



# DOMESTIC BUILDING CONTRACTS

General information for home owners

January 2018

# TABLE OF CONTENTS

1. Queensland Legislation Governing Domestic Building Contracts.....	3
2. Summary of Key Domestic Building Contract Requirements.....	3
3. Warning regarding Cost Plus and Construction Management Contracts .....	5
4. The Queensland Home Warranty Scheme .....	5
5. Preliminary Agreements.....	7
6. Consumer Building Guide .....	7
7. Plans and Specifications.....	7
8. Allowances for Prime Cost (PC) Items and Provisional Sums (PS) .....	7
9. The Cooling-Off Period.....	8
10. Foundations Data .....	8
11. Deposits.....	9
12. Commencement Notice.....	9
13. Progress Payments .....	9
14. Variations .....	10
15. Delays During Construction and Extensions of Time (EOTs) .....	10
16. Liquidated Damages .....	11
17. Disputes - Before the Contract is Completed/Terminated.....	11
18. Disputes - After the Contract is Completed/Terminated .....	13
19. Contract Termination .....	13
20. Practical Completion and Final Payment.....	13
21. Defects Liability Period in the Contract .....	14
22. Directions to Rectify.....	14
23. For Further Information.....	14

**DISCLAIMER** - This QBCC booklet is designed to provide general information, including a summary of key legislative requirements, regarding contracts for the construction, renovation or repair of a home or associated domestic building work. It is **not** intended, and cannot be relied upon, as legal advice for specific contracts or individual circumstances. **For detailed advice on your particular contract you should consult a practising solicitor before signing.**

**NOTE:** Unless stated otherwise, all references to section numbers in this booklet refer to Schedule 1B of the *Queensland Building and Construction Commission Act 1991*.

# 1. QUEENSLAND LEGISLATION GOVERNING DOMESTIC BUILDING CONTRACTS

On 1 July 2015 Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (‘the QBCC Act’) came into force. This new legislation replaced the Domestic Building Contracts Act 2000 (‘the DBC Act’) and applies to domestic building contracts entered into from 1 July 2015.

This legislation sets out contract requirements for the erection or construction of a detached dwelling (i.e. a single, free-standing home or duplex) or the renovation, alteration, extension or improvement of a home, and for other domestic building work associated with a home, such as building a driveway, fence or swimming pool.

**Note: The previous legislation still applies to domestic building contracts entered into before 1 July 2015.**

**WARNING:** Because of the changes under the legislation, domestic building contracts developed prior to July 2015, and many contracts developed interstate irrespective of date, are unlikely to comply with the new Queensland requirements for domestic building contracts.

The cheapest and easiest way for contractors and owners to be sure their contract documentation complies with Queensland legislation is to use a standard form (pre printed) contract produced since 1 July 2015 by QBCC or one of the major industry associations. While each of these contracts will satisfy the minimum requirements of the legislation, it is important to note that they will vary in detail and in the apportionment of risk and responsibility between the home owner and contractor. Alternatively, **contractors or owners may develop their own contracts but it is strongly recommended that assistance be obtained from a practising lawyer** to ensure the contract complies with the new legislation.

## KEY CHANGES UNDER THE NEW LEGISLATION (Schedule 1B of the QBCC Act)

Many provisions under the new legislation are the same as or similar to those in the previous legislation but there are some major changes. **One significant change is the introduction of two levels of contracts:**

**Level 1 contracts** (priced at \$3301 - \$19999); and

**Level 2 contracts** (priced at \$20000 or more),

**with different levels of contract requirements for each.**

Other key changes introduced in Schedule 1B include the introduction of a *Consumer Building Guide* and a *Commencement Notice* for all Level 2 contracts, and new documentation requirements for extension of time (EOT) claims by contractors. **The content requirements for level 1 contracts are set out in section 13 of Schedule 1B, while section 14 details the level 2 contract requirements.**

The introduction of the Commencement Notice and mandatory EOT documentation is designed to provide greater certainty (and fewer disputes) for both parties regarding start and finish dates.

# 2. SUMMARY OF KEY DOMESTIC BUILDING CONTRACT REQUIREMENTS

While Schedule 1B of the QBCC Act sets out a range of provisions which must be included in domestic building contracts, it does NOT require contractors to use QBCC contracts or any particular contract. Contractors have a legal obligation to ensure that whatever contracts they use fully comply with the requirements of the Queensland legislation. They may choose to use standard form, pre-printed contracts produced by QBCC or one of the industry associations or, alternatively, they may develop their own contract documents with assistance from a lawyer. **The key requirements for domestic building contracts, depending on the contract price, are summarised below:**

## CONTRACTS PRICED AT \$3300 OR LESS (NOT REGULATED BY DOMESTIC BUILDING LEGISLATION)

The form and content requirements for domestic building contracts set out in Schedule 1B of the QBCC Act only apply to contracts priced at more than \$3300 (including labour, materials and GST). Nevertheless, to avoid uncertainty and minimise the risk of disputes, **QBCC recommends that even contracts priced at \$3300 or less (including labour, materials and GST) should still be recorded in a brief written document** – the 2 page **QBCC Small Building Projects Contract** (available for free download from the QBCC website) is recommended for this purpose.

## CONTRACTS PRICED AT \$3301 - \$19999 (LEVEL 1 CONTRACTS)

Some of the key content requirements for contracts priced at from \$3301 to \$19999 include:

- Must be **in writing, dated and signed** by or on behalf of the contractor and the owner
- Must **contain:**
  - **names of the contracting parties** including the name and licence number of the building contractor as it appears on the contractor’s licence,
  - a **description of the contracted work,**
  - the **contract price** (or the method for calculating it, including the contractor’s reasonable estimate of the contract price),
  - the **date for practical completion** or how the date is to be determined (e.g. *within 20 business days of work commencing on site*),
  - a copy of any **plans and specifications** required for the contracted work, and



