
Queensland Building and Construction Commission

2018/19 Compliance and Enforcement Strategy

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Introduction

The Queensland Building and Construction Commission (QBCC) is the regulator of the building and construction industry in Queensland. Currently, the QBCC licences around 105,000 people comprising of builders, trade contractors, plumbers, drainers, fire protection workers, pool safety inspectors and building certifiers.¹ The QBCC's oversight contributes to the peace of mind of Government, industry and community, and promotes a level playing field across the industry.

The QBCC is responsible for the administration of the following Acts, including their subordinate legislation:

- *Building Act 1975* (Building Act),
- *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act)²,
- *Plumbing and Drainage Act 2002* (PD Act), and
- *Queensland Building and Construction Commission Act 1991* (QBCC Act).

The abovementioned Acts set out the requirements, responsibilities and entitlements of industry participants and stakeholders, as well as the QBCC's powers and jurisdiction.

The building and construction industry is subject to continuous change and disruption. This puts greater pressure on Government to ensure a balanced regulatory environment exists that meets the standards and expectations of industry participants and the wider community.

The release of the *Queensland Building Plan 2017* highlighted key areas for legislative reform to keep pace with changes occurring within the industry. These key areas signal priorities within the building and construction sector that the Queensland Government have identified through consultation with industry and the community, including the importance of financial sustainability, the need for regulation of non-conforming building products and a focus on pool safety. Resulting legislative amendments have significantly expanded the QBCC's regulatory function including new laws around non-conforming building products and financial matters. The changes have seen the QBCC become responsible for regulating not only the people who use building products that do not comply with the National Construction Code, but also the people who form part of the supply chain for those products (the "chain of responsibility"), including domestic manufacturers and importers of those products. Similarly, new laws around financial security, including requirements to establish Project Bank Accounts, have altered the QBCC's regulatory functions and stakeholder expectations.

The QBCC regulates the sector and its participants through licence management, dispute resolution, building inspection, audits and investigation and enforcement of non-compliance with the law. The QBCC's Compliance and Enforcement Branch is responsible for investigating and taking enforcement action in cases of non-compliance. The Compliance and Enforcement Branch:

¹ A person can hold multiple licences under the various Acts that the QBCC regulates.

² Upon commencement of chapters 3, 4 and 5 of the *Building Industry Fairness (Security of Payments) Act 2017*, the *Building and Construction Industry Payments Act 2004* and *Subcontractors Charges Act 1975* will be repealed.

- investigates alleged offences under the QBCC Act, PD Act and Building Act,
- investigates suspected contraventions of the QBCC's Minimum Financial Requirements Policy³, and
- takes appropriate enforcement action.

The 2018/19 Compliance and Enforcement Strategy identifies the QBCC's compliance priorities for the year ahead and has been developed taking into consideration:

- the *QBCC Strategic Plan 2018-2022*,
- the *Queensland Building Plan 2017*,
- risks, trends and issues in the building and construction industry, and
- intelligence from external sources.

Strategic alignment

The Queensland Building and Construction Board provides the strategic oversight for the QBCC. Every four years, the QBCC Board sets a strategic plan to guide the QBCC's priorities and focus. The *QBCC Strategic Plan 2018-22*⁴ was developed in alignment with the Queensland Government's objectives for the community and the Queensland Building Plan 2017 and sets the vision of the QBCC *"to be a regulator that builds trust and confidence in all we do"*.

This Compliance and Enforcement Strategy supports this overarching strategic vision through 10 targeted compliance priorities for the 2018/19 financial year. These 10 compliance priorities not only recognise the newly increased regulatory scope of the QBCC but are developed with the purpose of focusing the QBCC's compliance and enforcement activities to achieve the following strategic objectives:

- to promote integrity and probity in the building and construction sector;
- to provide regulatory and customer services that are timely, clear and transparent; and
- to improve operational and organisational excellence.

The compliance priorities will foster integrity and probity in the sector by developing and implementing risk-based frameworks to detect non-compliance, as well as facilitating education, engagement and partnership activities within the industry.

Furthermore, these compliance priorities will help the QBCC to provide improved regulatory services that are timely, coherent and transparent by undertaking proactive activities, utilising data and intelligence to drive a risk-based compliance approach, improving standards across compliance activities and reporting on the outcomes of these priorities.

³ The Minimum Financial Requirements Policy is made by the Queensland Building and Construction Board and states the Minimum Financial Requirements for licensing under the *Queensland Building and Construction Commission Act 1991*. The objectives of the Minimum Financial Requirements in this policy are to promote financially viable businesses and foster professional business practices in the Queensland building industry. To achieve these objectives and minimise the incidence of financial failure in the building industry, this policy requires all applicants and licensees to comply with the Minimum Financial Requirements. A copy of the policy can be found at https://www.qbcc.qld.gov.au/sites/default/files/Minimum_Financial_Requirements_Policy.pdf

⁴ *Queensland Building and Construction Commission Strategic Plan 2018-2022*, http://www.qbcc.qld.gov.au/sites/default/files/QBCC_Strategic_Plan_2018-2022.PDF

QBCC approach to compliance and enforcement

The QBCC utilises powers available to it under current legislation to carry out a range of activities as part of each compliance priority. These activities include investigation, audit, education, stakeholder engagement, and enforcement.

The QBCC focuses on both proactive and responsive activities as part of the Compliance and Enforcement Strategy. Proactive activities include:

- joint operations with other regulators targeting specific risks within the sector;
- a re-inspection program to ensure compliance issues identified during previous inspections have been satisfactorily addressed; and
- targeted auditing of licensees.

Responsive activities include:

- investigation of monies owed complaints;
- auditing non-conforming building products; and
- investigation of breaches of relevant legislation referred by other agencies.

