

QBCC Governance Reform

Master Builders Position Paper

Master Builders is the peak industry body for building and construction in Queensland and represents the interests of 10,000 building and construction related members. Most members are licensed by the Queensland Building and Construction Commission (QBCC) and are directly impacted by its regulatory activities.

The QBCC needs to operate as a best practice, robust and independent regulator. Currently, there are too many examples where it does not resolve issues in a timely and fair manner. Its regulatory decisions often fall outside the governing legislation. It has a long history of failing to hold licensed subcontractors to account when they carry out defective work.

The impact is an unwarranted burden on industry both in direct dealings with the regulator and in undermining community confidence.

The building industry regulator can be transformed through immediate operational change and longer-term regulatory and structural reform to a more transparent and risk-based regulator that is focused on its core regulatory functions supported by industry-experienced staff.

Summary of recommendations

A. OPERATIONAL CHANGE

1. Licensed contractor accountability across the contractual chain
2. Regulatory decisions and processes in accordance with the governing legislation
3. Consistent, fair and reasonable decision making and investigative practices
4. Regulatory outcomes are proportionate to the harm to be addressed
5. Customer service accountability through response targets.

B. REGULATORY REFORM

6. Correct the timing of payment of Home Warranty premium
7. Cease the duplication of Workplace Health and Safety Queensland functions
8. Allow monies held in project and retention trust accounts to be included in MFRs
9. Improve pathways for skills recognition for overseas migrants
10. Filter claims to limit productivity sapping improper or vexatious complaints.

C. STRUCTURAL REFORM

11. Replace the QBCC commission model with an independent office holder model
12. Separate the Home Warranty Scheme from the QBCC and revisit the premium structure.

A. OPERATIONAL CHANGE

Recommendation (1)

Licensed contractor accountability across the contractual chain

The QBCC has a long history of declining to hold licensed subcontractors accountable where they carry out defective work or fail to comply with their contractual obligations (including contractual obligations to rectify defective work).

Despite having broad compliance and resolution powers to intervene in these situations to ensure a fair result for both the head contractor (builder) and subcontractor, the QBCC generally refuses to take any action against any party but the head contractor. In most cases a direction to rectify is issued only to the head contractor with no accountability apportioned to the licensed subcontractor, regardless of the merits of the situation.

The lack of accountability undermines the licensing system. It results in project delays and increased costs in cases subcontractors do not return to rectify sub-standard work.

Recommendation (2)

Regulatory decisions and processes in accordance with the governing legislation

Many of the QBCC regulatory decisions are misaligned with its governing legislation. The causes appear to be a lack of understanding of its governing legislation, preference being given to administrative expedience over proper decision-making and a disconnect between senior leadership and operational staff.

Examples of this misalignment include:

- QBCC officers routinely declining licence applications on grounds that are not provided for in the QBCC Act.
- QBCC officers routinely declining licence applications based on a personal belief that the applicant has breached the QBCC Act, notwithstanding that the alleged breaches are not investigated, actioned or proven by the regulator.
- When assessing a licence application, QBCC officers routinely requiring the applicant to provide additional information that is not only unreasonable but also not provided for in the QBCC Act. For example, when assessing an applicant's experience, QBCC commonly requires applicants to supply two to four years of pay slips. It is also common for QBCC to require applicants to prove that their employer has paid the home warranty premium for any work that the applicant is relying on for their experience.
- When declining a licence application, QBCC commonly provides a statement of reasons that is overly brief, ambiguous and generally non-compliant with the QBCC's legislative obligations. This practice prejudices the ability of the applicant to understand the decision and decide whether they should seek internal or external review of the decision.
- QBCC building inspectors issuing formal notices encouraging unlicensed persons (included excluded individuals), who have in the past carried out defective work, to unlawfully engage licensed subcontractors to rectify the work.

- QBCC building inspectors routinely issuing directions to rectify building work that are inconsistent with the QBC Board's Rectification of Building Work Policy and its obligation under section 20K of the QBCC Act to give effect to the policy.
- QBCC building inspectors routinely issuing directions to rectify building work contrary to the published policies of the QBC Board which state when it is fair and reasonable to do so.

