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Changes to QBCC legislation

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Changes to QBCC legislation were announced recently that will impact the building and construction industry. Changes have been made to the following sections:

- [Building disputes](#)
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Building disputes (commencing 10 October 2014)

1. Defective work after practical completion
 - a. Structural defects (replaces Cat 1 defects) – e.g. leaking roof, leaking shower, health and safety issue – 6 years + 3 months from practical completion
 - b. Non-structural defects (replaces Cat 2 defects) – e.g. sticking doors or windows, minor cracking of plasterboard – 12 months from when the work was completed (formerly 7 months)
 - c. For both structural and non-structural there is an additional 12 months to lodge a notice about the defect with the QBCC, providing the consumer has advised the contractor in writing.
2. Defective work before practical completion
 - a. Residential work – lodge a request for an Early Dispute Resolution (EDR) service.
 - b. Commercial work – EDR is not applicable.
 - c. Both building contractor and the home owner can request an EDR.
 - d. EDR deals with both defective work and non-payment issues.
3. Internal Review
 - a. If either party is unhappy with the decision of the EDR they have 28 days to lodge an Internal Review request or 28 days to apply to QCAT for an independent external review. The parties can only review an EDR decision if the matter in dispute is defined as reviewable domestic work.
4. All residential building disputes must be dealt with by the QBCC in the first instance. A person cannot proceed to QCAT unless they have first complied with the QBCC's dispute resolution process.
5. The fact that a matter is being heard in QCAT does not prevent the Commission from acting in relation to the dispute. For example, the Commission may continue to process a statutory insurance claim even though the matter is before QCAT.
6. An owner or occupier adjacent to a building site may request assistance from the Commission in regards to consequential damage to the property.

Financial reporting (commencing 10 October 2014)

- The new Minimum Financial Requirements (MFR) Policy no longer requires licensed contractors to provide financial information demonstrating they comply with the financial requirements yearly at renewal.
- Licensed contractors must still meet the MFR at all times. Contractors must monitor their financial performance and maintain internal management accounts at least quarterly (no need to send these to the Commission). This aligns with BAS (GST) reporting requirements so as not to add additional burdens on contractors.
- Contractors with annual turnover in excess of \$600,000 are only required to submit a financial report to the Commission when they first apply for a licence or in order to upgrade their turnover limit.
- The new MFR requires licensed contractors to pay all debts within agreed trading terms. Failure to pay a legitimately owed debt that is not subject to genuine dispute may result in loss of licence.
- The new MFR doubles the turnover limits for the self-certification categories to \$200,000 (only for trade contractors) and \$600,000 (entry level for builders) respectively.
- New licensing provisions allows an applicant for a contractor's licence, a nominee supervisor's licence, a site supervisor's licence or a fire protection occupational licence to choose to renew their licence for a period of either 1 or 3 years.

Domestic Building Contracts (commencing 1 March 2015)

purpose contract for which the contract price is more than \$3,300 but less than \$20,000. A Level 1 contract has less regulation compared to a Level 2 contract.