If an offence is established as a result of a compliance activity, an enforcement response may be taken after consideration of factors including the severity of the offence, impact on individuals and the community, prevention of further harm and general deterrence.

Enforcement responses include:

- escalated compliance surveillance;
- Stop-Work orders;
- warnings and reprimands;
- disciplinary action;
- Penalty Infringements Notices;
- commencing prosecutions before Magistrates' Courts; and
- commencing civil proceedings, including seeking injunctions.

The QBCC's Compliance and Enforcement Branch operates across the state. QBCC investigators and inspectors based in Brisbane partner with staff from each of our eight regional offices to undertake specific initiatives tailored to compliance issues and risks in those regional locations.

As part of its regulatory function, the QBCC will also deliver education programs to regional areas of Queensland and, where possible, partner with other regulators and industry stakeholder groups in those areas.

Establishing compliance priorities

The QBCC continues to use a risk-based approach to develop compliance priorities for the year ahead. This approach allows prioritisation based on what is to be achieved in our strategic objectives in terms of compliance and enforcement activities and identifying the highest risk impact. To identify highest impact relevant factors are considered, such as the likelihood and impact of non-compliance with the law, recent amendments to the law, and emerging issues that present risk to both the sector and the public. The QBCC will continue to monitor the industry for emerging issues and amend compliance priorities as and when necessary.

Compliance Priorities for 2018/19

Collectively the 10 compliance priorities for 2018/19 aim to keep licensees and building occupiers across Queensland safe. They aim to enforce compliance with and foster respect for the law, and ensure that the QBCC continues to improve its regulatory operations. In doing so the QBCC will give peace of mind to the sector and build trust and confidence in all that we do.

The compliance priorities for 2018/19 are outlined below:

1. Combating unlicensed building work by:
 - conducting intelligence-driven licence audits; and
 - using a technology-based analytics approach to identify unlicensed entities advertising to perform regulated building work.
2. Confronting unlicensed persons performing maintenance work on fire safety installations by:
 - conducting intelligence-driven site inspections of buildings and house fire safety systems; and
 - conducting a series of desktop audits to identify licensees who are not appropriately certified or have the required staffing to fulfil their licence requirements.
3. Averting licensees causing financial detriment to participants of the building and construction industry by:
 - ensuring project bank accounts have been established in instances where they are required by law;
 - providing education to the building and construction industry about the QBCC's monies owed function;
 - providing education to licensees, in conjunction with co-regulators, regarding indicators of financial distress;
 - conducting analysis of licensees' financial records through the QBC Commissioner's approved audit program;
 - providing education to professional accounting bodies regarding financial reporting requirements of licensees;
 - prosecuting persons for avoiding contractual obligations causing significant financial loss;
 - prosecuting persons providing the QBCC with false or misleading documents about a licensee's financial requirements as stated in the QBCC Minimum Financial Requirement Policy⁵; and

⁵ Or subsequent regulation.

- investigating excluded persons who are acting as influential persons within corporate licensees.
4. Improving the quality of building work performed by licensees by:
 - performing a thematic analysis of licensees to identify main defects and the licensees most regularly being reported for the performance of defective work;
 - ensuring building work is being supervised in accordance with the law;
 - conducting intelligence-driven supervision audits;
 - ensuring regulated building work is performed to an appropriate standard by appropriately licensed persons; and
 - referring suspected serious breaches for investigation.
 5. Ensuring licensees notify the QBCC of notifiable work performed in accordance with the law by:
 - monitoring the lodgement of documents with the QBCC as required by law; and
 - conducting investigations in cases of suspected non-compliance.
 6. Promoting certifier compliance by:
 - conducting audits of work performed by building certifiers.
 7. Combating the use of non-conforming building products by:
 - identifying buildings that have combustible cladding affixed to them and ensuring rectification work is performed as required;
 - conducting audits of suppliers and retailers who sell building products to ensure they are complying with their legislative requirements; and
 - prosecuting entities within the 'chain of responsibility' who do not comply with legislative requirements.
 8. Averting failure to comply with pool safety provisions:
 - ensuring Pool Safety Inspectors properly inspect swimming pools and issue Pool Safety Certificates as required by law;
 - ensuring non-shared private pool owners obtain a Pool Safety Certificate when required by law to do so; and
 - ensuring shared pools with no safety barrier have a current Pool Safety Management Plan.
 9. Improving licensee reporting of safety matters to the QBCC and ensuring utilisation of QBCC powers to promote ongoing safety by:
 - educating the building and construction industry of the requirement of licensees to notify the QBCC of notifiable incidents;
 - educating the building and construction industry of the requirement of licensees to notify the QBCC where a person carrying out work on a building site is doing so in contravention of a notice or injunction under the *Work Health and Safety Act 2011* and *Electrical Safety Act 2002*;
 - taking appropriate enforcement action against licensees who fail to comply with the law regarding the provisions of section 54A of the QBCC Act; and
 - using the information provided by licensees to apply appropriate licence conditions aimed at ensuring the safety of workers on and members of the public near building sites.

10. Educating industry participants about the QBCC's compliance and enforcement activities by:
 - releasing quarterly results to the building and construction industry of compliance and enforcement activity;
 - providing thematic overviews as part of these results aimed at educating the building and construction industry, including industry groups, on the most significant areas of non-compliance; and
 - undertaking market research to assess the building and construction industry's perceptions of the QBCC's regulatory capability so to improve services.

The Compliance and Enforcement Strategy is designed to be a living document; meaning the planned priorities outlined above could change during the year based on changes to the operating environment such as legislative reform or the identification of emerging risks that warrant a reallocation of resources.