Recommendation (3)

Consistent, fair and reasonable decision making and investigative practices

It is evident that the QBCC needs to address its processes and staff training to ensure that all investigations are conducted in a way that is consistent, fair and reasonable. While there are QBCC investigative and licensing staff who undertake their work in a fair and reasonable way, this is not consistent.

For example, QBCC officers often refuse to communicate verbally with persons who are applying for licence or are being investigated for a licensing breach and require all communication to be in writing. This can be particularly stressful, alienating and frustrating to persons who are not used to communicating exclusively in this way or are not familiar with emails and notices that contain 'public service speak', legal jargon and unfamiliar legal procedure.

Master Builders is also aware that QBCC investigators routinely telephone licensees about a complaint and then conduct a recorded interview over the telephone. The affected licensees, many of whom have had no experience with the regulator, are caught off-guard and give evidence under duress without the benefit of legal counsel or due consideration of their rights.

For QBCC to be a respected regulator it needs to avoid the temptation to engage in unfair practices to obtain a favourable compliance or licensing investigation outcome. In addition, an important part of any regulatory framework is the rehabilitation of those found in breach of the legislation. Such rehabilitation is made far more difficult if the regulator engages in unfair practices to obtain the 'win'.

Recommendation (4)

Regulatory outcomes are proportionate to the harm to be addressed.

The QBCC takes a very limited approach when exercising its compliance powers under the QBCC Act. In most cases, the compliance powers exercised by the QBCC are limited to cancelling/suspending licences under section 48 of the QBCC Act, issuing penalty infringement notices and issuing formal warning notices (which are not provided for in the QBCC Act).

Notably the QBCC has a long history of declining to use its licensee disciplinary powers against licensees who have been found to breach their statutory obligations. One of the benefits of using its disciplinary powers to address offending behaviour is that it allows the QBCC to tailor its regulatory response to ensure that it is proportionate to the harm it is seeking to address.

A strategy can include a remedial professional development program for targeted licensees. Many proven breaches of legislation by licensees arise from inadequate skills and poor knowledge of legislative requirements. This is particularly so in the context of breaches associated with unrectified defective work, contractual matters, and payment practices.

Subject to “proper grounds”, the QBCC has express licensing powers in the QBCC Act to require licensees to “complete course modules included in technical or managerial national competency standards relevant to the building industry”. These licensing powers operate in the form of a condition on the licence. However, the powers are currently rarely exercised.

It is recommended that selected licensees for the program would initially be given the opportunity to undertake the remedial training without the imposition of a condition on their licence. In addition to reducing administrative cost on the QBCC, this approach would promote ‘buy-in’ and commitment by the licensee. The imposition of a condition would only be used where the licensee failed to take reasonable action to enrol or complete the relevant module in a reasonable time.

Master Builders believes there would be substantive benefit in the QBCC using its licensing powers to develop and implement a remedial professional development program to upskill licensees who have breached their legislative obligations. Such a program would substantively assist in reducing future re-offending behaviour by addressing its “root” causes.

The QBCC should also reintroduce ‘requests to rectify’ which served as a good step in the process to resolving consumer complaints without the need for immediate escalation to ‘directions to rectify’.

Recommendation (5)

Customer service accountability through response targets

Provide customer service response targets for regulatory decisions and license applications to set clear performance benchmarks. Publish performance results against those targets to provide accountability.

B. REGULATORY CHANGE

Recommendation (6)

Correct the timing of payment of Home Warranty premium

The QBCC Act requires a licensed contractor who carries out the residential construction work to collect the home warranty premium from the consumer and pay it to the QBCC. Section 68B of the Act states that the 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.

Failure to comply with this obligation is a regulatory offence under the QBCC Act.

Most residential building contracts in the industry (including Master Builders contracts) require consumers to pay the building contractor the appropriate insurance premium on the entering of the contract. Unfortunately, many consumers are either unable or unwilling to pay the premium until finance is approved or until the consumer has obtained development approval. Both approval processes take longer than the 10 days.

