- shrinkage or thermal movement
- extensive cracking or dislodgement of floor or wall tiles
- defective, incomplete or inadequate termite protection methods
- inadequate provision for discharge of roof water
- incorrect or inadequate site drainage
- paint - large areas delaminating - adhesion failure
- use of materials not fit for the purpose.

## Non-structural Defective Work

Non-structural defects are defects, which are not a defect of another category and which:

- result from failure of the contractor to meet a reasonable standard of construction and finish
- are of a kind which commonly occur during the settling in period of a new building.

Examples of non-structural defects include but are not limited to:

- sticking cupboard doors
- minor cracking of plasterboard joints or cornice joints
- poor finishing detail, including paint work.

### Consequential Damage

On 15 December 2014, the legislation changed, giving QBCC the power to direct on consequential damage to a residential property that is caused by, or as a consequence of building work at a building site.

*Consequential damage* is:

- caused by, or as a consequence of, carrying out building work at a building site (the relevant site), regardless of any intention, negligence or recklessness of the person carrying out the work; and
- to a residential property at the relevant site, containing the relevant site or adjacent to the relevant site.

*Building work* includes any work prescribed by regulation.

*Damage*, to a residential property, includes any of the following—

- (a) the impairment of drainage at the property;
- (b) the undermining of a fence, retaining wall or other structure along the boundary of the property;
- (c) the compromising of the structural integrity of a building, swimming pool or wall on the property;
- (d) the cracking, lifting or cratering of a driveway or pathway on the property;
- (e) water penetration of the property;
- (f) infestation of the property by termites.

*Residential property* includes—

- (a) a single detached dwelling or a duplex; or
- (b) a lot or the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (c) a lot or the common property for a building units plan or a group titles plan under the *Building Units and Group Titles Act 1980*.

### Consequential Damage to an Adjacent Property

Owners or occupiers of a property adjacent to where building works are being carried out are able to lodge a complaint for consequential damage that is a result of the building work. This will encompass damage or even potential damage during construction.

For example, if the work the contractor is doing on the site next door is going to affect the foundations of the neighbour's house or swimming pool, then they could lodge a complaint with QBCC.

The *Queensland Building and Construction Commission Act 1991* provides:

***“71J Requests for rectification of building work or remediation of consequential damage***

*(2) The owner or occupier of a residential property adjacent to a building site may ask the commission give a direction to remedy any consequential damage to the property.”*

In all cases the affected party should write to the contractor advising them of the concerns and/or request rectification of any damage. If the matter is not resolved, they can submit a complaint form.

### Post Completion Complaint Process

For disputes arising after Practical Completion an owner (including an owner-builder) can lodge a QBCC 'Residential and Commercial Construction Work Complaint Form' for building work they consider defective or incomplete. The owner or occupier of a residential property adjacent to a building site may also lodge a complaint about consequential damage that is a result of the building work carried out.

### Time Limitation for Lodging a Complaint

From 10 November 2017, the *Queensland Building and Construction Commission Act 1991* section **71J Requests for rectification of building work or remediation of consequential damage** provides that a consumer must make their request to the commission (lodge a complaint) within 12 months of becoming aware of the defective or incomplete work or the consequential damage to the property. When assessing the complaint this timeframe is to be considered but regardless, QBCC still has the power to proceed with the complaint and issue and direction if it is reasonable to do so.

### Determining the Completion Date

- First Owner – depending on the General Conditions of the contract, the date of Practical Completion may be the earliest of the handover date, the final inspection date or the property being occupied.
- Subsequent Owner - the final approval issued by the certifier or council, the date of the pest inspection or the date of the final plumbing inspection etc.
- Common Property - the Certificate of Classification.

## 1.3 QBCC Discretion to Issue a Direction to Rectify

QBCC maintains discretion as to when it may direct a contractor to rectify defective work and as of 15 December 2014, consequential damage.

In applying discretion QBCC will consider the severity of the defect/s, how long it took to appear after the work was completed, the time taken to notify the contractor and QBCC of the defect/s and if there are monies owed etc.

Refer to [Guidance Statement RES-017 – Outstanding Monies](#) for further information on the consideration of monies owed.

As of 15 December 2014, the *Queensland Building and Construction Commission Act 1991* (the QBCC Act) states:

**"72 Power to require rectification of building work and remediation of consequential damage**

- (1) *This section applies if the commission is of the opinion that—*
- (a) *building work is defective or incomplete; or*
  - (b) *consequential damage has been caused by, or as a consequence of, carrying out building work.*
- (2) *The commission may direct the person who carried out the building work to do the following within the period stated in the direction—*
- (a) *for building work that is defective or incomplete—rectify the building work;*
  - (b) *for consequential damage—remedy the damage.*
- (3) *In deciding whether to give the direction, the commission may take into consideration all the circumstances it considers are reasonably relevant and, in particular, is not limited to particular, is not limited to out the building work (including r carrying the terms of any warranties included in the contract).*
- (4) *The period stated in the direction must be at least 28 days unless the commission is satisfied that, if the direction is not required to be complied with within a period—*
- (a) *a substantial loss will be incurred by, or a significant hazard will be caused to the health or safety of, a person because of the incomplete building work or consequential damage; or*
  - (b) *the defective or incomplete building work, or consequential damage, will cause a significant hazard to public safety or the environment generally.*
- (5) *The commission is not required to give the direction if the commission is satisfied that, in the circumstances, it would be unfair to the person to give the direction.*

*Example for subsection (5)—*

*The commission might decide not to give a direction for the rectification of building work because an owner refuses to allow a building contractor to return to the owner's home or because an owner's failure to properly maintain a home has exacerbated the extent of defective building work carried out on the home.*

- (6) The commission may, before it considers whether building work is defective or incomplete, require the consumer for the building work comply with a process established by the commission to attempt to resolve the matter with the person who carried out the work.*
- (7) In subsection (3), a reference to a contract for carrying out building work includes a reference to a domestic building contract for managing the carrying out of building work.*
- (8) To remove any doubt, it is declared that the commission may act under this section in relation to consequential damage whether or not an owner or occupier has made a request under section 71J."*

In relation to subsection 5 above, if information is obtained prior to, at the time of or after the inspection regarding access issues, this information must be vetted against the affected party to validate or not.

The QBCC Act further outlines our powers and limitations of directions e.g. who a direction can be issued to, the time frame in which we are able to issue a direction and the ability to apply to the tribunal for an extension of time for giving a direction. Refer to [Section 4](#) for more information on directions.

## Accountability for Subcontractor Defects

On 1 June 2015, QBCC introduced the Accountability for Subcontractor Defects Policy, which then became the Accountability for Subcontractor Defects Procedure in July 2017. The procedure aims to ensure all licensees; not just principal contractors are held accountable for the work they perform. Refer to the below procedure for full details.



[Accountability for Subcontractor Defects Procedure](#)



[Q & A Subcontractor Accountability 2017](#)

## 1.4 Queensland Home Warranty Scheme

Where defective or incomplete works are not rectified and/or completed by the contractor, assistance may be available under the Queensland Home Warranty Scheme (the Scheme).

Only **primary insurable work** as defined in the QBCC Act section 67WC is covered for a claim for defects where the work is substantially complete. When completing the initial case assessment, the AO should be making note on their Complaint Assessment File Note

(CAFN) as to if the complaint items are primary insurable work. This may later be referred to by the Building Inspector when determining upon case closure if the case is to be referred for a claim assessment.

An Insurable Work page is on the QBCC website to assist in determining if something is Insurable Work, both pre and post 28 October 2016 and the below Guide to What is RCW can also be reference when determining if something is primary insurable work and residential construction work.



### **Insurable Work**



### **A Guide to What is RCW**

## **Residential Construction Work - contracts prior 28 October 2016**

### **Insurance Policy Conditions 1 – 8**

Subject to the terms of the relevant policy, the Queensland Building and Construction Commission will pay for loss for:

- Non-completion
- Vandalism and forcible removal – Policy 8 +
- Fire, storm and tempest – Policy 8 +
- Defective construction
- Subsidence or settlement.

These policy conditions apply to residential construction work covered by the Queensland Home Warranty Scheme for which a premium has been paid, a contract entered, or work commenced (whichever is the earliest) on or after the date of commencement of the policy.

## **Queensland Home Warranty Scheme changes from 28 October 2016**

Changes to the Home Warranty Scheme were introduced on 28 October 2016. The terms and conditions of the Scheme were incorporated into a schedule in the *Queensland Building and Construction Commission Regulation 2003* which was then replaced by the *Queensland Building and Construction Commission Regulation 2018*. Definitions are also provided in the *Queensland Building and Construction Commission Act 1991*.

In summary the changes are:

- the scheme has been expanded to cover other additional work
- a consumer can increase the amount of cover by payment of an additional premium and
- there are changes to the way GST is dealt with in regard to cover.



## Expansion of cover

Everything covered by the Queensland Home Warranty Scheme prior to the changes remains covered. The Scheme has been expanded to include the following work.

- The erection, construction or installation of a residential swimming pool.
- In relation to a residence or related roofed building (e.g. a shed):
  - All building work performed within the building envelope (internal or external parts of the building), for example, painting, tiling, plastering, roof restoration and repair work, rendering of walls, floor restoration, and glazing work.
  - Anything attached to the building if it requires building approval or plumbing approval.
  - Any structure attached to the external part of the building where there is no other supporting structure (e.g.: awning or handrail).
  - Stairs or an access ramp which are permanently attached to the building.
- In relation to plumbing and drainage for a residence or related roofed building:
  - building work for the primary water supply (e.g. install water tank for primary water supply)
  - building work for sewerage or drainage (e.g. work on a sanitary drain connecting a residence to the sewerage main).
  - stormwater drainage (e.g. repair of downpipe or gutter).
- The installation of a manufactured home fixed to land in a residential park.

## 1.5 Substandard Designs

An owner can lodge a complaint against the building designer if they believe there is a design fault in their plans. The complaint must be lodged soon after the design fault is identified, this may be before or during construction of the building work.

### What QBCC Can Assist With

- QBCC provides an audit role in the assessment of substandard design plans.
- QBCC can inspect the premises and issue the owner with an investigative report. The owner can use QBCC's report in conjunction with legal advice in the Tribunal or Courts for a compensation claim.
- Whilst QBCC does have the power to issue a Direction to Rectify in relation to substandard design, please only take this option after discussing with your immediate manager to determine the consumer benefits.

## Complaint Requirements

The claimant must provide QBCC with a completed Complaint Form along with a copy of the design.

## 1.6 Pre Purchase and Termite Inspections

Any complaint made against a building inspector must originate from the person/s that requested the inspection. The complaint must be lodged as soon as possible after the inspection report is received as time delays may affect QBCC's ability to make an accurate determination on the content.

### What QBCC Can Assist With

- QBCC can only provide an audit role in the assessment of inspection reports.
- QBCC can inspect the premises and issue the owner with an investigative report. The owner can use QBCC's report in conjunction with legal advice in the Tribunal or Courts for a compensation claim.

### What QBCC Cannot Assist With

- QBCC cannot direct the Building Inspector.
- QBCC cannot resolve any contractual issues.
- QBCC cannot provide an amended and fully compliant inspection report.

## Complaint Requirements

The claimant must provide QBCC with a completed Complaint Form along with a copy of the pre purchase report or termite inspection (including annual inspections) report.

## 1.7 Tier 1 Defective Work

The *Queensland Building and Construction Commission Act 1991* allows for a person to be banned from holding a licence for three (3) years if they carried out grossly defective work, and for life if they carried out grossly defective work a second time. Tier 1 defective work by an individual licensee will also result in cancellation of the licence.

In the case of a licensed company the nominee, directors, secretaries and influential people will be banned (and if licensed have their licences cancelled), and if they do not remove themselves from the company its licence will be cancelled.

Tier 1 defective work action can also be taken against a non-licensee that is an unlicensed contractor. Such contractors when banned will not be able to apply for a licence for three (3) years (or life in the case of a second ban).

The legislation uses the term “Tier 1 defective work” when referring to the sorts of grossly defective work which enables QBCC to ban a person.

Tier 1 defective work is work which is dangerous and may cause grievous bodily harm or worse, or which is so defective it is structurally unsound and requires a knock down rebuild or extensive corrective measures.

Given the seriousness of the consequences the call on whether work is Tier 1 defective work or not is to be made only by the Manager Resolution Services. The Manager making the decision must have extensive building qualifications and experience in order to be a suitable witness should the decision be challenged.

If Tier 1 defective work is identified, QBCC must issue a notice to the person. This is basically a show cause notice why the person should not be banned and affords them natural justice. In the case of an individual the notice is issued to the individual.

Where a company performs the work the notice is issued to the persons in charge of the company and responsible for the work, i.e. directors, secretaries, influential persons and nominees.

A notice is only ever sent to the company itself if one of those persons is banned. If one of those persons is banned and the company does not get rid of them the company's licence is cancelled. A company is not banned; it is only the individuals responsible who are banned.

Any submissions provided in response to the notice are to be considered. If it is still QBCC's position the work is Tier 1 defective work and the person is responsible the person is banned for 3 years and another notice issued to inform them of that. If an individual is banned a second time the term of the ban is life.

The ban operates to prevent the individual from holding any sort of QBCC licence, not even an occupational licence.

## The Legislation

The relevant legislation is Part 3D of the *Queensland Building and Construction Commission Act 1991*, s67AB to s67AP.

The purpose of QBCC is to regulate the building industry to ensure the maintenance of proper standards. That is to implement measures designed to reduce instances of defective work. To allow QBCC to take appropriate action the power was granted to QBCC to ban a person who did grossly defective work for 3 years. The 3-year ban is to give the person appropriate punishment and isolation from the building industry, and also to give them sufficient time to do required study and gain experience as an employee.

If the person does grossly defective work after receiving their first notice (even if done unlawfully during the period of their ban) they will be banned for life. Clearly such a person does not belong in the building industry.

## What is Tier 1 Defective Work?

Section 67AB of the QBCC Act states:

*“(1) **Tier 1 defective work** means grossly defective building work that—*

*(a) falls below the standard reasonably expected of a licensed contractor for the type of building work; and*

*(b) either—*

*(i) adversely affects the structural performance of a building to the extent that a person could not reasonably be expected to use the building for the purpose for which it was, or is being, erected or constructed; or*

*(ii) is likely to cause the death of, or grievous bodily harm to, a person.*

*Example for paragraph (b)(i)—*

*A building is constructed and due to substandard building work all or a significant part of the building requires demolition or substantial reconstruction.*

*Examples for paragraph (b)(ii)—*

*A fire protection contractor installs a fire protection system that does not meet the requirements of the Building Code of Australia for the system. In the event of fire, the non-compliance is likely to result in the death of, or grievous bodily harm to, a person.”*

## What to Consider When Deciding Whether Building Work is Tier 1 Defective Building Work

The definition of “Tier 1 defective work” has **two (2)** elements that **must be satisfied**.

### The First Element

In all cases, the building work must fall below the standard reasonably expected of a licensed contractor for the type of building work. This means the defect must be such that a person with the required technical knowledge and experience to obtain a licence would not have performed it. It must be a defect resulting from poor workmanship that would not reasonably be expected of a licensee of the appropriate class.

## The Second Element

Must be at least one, but can be both, of the following:

- affects the structural performance of the building to the extent the building could not be used for the purpose it was intended for, i.e. it is structurally unsound
- is likely to cause the death of, or grievous bodily harm to, a person, i.e. it is unsafe.

You might be forgiven for thinking that a building that is structurally unsound must be likely to cause death or grievous bodily harm. It is therefore hard to draw a distinction between the 2 options in the second element without reference to the examples provided in the legislation

Other examples of structurally unsound building work:

- a deck which is structurally inadequate (which might meet both limbs of the second element if the structural inadequacy may result in a collapse)
- a masonry wall or support column or similar that is not core filled (which might meet both limbs of the second element if the structural inadequacy may result in a collapse)
- inadequate footing system causing major damage to the house so as to render it uninhabitable. In such cases it might be the house is not going to fall down and kill someone, but it is still structurally unsound, and therefore only meets the first limb.

The QBCC Act example of unsafe building work is:

*“A fire protection contractor installs a fire protection system that does not meet the requirements of the Building Code of Australia for the system. In the event of fire, the noncompliance is likely to result in the death of, or grievous bodily harm to, a person.”*

Another example of unsafe building work is incorrect glazing is installed in a door or a shower screen that is not safety glass. In the event of human impact serious injury could occur to a person.

## Process to establish Work is Tier 1 Defective

The Building Inspector should prepare a detailed report referring to each element of the building work thought to be Tier 1 defective and why.

The definition should be referred to in relation to each element and of course numerous photographs or a video recording should be taken. There is a very high likelihood the report will be used in evidence in the Tribunal and it should be prepared with that in mind.

The Building Inspector's report must include the following information:

- details of the nature of the defective works
- whether the works were performed by an individual or a company
- recommendation as to why the defect is of a severity or type placing it above a normal “Category 1” defect class

- details of what the defect is and how it fails to comply with the BCA, Australian Standards, contractual documentation or plans etc.
- recommendation as to why the defect is regarded as more significant than negligent and incompetent work.

The Building Inspector's report should be referred to a Manager Resolution Services who is delegated to make the final decision on whether works are Tier 1 defective.

If the Manager Resolution Services agrees the work is Tier 1 defective work the Manager Resolution Services should discuss it with the Director Resolution Services and Strategy before proceeding any further.

The notices to be issued by the Compliance Division have to be very detailed in their description of the works alleged to be Tier 1 defective work. It is imperative therefore that the Building Inspector's report is of a high standard with precise details of the defective works to allow direct insertion into show cause notices.

### When has a Person Carried out tier 1 Defective Work?

Section 67AB of the QBCC Act states:

***“(2) Carry out tier 1 defective work means—***

- (a) carry out tier 1 defective work personally; or*
- (b) directly or indirectly, cause tier 1 defective work to be carried out; or*
- (c) provide advisory, administrative, management or supervisory services for carrying out tier 1 defective work.”*

The person in charge of the site can be held responsible, as can the employee, subcontractor or other person who actually performed the work.

### Carry Out Tier 1 Defective Work Personally

A person carries out Tier 1 defective work if they carry it out personally. This means they themselves are responsible for physically carrying out the work.

### Carry out Directly or Indirectly Cause Tier 1 Defective Work to be Carried Out

A person directly causes Tier 1 defective work to be performed where the work is carried out by subcontractors or employees of the person, or otherwise at the person's direction.

A person indirectly causes Tier 1 defective work to be performed where the work is carried out by subcontractors of subcontractors, or is carried out on a site they are responsible for in circumstances where the work could not have been carried out except through the first person's involvement. For example, they lent their licence to someone to allow the work to be performed.

## **Provide Advisory, Administrative, Management or Supervisory Services for Carrying Out Tier 1 Defective Work**

A person:

- Provides “administration services” in relation to building work by:
  - preparing tender documentation and calling and selecting tenders
  - arranging and conducting on-site meetings and inspections
  - arranging payment of subcontractors
  - arranging for certificates, including certificates from a local government, to be issued
  - doing administration for the work usually carried out by:
    - a construction manager or
    - a project manager under a project management agreement and
  - doing other administration for the work usually carried out by a licensed contractor in the course of the contractor’s business.
- Provides “advisory services” in relation to building work if they provide advice or a report about building work.
- Provides “management services” in relation to building work by:
  - coordinating the scheduling of the work by building contractors including as agent for another person; and
  - performing management for the work usually carried out by:
    - a construction manager or
    - a project manager under a project management agreement and
  - performing other management for the work usually carried out by a licensed contractor in the course of the contractor’s business.
- Provides “supervisory services” in relation to building work by doing:
  - the development, implementation and management of a system for the supervision of the work and
  - the coordination or management of persons undertaking the supervision of the work and
  - the personal supervision of the work and
  - any other supervision of building work under this Act.

Remember carried out means directly or indirectly caused it to be carried out, or provided advisory, administrative, management or supervisory services for carrying out Tier 1 defective work.

## **Workflow for Tier 1 Defective Work**

- Establish Tier 1 defective work has been carried out.
- Building Inspector to prepare a detailed report regarding the Tier 1 defective work.
- Building Inspector’s report to identify whether the work has been carried out by:
  - an individual or
  - a company.
- Report to be submitted to a Manager Resolution Services for consideration.

- If the Manager Resolution Services agrees Tier 1 defective work has been performed, then a memo is to be submitted to the Compliance Manager to prepare and issue the appropriate show cause notice. (Manager Resolution Services will sign the notice as they are the decision maker).
- Compliance Manager will supply the Manager Resolution Services with any submission received in response to the show cause notice.
- Manager Resolution Services to consider any submission provided and then advise the Compliance Manager if:
  - you **are** or **are no longer** of the view the individual or company carried out the work
  - the work **is** or **is no longer** considered Tier 1 defective work
  - the individual or company **did** or **did not** exercise reasonable diligence to ensure the work carried out was not Tier 1 defective work.
- Dependant on the above outcomes the Compliance Division may require input from both the Building Inspector and Manager Resolution Services to prepare a Statement of Reasons for submission to the Tribunal.

## 1.8 Negligence and Incompetence

For building work to be classified as having been carried out in a negligent and incompetent fashion by the contractor the works must fail to meet either the Building Code of Australia, relevant Australian Standards or fail to comply with the design or even approach the standards expected of a competent builder.

An example would be incorrect installation of the sewer drainage system resulting in backflow occurring through the floor waste manifesting in effluent spilling into a habitable area.

The process to follow to have a matter dealt with as Negligence and Incompetence is for the Building Inspector to compile a report including the following information:

- details of the nature of the defective works
- recommendation as to why the defect is of a severity or type placing it above a straight category one defect class
- recommendation as to why the defect fails to meet a severity which would place it as a Tier One (link to tier one)
- details of what the defect is and how it fails to comply with the BCA, Australian Standards, contractual documentation or plans etc.

The recommendation is forwarded from the Building Inspector to the Manager who will refer the request for a Negligence and Incompetence action to the Manager Resolution Services. The Manager Resolution Services, if in support of the request will refer the matter to Manager Legal Services with a memorandum requesting a Negligence and Incompetence action be commenced. Once the matter has been assigned to a legal officer they will speak with the Building Inspector and draft a statement of reasons on their behalf.



## 2 Complaints Process

### 2.1 Documentation

QBCC's Resolution Services provides a dispute resolution process for owners who have had either defective or incomplete work performed by a contractor on their property.

The owner must complete a Complaint Form to access the resolution process and provide the minimum mandatory documents. Owners can submit a Complaint Form online, over the counter or by post.

When assessing the case, the Assessment Officer (AO) must ensure all areas of the Complaint Form have been completed, perform various checks of the information provided and ensure the necessary documents have been provided. If further information or documents are required to complete an assessment, generally 7 days is allowed for the claimant to provide them.

If at the end of this time, the request has not been fulfilled, contact should again be made e.g. phone call, email, prior to closing the case on this basis. The appropriate request and closure letters are available in ActiveDocs.

#### Body Corporate Complaints

In the instance where the dispute relates to a Unit Complex, the following applies in relation to the number of complaint forms to be lodged with the QBCC:

- one complaint form for the common areas of the Unit complex or any part of the units or property deemed to be the responsibility of the Body Corporate
- a complaint form for each unit that has internal defects i.e. defects to what is deemed to be the owner's private property.

**The maintenance responsibilities of a Body Corporate vary and can be defined in relation to the type of survey plan they are registered under.**

**Below are links to information about the types of plans, common property and body corporate responsibilities.**



**Body Corporate Obligations - Maintenance**



**Body Corporate and Community Management**

## For every complaint lodged QBCC must have

### Complaint Form

A completed complaint form must be submitted to QBCC and include all the information requested in the form. The AO will check all the information on the form and request any further information or documents that have not been provided or that may be required to complete an assessment.

### Contract

A copy of the building contract is required to verify an agreement was in place between the owner and contractor to carry out building work.

If there is no written contract and only a quote available this would be treated as a contract. If there is no quote or contract and only a verbal arrangement, QBCC can still assess the complaint but will need to determine if the work has been carried out by the contractor. The **Verbal Contract Questionnaire**, available in ActiveDocs, should be sent to both parties in such instances.

Once a copy of the contract or quote is received or confirmation of the arrangement between the parties is proved the AO must check to determine:

- compliance with the *Queensland Building and Construction Commission Act 1991* requirements
- the contractor and claimant are both parties to the contract. If they are not a party to the contract confirm if QBCC can pursue the matter against the contractor
- the date the contract was signed and or the work has been completed
- the full contract terms and conditions required when either of the parties do not agree what work was actually carried out under the contract.

### Construction Management Contracts

For a complaint where the work was carried out under a construction management trade contract the standard assessment process is to be followed, treating the construction manager as the principal contractor. The AO should attempt to verify all information as outlined in the above dot pints.

### Verbal Contracts

If a written contract was not entered into and there is no documentary evidence of the agreed works, then the **Verbal Contract Questionnaire**, available in ActiveDocs, should be sent to both parties. The purpose of the questionnaire is to determine the scope of work, specifications, value of the alleged contract, payment terms and any other relevant details.

By sending the questionnaire to both parties they are afforded natural justice and allowed to present information for QBCC to consider. In the absence of information from both parties, QBCC must make a decision based on the information to hand.

## Contact with Licensee

The claimant must provide evidence that they have attempted to contact the contractor regarding the compliant items and provided an opportunity for them to rectify or complete the work.

In most instances this evidence will be a copy of a letter sent to the contractor. The only exception to this is if the contractor is bankrupt, deceased or a liquidated or deregistered company.

## The following documents are required depending on the case

### Proof of Ownership

The AO will perform an RP Data Search in the first instance, but if necessary the claimant may be asked to provide evidence of their ownership of the property. Acceptable proof of ownership includes:

- Rates Notice or Water Rates Notice (current at the time of the complaint lodgement)
- Title Search.

The AO will check the lot and plan number against the contract, the Insurance Policy and the Complaint Form to ensure the property details are the same throughout. In addition to this the assessing officer will check the owner's name against the contract and Complaint Form to ensure they are the same person.

### Variations

If the complaint items relate to work that was the subject of a variation, copies of the relevant variation/s will be required to determine the actual work that was agreed upon and performed. All variations must be signed and agreed to by both parties to be considered valid.

### Plans

A copy of the approved plans may be required to verify the complaint items and confirm if the work carried out by the contractor is included in the plans.

This is a very important document when a subsidence related complaint. It is needed for a defects complaint if there is no other evidence available to confirm work was to be carried out by the contractor.

In case of **subsidence** the Assessment Officer may need to request some or all of the following documents:

- copy of council approved plans (engineer designed)
- copy of drainage plan
- copy of engineering inspection certificates

- copy of soil report and classification
- copy of compaction certificate or inspection report - if a Cut and Fill site.

When requesting documents from Local Authorities the template available in ActiveDocs is to be used.

## Specifications

A copy of the approved specifications may be required to verify the complaint items were included in the contract and were to be provided by the contractor.

If an item in dispute is not included in the specifications it may indicate the owner was responsible for the item. Each page of the specifications must be signed by both parties to ensure there are no amendments made to the original documents.

## Payment

Evidence of the payments made to the licensee may be required to verify the contract amount, amounts owing and any possible pre-payments made under the contract terms. Evidence of payment is more important to determine who carried out the work in the absence of a written contract or quote.

In instances where the owner holds a retention, (money owing under the contract) it will be taken into consideration when (if necessary) the Building Inspector is deciding if it is reasonable to issue the contractor with a direction.

Acceptable evidence of payment includes:

- contractor's receipts
- statement from the contractor detailing the payments made
- letter from a bank or lending institution detailing the payments made
- copies of presented cheques
- tribunal determination.

Cheque butts and copies of bank statements are unacceptable as proof of payment.

## Agent Authority

In some instances, the claimant may nominate an agent to act on their behalf. If this is the case a copy of the authorisation must be provided with the Complaint Form.

## Subsequent Purchaser Complaint

The following documents may be required by a claimant who has purchased a house previously built.

### Contract of Sale

The Contract of Sale confirms the claimant purchased the house. The Special Conditions also need to be checked to determine whether any of the complaint items were apparent at the time of the sale and whether the owner was compensated for the apparent defects.

The Special Conditions will also identify whether the contract was subject to the purchaser obtaining a pre purchase inspection report.

Copies of any pre purchase inspection reports are to be provided to QBCC as these may also determine whether the complaint items were evident at the time of purchase.

The Contract of Sale must be dated and signed and the purchaser (name on the contract) must be the same person as the claimant listed on the Complaint Form.

### Pre purchase Inspection Reports

- Consider the date of the pre purchase inspection report to determine whether the complaint items were apparent prior to entering/completing the contract.
- Consider whether the complaint items listed in the Complaint Form are listed in the pre purchase inspection report.

It is important to note QBCC can inspect work and direct the contractor for items that may have been identified as a Special Condition on a Contract of Sale or pre purchase inspection report; however it will have an impact on their entitlement under an insurance claim.

