

Non-Completion Technical Procedures Manual

Building and Technical Inspectorate

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QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION

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1 Overview

1.0 Purpose

The *Non-Completion Technical Procedures Manual* (manual) is limited to Building Inspector (BI) and Senior Building Inspector (SBI) duties relating to the Non-Completion team. For procedures not expressly addressed by this manual the procedures within the *Disputes Procedures Manual* and *Claims Procedures Manual* apply.

This manual is a supplementary document to existing procedures for the non-completion BIs and SBI.

1.1 Non-Completion team

The Non-Completion team is dedicated to managing all non-completion claims across the State to improve claim approval times, by focusing on mitigating bottlenecks of claims related to non-completion. The team only manages non-completion claims.

The team consists of a Senior Lead (SL), Principal Resolution Officer (PRO), two Senior Assessment Officers (SAO), four Assessment Officers (AO) and a dedicated Building Inspector (BI) who will receive assistance from another BI during high volume periods, reporting to a Senior Building Inspector (SBI) who supports the BI while undertaking various duties outside the team.

The team reports to the Manager of Resolution Services Strategic (MRSS).

1.2 Consumer's entitlement to claim assistance for non-completion

The *Queensland Building and Construction Commission Act 1991* (QBCC Act) Part 5 The statutory insurance scheme (Part 5), sets out assistance available under the Queensland Home Warranty Scheme (QHWS) and its limitations; the terms of cover under which a person is entitled to assistance under the QHWS are prescribed by the *Queensland Building and Construction Commission Regulation 2018* (QBCC Regulation). Meaning a consumer is entitled to claim assistance for completion of **residential construction work** if the work is incomplete and defective, subject to the limitations of the QHWS within the QBCC Act and QBCC Regulation.

1.3 Role of the Building Inspector

It is the role of the BI to provide technical advice to the SL, PRO, SAOs and AOs which are the team of delegated insurance decision makers (decision makers). In all instances, when providing technical advice, the BI must consider the circumstance and hierarchy of legislation regulating the building work, both the work subject to the claim, and the work subject to the technical enquiry.

When providing technical advice to decision makers, it is important to form an understanding of the decision before the decision maker, and where possible, the related insurance provision within the QBCC Act and QBCC Regulation.

The BI's role is to partner with decision makers to progress claims to achieve insurance time frames. The primary duties include:

- provide technical advice to the non-completion claims team to meet targeted insurance approval timeframes
- respond to internal technical enquiries relating to non-completion insurance decisions

- undertake termination advice, Direction to Rectify (DTR) consideration, and Scope of Work (SOW) site inspections with stakeholders
- provide internal technical advice, including the preparation of technical reports, review of Sedgwick Building reports, SOW and variation requests
- provide feedback and contribution to the team's process documents
- manage a caseload relating to non-completion inspections, DTR and Failure to Rectify (FTR) considerations
- attend regular site inspections with Sedgwick's Building Consultants (BC) to develop the partnership between Sedgwick and QBCC and identify opportunity for technical process improvements
- evaluate current case load volume to decide allocation of resource.

 **Non-Completion Team BI Process Map**

1.4 Record keeping

A record of all technical advices must be marked within the [BI Statistics for Non-Completion](#) excel sheet. The data is used by the MRSS for the monthly report and by the SBI to monitor the technical work volume being generated by the decision makers.

For cases being managed by the BI, such as DTR considerations, it is the responsibility of the BI to maintain records in accordance with QBCC's existing procedures and keep the insurance officer informed of the status of the DTR consideration and its impact on the SOW.

For technical advice requests responded to via email, the insurance decision maker will save the technical advice provided by the BI in ECM.

1.5 The role of Sedgwick

It is the role of Sedgwick to:

- attend sites for the purpose of preparing a scope of work to complete the building work and decide if the work is satisfactory. In deciding if the work is satisfactory the Building Consultant is required to identify any defective building work, explaining why the work is defective, and provide a SOW to rectify the defective and incomplete work. Minor defects and omissions which are non-structural defects and not due under the terms of the contract until practical completion will generally form part of the incomplete work provisions of the SOW. The guiding principle when preparing a SOW for incomplete work is to record the built work's stage and scope to complete the work in accordance with the documents forming part of the contract
- provide a recommendation whether QBCC should accept or decline consumer's claims for defective and incomplete building work, including claims for variations
- maintain a panel of rectifying builders for tendering and undertaking work resulting from approved claims under the Queensland Home Warranty Scheme (QHWS)

- conduct tender processes for quantifying the reasonable cost to the QBCC for rectification of incomplete and defective building work
- providing recommendation to QBCC about stage payments due under the terms of contracts between consumers and panel builders
- provide recommendation to QBCC about variation requests arising during contracts between consumers and panel builders.

1.6 The role of Panel Builders

It is the role of panel builders to enter contracts with consumers for building work in accordance with approved SOWs. QBCC's service does not extend to direct supervision of the work or ongoing project management of these contracts because QBCC is not a party to the contract and we are not able to provide specific direction to either party as it relates to complying with terms of the contract. QBCC's interest in the contract between the consumer and panel builder is for the purpose of releasing stage payments as they are due under the terms of the contract.

It is the role of the panel builders to undertake the work in accordance with all relevant codes and standards, within the scope of the contract. As part of their service agreement, panel builders are required to maintain reasonable levels of customer service and maintain a licence record without demerits arising from DTRs. Consumers enquiring about the terms of the contract between themselves, and the panel builder should be encouraged to contact the panel builder in the first instance and Sedgwick in the second instance to attempt to resolve any matters which arise during the contract period.

2 Process

2.0 Overview

This section outlines the guiding principles to be followed when undertaking the most frequent requests arising from the non-completion team of decision makers.

2.1 Site Inspection – termination advice

Prior to accepting a claim, in the circumstance the respondent contractor is currently licenced, the decision maker must decide if the fixed price residential contract has ended as per the QBCC Regulation Section 6, Part 1(4).