2. Level 2 regulated contract is a domestic contract and includes both a cost-plus contract and a mixed-purpose contract for which the contract price is equal to or more than \$20,000. More onerous general provisions apply to Level 2 contracts namely, details of price, method of calculating price and warning regarding price change, documents to be given to the owner.
3. Warranties
 - a. Structural defects (replaces Cat 1 defects) – e.g. leaking roof, leaking shower, health and safety issue. The warranty period is for 6 years from when the work was completed (formerly 6 years + 6 months).
 - b. Non-structural defects (replaces Cat 2 defects) – e.g. sticking doors or windows, minor cracking of plasterboard. The warranty period is 12 months from when the work was completed (formerly 6 years + 6 months).
 - c. For both structural and non-structural defects a person has an additional 6 months to lodge a notice about the defect with the QBCC, providing they have advised the contractor in writing.
4. An owner may withdraw from a contract within the cooling off period (5 business days):
 - a. If an owner is not given a copy of both the signed contract and, in addition for a Level 2 contract, a copy of a consumer building guide within 5 business days of signing the contract.
 - b. An owner may still withdraw from a contract if the owner subsequently received the contract and, in addition for a Level 2 contract, the consumer building guide, after the cooling off period.
5. The maximum deposits that can be sought is 10% for Level 1 contracts, 5% for Level 2 contracts and 20% if greater than 50% of the work involves off-site work.
6. There are no prescribed payment stages – all the Act requires is that the claim must be proportionate to the value of the work completed.
7. Variations – an owner has to agree to the variation in writing.
 - i. However the variation does not have to be signed by the owner instead the owner could agree to the variation in an email.
 - ii. Work on the variation cannot commence until the owner has agreed in writing. A maximum penalty of 20 penalty units applies for failure to comply.
 - iii. The contractor must give the owner a copy of the variation before the first of the following happens; 5 business days elapse from the time the contractor and owner agreed to the variation; or any work starts on the works for variation. A maximum penalty of 20 penalty units applies for failure to comply.
 - iv. The variation document must comply with the formal requirements as set down by the QBCC Act for a variation. A maximum penalty of 20 penalty units applies for failure to comply.
 - v. If the value of any single variation or multiple variations increases the contract price by more than \$5,000 an additional insurance premium must be paid to the Commission before any work relating to the variation starts. This requirement also applies to speculative residential construction work and where optional addition insurance cover has been obtained by the owner.
8. Extension of time – a contractor must get the owner to approve the claim in writing.
 - i. Unless an owner approves a contractor's claim in writing a contractor cannot seek to rely on an extension of time under the contract. The owner can approve the claim in an email.
 - ii. The contractor must give the owner a signed copy of the claim within 5 business days of the owner approving the claim. A maximum penalty of 20 penalty units applies for failure to comply.

For example, the owner may have caused the delay but refuses to approve the claim in writing. As a consequence the construction period runs over the practical completion date and liquidated damages become due to the owner. The owner deducts the said damages from the final progress payment. The contractor refuses to hand over the keys to the owner arguing they were not liable for damages and the owner must pay all monies before they take possession.

Under these circumstances it might be argued that the contractor is relying on their entitlement to an extension of time claim without having had the owner approve the claim in writing. The contractor in seeking to rely on a claim, not approved in writing by the owner, could be said to be in breach of section 42(2) and therefore liable for the maximum penalty of 20 penalty units.

Master Builders understands that issues arising on site are not always clear cut and beyond dispute. Should a dispute such as described above arise we suggest you give such notices for dispute as required by your contract. If matters cannot be resolved you should access the QBCC's Early Dispute Resolution (EDR) service. Furthermore it is our understanding that the Commission when involved in these matters will be proportionate in their response when deciding whether or not the contractor failed to comply with the extension of time requirements.

- iii. The claim must be given to the owner within 10 business days of the contractor becoming aware of the cause and extent of the delay or when the contractor reasonably ought to have become aware the cause and extent of the delay.
- iv. The owner must be given a copy of the claim within 5 business days of the owner approving the claim. Failure to give a copy of the claim to the owner could result in a 20 penalty unit fine for the contractor.
9. There is no requirement for obtaining foundation data before entering a contract where:
 - i. The contractor cannot gain lawful access to the site; and

they based the contract price is found to differ and as a consequence is more expensive to build. The contractor accepts any increase in the cost to the foundation works.

10. The contractor must give the owner a commencement notice within 10 business days of starting the work on site.
11. Contractors should be aware there has been a substantial increase in the maximum number of demerit points and heavier fines for offences when not complying with the requirements of the QBCC Act in regards to domestic building contracts, variations claims, extension of time claims, exceeding deposits. See extended list below.

Statutory Home Warranty Insurance Scheme (commencing 1 July 2015)

1. Prefabricated homes are now fully insurable:
 - a. If the contract is for both supplying and installing a prefabricated dwelling the statutory insurance premium paid by a contractor must cover the total contract price of all the works, which includes the off-site works and on-site works.
 - b. If the owner supplies the home the insurance premium is only payable on the work performed on-site by the contractor.
2. A consumer may obtain additional cover for residential construction work by the earlier of the following:
 - a. 30 business days after the date the consumer signed the contract;
 - b. The day the construction started.
3. A contractor building a 'spec' may also buy additional insurance but prior to commencing the works.
4. If the value of any single variation or multiple variations increases the contract price by more than \$5,000 an additional insurance premium must be paid to the Commission before any work relating to the variation starts. This requirement also applies to speculative residential construction work and where optional additional insurance cover has been obtained by the owner.
5. The erection, construction or installation of a swimming pool is fully insurable.