- a conspicuous notice advising the owner of their cooling-off period rights (see separate section on 'Cooling-off Period').
- the contract should also clearly identify the site where the building work is to take place (e.g. house or unit number and street name, or lot and plan numbers if the work is in a new estate)
- The contractor must give the owner a fully signed copy of the entire contract (including any associated plans and specifications) within 5 business days after the contractor enters the contract
- The maximum deposit for level 1 contracts is 10% of the contract price (**EXCEPTION**: a deposit of up to 20% is allowed if the value of work to be performed off-site is more than 50% of the contract price)
- There is no limit on the number and timing of progress payments (i.e. payments after the deposit) but they must be directly related to progress of the work on site and proportionate to (or less than) the value of the work that relates to the claim (e.g. the contractor can't claim a total of 50% of the contract price, including the deposit, until the value of the work performed on site has reached at least 50% of the contract price)
- 'Variations', or changes to the domestic building contract after it is signed (e.g. an increase, decrease or substitution in the scope of work or changes to the materials included in the contract), must be set out in writing in a compliant variation document and approved by the owner before the variation work commences, and the contractor cannot require payment for an increase in the contract price due to the variation before the variation work has started (see separate section on 'Variations')
- Extensions of time (EOTs – section 42 of Schedule 1B) – a contractor may only claim an extension to the date for practical completion, or an extension to the construction period given in the original contract, if:
  - the need for an extension of time relates to a delay recognised in section 42(1)(a) of Schedule 1B. The recognised reasons for the delay causing the need for an extension of time are:
    - a delay not reasonably foreseeable and beyond the reasonable control of the contractor; or
    - a delay caused by the owner; or
    - a delay caused by a variation of the contract complying with section 40 of Schedule 1B and agreed by the owner in writing; and
  - the claim is presented to the owner in writing within 10 business days of the contractor becoming aware of the cause and extent of the delay or when they ought to have become aware of the cause and extent of the delay (see separate section on 'Delays During Construction and Extensions of Time'); and
  - the owner approves the claim in writing.
- Implied warranties (sections 19 – 26 of Schedule 1B) – the legislation sets out a number of warranties which are deemed to be part of all regulated domestic building contracts (although they only need to be stated in the contract if the contract price is \$20000 or more). A breach of these warranties is effectively

a breach of contract and may give rise to various remedies, including monetary compensation. In summary, the key warranties are:

- **Materials** must be **new and suitable for purpose** (unless otherwise stated in the contract)
- **Work** must be **carried out in accordance with all relevant laws, legal requirements and the plans and specifications** (if plans and specifications form part of the contract)
- **Work** must be **carried out in an appropriate and skilful way** and with reasonable care and skill
- **Work** must be **carried out with reasonable diligence**
- If the contracted work consists of the construction, renovation, improvement or repair of a home to a stage suitable for occupation – the home will in fact be **suitable for occupation when the contracted work is finished**
- If the contract price includes any allowances for *Prime Cost Items* (e.g. fixtures and fittings such as tiling, kitchen appliances, bathroom fittings, etc.) and/or *Provisional Sums* (e.g. contracted services such as rock or termite removal), such **allowances will be calculated with reasonable care and skill.**

## CONTRACTS PRICED AT \$20000 OR MORE (LEVEL 2 CONTRACTS)

The requirements for these contracts include all those listed above for Level 1 contracts, plus the following additional points:

- The **QBCC Consumer Building Guide** (2 pages) must be given to the owner before the owner signs the building contract
- **The Start Date** (in addition to a date for practical completion), or how it is to be determined (e.g. *within 10 business days of building approval being issued*), must be stated
- **Relevant Statutory/Implied Warranties must be stated** in the contract (see the section on *Contracts priced at \$3301 - \$19999 for more details on the implied warranties*)
- **The contract price** (if a fixed amount, without allowances) **and a price change warning** (setting out any contract provisions which could cause the contract price to increase or decrease e.g. because of agreed variations) **must be stated on the first page of the contract schedule**
- **If the contract price is not fixed, the method for calculating it including any allowances** (e.g. for Prime Cost Items or Provisional Sums) **must be stated in the contract schedule**
- **The contractor must, within 10 business days of work commencing on site, give the owner a commencement notice** stating the date work commenced on site and the date for practical completion (see separate section on the 'Commencement Notice')

**WARNING: DO NOT SIGN** the contract until you have read it and confirmed that it does meet the above requirements. If unsure, you should obtain formal legal advice. **Please note**, however, that these are **minimum requirements**. There are other matters, such as provision for *liquidated damages* (see separate section

on 'Liquidated Damages'), which may not be required by the legislation but which may be important for your protection.

It is important to remember that even between domestic building contracts which fully comply with the legislative requirements there will be differences in the apportionment of risk and responsibility. Because the building contract is the main source of the rights and obligations of the parties, it is recommended that, before you sign a contract and commit to a particular contractor, you ask the contractor for a blank copy of the full contract documents they intend to use for your domestic building project. **You should read the contract** (especially the Contract Schedule and the General Conditions/Terms and Conditions) **carefully in your own time and obtain legal advice on any matters of concern before you sign.** Some contractors will be willing to use another contract of your choice, while others may insist on using a particular contract (especially if they are members of one of the major industry associations that produces domestic building contracts for its members).

You may wish to refer to the relevant QBCC contract (depending on the nature and value of your project) on the Commission's website [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au) for comparison if you will be using another form of contract.

### 3. WARNING REGARDING COST PLUS AND CONSTRUCTION MANAGEMENT CONTRACTS

*Cost plus* contracts and *construction management* contracts are two types of contracts which, although more commonly associated with commercial building projects, may legally be used for domestic building work in Queensland. However, because both of these contracts involve added responsibility and risk for home owners, and reduced protection under the Queensland Home Warranty Scheme, **QBCC strongly recommends you obtain formal legal advice before agreeing to use either of these contracts for domestic building work.**

#### COST PLUS CONTRACTS

A **cost plus contract is defined in section 1 of Schedule 1B** of the QBCC Act as "*.. a domestic building contract under which the amount the building contractor is to receive under the contract can not be accurately calculated when the contract is entered into, even if prime cost items and provisional sums are ignored*". Typically under this type of contract the amount you will have to pay will be the actual costs incurred by the contractor (e.g. the amount a builder pays for materials and to their subcontractors) plus a percentage of that total figure, hence 'cost plus 20% [for example]'. Cost plus contracts are particularly dangerous for home owners because of the total lack of certainty regarding the final cost of the project and the high incidence of serious disputes associated with the use of this contract

format. In fact, because the contractor's payment claims are proportionate to the total cost of materials and subcontractor's charges, there is actually a disincentive for the contractor to minimise those costs. Reports to QBCC over many years suggest that the final costs under a cost plus contract are often considerably more than the home owners anticipated (sometimes 50 - 100% greater than their expectation).