For the purpose of a claim, the consumer is entitled to claim assistance under the QHWS if the contract is validly terminated on the default of the licensed contractor.

In the circumstance the consumer's termination relies on a contractual default by the contractor in relation to the built work which may, for example, relate to the progress or adequacy of the work, the decision maker will request technical advice from the BI related to the technical aspects of the decision before them (termination decision).

The role of the BI in responding to the technical request is to answer the question posed by the decision maker.

It is important to establish the basis of the termination and limit the investigation to the reason for the termination.

For consumers who sought legal advice, the notice to remedy breach and termination letters should be reviewed and the inspection limited to the items listed as requiring remedy.

It is the role of the BI to review the case and decide if a site inspection is necessary. The following circumstances (not exhaustive) would cause the BI to decide an inspection was necessary:

- evidence provided by both parties cannot be relied upon because it is unclear
- the termination relies on the inadequacy of work, or progress of the work, which cannot be established without inspection
- correspondence within the case indicates parties do not understand the process as it stands therefore by meeting both parties on site to provide relevant process information and allowing both parties to ask questions and present evidence relating to the termination consideration, the likelihood of acceptance of QBCC's future decision will be increased.

If it is decided an inspection is necessary the BI is to request the decision maker invite both parties to an inspection, providing a weeks' notice to both parties.

Inspection Process

The non-competition trial team identified that termination site inspections within the non-completion team arise infrequently because in most instances sufficient evidence is provided to the QBCC for the decision maker to decide the termination.

Two inspectors should attend termination advice inspections because the non-completion trial team identified that parties to these disputes are often emotive and have difficulty following our inspection process.

Between the two BIs or BI and SBI, one officer, ordinarily the more senior officer, is responsible for facilitating the site meeting and affording the second officer the opportunity to procure the necessary evidence to provide the termination advice to the decision maker.

The inspection process for the facilitator is to:

1. Undertake the meeting introductions by:
 - explaining the meeting's purpose and excluding peripheral subjects. It is imperative parties are advised the meeting is limited to the subjects relevant to the termination and that new items or defects will not be addressed within the meeting
 - discussing behavioural expectations where relevant

- asking parties to identify themselves
 - covering any OH&S requirements.
2. Invite the claimant to direct QBCC to each item relevant to the termination. Upon attendance of the item both parties must be afforded the opportunity to provide a verbal statement and encouraged to refer to any written material relevant to their statement. In instances parties produce documents, confirm the documents have been sent to QBCC and if not, request they are sent to the decision maker.
 3. Direct parties away from the item in question to afford the second inspector unrestricted access to inspect and photograph the item. Clear parties away and assist with any testing, such as water tests or the like.
 4. Field process questions as they arise. It's often effective to answer questions while the second inspector investigates an item of complaint.
 5. Close the meeting by recapping any process information provided and the next steps regarding termination decision, noting your advice will form part of the decision that will be made by the insurance decision maker who will take all matters relevant to the decision into consideration.

After the meeting it is the responsibility of the second BI to prepare advice for the insurance decision maker. This may be done by an email and/or a report dependent upon the complexity of the matter.

2.2 Site Inspection – attend with Sedgwick’s building consultant

For all claims within the south east (Brisbane areas) Sedgwick Engagements requiring Sedgwick’s Building Consultant (BC) to attend site for the purpose of preparing a SOW include the requirement to invite QBCC’s BI where the respondent is likely to respond to a Notice of Defective Work (NODW).

It is the role of the BI to attend as many site inspections as possible with Sedgwick’s BC in order to:

- view the subject of the claim and any defective building work to reduce approval times when reviewing SOWs
- develop consistent decision-making process with Sedgwick’s BCs.
- provide feedback to BCs about inspection process and defect determination.

In all instances, it may not be possible for the BI to attend every inspection he or she is invited to such as conflicting appointments or limited availability due to a lack of capacity or backlog of technical advice requests.

In such instances, the inspection invitation should be declined, and Sedgwick instructed to proceed with the inspection.

If faced with numerous conflicting invitations, the most complex cases should take precedence, such as more complex cases or the first inspection of a set of cases related to a large contractor collapse in lieu of simple cases such as an incomplete pool or house at slab stage.

It is the role of Sedgwick's BC to facilitate the site inspection, in accordance with their engagement. QBCC's BI is there to observe and provide any process information to the claimant should they raise questions.

Sedgwick's BC will produce a SOW after the meeting and forward it to QBCC for review and approval.

For cases where the original contractor, is currently licenced, Sedgwick's BC will also produce a separate Defects Report.

2.3 DTR consideration

With Site Inspection

In the circumstance QBCC accepts a claim for incomplete and defective work, and the affected party, the original contractor has an active, suspended or cancelled licence,

they should be sent a copy of Sedgwick's Defects Report and the **7 Day Defects Notice for Non-Comp** to afford them the opportunity to attend to the defects.

If the contractor does not respond within 7 days, the claim is progressed.

If the contractor responds to QBCC indicating, he or she wishes to attend to some or all of the defects a Dispute case will be opened by the decision maker and forwarded to the BI for a DTR consideration.

The QBCC Regulation, Schedule 6, Part 6, section 67 requires that if the commission is of the opinion residential construction work, the subject of the claim, is defective or incomplete, before deciding the claim the commission must decide whether to give a DTR under section 72 of the QBCC Act, meaning both the defective and incomplete work must be addressed within the DTR decision (refer to section 3 for DTR considerations).

It is the role of the BI to review the case and decide if a site inspection is necessary. The following circumstances (not exhaustive) would cause the BI to decide an inspection was necessary:

- aspects within the Sedgwick Defects Report are ambiguous and the BI is unable to rely upon the report
- new information has been presented to the QBCC by the respondent
- the respondent has indicated a willingness to comply with the NODW and is seeking guidance regarding how to comply
- correspondence within the case indicates parties do not understand the process as it stands therefore by meeting both parties on site to provide relevant process information and allowing both parties to ask questions and present evidence relating to the DTR consideration the likelihood of acceptance of QBCC's future decision will be increased.