### Required Documentation

QBCC requires thorough documentation to be able to assess the complaint. The required documentation depends upon the nature of the complaint. The below table taken from the PDF complaint form depicts the potential required documentation for each complaint type. Only copies of documents are to be provided to QBCC.

If further information or documents are required than what is submitted with the complaint, generally 7 days is allowed for the claimant to provide them. If at the end of this time, the request has not been fulfilled, contact should again be made e.g. phone call, email, prior to closing the case on this basis. The appropriate request and closure letters are available in ActiveDocs.

DOCUMENTS REQUIRED (Only copies should be sent)	TYPE OF COMPLAINT					
	Before completion (your contract is still in progress)		After completion (your contract has been completed)			
	Defective work	Contract dispute	Defective work	Consequential Damage (adjacent property)	Subsidence	Substandard Design or Building Inspection Services
Written notification to the contractor advising of all the complaint items. <b>See note below**</b>			✓	✓	✓	
<b>If the work was carried out for you:</b> Contract for the work	✓	✓	✓		✓	
Evidence of contract termination						
Contract variation documentation						
Contract specifications						
Evidence of payments						
Final Certification or Certificate of Practical Completion/ Handover			✓*		✓*	
Rates Notice, Water Rates Notice or Current Title Search				✓		
<b>If the work was carried out before you purchased the property:</b> 1. Purchase Contract (Contract of Sale) 2. Pre-purchase inspection			✓		✓ ✓	
Pre-purchase Building or Pest Inspection Report						✓
Building design plans						✓
<b>For body corporate:</b> Contract for the work			✓		✓	✓
<b>For body corporate:</b> Community Title Search document			✓	✓	✓	✓
<b>For body corporate:</b> Certificate of Classification			✓		✓	
<b>For body corporate:</b> Complete Survey Plan			✓		✓	
Council Approved Plans					✓	
Drainage Plan					✓	
Engineering Inspection Certificates					✓	
Soil Report and Classification					✓	
Compaction Certificate or Inspection Report (cut & fill site)					✓	

\* If applicable to your circumstances, please provide these documents where possible as they assist us in providing an accurate case assessment.  
 \*\* Not required if contractor is bankrupt (sole trader) or liquidated and/or deregistered (company) or the contractor is deceased.

## 2.2 Complaint Assessment

**NOTE: Refer to Sections 14 and 15 for any variations to standard process due to COVID-19.**

### Case Allocation

The manager in each team may choose to undertake an initial appraisal of each new case assigned to their team prior to allocating the case for assessment. Alternatively, the Assessment Officer may take ownership of the case directly from the team's Case Queue.



#### SDW Flow Chart

When allocating cases the manager would consider the following:

- ensure there is fair distribution of cases amongst the team
- for unit sites with multiple complaints, ensure all cases are allocated to only one Building Inspector
- identify any urgent or contentious cases and cases involving health and safety of the occupants should be prioritised.

### Communicating with Our Non-English Speaking Customers

To assist with communicating with our non-English speaking customers, QBCC has an account with a company called Ezispeak, a translating and interpreting service. If you would like to use their services, please refer to the User Guide below and ensure the Resolution Services Team PIN is used, as Business Units are invoiced individually for the service.



#### Ezispeak User Guide and Resolution Services Team PIN



#### Ezispeak Customer Language Aid and Language Selection Codes

### Complaint Assessment File Note

For every case assessment, there must be a Complaint Assessment File Note (CAFN) completed. The template is available in ActiveDocs.

The CAFN will populate with much of the case information from Salesforce and contains other fields and sections for the AO to complete. The CAFN contains headings as a guide of the information that should be considered and noted in the assessment. The AO can also add any information they believe is relevant to the assessment and supports the decision being made.

A table for Breaches of the QBCC Act and PD Act is also within the template and must be completed. When creating the template, the AO will select if they want to include a table of the Complaint Items (recommended) and a Documents List table (not mandatory).

The CAFN is useful, not only for the Building Inspector if the case proceeds to inspection, but also if the case becomes a claim. It is therefore essential that the AO ensures all relevant information is completed on the CAFN and that their assessment of the case is clearly communicated.

Below is an example of the template. The content under the headings is a guide of the information that should be included when completing your assessment.



### Sample Complaint Assessment File Note

#### Complaint Items List

A list of complaint items including the date noticed is to be provided in the required format, by the claimant in order for an accurate assessment to be completed. The items from the PDF form will be entered into Salesforce by Records when creating the case, or automatically for an online form submission.

Where the claimant submits a PDF Complaint Form and the Complaint Item Description exceeds the Salesforce field limit of 255 characters, the Records officer will not enter the item. When the case is assessed by the AO the following is to occur:

- if the description is only a little over the character limit, the AO can make minor amendments to fit the description within the limit e.g. remove non crucial text (and, it, punctuation etc.)
- if the description is very lengthy and/or the alleged defect is not clear, the claimant is to be contacted (preferably in the initial phone call) and advised to provide a revised list with only a brief description of the item/s, as is stipulated on the Complaint Form. If there are numerous items, the 50+ items spreadsheet can be utilised. When the revised list is received, the AO is then to enter the items manually or via the Bulk Upload function.

The above process is also to occur where the claimant has utilised the spreadsheet with the online form or where they have entered the items on the online form, but have carried over an item description into another item.

#### Conformance with Legislation

The complaint must be assessed to establish that QBCC is able to assist with the items listed on the Complaint Form. If the claimant has not provided a clear and concise list of complaint items, with all required details, the Assessment Officer should request this when making their initial contact. The AO must then be checking such things as:

- the complaint has been lodged within 12 months of the complaint items being noticed. When assessing the complaint this timeframe is to be considered but, QBCC still has the power to proceed with the complaint and issue and direction if it is reasonable to do so.



- the complaint does not relate to exempt building work
- the value of the building work (including labour and materials) is \$3,300.00 or more (except for plumbing, drainage, gas fitting, termite management system installation and residential and building design drafting where the value of work is \$0).

**NOTE:** where the quoted value and/or payments received are less than \$3,300.00, but QBCC would estimate that the value of work is in excess of \$3,300.

The *Queensland Building and Construction Commission Act 1991* states:

*“value of building work means to a consumer of having the work carried out to a consumer of having the work carried out by basis that all building materials are to be supplied by the contractor (whether or not the work is in fact carried out by a licensed contractor on that basis) or not the work is in fact carried out by a licensed contractor on that basis).”*

Therefore, the value of building work is taken to include the value of materials, labour and GST, regardless of who provides the elements.

Various **Guidance Statements** are available in [Section 13](#) that may assist with the assessment and decision making process.

### Identifying Breaches of the QBCC Act

As part of the initial assessment of a case, the AO should be checking for any breaches of the QBCC Act by the Respondent. The below table is a list of breaches to look for. The table also includes 3 items from the *Plumbing and Drainage Act 2018*.

This table is in the **Complaint Assessment File Note (CAFN)** and is to be completed in every instance. In the **Comments** column, the AO should reference the information/evidence they have identified to establish the potential breach.

Section	Offence	Yes/No	Comment
42	Unlawful carrying out of building work		e.g. Is licensed under 123456 but does not hold the correct license for type of work <b>or</b> Does not hold a QBCC licence
50D	A person must not pretend to be a licensee		e.g. Licence number on quote is not theirs – refer Quote
68B	When insurance premium is payable by licensed contractor		e.g. HWI was not paid or was paid outside specified time
Schedule 1B S30	Failure to put contract in writing		e.g. Verbal contract only – refer to Complaint Form

<b>Schedule 1B S33</b>	Deposits (excess)		e.g. 25% deposit charged – refer invoice # 888
<b>Schedule 1B S34</b>	Progress payments for regulated contracts		e.g. Final payment was demanded/paid before it was due <b>or</b> Not reflective of the value of work completed to date – refer email dated 01/01/18
<b>Schedule 1B S40</b>	Variations must be in writing		e.g. Variation not in writing; not agreed with 5 days of being agreed; not prior to the varied work commencing – refer email/Complaint Form etc.
<b>56 (PD Act)</b>	Carrying out work without the appropriate licence		
<b>57 (PD Act)</b>	Supervising or directing work without the appropriate licence		
<b>64 (PD Act)</b>	Complying with code requirements for plumbing and drainage work		

If breaches are identified and are being referred for further investigation, it is essential that that when making contact with the Claimant the AO asks the following which must be recorded in CAFN. ***“If the QECC identifies any compliance matters outside of your dispute, would you be willing to appear as a witness in court?”***

If any breaches are identified, the AO will refer the matter to **Kylie Andersen** in the **Compliance Triage Team** for possible further investigation.

The referral is to be via a Salesforce task with the Subject of ***“Suspected offences identified – ULC etc.”*** A Compliance Triage Officer will then refer to the CAFN. To assist the Compliance Officer, the CAFN should be named (in ECM) in the following format **Case ID\_Respondent vs Claimant\_CAFN**.

The Compliance Triage Officer will complete their assessment and if the matter is to be referred for Compliance investigation they will forward the ECM sub folder to the relevant regional Compliance Officer for processing. The sub folder will contain the referral memo and all associated evidence. The Compliance Officer will then complete their investigation as normal.

**If it comes time to close the case and this task has yet to be actioned, complete the task, close the case, then create a new identical task for action.**

## Timeframes

The *Queensland Building and Construction Commission Act 1991* (QBCC Act) Section 71J provides that a customer has 12 months from the date the complaint items are noticed to lodge a complaint. When assessing the complaint this timeframe is to be considered but QBCC still has the power to proceed with the complaint and issue a direction if it is reasonable to do so.

Under section 72 and 72A of the QBCC Act, the commission has 6 years and 6 months from the date the works were completed or left in an incomplete state to issue a direction to the contractor.

A Final Inspection Certificate, Certificate of Classification or Practical Completion Certificate can be evidence of the date of Practical Completion.

These certificates should be sought, particularly when the work in question is close to the end of the six (6) year six (6) month time period.

**In instances where the timeframe is close to expiry, where possible it may be necessary to take immediate action to ensure the QBCC's ability to direct is maintained.**

**Make note of this in your Complaint Assessment File Note and when referring the case for BI inspection, ensure it is flagged to your manager so they can action accordingly.**

If the complaint has been lodged outside of legislated timeframes, the Case Owner must check to see if the complaint items were the subject of a previous complaint. The completion date of the earlier rectification work can then be used as the new completion date, provided that the current complaint items relate directly to the previous rectification work.

Section 72A (4) of the QBCC Act provides that the commission may apply to the tribunal for an extension of time for giving a direction, however, such an application should only be made after approval from an OTL, SBI or RM.

## Respondent Licence and Company Status

It is essential that the licence status of the Respondent is checked as part of the assessment. The Customer record in Salesforce provides all necessary information. Additionally, if the Respondent is a company, an ASIC search should be completed to establish if the company is still solvent etc. For full details on completing an ASIC search refer to [Section 4.1](#).

- If the respondent is a company that is now liquidated or deregistered, the Assessment Officer is not expected to attempt telephone contact with the liquidator or directors as part of their initial assessment.
- If some or all of the complaint items are defective building work in time for a direction and/or claim - the case will be referred for inspection. If defective work is identified for which the respondent is responsible, the Building Inspector will issue the liquidator and directors a Notice of Defective Work. They are required to respond in writing within 14

days of the date of the notice if they intend to address the work. If no response is received, or the work is not rectified the case will be closed and where relevant referred for assessment of a possible claim.

- Where the defects relate to fire/safety issues, we should consider directing the nominee and/or directors if they have an active licence. Such instances should be discussed with your manager.
- If the respondent is a ULC and the complaint items are insurable work, it may be necessary to determine if there has been any fraudulent misrepresentation by the respondent, which could affect the claimant's possible entitlement to a claim. The **ULC Questionnaire**, available in ActiveDocs should be sent to both parties.

### Related Case and Previous Building Inspector

A related case is a previous dispute case pertaining to the same site address, but not necessarily the same owner. It must be remembered that cases always relate to a particular property description and site address.

Where a QBCC BI has been involved on a previous case, ensure this is noted in your Complaint Assessment File Note and in a Case Comment, this will assist managers with assigning the case to the same BI where possible/reasonable to do so.



**If the complaint is the same as a previous case always check that the matter has not been settled in the Tribunal or that an agreement hasn't been reached between the parties.**

### Consideration of Further Documents or Information Provided

It is imperative that all primary decision makers consider all evidence both prior and post decision making. Once a decision has been reached based on evidence to hand, should further documentation/information be provided by either party this must be reviewed and determined if it alters or supports the original decision.

If the decision maker believes the information is credible for a decision (significant or averse to both parties), the parties must be given the opportunity to answer to that. Where relevant, this information should also be vetted against the affected party to validate or not e.g. issues with site access.

**NOTE:** Once an application for review is lodged with IRU or QCAT, you cannot change your decision.

Where evidence being relied on in the decision making process was commissioned by QBCC e.g. plumbing report, engineer report etc., both parties can be provided a copy. Where the evidence has been provided by one of the parties, only the relevant details can be provided (rather than the entire document) without the consent of the party who provided the evidence.

Permission to share the evidence can be sought from the providing party but if they do not consent, the other party must apply through RTI.

The following scenario serves to illustrate what can occur if further information is not considered.

*A Complaint Form is lodged with QBCC in relation to concerns over a non-certified retaining wall that has a significant bow in the structure. QBCC's Manager/SBI/BI contacts their local council who has had cause to previously inspect the wall, originating from a complaint by both the owner and neighbour.*

*The council report stated that "the bow in the wall is not detrimental to the structural adequacy of the wall and any decision to repair the wall at this stage would be for aesthetic reasons."*

*On the same day that this document was scanned into ECM a closure letter was sent to the owners of the property advising QBCC would not be requesting the licensee to rectify the retaining wall.*

*The case is closed based on the documents from the council only with no QBCC inspection undertaken.*

*Subsequent to the council inspection the neighbours who had previously obtained their own engineers report regarding the wall (inspection carried out 6 months after the report from council) provided the claimants with a copy who then sent it to QBCC for further consideration of their complaint. This report indicated that the bow may well be detrimental to the structural adequacy of the wall. QBCC did not follow up on this report submitted by the claimant instead chose to rely on the original older report obtained through the local council. The wall subsequently collapsed during the next wet season.*

*Clearly QBCC did not place sufficient weight on the more recent report, instead choosing to rely primarily on the older report. It is clear that it is more prudent for QBCC to place due weight on all evidence provided by the parties to a dispute, even in instances where a case may have already been closed. Simply having made a determination based on evidence at the time of the initial complaint lodgement it is then foolhardy not to re-evaluate our position if further documentation/information is provided.*

### **Insurance Policy Search for Technical Standards Unit**

Previously the Technical Standards Unit (TSU) would make notation of any issues identified at their site inspection (carried out prior to completion of construction) on the Insurance Policy. It is therefore advisable when receiving a new complaint to check the Insurance Policy to determine if an inspection has been carried out at the site and if any issues were identified. If there is a notation of an inspection on the Insurance Policy, then this notation should be copied into the Complaint Assessment File Note and the information utilised accordingly in the assessment and contact with the licensee.

## 2.3 Verifying Customer Details and Updating Customer Records

When first contacting the parties of the complaint, it is important to verify their details and ensure you are discussing the case with the appropriate person/s.

- The claimant details can be verified against their Customer record in Salesforce and the information provided on the Complaint Form. If any details require updating, this can be done in Salesforce by the AO/BI etc. with the verbal notice of such documented in the CAFN or Case Comment.
- If you make contact with the respondent, it is essential that you verify their identity. If they then advise you of an alternative address, contact number etc. their verbal notification of this change of details is sufficient to provide to Licensing who are then able to update their Customer Record.

Verification is to be completed against the caller's individual profile within Salesforce. For a company, we can only discuss the matter and take alternative contact details from a Director.

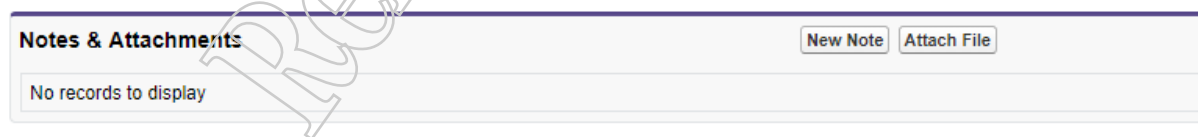
### Verify the following:

- Full Name - including middle name
- Date of birth
- Email address - including domain name

**If one of the above components are missing from the profile, or the email is incorrect, the following can be asked instead:**

- Phone number - mobile, business or home
- Address - postal, business or residential

Any such information should be recorded in the **Case Comments** in Salesforce and a New Note added to the **Notes & Attachments** section in Customer's Record in Salesforce.



Notes & Attachments New Note Attach File

No records to display

**An email with this information should then be sent to Licensing who are able to update the Customer's Record.**

## 2.4 Initial Contact with the Parties - Post Completion Complaints

**NOTE: Refer to Sections 14 and 15 for any variations to standard process due to COVID-19.**

The Assessment Officer should make contact with both parties as soon as possible after receipt of the complaint. All conversations are to be documented.

When making first contact, the **Has Claimant Been Contacted** and **Date Claimant Contacted** fields (and the corresponding Respondent fields) are to be completed on the Salesforce Dispute case.

### Facilitation

Part of the Resolution Services process is to provide an equitable and efficient alternative dispute resolution service for building disputes arising between both licensed contractors and consumers concerning building defects.

Prior to a matter being scheduled for a site inspection, the Assessment Officer will contact both parties and determine whether an outcome can be facilitated regarding the dispute. This is achieved by making contact with both the claimant and respondent by telephone and where required in writing, working toward isolating the issues in dispute then going forward to develop options, consider alternatives and reach by mutual consent an outcome agreeable to all concerned.

**If the respondent is a liquidated or deregistered company, the Assessment Officer is not expected to attempt to contact the liquidator or directors.**

### When does QBCC Attempt to Facilitate an Outcome

On making the first phone call it may be evident there is an opportunity for the matter to be resolved between the parties without an inspection:

- if the contractor agrees to rectify all defects within a reasonable timeframe
- if the owner agrees to the proposal
- if in the past you have had experience of the contractor rectifying defects
- if both parties are reasonable in their approach towards the problem.

### Contact the Claimant (Owner)

- Confirm receipt of the complaint.
- Provide your details i.e. name and contact number.
- Verify their contact details and update their Salesforce Customer record if required.

- Ask about the complaint items (seek clarification if necessary) and the current state of the situation.
- Request further information if required.
- If breaches of the QBCC Act by the Respondent have been identified, ask *“If the QBCC identifies any compliance matters outside of your dispute, would you be willing to appear as a witness in court?”*
- If it has been identified QBCC are unable to assist e.g. out of time, not building work advise the case will be closed and they will receive written advice of the decision.
- Otherwise, advise that the case will be assigned to a Building Inspector.
- The Building Inspector will schedule an inspection to look at the complaint items. You can advise that when conducting an inspection, the Building Inspector will carry out a visual inspection only. This will involve visually observing each complaint item. Invasive investigations are not undertaken by the QBCC to determine the cause of an alleged defect. Examples of invasive investigations include cutting a hole in a wall to look at damage behind the wall. The inspection is also not intended to be a complete inspection of the whole building or dwelling.
- Advise the Respondent will be invited to the inspection.
- A letter will be sent confirming the date and time. Provide a probable timeframe if possible.
- Advise that the Respondent will also be contacted and notified of the complaint and encouraged to address the complaint items prior to an inspection.
- Cooperation is requested to allow reasonable access during working hours should the Respondent elect to address the complaint items.
- Should the respondent attend to the items prior to the scheduled inspection ensure the Building Inspector is notified as an inspection may no longer be required.
- Further advise that if an inspection is conducted and the Respondent is found to be responsible the BI will likely issue a Direction to Rectify.
- Generally, a minimum of 28 days is given to comply with a direction, in which time they are again expected to allow reasonable access to the respondent.
- If at the end of the Direction has been complied with the case will be closed.
- If the Direction has not been complied with and the work is considered primary insurable work, the case will be referred for assessment of a claim.
- If it is not primary insurable work the case will be closed and no further action taken by QBCC.

**\*If upon the initial contact with the claimant** they advise they do not want us to contact the respondent, or they advise they wish to withdraw their complaint the case should be closed and no closure letters are to be issued.

Closure letters contain content advising the customer they have participated in the QBCC dispute resolution process and they may now apply to QCAT for assistance. If contact with both parties is not made, our process has not been completed.



## Contact the Respondent (Contractor)

- Advise them of the complaint.
- Provide them your details i.e. name and contact number.
- Verify their contact details
  - follow the verification process outlined in 2.3 above
  - if different from their Salesforce Customer record, remind them they are obligated under the QBCC Act to have their current details recorded with QBCC.
- Ask about the complaint items (seek clarification if necessary) and the current state of the situation.
- Request further information if required.
- Advise you will be assigning the case to a Building Inspector.
- The Building Inspector will schedule an inspection to look at the complaint items. You can advise that when conducting an inspection, the Building Inspector will carry out a visual inspection only. This will involve visually observing each complaint item. Invasive investigations are not undertaken by the QBCC to determine the cause of an alleged defect. Examples of invasive investigations include cutting a hole in a wall to look at damage behind the wall. The inspection is also not intended to be a complete inspection of the whole building or dwelling.
- A letter will be sent confirming the date and time. Provide a probable timeframe if possible. A list of the complaint items will be included with this letter.
- They are able to bring along any subcontractors they feel necessary.
- Advise we encourage them to contact the Claimant and attempt to resolve the matter prior to the inspection to be scheduled i.e. attend to any defective work they are responsible for, reach an agreement with the Claimant regarding the items.
- The Claimant has been requested to allow reasonable access during working hours should they elect to address the complaint items.
- Should they attend to the items prior to the scheduled inspection ensure the Building Inspector is notified.
- Should the work remain outstanding, the site inspection is an important part of the dispute resolution process so please attend, or arrange a representative to attend.
- If the inspection is conducted and they are found to be responsible for the complaint items, the Building Inspector will likely issue a Direction to Rectify.
- Generally, a minimum of 28 days is given to comply with a direction, in which time the Claimant will again be expected to allow reasonable access to the site.
- If they are issued with a direction it will appear on their public record.
- If they fail to comply with the Direction, there are penalties and any outstanding works may be completed under the Queensland home Warranty Scheme. QBCC may then seek recovery from them for any approved insurance claim and recovery action, including legal action may be considered against them.

The above conversations with the parties are to be documented (summarised) in the Complaint Assessment File Note. Any subsequent conversations should be noted in the Case Comments at a minimum.

The **Has Claimant/Respondent Been Contacted?** and **Date Contacted** fields in the Salesforce case must also be completed to record you have made contact and the date.

After the initial phone call with the parties, the Assessment Officer should also be sending the emails (below) or letters (available in ActiveDocs) **AO Notice to Claimant – Assigned to BI** and **AO Notice to Respondent – BI Assigned**.

Refer to the below email containing the templates and instructions to add them to Outlook. Further are instructions to amend the templates.



AO Notice of BI Assigned emails and instructions.msg



Amending Email  
Template Instruction

## 2.5 Cases with 50+ Complaint Items

**NOTE: Refer to Sections 14 and 15 for any variations to standard process due to COVID-19.**

### Assessment Officer Process

When assessing a case that has 50 or more complaint items, it may be possible to utilise a Scott Schedule to facilitate the resolution of some or all of the complaint items.

The Scott Schedule (the Schedule) is a document that can be generated from Salesforce and provided to both parties. The Schedule will list all of the complaint items and additional columns are added to allow for the Claimant and Respondent to make comment on each item.

The Schedule is provided to the parties at the time the AO is assigning the case for a BI to schedule an inspection. As with any case, the Claimant and Respondent are encouraged to make contact with one another prior to the BI conducting an inspection, with the aim of reducing the number of items in dispute. The Schedule is to be used to record the outcome of any resolution or outcome of the parties discussing the items.

When assigned the case to schedule an inspection, the BI will contact both parties and follow up on the progress of the resolution of the complaint items and the completion of the Scott Schedule.

### Contact the Claimant (Owner)

- Confirm receipt of the complaint.
- Provide your details i.e. name and contact number.

- Verify their contact details and updated their Salesforce Customer record if required.
- Ask about the complaint items (seek clarification if necessary) and the current state of the situation.
- Request further information if required.
- If breaches of the QBCC Act by the Respondent have been identified, ask ***“If the QBCC identifies any compliance matters outside of your dispute, would you be willing to appear as a witness in court?”***
- Advise that due to the number of complaint items, a Scott Schedule listing all of their items will be emailed to them and the Respondent. The Scott Schedule will have a column for their comment and a column for the Respondent’s comment.
- If items have been identified that are out of time, not building work, contractual etc. advise QBCC will not be able to assist with those items.
- Advise that the Respondent will also be contacted and notified of the complaint and encouraged to address the complaint items.
- Cooperation is requested to allow reasonable access during working hours should the Respondent elect to address the complaint items.
- Advise that the case will be assigned to a Building Inspector.
- The Building Inspector will contact them and the Respondent to discuss the Scott Schedule and to schedule a site inspection if required.
- Advise the Respondent will be invited to the inspection.
- Should the Respondent attend to the items prior to the scheduled inspection ensure the Building Inspector is notified as an inspection may no longer be required.
- A letter will be sent confirming the date and time. Provide a probable timeframe if possible.
- Further advise that if an inspection is conducted and the Respondent is found to be responsible the BI will likely issue a Direction to Rectify.
- Generally, a minimum of 28 days is given to comply with a direction, in which time they are again expected to allow reasonable access to the respondent.
- If at the end of the Direction has been complied with the case will be closed.
- If the Direction has not been complied with and the work is considered primary insurable work, the case will be referred for assessment of a claim.
- If it is not primary insurable work the case will be closed and no further action taken by QBCC.

### Contact the Respondent (Contractor)

- Advise them of the complaint.
- Provide them your details i.e. name and contact number.

- Verify their contact details. If different from their Salesforce Customer record, remind them they are obligated under the QBCC Act to have their current details recorded with QBCC.
- Ask about the complaint items (seek clarification if necessary) and the current state of the situation.
- Request further information if required.
- Advise that due to the number of complaint items, a Scott Schedule listing all of the Claimant's complaint items will be emailed to them and the Claimant. The Scott Schedule will have a column for their comment and a column for the Claimant's comment.
- If items have been identified that are out of time, not building work, contractual etc. advise QBCC will not be able to assist with those items.
- Advise that the case will be assigned to a Building Inspector.
- The Building Inspector will contact them and the Claimant to discuss the Scott Schedule and to schedule a site inspection if required.
- Advise we encourage them to contact the Claimant and attempt to resolve the matter prior a possible inspection i.e. attend to any defective work they are responsible for, reach an agreement with the Claimant regarding the items.
- The Claimant has been requested to allow reasonable access during working hours should they elect to address the complaint items.
- Should the Respondent attend to the items prior to the scheduled inspection ensure the Building Inspector is notified as an inspection may no longer be required.
- Should an inspection be required, a letter will be sent confirming the date and time. Provide a probable timeframe if possible.
- They are able to bring along any subcontractors they feel necessary.
- Should the work remain outstanding, the site inspection is an important part of the dispute resolution process so please attend, or arrange for your representative to attend.
- If the inspection is conducted and they are found to be responsible for the complaint items, the Building Inspector will likely issue a Direction to Rectify.
- Generally, a minimum of 28 days is given to comply with a direction, in which time the Claimant will again be expected to allow reasonable access to the site.
- If they are issued with a direction it will appear on their public record.
- If they fail to comply with the Direction, there are penalties and any outstanding works may be completed under the Queensland home Warranty Scheme. QBCC may then seek recovery from them for any approved insurance claim and recovery action, including legal action may be considered against them.

The above conversations with the parties are to be documented (summarising) in the Complaint Assessment File Note. Any subsequent conversations should be noted in the Case Comments at a minimum.

For the **Building Inspector Process** refer to **section 7.4**. For instruction on **How to Create a Scott Schedule** refer to Section 11 of the [Disputes Salesforce Processing Guide](#).

## 2.6 Inspection, Direction and Closure

Once a Building Inspector has nominated a date and time for inspection of the items listed in the Complaint Form, both the Claimant and Respondent are sent advice of this via an Initial Inspection letter.

When conducting an inspection, the Building Inspector will carry out a visual inspection only. This will involve visually observing each complaint item. Invasive investigations are not undertaken by the QBCC to determine the cause of an alleged defect. Examples of invasive investigations include cutting a hole in a wall to look at damage behind the wall. The inspection is also not intended to be a complete inspection of the whole building or dwelling.

The Inspector's role is to investigate each item listed in the Complaint Form to determine whether the work is defective or incomplete, and if the Respondent is responsible for the work in question. The Building Inspector then provides a written report of their investigation of these items.

The Building Inspector may determine there are no defects or that the defects are not the Respondent's responsibility. The Building Inspector may determine the case is to be closed at this point.

After the Initial Inspection, the Building Inspector will determine if QBCC can provide any further assistance. Depending on the circumstances this may require further investigation, documentation supplied by the parties, or monitoring of the property for a nominated amount of time. If the Respondent is determined to be responsible for defective work, the Building Inspector will most likely issue a Direction to Rectify.