#### CONSTRUCTION MANAGEMENT CONTRACTS

The main distinguishing feature of these contracts is that whereas under a normal domestic building contract you sign a single contract with a builder who then contracts with trade contractors and manages and supervises their work on your behalf, under the construction management model in addition to engaging a construction manager (who must be a licensed builder) you may also be required to contract directly with a multitude of trade contractors (e.g. plumbers, carpenters, electricians, etc.) and you will ultimately be responsible for their performance. **A breakdown in your construction management contract, or one of the trade contracts, may have a collateral impact on your other contracts, potentially leaving you exposed to delays and costly legal action.**

**WARNING:** As a consequence of the uncertainty surrounding the final contract price for both of these types of contracts, **protection for non-completion under the Queensland Home Warranty Scheme is generally not available to home owners where these contracts are used.**

### 4. QUEENSLAND HOME WARRANTY SCHEME

#### What is covered?

Residential construction work performed in Queensland valued at over \$3,300 (including labour, materials and GST) is subject to protection under the Queensland Home Warranty Scheme.

#### Examples of the type of work covered include:

- construction of a new home, related roofed building (e.g. a garage), townhouse or multiple unit dwelling (no more than 3 storeys)
- the extension, addition, alteration, renovation or repair of any of the above buildings
- replacement or refit of fixtures or fittings in a kitchen or bathroom
- work on a deck or verandah, attached to a residence
- building work that affects the structural integrity of the building.
- From 28 October 2016, in addition to the above, the following work is also covered:
  - building work on or in the home or related roofed building (e.g. painting)
  - building work on a deck or verandah attached to a related roofed building

- building work for anything attached to the home or related roofed building that requires building or plumbing approval
- building work for a structure attached to the external part of a home or related roofed building which has no other supporting structure (e.g. awning, handrail)
- stairs or ramp which provide access, and are permanently attached to the home or related roofed building
- construction/installation of residential swimming pools
- installation of a manufactured home in a residential park

The examples below do not require insurance if done on their own:

- driveways and paths
- fences.

Queensland Home Warranty Scheme cover provides protection where:

- a licensed builder does not complete the contracted residential construction work and you have correctly terminated the contract
- the contractor fails to rectify defective work
- the building suffers from subsidence or settlement.

## PAYMENT OF THE PREMIUM

Under the QBCC Act, the building contractor is required to collect the premium from the home owner and pay it to the QBCC within 10 business days after the date the contract was entered into or before the contracted work is started (whichever is earlier). The premium is linked to the insurable value of the work and is included in the deposit amount usually payable when you sign the contract (see separate section on 'Deposits').

If QBCC pays out on a claim, QBCC will seek to recover the claim amount from the responsible building contractor.

## CALCULATION OF THE PREMIUM

The premium is based on the "insurable value" of the work.

The term *insurable value* is the amount which represents the reasonable cost of having the work carried out by a licensed contractor on the basis that all materials are to be supplied by the contractor - whether or not the work is carried out on this basis.

## OPTIONAL ADDITIONAL COVER

The standard insurance cover is a maximum of \$200,000. However, a consumer may increase this cover to \$300,000 by paying an additional premium to QBCC. Also, coverage for accommodation, removal and storage costs is \$5,000 increasing to \$10,000 if optional additional cover is obtained. Both of these amounts are included in the maximum entitlements noted above.

In order to be eligible for this additional cover, the standard premium for the work must first be collected from the owner and paid to QBCC by the licensed contractor, and the consumer must then pay the

additional premium direct to QBCC within 30 business days of entering the contract, or prior to the work starting (whichever is earlier).

A premium table for home owners wishing to purchase this cover is available on the QBCC website.

## OBTAINING ASSISTANCE UNDER THE QUEENSLAND HOME WARRANTY SCHEME

If your complaint regarding non-completion, defective work or subsidence involves residential construction work and is not able to be satisfactorily resolved through QBCC's dispute resolution process, your application will be assessed to determine whether you may be eligible for assistance under the Queensland Home Warranty Scheme. You are not required to lodge a separate form for this to occur.

## TIME LIMITS FOR LODGING CLAIMS

- For non-completion the contract must end within 2 years of the contract date, and the claim must be lodged within 3 months of the contract ending
- For structural defects you must lodge the complaint form within 3 months of noticing the defect
- For non-structural defects you must lodge the complaint form within 7 months of the completion date

## WHICH INSURANCE POLICY IS APPLICABLE?

Insurance Policy Conditions Edition 8 applies to contracts signed between 1 July 2009 and 27 October 2016

The new Terms of Cover [http://www.qbcc.qld.gov.au/sites/default/files/QBCC\\_QHWS\\_-\\_Product\\_Disclosure\\_A4\\_-\\_Oct\\_2016.pdf](http://www.qbcc.qld.gov.au/sites/default/files/QBCC_QHWS_-_Product_Disclosure_A4_-_Oct_2016.pdf) apply to contracts signed on or after 28 October 2016. For the full terms of cover see *Queensland Building and Construction Commission Regulation 2003*, Schedule 2C.

## MAKE SURE YOU HAVE A CONTRACT

It's important to have a signed contract with your builder. Apart from being a legal requirement, it ensures that you have access to the benefits under the Queensland Home Warranty Scheme. As mentioned elsewhere in this booklet, the use of a Cost Plus or Construction Management form of contract will lead to the loss of non-completion cover.

## HOW LONG DOES A HOME WARRANTY POLICY LAST?

The work is covered for a period of 6 years 6 months from the date (whichever is earliest):

- the premium is paid
- a contract is entered, or
- work is commenced

The period of cover is extended where the work takes longer than 6 months to complete.

## CHECKING YOUR QUEENSLAND HOME WARRANTY SCHEME COVER

If you have signed a contract for residential construction work, QBCC will send you a notice of cover which provides details of the work, the builder and the premium paid. You should receive this notice before the work begins.

**To check**, contact QBCC with the property details (e.g. address, lot and plan number).

**Note: If you are a subsequent owner of the property and didn't contract with the builder for the work, or you intend purchasing the property, you should complete the Insurance Search Request form (PDF) on the QBCC website.**

For further information on the Queensland Home Warranty Scheme....

Visit the QBCC website or contact QBCC.