If it is decided an inspection is necessary the BI is to request the decision maker invite both parties to an inspection, providing a weeks' notice to both parties.

Inspection Process

The non-competition trial team identified that DTR site inspections within the non-completion team arise infrequently because in most instances the Sedgwick report can be relied upon to make the DTR decision therefore two inspectors should attend the DTR inspection and assign responsibilities to facilitate the inspection and gather relevant evidence.

Between the two BIs or BI and SBI, one officer, ordinarily the more senior officer, is responsible for facilitating the site meeting and affording the second officer the opportunity to procure the necessary evidence to make the DTR decision.

The inspection process for the facilitator is to:

1. Undertake the meeting introductions by:
 - explaining the meeting's purpose and excluding peripheral subjects
 - discussing behavioural expectations where relevant
 - asking parties to identify themselves
 - covering any OH&S requirements.
2. Invite the claimant to direct QBCC to each item of complaint. Upon attendance of the item both parties must be afforded the opportunity to provide a verbal statement and encouraged to refer to any written material relevant to their statement. In instances parties produce documents, confirm the documents have been sent to QBCC and if not, request they are sent to the decision maker.
3. Direct parties away from the item in question to afford the second inspector unrestricted access to inspect and photograph the item. Clear parties away and assist with any testing, such as water tests or the like.
4. Field process questions as they arise. It's often effective to answer questions while the second inspector investigates an item of complaint.
5. Close the meeting, by recapping on any process information provided and the next steps regarding DTR decision, timeframes, and review rights.

After the meeting it is the responsibility of the second BI to prepare an inspection report and issue the decision in accordance with the Disputes Procedures Manual.

Further guidance for the relevant DTR considerations is contained within the **BI Decision – DTR Non-Comp – Reasonability** template available in ActiveDocs which may be utilised for more complex matters or when relying on the contents of Sedgwick's report.

NOTE: For FTR inspections follow the Disputes Procedures Manual.

Without Site Inspection

The following circumstances (not exhaustive) would cause the BI to decide an inspection was not necessary:

- the Sedgwick Defects Report contains sufficient detail to be relied upon for the purpose of issuing a DTR

- the respondent, in response to the NODW, has not provided any information contrary to the findings within the Sedgwick Defects Report
- the respondent has indicated a desire to rectify all, or aspects of, the defects contained within the Sedgwick Defects Report.
- correspondence within the case indicates parties understand the process therefore the most efficient means of progressing the matter is to issue a DTR relying on the Sedgwick Defects Report.

If it is decided a DTR will be issued, a report is not necessary. DTR wording is to be entered into the Salesforce case and instruction issued to the CSO/AO for regional offices, to send the DTR and Sedgwick report to both parties. For more complex matters where numerous reports or documents have been relied upon, it may be necessary to zip the documents within ECM for the CSO/AO.

Further guidance for the relevant DTR considerations is contained within the **BI Decision – DTR Non-Comp – Reasonability** template available in ActiveDocs which may be utilised for more complex matters or when relying on the contents of Sedgwick's report.

NOTE: For FTR inspections follow the Disputes Procedures Manual.

2.4 Review of Sedgwick's SOW

Sedgwick's service agreement for non-completion claims is to prepare a SOW to complete the work, the subject of the claim, and rectify any defective building work.

For SOWs with defects or complex matters where the decision maker requires technical guidance, the process is to refer the SOW to the BI for technical review.

A SOW will be sent to the BI and generally contain:

- a Tender Assessment Report (TAR) which contains the entire assessment of the *claim by Sedgwick*
- *Defective Items for Acceptance document which includes a scope to rectify item*
- *Defective Items Report (for active respondents)*
- *Defective Items for declination.*

It is the role of the BI to either:

- a) recommend approval of the SOW or
- b) draft a change request for the decision maker to send to Sedgwick.

Because QBCC outsources this aspect of the work to Sedgwick, as the BI reviewing the SOW, you are:

- relying on the inspection and observations made by the Sedgwick BC
- relying on the documents of reference noted by the Sedgwick BC, including the payment reconciliation provided to Sedgwick by the decision maker

- checking the defect findings and recommendations are in accordance with QBCC's Rectification of Building Work Policy
- checking the SOW to repair defective items is reasonable and necessary to remedy the defects
- making any change requests to Sedgwick to be sent via the decision maker and noting reoccurring inconsistencies to be highlighted to Sedgwick via the SBI who will raise the issue at the QBCC/Sedgwick monthly meeting.

The BI's recommendation or change request is to be emailed to the relevant decision maker.

2.5 Termination advice – without inspection

Prior to accepting a claim, in the circumstance the respondent is currently licenced, the decision maker must decide if the fixed price residential contract has ended per the QBCC Regulation, Schedule 6, Part 1, section 4.

For the purpose of a claim, the consumer is entitled to claim assistance under the QHWS if the contract is validly terminated on the default of the licensed contractor.

In the circumstance the consumer's termination relies on a contractual default by the contractor in relation to the built work which may, for example, relate to the progress or adequacy of the work, the decision maker will request technical advice from the BI related to the technical aspects of the decision before them (termination decision).

The role of the BI in responding to the technical request is to answer the question posed by the decision maker.

It is important to establish the basis of the termination and limit the investigation to the reason for the termination.

For consumers who sought legal advice, the notice to remedy breach and termination letters should be reviewed and the inspection limited to the items listed as requiring remedy.

It is the role of the BI to review the case and decide if a site inspection is necessary. The following circumstances (not exhaustive) would cause the BI to decide an inspection was not necessary:

- evidence provided by both parties contains sufficient detail to decide the relevant aspects of the insurance decision makers enquiry
- the termination relies on contractual aspects that can be verified by documentary evidence.

If the advice can be provided without an inspection, the advice, and the reasons to support the advice must be emailed to the decision maker.