### Direction to Rectify

A Direction to Rectify is commonly issued in circumstances where a contractor has been determined to be responsible for defective or incomplete work and has not rectified the work voluntarily.

As per Section 72 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act) in deciding whether to give a direction the commission may take into consideration all circumstances it considers reasonably relevant.

The Direction to Rectify is a document that notifies the contractor that, in accordance with the QBCC Act, QBCC is ordering the listed defects at a particular site address to be rectified within the stated timeframe.

The standard timeframe for a Direction to Rectify is 28 days; however, matters concerning a health and safety issue can have a shorter timeframe imposed if needed.

When determining if to direct or not to direct the Inspection Report will serve to support the Building Inspector's determination and if the decision is reviewed. A copy of the report is sent to both parties with the Direction and/or closure letter.

For example, if an owner lodges a Complaint Form with 10 items and upon inspection the BI determines only 5 of them are defects, and the other 5 are deemed to be not defective a Direction to Rectify would be issued to the contractor for the 5 items deemed to be defects. QBCC would then have to provide review rights to both the owner (for using QBCC's discretion and not directing the contractor on 5 items) and the contractor (for directing on 5 items).

**i** If for some reason it is determined by the Manager that a direction is to be amended (except for when a direction is under review in QCAT), the initial Direction MUST be withdrawn and a new direction created and sent to all parties.

**i** If a contractor reviews our decision to issue a direction in QCAT and our decision is upheld, the 28 day Direction to Rectify period is to start again from the date of notification of QCAT's decision.

It is imperative that the details contained in the Direction to Rectify are accurate as this is a legal document and the details will be displayed on the Public Licence Search. All relevant details will be drawn from the Salesforce case and automatically populated into the ActiveDocs template. Care should be taken to ensure all information is correct.

### Correct Contractor Name

The correct spelling of the contractor's name must be on the Direction to Rectify. Trading names are not to be used. Only the contractor's name should be shown.

### Correct Address Details

An original Direction to Rectify should be sent to all known addresses. This is then deemed that the contractor has been correctly served. This includes postal, business and residential.

### Items to be Rectified

The list of items to be rectified, Direction Items, as written by the Building Inspector. The complaint item it relates to should also be included.

### Right of Appeal

The letter forming part of the Direction to Rectify document that is sent to the contractor contains paragraphs explaining their review rights via QBCC's Internal Review Unit or in the

QCAT and the further actions QBCC may take in the event they fail to comply with the Direction.

A copy of the Direction to Rectify should also be sent to the claimant with the 'Direction Advice - Claimant' letter, which contains their review rights.

Under Section 158 of the *Queensland Civil and Administrative Tribunal Act 2009*, a person who may apply to the tribunal for a review of a reviewable decision may ask the decision-maker of the reviewable decision to give the person a written statement of the reasons for that decision.

If this occurs, the QBCC officer (decision-maker) should submit a Request for Legal Advice, available in ActiveDocs or on Trevor. A QBCC legal officer will then assist with drafting a written statement of reasons and enclosing all relevant documentation.

When completing the Request for Legal Advice, please ensure it contains links to the documents you consider relevant to the decision to ensure there are no delays in completing the request. The written statement of reasons for the decision must be provided within a reasonable period of not more than 28 days after the request is made.

### Completion Date

The Direction Due Date is calculated automatically by creating the Direction and is calculated as 28 days from the Date of Issue plus 7 days allowed for postage.

In cases where the signature on the Direction is delayed by more than one day, it would be pertinent for the timeframe to be extended by the number of days delayed (for whatever reason) to arrive at the same Due Date that would apply to the person receiving the Direction to Rectify.

For example, if the Direction was delayed by 2 days awaiting a signature or investigation of Company addresses and the timeframe was 28 days, then the Direction record should be changed to coincide with the posted document.

### Failure to Rectify

Under section 73 of the *Queensland Building and Construction Commission Act 1991* it is an offence to fail to comply with a direction to rectify or remedy.

Should the contractor disregard the Direction to Rectify and the defective or incomplete work remains outstanding or unsatisfactorily complete at the end of the 28-day period, QBCC will record a Failure to Rectify against the contractor.

Failure to comply may incur a SPER fine and Demerit Points or action against the contractor in the Tribunal. In cases where an insurance claim is involved the cost of repair accumulated by QBCC may be debited to the contractor in question.

The failure to rectify the directed items will appear on the publicly accessible licence record of the contractor. Unlicensed contractors may also attract a fine for unlicensed contracting.

When closing the case, the Building Inspector should refer the case back to the CSO/AO to arrange the issue of an Infringement Notice (I.N.) for a SPER fine.

When the Building Inspector is considering issuing a Failure to Rectify, verbal or written confirmation from both parties of the complaint must be sought to establish that:

- a. rectification works **have** been satisfactorily carried out; or
- b. rectification works **have not** been satisfactorily carried out.

Communications to ascertain (a) or (b) above, need to be made with the Claimant **and** the Respondent and recorded in Salesforce and or ECM. Similarly, if contact cannot be made. Acting on the assertion of one party alone will not withstand the scrutiny of the Tribunal or Court if the decision and /or subsequent SPER fine is challenged.

In circumstances where the parties disagree on whether the rectification work occurred, or there is a dispute with respect to the quality of the rectification work, a reinspection must be undertaken and a decision made by the Building Inspector.

## Reinspection

There are various circumstances when a reinspection may be required. Most commonly, at the end of the Direction period to determine if works have been satisfactorily rectified.

In any instance, where a reinspection is required, a Salesforce task must be created and a Reinspection Report completed and provided to both parties of the dispute. When sending the Salesforce task to the CSO/AO to issue the Failure to Rectify letters, the BI must note if a reinspection report is to be enclosed.

## Case Closure

A case is closed when no further action is required or can be given. There are two types of closures that can apply.

## Satisfactory Result

A dispute case is deemed satisfactorily closed when:

- the contractor has successfully rectified the work
- the time limit has expired in regard to either the time for complaint lodgement or the period to issue a direction  
period to issue a
- the complaint is outside the boundaries set out in the QBCC Act
- the owner withdraws the complaint
- the dispute has been entered in the Tribunal or Courts and a decision is handed down
- insufficient information is supplied to identify who was responsible for the work, and/or to enable an adequate assessment of the case



- before closing a case on this basis, the claimant must be sent a written request, generally allowing 7 days for them to provide the requested evidence/information. If at the end of this time, the request has not been fulfilled, contact should again be made e.g. phone call, email, prior to closing the case.
- the appropriate request and closure letters are available in ActiveDocs.

### Unsatisfactory Result

If the contractor fails to rectify or complete the work, then this is an unsatisfactory result. The case may then be referred for a claim assessment to establish whether the work is covered under the Queensland Home Warranty Scheme.

This can also apply to cases where the licensee is:

- bankrupt or deceased
- the company is liquidated or deregistered
- deemed not responsible for subsidence.

### BI decision to decline a claim

Building Inspectors have the delegation to make a decision to decline a claim, limited to work that is not building work, not defective work or not primary insurable work. Where **all items** inspected or directed on are not building work, not defective work or not primary insurable work, the closure letter issued by the Building Inspector will advise the parties the case is closed and that assistance is not available under the Queensland Home Warranty Scheme for the applicable reason.

### Referring for Claim Assessment

If a direction has not been complied with, or there are complaint items that are defective building work that were not directed on, and the items are primary insurable work, the case must be referred for a claim assessment.

For defects, if referring the matter for a claim assessment the BI is required to prepare a Scope of Work and provide an estimate of the works.

The **Scope of Work Memo** is available via ActiveDocs and once completed is to be saved to ECM for use in the claim assessment. For further information, refer to the below presentation from the 2016 Building Inspectors Conference.



**Preparing a Scope of Work (2016 BI Conference Presentation)**



**Home Warranty Insurance and the Role of the BI (2016 BI Conference Presentation)**

## Internal Review Unit

The QBCC's Internal Review Unit (IRU) came into effect on 10 November 2014, allowing consumers to apply for an internal review of any of QBCC's reviewable decisions.

For the Resolution Services Disputes process these are:

- a decision to give a direction to rectify or remedy or not to give the direction
- a decision that building work undertaken at the direction of the commission is or is not of a satisfactory standard.

If you are contacted by an affected person (affected by the decision we made) who wants a decision reviewed or reconsidered, you can refer the matter to IRU on the applicant's behalf. IRU will only accept a forwarded email i.e. from the affected party, via an internal staff member, if it is clear they are seeking an internal review.

When the IRU receives an application they will decide whether to conduct a review (discretionary). If they do proceed with a review, the IRU officer will notify the original decision maker and their manager. By completing a review, the IRU officer becomes the decision-maker.

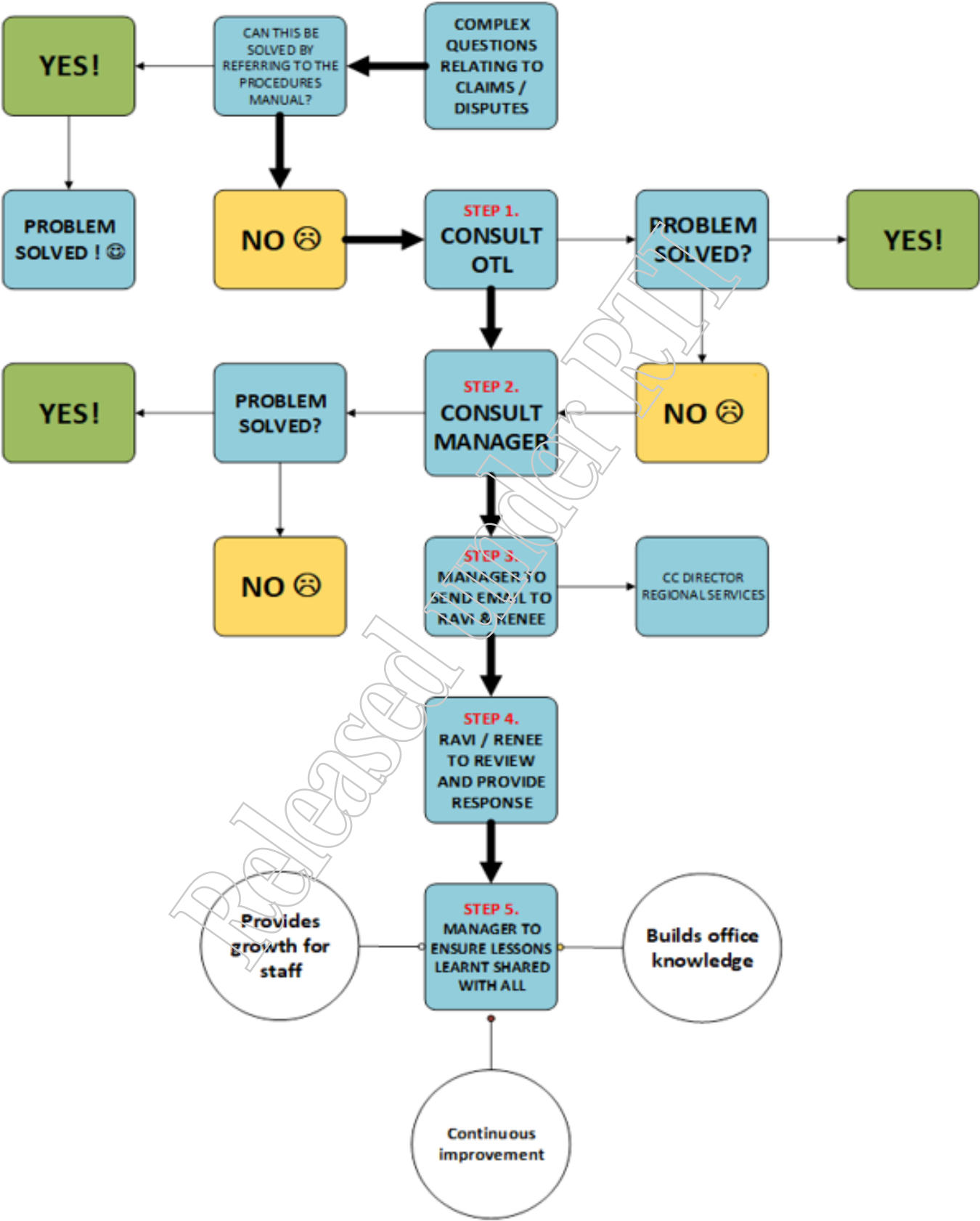
Their decision may uphold the original decision or may vary or overturn the original decision. A letter will be given to all affected parties at the end of the review, outlining the decision made by the review officer.

The decision, via a copy of the Decision Notice, will also be communicated to the original decision-maker and their manager who will then give operational affect to the decision. For example, if the decision is to issue a Direction to Rectify, the appropriate Resolution Services Brisbane team or Regional Service Centre will be requested to complete and send Direction to Rectify letters.

Refer to the [Resolution Services - Disputes Salesforce Processing Guide](#) for instructions on these processes.

## 2.7 Seeking Advice from Resolution Services

If it is necessary to seek advice in the course of actioning a case, the below diagram depicts the process to be followed. This diagram relates to regional offices specifically, however the equivalent process is to be followed by officers in Brisbane.



## 3 Early Dispute Resolution

QBCC provides an Early Dispute Resolution (EDR) service for disputes between principal contractors and homeowners and principal contractors and subcontractors, concerning building defects, non-completion and contractual issues, before the work is complete.

From 11 July 2019, a dispute will only be considered an EDR where the works are not completed. If the work is complete but there is money outstanding, this is NOT considered an EDR and will follow the normal (post completion) complaint process.

The EDR process involves Resolution Services officers facilitating an agreement between the parties to resolve disputes during construction. The objective is to encourage both parties to resolve any issues amicably at all times.

### 3.1 EDR Complaint Requirements

- Contracts for *Domestic Building Work* as defined in Schedule 1B of the *Queensland Building and Building and Construction Commission Act 1991* only and for building contracts in excess of \$3,300.

Note - plumbing, drainage, gas fitting, chemical termite management system installation, building design, site classification, fire protection and completed building inspections are exempt from this threshold and can be investigated regardless of the value of work and hydraulic design work valued over \$1,100.

**Note:** QBCC can however investigate complaints where a contractor has performed building work where the quoted value and/or payments received are less than \$3,300.00, but QBCC would estimate that the value of work is in excess of \$3,300.

The *Queensland Building and Construction Commission Act 1991* states:

*“value of building work means to a consumer of having the work carried out by a licensed contractor on the basis that all building materials are to be supplied by the contractor (whether or not the work is in fact carried out by a licensed contractor on that basis).”*

Therefore, the value of building work is taken to include the value of materials, labour and GST, regardless of who provides the elements.

- Disputes about defective work, incomplete work and contractual matters e.g. payments, certificates, design and specification etc.
- The building contract must not be completed.
- Disputes between an owner and principal contractor.
- Disputes between a principal contractor and their subcontractor/s.

On 15 December 2014 legislative changes came into effect stipulating that before lodging a building dispute application with QCAT it is mandatory to undertake the appropriate QBCC dispute resolution process.

The *Queensland Building and Construction Commission Act 1991* states:

## Division 2 Building disputes

### 77 Tribunal may decide building dispute

- (1) A person involved in a building dispute may apply, as provided under the QCAT Act, to the tribunal to have the tribunal decide the dispute.
- (2) However, the person may not apply to the tribunal unless the person has complied with a process established by the commission to attempt to resolve the dispute.

Although parties cannot be forced to reach a facilitated agreement, in instances where defective work is present and an agreement cannot be reached, it is generally expected an inspection will be conducted. If our process is unsuccessful or unresolved, the QBCC closure letter is then sufficient evidence for the parties to proceed with lodging a dispute with QCAT.

In all instances of case closure, the appropriate letter is to be sent to both parties. Only the approved templates in ActiveDocs should be used and only if necessary general content edited.

**NOTE:** Closure letters contain content advising the customer they have participated in the QBCC dispute resolution process and they may now apply to QCAT for assistance. In instances where the Claimant withdraws their complaint prior to us contacting the Respondent, or if upon our initial contact with the Claimant they advise they do not want us to contact the Respondent, no closure letters are to be issued.

## 3.2 Lodging an EDR Case

Either the owner or principal contractor may initiate the EDR process by lodging the online or PDF complaint form. They are required to provide a copy of the related contract or subcontract agreement with the completed form.

The case will be created in Salesforce automatically via the online form or via Records for the PDF forms. The case will then be assigned to the appropriate region based on the postcode of the site address. The manager can then assign the cases to a Building Inspector or Assessment Officer for assessment.

### 3.3 Case Management

The relevant team manager will assign EDR cases to a Building Inspector or Assessment Officer or take ownership of new cases assigned to their team.

In determining who a case should be allocated to, the following should be considered:

- fair distribution of cases amongst the team
- Assessment Officers may be able to finalise routine cases which can be resolved without a site inspection
- managers should identify any urgent or contentious cases and either take ownership of the case themselves or ensure the progress of these cases is closely monitored
- cases involving health and safety matters need to be prioritised
- cases are not to be allocated to outsource Building Inspectors due to the time restraints of the EDR process.

### 3.4 Case Assessment

The initial case assessment requires the officer to ascertain if QBCC is able to act on the EDR case and should also check the following (not exhaustive):

- is the contractor currently licensed?
- does the licence class, conditions etc. permit the licensee to perform the contracted works?
- is there any history of not adhering to QBCC directions?
- is there a QBCC HWI policy for the work?
- are the two parties involved in the dispute the same as on the contract and/or policy?

**Note:** where the contractor is unlicensed (including inappropriately licensed), we should not be facilitating an agreement between the parties i.e. we cannot encourage an unlicensed person to carry out work. Where there is alleged defective work present an inspection should be conducted and if necessary, a Cause Direction issued.

If the dispute is contractual in nature, the Claimant should be advised of their possible options e.g. to seek legal advice, QCAT, non-completion claim etc.

#### Related Cases

A related case is a previous case pertaining to the same site address. It must be remembered that cases always relate to a particular site address. The site record in

Salesforce should indicate if there have been any previous cases relating to the site. Salesforce will also show all cases related to a particular Customer.

### Documents Required

When lodging the complaint form, the claimant is required to provide a copy of the relevant contract or subcontract agreement. After initial assessment of the dispute and/or telephone contact with both parties, the officer may determine other documents are required to attempt to facilitate an agreement.

### Breaches of the QBCC Act Identified

During the EDR process it is possible breaches of the *Queensland Building and Construction Commission Act 1991* will be identified, such as:

- s42 Unlawful carrying out of building work
- s68B Non-payment of insurance premium
- Schedule 1B s30 No written contract
- Schedule 1B s33 Excess deposit
- Schedule 1B s40 Variations must be in writing.

If any breaches are identified, the appropriate box should be ticked within the **Breaches Identified** section on the case page in Salesforce and the matter is to be referred to **Kylie Andersen** in the **Compliance Triage Team** for possible further investigation. The Claimant must also be advised that a potential breach has been identified and the matter will be referred for further investigation, and QBCC may request additional information.

The referral is to be via a Salesforce task with the Subject of **“Suspected offences identified – ULC etc.”** The Compliance Triage Officer will complete their assessment and if the matter is to be referred for Compliance investigation they will forward the ECM sub folder to the relevant regional Compliance Officer for processing. The sub folder will contain the referral memo and all associated evidence. The Compliance Officer will then complete their investigation as normal.

**If it comes time to close the case and this task has yet to be actioned, complete the task, close the case, then create a new identical task for action.**

## 3.5 Telephone Facilitation

The EDR process aims to facilitate an agreement between the parties. The officer should not develop options or provide alternatives in trying to get the parties to reach a resolution, as with a traditional mediation, but rather assist them in reaching the agreed terms themselves.

Telephone facilitation should be attempted in all instances. Site inspections should only be necessary where there is alleged defective work and the parties cannot reach an agreement.

Once the EDR case is assigned to the applicable team, the officer taking ownership of the case is to make contact with both parties within 5 working days.

The Claimant must always be contacted first.

**NOTE:** If upon the initial contact with the Claimant they advise they do not want us to contact the Respondent, or they advise they wish to withdraw their complaint the case should be closed and no closure letters are to be issued.

Closure letters contain content advising the customer they have participated in the QBCC dispute resolution process and they may now apply to QCAT for assistance. If contact with both parties is not made, our process has not been completed.

### Contact with the parties

- If the Claimant, confirm receipt of the dispute and ensure they have already discussed the matter with the other party.
- If the Respondent, advise of receipt of the dispute.
- Provide your name and contact details and confirm their case number.
- Explain the EDR process – limitations, proposed timeframes, manage expectations and risks.
- Explain that QBCC is not a party to any agreement reached and that we do not formally document the agreement, nor can we enforce it.
- Record any conversations or further information obtained from the parties in a Complaint Assessment File Note or Case Comment within Salesforce.
- Complete the **Has Claimant/Respondent Been Contacted?** and **Date Contacted** fields in the Salesforce case to record you have made contact and the date.
- Ascertain if there are any other parties involved in the dispute e.g. engineer, supplier, subcontractor etc.
- Request any relevant documentation required. As the process is focused on facilitating an agreement between the parties, minimum documentation should be needed.

### Telephone Facilitated Agreement Reached

If a facilitated agreement is reached, the EDR process is complete and the case is to be closed. QBCC is not a party to any agreement reached and we do not formally document the agreement, nor can we enforce it. The officer can of course record details of the agreement in Salesforce Case Comments or a File Note or if the parties develop their own written agreement and wish to provide a copy to QBCC, we will save it to the case in ECM.

We do not monitor the agreement, nor do we have the power to enforce it.



When the case is closed both parties are to be sent the ***EDR Telephone Facilitated Agreement Reached*** letter. This letter will allow either party to proceed with the matter in QCAT should they wish to.

### Telephone Facilitated Agreement Not Reached

If an agreement cannot be reached over the telephone and no further assistance can be given, it may be appropriate to close the case. If the dispute is only about contractual items, the Claimant should be advised of their possible options e.g. to seek legal advice, QCAT, non-completion claim etc.

When the case is closed both parties are to be sent the ***EDR Telephone Facilitated Agreement Not Reached - Contractual Only*** letter. This letter will allow either party to proceed with the matter in QCAT should they wish to.

Where alleged defective work exists and the parties cannot reach an agreement, a site inspection may be necessary to determine if the work is defective or not. The BI will then following the standard inspection and reporting process.

## 3.6 Site Inspection and Outcomes

**NOTE: Refer to Sections 14 and 15 for any variations to standard process due to COVID-19.**

If it is determined a site inspection is necessary, the Building Inspector will coordinate a date and time suitable for both parties to conduct the inspection.

When conducting an inspection, the QBCC Building Inspector will carry out a visual inspection only. This will involve visually observing each complaint item. Invasive investigations are not undertaken by the QBCC to determine the cause of an alleged defect. Examples of invasive investigations include cutting a hole in a wall to look at damage behind the wall. The inspection is also not intended to be a complete inspection of the whole building or dwelling.

The Building Inspector's role is to investigate each dispute item identified by the parties and record the findings as with any site inspection.

### Site Meetings

#### Prior to scheduling the site inspection

Phone call by BI to both the Claimant and Respondent covering the following general talking points:

- introduce yourself as the BI and the decision maker on the case
- allow the customer an opportunity to explain their position

- outline QBCC's process and your role within the process – evidence will be considered, site meeting process, report, review rights
- create structure and certainty to mitigate perceived unfairness or bias
- demonstrate competence and answer any questions the customer may have. Portray – impartiality, objectivity, thoroughness, certainty and use empathy to diffuse any emotionally charged mindset seeking a cooperative mindset
- gain a commitment from the customer to participate in QBCC's process
- agree on an inspection date and time.

**NOTE:** Should the customer be unreachable by phone add a Salesforce Case Comment regarding the attempted contact. Follow up by sending an email using the email templates. Before sending, ensure all details are correct and the email accurately reflects the position of the QBCC.

## Inspection

During the site inspection, the BI should:

- attend the site at the agreed upon time and date
- enter the site being mindful of the owner's perceptions, this may require advising the licensee that introductions will be done in the presence of the owner should the licensee wish to have a conversation on the street
- identify yourself to both parties and identify the parties present at the meeting
- advise the parties you will be voice recording the inspection. A voice recording is to be made at every inspection
- advise both parties of the inspection process and reaffirm what has already been stated during your contact within your pre-inspection phone call
- advise both parties that the verbal conversations during the site meeting are intended to assist parties with understanding the Commission's process and assist all parties to gain a better understanding of the dispute. Information provided by the BI is general advice only, based on the information the BI has at hand. QBCC's decision will be issued in writing post inspection
- outline inspection criteria, structural and non-structural defects, time frames and any other information of relevance specific to the case
- make technical enquiries to form an understanding of construction methodologies
- create behavioural expectations as required
- confirm your understanding of points raised by the customers by paraphrasing
- outline what happens next i.e. DTR, case closure or further investigation required

- set expectations as to what QBCC's next action will be.

**NOTE:** The points above should be covered over the course of the inspection and should be specific to the case and the parties involved. It is at the discretion of the BI to chair the site meeting based on the behaviours displayed by the parties. For example, in the event both parties are communicating respectfully the BI should not instigate a discussion in relation to behavioural expectations.

## Post Inspection

Post inspection has been broken into 2 categories.

### Scenario 1

You have outlined the QBCC's position at the site meeting, outlined the date QBCC's inspection report will be issued and both parties have confirmed their understanding of your verbal description of QBCC's decision. The issuing of the report and QBCC's decision letter is sufficient contact.

### Scenario 2

You have completed your site meeting and have not been able to provide QBCC's decision verbally on site. The meeting was concluded with one of a combination of the following and you advised you are:

- seeking internal/external advice
- reviewing evidence submitted by either party
- you have changed your position post inspection
- undertaking further investigation.

In the above scenario, contacting the affected party by phone to explain QBCC's decision is required prior to issuing the report and decision. The BI would then explain the decision by covering the following general talking points:

- QBCC's decision and the impact of the decision
- demonstrate competence and answer any questions the customer may have. Portray impartiality, objectivity, thoroughness, certainty and use empathy to diffuse any emotionally charged mindset seeking a cooperative mindset
- outline the customer's review rights – Internal Review and QCAT
- give an undertaking to forward QBCC's decision via written correspondence and note an approximate time frame.

## Documents Received

Any documents received on site or sent to the BI via email, fax or over the counter must be declared to ECM as soon as possible.

## Outcome of Inspection

Following the site inspection, one of the following two options will apply.

- Direction to Rectify issued.
- No Direction to Rectify issued.

## Direction to Rectify

A direction is a document that notifies the contractor that, in accordance with the *Queensland Building and Construction Commission Act 1991* (QBCC Act), QBCC is ordering the listed defects at a particular address to be rectified within the stated timeframe.

The QBCC Act states the standard time for direction is 28 days however matters concerning health and safety can have a shorter timeframe imposed.

The BI maintains the discretion as to when a direction should be issued. They should consider the severity of the defect/s, any money outstanding under the contract and the potential effect of holding up the contract.

Refer to [Guidance Statement RES-017 – Outstanding Monies](#) for further information on the consideration of monies owed.

In the event the EDR is lodged by the principal contractor against the property owner, but upon inspection the BI determines a direction should be issued to the contractor, a separate case must be created for the issuing of the direction and the QBCC must be the Claimant, not the property owner. For more information regarding Directions refer to [Section 2.5](#) and [Section 4](#).

## Failure to Rectify

Under section 73 of the *Queensland Building and Construction Commission Act 1991* it is an offence to fail to comply with a direction to rectify or remedy.

Should the contractor disregard the Direction and the defective or incomplete work remains outstanding or unsatisfactorily complete at the end of the 28-day period, QBCC will record a Failure to Rectify against the contractor.

Failure to comply may incur a SPER fine and Demerit Points or action against the contractor in the Tribunal. The failure to rectify will appear on the publicly accessible licence record of the contractor. Unlicensed contractors may also attract a fine for unlicensed contracting.

When closing the case, the Building Inspector should refer the case back to the CSO/AO to arrange the issue of an Infringement Notice (I.N.) for a SPER fine.

When the Building Inspector is considering issuing a Failure to Rectify, verbal or written confirmation from both parties of the dispute must be attempted to establish that:

- a. rectification works **have** been satisfactorily carried out; or
- b. rectification works **have not** been satisfactorily carried out.

Communications to ascertain (a) or (b) above, need to be made with the Claimant **and** the Respondent and recorded in Salesforce and or ECM. Acting on the assertion of one party alone will not withstand the scrutiny of the Tribunal or Court if the decision is challenged.

In circumstances where the parties disagree on whether the rectification work occurred, or there is a dispute with respect to the quality of the rectification work, a re-inspection must be undertaken and a decision made by the Building Inspector. In any instance, where a reinspection is required, a Salesforce task must be created and a Reinspection Report completed and provided to both parties of the dispute. When sending the Salesforce task to the CSO/AO to issue the Failure to Rectify letters, the BI must note if a reinspection report is to be enclosed.