## 5. PRELIMINARY AGREEMENTS (see definition of 'excluded building work', s1 of Schedule 1B)

Preliminary agreements are quite common in the domestic building industry, especially where the building work will involve the construction of a home. These agreements are simple contracts entered into in advance of a domestic building contract to enable the builder to obtain payment up front for preliminary work they will perform or arrange on the owner's behalf. This preliminary work (especially tests to obtain foundations data) will often be essential to enable the builder to calculate an accurate price for the building contract.

The work most commonly covered by preliminary agreements includes design work, the preparation of plans and specifications for carrying out domestic building work and the work involved in obtaining foundations data about a building site (e.g. soil tests and contour surveys to determine the soil classification and earthwork costs). These activities all fall under the definition of 'excluded building work' in s1 of Schedule 1B of the QBCC Act – this means that the builder is able to take full payment up front to cover their costs in arranging this work on the owner's behalf.

The legislation governing domestic building contracts, Schedule 1B of the QBCC Act, does not specifically address preliminary agreements – the rights and obligations of the parties under these simple agreements are therefore governed by general principles of contract law. As with any contract, **you should carefully read the terms of any preliminary agreement before signing it** to ensure you are clear on exactly what you are paying for, **and seek formal legal advice if you are unsure of your rights and obligations under the agreement** (**WARNING:** Some preliminary agreements seek to impose harsh penalties or extra charges if the owner, having received the final contract price, decides not to

proceed with the building contract. Such provisions may be illegal – seek formal legal advice **before signing** any agreement which contains such penalty provisions).

## 6. CONSUMER BUILDING GUIDE (CBG) (ss18 & 46 of Schedule 1B)

The [Consumer Building Guide](#) (CBG), developed by the QBCC, replaces what was previously called a 'Contract Information Statement'. It contains some basic building and contractual information for home owners and **must be given to the home owner by the contractor before the home owner signs any level 2 domestic building contract (i.e. a domestic building contract priced at \$20000 or more).**

The Guide, which can be downloaded for free from the QBCC website, is already included in most common industry contracts. **Only the QBCC version of the Guide, without amendment, is acceptable under the legislation.**

## 7. PLANS AND SPECIFICATIONS (ss13 – 15 & 23 of Schedule 1B)

Most significant building projects will require the contractor to produce and adhere to plans and specifications. Under section 15 of Schedule 1B the contractor must give the home owner a copy of these plans and specifications together with the other contract documents within 5 business days of both parties signing the contract. **NOTE: It is very important that the description of the contracted work in the contract schedule specifically refers to the plans and specifications**, including their date and/or version number, and that they are attached to the contract for your ease of reference during the building process. Section 23 of Schedule 1B requires that the contractor must carry out the contracted work in accordance with the plans and specifications.

## 8. ALLOWANCES FOR PRIME COST (PC) ITEMS AND PROVISIONAL SUMS (PS) (ss1, 10 & 26 of Schedule 1B)

Sometimes a contractor may not be able to provide an exact fixed price in the contract for fixtures and fittings or contracted services which form part of the contracted work. These items may be covered by an allowance instead of being included in the fixed price component of the contract.

**A prime cost (PC) item allowance is defined in section 1 of Schedule 1B** as “...an item, including, for example, a fixture or fitting—



(a) that has not been selected, or the price of which is not known, when the contract is entered into; and

(b) for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the contract by the building contractor”.

Common examples of PC items are the supply of tiles, tap fittings or in-built kitchen appliances (e.g. ovens, cook tops, dishwashers, etc.)

**A provisional sum (PS) allowance is defined in section 10 of Schedule 1B as:**

“(1) A provisional sum, for a domestic building contract, is an amount that is an estimate of the cost of providing particular contracted services

(2) However, subsection (1) applies only to contracted services for which the building contractor, after making all reasonable enquiries, can not state a definite amount when the contract is entered into.

(3) The reference in subsection (1) to the cost of providing the contracted services includes a reference to the cost of supplying materials needed for the subject work”.

Common examples of PS items are allowances for the cost of rock removal, asbestos removal or earthworks.

Because the final price of any item covered by an allowance could be far more than what has been allowed in the contract, wherever possible **you should try to obtain a fixed price for all, or as much as possible, of the work you intend to contract for.** Sometimes, however, a fixed price may not be available, for example where the tiles you have chosen are sourced from overseas and temporarily out of stock and the contractor is not yet able to obtain a fixed price for the new stock when it arrives. **Contracts which have a high proportion of the total contract price covered by allowances (e.g. 30% or more) are particularly dangerous,** especially for those on a tight budget, because of the level of uncertainty about the final amount payable under the contract. Section 26 of Schedule 1B requires contractors to calculate PC and PS allowances with “...reasonable care and skill...”.

It is very important that, before signing a domestic building contract, you carefully check the documentation to be sure what proportion of the total contract price is fixed and what proportion is covered by PC and PS allowances and therefore variable. When it comes time to pay for these allowances, some contracts, such as those produced by QBCC, require the contractor to provide supporting documentation (e.g. tax invoices or receipts) to evidence the costs they have incurred for the items supplied, or contracted services provided, which were covered by allowances in the contract.

## 9. THE COOLING-OFF PERIOD [ss 35 – 38 of Schedule 1B]

**Under section 35 of Schedule 1B, home owners generally have the right to withdraw from the contract during the cooling-off period of 5 business days. The cooling-off period commences on the day after the owner receives**

**a signed copy of the entire contract** (including any plans and specifications) **and, for contracts priced at \$20000 or more, a copy of the QBCC Consumer Building Guide.** Any delay by the contractor in providing these documents to the owner prolongs the period within which the owner may withdraw from the contract.

**Section 36 of Schedule 1B sets out some restrictions on the owner’s right to withdraw** under the cooling-off provisions (e.g. where the owner and the contractor have previously entered into a contract which is ‘substantially the same’, or where the owner, before entering the contract, has already received formal legal advice about that specific contract).

The **procedure for withdrawing is set out in section 37** of Schedule 1B. If an owner wishes to withdraw under the cooling-off provisions they must, before the expiry of the cooling-off period, give the contractor a written and signed withdrawal notice stating that they are withdrawing from the contract under the cooling-off provisions in section 35 of Schedule 1B of the QBCC Act.

**Section 38 of Schedule 1B sets out the amount a contractor is entitled to receive from an owner who withdraws under the cooling-off provisions** in section 35 (or to retain if the owner has already paid more than the contractor’s entitlement). This entitlement is usually \$100 plus “an amount equal to any out-of-pocket expenses reasonably incurred by the building contractor before the owner withdrew”.