The **Non-Comp Technical Termination Advice** template for providing advice is available in ActiveDocs.

2.6 Variation requests

It is the role of Sedgwick to provide variation requests, including a recommendation for approval or declination to QBCC for consideration for latent conditions arising during the course of a contract between a claimant and panel builder.

Decision makers will send technical requests to the BI to review the variation requests and provide advice.

It is the role of the BI to provide a recommendation to the decision maker whether the variation should be approved or declined.

Variations should be assessed against the following criteria and only approved if the answer to all is yes.

1. Is the subject of the variation a latent condition arising as part of the contract? yes/no.
2. Is the work the subject of the variation necessary to complete the original SOW? yes/no.
3. If the variation relates to a defect, is it defective requiring rectification to complete the original SOW? yes/no.
4. Does the work form part of the original contract? yes/no
5. Is the respondent responsible for the latent condition or defect? yes/no
6. Is the claimant entitled to claim for the work under the terms of the QHWS? yes/no

The BI's recommendation and a brief reason for acceptance or declination must be emailed to the decision maker.

2.7 Tender Assessment Report review and quote variance

It is the role to Sedgwick to conduct a tendering process for non-completion SOW.

- For claims below \$100k 2 tenders are required.
- For claims over \$100k 3 tenders are required.

In accordance with Sedgwick's service agreement with QBCC, Sedgwick issue a Tender Assessment Report (TAR) for QBCC's consideration. Contained within the report is a concluding recommendation from Sedgwick about acceptance of the winning tender.

Decision makers forward the TAR and tenders to the BI for review requesting the BI's recommendation for acceptance.

A TAR should be reviewed for:

1. exclusions which may render a tender non-conforming
2. large variances within the tenders, noting reoccurring inconsistencies to be highlighted to Sedgwick via the SBI who will raise the issue at the QBCC/Sedgwick monthly meeting
3. comparison with the estimated cost to complete against Sedgwick's original TAR forming part of the SOW.

Note: detailed cost analysis is not required, however tenders which significantly exceed the original estimate or other tenderers should be questioned through Sedgwick. Panel builders service agreements require competitive pricing.

The BI's recommendation is to be emailed to the decision maker.

2.8 Under-pricing and calculating insurable value

If the **insurable value** of the work, exceeds the **contract price** for the work by more than 30%, the claim must be reduced by the amount by which the **insurable value** of the work exceeds the contract price, meaning QBCC must quantify the **insurable value** of the work, excluding the cost to rectify any defective building work, and deduct the contract price from the **insurable value** to determine if the work exceeds the contract price for the work by more than 30%.

For Part 5 of the QBCC Act, **insurable value** of residential construction work, means an amount representing the **reasonable cost to the insurer** of having the work carried out by a licensed contractor on the basis that all building and other materials are to be supplied by the contractor (whether or not the work is carried out by a licensed contractor on that basis).

It is the role of the decision maker to determine if under-pricing should be applied to a claim, in accordance with section 5.8 of the Claims Procedures Manual, however recent increases in cost and labour and the liquidation of various large builders has resulted in technical requests to calculate the **insurable value** at the time of signing the contract (original contract, the subject of the claim).

In the circumstance of a large, liquidated builder's collapse it is the role of the BI to determine the **insurable value** of the work and provide advice to the decision maker regarding whether under-pricing should be applied at the request of the decision maker.

Sedgwick should be engaged by the SBI to utilise their Quantity Surveyor to review typical designs used by the collapsed builder to determine the M2 rate for typical floor plans and to provide historical price indices for the past two years within a report to QBCC.

The set of square meter rates, and price indices, within the Sedgwick report is to be used to quantify the insurable value of the work by multiplying the relevant M2 rate from the report by the square meters of building work on the site, nominated on the architectural floor plans.

The overall floor area used within the Sedgwick report comprises of the fully enclosed covered areas measured from the internal face of the external walls and unenclosed covered areas comprising of floor and roof such as a patio or entrance.

If under-pricing is not triggered, the BI must advise the decision maker via email with a brief reason for the recommendation.

Alternatively, if under-pricing is triggered, the BI's recommendation should be that Sedgwick is engaged to provide a site-specific Quantity Surveyor's assessment and report to determine under-pricing.

3 Technical Subjects

3.0 Overview

This section contains reoccurring enquiries for technical advice arising from the team of decision makers and common technical subjects QBCC has formed a view on.

3.1 Building Approval

A common enquiry from decision makers relates to aspects of building approvals which arise throughout the claim process and are restricting the claim from progressing.

Obtaining building development approval (building approval) and complying with a development approval is the ultimate responsibility of the landowner, irrespective of contractual arrangements between a consumer and a building contractor. Part 164 of the *Planning Act 2016* (Planning Act) states a person must not contravene a development approval meaning engaging a panel contractor to perform works as part of a claim under the QHWS without the appropriate approvals in place would be placing both the claimant and rectifying builder in an untenable position of committing an offence under the Planning Act.

QBCC is not able to assist claimants with confirming the built work complies with the conditions of the building development approval.

Claimants should be encouraged, in the first instance, to engage with the original building certifier, noting they may need to obtain a quote and pay the costs for assessment work associated with the built work. If the original certifier's engagement with the previous building contractor has not been disengaged, the original building certifier may discontinue the engagement (Building Act, 144) to engage with the building owner. The QBCC does not have the power to compel the building certifier to undertake any actions.

Should the claimant engage a private certifier for the purpose of certifying both the built work and remaining work, QBCC will consider the cost of certifying the new work under the terms of the QHWS and the original contract.

If the claimant is unable to satisfy the commission that the built work complies with the development approval through confirmation from a building certifier, where there are missing certificates impeding the claimant from obtaining a Form 21 or Form 17, or the claimant's bank/lender will not provide a written guarantee that they will release the final payment in the absence of a Form 21. In the interest of safeguarding the panel builders, QBCC would cash settle these claims.

The main questions relating to building approval are covered below.