### 3.7 Legal Advice

The EDR process will allow QBCC to attempt to facilitate a resolution of contractual disputes between contractors and home owners. The QBCC officer will possess varying levels of expertise in contractual matters and consequently it may be necessary to utilise in house Legal Officers when expert legal advice is required.

### 3.8 Technical Advice

Prior to engaging a consultant to assist with an investigation Building Inspectors should ask themselves, 'is there another solution, or does QBCC really need the additional information to resolve the dispute?'

#### Requests for Technical Advice

All requests for technical advice must be made through your manager.

The requests are then to be submitted to the respective expert, providing them with an understanding of precisely what advice is required and should also include any documents that are relevant to the request.

## 3.9 Case Closure

A case is closed when no further action is required or further assistance cannot be provided. Two types of closure can apply.

### Satisfactory Result

- An EDR case is deemed satisfactorily closed when:
- there is an agreement reached between the parties involved
- an agreement cannot be reached between the parties and QBCC cannot assist further – contractual disputes only
- post inspection the BI decides not to issue a direction.

### Unsatisfactory Result

If a direction is issued and the contractor fails to rectify or complete the work, or the contract has been terminated, then this is an unsatisfactory result.

### Unresolved Complaints

- A QCAT application may be lodged to seek further assistance with resolving their dispute or alternatively they may wish to seek legal advice if QBCC is unable to assist.
- If during the EDR process the contract is terminated the EDR case will be closed and the owner should be advised they can lodge a Non-completion Complaint Form for assessment of a claim under the Queensland Home Warranty Scheme.
- If either party to the dispute is dissatisfied with the decision QBCC should recommend they source an independent building report or seek legal advice. They also have the ability to review the decision internally via IRU or externally in QCAT.

Refer to the [Resolution Services – Disputes Salesforce Processing Guide](#) for full details on processing of cases.

## 4 Issuing Directions and Other Correspondence

### 4.1 Overview

The *Queensland Building and Construction Commission Act 1991* section 72 enables QBCC to direct rectification of defective or incomplete building work by a person and/or company responsible for carrying out that building work.

It may also require remediation of consequential damage that is a result of building work. Contractors are given an opportunity to rectify any defective work prior to the issue of a direction.

They are notified of the complaint items prior to the scheduling of an inspection and have until the inspection date to address the items voluntarily.

If the matter proceeds to an inspection, the BI may decide to issue a direction to more than one licensee/person for the same work. In such instances another case would be opened for the processing of the Direction.

Any failure by a licensee to comply with a QBCC Direction to Rectify within the time specified may lead to QBCC commencing actions including:

- the imposition of up to 10 demerit points upon the licence
- substantive financial penalties if prosecuted in QCAT or the courts (as per s73), maximum penalty 250 penalty units or if QBCC issues an infringement notice
- disciplinary action in the Tribunal or the Courts
- imposition of conditions on the licence
- issuing of show cause notices which may result in the cancellation or suspension of the licence.

The below **Quick Guide – Issuing Correspondence** is designed to assist with determining if and what type of direction should be issued based on a licensee's current licence and financial status and contains a summary of the below instructions for issuing correspondence. The **Insolvency: a glossary of terms** document is from the ASIC website and helps to explain the different terminology.



**Quick Guide – Issuing Correspondence**



**Insolvency: a glossary of terms**

The detailed instructions below should be followed when issuing required correspondence.

**NOTE:** letters may also be emailed but only in addition to the posted correspondence, not in lieu of.

**\*\* From January 2020, the Direction is to be emailed to the Respondent as well as posted. The email is not deemed service but aims to provide earlier awareness. The emailed Direction does not need to be signed. The email must be declared to ECM.**

## 4.2 Issuing a Direction and Other Correspondence to Individuals

### Active Licence Holding the Appropriate Class

A **Direction to Rectify to Active Licensee** should be issued. The Direction and all other correspondence should be posted to all known addresses on the customer record.

### Inappropriate Licence (cancelled, suspended, inappropriate class)

A **Cause Direction** should be issued. The Direction and all other correspondence should be posted to all known addresses on the customer record.

### Undischarged Bankrupt without a Current Licence

Bankruptcy is where a Trustee is appointed either voluntary or by order of a Federal Court. The Trustee is responsible for calling in all assets divisible under the Bankruptcy Act and distributing those funds to creditors.

After bankruptcy they are discharged from all provable debts and liability, such as that pursuant to the Insurance Policy. Provable debts are debts for which a claim can be made in their bankruptcy.

**No direction will be issued.** All correspondence should be forwarded to the Trustee in bankruptcy. Additionally, the **Initial Inspection Letter** should be sent to all known addresses of the individual.

### Undischarged Bankrupt with a Current Licence

Initial Inspection letters and Direction to be issued as with a normal licensee, either **Direction to Rectify - Active** or **Cause Direction - Inappropriate Licence**.

Even though an individual is bankrupt, they may still hold a licence, such as a Site Supervisor or Fire Occupational Licence. Alternatively, they could be in the process of becoming an excluded individual or in rare cases may be a permitted individual and therefore still hold an active licence.



**i Cease sending correspondence to the licensee after the Failure to Rectify has been issued as QBCC cannot recover any monies paid out as covered by bankruptcy.**

## Discharged Bankrupt

This has no effect on the complaint process. **Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**

Once an individual has been discharged from bankruptcy, the complaint process is no longer affected so the bankruptcy is ignored for the purpose of determining whether a direction is required and whether correspondence should be forwarded.

## Part X Administration

Part X (Part 10) is a part of the Bankruptcy Act that provides a mechanism for people with financial difficulties to propose a formal agreement with their creditors to satisfy their debts without becoming bankrupt. These agreements are called Personal Insolvency Agreements ("PIA").

For the purposes of issuing a direction and other correspondence, treat this instance as an active licensee. **Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**

**i A copy of all correspondence is also sent to the trustee of the Part X Administration.**

## Part IX Debt Agreement

Part IX (Part 9) of the Bankruptcy Act provides people who have limited assets, debts and income with a mechanism for satisfying those debts without becoming bankrupt, or going through the more detailed Part X process. These arrangements are called Debt Agreements.

For the purposes of issuing a direction and other correspondence, treat this instance as an active licensee. **Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**

**i A copy of all correspondence is also sent to the administrator of the debt agreement.**

## Deceased Builder

If the licensee is deceased a direction will not be issued. In this instance contact the Debt Recovery Manager who will determine if any correspondence is required. Generally, no correspondence will be issued at all. The Debt Recovery Manager will confirm and update the address as “Deceased – No Correspondence Required – Refer Debt Recovery Manager”. Any required correspondence will be produced by the Debt Recovery Manager.


## 4.3 Issuing a Direction and Other Correspondence to Companies

**Before issuing a direction it is essential to check the current status of the licensee and for companies to also check their status on ASIC.** Remember the ASIC term “External Administration” can include Voluntary Administration; Deed of Company Arrangement; Receiver/Controller Appointed or Provisional Liquidation.

**A company with the ASIC status of External Administration may also actually be in liquidation, so to it is vital to check the document listing for the “Notification of Appointment of a Liquidator” document which confirms they are in fact in liquidation.**

▼ Company Summary ?

<b>Name:</b>	GLENWOOD HOMES PTY. LTD.
<b>ACN:</b>	010 930 284
<b>ABN:</b>	<a href="#">94 010 930 284</a>
<b>Previous state number:</b>	89B05203K
<b>Previous state of registration:</b>	Queensland
<b>Registration date:</b>	9/05/1989
<b>Next review date:</b>	9/05/2016
<b>Former name(s):</b>	MEZCO PTY. LTD.
<b>Status:</b>	External Administration
<b>Type:</b>	Australian Proprietary Company, Limited By Shares
<b>Locality of registered office:</b>	CAIRNS QLD 4870
<b>Regulator:</b>	Australian Securities & Investments Commission

 [View Summary \(PDF\)](#)

Documents <a href="#">Hide all documents</a>					
Show <input type="text" value="All document type"/> <input type="button" value="v"/> <input type="checkbox"/> Exclude disclosure notice for disclosing entity (7053A) Date from <input type="text"/> <input type="button" value="v"/> Date to <input type="text"/> <input type="button" value="v"/> <input type="button" value="Filter"/> <input type="button" value="Clear Filter"/>					
Display <input type="text" value="10 results"/> <input type="button" value="v"/> <a href="#">Prev</a> <a href="#">Next</a>					
Date	Document No.	Document type	Pages	Uncertified	Certified <input data-bbox="1412 459 1428 481" type="button" value="?"/>
30/08/2011	027752363	Notification Of Cessation Of Controller (Other Than Receiver Or Managing Controller) (505X)	4	\$19.00 <input type="checkbox"/>	\$38.00 <input type="checkbox"/>
15/06/2011	7E3736774	Report As To Affairs From Controller Under S.429(2)(C) (507F)	35	\$38.00 <input type="checkbox"/>	\$57.00 <input type="checkbox"/>
26/05/2011	7E3695177	Report As To Affairs From Managing Controller Who Is Also A Receiver/manager (507G)	13	\$38.00 <input type="checkbox"/>	\$57.00 <input type="checkbox"/>
19/05/2011	7E3679558	Notice Of Disclaimer Of Onerous Property (525)	3	\$19.00 <input type="checkbox"/>	\$38.00 <input type="checkbox"/>
10/05/2011	7E3657486	Presentation Of Accounts & Statement Presentation Of Final Accounts Of Administrator (524Z)	11	\$38.00 <input type="checkbox"/>	\$57.00 <input type="checkbox"/>
20/04/2011	7E3621739	Change To Company Details Change Of Registered Address (484B)	2	\$19.00 <input type="checkbox"/>	\$38.00 <input type="checkbox"/>
18/04/2011	7E3615670	Notification Of Appointment Of Liquidator (Creditors' Voluntary Winding Up) (505J)	2	\$19.00 <input type="checkbox"/>	\$38.00 <input type="checkbox"/>

**ASIC** also have a [Published notices](#) site where you can Browse/Search Notices for a company which may assist with determining the status of a company.

### Active Licence Holding the Appropriate Class

A **Direction to Rectify to Active Licensee** should be issued. The Direction and all other correspondence should be posted to all known addresses on the customer record. The Registered Office address should be confirmed at the time the Direction is issued.

### Inappropriate Licence (cancelled, suspended, inappropriate class)

A **Cause Direction** should be issued. The Direction and all other correspondence should be posted to all known addresses on the customer record. The Registered Office address should be confirmed at the time the Direction is issued.

### External Administration

External Administration is a term which covers all types of insolvency arrangements. An external administrator is a general term for an external person formally appointed to a company or its property and includes a provisional liquidator, liquidator, voluntary administrator, deed administrator, controller, receiver and receiver and manager. An external administrator is sometimes also referred to as an insolvency practitioner.

An ASIC company search may show a status of **External Administration**.

This can include:

- Voluntary Administration
- Deed of Company Arrangement
- Receiver/Controller Appointed
- Provisional Liquidation.

### **Voluntary Administration**

Voluntary administration is a process under the Corporations Act, where a caretaker (the voluntary administrator) takes control of the affairs of a company while it is given a chance to propose a resolution of its financial problems to its creditors.

The period of voluntary administration runs for about 4 to 6 weeks and results in a meeting of the company's creditors who decide on the future of the company.

**Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**



**A copy of all correspondence is also sent to the administrator.**

### **Deed of Company Arrangement**

A Deed of Company Arrangement is a formal written arrangement entered into by an insolvent company, its creditors and any other relevant party to resolve the company's debt problems without the need for liquidating the company.

Deed of Company Arrangements can only be formed through the voluntary administration process under the *Corporations Act*. Agreements that are not formed under this process will not be binding on all creditors

**Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**



**A copy of all correspondence is also sent to the Deed Administrator and to the Directors at the time of the contract (date signed to date of completion).**

## Receiver/Controller Appointed

Receivership is when a receiver is appointed by a secured creditor because the company has defaulted on a loan repayment. A secured creditor is someone to whom the company has given a "charge", such as a mortgage, over all or part of its assets in return for loan funds.

The court does not need to approve of the appointment of a receiver, the procedure is simple and the appointment is usually done quickly. Receivers usually known as "receivers and managers" can carry on the business, or close it down, or sell it off.

Their principal task is to release sufficient funds to repay the secured creditor and they are not there to deal with claims from creditors.

A Receiver/Controller acts for a single secured creditor of the company to sell property over which that creditor holds security such as a mortgage over real estate.

As it does not affect the complaint process, the appointment of a Receiver/Controller is ignored for the purpose of determining whether a direction is required and where correspondence should be forwarded.

This scenario has no effect on the complaint process. **Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**

## Provisional Liquidation

The process of Liquidation was commenced by either the Directors or Shareholders of the company through the appointment of a Liquidator directly or by the order of a Court.

**Follow instructions for Active Licence Holding the Appropriate Class or Inappropriate Licence (cancelled, suspended, inappropriate class).**



**All correspondence should be forwarded to the Liquidator.**

**Additionally, the Initial Inspection Letter should be sent to all individuals who are directors of the company and all individuals who were directors of the company at the time of the contract (date signed to date of completion). A company search should be obtained.**

**Each individual's address will appear in the company search. Salesforce should also be checked to determine whether any additional addresses exist for the directors.**

## Liquidation

Liquidation is a process for the winding up of a company's financial affairs in order to provide for an orderly dismantling of the company's structure, the undertaking of appropriate investigations and a fair distribution of the company's assets to creditors. This occurs either because the company can't pay all of its debts (i.e. it is insolvent), or its members want to end the company's existence.

**Only if the complaint items are defective building work in time for a direction and/or claim the Initial Inspection Letter, a Notice of Defective Work and the subsequent case closure letter should be sent to the Liquidator and all individuals who were directors of the company at the time of the contract (date signed to date of completion).**

A company search should be obtained. Each individual's address will appear in the company search. Salesforce should also be checked to determine whether any additional addresses exist for the directors.

## Deregistered Company

Deregistered effectively means that the company no longer exists, there is no Director and nothing to hold responsible for the works undertaken by that company. It is effectively dead.

**Only if the complaint items are defective building work in time for a direction and/or claim the Initial Inspection Letter, a Notice of Defective Work and the subsequent case closure letter should be sent to all individuals who were directors of the company at the time of the contract (date signed to date of completion).**

A company search should be obtained. Each individual's address will appear in the company search. Salesforce should also be checked to determine whether any additional addresses exist for the directors.



**Where mail is returned, inquiries should be undertaken to confirm the addresses. Please contact the Debt Recovery Manager should assistance be required with this.**

**In the event that you are concerned about the appropriateness of the above instructions for a particular matter, please discuss with the Debt Recovery Manager. In special circumstances it might be agreed to deviate from the above instructions.**

## 4.4 Return through Post

Any correspondence returned to sender will be notified to the issuing officer (generally the Case Owner) in the first instance, via an ECM Workflow (task). If the issuing officer was a Building Inspector, the task should be forwarded to the appropriate CSO/AO (as per process established in your office/team) for actioning.

If all correspondence is returned through the post marked “unknown at address”, “left address” or any other reason that suggests that the intended recipient may not be at the address provided, the officer should make all reasonable enquiries to locate an alternative address for delivery of the correspondence.

Such enquiries should include:

- reviewing all documents in the Case records
- conducting a Salesforce Customer Record search (in case there has been a change of address)
- making a telephone call to the intended recipient asking them to confirm their address.\*see section below Verifying Customer Details
- sending an email to the intended recipient’s email address on their record, if available
- conducting an RP Data search (if not done already)
- conducting a search of the White Pages, Google etc.
- conducting a CITEC, ASIC or business names search (if not done already). If a cost is to be incurred, first check with your manager.

For registered companies, a company extract should always be obtained.

If you are unable to find an alternative address, you can also contact Debt Recovery who may be able to assist with finding an alternative address.

### **Verifying Customer Details and Updating Customer Records**

If you make contact with the respondent, it is essential that you verify their identity. If they then advise you of an alternative address, their verbal notification of this change of details is sufficient to provide to Licensing who are then able to update their Customer Record.

Verification is to be completed against the caller’s individual profile within Salesforce. For a company, we can only discuss the matter and take alternative contact details from a Director.

#### **Verify the following:**

- Full Name - including middle name
- Date of birth
- Email address - including domain name

**If one of the above components are missing from the profile, or the email is incorrect, the following can be asked instead:**

- Phone number - mobile, business or home
- Address - postal, business or residential

Any such information should be recorded in the **Case Comments** in Salesforce and a New Note added to the **Notes & Attachments** section in Customer's Record in Salesforce.

Notes & Attachments	New Note	Attach File
No records to display		

Any email with this information can then be sent to Licensing who are able to update the Customer's Record.

## 4.5 When a Contractor Reviews the Direction

Should the contractor review the Direction to Rectify, and the complaint items are insurable work, a claims case is to be created for a claim assessment. The steps to be followed are in the [Disputes Salesforce Processing Guide](#).

The claim is not to be put on hold pending the review. The claim should be assessed as usual however should not be approved until the original Direction period has lapsed.

If the review's decision requires a new direction to be issued, the claim should not be approved until the new Direction has expired.

If the contractor reviews the Direction and the work is found not to have been defective, i.e. the Direction should not have been issued, the debt will not be recovered.

**NOTE:** If the Direction is being reviewed in QCAT, at the Direction Due Date, the Building Inspector is to follow standard process and determine if the Direction has been satisfactorily complied with or not. The appropriate Direction Failure or Direction Complete letters are then to be issued to the parties.

The Direction Status is **NOT** to be changed from QCAT Involvement, nor is the case to be closed, **both must remain on QCAT Involvement** until the review is complete. Where the complaint items are insurable work, the BI must draft a Scope of Works, if not already completed, and the claim is to proceed as outlined above.

Where the outcome is Failure to Rectify, the Infringement Notice is not to be actioned at this time. Only upon the outcome of the review, we may proceed with this step.

## 4.6 Review of or after a Failure to Rectify

If an **IRU or QCAT review** is lodged **after** we have issued the **Failure to Rectify**, or if the review is of the **Failure to Rectify**, the **Case Status** and **Direction Status** on the case in Salesforce must still be updated to reflect this. In instances where the case has been closed, it will have to be reopened.



Section 100 of the QBCC Act states:

**“100 When information may be included in the licensee register**

- (1) *No information may be included in the register under section 99(3)(a) until-*
- (a) *all periods for seeking a review of the direction, and for making any appeal arising out of review of the direction, have ended; and*
  - (b) *any review or appeal about the direction is finally decided or is not proceeded with.”*

The **Direction Status** of either **Direction Fully Complied With** or **Failure to Comply** is what triggers a Direction showing on the licensee register, therefore is vital that these statuses are **NOT** active or selected whilst a review is underway.

## 4.7 IRU Decision to Issue a Direction

If an Internal Review Decision is made to issue a Direction to Rectify or withdraw a direction, the original decision maker and their manager will be notified.

If the decision is to issue a direction, whether the same or different from the original Direction, the original Direction must be withdrawn and a new direction issued.

This Direction is to be in the name of the original decision maker whether they concur with the IRU decision or not. If the decision is to withdraw the Direction, the manager will do so and no further action is required.

Refer to the [Resolution Services - Disputes Salesforce Processing Guide](#) for instructions on these processes.

## 4.8 Withdrawing a Direction

Whilst the *Queensland Building and Construction Commission Act 1991* (QBCC Act) doesn't specify the power to withdraw a direction, the *Acts Interpretation Act 1954* states:

**“24AA Power to make instrument or decision includes power to amend or repeal**

*If an Act authorises or requires the making of an instrument or decision—*

- (a) *the power includes power to amend or repeal the instrument or decision; and*
- (b) *the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.”*

Therefore, this means the QBCC Act provides the power to issue a direction and thus the power to amend or repeal that decision.

If it is necessary to withdraw a Direction already issued, the **DTR Withdrawal Memo**, available in ActiveDocs and section 7.10, must be completed and sent to the relevant manager explaining the circumstances for the request to withdraw an issued Direction. The only reason this should be necessary is if a direction has been issued in error or the decision has been changed and the reasons for withdrawing it can be substantiated.

If the withdrawal is due to the decision being changed or set aside, written approval from the Assistant Commissioner **must** be obtained. **This request must come from the manager (SBI or RSCM) and is to be sent to the Assistant Commissioner via email.**

For further information of these instances refer to the below **Commissioner Directive: Changing Original Decisions to Give a Direction to Rectify or Remedy, or Not Give a Direction.**

This directive does not apply to a direction that needs to be withdrawn in Salesforce prior to it being issued, due to a clerical or data entry error, nor does it relate to withdrawing a direction due to/as part of an IRU or QCAT review.

Once approved, the relevant manager will then withdraw the Direction. The reasons for withdrawing the Direction must be recorded in the Case Comments and any relevant documents saved to ECM.

For Resolution Services, only the following positions can withdraw a direction in Salesforce:

- Director Resolution Services and Strategy
- Director Regional Services, Queensland North
- Director Regional Services, Queensland South
- Manager Resolution
- Manager Service Centre
- Manager Technical Resources
- Senior Building Inspector

Only directions issued by Resolution Services staff can be withdrawn by the positions listed above, i.e. they do not have the delegation to withdraw a direction issued for an IRU or QCAT decision.



**Commissioner Directive: Changing Original Decisions to Give a Direction to Rectify or Remedy or Not Give a Direction**

## 4.9 Extending a Direction to Rectify

For decisions made from 10 November 2017, the QBCC Act provides:

### ***“72B Extending time to rectify or remedy***

- (1) *A person given a direction to rectify or remedy may apply to the commission for an extension of the period for compliance with the direction.*
- (2) *The application must—*
  - (a) *be made before the end of the period stated in the direction; and*
  - (b) *state the reasons the extension is needed.*
- (3) *The commission must decide whether or not to grant the extension, and inform the applicant of the decision, within 10 business days after receiving the application.*
- (4) *The commission may grant the extension only if satisfied it is likely to be impracticable for the applicant to comply with the direction within the period stated in the direction.*
- (5) *Also, the commission must grant the extension if satisfied the person affected by the building work the subject of the direction has agreed to the extension being applied for.*
- (6) *If the commission grants the extension, the commission must give the applicant a written notice stating the period within which the applicant must rectify the work or remedy the damage.*
- (7) *If the commission refuses to grant the extension, the commission must give the applicant written notice of the refusal.*
- (8) *If the commission fails to comply with subsection (3), the commission is taken to have decided to refuse the application.*
- (9) *The direction to rectify or remedy is stayed while the commission considers the application.”*

When an extension has been granted or denied, the decision must be communicated to the parties in writing. The relevant letters are available in ActiveDocs. The below email templates for an extension denied may also be sent in addition to the letters, but never instead of.



DTR extension  
denied - Responder



DTR extension  
denied - Claimant.o

The below Guidance Statement contains further information and instruction regarding the process for extending a direction.



**RES-019 – Extension of Time for Direction to Rectify**

## 4.10 Applying to QCAT for an Extension of Time to Direct

The Queensland Building and Construction Commission Act 1991 Section 72A(4) provides:

**“72A Powers and limitations of directions to rectify or remedy**

- (4) A direction to rectify or remedy cannot be given more than 6 years and 6 months after the building work to which the direction relates was completed or left in an incomplete state unless the tribunal is satisfied, on application by the commission, that there is in the circumstances of a particular case sufficient reason for extending the time for giving the direction and extends the time accordingly.

The process for considering such an application is detailed in the below Guidance Statement.



**RES-023 – Considering Whether QBCC Should Apply to QCAT for an Extension of Time under Section 72A(4)**

## 5 QBCC and Related Legislation



**Queensland Building and Construction Commission Act 1991**



**Queensland Building and Construction Commission Regulation 2018**



**Building Act 1975**



**Building Regulation 2006**



**Building & Construction Industry Payments Act 2004**



**Building & Construction Industry Payments Regulation 2004**



**Subcontractors Charges Act 1974**

## 6 Board and Internal Policies



[Commissioner Directive: Changing Original Decisions to Give a Direction to Rectify or Remedy or Not Give a Direction](#)



[Commissioner's Directive – Direction to Rectify](#)



[Accountability for Subcontractor Defects Procedure](#)



[Rectification of Building Work Regulatory Guide](#)



[Rectification of Building Work Regulatory Guide FAQs](#)



[Rectification of Building Work Policy - Effective 10 October 2014](#)



[Commissioner Directive - Rectification of Building Work Policy](#)

## 7 Building Inspectors



[QBCC Inspectors Charter](#)

For step by step instructions on processing cases in Salesforce, refer to the [Resolution Services - Disputes Salesforce Processing Guide](#).

### 7.1 Relevant Legislation

Building Inspectors employed by QBCC are able to perform their duties due to legislation passed by the Queensland Parliament, the list below is an example but not exhaustive of all applicable legislation. It is important to remember to refer to the version of the legislation relevant to the time the building work was performed.

- *Building Act 1975*
- *Building Regulation 2006*
- *Queensland Building and Construction Commission Act 1991*
- *Queensland Building and Construction Commission Regulation 2018*
- Queensland Building and Construction Board Policy (Rectification of Building Work)
- *Queensland Civil and Administrative Tribunal Act 2009*.



[Queensland Government Legislation](#)

For Some of the key sections of the Legislation for Building Inspectors are:

- Definition of Building Work (QBCC Act 1991)
- Power to enter and inspect building site (QBCC Act 1991)
- Power to require rectification of building work (QBCC Act 1991)
- Reviewable decisions (QBCC Act 1991)
- Definition of residence and related roofed building (QBCC Regulation 2018)
- Definition of Building work that is not classified as residential construction work - pre 28 October 2016 (QBCC Regulation 2018)
- Work not covered under the statutory insurance scheme - from 28 October 2016 (QBCC Regulation 2018)
- Definition of Primary Insurable Work and What is not primary insurable work– from 28 October 2016 (QBCC Act 1991 and QBCC Regulation 2018)

## 7.2 Queensland Home Warranty Scheme

Where defective or incomplete works are not rectified and/or completed by the contractor, assistance may be available under the Queensland Home Warranty Scheme (the Scheme).

Only **primary insurable work** as defined in the QBCC Act section 67WC is covered for a claim for defects where the work is substantially complete.

**Primary insurable work** is any of the following building work by a licensed contractor over \$3,300:

- erection or construction of a residence or related roofed building
- building work within the building envelope of a residence or related roofed building
- building work for anything attached to the residence or related roofed building that needs building or plumbing approval
- erection, construction or installation of a swimming pool
- renovation, alteration, repair of the building envelope of the residence or related roofed building
- building work attached to the external part of the residence or related roofed building if it has no other supporting structure

- a structure attached to the external of the residence or related roofed building if it is for:
  - primary water supply to the building
  - sewerage or drainage for the building
  - stormwater discharge for the building
- verandah or deck attached to the residence or related roofed building
- stairs or ramp which provide access and are permanently attached to the residence or related roofed building
- installation or repair of support structures for a residence or related roofed building e.g. underpin.

**Building envelope** for a residence or related roofed building, means the outermost sides of the aggregation of the components of a building that have the primary function of separating the internal part of the residence or related roofed building from the external environment e.g. the slab and footings system, an external wall and a roof.

An Insurable Work page is on the QBCC website to assist in determining if something is Insurable Work, both pre and post 28 October 2016 and the below Guide to What is RCW can also be reference when determining if something is residential construction work.



### Insurable Work



### A Guide to What is RCW

## Residential Construction Work - contracts prior 28 October 2016 Insurance Policy Conditions 1 – 8

Subject to the terms of the relevant policy, the Queensland Building and Construction Commission will pay for loss for:

- Non-completion
- Vandalism and forcible removal – Policy 8 +
- Fire, storm and tempest – Policy 8 +
- Defective construction
- Subsidence or settlement.

These policy conditions apply to residential construction work covered by the Queensland Home Warranty Scheme for which a premium has been paid, a contract entered, or work commenced (whichever is the earliest) on or after the date of commencement of the policy.

## Queensland Home Warranty Scheme changes from 28 October 2016

Changes to the Home Warranty Scheme were introduced on 28 October 2016. The terms and conditions of the scheme have been incorporated into a schedule in the *Queensland Building and Construction Commission Regulation 2018* and definitions are also provided in the *Queensland Building and Construction Commission Act*.

In summary the changes are:

- the scheme has been expanded to cover other additional work
- a consumer can increase the amount of cover by payment of an additional premium and
- there are changes to the way GST is dealt with in regard to cover.

### Expansion of cover

Everything covered by the Queensland Home Warranty Scheme prior to the changes remains covered. The Scheme has been expanded to include the following work.

- The erection, construction or installation of a residential swimming pool.
- In relation to a residence or related roofed building (e.g. a shed):
  - All building work performed within the building envelope (internal or external parts of the building), for example, painting, tiling, plastering, roof restoration and repair work, rendering of walls, floor restoration, and glazing work.
  - Anything attached to the building if it requires building approval or plumbing approval.
  - Any structure attached to the external part of the building where there is no other supporting structure (e.g.: awning or handrail)
  - Stairs or an access ramp which are permanently attached to the building.
- In relation to plumbing and drainage for a residence or related roofed building:
  - Building work for the primary water supply (e.g.: install water tank for primary water supply)
  - Building work for sewerage or drainage (e.g.: work on a sanitary drain connecting a residence to the sewerage main).
  - Stormwater drainage (e.g.: repair of downpipe or gutter).
- The installation of a manufactured home fixed to land in a residential park.