## 10. FOUNDATIONS DATA (s31 OF SCHEDULE 1B)

Under section 31 of Schedule 1B of the QBCC Act *foundations data* (e.g. soil tests, contour surveys) is required where a building contractor is contracting to perform domestic building work that:

- requires the construction or alteration of footings, or a concrete slab, for a building; or
- may adversely affect the footings of a building or a concrete slab forming part of a building.

**In practice, foundations data will almost always be required for the construction of a new home or an associated building requiring footings or a concrete slab, major extensions to an existing home, and the construction or installation of an in-ground swimming pool.**

Because foundations data is important in determining the cost of earthworks and building foundations, and therefore in providing an accurate total contract price, s31(2) of Schedule 1B of the QBCC Act requires contractors to obtain any foundations data necessary for the work before they enter the building contract. The contractor usually covers the costs of obtaining the foundations data up front via a simple contract called a *preliminary agreement* which the parties sign before finalising the main building contract (see *Part 5 of this booklet titled ‘Preliminary Agreements’*). **Section 31(5)** of Schedule 1B of the QBCC Act requires the building contractor to provide a copy of the foundations data to the owner once the owner has paid for the costs incurred in obtaining the data. In determining what is the



appropriate foundations data for the particular project the contractor must have regard to the following:

- the Building Code of Australia;
- the need for a drainage plan;
- the need for engineer's drawings and computations; and
- the need for information on the fall of the land at the building site.

The only exceptions to the general requirement for a contractor to commission and obtain the foundations data prior to entering the building agreement are:

- a) where the contractor is not lawfully entitled to enter the building site to obtain the foundations data before the contract is signed AND the contract guarantees there will be no increase in the contract price because of the foundations data when it is later obtained [see section 31(3) of Schedule 1B]; or
- b) where appropriate foundations data already exists (e.g. the data has already been obtained by the owner and given to the contractor) and it is reasonable for the contractor to rely on it [see section 31(4) of Schedule 1B].

## 11. DEPOSITS

### For contracts priced at \$3300 or less (unregulated contracts)

Although a written contract is **not** required under Queensland legislation for domestic building work priced at up to \$3300, and the legislation does not stipulate maximum deposits for these smaller building projects, **QBCC recommends that you should never pay more than 20% deposit** before work commences **and be sure not to pay the full price until you have checked that all the agreed work has been completed.**

### For contracts priced at more than \$3300

Section 33 of Schedule 1B of the QBCC Act sets out the following maximum deposits:

- **For contracts priced at \$3301 - \$19,999 (level 1 contracts)** - a maximum of 10% of the total contract price
- **For contracts priced at \$20,000 or more (level 2 contracts)** - a maximum of 5% of the total contract price.

**EXCEPTION:** Section 33 of Schedule 1B of the QBCC Act also provides for a **new maximum deposit of 20%** - an exception to the general rule of 5% or 10% - **in cases where** (irrespective of the contract price) **"..the value of off-site work is more than 50% of the contract price"**.

It is intended that the new special deposit of 20% only applies in limited circumstances where substantial customised building work or prefabrication is performed away from the building site (e.g. where kitchen modules, or customised windows, sheds, pergolas or cladding are made to measure off-site and the total value of this off-site work - including labour, materials and GST - is more than 50% of the total contract price).

## 12. COMMENCEMENT NOTICE (s16 of Schedule 1B)

**For all contracts priced at \$20000 or more (i.e. level 2 contracts), contractors are now required to give owners a commencement notice within 10 business days of the contracted work commencing on site.** The notice must state the exact date work commenced on site and the date for practical completion. Some contracts, including those produced by QBCC, contain a commencement notice ready for the contractor to fill out and give to the owner. You should retain and refer to this notice (together with any extension of time claims you may have approved) when assessing if, and from what date, you may be entitled to *liquidated damages* (i.e. payments from the contractor to compensate you in the event the contractor fails to complete the contracted work by the date for practical completion - see the section of this booklet titled 'Liquidated Damages').

## 13. PROGRESS PAYMENTS (s34 of Schedule 1B)

Before you sign a building contract it is very important that you discuss with the contractor, and fully understand, what progress payments the contractor proposes for your project (i.e. how much and at what stages you will be required to pay the contractor after work has commenced on site). **It is recommended that the payment stages be linked to clearly defined construction stages** (so you can inspect the work and confirm that the payment stage has been reached) **and that these stages, and the payment required at each, are fully described in the contract.** If, instead of construction stages, the contract provides for payment at regular intervals (e.g. every month), it is very important that the builder's payment claims are supported by detailed evidence of the amount and value of work performed during the period covered by the claim. **Uncertainty about when a progress payment is due, or the amount payable, are common causes of disputes.**

Under Schedule 1B of the QBCC Act **contractors and home owners are now free to determine how many progress payments, if any, are appropriate for their particular project and when they are payable** (irrespective of whether the project involves construction of a new home or work on, or associated with, an existing home). **There is, however, one over-arching requirement for all progress payments** which is set out in section 34(1) of Schedule 1B of the QBCC Act. The effect of this provision is **that the total of the payments demanded at any given point during construction (including the initial deposit) must be directly related to, and not in advance of, progress of the work on the building site.** So, for example, a contractor cannot demand payments totalling 50% of the total contract price (including the deposit) until the total value of the work performed on site (including labour, materials and GST) has reached at least 50% of the contract price.

**Please Note: After the deposit, no progress payments may be demanded or taken until work has actually commenced on site. Payments sought before work commences on site may be treated by QBCC as further deposit payments and if the total exceeds the maximum deposit set out in s33 of Schedule 1B (i.e. 5%, 10% or 20%, as the case may be – see the section in this booklet titled ‘Deposits’), QBCC may take action against the contractor for breaching the QBCC Act.**

An important change under Schedule 1B of the QBCC Act is that contractors can no longer contract out of the obligation for progress payment claims to be ‘proportionate’ to the value of the work that relates to the claim.

**WARNING: Home owners should be careful to never pay more than the amount required under the contract for a progress payment, or make the payment before it is due under the contract, as this may reduce the protection available to them under the Queensland Home Warranty Scheme administered by QBCC.**

## 14. VARIATIONS (ss40, 41 of Schedule 1B)

Full and accurate documentation of *variations* (changes to the original contract) is vital for both home owners and contractors to ensure they are ‘on the same page’ with regard to exactly what work has been agreed.