Typical Question 1: Should building approval be included in the Sedgwick SOW?

Answer: The QBCC Regulation Terms of cover entitles a consumer to claim for:

- completion of defective and incomplete residential construction work and
- the reasonable cost of obtaining a certificate in relation to the work and any inspections of the built work required for obtaining the certificate.

The consumer is not entitled to claim for the cost of obtaining certificates in relation to work carried out in whole or part by the licensed contractor who carried out the residential construction work for which the consumer is entitled to claim assistance meaning any assessment work for the built work done by the original contractor is expressly excluded

from the terms of cover per the QBCC Regulation Schedule 6, section 51 Cost of certificates.

If the original contractor was responsible for providing building approval, the SOW to complete the work must include building approval and the panel builders must allow for certification of the work they will undertake.

Any missing certificates relating to the built work, required by the certifier, must be procured by the claimant, and supplied to the panel builder.

Typical Question 2

Circumstance

There is a building approval in place and the built work has progressed beyond a *stage of assessable development*, regulated by the *Building Regulation 2021* (Building Regulation).

The private certifier has issued a Form 16 inspection certificate for the most recent *stage of assessable development*.

There are missing Form 12 (Appointed Competent Person) and/or Form 43 (QBCC Licensee Aspect Certificate).

Without the certificates the certifier will not issue final certificate. (Form 21 Class 1 and 10 or Form 17 for pools)

Question: Can the panel builder progress the work?

Answer: Yes, they may progress the work without contravening section 49 of the Building Regulation or Part 164 of the Planning Act.

Because there is a building approval in place and the regulated *stage of assessable development* has been certified and the *certificate of inspection* (Form 16) issued, the absence of aspect certificates (Form 1s and Form 43) associated with the work progressed beyond the *stage of assessable development* does not prohibit progression of the work to the next stage.

Typical Question 3

Circumstance

The previous builder progressed the work beyond a regulated *stage of assessable building work*. A certificate of inspection (Form 16) stating that the work complies with the development approval for the stage has not been issued by the certifier. NOTE: There may be an outstanding Form 62, or the stage was never inspected because the original builder did not notify the private certifier.

Question: Can the panel builder progress the work?

Answer: No, they cannot progress the work without contravening:

- Part 49 *Prohibition on further building work until certificate of inspection given of the Building Regulation 2021* or
- the conditions of the building approval

- Part 164 of the Planning Act which states a person must not contravene a development approval.

The claimant should be encouraged to engage with the building certifier to procure the necessary certificate of inspection (Form 16).

There may be ways for a Certifier to satisfy themselves the *built work* is compliant, additional advice for landowners and builders regarding how they may go about requesting their certifier [approve existing building work](#), can also be sought from the [Department of Energy and Public works](#).

If the claimant is unable to resolve the matter with the private certifier, or re-engage the private certifier, they may seek assistance from the local council to appoint a private certifier pursuant to parts 51, 144 and 145 of the *Building Act 1975* (Building Act).

Typical Question 4: Does the work require Building Approval?

Answer: It is the responsibility of the claimant to provide suitable evidence to QBCC that work the QBCC suspects requires required building approval, has the relevant approvals in place.

The BI should consult relevant legislation to determine if the work appears to require building approval or not.

If it can be determined the work does not require building approval, advice must be provided to the decision maker that the claim may progress.

If the BI suspects building approval is required, instruction should be provided to the claimant via the decision maker that the claimant must provide written confirmation the work does or does not require building approval from a licenced private building certifier before a panel builder can be appointed to complete the work.

Relevant Legislation to consider when reviewing building work's requirement for Building Approval:

Part 20 of the Building Act states that all building work is *assessable development*, requiring building approval, unless it is *accepted development* prescribed by regulation, not requiring a building approval.

Schedule 1 of the Building Regulation lists work that is self-assessable, not requiring a building permit (Building Approval).

Schedule 2 of the Building Regulation lists work that is exempt from the relevant provisions (see Part 21(5) of the Building Act) not requiring a building permit.

Schedule 7 of the *Planning Regulation 2017* lists work that is Accepted Development.

Typical Question 5

Circumstance

Work has been undertaken without the claimant acquiring a building approval. The requirement to seek building approval may or may not form part of the original contract.

QBCC has asked the claimant to provide a current building approval.

The claimant has provided written advice from a certifier that the work, or aspects of the work, cannot be approved.

Question: How does QBCC settle the claim?

Answer: QBCC will settle the claim pursuant to the QBCC Regulation, Schedule 6, section 7 Assistance for completion of work, sub sections (2) and (3).

The effect of settling the claim pursuant to the above means the unapproved building work must be demolished and the claimant reimbursed for the amount they have paid under the terms of the contract, subject to the AO's payment assessment.

NOTE: Demolition does not include make good.

Because if the consumer is not entitled to claim assistance to complete the residential work because it is prohibited under a relevant law (*Queensland Heritage Act 1992* or the Planning Act) they are entitled to claim assistance for the reasonable cost of demolishing the built work and an amount equivalent to the amount the consumer has paid under the contract when the claim is made for the built work that is demolished.

Question 6 – Changes to a development approval (Building Approval)

Circumstance

The built work is not otherwise defective however it differs in size and or configuration from the approved plans, for example an extension to a house measuring 6m x 6m has been constructed to a size of 6m x 5.5m.

Question: Can the work progress?

Answer: The claimant should be directed to the building certifier requesting advice as to whether a change application to the building development permit (Building Approval) is required.

A minor change would likely be approved by the building certifier, and if approved:

- a panel builder could progress the work lawfully and
- the consumer could claim for loss pursuant to QBCC Regulation Schedule 6, section 53 which we could consider.

A substantial change to the building approval may not be approved meaning:

- the panel builder could not progress the work lawfully and
- we may consider the work to be defective if it does not comply with the provisions of the QBCC Regulation Schedule 6, Part 2, section 15 (2) (b) (i) to (iii).

