

Guidance Statement – Confidential – For Internal Use Only



Prepayment

The Queensland Building and Construction Commission Regulation 2018 (QBCC Regulation) Schedule 6 Terms of Cover states:

“Subdivision 2 Completion of work

7 Assistance for completion of work

- (1) *The consumer is entitled to claim assistance for the reasonable cost of completing the residential construction work.*
- (5) *The assistance mentioned in subsection (1) or (3) the consumer is entitled to claim in relation to the residential construction work must be reduced by—*
 - (a) *for assistance mentioned in subsection (1)—the consumer’s liability amount for the work; and*
 - (b) *if the consumer makes a payment to, or for, the licensed contractor for the work before the payment is due under the contract—the reasonable cost of completing the work for which the payment was made; and*
 - (c) *if the insurable value of the work exceeds the contract price for the work by more than 30%—the amount by which the insurable value of the work exceeds the contract price.*

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Prepayment has occurred when a consumer pays money to a contractor, or to a subcontractor or supplier of the contractor (on the contractor's behalf), before the payment has become due, in accordance with the contract progress payment schedule.

A contract sets out the rights and responsibilities of all parties to the contract, and the contractor has the right to request payments only when they fall due. Conversely, the consumer has the responsibility to only make payments when they fall due, in accordance with the contract definitions.

Contractors sometimes request consumers make progress payments in advance, to help with "cash flow" or "to ensure continued supply of goods and services". Many excuses or reasons may be used by contractors to request payments in advance, and consumers often feel pressured or intimidated into making the payments to ensure the construction continues without delay.

If the consumer makes a payment before it falls due (under the terms and conditions of the contract), they have made a "prepayment" and have not abided by their rights and responsibilities under the contract. The QBCC Regs requires the Assessment Officer to quantify this prepayment and deduct it from any claim approval.

Prepayment will be identified by the Assessment Officer by comparing the stage payments made against the building contract to the Service Provider's Non-Completion Report detailing the stage of construction reached.

If the consumer has paid for a stage not yet reached, prepayment has occurred. The Assessment Officer should use the "reasonable person test" in considering if prepayment has occurred; that is, if a "reasonable" person would believe a progress stage had been reached (without technical knowledge) and then made a payment.

The QBCC should determine if the person making the payment acted reasonably. For example, if extra works are on site other than for the stage payment not yet achieved but paid for, and the value of that work is similar to the

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minor outstanding work, the QBCC may consider the consumer acted reasonably in making the payment knowing the work on site exceeds in value that which is incomplete in the progress stage.

A prepayment has the effect of reducing the consumer's liability amount (as they have made more payments), yet as the work has not been performed in full, they have not received the stage of construction which they have paid for. This then increases the completion cost, and potential claim approval. Had the consumer only paid the progress payments required, the difference in the cost to complete the construction compared to their liability amount would be lower.

The consumer's actions have prejudiced the QBCC and we must therefore quantify the prepayment. It is unreasonable to expect the Home Warranty Scheme to compensate consumers for money that they have paid unnecessarily.

To quantify the amount of prepayment, the QBCC looks at the value of work not yet completed in the prepaid stage of work. The Service Provider will provide information about prepayment in their Non-Completion Report including the estimated value of the prepayment. The QBCC may further utilise the Service Provider, a QA or panel contractor if further assessment of the prepayment is required.

The prepayment calculation is to be deducted from the total cost to complete when assessing a claim. This will have the effect of reducing the QBCC's claim payment. The prepayment calculation may have been discussed with the consumer prior to the approval letter, but the decision must only be advised **in writing** at claim approval stage.

The application of this clause is mandatory.

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