New demerit points and penalty points (commencing 1 March 2015)

- Section 67AZB (1) – Limitation demerit points from a single audit or investigation have been increased from 6 to 20 demerit points.
- Section 68C – When insurance premium is payable by construction manager. Failure to comply will result in the manager being liable to pay a penalty. A maximum penalty of 100 penalty units applies for failure to comply.
- Section 73 – Offence to fail to comply with direction to rectify or remedy. Once directed by the Commission and the contractor fails to comply they will be liable to pay a penalty. A maximum penalty of 250 penalty units applies for failure to comply.
- Section 101 – Licensees must advise change of circumstances. It is the contractor's responsibility to keep their contact details up-to-date with the Commission. A maximum penalty of 20 penalty units applies for failure to comply.

SCHEDULE 1B: Domestic Building Contracts

- Section 15 – Copy of contract for building owner – must give building owner a signed copy of the contract, including any plans and specification for the subject work within 5 business days after entering into a regulated contract. A maximum penalty of 60 penalty units applies for failure to comply.
- Section 16(2) – Copy of commencement notice for Level 2 contracts – a commencement notice stating the date the subject work started and the date of practical completion within 10 business days of starting the work. A maximum penalty of 40 penalty units applies for failure to comply.
- Section 17(2) – Copies of certificates of inspection if the contractor engages the certifier - a copy of each certificate must be given to the owner as soon as practicable after receiving it. A maximum penalty of 20 penalty units applies for failure to comply.
- Section 18(2) – Copy of consumer building guide for a level 2 contract before the owner signs the contract. A maximum penalty of 20 penalty units applies for failure to comply.
- Section 30 – Contracted services must not start before regulated contract complies with requirements. A maximum penalty of 100 penalty units applies for failure to comply.
- Section 31(2) – Foundation data. Before signing the contract the contractor must have obtained the foundation data appropriate to the site. A maximum penalty of 100 penalty units applies for failure to comply.
- Section 31(5) – Foundation data. The contractor must give a copy of the foundation data on payment from the owner for the cost incurred by the contractor in obtaining the data. A maximum penalty of 10 penalty units applies for failure to comply.
- Section 33(1) – Deposits a contractor must not demand or receive a deposit in excess of the allowable amount. A maximum penalty of 100 penalty units applies for failure to comply.
- Section 34(1) – Progress payments for regulated contracts. The contractor is not to claim more than the value of the work completed. A maximum penalty of 50 penalty units applies for failure to comply.
- Section 40(2) – Variation agreed in writing. The contractor must give the owner a copy of the variation before the first of the following happens; 5 business days elapse from the time the contractor and owner agreed to the variation or any work starts on the works for variation. A maximum penalty of 20 penalty units applies for failure to comply.
- Section 40(5) – Variation agreed in writing. The work on the variation cannot commence until the owner has

with the formal requirements detailed by the QBCC Act for a variation. A maximum penalty of 20 penalty units applies for failure to comply.

- Section 42(2) – Extension of Time. A contractor can only submit a claim if the delay was not reasonably foreseeable and beyond the reasonable control of the contractor. A maximum penalty of 20 penalty units applies for failure to comply.
- Section 42(3) – Signed copy to be given to owner. The contractor must give the owner a signed copy of the claim within 5 business days of the owner approving the claim. A maximum penalty of 20 penalty units applies for failure to comply.
- Section 43(2) – Building contractor does not acquire interest in land of resident owner. It is an offence if the contractor lodges a caveat claiming an interest in the land of the owner under a domestic building contract knowing the owner is to be a resident owner. A maximum penalty of 100 penalty units applies for failure to comply.

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