(i) the *Building Act 1975*;

- (ii) the Building Code of Australia;
- (iii) the Queensland Development Code;

The claimant should be directed to seek advice from their building certifier asking if a change application is required.

Reference

Planning Act Part 5 Development approvals - Division 2 – Subdivision 2 - sections 77 to 82A.

Per the Planning Act, **minor change** means a change that—

“(a) for a development application—

- (i) does not result in substantially different development; and*
- (ii) if the application, including the change, were made when the change is made—would not cause—*
 - (A) the inclusion of prohibited development in the application; or*
 - (B) referral to a referral agency if there were no referral agencies for the development application; or*
 - (C) referral to extra referral agencies; or*
 - (D) a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or*
 - (E) public notification if public notification was not required for the development application; or*

(b) for a development approval—

- (i) would not result in substantially different development; and*
- (ii) if a development application for the development, including the change, were made when the change application is made would not cause—*
 - (A) the inclusion of prohibited development in the application; or*
 - (B) referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or*
 - (C) referral to extra referral agencies, other than to the chief executive; or*
 - (D) a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or*

(E) *public notification if public notification was not required for the development application.*

Note—

For when a change to a development approval that was a PDA development approval is a minor change, see also the Economic Development Act 2012, section 51 AM.”

3.2 Occupancy and final certificate

In the circumstance a claimant is unable to procure a final certificate because there are missing aspect certificates or the like, the claimant asks how they are allowed to occupy a class 1a building or use a class 10 structure without a *final inspection certificate*.

They are able to occupy a class 1a building because the issuing of *certificates of occupancy* is expressly excluded from the Building Act.

Section 114 of the Building Act restricts the use of a building without a *certificate of occupancy* for all buildings that are not single detached class 1a buildings or class 10 structures.

A certificate of occupancy is not required for a single detached class 1a building or a class 10 building or structure (Building Act section 114) meaning occupying a class 1a building, or using a class 10 building, or structure, is not prohibited.

Certificates of occupancy are often confused with *final inspection certificates*. For class 1a and 10 buildings, issuing a final inspection certificate in the approved form is part of the certifiers functions under part 10 of the Building Act.

The absence of a final inspection certificate (Form 21 or Form 17) does not prohibit the use of the building work.

3.3 Work Started

(For Pools see section 3.5)

Technical requests from decision makers relating to whether work has started are often sent to the BI. In most cases photos of the site may be sought from the claimant to determine if work has started before assessing the work against section 43 of the QBCC Regulation which states:

43 When work is taken to have started—[Act, s 71F](#)

(1) For [section 71F](#) of the [Act](#), residential construction work is taken to start when—

- (a) *if the work includes the erection or construction of a footing system or slab or the provision of sewerage or drainage on a site—the erection or construction of the footing system or slab, or the provision of sewerage or drainage, physically starts on the site; or*

- (b) *otherwise—work for the renovation, alteration, extension, improvement, or repair of an existing building on a site physically starts on the site.*

(2) *In this section—*

physically starts, *for residential construction work, does not include starting any of the following—*

- (a) *the preparation of plans or specifications for the performance of the work.*
- (b) *design work.*
- (c) *administration services.*
- (d) *earthmoving or excavating.*
- (e) *site work related to the residential construction work.*

Advice should be provided to the decision maker advising if, in your view, work has or has not started when assessed against this section.

A detailed explanation is covered within the below Guidance Statement.



CLAIM-016 – Non-Completion – Work Started

3.4 Practical Completion

Decision makers will often refer a case for technical advice asking if practical completion has been reached. The request is ordinarily sent prior to the decision maker accepting a non-completion claim.

The QBCC Act Part 5 The statutory insurance scheme (Part 5), sets out assistance available under the QHWS and its limitations; the terms of cover under which a person is entitled to assistance under the QHWS are prescribed by the QBCC Regulation. A consumer is entitled to claim assistance for completion of residential construction work if the work is incomplete and defective, subject to the limitations of the QBCC Act and QBCC Regulation.

The following terms are important to consider.

Incomplete is defined under section 67WA of the QBCC Act as:

“incomplete, *in relation to residential construction work—*

(a) *means work that has not reached practical completion; but*

(b) *does not include—*

- (i) *work that does not comply with the contract because of a cosmetic difference; or*

Example of a cosmetic difference—

a different shade of paint

- (ii) *work that is defective.*

Practical completion is defined in section 1 of Schedule 1B of the QBCC Act as being:

“... for a domestic building contract, means the day when the subject work is completed—

- (a) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (b) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect occupation; and
- (c) if the building owner claims there are minor defects or minor omissions—the building contractor gives the building owner a defects document for the minor defects or minor omissions.”

It's important to understand that just because *practical completion* has not been reached, it may not necessarily mean the claimant is entitled to claim assistance for incomplete residential construction work, if:

1. the residential construction work is complete
2. aspects of the built work are complete; however, they differ in appearance or configuration to the contract plans or specifications and the work complies with the Building Act, BCA and QDC (contractual matters)
3. aspects of the work are defective. Note: the term defective is expressly excluded from the definition of *incomplete*
4. practical completion has not been reached because of a documentary reason under the terms of the contract, for example using the QBCC regulated contract, practical completion has not been reached until the final certificate has been issued. Because acquisition of the final certificate is not residential construction work, a non-completion claim would not assist.

To determine whether the work is *incomplete*, **determine** if the work has reached **practical completion** by assessing the work, contract, and circumstance, against the QBCC Act definition of *practical completion*, sections a to c.

To determine if the work is *incomplete* for the purpose of a non-completion claim, consider if assistance can be provided under the terms of the QHWS by assessing the work, contract, and circumstance, against points 1 to 4 above.

Further guidance is contained within the ActiveDocs template **Non-Comp Technical Advice – PC Reached but Not Complete** which may be utilised for more complex matters.

3.5 Pools

When Work Has Started for a Swimming Pool

For a Fibreglass Pool – once Excavation has commenced on site. Despite QBCC Act 71F(2)(d) based on internal advice in 2020) Refer to the Claims Procedures Manual section 4.5.