The result is that the building contractor commits an offence under section 68B of the QBCC Act when the late payment occurs.

Most concerning is that this offence occurs outside of the building contractor's control as there is no option available for them to avoid it. That is the offence occurs even if the building contractor does any of the following:

- Pays the premium themselves - section 68B specifically requires that the premium must be collected from the consumer.
- Cancels or suspends the contract - section 68B requires the premium to be collected and paid regardless of whether the contract is later cancelled or suspended.
- Takes civil action to enforce payment of the premium – Aside from being impracticable, this cannot be undertaken and finalised within the 10 days required by section 68B.

If a building contractor is prosecuted or fined by the QBCC in the above circumstances they then must rely on the absolute defence in section 23 of the Criminal Code to defeat the prosecution. Under this section the building contractor is not criminally responsible "for an act or omission that occurs independently of the exercise of the person's will".

Further, the QBCC is exercising its powers to in effect force consumers to take out 'junk insurance' where they are paying a policy premium that has no insurance benefit until the deposit is paid.

The problem can be resolved by:

- QBC Board endorse that the QBCC take no regulatory action against a building contractor under section 68B of the QBCC Act if the consumer fails to pay the Home Warranty premium contrary to their residential building contract.

This regulatory approach is appropriate because:

- The building contractor has an absolute defence under the law.
 - Acting in these circumstances is unfair, unreasonable and does not take into account the intentional act of the consumer in causing the offence.
 - Acting against the building contractor in this circumstance is inconsistent with the QBCC's outcome focussed regulatory approach.
 - The Scheme is not at financial risk as there is no possibility of a claim until a deposit is paid.
- Alternatively, the QBCC should take regulatory action against both the consumer and the building contractor for breaching section 68B of the QBCC Act. Regulatory action against the consumer is possible due to the "Parties to offences" provisions" in [Chapter 2](#) of the Criminal Code.

This issue was addressed 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 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 scheme and that the final report, provided to the Minister under the previous government, includes this recommendation.

Recommendation (7)

Cease the duplication of Workplace Health and Safety Queensland functions

The regulator for health and safety on building sites is Workplace Health and Safety Queensland (WHSQ).

However, in 2017 the QBCC Act was amended to provide the QBCC with additional regulatory powers associated with serious risks to health and safety on a building site under a licensee's control. These amendments allowed the QBCC, in appropriate circumstances, to:

- cancel or suspend a licensee's licence under section 48 of the QBCC Act; or
- take a disciplinary action against a licensee under Part 6A of the QBCC Act.

To assist QBCC in the exercise of these new powers a statutory obligation was also placed on licensees to notify the QBCC of certain safety matters that occur on a licensee's building site (section 54A, QBCC Act).

The expanded role of QBCC in health and safety matters has resulted in both QBCC and WHSQ conducting inquiries and investigations into the same safety incident at the same time. This duplication of effort is pointless. This is particularly evident when one considers that the QBCC only has capability to conduct desktop investigations into health and safety incidents and does not have dedicated or trained safety investigators.

As a result the QBCC's investigations have produced minimal regulatory outcomes to improve safety in Queensland. For example, since 2017 Master Builders is only aware of one licensee who has had their licence cancelled under section 48 of the QBCC Act for a health and safety matter. Further, there

have been no disciplinary actions for a safety incident, or any prosecutions/fines issued under section 54A during this time.

There is also significant confusion in industry as to the role of QBCC in safety matters generally. This has been compounded by the fact that QBCC often asks licensees and applicants for health and safety related information in circumstances where there has been no safety incident (e.g. at time of granting or considering a licence application). The legislative provisions that authorise the QBCC to seek this information are unknown and appears to be a possible example of regulatory overreach.

It is acknowledged that there may cases where it is appropriate for QBCC to take licensing or disciplinary action against a licensee who has negligently or recklessly caused a serious safety incident on a building site. However, the QBCC should only take such regulatory action once WHSQ has completed its investigation and the licensee's alleged actions have been proven through a successfully prosecution under the WHS Act. This recommended approach would also better align QBCC processes with its obligations under the Human Rights Act 2019.