### Key Points to Note

- Disputes relate to Building Work and Insurance relates to Insurable Work.
- QBCC's insurance premium is a “one-off” payment.
- QBCC's Insurance cover lasts for 6 years and 6 months.
- QBCC's Insurance cover cannot be renewed.
- The contractor is responsible for paying the insurance premium.
- From 28 October 2016 a consumer can pay for Optional additional cover.
- QBCC's Insurance cover “runs with the land”.
- Only **primary insurable work** is covered for claims for defective work where the work is substantially complete.

## 7.3 Inspection and Reporting

**NOTE:** Refer to Sections 14 and 15 for any variations to standard process due to COVID-19.

### The 6 Fundamental Rules!

1. Identify **RESPONSIBLE** Parties



4. **WHERE** is the Defect?



2. Is it **BUILDING WORK**?



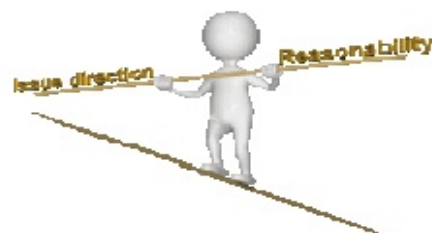
5. What is the **RESULT**? (damage)



3. **WHAT** is the Defect? (faulty or unsatisfactory)



6. **REASONABILITY**



#### Inspection Process

Prior to the inspection check all case details

- Case Comments, Complaint Assessment File Note, Insurance Policy details etc.
- Completion dates in regard to minor defect period and direction period

- Time the owners have known about defect and time to lodge complaint with QBCC may affect our decision
- Pre purchase inspection report, if complaint items were known before purchase
- If necessary, make technical enquiries to form an understanding of construction methodologies. Always be prepared for inspection i.e. prior home work on BCA, Standards, Manufacturer Manual or Equipment etc.

### Prior to scheduling the site inspection

Phone call by BI to both the Claimant and Respondent covering the following general talking points:

- introduce yourself as the BI and the decision maker on the case
- allow the customer an opportunity to explain their position
- outline QBCC's process and your role within the process – evidence will be considered, site meeting process, report, review rights
- create structure and certainty to mitigate perceived unfairness or bias
- demonstrate competence and answer any questions the customer may have. Portray – impartiality, objectivity, thoroughness, certainty and use empathy to diffuse any emotionally charged mindset seeking a cooperative mindset
- gain a commitment from the customer to participate in QBCC's process
- agree on an inspection date and time.

**NOTE:** Should the customer be unreachable by phone add a Salesforce Case Comment regarding the attempted contact. Follow up by sending an email using the email templates. Before sending, ensure all details are correct and the email accurately reflects the position of the QBCC.



Initial Contact from  
BI - Claimant.oft



Initial Contact from  
BI - Respondent.oft



Amending Email  
Template Instruction

## Inspection

During the site inspection, the BI should:

- advise the parties you will be voice recording the inspection. A voice recording is to be made at every inspection.
- attend the site at the agreed upon time and date
- enter the site being mindful of the owner's perceptions, this may require advising the licensee that introductions will be done in the presence of the owner should the licensee wish to have a conversation on the street
- identify yourself to both parties and show your identification to both parties and identify the parties present at the meeting
- fill out Contractor Statement and ensure it is signed and dated by the licensee or their representative if possible.
- advise both parties of the inspection process and reaffirm what has already been stated during your contact within your pre-inspection phone call. You can use your own words but make sure that all the required information is covered. Some suggested wording is provided below.
- advise both parties that the verbal conversations during the site meeting are intended to assist parties with understanding the Commission's process and assist all parties to gain a better understanding of the dispute. Information provided by the BI is general advice only, based on the information the BI has at hand. QBCC's decision will be issued in writing post inspection
- outline inspection criteria, structural and non-structural defects, time frames and any other information of relevance specific to the case
- create behavioural expectations as required
- confirm your understanding of points raised by the customers by paraphrasing
- outline what happens next i.e. DTR, case closure or further investigation required
- set expectations as to what QBCC's next action will be.

**NOTE:** The points above should be covered over the course of the inspection and should be specific to the case and the parties involved. It is at the discretion of the BI to chair the site meeting based on the behaviours displayed by the parties. For example, in the event both parties are communicating respectfully the BI should not instigate a discussion in relation to behavioural expectations.



**Check on the complaint item list to be inspected and confirm with the owner. If there are other items, ask the licensee if they are happy to look at the other items while we are there. If not all parties will have to come back another time so try and encourage the licensee to look at the new items.**

### Suggested wording for inspection introduction

*“We are here today to inspect the issue/s raised by the owner in their Complaint Form”.*

*“I will inspect the items and try to make a decision today but if I require further information I will make a decision once all information has been assessed.”*

*“I will try and explain the reasons for the decision but at the end of the day I will make a decision.”*

*“If I request the licensee to perform rectification and they are not willing to do so I will issue a formal Direction to Rectify and that decision can be appealed and all matters cease until that is settled.”*

*“On the other hand you the owner can appeal the fact I am not going to issue a formal Direction to Rectify and all matters will cease until that is settled.”*

*“Hopefully we won’t get to that situation but if we do we will cross that bridge then.”*

*“Now has anyone any questions, no, ok let us inspect the issues of concern.”*



**Any documents received on site or existing documents you may have used to take notes etc. must be forwarded to Records for scanning. Have the CSO/AO do so upon your return to the office or place the documents yourself in the relevant tray for Records, noting the Case Number on the top of the document.**

### Voice Recording Site Inspections

A voice recording is to be made at every inspection.

In the circumstance that the owner does not wish the meeting to be recorded, the meeting is to be scheduled (or re-scheduled if already on site) with a support person also attending. The support person will likely be the assessment officer, another BI or SBI or OTL.

In the event the respondent indicates they do not wish to be recorded, the respondent is to be advised that it is the Commissions directive that we are recording and the meeting is to proceed with the recording activated.

The recording should begin with identifying:

- the salesforce case number
- the property address
- the nature of the inspection (i.e. initial site inspection, re-inspection etc.)
- the details of the other parties attending the inspection should also be noted.

The recording is to be a continuous record without any stops or breaks in the recording.

In the event a recording is not captured, specific Case Comments are to be placed in Salesforce detailing why the recording has not worked and if any contentious matters were raised at the inspection. This action should be the exception.

In the circumstance that either party request a copy of the recording, they are to be advised that any information within the Commission can only be released under a RTI application due to privacy legislation and as they are a party to the matter there is likely no fee attached to the application.

Pursuant to the *Public Records Act 2002* we are to keep all records made or received by the Commission. Further, the Commission has a Records Management Policy prescribing all records are to be stored into ECM as soon as practical. The voice recording is defined as a public record and is therefore required to be stored in ECM.

Recordings are not to be stored or kept locally on personal hard disc drives or USB devices and must be declared and stored against the relevant ECM file.

Where a recording is too large to drop straight in to ECM, the Audacity programme can be utilised to compress the recording. The instructions for this are attached. In circumstances of extremely large recordings, we can avail ourselves to place the recording onto a USB drive and provide the USB to Records to store into ECM.

Specific instructions of the Salesforce case number and property address will need to be provided with the USB to assist Records in storing the information.



**[Audacity Instructions 1](#)**



**[Audacity Instructions 2](#)**



**[Record Management Policy](#)**

## After the Inspection

For step by step processing of the case in Salesforce, refer to the **[Resolution Services – Disputes Salesforce Processing Guide](#)**.

## Issues to Consider

- Always use logical process and make inquiries where required.
- Correspondence from parties, always respond in a timely manner - same day if possible in writing, but at least phone to acknowledge receipt of correspondence and advise response times.
- Finally, you must be able to defend your decision in a logical manner i.e. QBCC manager, QCAT etc. We don't represent either of the parties; we are there to resolve their problems if possible.

Various **Guidance Statements** are available in [Section 13](#) that may assist with the assessment and decision making process.

### Consideration of Further Documents or Information Provided

It is imperative that all primary decision makers consider all evidence both prior and post decision making. Once a decision has been reached based on evidence to hand, should further documentation/information be provided by either party this must be reviewed and determined if it alters or supports the original decision.

If the decision maker believes the information is credible for a decision (significant or averse to both parties), the parties must be given the opportunity to answer to that. Where relevant, this information should also be vetted against the affected party to validate or not e.g. issues with site access.

**NOTE:** Once an application for review is lodged with IRU or QCAT, you cannot change your decision.

Where evidence being relied on in the decision making process was commissioned by QBCC e.g. plumbing report, engineer report etc., both parties can be provided a copy.

Where the evidence has been provided by one of the parties, only the relevant details can be provided (rather than the entire document) without the consent of the party who provided the evidence. Permission to share the evidence can be sought from the providing party but if they do not consent, the other party must apply through RTI.

The following scenario serves to illustrate what can occur if further information is not considered.

*A Complaint Form is lodged with QBCC in relation to concerns over a non-certified retaining wall that has a significant bow in the structure. QBCC's Case Owner contacts their local council who has had cause to previously inspect the wall, originating from a complaint by both the owner and neighbour. The council report stated that "the bow in the wall is not detrimental to the structural adequacy of the wall and any decision to repair the wall at this stage would be for aesthetic reasons."*

*On the same day that this document was scanned into ECM a closure letter was sent to the owners of the property advising QBCC would not be requesting the licensee to rectify the retaining wall. The file is closed based on the documents from the council only with no QBCC inspection undertaken.*

*Subsequent to the council inspection the neighbours who had previously obtained their own engineers report regarding the wall (inspection carried out 6 months after the report from council) provided the claimants with a copy who then sent it to QBCC for further consideration of their complaint. This report indicated that the bow may well be detrimental to the structural adequacy of the wall.*

*QBCC did not follow up on this report submitted by the claimant instead chose to rely on the original older report obtained through the local council. The wall subsequently collapsed during the next wet season.*

*Clearly QBCC did not place sufficient weight on the more recent report, instead choosing to rely primarily on the older report. It is clear that it is more prudent for QBCC to place due*



*weight on all evidence provided by the parties to a dispute, even in instances where a file may have already been closed.*

*Simply having made a determination based on evidence at the time of the initial complaint lodgement it is then foolhardy not to re-evaluate our position if further documentation/information is provided.*

## **Post Inspection Customer Contact**

This has been broken into 2 categories.

### **Scenario 1**

You have outlined the QBCC's position at the site meeting, outlined the date QBCC's inspection report will be issued and both parties have confirmed their understanding of your verbal description of QBCC's decision. The issuing of the report and QBCC's decision letter is sufficient contact.

### **Scenario 2**

You have completed your site meeting and have not been able to provide QBCC's decision verbally on site. The meeting was concluded with one of a combination of the following and you advised you are:

- seeking internal/external advice
- reviewing evidence submitted by either party
- you have changed your position post inspection
- undertaking further investigation.

In the above scenario, contacting the affected party by phone to explain QBCC's decision is required prior to issuing the report and decision. The BI would then explain the decision by covering the following general talking points:

- QBCC's decision and the impact of the decision
- demonstrate competence and answer any questions the customer may have. Portray impartiality, objectivity, thoroughness, certainty and use empathy to diffuse any emotionally charged mindset seeking a cooperative mindset
- outline the customer's review rights – Internal Review and QCAT
- give an undertaking to forward QBCC's decision via written correspondence and note an approximate time frame.



## Potential NCBP Items Identified

If you have identified something that might be a non-conforming building product (NCBP), once your Initial Inspection Report is prepared, you should send an email to the NCBP team attaching the report and any other relevant documents.

In the body of the email, identify the relevant complaint items and why you believe them to be a NCBP, the Salesforce Case Number and ECM Folder Number.

If any of the items relate to Pool Fencing issues or Plumbing Watermark issues, also send the email to the Principal Investigator of the respective Plumbing or Pools Investigations Unit.

This referral should take place 'in the background' i.e. don't advise the parties about your intention to refer to NCBP etc.

## Reinspection

There are various circumstances when a reinspection may be required. Most commonly, at the end of the Direction period to determine if works have been satisfactorily rectified. In any instance, where a reinspection is required, a Salesforce task must be created and a Reinspection Report completed and provided to both parties of the dispute.

When sending the Salesforce task to the CSO/AO to issue the Failure to Rectify letters, the BI must note if a reinspection report is to be enclosed.

## 7.4 Cases with 50+ Complaint Items

**NOTE: Refer to Sections 14 and 15 for any variations to standard process due to COVID-19.**

It may be possible to utilise a Scott Schedule Report when QBCC receives a case with more than 50 complaint items, in conjunction with the Scott Schedule Report Photos document, to record the site inspection.

Use of the Scott Schedule method is at the Building Inspectors discretion taking into consideration the complexity of the case and detail required in outlining QBCC's decisions.

In situations where complaint items are predominantly non-structural defects, and the complaint items are repetitive in nature. The Scott Schedule Report may be used.

The AO has provided a Scott Schedule of complaint to both parties that lists all of the complaint items. The Claimant and Respondent have been encouraged to make contact with

one another prior to the BI's involvement, with the aim of reducing the number of items in dispute. QBCC asked the Claimant and Respondent to make comment on each item within the additional columns added to the Scott Schedule of complaint items.

Upon receipt of the case, the Building Inspector should contact both parties and follow up on the progress of the resolution of the complaint items and the completion of the Scott Schedule.

### **Contact the Claimant (Owner) by phone**

- Introduce yourself as the Building Inspector and the decision maker on the case
- Provide your details i.e. name and contact number.
- Ask about the complaint items and the current state of the situation.
- Allow the customer an opportunity to explain their position.
- Request an updated list of the Scott Schedule outlining items which the customer is dissatisfied with/requires further assistance with.
- Advise QBCC's process and your role within the process.
- Advise that all evidence will be considered and request any additional information the customer may wish the QBCC to consider
- Advise the site meeting process.
- Gain a commitment from the customer to participate in QBCC's process.
- Agree on an inspection date and time.
- Advise that the Respondent will be contacted and asked to provide details of action taken on each item of complaint and that the respondent will be invited to the site meeting.
- Add Salesforce Case Comment as a record of the call.

### **Contact the Respondent (Contractor) by phone**

- Introduce yourself as the Building Inspector and the decision maker on the case.
- Provide your details i.e. name and contact number.
- Ask about the complaint items and the current state of the situation.
- Allow the respondent an opportunity to explain their position.
- Advise that the applicant has been contacted and that any items which remain in dispute will form the basis for the inspection.
- Request an updated list of the Scott Schedule outlining items which the respondent believes have been attended to and any reasons for not attending to any items of complaint.
- Advise QBCC's process and your role within the process.

- Advise that all evidence will be considered and request any additional information the customer may wish the QBCC to consider.
- Advise the respondent of the site meeting process.
- Gain a commitment from the respondent to participate in QBCC's process.
- Advise of the inspection date and time.
- Add Salesforce Case Comment as a record of the call.

For instructions on **How to Create a Scott Schedule** refer to Section 11 of the [Disputes Salesforce Processing Guide](#).

For the **Assessment Officer Process** regarding the use of a Scott Schedule, refer to **Section 2.4**.

### BI Scott Schedule Reporting Process

- The QBCC Inspection Report Photos document is to be used in conjunction with the Scott Schedule QBCC Inspection Report. Photos are to be input into the document, to the degree necessary, for example typical examples of re-occurring minor defects may be used.
- Inspection notes and comments should be kept brief and articulate the inspection within column E of the Scott Schedule Report.
- QBCC's standard format for **Direction/Exclusion Wording** is to be used in column F of the Scott Schedule QBCC Inspection Report, this text is to be input into each Salesforce complaint item upon completion of the Scott Schedule QBCC Inspection Report.
- QBCC's Decision, within column G of the Scott Schedule QBCC Inspection Report, may be selected from the drop down and coincides with the **Description of QBCC's Decisions** at the bottom of the report.

**NOTE:** It is the inspector's responsibility to ensure the **Description of QBCC's Decisions** reflect the specifics of the case. Outcomes under the heading **Description of QBCC's Decisions** which are not used or not relevant to the case should be removed/deleted.

### BI Scott Schedule Report Writing Method

- Save the blank Scott Schedule QBCC Inspection Report and QBCC Inspection Report Photos document to your computer.
- Input the case particulars into both documents. You will note both documents reference each other by date and they are to be read in conjunction with each other.

- From the Scott Schedule provided by both parties, input the complaint items and items agreed by both parties as being rectified.
- Undertake the inspection and gather your evidence.
- Complete the Scott Schedule QBCC Inspection Report with the methodology being that the **QBCC Comment** (Column E) will be your Notes and the **Direction/Exclusion Wording** (Column F) will be entered into Salesforce for each item, along with the defect code.
- Input your photos to the QBCC Inspection Report Photos document. The number of photos you will input will be to the degree necessary to identify the location of the defect or item. In the case of a reoccurring defect, typical examples may be used.
- In general, one photo per complaint item, with an arrow identifying the location is sufficient when viewed in conjunction with your comments within columns E and F of the Scott Schedule QBCC Inspection Report.
- Upon completion of both reports, enter the **Direction/Exclusion Wording** and **Defect Code** for each item into Salesforce.
- Save the completed Scott Schedule QBCC Inspection Report and QBCC Inspection Report Photos document to **ECM** and send a task to the CSO to generate and send the relevant letters and reports.

#### NOTE

- The Scott Schedule QBCC Inspection Report prints in A3 Landscape.
- It is worth checking the printable view before saving.
- The heading (Row 17) will automatically appear at the top of each page where the table of complaint items is printed.
- When printing the Scott Schedule QBCC Inspection Report you have to print Sheet 3 as well as sheet 1 to generate the table correctly.
- The defect code column is not intended to print, and is not within the printable area.

## 7.5 Producing and Saving Reports

QBCC Building Inspectors investigate and report on a varied range of topics for example:

- Defective Building Work
- Consequential Damage
- Subsidence
- Termite Infestations
- Pre Purchase Inspections (Completed Building Standard, Structural and Pest)

- QCAT matters.

QBCC has produced standard formatting in accordance with the QBCC Style Guide to ensure consistent investigation and sound reporting.



**Tribunal reports are required to be provided to QCAT in colour with a plain copy provided to both the Applicant and Respondent.**



**Building Inspectors must be aware that no documentation shall contain any comments that may be interpreted as inflammatory.**

All inspections conducted by QBCC must rely on a list of complaint items provided by the Owner or QCAT; QBCC cannot conduct an inspection without a list of complaint items.

#### **Always ensure:**

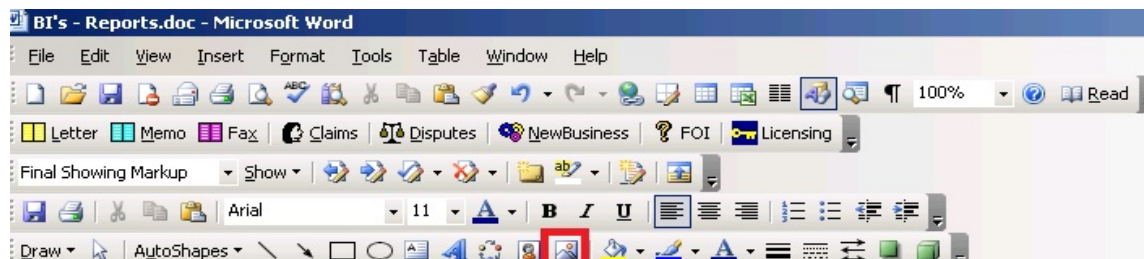
- prior to declaring records to ECM they can be saved to your Desktop but ideally your One Drive but never to a personal external device e.g. hard drive.
- a copy of the report and all correspondence is saved in ECM
- all notations i.e. discussions etc. are to be recorded in Salesforce Case Comments, a File Note or equivalent that is saved in ECM.

#### **Producing the Report**

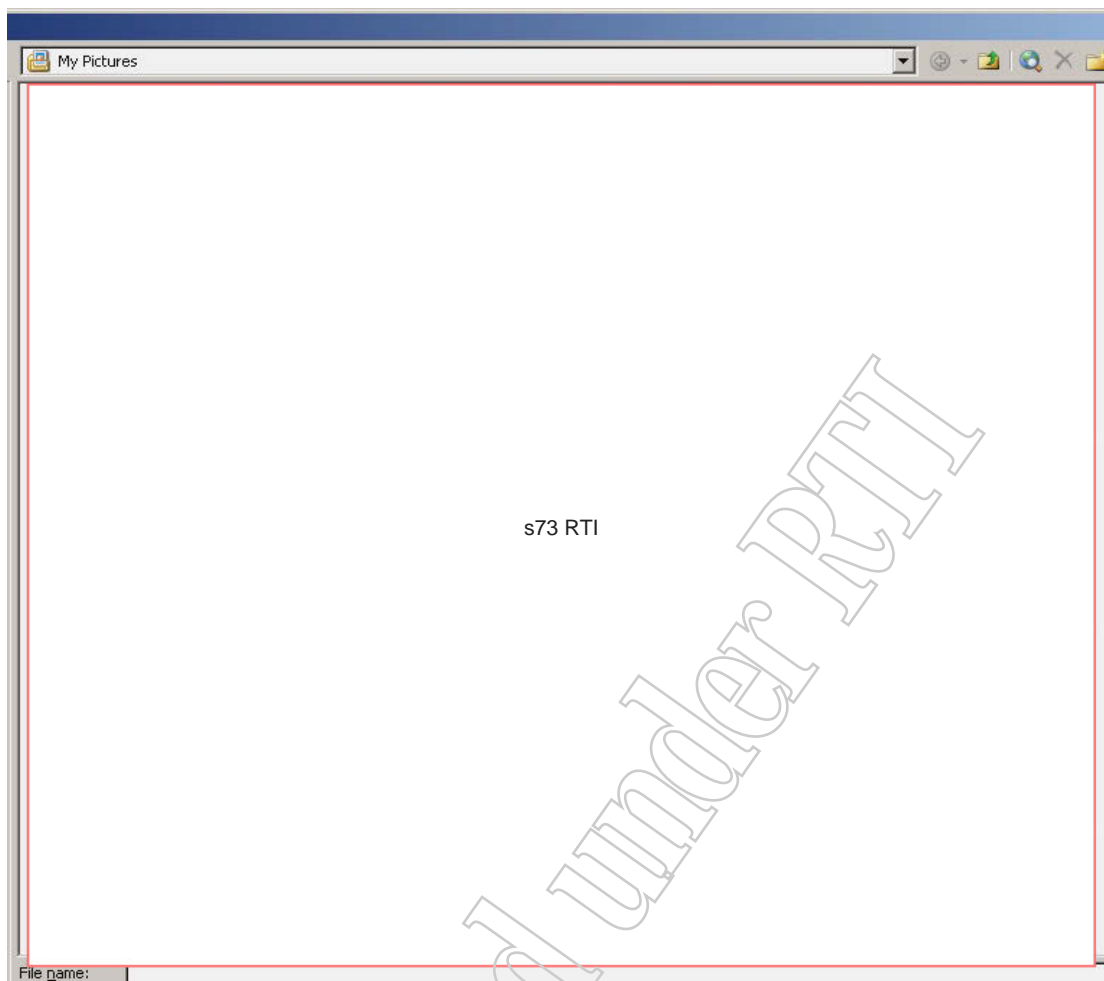
Follow the steps for creating reports in ActiveDocs as per the [Disputes Salesforce Processing Guide](#).

- Camera settings will at all times be set to VGA or VGA e-mail.
- Download pictures.

To insert a picture (photo), delete the text from the box then drag and drop the photo into the box. Alternatively rest the cursor on the position where you want the picture inserted into the report. Click on the **<Insert Picture>** icon from the toolbar.



The **<My Pictures>** screen below will appear. Click on the picture folder relevant to the file.



Click on the picture you want to place in the report.



**Ensure the cursor is clicked on the location for the picture**

s73 RTI

**Persons on Site:**

**Owner or Rep:** → owners name → → **BSA Inspector:** →

**Licensee or Rep:** → contractors name → **Others:** → other at site →

**Completion Date:** → → → **Date:** → work completed →

**Defect Apparent to Owners:** → **Date:** → when noted → →

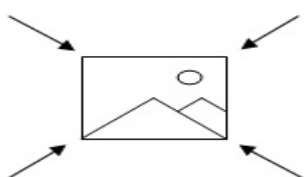


**Always remember to proof read the report before you Save and Declare it to ECM.**

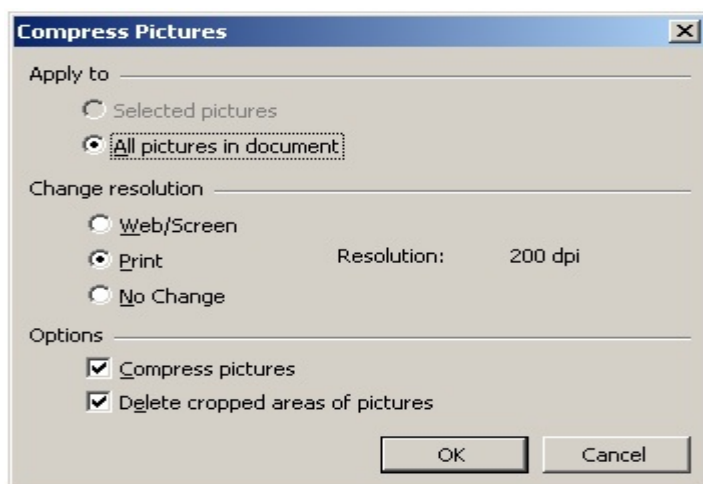
When the report is completed, the photos must be compressed. This is required so the electronic size of the document is significantly reduced. Right click on the task bar and open the **<Picture>** task bar.



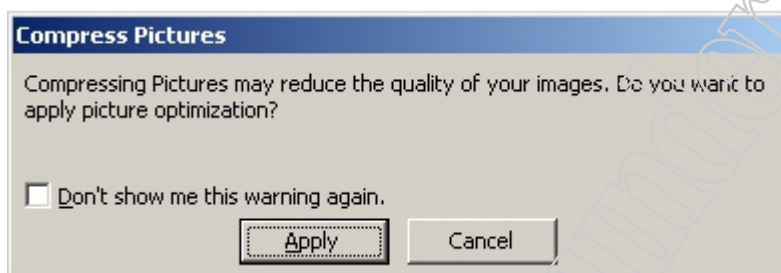
Press the button that looks like this:



The following screen will appear, press **<OK>**.



A pop up message box will appear, click on the **<Apply>** button.



The document can be now be saved and uploaded to ECM as normal.

## 7.6 Sample Rectification and Direction Items

The following list provides samples of direction items for general categories of defects. These are intended to be used as a guide when issuing a Direction to Rectify. This list may be individually added to for your own benefit when coming across common defects or common categories of defects. This library of items may help with a consistent approach to issuing directions and also ensure directions can withstand legal scrutiny. Importantly all direction items should have a simple rule applied to them.

This rule is as follows:

1. **What** is the defect?
2. **Where** is the defect?
3. **Results** of the defect?

**The Direction item should also state the Complaint Item it relates to.**



For example:

The **(2)** installation of the membrane to the ensuite shower recess is (1) not in accordance with AS3740 – 2004 resulting in water escaping causing (3) damage to wall linings, fixtures and fittings. *Pertains to item # on the QBCC complaint form.*

1. **What** is the defect? – Failure of membrane to shower recess.

2. **Where** is the defect? – Ensuite bathroom.

3. **Result** of the defect? – Damage to building elements.