For Concrete Reinforced Pool – when the reinforcement has begun within the excavation, meaning the footing system has started.

Work Covered by the QHWS

A common technical enquiry arising from non-completion claims relating to pools is whether a claimant is entitled to claim assistance under the QHWS for defects in the pool, its coping, surrounding pavements, water features, slides or the like.

A contract to carry out repairs or renovations to a pool is not insurable. The QBCC Act section 67WC(1)(d) provides that primary insurable work is “*the erection, construction or installation of a swimming pool*” There is no provision in the QBCC Act or the QBCC Regulation that includes repair or renovation of a pool as primary insurable work.

NOTE: If the contract was for the repair of a pool and other primary insurable work, incomplete repair work, which would be associated insurable work would be covered under the provisions of the scheme however defects would not be covered.

*****Refer to the Claims Procedures Manual for additional detail*****

Consumers are entitled to claim assistance for *incomplete pools*, and *structural defects* related to the pool for contracts to construct a pool only, and contracts for both a house and pool.

Under the terms of the QHWS, for *primary insurable work*, if the work is a swimming pool a *structural defect* is limited to:

- a defect in the work that allows water to escape through the shell of the swimming pool; or
- a defect in the work that adversely affects the health or safety of persons who use the swimming pool.

Ref: QBCC Reg – 2018 – Schedule 6 – Part 1 Preliminary (2) Definition.

The following work related to defects in swimming pools is expressly excluded from the provisions of the QHWS. The consumer is not entitled to claim assistance for defects in swimming pools related to any of the points below:

- a defect in the work for the swimming pool that is not a structural defect
- defects in the surfacing of an area outside the coping for the swimming pool
- defects related to work associated with the erection, construction, or installation of the swimming pool, including, for example, paving, supplying or installing water features, swimming pool slides, diving boards and swimming pool equipment and housings
- defects in the steps for the swimming pool that are not fixed structures.

Ref: QBCC Regulation – Schedule 6 – Part 3 Defective Work (19) No assistance for particular loss.

When providing technical advice to decision makers regarding defective work related to pools, advice must include if, in your opinion, the severity of the defect is such that a consumer would or would not be entitled to claim assistance from the QHWS pursuant to section 15 of Schedule 6 of the QBCC Regulation when assessing the defects location and impact against:

- section 19 of the QBCC Regulation

- the definition of a *structural defect* for the purpose of *primary insurable work*
- the BA and its conditions.
- the relevant assessment provisions, i.e. correct year of NCC referenced within the BA conditions
- for Pre-moulded fibre-reinforced plastic pools AS1839:2021.

3.6 Portable Buildings

From time to time, technical enquires are referred for advice relating to incomplete work associated with the installation of prefabricated homes.

It is the role of the BI to establish the stage of work, and provide advice to the decision maker whether, in your opinion, aspects of the work are incomplete, and or defective, for the purpose of a non-completion claim.

Evidence submitted by both parties such as photos, reports, statements should be considered to determine the stage of the work.

The offsite fabrication of a portable building, that is a residence or related roofed building is not insurable work, (*Ref: QBCC Act 67WB(1)(d)*) meaning if the contract termination occurred prior to works starting on site, the *residential construction work* has not started for the purpose of a claim. Note: the decision maker will consider if a refund of deposit is applicable.

When considering if the work has started, refer to previous sections of this manual and the QBCC Regulation section 43.

Building work for the installation of a prefabricated home that is a residence or related roofed building over \$3,300 is primary insurable work, per the QBCC Act 67WC(1)(c) and 67WE, meaning if the *residential construction work* has physically started on site, either:

- the start of the erection or construction of the footing system or slab or
- the start of the provision of sewerage or drainage on the site, then

The *work* has started for the purpose of a claim and the claimant may be entitled to a non-completion claim.

3.7 Variation requests for theft of materials

Materials stolen; panel builder has possession of the site

In all circumstances variation requests from panel builders for theft of materials, when the materials were removed from site, while the panel builder was in control of the site, should be declined on the basis the panel builder is responsible for the security on the site.

Materials stolen; panel builder has not yet taken possession of the site

In the circumstance, through the tendering process, Sedgwick provided instruction to panel builders to utilise existing materials on site, and it can be verified the panel builder allowed to use existing building materials, and the materials were stolen prior to the panel builder taking

possession of the site, it may be appropriate to recommend approval of a variation in certain circumstances. In deciding if it is appropriate, consider:

Under the terms of QHWS cover:

- the QBCC Regulation Schedule 6, section 12 – consumers are entitled to claim assistance for vandalism or forcible removal of built work for loss exceeding \$2,500 if the consumer reports the event to the police
- the term “theft” is not included in the QHWS Terms of cover and the building materials are not residential construction work, therefore not the subject of the claim
- the QBCC Regulation Schedule 6, section 7 – consumers are entitled to claim assistance for the reasonable cost of completing residential construction work.

Meaning:

- if the materials were not included within the tender, the panel builder is entitled to claim a variation under the terms of their tender, leaving the question of the claimant’s entitlement to claim
- prior to the panel builder taking possession, the claimant is responsible for security on the site, however the claimant is claiming to have the work complete, and the building materials are not building work until they are fixed in place meaning if a variation were not approved for the building materials, a re-tendering process may need to be undertaken
- the claimant is entitled to claim the reasonable cost of having the *residential construction work*, the subject of the claim, complete
- by continuing to instruct panel builders to use suitable building materials on site, accepting the risk that they may be damaged or removed prior to the panel builder taking possession of the site, the QBCC is achieving more competitive tenders.

It is the ultimate decision of the decision maker to decide if a claimant’s claim for a variation because of theft of materials should be accepted. It is the BI’s responsibility to form a view, considering the circumstance, and to provide that view to the decision maker.