**Failure to properly document variations is one of the most common causes of confusion on site and disputes** which are costly for both home owners and contractors.

### THE VARIATION DOCUMENT

The *variation document* may be given by the contractor to the owner personally, by post, fax or email or in accordance with any provision in the contract providing for service of notices. It must be dated (and signed) by the contractor, describe the variation and state the change to the contract price because of the variation (increase, decrease or no change) or the method for calculating the change (e.g. \$50 per square metre for the supply and laying of tiles to a balcony). In addition, if the proposed variation is likely to delay the completion of the contracted work, the document must also include the contractor’s reasonable estimate of the period of delay. The variation document must be copied to the owner within 5 business days of agreement on the variation and before the variation work is started.

**The contractor must not commence work on a variation before the owner agrees to the variation in writing, and the contractor cannot require extra payment for a variation before the variation work is started.**

## 15. DELAYS DURING CONSTRUCTION AND EXTENSIONS OF TIME (EOTS) [ss13, 14 and 42 of Schedule 1B]

**Section 14** of Schedule 1B of the QBCC Act requires that all level 2 domestic building contracts (i.e. those priced at \$20000 or more) must state:

- the date for the start of the work at the building site; or
- If a date is not stated, then how the start date is to be determined (e.g. *within 20 business days from the date of approval of the plans*).

In addition, under sections 13 and 14 of Schedule 1B all regulated domestic building contracts (i.e. both level 1 and level 2 contracts) must state the date for practical completion of the contracted work or how the completion date is to be determined (e.g. *180 days from the Start Date*).

The domestic building legislation no longer requires contractors to state in their contracts the number of days they have allowed for likely delays (e.g. for wet weather and non-working days) when calculating the date for practical completion. Contractors should note, however, that the legislation still requires them to make a reasonable allowance for such likely delays because an extension of time (EOT) claim will not be valid if the cause of the delay was reasonably foreseeable or within the reasonable control of the contractor. In the interests of transparency, and to ensure the contractor turns their mind to the issue of likely delays and factors them in, where relevant, to their calculation of the date for practical completion, some contracts (including those produced by QBCC) still require contractors to state the number of days they have allowed for each likely delay (including wet weather and non-working days).

For a contractor to validly claim for an extension of time (EOT), the delay giving rise to the claim must be:

- due to something which is beyond the contractor’s control and which the contractor could not reasonably have anticipated when the contract was signed; or
- a delay caused by the owner; or
- a delay caused by a variation of the contract which complies with the legislation and is agreed in writing by the owner.

In addition, the EOT claim must be given to the owner in writing within 10 business days of when the contractor becomes aware of, or reasonably ought to have become aware of, the cause and extent of the delay. The contractor may only claim an EOT if the owner approves the claim in writing. The contractor must give the owner a fully signed copy of the claim for the extension of time within 5 business days of the owner approving the claim.

## 16. LIQUIDATED DAMAGES (NOT DEALT WITH IN THE LEGISLATION)

Most, but not all, domestic building contract schedules contain some provision for *liquidated damages* (i.e. an amount per day which the contractor agrees to pay the owner to compensate them in the event the contractor fails to complete the contracted work by the date for practical completion). **Check your contract before signing to see if it includes a provision for liquidated damages (LDs).**

### CALCULATION OF LIQUIDATED DAMAGES

The liquidated damages figure should be an amount *per calendar day (not business day)* and be written into the contract. The amount should be the owner's genuine estimate at the time of signing the contract of the extra costs or losses (in the case of a rental property) they will incur per day if the contractor fails to complete the contracted work by the date for practical completion. The appropriate amount will depend on individual circumstances but commonly includes an allowance for such things as:

- extra rent and storage costs incurred due to the delay;
- lost rent (in the case of an investment property); and
- additional interest charges and fees payable to a financier, but only if the extra costs become payable if the contractor fails to complete the contracted work by the date for practical completion, and not otherwise.

As with the repealed DBC Act, the new legislation does not refer to or deal with liquidated damages. This means that it is up to the contracting parties to consider whether LDs are relevant to the particular project and, if so, what amount per calendar day is appropriate in the circumstances. There may be some circumstances in which no liquidated damages may be applicable.

**NOTE:** Some of the more commonly used domestic building contracts (including those produced by QBCC, Master Builders and HIA) contain a default amount per calendar day (currently \$50 per day but subject to change) which will apply when an amount for **liquidated damages** is not stated in the contract schedule. It is very important that owners carefully consider what, if any, extra costs or losses they will suffer if the contracted work is not completed by the date for practical completion and ensure that an appropriate daily amount is recorded in the contract schedule as the liquidated damages before signing the contract. Failure to do so may prove to be very costly, particularly if the contractor has written 'NIL', 'N/A' or an inadequate amount for liquidated damages in the contract schedule.

**NOTE:** The date for practical completion, after which any liquidated damages will be payable, may be different from the date stated in the contract when it was signed. That is because the date for practical completion can be pushed back by, for example, an extension of time (EOT) claimed by the contractor and approved by the owner.

If the contract expressly provides for this, the total amount of liquidated damages may be deducted from the final amount payable under the contract by the owner to the contractor. Such a deduction is generally allowed in the contracts produced by QBCC, HIA and Master Builders.

**NOTE: Deducting any amount from an amount due to the contractor (including for liquidated damages) may constitute a breach of the contract unless the deduction is expressly authorised by the contract. You should carefully check the General Conditions of your contract regarding this matter and if in doubt obtain formal legal advice. Where a deduction is authorised, it is very important that you correctly calculate the number of days of liquidated damages (i.e. the number of days the project has overrun the date for practical completion, as adjusted for any approved extensions of time).**

## 17. DISPUTES – Before the Contract is Completed/Terminated

If you are concerned about any aspect of your domestic building project you should, in the first instance, contact your contractor to discuss the matter. If this does not promptly resolve the issue, you should set out your concerns clearly in writing to your contractor and request that they respond within a reasonable time (say 14 days). Keep a copy of all correspondence.

### QBCC'S EARLY DISPUTE RESOLUTION (EDR) SERVICE

If the dispute is still unresolved, QBCC's EDR process may be of assistance. This free service offers a facilitation-based approach to resolving disputes while the contract is still on foot (*see the section in this booklet headed 'DISPUTES – After the Contract is Completed/Terminated' for information on what to do if you have problems **after** completion of your project or after your contract has been terminated*).