**Use the correct terminology when referencing the BCA in your reports. If not referenced accurately – confusion can arise.**

### Showers

- The installation of the shower screen to the (location) is not in accordance with BCA Volume 2 Housing Provisions (Year) Section 3 Acceptable Construction Part 3.8.1 Clause 3.8.1.27 in that it has been fixed to the outside edge of the hob resulting in water leakage occurring, causing damage to the surrounding area including... (nominate any specific defects). *Pertains to item # on the QBCC complaint form.*
- Penetrations for stopcocks to the (location) shower recess have not been sealed in accordance with BCA Volume 2 Housing Provisions (Year) Section 3 Acceptable Construction Part 3.8.1 Clause 3.8.1.9 in that and water leakage is occurring causing damage to the surrounding area including... (nominate any specific defects). *Pertains to item # on the QBCC complaint form.*

### Window/Door Joinery

- Upper level, external ensuite window, external windows in both the dining and lower level rumpus room show evidence of water leakage causing damage to surrounding areas including... (nominate any specific defects). *Pertains to item # on the QBCC complaint form.*
- Water leakage is occurring in the vicinity of the window/s on the (location) causing damage to the surrounding areas including... (nominate any specific defects). *Pertains to item # on the QBCC complaint form.*
- The aluminium glass sliding door to the (location) has insufficient flashing allowing water leakage to occur causing damage to the surrounding area including (nominate any specific defects). *Pertains to item # on the QBCC complaint form.*

### Floor Tiles

- The ceramic floor tiles to the (location) are drummy and have lifted causing a danger to the occupants of the building. *Pertains to item # on the QBCC complaint form.*

- The ceramic floor tiles to the (location) are cracked and lifted leaving sharp exposed edges causing a danger to the occupants of the building. *Pertains to item # on the QBCC complaint form.*
- There is extensive cracking to the ceramic floor tiles in the (location) causing a danger to the occupants of the building and producing an unsightly floor surface. *Pertains to item # on the QBCC complaint form.*

### Strip Flooring

Excessive shrinkage creating gaps to the polished strip flooring in all areas of the house has occurred causing an extremely unsightly floor surface. *Pertains to item # on the QBCC complaint form.*

### Wall/Ceiling Internal Plasterboard

The stopping to the wall/ceiling sheeting of the (location) has been carried out in a manner that shows joints to be visible, therefore causing extremely unsightly surfaces. *Pertains to item # on the QBCC complaint form.*

### Stairs and Balustrades

- The risers to the stairway to the (location) are not equal in dimension therefore not complying with the Building Code of Australia and causing a danger to the occupants of the building. *Pertains to item # on the QBCC complaint form.*
- The riser opening to the stairway to the (location) is too large and would allow a 125mm sphere to pass through therefore not complying with the Building Code of Australia and causing a danger to the occupants of the building. *Pertains to item # on the QBCC complaint form.*
- The openings in the balustrade to the stairway to the (location) are too wide and will allow a 125mm sphere to pass through therefore not complying with the Building Code of Australia and causing a danger to the occupants of the building. *Pertains to item # on the QBCC complaint form.*

### Concrete Driveway/Path

The exposed aggregate to the driveway at the (location) has dislodged in various areas and is causing a hazard to the normal movement of vehicles and a danger to pedestrians. *Pertains to item # on the QBCC complaint form.*

### Footings

The piers under the footings to (location) have not been taken to natural ground as required by the engineer and subsidence is occurring causing damage to the surrounding area including (nominate any specific defects). *Pertains to item # on the QBCC complaint form.*

## 7.7 Wet Area Rectification

There are many factors to deliberate in determining a rectification method for wet areas. This section is intended to be a guide and each Scope of Works is to be considered on a case by case basis in view of the specifics of the construction methodology.

The QBCC does not prescribe a standard method of rectification or Scope of Works for all defective works involving wet areas.

The QBCC Bathroom Process may be employed in determining a repair Scope of Works in the particular examples outlined in the flow chart, however the Building Inspector is able to amend or vary the rectification methodology summarised in the flow chart to best match the particular defect or construction type.

Depending on the situation a “patch repair” methodology may also be applied in the circumstance that a leak to an enclosed shower may only require the rectification of the enclosed shower component. There may be no utility in the complete removal of the bathroom substructure and finishes.

Similarly, where the door jambs and architraves of the bathroom doorway have been affected by moisture, in the circumstance the timber work is set into the tile surface, a patch repair may also suffice.

When considering an “isolated repair” methodology careful consideration must be given to the termination point of the waterproofing and ability to isolate the repaired element from the remaining wet area. As an example, for a shower enclosure with a hob arrangement the inclusion of horizontal and vertical water stops at the intersection of the shower screen/return to the wall/floor junction should be considered to contain moisture within the enclosure.

The inclusion of water stops at these locations is additional to AS3740 and should be identified within the Scope of Works. (Inclusion of a diagram within the Scope of Works document may be of assistance).

It is the responsibility of the Building Inspector to determine the most appropriate rectification method at the same time as not providing a Scope of Works that could be considered excessive, however will rectify the defect.

Sample Scope of Works in relation to an enclosed shower leak utilising a patch method.

1.	Allow to remove and store shower screen and shower fittings for later use.	
2.	Allow to remove wall tiles and F.C substrate to a height of 1.8 m within the shower enclosure and remove from site. Allow to remove floor tiles within the shower enclosure and remove from site.	
3.	Allow to supply and install new F.C lining to the shower enclosure walls. Allow to prepare the shower enclosure floor for installation of waterproof membrane.	
4.	Allow to install waterproof membrane to the floors and walls of the shower enclosure with the termination at a vertical waterstop angle to the walls and a horizontal waterstop angle at the floor.	
5.	Allow to supply and install wall and floor tiles to match existing or similar.	
6.	Allow to reinstall shower screen and shower fitting.	

Sample Scope of Works in relation to a waterstop angle not installed at the doorway to the bathroom with an enclosed shower utilising a patch method.

1.	Allow to remove door and store for later use. Allow to carefully remove door jambs and architraves for later use.	
2.	Allow to remove one row of tiles to gain access to floor and wall junction.	
3.	Allow to provide waterproof membrane to the wall and floor junction and terminate at a waterstop angle in the doorway	
4.	Allow to supply and install floor tiles to match existing or similar	
5.	Allow to reinstall door jamb, door and architrave. Allow to paint disturbed areas to nearest break.	

Please also refer to the below guide, also available in Section 7.10 under Reference Documents.



### QBCC Wet Area Rectification Guide

## 7.8 Clarity Connect Communication

Clarity Connect allows QBCC Building Inspectors (BIs) to view unforeseen issues remotely by using an on-site representative's tablet or smart phone and the BI's smart phone.

Clarity Connect creates a secure video link enabling real time visibility of on-site matters identified during the rectification or at Tender. The link will allow the BI to direct the on-site representative to provide vision of the rectifying builders concerns and allow the BI to gain a clear understanding of the site related issues in real time.

It is expected that the introduction of this technology will assist the parties in:

- the assessment of variations
- resolution of Scopes of Work issues during tendering
- progress and final stage claims.

Clarity Connect is compatible with the Commission's smart phones and there is no training required to use the software. The app does, however, use a significant amount of battery power, BIs must ensure a minimum of 40% charge prior to utilising the function.

BIs will be contacted prior to the proposed site inspection for an agreed time to carry out the Clarity Connect inspection.

The BI will receive a text message just prior to the Clarity Connect inspection containing a link to the inspection conference call which will allow the live feed to display on their phone. Audio is maintained throughout the link allowing discussions to continue during the session.

It there is sufficient information provided at the Clarity Connect meeting, BIs are able to determine a decision which will be recorded on the Clarity Connect recording.

At the conclusion of the meeting, the BI is to request a copy of the recording.

All video and voice recording captured by the software is to be saved to the Claims case in ECM.

The **Clarity Connect Point of Contact Escalation Chart** below, and as located in Section 7.10 under Reference Documents outlines the contact points within the QBCC inspectorate.

The use of Clarity Connect can assist BIs in considering issues raised at a Tender meeting or variations to the rectification works contract, however there will still be circumstances where the BI will be required to attend site to satisfy themselves that the additional rectification works are required and not a new complaint item.

In instances where the Clarity Connect call proceeds without the involvement of QBCC, Sedgwick will upload the video to the Claims case in Salesforce and send a Task to the BI. The BI must then save the video to ECM and communicate with the Assessment Officer accordingly.



#### **Clarity Connect Point of Contact Escalation Chart**

## **7.9 Subsidence** **NOTE: THIS SECTION IS UNDER REVIEW**

There are many factors to be taken into consideration before making a decision whether a dwelling is or is not performing in accordance with the allowable tolerances as set out in AS2870-1996 or AS2870-2011.

Depending on the situation the dwelling may or may not require further investigation which may lead to other actions i.e. Monitor, Drainage Tests, Engineer, Direction, etc. Therefore, before closing a file involving possible subsidence, a thorough investigation as detailed in steps 1 to 4 below must be undertaken to clearly identify whether the dwelling in question is performing in accordance with AS2870-1996 or AS2870-2011.

If QBCC does not take the time to investigate the issues in a professional manner as detailed above, the result in many cases places considerable pressure on QBCC staff to defend a review regarding the performance of a dwelling.

### **Contributing Factors by Licensee**

- Incorrect or non-installation of articulation joints in masonry.
- Non articulation of sewer/stormwater lines.
- Inadequate drainage and falls.
- Non Compliance with Board Policy.

### **Contributing Factors by Owner**

- Over watering, gardens, site drainage (Site Classification, Slab design).

- Are the actions of the owner/s major contributing factors?
- Owner/s maybe responsible for certain works.



**In regard to the provision of design documentation, consideration should be given to the provision of the construction details. In general terms it may be unreasonable to direct the licensee to rectify defective works if the design documentation was provided by the owner. However, the provision of documents does not automatically release the licensee from their responsibility. That is the building work does not meet a reasonable standard or finish expected by a competent holder of a contractor's licence of the relevant class.**

**Example:** Owner supplies design detail

#### **Site Classification H**

- Slab Design no internal beams
- detail must raise questions

#### **Site Classification S**

- excavate clay and fill material
- excavated material must raise questions

#### **Site Classification above M**

- no design details regarding masonry and/or drainage articulation
- detail must raise questions

#### **Drainage Design**

- Insufficient DPs and/or number of SW line i.e. gutters overflowing
- details must raise questions

#### **Board Policies**

The functions and responsibilities of the QBCC include the power to require the rectification of building work and remediation of consequential damage as per Section 72 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

QBCC takes into consideration all other circumstances it considers are reasonably relevant, in deciding whether to give a direction under s72 of the QBCC Act.

The most recent Queensland Building and Construction Board 'Rectification of Building Work' policy commenced on 10 October 2014. As of the date of commencement, the policy rescinds and replaces the previous Board guideline policies relating to rectification of building work and rectification of subsidence and settlement.



**Subsidence means foundation movement that causes footing or slab deflection or other damage to a residence or related roofed building beyond**

that allowed for in applicable Australian Standards, including AS2870 and AS3600.

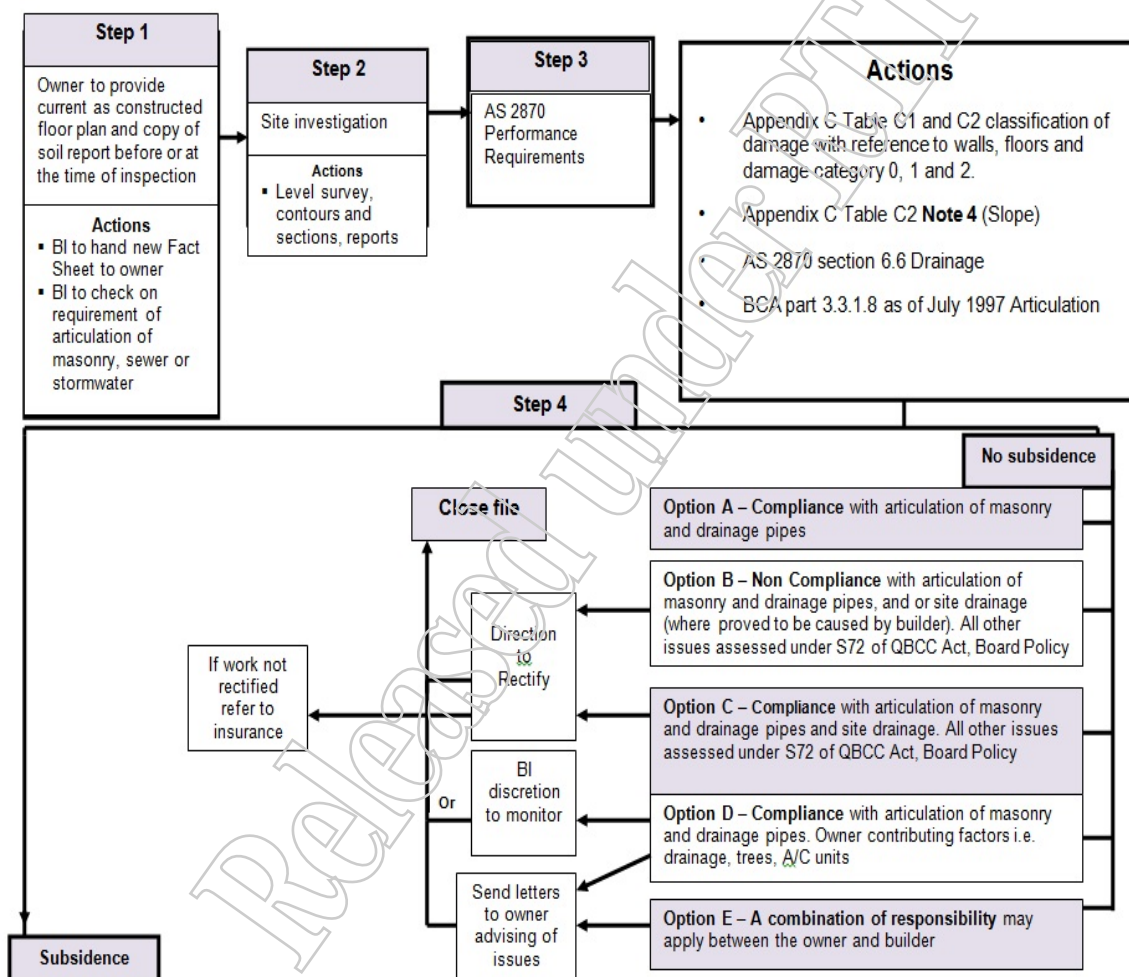


**Rectification of Building Work Policy** - Effective 10 October 2014

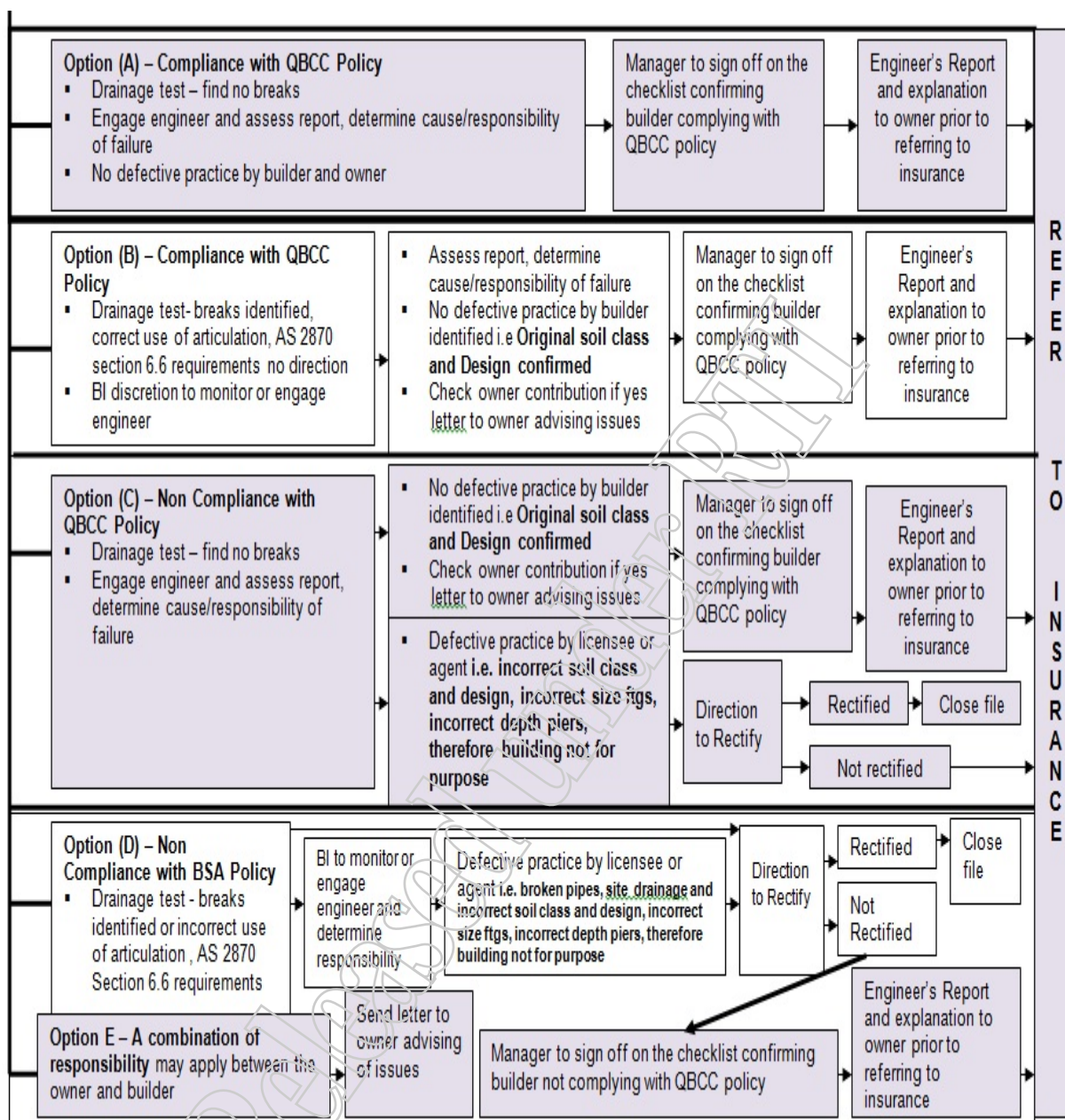


**Commissioner Directive - Rectification of Building Work Policy**

## Subsidence Procedures

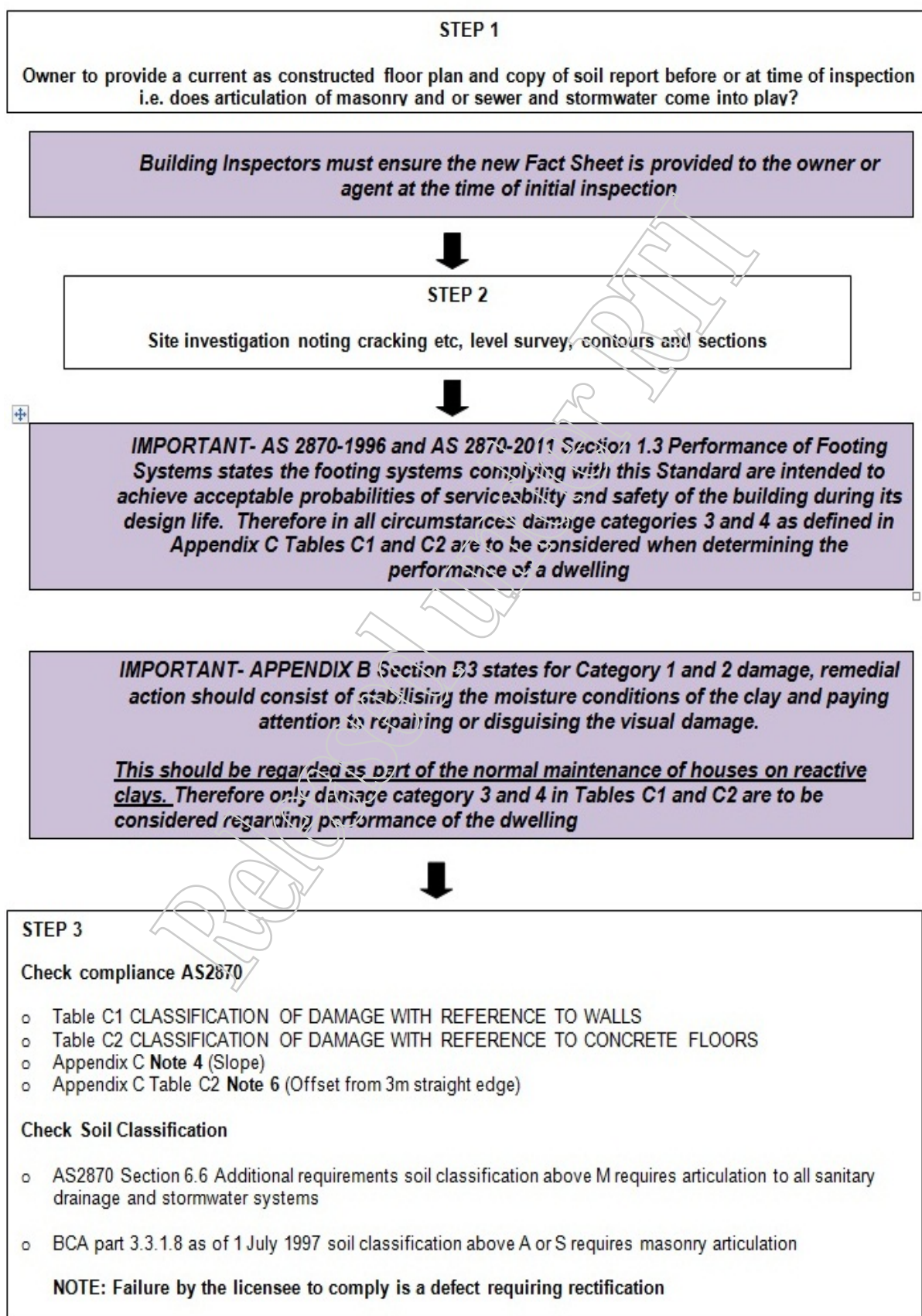








## Procedure Steps



APPENDIX C  
CLASSIFICATION OF DAMAGE DUE TO FOUNDATION MOVEMENTS  
(Normative)

**TABLE C1**  
**CLASSIFICATION OF DAMAGE WITH REFERENCE TO WALLS**

Description of typical damage and required repair	Approximate crack width limit (see Note 3)	Damage category
Hairline cracks	< 0.1 mm	0
Fine cracks which do not need repair	< 1 mm	1
Cracks noticeable but easily filled. Doors and windows stick slightly	< 5 mm	2
Cracks can be repaired and possibly a small amount of wall will need to be replaced. Doors and windows stick. Service pipes can fracture. Weather tightness often impaired	5 mm to 15 mm (or a number of cracks 3 mm or more in one group)	3
Extensive repair work involving breaking-out and replacing sections of walls, especially over doors and windows. Window and door frames distort. Walls lean or bulge noticeably, some loss of bearing in beams. Service pipes disrupted	15 mm to 25 mm but also depends on number of cracks	4

**TABLE C2**  
**CLASSIFICATION OF DAMAGE WITH REFERENCE TO CONCRETE FLOORS**

Description of typical damage	Approx. crack width limit in floor	Change in offset from a 3 m straight edge centred over defect (see Note 6)	Damage category
Hairline cracks, insignificant movement of slab from level	< 0.3 mm	< 8 mm	0
Fine but noticeable cracks. Slab reasonably level	< 1.0 mm	< 10 mm	1
Distinct cracks. Slab noticeably curved or changed in level	< 2.0 mm	< 15 mm	2
Wide cracks. Obvious curvature or change in level	2 mm to 4 mm	15 mm to 25 mm	3
Gaps in slab. Disturbing curvature or change in level	4 mm to 10 mm	> 25 mm	4

**NOTES:**

- Crack width is the main factor by which damage to walls is categorized. The width may be supplemented by other factors, including serviceability, in assessing category of damage.
- In assessing the degree of damage, account shall be taken of the location in the building or structure where it occurs, and also of the function of the building or structure.
- Where the cracking occurs in easily repaired plasterboard or similar clad-framed partitions, the crack width limits may be increased by 50% for each damage category.
- Local deviation of slope, from the horizontal or vertical, of more than 1/100 will normally be clearly visible. Overall deviations in excess of 1/150 are undesirable.
- Account should be taken of the past history of damage in order to assess whether it is stable or likely to increase.
- The straight edge is centred over the defect, usually, and supported at its ends by equal height spacers. The change in offset is then measured relative to this straight edge.

STEP 4 – <u>NO SUBSIDENCE</u> – (Footing and Slab system performing in accordance with AS2870 options)	
<p><b>Option (A)</b></p> <p>Compliance with articulation of masonry and drainage pipes</p> <ul style="list-style-type: none"> <li>○ Close File</li> </ul>	<p><b>Option (B)</b></p> <p><u>Non-compliance with articulation of masonry, drainage pipes and/or site drainage (where proven to be caused by the builder).</u></p> <p>All other issues assessed under S72 of QBCC Act, Board Policy</p> <ul style="list-style-type: none"> <li>○ Direction to Rectify</li> <li>○ Rectification or Insurance</li> <li>○ Close File</li> </ul>
<p><b>Option (C)</b></p> <p><u>Compliance with articulation of masonry, drainage pipes and site drainage.</u></p> <p>All other issues assessed under S72 of QBCC Act, Board Policy</p> <ul style="list-style-type: none"> <li>○ Direction to Rectify</li> <li>○ Rectification or Insurance</li> <li>○ Close File</li> </ul>	<p><b>Option (D)</b></p> <p>Compliance with articulation of masonry, drainage pipes. Owner contributing factors, i.e. drainage, trees, A/C units leaking. Owner provided written advice on site issue improvements required</p> <ul style="list-style-type: none"> <li>○ BI discretion to monitor or close depending on the extent of movement</li> </ul>
<p><b>Option (E)</b></p> <p>A combination of responsibility may apply between the owner and builder</p>	



**STEP 4 – SUBSIDENCE – (Footing and Slab system not performing in accordance with AS2870 options)**

***Issue confirmation letters to Licensee and Engineer***

**Option (A)**

Compliance with QBCC Policy

- o Drainage test – find no breaks
- o Engage engineer
- o Assess engineers report, determine cause/responsibility of failure
- o No defective practise by licensee identified
- o Check owner contribution
- o Engineer report and explanation to owner prior to refer to insurance
- o Refer file to Insurance

**Option (C)**

Non-compliance with QBCC Policy

**Option C (1)**

- o Drainage test – find no breaks
- o Engage engineer
- o Assess engineers report, determine cause / responsibility of failure

**Option C (2)**

- o No defective practices by licensee or their agents or owners identified i.e. **original soil class and design confirmed**
- o Engineer report & explanation to owner prior to refer to insurance
- o Refer to Insurance

**Option C (3)**

- o Defective practices by licensee or agent i.e. **incorrect soil class and design, incorrect size ftgs, incorrect depth piers, therefore dwelling not fit for purpose**
- o Direction to Rectify
- o Rectification or Insurance
- o Close File

**Option (E)**

A combination of responsibility may apply between the owner and builder

**Option (B)**

Compliance with QBCC Policy

**Option B (1)**

- o Drainage test – **breaks identified, correct use of articulation, AS2870 Section 6.6 requirements no Direction**
- o BI discretion to monitor or engage engineer

**Option B (2)**

- o Engage Engineer
- o Assess Engineers report, determine cause/responsibility of failure
- o No defective practices by licensee identified i.e. **original soil class and design confirmed**
- o Check owner contribution
- o Engineer report and explanation to owner prior to refer
- o Refer file to Insurance

**Option (D)**

Non-compliance with QBCC Policy

**Option D (1)**

- o Drainage test – **breaks identified or incorrect use of articulation, AS2870 Section 6.6 requirements**
- o Request to Rectify or Direction
- o Rectification or Insurance

**Option D (2)**

- o BI discretion to monitor or engage engineer
- o Engage engineer
- o Assess engineers report, determine cause / responsibility of failure

**Option D (3)**

- o Possible defective practise by licensee or their agents or owners identified, **ie cause of failure broken pipes, site drainage, or incorrect soil class and design therefore dwelling not fit for purpose**
- o Direction
- o Rectification or Insurance

**Option D (4)**

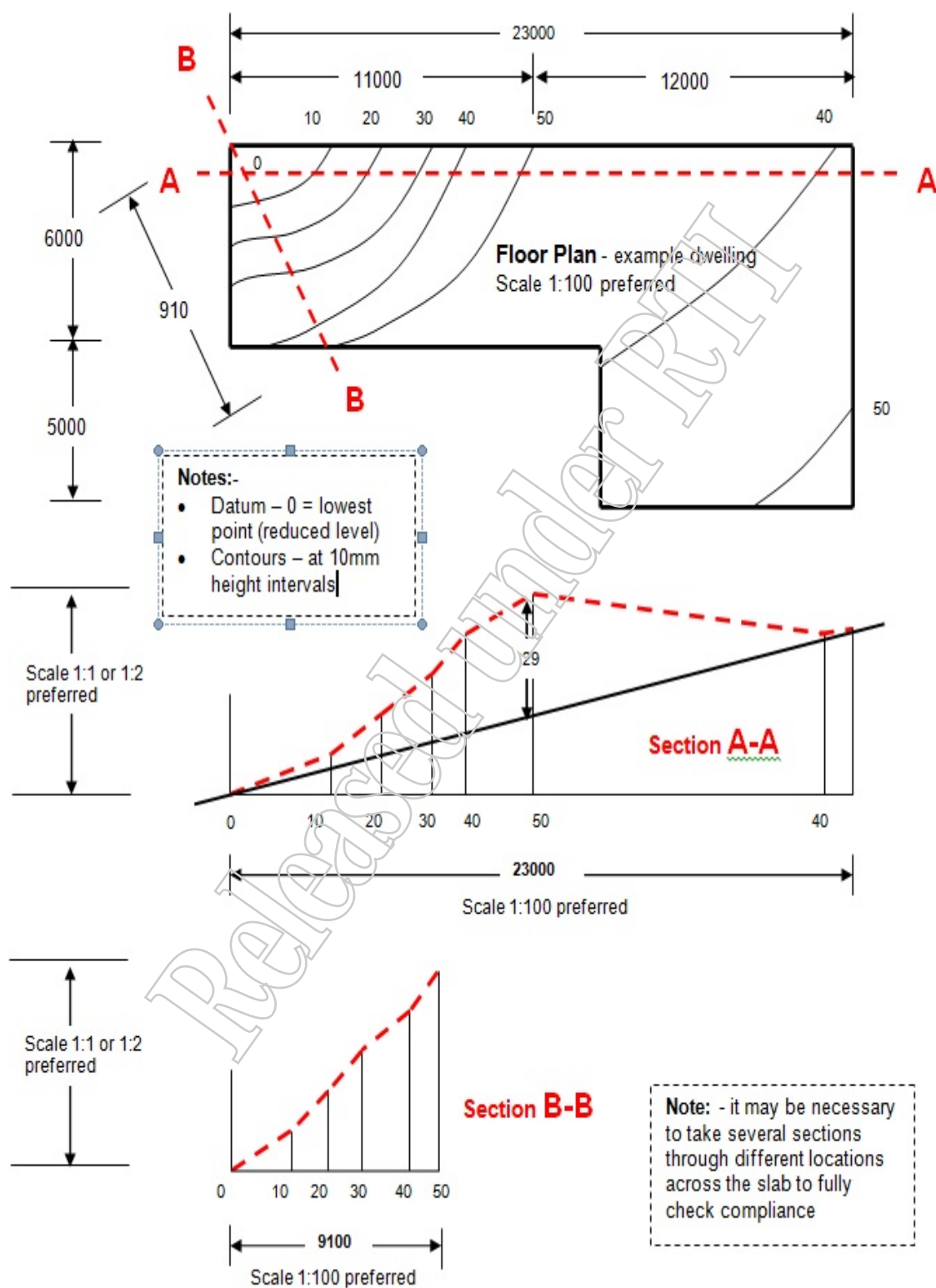
- o Engineering report and explanation to owner prior to refer to insurance
- o Check owner contribution
- o Refer to Insurance

## Procedure Subsidence Guide – Checking a Slab’s Performance against AS2870

Record a set of levels on the hard floor finishes - use spike to push through carpet  
Take 2 levels close together on each side of a change in thickness of the hard floor surface (suggest a minimum of say 40 levels).

