

10 May 2024

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Hon Meaghan Scanlon MP
Minister for Housing, Local Government and Planning
Minister for Public Works
By email: housing@ministerial.qld.gov.au

Dear Minister

QBCC compliance program – Home Warranty Insurance payment

On 19 April 2024 the QBCC notified all licensed builders that they are conducting compliance activities regarding the payment of Home Warranty Insurance (HWI) premiums. The notice also stated that licensees may *“face penalties if found not to be paying home warranty insurance premiums on time.”*

Members are concerned that they will be prosecuted, fined and lose their licence because of compliance action arising from the review. There is also industry concern on the impact for consumers who will be required to pay an insurance premium to protect a deposit that has not yet been paid.

The QBCC Act requires a licensed contractor who carries out the residential construction work to collect the HWI premium from the consumer and pay it to the QBCC. Section 68B of the Act states that the HWI premium must be collected and paid before the earlier of:

- 10 days from the day the contract was entered into, or
- the day construction work starts.

It is industry practice to pay the premium once the deposit is paid, based on the understanding that a ‘contract is entered into’ on payment of the deposit. However, the QBCC hold a different view that a contract is ‘entered into’ on contract signing. Contract conditions such as financing and land registration can mean that there is a difference of several months between the two dates.

Industry’s position is based on the view that:

- A contract does not come into existence until consideration (in the form of a deposit) has been received.
- Government and QBCC should not require a consumer to pay a premium to insure themselves for the loss of a deposit that has not yet been paid. (If work has not started under a contract for residential construction work, the Scheme only insures the consumer for loss of any deposit that has been paid.)

- The QBCC's own education program has long advised the industry that the maximum deposit they collect under a domestic building contract must include the cost of the HWI premium.
- Collecting the premium when the deposit is paid, rather than at the time the contract is signed, will save consumers unnecessary costs while they are waiting for finance to be approved or other pre-building matters to be settled (e.g. subdivision approval).

This issue has been discussed at the *Ministerial Construction Council Subcommittee on Queensland Home Warranty Scheme Review* where it was unanimously agreed that the appropriate trigger for payment of the HWI premium is at the time of the deposit being received or before work starts.

Master Builders understands that the QBCC gave in-principle support for this approach on the basis that it posed no risk to the HWI scheme. Master Builders also understands that the final report, to be provided to the Minister, includes this recommendation.

Solution

Master Builders is asking the Minister to take action to address this issue on two fronts:

- Urge the QBCC to limit its compliance program so that it does not apply to licensees who have been working to long-standing industry practice and collecting the HWI premium within 10 days from when a deposit is paid (providing work has not commenced).
- Urgently progress the Ministerial Construction Council subcommittee recommendation to amend the QBCC Act to address this issue.

I would welcome the opportunity to discuss this matter further.

Yours sincerely,

Paul Bidwell
CEO

Cc: Anissa Levy, CEO and Commissioner, Queensland Building and Construction Commission