3.8 Rectification of work without or without QBCC approval

Under the QBCC Regulation Schedule 6 section 64, consumers are not entitled to claim assistance for completion of work without prior written approval from the QBCC. Work includes:

- demolition of the built work
- rectification of the work (defects)
- reinstatement of the built work (continuing the work).

Often claimants will request approval from QBCC to undertake aspects of the work which is subject to their claim. The request may relate to defective or incomplete work and is often made on the basis of:

- opportunity for a subcontractor to complete their work to limit delays
- preserve aspects of the work, by completing a roof, or installing cladding or the like
- urgent works to remove health and safety issues.

Approving a claimant's written request pursuant to QBCC Regulation Schedule 6 section 64 to undertake aspects of the work is a delegated decision to be made by either the Manager Resolution Services Operations or Strategic or the Director. It is the BI's role to provide technical advice to the decision maker whose role it is to prepare the request for the manager's final decision.

When considering a claimant's request to complete aspects of the work, it is always preferable for all of the work, the subject of the claim, to be tendered and completed through the Sedgwick tendering process.

Approval should only be recommended in the circumstance undertaking the work will:

- a) reduce or eliminate an imminent safety risk or
- b) preserve aspects of the built work which would otherwise be destroyed if the work was not undertaken.

Examples include:

- a claimant wanting to install a roof because they claim a steel frame will rust before the tendering process. In this circumstance you should recommend the request be declined because the steel frame is designed to be exposed to the weather and would be expected to perform adequately in the time between the making of the claim and the rectifying builder being appointed.

In contrast to the above:

- a claimant asked to install a roof flashing because the roof was leaking resulting in water entering the dwelling and damaging internal plasterboard ceilings, and the owner could provide suitable evidence to support their claim such as photographs of the area to be flashed and the damage to the ceiling, approval to install the flashing would be reasonable, with the consequential damage forming part of the Sedgwick SOW. In this circumstance you should recommend the manager approve the request
- where claims are at frame stage, some claimants may be justifiably concerned with the exposed frame being damaged by the weather over time.

The QBCC does not provide a 'make safe' service and customers are generally advised that where they have any immediate safety or security concerns, they take steps to mitigate any risk to occupants and visitors e.g. restrict access to any unsafe areas. This can also extend to protecting the building elements from damage resulting in further financial loss e.g. tarping roof frames to protect damage from the weather. Each case should be reviewed on its own merits, with regard to whether temporary or permanent mitigation measures are being proposed or have been carried out by the claimant. If the case involves permanent measures, you should consider whether temporary measures could achieve the same intent because the QBCC's ability to recover the debt could be prejudiced if QBCC has been prevented from quantifying the loss through tendering and/or issuing a NODW where it involves defects.

In the circumstance a claimant undertook aspects of the work without prior approval they would not be entitled to claim assistance for the loss they incurred as a result of undertaking the work. The decision maker will need to partially decline the claim for the amount of work undertaken without prior written approval.

3.9 Weathered particle board flooring

Particle board flooring, when exposed to the weather for prolonged periods is often found to be defective by Sedgwick during their initial inspection or a variation arises post signing of the contract between the consumer and rectifying builder.

In deciding if the particle board flooring is defective the following should be considered.

- **AS1860.2 – 2006** – part 11 Protection of Installed Particleboard Flooring, which states:
“2. The specified maximum exposure time of 3 months refers to the general effects of weathering on the resin system and wood particles. However, it is possible that hot sun may cause dimensional problems in a relatively short time under severe conditions. If moisture is dried out rapidly from the board surface, the moisture gradient through the board thickness may cause the panel to cup, resulting in nails being pulled from joists or nail heads being pulled through the board.

3. Particleboard flooring would be expected to perform satisfactorily, in most cases, after more than 3 months weather exposure. However, if the 3 months exposure is exceeded, the particleboard-flooring manufacturer should be called upon to provide a written opinion as to whether the floor is satisfactory. If the manufacturer considers the floor to be unsatisfactory, appropriate remedial action should be specified.”
- **The manufacturer** of the sheet flooring should also be identified, and their recommendation considered. for example D & R Henderson particleboard sheet flooring states a maximum exposure period of 5 months is permissible.
- **The condition** of the flooring should be considered, looking for peaking at the joints, swelling, dimensional problems, detached fixings.
- **Remedial action** may be recommended by the manufacturer, and in some cases replacement of the flooring may be required.
- **The duration of exposure:**

Work Ceased:

Work Expected to progress, estimated:

Total time of exposure = ? months.

It is the BI's responsibility to accept or decline Sedgwick's recommendation and provide advice to the decision maker whether the defective flooring, and proposed rectification method, should be accepted, declined, or varied. In the circumstance the BI disagrees with Sedgwick, a change request to the SOW must be drafted by the BI and sent to the decision maker for action.

3.10 Damaged pliable building membranes (wall wrap)

Pliable building membrane (wall wrap) is often damaged when exposed to the weather for extended periods of time, in most cases manufacturers recommend close inspection and replacement of damaged wall wrap after 6 weeks of exposure.

In deciding if wall wrap is defective consider:

- **NCC revision** applicable to the build, for example:
 - (i) 2019 NCC-BCA V2-3.8.7.2 Pliable building membrane or
 - (ii) 2022 NCC-BCA V2-10.8.1 External wall construction
- **The manufacturers** recommendation for weather exposure duration.
- **The condition** of the wall wrap, meaning the wrap must be continuous and integral without rips, tares, or the like.
- **The duration of exposure:**

Work Ceased:

Work Expected to progress, estimated:

Total time of exposure = ? months

It is the BI's responsibility to accept or decline Sedgwick's recommendation and provide advice to the decision maker whether the defective flooring, and proposed rectification method, should be accepted, declined, or varied. In the circumstance the BI disagrees with Sedgwick, a change request to the SOW must be drafted by the BI and sent to the decision maker for action.

3.11 Weathered timber frame

Refer to the below Guidance Statement



CLAIM-031 – Non-Completion Frame Deterioration