- Plot the levels on a plan (in mm).
- Draw contours on the plan at 10 mm intervals.
- Determine Maximum Floor Slope
  - a. Check where the contours are the closest together and calculate the floor slope. (The floor slope is the change in level between two points or between contours (say 14 mm) divided by the distance (say 1700 mm) between those two points. (In this case 1/121)
  - b. If the floor slope exceeds 1/150 then it exceeds the maximum recommended floor slope in AS2870. In this case 1/121 is steeper than 1/150 and so the floor slope exceeds the maximum recommended floor slope in AS2870.
- Draw section through the building from a low point, across the highest point to low point on the other side or the reverse. This may require 2 or 3 sections to pick the most distortion.
- Draw long sections at a distorted scale, horizontal dimensions at 1:100, vertical scale at 1:1.
- Draw a straight line on the long section through the high or low points on the section. The length of that line is the SPAN.
- Measure the maximum departure of the slab section from that straight line. The length of that line is the DEFLECTION.
- Is the DEFLECTION greater than 20, 30 or 40 mm for masonry veneer, articulated masonry veneer or clad framed construction? If the DEFLECTION is then there may be a PROBLEM with the footing performance and further investigation may be required.
- Divide the DEFLECTION by the SPAN.
- Is the DEFLECTION to SPAN ratio greater than 1/600, 1/400 or 1/300 for masonry veneer articulated masonry veneer or clad framed construction? If it is then there may be a PROBLEM with the footing performance and further investigation may be required.

## Example Only - Floor plan and sections through contours



## 7.10 Report Templates, Memos and Reference Documents

QBCC has developed the report templates and forms to assist Building Inspectors in developing the required reports. The use of these templates and forms will also ensure a consistent format is used. Many of the commonly used templates are available in ActiveDocs via the Salesforce Dispute case.

### Report Templates

-  [Consequential Damage Inspection Report](#)
-  [Initial Inspection Report](#)
-  [Initial Termite Inspection Report](#)
-  [Residential Pre Purchase Inspection Report](#)
-  [Pre Purchase Pest Inspection Report](#)
-  [Pre Purchase Structural Inspection Report](#)
-  [Reinspection Report](#)
-  [Scott Schedule QBCC Inspection Report](#)
-  [Scott Schedule QBCC Inspection Report Photos](#)
-  [Subsidence Report AS2870 - 2011](#)
-  [Subsidence Report AS2870 - 1996](#)
-  [Subsidence File Summary](#)
-  [External Consultant Initial Inspection Report](#)
-  [QCAT Report](#)

## Form Templates



**Contractor's Statement**

## Memo Templates



**Scope of Work Memo**



**DTR Extension Memo**



**DTR Withdrawal Memo**

## Reference Documents



**Tasks for Issuing Correspondence**



**Defect Codes – effective Dec 2014**



**Wording for Exclusion Items**



**Preparing a Scope of Work (2016 BI Conference Presentation)**



**Home Warranty Insurance and the Role of the BI (2016 BI Conference Presentation)**



**Insurance Schedule – Subsidence**







**QBCC Wet Area Rectification Guide**



**Clarity Connect Point of Contact Escalation Chart**



## Checklists

-  [BI Process Assessment Checklist](#)
-  [Inspection Process Checklist](#)
-  [Subsidence Initial Inspection Checklist](#)
-  [Manager's Decision Regarding Compliance with Board Policy](#)

## Example Documents

-  [Plumbing Report 1 Mud Map](#)
-  [Plumbing Report 2](#)
-  [Plumbing Report 2 Mud Map](#)
-  [Plumbing Report 3](#)
-  [Plumbing Report 3 Mud Map](#)
-  [Plumbing Report 4](#)
-  [Plumbing Report 4 Mud Map](#)

## 7.11 Completing BI Report and Salesforce Using the Robot

A process has been developed where the BI can complete their Initial Inspection Report or Scott Schedule, completing all of the required fields within the template, and this information will be updated in Salesforce using an automated software program (the Robot).

This alleviates the need for BIs to complete both their report details in the template and within Salesforce. The Robot, named 'Apprentice', allows the BI to enter all information in the report only and the Robot will transfer the required information to Salesforce automatically.

The below document is a step by step guide to using the Robot.

-  [Completing BI Report and Salesforce Using the Robot](#)

To utilise the Robot, one of the following report templates must be used.

**Robot Initial Inspection Report – available in ActiveDocs**

-  [Robot Scott Schedule – Excel](#)

## 7.12 Cordell Estimator Platinum and Estimating Sheet

The **Cordell Estimator Platinum** program is available for use by Building Inspectors to assist with estimating works where required. There are 3 different accounts that can be utilised, as listed below.

To access the Cordell Platinum site:

- Open your web browser (e.g. Internet Explorer) and type <http://platinum.cordell.com.au/welcome.php> in the Address bar. Click Go or press Enter.
- Alternatively, click on this link <http://platinum.cordell.com.au/welcome.php>
- In the Cordell Platinum Login page, type in the **Username** and **Password** and click the **Login** button.

<b>User ID:</b>	<input type="text"/>	<b>Password:</b>	<input type="password"/>
<b>User ID:</b>	s73 RTI	<b>Password:</b>	s73 RTI
<b>User ID:</b>		<b>Password:</b>	



### Cordell's Estimator User Guide

The below Estimating Spreadsheet is a tool to assist in evaluating the cost to complete the construction of a dwelling.

Once a budget estimate is formulated in the Cordell Estimating package and entered in to the top (blue) box, the document will automatically populate the designated stage payments.

Once the completed percentage of each stage is entered in to the (blue) boxes below, the document will automatically generate the remaining cost to complete the project.

### Estimating Spreadsheet

Enter the budget estimate in to the (blue) box at the top of the form.

Enter the percentage of completion for each stage in the (blue) boxes below, e.g. 100, 100, 100, 30, 0, 0.

The cost to complete this project will be generated in the bottom right hand corner of the document – Subsequent Cost to Complete.



### Estimating Spreadsheet

## 7.13 Relevant Australian Standards



**Always ensure you are sourcing information from the appropriate year of construction and the current Australian Standard.**

Reference the NCC and BCA Volumes 1 and 2, where such reference documents (Australian Standards) are adopted to ensure currency.

## 7.14 Standards Australia Hand Book



**SAA HB39 - 2015 Installation code for metal and roofing and wall cladding hand book**

## 7.15 Contact Passwords

### Timber Queensland



**Timber Queensland**

**User ID  
Password**

s73 RTI

### Australian Standards – SAI Global



**SAI Global**

To login to your subscription, use the above link and enter the following details:

**User ID  
Password**

s73 RTI

**Last Name/Location** e.g. Brown/Brisbane

TO SAVE YOUR LOGIN DETAILS - "Remember Me" function

- 1) Enter the User ID and Password
- 2) Enter your Last Name/Location
- 3) Tick the "save my login.... box"
- 4) Click the "submit" button
- 5) Next time you need to login, simply click the "Remember me" button. Your details will be retained and not needed to be entered again.

## Australian Building Codes Board BCA



### Australian Building Codes

User ID  
Password

s73 RTI

## Blackwoods

Account Number s73 RTI

Purchase Order Number will be the purchaser's name  
e.g. p/o Resolution Services

## 8 Infringement Notices (I.N.)

Resolution Services staff are responsible for issuing Infringement Notices in relation to Failure to Rectify breaches.

For a step by step guide on processing Infringement Notices refer to the [Disputes CMS Processing Guide](#).

In addition, Resolution Services staff may be required to represent QBCC if the recipient of the I.N. elects to challenge the issue of the I.N. in Court.



**Issuing an Infringement Notice stops the Licensee's ability to lodge a QCAT review of the Direction to Rectify, therefore it is essential to action the issue of the Infringement Notice within 48 hours of the Direction expiring.**

## State Penalties Enforcement Registry (SPER)

The State Penalties Enforcement Registry is a division of the Department of Justice and Attorney General and is responsible for the collection and enforcement of unpaid Infringement Notice fines. QBCC registers any unpaid Infringement Notices with SPER for recovery.

## 8.1 Failure to Rectify

Delegated staff can issue Infringement Notices for certain offences against the *Queensland Building and Construction Commission Act 1991*. The recipient of the Infringement Notice can either:

- Pay the full penalty amount to QBCC.
- Enter into a Voluntary Instalment Plan to pay the penalty amount in instalments.
- Challenge the issuing of the Infringement Notice and seek a Court hearing.

### Delegation

Delegation to issue an Infringement Notice for Failure to Rectify is limited to the particular designations, refer to the Delegations Manual.



[Delegations Manual](#)

### Applicable Legislation

#### For offences from 15 December 2014

- Section 73 of the *Queensland Building and Construction Commission Act 1991*  
**“S73 Offence to fail to comply with direction to rectify or remedy”**

#### For offences prior 15 December 2014

- Section 72(10) of the *Queensland Building and Construction Commission Act 1991*  
**“S72(10) Offence to fail to comply with direction to rectify building work”**

### Penalty

- 20 penalty units are currently issued for an infringement for Failure to Rectify.
- The maximum penalty for a Failure to Rectify is 250 penalty units.

Refer to the Compliance Investigation Unit [Penalty Calculator](#) to calculate the value of fines based on the offence and relevant date.

## 8.2 Issuing Infringement Notices

### Instances Where an Infringement Notice Will Not Be Issued

- If the licensee (Company) is in Receivership or Liquidated. These statuses fall under the ASIC term External Administration\*.
- If the Licensee (Company) is in Strike-off Action.
- If the licensee (Company) is deregistered.
- If the licensee (Individual) is deceased.
- A prosecution for an offence against this Act may be started within 2 years after the alleged date of commission of the offence or within 12 months after the offence comes to the knowledge of the Commission, whichever is the later.

\* **External Administration** is a term used by ASIC which can include Voluntary Administration; Deed of Company Arrangement; Receiver/Controller Appointed or Provisional Liquidation.

Refer to [section 4.3](#) for further explanation of the various company statuses, and the below **Insolvency: a glossary of terms** document from the ASIC website that helps to explain the different terminology.



[Insolvency: a glossary of terms](#)

Where the company has the ASIC status of **External Administration** the officer needs to further check to determine the actual situation, and if the company is anything except Receiver/Controller Appointed or Liquidated, an infringement can still be issued. Refer to [section 4.3](#) for how to check the Documents on ASIC for this.

In such instances the Infringement Notice should be made out to the company but served on the Administrator.

Before the Infringement Notice is issued the ASIC website should again be checked as the company name may have changed e.g. XYZ Pty Ltd (in administration) ACN12345. It is the ACN that is crucial as that is the unique identifier of the company.

### When an Infringement Notice Will be Issued

An Infringement Notice for Failure to Rectify is issued when a Direction to Rectify has been issued to a licensee or unlicensed contractor and they have failed to comply with the direction.



**Issuing an Infringement Notice stops the licensee's ability to lodge a QCAT review of the Direction to Rectify, therefore it is essential the Infringement Notice Checklist is completed and the Infringement Notice issued within 48 hours of the Direction expiring.**

## Completing Infringement Notice Checklist and Issuing Infringement Notice



**Prior to completing the I.N. Checklist, it is essential to check if the licensee has lodged a review of QBCC's decision in QCAT. If so, the I.N. should not be issued.**

**If an I.N. is issued and it is later evident that a review was lodged with QCAT prior to our issue of the I.N. (but QBCC was not notified etc.) then the I.N. must be withdrawn.**

The Checklist for issuing an Infringement Notice **is available in ActiveDocs**. This checklist is not to be saved as a Word Document to your Desktop etc. for use. Each time a checklist is required it should be accessed via ActiveDocs as the document can be changed without notice and the current version should always be used.

Upon instruction from the Manager/SBI/OTL/BI the AO is to complete the Infringement Notice Checklist for **FTR s73**. Instruction to do so should be via a Salesforce task, created at the time of case closure and/or issuing the failure to rectify.

Once the Checklist is completed, it can be signed by the AO or forwarded back to the Manager/SBI/OTL/BI for sign off, as per the process in place in that team. Regional staff are to forward the completed Checklist to their Manager/OTL/BI for further action, or as per the process in place in that office.

The SPER Officer monitors CMS and will follow up in 44 days. (change from 28 days on 31/07/17). From 3 June 2017, Infringement Reminder Notices are no longer sent.



**For FTR the Offence Date is the next calendar day after the date of the expiry of the Direction to Rectify.**

For a step by step guide on processing Infringement Notices refer to the [Disputes CMS Processing Guide](#).

### Maximum Infringements

Infringement notices are issued for lower level offending behaviour. Therefore, in cases where there are a large number of breaches, a prosecution is more appropriate. When deciding whether to issue multiple infringement notices or commence a prosecution, the following procedures are to be applied.

Where 20 or more offences have been committed by a person:

- the number of infringement notices that may be issued to a person as a result of one investigation or a series of investigations undertaken at the same time is 10
- the combined total value of the fines should not exceed \$15,000 for an individual and \$20,000 for a company.

Where 6 to 19 offences have been committed by a person:

- the number of infringement notices that may be issued to a person as a result of one investigation or a series of investigations undertaken at the same time is 6
- the combined total value of the fines should not exceed \$9,000 for an individual and \$12,000 for a company.

Prior to any offender being issued with the maximum allowable fine value (i.e. company or individual) approval must be obtained from the relevant manager.

Also, as there is no legislative restriction on the number of infringement notices that can be issued, the above stated maximum infringement notices can be exceeded with the approval of the relevant Director, Assistant Commissioner, Deputy Commissioner or the Commissioner.

### Licensee Options

The licensee has 2 options when they have received the Infringement Notice:

Pay the Fine - if they choose to pay the fine they should be asked to pay immediately, but can be given further time (no more than 28 days) to pay if they request it. They are also able to pay by instalments.

Dispute the Fine - if they wish to dispute the fine they may choose to either:

- write to Resolution Services stating the grounds upon which they dispute the Infringement Notice
- elect to have the matter heard by a court. In this case the offender should be told that QBCC will withdraw the infringement notice and commence proceedings. They should also be informed that QBCC reserves the right to seek the maximum penalty (which is 10 times the amount of the infringement notice) and its legal costs. An election to go to court by telephone is acceptable.

The option selected should be recorded in the case commentary.

## 8.3 Withdrawal of I.N. – Licensee Court Elects

When a court election is received by QBCC, Records sends the matter to the SPER Officer to action. The SPER Officer will complete the process in CMS including the withdrawal of the Infringement Notice and will then forward the court election documents to the decision maker.

**NOTE:** For the purpose of deciding to and issuing the Infringement Notice of a section 73 offence, the decision maker is commonly the Assessment Officer. The Building Inspector is the decision maker to issue the Failure to Rectify (s73), but not the decision to issue the IN.



The decision maker, in consultation with their manager is to review the matter and decide on the next course of action i.e. commence prosecution or not.

If it is decided to commence prosecution, the decision maker should again consult with their manager who will submit a Request for Legal Advice, available in ActiveDocs or on Trevor, as to if the matter should proceed to prosecution.

If Legal recommend commencing prosecution, a brief to Legal must then be completed. To do so there are 3 documents to be completed, refer below.

The inability to have all documents completed could impact our case, so again, it is important to complete this process in consultation with your Manager and seek further guidance or assistance from the Resolution Services Management team if required.



**Prosecution Brief**



**Building Inspector Witness Statement**



**Home Owner Witness Statement**

## **8.4 Withdrawal or Waiver of I.N. for Reasons Other than Court Elect**

If for some reason, other than a court elect, it is determined an I.N. should be withdrawn or not issued, approval must be sought from the Assistant Commissioner (Service Trades & Regulatory).

To do so, the manager must send an email to the AC, copying in their Director, with dot points outlining the reasons for the request.

Such instances may include:

- after the fact, further information is made available to us that the Direction/FTR/I.N. were issued to the incorrect address
- the licensee is deceased during that period or someone explains hardship and are requesting the withdrawal of the infringement
- where the decision is not to issue an infringement for fairness e.g. if three Failure to Rectify have been issued but fairness is applied to issue just one infringement.

Once the withdrawal is approved by the authorised Manager the email will be forwarded to the SPER Officer who will withdraw the Infringement Notice.

The SPER Officer will advise when the withdrawal is completed and if necessary you can then proceed to re-issue the correct Infringement Notice.

## 8.5 SPER Infringement Cancellation Applications

Offenders can now make an **Application to Cancel Enforcement Order** to SPER claiming that they didn't receive the original infringement notice.

If an application is received by SPER, they will advise the QBCC SPER Officer who will in turn notify the issuing officer to send a **new** infringement notice.

If there was a change of address and the offender did not notify QBCC, this is an offence in itself and another infringement may be issued for such.

The QBCC SPER Officer will verify if the address is different when the application is received and if so will advise the issuing officer of the different address the infringement notice is to be sent to.

**NOTE:** The system will not be updated with the different address at this time, as it is provided by a third party.

When creating and issuing the new infringement notice, standard process is to be followed.

## 9 Demerit Points

### 9.1 Overview

Demerit points must be allocated in accordance with the *Queensland Building and Construction Commission Act 1991* (the QBCC Act) **Part 3E Disqualified individuals** and the *Queensland Building and Construction Commission Regulation 2018* (the QBCC Regulation).

Contractors will incur demerit points if they commit demerit point offences. Demerit point offences are specific offences under the QBCC Act. The demerit point offences attract varying amounts of demerit points and a person needs to accumulate 30 demerit points in a 3-year period to be disqualified.

Disqualification lasts for 3 years. The 3-year ban is to give the person appropriate punishment and isolation from the building industry. If a person is disqualified again they will be disqualified for life.

## 9.2 Allocation of Demerit Points

Resolution Services officers currently allocate demerit points for the QBCC Act section **73 Offence to fail to comply with direction to rectify or remedy**. From 1 July 2015 to 17 December 2018 such an offence attracted 10 demerit points.

From 17 December 2018, pursuant to section **24(2) Demerit points** of the QBCC Regulation, a total of 10 demerit points must be allocated to a person for each conviction for a demerit offence against section 73 of the QBCC Act, if the QBCC is satisfied that the building work to which an offence relates:

- is work relating to the structural performance, safety or integrity of a building; or
- causes a hazard to public health, public safety or the environment generally; or
- causes a person to suffer significant financial loss.

For other section 73 demerit offences, the following is to apply.

- for a first conviction for a section 73 QBCC Act offence – 4 demerit points
- for a second conviction for a section 73 QBCC Act offence – 8 demerit points
- for a third or subsequent conviction for a section 73 QBCC Act offence – 10 demerit points.

## 9.3 Circumstances for which 10 demerit points must be allocated

Section 24 of the QBCC Regulation sets out circumstances under which 10 demerit points must be allocated. These circumstances include a third or subsequent offence, or where one of the criteria stated in section 24(2) applies. The following is intended to provide guidance in the application of section 24(2) of the QBCC Regulation.

### Work relating to the structural performance, safety or integrity of a building

For the purposes of section 24(2)(a), building work that QBCC has determined to be a 'structural defect' will constitute 'work relating to the structural performance, safety or integrity of a building' and subject to 10 demerit points. Therefore, any 'Structural' Direction, i.e. at least one item on the Direction was deemed to be a structural defect, will attract 10 demerit points.

### **Causes a hazard to public health, public safety or the environment generally**

For the purposes of section 24(2)(b), building work that causes a hazard to public health, public safety or the environment generally includes tier 1 defective building work.

In considering whether work other than tier 1 defective building work may cause a hazard to public health, public safety or the environment generally, it is relevant to consider factors including, but not limited to:

- a notifiable incident as defined under the QBCC Act or the *Work Health and Safety Act 2011*
- the issue of a notice or injunction under Part 10 of the *Work Health and Safety Act 2011* or Part 11A of the *Electrical Safety Act 2002*;
- a direction to which section 72(4) was applied.

### **Causes a person to suffer significant financial loss**

For the purposes of section 24(2)(c), the QBCC may consider a financial loss experienced by any person as a result of the offence, including but not limited to a consumer, another contractor or the QBCC. When deciding whether a loss is a “significant” financial loss, the QBCC may consider:

- the amount of any loss attributable to the offence
- whether the amount of the loss is recoverable
- the amount of loss relative to the cost of the building work
- the amount of the loss and the impact on the person who has suffered the loss
- any mitigation actions that reasonably could have been taken to reduce the amount or impact of the loss.

## **9.4 Application of Demerit Points**

Convictions for offences against section 73 which occurred prior to 17 December 2018 will be subject to 10 demerit points. These offences will not contribute as offences for the purposes of applying the scale of demerit points from 17 December 2018.

The scale of demerit points must be applied to all section 73 offences resulting in a conviction on or after 17 December 2018.

For demerit offences, a conviction for an offence means:

- a court finding the person guilty or accepting the person’s plea of guilty, whether or not a conviction is recorded

- the person paying a fine under an infringement notice, in full
- the person paying the first instalment of a fine under an infringement notice
- the registration by the registrar of a default certificate for an infringement notice given to the person
- a decision of the commission to take disciplinary action against the person if the disciplinary action has taken effect under section 74G.

The **Demerit Points Required** spread sheets list offences where demerit points are to be allocated. The allocation of points is then processed in CMS. Refer to the **Disputes CMS Processing Guide**.

## 10 Outsourcing Consultants

An integral part of the Resolution Services process is to determine if there is defective building work and whether there will be situations where a Building Inspector or Manager may require additional technical expertise to determine if work is defective.

Outsourced inspections may also be called upon to inspect and provide a report on alleged defective building work complaints from consumers. This service is only available to Managers/SBIs and subject to the Resolution Services Manager's prior approval to cover short fall in staff or unforeseen demand for technical inspections.

This information is available from a number of sources.

### 10.1 Types of Consultants

#### Engineer Panel

11 separate RPEQ engineering companies across the state currently have a contractual arrangement with QBCC to look at general construction issues and suspected slab/footing movement in residential construction work.



#### QBCC's Engineers Panel

If for some reason it is deemed necessary to engage the services of an engineer not on the panel, it is essential to provide the chosen engineer with the adequate documentation, "Attachment B and Attachment C" detailing QBCC's requirements for their inspection and report. When sending the letter "Request Technical or Engineer Inspection" to the chosen engineer it is also necessary to insert a standard paragraph outlining the details of our request.

Below are the necessary documents and insert that are required when requesting the services of an engineer that is not on QBCC's panel.



**Request for Engineer – Attachment B**



**Request for Engineer – Attachment C**



**Request for Engineer Insert for Letter “REQUEST TECHNICAL OR ENGINEER INSPECTION”**

### External Trade Contractors

QBCC has a number of contractors registered with or have been recognised by QBCC to have individual skills in fields such as plumbing and drainage, roofing specialists, experts in termite management and detection systems.

### Professional Industry Groups

Master Painters Association, Timber Queensland and Boral Plasterboard provide an inspection and advisory service on request.

### Pre-qualified Licensees

Pre-qualified licensees have a specific outsource complaint inspection consultancy contract with QBCC.

## 10.2 What to Consider Before Engaging a Consultant

Prior to engaging a consultant to assist in an investigation ask the following.

- Is this an easy way out? Or does QBCC really need the additional information to resolve the complaint?
- Do I have the appropriate level of delegation to allow me to engage an external consultant?
- Have all the required stages of the inspection prior to requesting an external consultant investigation been completed?
- Has the reporting procedure set out in the BI section of the Procedures Manual been followed?

## 10.3 Who QBCC can Engage as an External Consultant

QBCC has a number of consultants who are assessed as suitably qualified to carry out inspections of new complaints. These consultants have a contract to carry out inspections for a fixed fee or by prior negotiation where multiple inspections on the site may be required. Generally, these inspections are for complaints with less than 10 individual items and not considered to be slab/footing movement complaints.

Complaints assessed as having a degree of movement suspected of being a result of slab/footing deflection have to pass the test of liability as set out in the BI Subsidence section of the Procedures Manual.

If the contractor has complied with the Board Policy a geotechnical engineering inspection is an integral part of the process in determining the cause of the problem, liability for the problem and what remedial works may be required to address the problem.

This is a prerequisite to having the remedial work assessed as a claim under the QBCC Home Warranty Scheme. All of the contracted engineers have a predetermined contracted cost of investigating and providing a report to QBCC and a pre-set hourly rate for less complex and smaller investigations.

Complaints questioning the structural adequacy of the framing component in residential and commercial buildings often require an expert opinion in addition to the expertise of building inspectors.

These investigations can also be allocated to the panel of engineers who have relevant expertise in the nature of the complaint being investigated. There is no pre-set overall fee for this service and the cost is generally required to be by prior quotation or in unusual or emergency situations on a contracted hourly rate.

There are a number of areas where complaints may relate to a specific area of expertise to determine quality of finish. An example may be paint finishes, installation and finishing of plasterboard, specialist linings and external cladding, timber floor installation and finishing, floor and wall tiling, plumbing and drainage or installation of termite management systems.

In situations where additional expertise is required there is no pre-set overall fee for this service and the cost is generally required to be by prior quotation or in unusual or emergency situations on a contracted hourly rate.

Where inspections require access to roofs over three meters in height and a risk assessment carried out by the Building Inspector has determined there is an unacceptable element of risk involved in carrying out the inspection, an inspection by a contractor with appropriate expertise and safety equipment is an acceptable method of dealing with this situation. QBCC has a number of roofing contractors registered for this type of work.

There is no pre-set overall fee for this service and the cost is generally required to be by prior quotation or in unusual or emergency situations on a contracted hourly rate.

There may be situations where invasive or destructive investigation may be required to enable a qualified statement as to liability and extent of defective works to be made, an example of this may be where a termite infestation is evident and point of entry may not be visible.

In cases such as this it is appropriate for either the building inspector to remove the sufficient internal sheeting or external cladding or engage an external contractor to remove the sufficient sheeting and carry out temporary repairs to the affected area.

In situations where this may be required a contractor can be selected from the QBCC panel of builders registered to carry out rectification of work under the QBCC Home Warranty Scheme. There is no pre-set overall fee for this service and the cost is generally required to be by prior quotation or in unusual or emergency situations on a contracted hourly rate.

Another example may be where a building having slab/footing movement requires additional investigation to determine if the licensee has constructed the footing in accordance with the approved design. This may require excavation and exposure of the footing system to confirm depth of footing and/or location of piers or subsoil conditions.

In situations where this may be required a contractor can be selected from the QBCC panel of builders registered to carry out specialist underpinning rectification work under the QBCC Home Warranty Scheme. There is no pre-set overall fee for this service and cost is generally required to be by prior quotation or in unusual or emergency situations on a contracted hourly rate.

## 10.4 Administrative Process for the Engagement of all Consultants

Approval of a consultant to carry out engineering or technical investigation has to be within your financial delegation and entered into the system prior to engagement of the consultant. For example, Building Inspector's approval is limited to \$1,000 for engagement of contractors and \$5,000 for engagement of consultants. Refer to the Delegations Manual.