### WHEN EDR MAY BE ABLE TO ASSIST

For QBCC to consider your EDR request, your contract needs to be for domestic building work priced at more than \$3,300 (including labour, materials and GST) - excluding plumbing, drainage, gas fitting, termite management chemical system installation, building design and completed building inspections, each of which can be investigated regardless of value. Domestic building work includes such projects as:

- Building a house or duplex
- Renovating, altering, extending or repairing a home, which can include a residential apartment or unit
- Associated works such as landscaping, paving, driveways, fencing, garages, carports, swimming pools and spas
- Supplying lighting, heating, ventilation, air-conditioning, water supply, sewerage and other services and facilities to a home.



You can find a more comprehensive definition of **domestic building work** in section 4 of [Schedule 1B - Queensland Building and Construction Commission Act 1991](#).

## WHEN EDR CAN'T ASSIST

If any of the circumstances below apply to your situation, QBCC won't be able to assist through its EDR service:

- The work is commercial or industrial building work (i.e. not domestic building work)
- The contract value is \$3,300 or less (including labour, materials and GST) - excluding plumbing, drainage, gas fitting, termite management chemical system installation, building design and completed building inspections, which can be investigated regardless of the value
- The contract has been terminated or completed
- The contract is between two parties other than a home owner and a principal contractor (e.g. a subcontract)
- The builder isn't responsible for the issue (e.g. damage arising from a natural disaster, lack of owner maintenance, etc.)

The EDR process does not prevent you from seeking legal advice or taking legal action against a contractor but it is important to note that under s77(2) of the *Queensland Building and Construction Commission Act* ('the QBCC Act'), building disputes which fall within the jurisdiction of the [Queensland Civil and Administrative Tribunal](#) (QCAT) must, in the first instance, be referred to the QBCC because a party to such a dispute *"...may not apply to the tribunal unless the person has complied with a process established by the commission to attempt to resolve the dispute"*. QCAT's jurisdiction includes most legal disputes arising from domestic building work done in Queensland, and commercial building disputes involving work of a value up to \$50,000 (or more if both parties agree).

If QBCC is unable to resolve the dispute, the Commission recommends all parties obtain formal legal advice before taking further legal action, including making an application to the Tribunal. If you do not have a solicitor, you may locate one by contacting the [Queensland Law Society](#) on 1300 367 757.

## BEFORE YOU START AN EDR REQUEST

It's important to speak to your principal contractor and clearly identify your concerns with them before you lodge an EDR request with QBCC. Explain the items you believe are defective or incomplete and give your contractor reasonable access to the site to view and address your concerns.

## WHAT WILL HAPPEN AFTER WE RECEIVE YOUR EDR REQUEST

When QBCC receives your EDR request, it will be assigned to one of our Resolution Services officers. They will contact you and your contractor. An attempt will be made in this first phone call to facilitate an agreement to settle your dispute.

If this is unsuccessful, and if defective work is alleged,

a site inspection may be conducted. During the site inspection, QBCC's building inspector will again attempt to facilitate an agreement to settle your dispute.

If an agreement can't be reached, and if it is necessary, the QBCC building inspector may issue the contractor with a direction to rectify where the inspector decides the contractor is responsible for defective building work.

It's QBCC's intention that this whole process will generally be completed within 28 days.

## HOW TO START THE EDR PROCESS

Either the home owner or the principal contractor can start the process using one of the following methods:

- Call QBCC 24/7 on 139 333
- Submit a request online using our general enquiry form
- Fax a request to QBCC at (07) 3225 2999
- Post a request to:  
The Queensland Building and Construction Commission  
GPO Box 5099  
Brisbane QLD 4001
- Visit one of our Customer Service Centres (see the QBCC website for locations)

## WHAT YOU CAN DO TO HELP THE EDR PROCESS

The process will run more smoothly if you have all of your information handy when QBCC's Resolution Services officer contacts you. This includes the details of the contractor you are in dispute with and the contract you have signed with them.

As the EDR process is about facilitation, it is important for both parties to be open and willing to reach an agreement.

**What to do if you're unhappy with the outcome of the EDR process**

## INTERNAL REVIEW

If you feel a decision made by QBCC is incorrect, you can have it separately reviewed by the QBCC's Internal Review Unit. You have 28 days from when you became aware of the QBCC decision in which to lodge your Internal Review request.

## QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (QCAT)

If you're unhappy with the initial decision of the QBCC, or a subsequent decision of the Internal Review Unit, you can have the decision reviewed by the Queensland Civil and Administrative Tribunal (QCAT) but you must apply to QCAT within 28 days of receiving QBCC's decision.

## 18. DISPUTES – After the Contract is Completed/Terminated

If your building issue or dispute arises after your contract is completed/terminated, the QBCC's EDR process will not be available to you. Instead, you should follow the process applicable to your situation as set out in the links below on the QBCC website which provide information for:

- [Complaints about defective building work](#)
- [Complaints about building design](#)
- [Complaints about building non-completion](#)
- [Complaints about pre-purchase or termite inspections](#)

### QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (QCAT)

As mentioned previously in the section headed 'DISPUTES – Before the Contract is Completed/Terminated', you may apply to QCAT to review a decision by QBCC but you must lodge the application within 28 days of receiving that decision.

For further information on QCAT's jurisdiction and procedures contact QCAT on 1300 753 288 or visit their website at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au).

## 19. CONTRACT TERMINATION (not dealt with in the legislation)

**WARNING:** Terminating a building contract for any reason is a very serious matter which may, if not done properly, cause major financial and legal problems for a party wrongly terminating. For a home owner, invalid termination may also reduce the amount of cover available to them under the Queensland Home Warranty Scheme administered by QBCC (e.g. cover for non-completion may not be available). For this reason, it is **STRONGLY RECOMMENDED** that owners obtain formal legal advice before taking steps to terminate their domestic building contract.

If there is a written contract (as required under Queensland legislation), proper termination will usually require strict adherence to the documentation and procedures for termination set out in the General Conditions/Terms and Conditions of the contract itself (The domestic building legislation does not deal with the procedures for terminating a contract). Most domestic building contracts require that, in most circumstances, 2 written notices must be sent to the other party:

(a) **Notice of breach:** an initial notice calling upon the other party to remedy the breach or breaches described in the notice, with a warning that the contract will be terminated unless the breaches are remedied within the period prescribed by the contract (commonly 10 business days) or a longer period if the prescribed period is insufficient; and

(b) **Termination notice:** a second written notice (sent

after the time stipulated in the first notice has passed) referring to the first notice and stating that as the breach or breaches have not been remedied, the contract is now terminated.