The QBCC Act should be amended to remove the additional health and safety powers for the QBCC and the obligation to notify the QBCC of certain safety matters.

In the interim the QBCC should put in place a process to ensure that where a licensee notifies WHSQ of an incident, this notification also serves to advise QBCC of the notifiable incident for the purposes of section 54A of the QBCC Act. Notably, a process of this kind has long been in place for other Queensland regulators with ancillary WHS responsibilities. There appears to be no logical reason for QBCC not to take the same approach.

Recommendation (8)

[Allow monies held in project and retention trust accounts to be included in MFRs](#)

Monies held in project and retentions trust accounts for the benefit of a contractor should be able to be used by that contractor in their calculations in meeting their minimum financial requirements. The inability to do so is inappropriately limiting the scale of work that they might be able to reasonably undertake.

Recommendation (9)

[Improve pathways for skills recognition for overseas migrants](#)

The building and construction industry needs more workers. BuildSkills Australia noted in March 2024 that the building and construction industry needed 90,000 new trades workers between then and the end of June 2024. Skilled migrants are a vital part of that growth.

Skilled migrants represent an important part of the building and construction industry and its ability to remain robust and resilient with around a quarter of all industry participants born overseas. Migrants in building and construction are in many ways set up to fail by Australia's systems.

The pathway to licensing in Queensland for those with overseas qualifications must be clear and easy to navigate. Comparable, or better international qualifications must be identified and exempt from hefty skills assessment processes.

Building and construction trades would also benefit from a gap training qualification to ensure skilled migrant tradespeople who have a qualification from a comparable jurisdiction can be quickly and comprehensively upskilled for the Australian workforce.

Source: [Master Builders Australia, The future of the Workforce: Skilled Migrants in Building and Construction](#)

Recommendation (10)

[Filter claims to limit productivity sapping improper or vexatious complaints.](#)

Vexatious claims for defective work are tying up contractors in unnecessary work, adding cost and time to construction. The regulator needs to limit the effect that these have on both its own operations and the industry it regulates.

Builders tell of needing to deal with an unfounded complaint a month, where they need to attend the site and prepare a response. Consumers are willing to take the most minor issue through to inspection as there is no cost to them.

Filtering these claims at an early stage would assist both industry productivity and provide an early response to those consumers who do not have a good case. Another option could be to require a token fee in the order of \$50 to lodge a complaint, which could be refunded should the claim be found to have merit.

C. STRUCTURAL REFORM

Recommendation (11)

Replace the QBCC commission model with regulatory office holder model

A regulatory office holder model would involve moving the building regulator to sit within a government department but continuing to work under a regulatory head who retains direct responsibility under the legislation.

Under this model there would be no governing board. However, there would still be a role for an advisory board on industry policy.

Moving to a regulatory office holder model would have the benefit of:

- giving the regulator a ‘fresh start’, including an opportunity to refocus and realign its administration, structure, culture, and regulatory priorities in line with its governing legislation,
- removing the need for the regulator to have duplicated support services (e.g., human resources and financial administration services), thereby leading to cost savings in its administration,
- removing the current disconnect between policy development and the regulator, and
- keeping the regulatory head independent of Government.

It is a model currently in place for other like industry regulators in Queensland such as the Electrical Safety Office, Office of Fair Trading and Office of Industrial Relations. Notably these regulators each appear to be very effective and attract far less criticism when compared to the QBCC.

Recommendation (12)

Separate the Home Warranty Scheme from the QBCC and revisit the premium structure

The QBCC is responsible for both regulatory functions (licensing, compliance enforcement and dispute resolution) and the administration of the Home Warranty Scheme. The conflict of interest associated with the QBCC being both the industry regulator and the industry insurer continues to be an ongoing source of concern.

Separating the administration of the Scheme from the QBCC would ensure decisions about licensing and directions to rectify building work (and the disputes that follow) have no regard to the financial impacts of those decisions on the Scheme.

Restructuring the Scheme it would also provide an opportunity to revisit the premium structure and introduce a risk-based schedule, as is currently applied in the other states and territories.