Ensure the established process of gaining the manager's approval prior to engaging an engineer is also completed.

The administrative process to be followed to create a purchase order and subsequent payment is usually carried out by the team Customer Support Officer (CSO) or Assessment Officer (AO). For processing details refer to the [Disputes Salesforce Processing Guide](#).

Standard letters confirming the engagement of a consultant to the consultant and the home owner (claimant) are listed in the standard suite of letters.



**Delegations Manual**



# 11 Legal

## 11.1 The Role of the Legal Services Branch

- to provide advice to managers and staff on all legal issues including legislation relevant to QBCC, contract law, corporations law and litigation
- to represent QBCC in the Tribunal and the Magistrates and Districts Court in litigation involving QBCC - including administrative reviews, disciplinary proceedings, prosecutions, debt recovery proceedings, insolvency proceedings and appeals.
- represent QBCC in mediations.

QBCC's Legal Branch operates effectively as an in-house legal practice in discharging its duties. The role of individual Legal Officers includes:

- providing accurate and timely advice to QBCC Officers
- conducting litigation in the appropriate courts and tribunals on behalf of QBCC, including acting as an advocate and instructing Counsel in more complex matters
- drafting originating applications, statements of reasons and statements of evidence for filing in the appropriate courts and tribunals
- interviewing witnesses for the purposes of drafting statements of evidence for use in litigation before the appropriate courts and tribunals
- representing QBCC in mediations
- drafting and interpreting contracts, deeds of settlement and other documents of a legal nature.

## 11.2 Requests for Legal Advice

All requests for legal advice must be made through your manager. The requests are then to be submitted to Legal on a Request for Legal Advice template, available in ActiveDocs or on Trevor. This form should be completed by your Manager. The form provides the legal staff with an understanding of precisely what advice is required and the documents that are relevant to the request.

Requests for legal advice are to be forwarded by email to [legal@qbcc.qld.gov.au](mailto:legal@qbcc.qld.gov.au) which is constantly monitored, logged and allocated for action.



**DO NOT send requests for Legal Advice to any individual people in Legal**

## 11.3 Process for Legal Advice Requests

Once the request for advice is received by Legal, it is logged into the system for the purposes of reporting and monitoring of workloads. The requests are then reviewed by the Team Leaders once a week (every Monday) and allocated to a Legal Officer for action.

Legal Officers will strive to action the request within two (2) weeks from the date of allocation.

## 11.4 Subpoenas and Summonses

In the course of conducting hearings, Courts and Tribunals have powers to compel people to attend and testify about the issues in the hearing. Although there are some grounds to object to testifying (for example, because testifying might incriminate the witness in some illegal activity) these are rarely applicable in matters involving QBCC.

As QBCC is both a model litigant and an independent regulatory body, testimony from QBCC witnesses – especially technical experts – is highly regarded by Courts and Tribunals, and QBCC generally does not object to having its staff appear in Courts and Tribunals to assist the person hearing the matter. Naturally, in matters in which QBCC is involved as a party (such as reviews or prosecutions) QBCC witnesses always attend to support QBCC's position.

It should be noted that whilst QBCC witnesses will appear (if properly directed) in matters which do not involve the QBCC, QBCC officers do not give affidavits or statements in such proceedings, as being the independent regulator QBCC cannot be seen to be assisting one private party against another.

There are various ways in which a QBCC officer may be directed to attend a Court or Tribunal, and each way is dealt with in turn below.

## 11.5 Queensland Civil and Administrative Tribunal (QCAT)

QCAT has the power to direct QBCC officers to attend hearings and give evidence, or to produce a particular document or piece of evidence, either at the direction of the Tribunal or the request of a party to a matter. Those powers are outlined in the *Queensland Civil and Administrative Tribunal Act 2009*.

Under Section 158 of the *Queensland Civil and Administrative Tribunal Act 2009*, a person who may apply to the tribunal for a review of a reviewable decision may ask the decision-maker of the reviewable decision to give the person a written statement of the reasons for that decision.

If this occurs, the QBCC officer (decision-maker) should submit a Request for Legal Advice, available in ActiveDocs or on Trevor. A QBCC legal officer will then assist with drafting a written statement of reasons and enclosing all relevant documentation.

When completing the Request for Legal Advice, please ensure it contains links to the documents you consider relevant to the decision to ensure there are no delays in completing the request. The written statement of reasons for the decision must be provided within a reasonable period of not more than 28 days after the request is made.

## Witness at QCAT

Witnesses who appear at a hearing are generally entitled to witness expenses, currently in the sum of \$66.00. Those expenses are paid subsequent to the giving of evidence, and for QBCC officers the expenses are paid directly to QBCC; individual officers are not entitled to collect the sum personally.

However, prior to attending witnesses must be paid conduct money, which is an amount sufficient to meet the reasonable expenses of complying with the attendance notice. This includes the expense of travelling to the location of the hearing, and accommodation if necessary. Conduct money must be paid either at the time the witness receives the notice, or within a reasonable time prior to the date on which the witness is to attend. In most cases, conduct money will be delivered to the witness at the same time the notice is served on the witness.

If conduct money is not served on the witness named in the attendance notice, there is no obligation on the witness to attend the hearing. However, prior to taking that course of action, witnesses should consult their manager as to how to proceed.

On receiving a notice of attendance, officers should immediately ensure that they are free to attend on the day and book time in the diary. Officers should bear in mind that the Tribunal will not accept prior appointments, work pressures and the like as a reasonable excuse not to attend.

If an officer is unable to attend a hearing, the officer should contact the legal services manager to discuss their options and determine whether or not the reason for the unavailability will be accepted by the Tribunal. It is vital that this consultation occur, as the Tribunal has the power to fine witnesses up to \$10,000.00 for failing to attend as required by an attendance notice.



### Example Notice to Appear from the Tribunal

On receipt of an attendance notice in a Tribunal matter, officers should follow the following process. Ensure that they are able to attend on the given date, and enter the appointment in their personal diary, Microsoft Scheduler and team calendar on portal.

Inform their manager of the fact that they have received the notice and will be required to attend on the given date and at the particular time.

Contact the law firm or party responsible for having the notice issued, and confirm the exact date and time they will be required to give evidence.

This is particularly important in multiple day hearings, as the Tribunal does not expect witnesses to be available for the entire length of the hearing, and the party requiring the witness's attendance should provide further detail in this regard.

If conduct money has not been provided with the notice, contact the person requiring the officer's attendance and advise that QBCC generally requires conduct money 14 days prior to the date of attendance.

If the officer has had some prior involvement in the dispute, the officer should ensure that prior to the hearing, they have familiarised themselves with the details of the case.

If the officer believes that there is some reason they should not be providing evidence in relation to the hearing, the officer should immediately raise their concerns with their manager and the legal services manager.

## 11.6 QCAT Attendance

From 1 March 2019, pursuant to the decision of the SLT on 9 November 2018, in relation to the Ebsworth recommendations for the Internal Review Unit, a meeting has been held with relevant Directors and Managers to discuss appropriate officers to attend QCAT.

The following general principles were agreed:

- Where an internal review decision is the subject of an external review before QCAT, the Internal Review decision-maker is, subject to the below, the best person to instruct the legal officer with carriage of the QCAT matter and attend a compulsory conference.
- There is no requirement for the internal review decision maker to be an AO7 level or above to attend a compulsory conference or appear at a QCAT hearing. The decision-maker with the most knowledge of the reasons for making the decision is the best person to attend. However, where mentoring / training considerations suggest a more senior officer should attend with the decision-maker, this should occur.
- Where the internal review decision is a 'deemed decision' – i.e. not decided within the statutory period and automatically decided on the same basis as the original decision – the original decision-maker is the best person to instruct the legal officer with carriage of the matter and attend a compulsory conference.
- Where the internal review decision is not a deemed decision, but the same as the original decision for the same reasons, on the same evidence including the original inspection report, the IRU decision-maker is still the first point of contact for the legal officer with carriage of the QCAT matter. However, where it becomes apparent that the original decision-maker should also have involvement, or should have primary involvement, this is to be negotiated. Where agreement cannot be reached, the matter is to be escalated to the Chief Legal Officer to discuss with the appropriate Manager/Director/SLT member.
- Where the internal review decision varies or overturns the original decision, or an inspection or technical advice is provided during internal review, the IRU decision-maker, with IRU technical support as required, is the best person to instruct the legal officer and attend a compulsory conference.

- Where the compulsory conference is at a location different to the office of the decision-maker required to attend, application will be made by the legal officer for attendance by telephone for that person, unless travel arrangements are agreed to be made. (Note attendance by telephone cannot be guaranteed).
- The legal officer with carriage of the QCAT matter will determine who should attend a QCAT hearing as a witness and/or to give instructions and advice for the hearing.
- Statements of reasons are to be prepared by Legal Services on instruction from the decision-maker with the most knowledge of the matter, as per the above.
- SORs are to be signed for and on behalf of the QBCC, by the decision-maker where practicable, and where that person is not available, by the legal officer or other appropriate officer.
- Documents required for SOR/QCAT – Legal Services to discuss with Res Services (at BI/Legal officer level) to determine appropriate wording for the request. IRU are commencing links to documents read and relied on when making decisions.

## 11.7 Magistrates Court

Magistrates Courts can issue summonses, both in relation to a defendant charged with an offence and to witnesses who may be required to prove that offence. It is highly unlikely QBCC officers will receive a summons from a Magistrates Court in relation to a QBCC matter – QBCC officers will most likely attend a Magistrates Court in relation to a QBCC prosecution and are required by the terms of their employment to attend and give evidence, so QBCC would not be likely to issue summons against its own staff.

In the event an officer does receive a summons from a Magistrates Court (or, for that matter, a subpoena from a higher Court) the officer should – if the matter relates to the officer's discharge of his/her duties during the course of their employment at QBCC – immediately contact the legal services manager to establish a course of action. Should an officer receive a summons from a Magistrates Court unrelated to their employment with the QBCC, it would be advisable for the officer to seek independent legal advice.

## 12 Reporting

QBCC provides an array of reports which are used primarily by management to ascertain the organisations current position and workloads.

These reports also allow viewers to determine if Resolution Services is keeping up with KPI's and benchmarking in regard to processing timeframes etc. They also allow management to use the information gathered as a tool for forward planning in relation to future needs of the division.

## 12.1 Salesforce Cases

Under the **Reports** tab in Salesforce you will find the folders **Disputes Reports** and **EDR Reports**. These folders contain various reports utilised by management and staff for case management, workload management, monitoring KPIs and forecasting etc.

Whilst all users have the ability to create their own reports and/or customise existing reports, the reports located in the above folders are deemed to be the 'source of truth' for Resolution Services.

Any reports created or customised must only be saved in your **My Personal Custom Reports** folder or a **Team Folder** you can create; they are not to be saved in the Public Folders.

The screenshot shows the Salesforce interface for Reports & Dashboards. The top navigation bar includes links for Home, Customers, Cases, Knowledge, Reports (highlighted), Dashboards, and Sites. The main header area has 'Reports & Dashboards' and buttons for 'New Report...' and 'New Dashboard...'. The left sidebar shows a list of folders, with 'Disputes Reports' highlighted. The main content area displays a list of reports under the 'Disputes Reports' folder, including 'Active Dispute Cases', 'Active DisputeTasks per Case Owner', 'BI Inspection Tasks and Reports Complete', 'BI's Active Dispute Cases', 'Case Owner History', 'Directions Complied With %', 'Directions Extended', and 'Directions Finalised'.

Action	Name	Folder	Created By	Last Modified
▼	<b>Active Dispute Cases</b> Shows all current dispute cases excluding EDR, grouped by Region then Case Owner	Disputes Reports		
▼	<b>Active DisputeTasks per Case Owner</b> Shows all active Dispute and Dispute Inspection tasks, grouped by Case Owner	Disputes Reports		
▼	<b>BI Inspection Tasks and Reports Complete</b> Shows all inspection tasks assigned to Building Inspectors and the days to complete the report post inspection, grouped by BI	Disputes Reports		
▼	<b>BI's Active Dispute Cases</b> Shows all current dispute cases excluding EDR, grouped by Region then BI	Disputes Reports		
▼	<b>Case Owner History</b> Shows all Case Owners for the life of a case, grouped by Region then Case	Disputes Reports		
▼	<b>Directions Complied With %</b> Shows percentage of directions complied with, not complied with and withdrawn	Disputes Reports		
▼	<b>Directions Extended</b> Shows the number of directions that have been extended, grouped by Region then Case Own	Disputes Reports		
▼	<b>Directions Finalised</b> Shows the number of directions finalised, grouped by Region	Disputes Reports		

There are also Dashboards available from the **Dashboards** tab. They can also be found within the Folders list under the Reports tab. The **Resolution Services Dashboard** displays the most commonly utilised Reports from the **Dispute Reports** and **EDR Reports** folders.

As with the Reports anyone can create a Dashboard, but again ensure it is only saved to your **My Personal Dashboards** folder, not a **Public Folder**.

## 12.2 CMS Cases

For all cases prior to the introduction of Salesforce for Disputes, The Resolution Services reports are accessible from the **Reporting, Risk & Governance** page on Trevor then the **Corporate Reports** Quick Link.

The image shows two screenshots of a corporate reporting portal. The top screenshot displays the 'Reporting, Risk and Governance' section with a 'Quick link' to 'Corporate Reports' circled in red. The bottom screenshot shows the 'Reports' page with a list of folders, including 'Resolution Services' circled in red.

**Reporting, Risk and Governance**  
Risk, executive, committees, delegations

**Policies, Procedures & Forms**

**Organisational Charts**  
Org Chart as at 3 April 2020

**Quick link**  
[Corporate Reports](#)

**Home > Reports**  
**Reports**

Welcome to QBC's corporate reporting portal. This area will continue to expand to incorporate most of your corporate reporting Sponsors and IS. If you have any queries, or have any reporting requirements, please contact your System Sponsor.

**Reports Training**

**Reports**

**Home**

- [BCIPA Reports](#)
- [BSA ITIL Reports](#)
- [Business Excellence](#)
- [Certification](#)
- [Compliance](#)
- [Disaster Management](#)
- [Finance](#)
- [Insurance Reports](#)
- [KPI Dashboard](#)
- [Legal](#)
- [Mailing Lists](#)
- [Project Office](#)
- [Regulatory Services](#)
- [Resolution Services](#)

Each report features a link “About this Report” which details an explanation of the report and details contained therein. The link will also take you to the Resolution Services Dashboard which gives an up to date snapshot of how the division is travelling in relation to its workloads, impact on resources and compliance with forecasted processing times.

## 13 Guidance Statements and Fact Sheets

### 13.1 Disputes Guidance Statements



**RES-001 – Reviewable Decisions and Closure Letters**



**RES-002 – Practical Completion and Defects Documents**



**RES-003 – Recurring Defects and Subsidence**



**RES-004 – Written and Verbal Contracts**



**RES-008 – Manufactured Homes, Prefabricated Homes, Prefabricated Related Roofed Buildings, Prefabricated Building Elements and Materials**



**RES-009 – "Fit for Purpose", Manufacturers Warranties, Appliances, Materials and the Board's 'Rectification of Building Work Policy'**



**RES-010 – Resultant Damage**



**RES-011 – Consequential Damage**



**RES-013 – Stormwater Runoff and Drainage Complaints**



**RES-014 – Unapproved Building Works**



-  **RES-015 – Owner-builders**
-  **RES-016 – Defects Known at Time of Purchase**
-  **RES-017 – Outstanding Monies**
-  **RES-018 – Managing Complaints Relating to Non-structural Defective Building Work**
-  **RES-019 – Extension of Time for Direction to Rectify**
-  **RES-020 – Timeframe for Lodging a Complaint under 71J**
-  **RES-021 – Consideration of Direction for Non-structural Defects**
-  **RES-022 – Complaints Received Within the Contractual Maintenance Period**
-  **RES-023 – Considering Whether QBCC Should Apply to QCAT for an Extension of Time under Section 72A(4)**

## **13.2 Technical Guidance Statements**

-  **RES-T001 – Use of Surface Waterproofing Systems**
-  **RES-T002 – Invasive Investigation Procedures**
-  **RES-T003 – Provision of Floor Wastes**
-  **RES-T004 – Subsidence - Guidelines on Extent of Scope of Work**

## 13.3 Legal Guidance Statements



[Section 72A\(4\)](#)



[Contract Termination](#)



[How to Protect Legal Professional Privilege](#)

## 13.4 Fact Sheets



[Defective building work complaints - inspections](#)



[QBCC's Dispute Resolution Process – Tips for Contractors](#)

# 14 Workplace Health and Safety for Resolution Services Officers

## 14.1 Workplace Violence Mitigation Process

QBCC has developed a workplace violence mitigation process to protect staff by helping to identify ways to be safe and opportunities for early intervention. The process outlined below is specific to state-wide Resolution Services Assessment Officers and Building Inspectors. This process commenced on 12 March 2020.

The QBCC has a zero-tolerance for workplace violence and aggressive behaviour.

Recognising and reporting safety risks when carrying out dispute assessments, in phone contact and personal interactions with complainants and our diligence in risk assessment will directly support BI safety at site inspections.

The QBCC website, the online and PDF Complaint Form and relevant email and letter templates have all been updated to include behavioural messaging to reflect the QBCC's zero tolerance for workplace violence and aggressive behaviour.

The below **Risk Matrix for QBCC Inspections** has also been developed to assist AOs and BIs in assessing risk and identifying and managing unreasonable violent complainant conduct.

This document should be read in conjunction with the below information for Assessment Officers and Building Inspectors.



## Risk Matrix for QBCC Inspections

### Assessment Officers

A checklist entitled **Identification of unreasonable customer conduct** has been incorporated into the Complaint Assessment File Note (CAFN) available in ActiveDocs. The checklist lists 8 steps to assist AOs assess risks by identifying warning signs when doing the initial complaint assessment.

A further checklist **Scripted Questions** has 2-5 scripted scenario questions AOs must ask both the Claimant and Respondent upon initial contact prior to assigning a case for BI allocation.

A record of the responses to the scripted questions from both parties must be recorded in the checklist.

A Salesforce Case Comment must also be created to indicate if warning signs were or were not identified. For further guidance refer to the ACTION section of the checklist.

When the case is ready to be allocated to a BI and warning signs are identified (or if in doubt) the AO must report it to the regional OTL or Brisbane SBI ( ) for the cases site region (not the Case Assessment Region). This can be done through a Salesforce task and attaching the checklist.

The OTL/SBI will evaluate the risk to a BI's safety prior to allocating them cases and take proportionate steps to reduce the risk. This may require a QBCC officer to go with the BI to the site inspection for safety.

The following email templates, and their corresponding ActiveDocs letter templates have been updated to include messaging relating to customer behaviour and illness (COVID-19 related, refer to Section 15). These templates are to be used until further notice.



AO Notice to  
Claimant - BI Assigner



AO Notice to  
Respondent - BI Assign



Steps on how to add  
email templates to Ou

### Building Inspectors

In line with the Workplace Violence Mitigation Process the following email templates, have been updated to include messaging relating to customer behaviour and illness (COVID-19 related, refer to Section 15). These templates are to be used until further notice.



Initial contact from BI  
- Claimant.oft



Initial contact from BI  
- Respondent.oft



Steps on how to add  
email templates to Ou

The below checklist **Scripted Questions for Building Inspectors**, also available in the ActiveDocs **Disputes - Assessment & Other** folder is to be utilised by BIs in all cases. The checklist contains 2 scenarios.



## Scripted Questions for Building Inspectors

### Scenario 1 – Scripted Telephone Questions

Scenario 1 is a replication of the questions AOs ask customers during the initial assessment. You must ask the questions again to both the claimant and respondent when phoning to arrange the initial site inspection appointment. The repetitive safety messaging to customers reaffirms the QBCC's behavioural expectations from customers before the site inspection.

Responses to the scripted questions must be recorded on the checklist and then saved to ECM.

A Salesforce Case Comment must also be created to indicate if warning signs were or were not identified. For further guidance refer to the ACTION section of the checklist.

Should any warning signs be identified (or if in doubt) you must report it to your direct supervisor (OTL/SBI ).

Escalation should firstly be a phone call to alert of the potential risk and then a Salesforce task attaching the checklist and noting any other warning signs you have detected.

OTLs/SBIs will assist to evaluate a suitable responsive strategy and it may require a QBCC officer to go with you to the site inspection for safety.

### Scenario 2 – Scripted On Site Questions

Scenario 2 must be asked to all attending parties at the front door before the site inspection starts.

The responses from everyone attending will be recorded on the voice audio recording and saved to ECM.

If the response indicates there is a risk, or if you are in doubt of your safety, advise that due to safety concerns you are leaving the site immediately and will either:

- Review options in consultation with OTL/SBI to manage the case; or
- Arrange a future inspection with a support person.

Resolution Services is continuing to work on the overall work health and safety mitigation framework to protect staff from violent and aggressive behaviour, including updates to the

QBCC website and external communications to notify customers what behavioural expectations will not be tolerated and the consequences if abusive, aggressive or threatening behaviour occurs.

## 14.2 Post Aggression Incident Response Procedure

If an incident occurs on site, the following must occur.

1. BI to seek first-aid or phone '000' to treat any injuries.
2. BI to notify SBI/Manager immediately.
3. WH&S Notification Form to be completed by BI/SBI and submitted in person to the WHS Advisor or emailed to [whs@qbcc.qld.gov.au](mailto:whs@qbcc.qld.gov.au) within 12 hours of occurring. A link to the WH&S Notification Form to report an incident, injury, hazard, or near miss is below.

### WH&S Notification Form

4. If the matter has not already been reported to Police (QPS) and a criminal offence has occurred, SBI/Manager to accompany BI to QPS to make a formal report.
5. For incidents involving threats or violence, SBI/Manager must contact HR/WH&S Advisor within 24 hours to discuss and arrange Employee Assistance Program (EAP) support options: critical incident debriefing service or counselling sessions that can be conducted in person, over the phone or over the web. For other incidents, SBI/Manager to discuss with BI EAP support options.
6. SBI/Manager to evaluate BI's caseload and make any workload adjustments, including proportionate leave arrangements, as needed on a case by case basis to ensure BI is supported post-incident.
7. SBI/Manager to regularly follow up with BI to monitor caseload, engage in informal internal debriefings and offer peer support. SBI/Manager can seek advice from WHS Advisor or HR, if required.

Refer to the Health and Safety page on Trevor for information and resources for all QBCC staff, such as the Debrief and Support section shown below.

### Health and Safety

## Debrief and Support

[Click here](#) QBCC's Employee Assistance Program


[Click here](#) Customer Suicide Threat Information

[Click here](#) Manager Support Hotline

[Click here](#) Mates in Construction

[Click here](#) QBCC's You Matter page

[Click here](#) Qld 'Leaving Domestic Violence' checklist and Referral pack



## 15 COVID-19 Processes

### 15.1 AO Initial Contact with Claimant and Respondent

Due to COVID-19 various process changes have been made impacting the state-wide operations of Resolution Services to ensure the ongoing safety of Building Inspectors.

The following email templates, and their corresponding ActiveDocs letter templates have been updated to include messaging relating to illness and customer behaviour (refer to Section 14). These templates are to be used until further notice.



AO Notice to  
Claimant - BI Assigner



AO Notice to  
Respondent - BI Assign



Steps on how to add  
email templates to Ou

## 15.2 BI Initial Contact with Claimant and Respondent

The following email templates, have been updated to include messaging relating to illness and customer behaviour (refer to Section 14). These templates are to be used until further notice.



Initial contact from BI  
- Claimant.oft



Initial contact from BI  
- Respondent.oft



Steps on how to add  
email templates to Ou

Precautionary steps for BIs to contact customers just prior to inspections to mitigate COVID-19 health risks was also introduced from 13 March. At or immediately before the inspection, the BI must **ask all parties whether they have a sore throat, fever, shortness of breath, cough or fatigue. If they answer 'yes', you should advise them that the inspection will be postponed for at least 14 days.** BIs are not required to carry out the inspection when another party is displaying these symptoms.

Following on from this, a number of ActiveDocs templates have been amended. Changes include the Complaint Assessment File Note now contains a risk assessment checklist and scripted questions for AOs, refer to Section 14 above. Additional wording has also been added to inspection letters communicating illness and safety risks, an excerpt is below.

### Step 3 – Attend the inspection

Without your (or your authorised agent's) attendance, the inspection cannot go ahead.

It is in your best interests to attend the inspection. You will be able to tell your side of the story and have input into any decision which could impact your property.

**Unable to attend?** If you cannot attend on the date and time listed above, there will be a considerable delay to book a new inspection date. Please let me know as a matter of urgency.

**Want someone else to attend on your behalf?** To protect your privacy, we need you to confirm this in writing before the inspection.

**Are you feeling unwell?** If you or another person who will be attending the inspection are currently experiencing flu-like symptoms, please contact me urgently.

#### What happens at the inspection?

1. I will arrive shortly before our Inspection\_time start. I will fully explain our process to you and the contractor (if attending) before we start, including the **categories of defect** we use and the **timeframes** that apply.
2. I will inspect the listed complaint items one by one and take photographs I will also audio record all of the inspection.
3. You will definitely have the opportunity to have your say.
4. Our inspection process is fair, impartial and professional. I will also give the contractor (if attending) the opportunity to have their say.
5. Please be respectful and polite to everyone attending – it's the best way to get the most out of the inspection. I will immediately stop the inspection if you are abusive, aggressive or threaten any party. If your behaviour is unacceptable, I may not progress your case.
6. Where possible, I will try to make a decision at the inspection, however some items may need to be considered in detail against relevant Building Standards and Codes. I will compile a detailed report, which will be shared with you.

**Please note:** The *Work Health and Safety Act 2011* requires me to check the site is safe before I can start my inspection.

#### Amended ActiveDocs Templates

- Complaint Assessment File Note
- AO Notice to Claimant – Assigned to BI
- AO Notice to Respondent – Assigned to BI
- Initial Inspection – Claimant – Active
- Initial Inspection – Claimant – Bankrupt
- Initial Inspection – Claimant – Deceased
- Initial Inspection – Claimant – Liquidated or Deregistered
- Initial Inspection – Claimant – ULC
- Initial Inspection – Respondent – Active
- Initial Inspection – Respondent – Bankrupt Without Active Licence
- Initial Inspection – Respondent – Deregistered
- Initial Inspection – Respondent – Liquidated
- Initial Inspection – Respondent – ULC
- Initial Inspection – CBI or PI – Claimant
- Initial Inspection – CBI or PI – Respondent



- Outsource Inspection Notice to Claimant
- Outsource Inspection Notice to Liquidator or Trustee
- Outsource Inspection Notice to Respondent
- QBCC Rescheduled Inspection
- Reinspection – Claimant – Complaint Items
- Reinspection – Claimant – Direction Items
- Reinspection – Respondent – Complaint Items
- Reinspection – Respondent – Direction Items

### 15.3 Site Inspections

The below WHS Fact Sheet about site inspection procedure for BIs is available on Trevor in the **Health & Safety** section **Coronavirus - information and updates** link, under the **Hygiene, health and safety** heading. It clarifies current Queensland Health social distancing and protective measures for BIs during site inspections in response to COVID-19. It also outlines what health questions BIs need to ask when phoning customers prior to initial inspections and at the start of the initial site inspection or re-inspection to determine if it is safe to continue the inspection.



#### COVID-19 - Field Staff

The below document, also available on Trevor, has been designed for BIs to display to parties prior to commencing a site inspection. The document provides the parties information on how we are to conduct the inspection to maintain our safety. If any of the parties do not agree to or do not follow our safe practices, the inspection is to be terminated immediately.



#### COVID-19 - BI Poster

### 15.4 COVID-19 Scenarios and QBCC Responses

On 25 march 2020 the QBCC SLT approved the following tabled 10 scenarios and QBCC responses relating to site inspections, Directions to Rectify and approved claims.



#### Resolution Services Scenarios and Proposed Responses to Regulatory Processes

## 15.5 Placing a Case On Hold for COVID-19 Reasons

During the processing of a case, there may be circumstances where it is reasonable for the case to be placed on hold for a period due to COVID-19 related reasons.

Situations where this may be relevant could be if the claimant advises they are unwell or cannot provide site access as they are self-isolating.

Each case and situation will need consideration prior to placing a case on hold due to COVID-19 reasons, so please consult with your manager prior to doing so.

The following Sub Status options can be utilised in such circumstances. The case **Status** should be **On Hold** in conjunction with using one of the below Sub Status options.

- On Hold – Claimant Request – COVID-19 Reasons
- On Hold – Respondent Request – COVID-19 Reasons
- On Hold – QBCC Process – COVID-19 Reasons
- COVID-19 No Inspection

The below ActiveDocs templates, available in the Assessment & Other folder, have also been developed to advise the parties when we have placed a case on hold at the claimant's request.

- Notice to Claimant – Case Paused (COVID-19)
- Notice to Respondent – Case Paused (COVID-19)

## 15.6 Printing and Sending Letters

Given the current limited resources for printing and sending of letters, at this time it is not necessary for letters to be signed, nor should electronic signatures be used.