There are some rare circumstances where a written contract may be terminated by a single written notice. An example is where a party becomes insolvent (a situation which cannot be quickly rectified). **Any correspondence relating to termination of a building contract should be written by, or at least checked by, a practising lawyer experienced in building disputes. Not all lawyers have such experience.**

Unfortunately QBCC is unable to provide legal advice.

## 20. PRACTICAL COMPLETION AND FINAL PAYMENT (s1 of Schedule 1B)

Under s1 of Schedule 1B, the *practical completion stage* is defined as the point at which:

- all of the contracted work has been completed in compliance with the contract, all statutory requirements and the plans and specifications; and
- all minor defects and minor omissions, if any, are recorded in an appropriate, signed, *defects document* which has been copied to the owner.

**In addition to these statutory requirements, it is important to check the General Conditions of your contract to see if they impose any additional contractual obligations on the contractor over and above those in the legislation.**

If you believe that the work is not complete when the contractor requests the practical completion payment (i.e. the contracted work has not reached practical completion as defined in your contract and the legislation), you should inform your contractor in writing and check your contract to be sure of your obligations concerning the final payment. The final payment is not due until practical completion has been reached.

### CERTIFICATES OF INSPECTION

Not all domestic building projects require building inspections or the issuing of certificates by a building certifier. While house construction and most major renovations and extensions will require building inspections and certification, some minor building projects, especially those not involving structural work, may not require inspection or certification. You should **discuss the certification requirements for your particular project with your building contractor and, if still unsure, check with a building certifier.**

**NOTE:** Queensland legislation does NOT expressly require building contractors to hand over all certificates of inspection relevant to the building work to the owner before the owner is required to pay the final contract payment. This means that in some circumstances, such as when the parties are in dispute or the contractor has not yet paid the building certifier, the owner may have to pursue the contractor for the final inspection

certificate (in particular) for many weeks after practical completion has taken place. This risk is largely avoided if the building owner has directly engaged the building certifier, instead of asking or allowing the contractor to engage the certifier. Failure to receive the final certificate can significantly disadvantage the building owner, especially if they are seeking to on-sell the house soon after practical completion, as a potential purchaser is likely to want written proof that all building work has been approved and certified. While the legislation does not require it, **some contracts, such as those produced by the QBCC, require all certificates of inspection relevant to the contracted work** (including the 'Final' certificate, where relevant) to **be copied to the owner before the contractor demands the final payment**. You should carefully check what your contract requires the contractor to do.

## DEFECTS DOCUMENT (S1 OF SCHEDULE 1B)

When the work is finished (i.e. at practical completion) your building contractor and you (or your authorised representative) should inspect the contracted work and, if you believe there are any minor defects or minor omissions, compile a 'defects document'. The defects document must:

1. List all minor defects and minor omissions in the work that **BOTH** you and your contractor agree exist;
2. State when the building contractor is to remedy the minor defects and minor omissions mentioned in the above list;
3. List any minor defects and minor omissions in the work that you believe exist but the contractor does not agree exist (i.e. which the contractor does not agree with); and
4. Be signed by the contractor and yourself or your authorised representative.

## 21. DEFECTS LIABILITY PERIOD IN THE CONTRACT

Most of the domestic building contracts commonly used in Queensland (including those currently produced by QBCC, HIA and Master Builders Queensland) include a 'defects liability period' which is set out in the General Conditions of the contract (usually towards the end of the document).

The defects liability period is the period within which the contractor is contractually obligated to rectify defects in the contracted building work which the owner has identified and referred to the builder in writing. The defects liability period is commonly 12 months from the date of practical completion.

QBCC recommends that you carefully check the contracted work, and notify the contractor in writing of any defects you identify, well before the expiry of the defects liability period. You may, for example, wish to diarise a reminder to check the work and document any problems a month or so before the expiry of the defects liability period set out in the contract.

## 22. DIRECTION TO RECTIFY

A consumer seeking the assistance of the Queensland Building and Construction Commission (QBCC) through the issuing of a direction to a building contractor to rectify defective building work must lodge a complaint form about the building work with the QBCC as soon as possible after negotiations break down with the contractor. The complaint form may be downloaded from the QBCC website.

In the first instance, before notifying QBCC, the owner should (as mentioned in the above section titled "Defects Liability Period in the Contract") promptly advise the contractor in writing of the alleged defects and give the contractor a reasonable period in which to respond (say 14 days, depending on the nature of the defects and any relevant provisions in your contract) and reasonable access to the site to enable the rectification work to be performed. If the contractor fails to rectify the defects you should promptly contact QBCC.

### PERIOD WITHIN WHICH QBCC CAN ISSUE A DIRECTION TO RECTIFY

After a written complaint has been received, QBCC may inspect the building work and, where appropriate, issue a direction to rectify to the building contractor. A direction to rectify cannot be issued more than 6 years and 3 months after completion of the building work without an order of QCAT extending that period.

## 23. FOR FURTHER INFORMATION

**To confirm a contractor's qualifications and track record** – go to 'Licensee Search' on the Home Page of the QBCC website [qbcc.qld.gov.au](http://qbcc.qld.gov.au) and enter the contractor's licence number or the contractor's name/company name exactly as it appears on their licence.

**Re legislative requirements for contracts** – refer to the relevant Queensland legislation, Schedule 1B of the QBCC Act. Google 'Qld legislation', click on 'Current legislation', then under 'Q' click on 'Queensland Building and Construction Commission Act 1991' and go to Schedule 1B.

**Re legal advice on your particular contracts/circumstances** – consult a practising solicitor experienced in building contracts and legislation. If you do not have a solicitor, you may locate one by contacting the [Queensland Law Society](http://Queensland Law Society) on 1300 367 757.

**Re technical building advice** – consult a QBCC licensed Building Certifier or builder.

**Re general information on the building process and related matters, including licence requirements and the Queensland Home Warranty Scheme** – refer to the QBCC website or contact QBCC statewide on 139 333.



# NOTES:

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**Need more information?**

Visit [qbcc.qld.gov.au](http://qbcc.qld.gov.au)



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