

# Hot Topic

## QBCC ENFORCEMENT



The home of building

In December 2018, Master Builders surveyed members, asking for their experiences with the QBCC's enforcement. The survey generated a passionate response from all quarters, with many taking much time and care to detail their experiences with the QBCC's current enforcement practices.

From these responses, a number of key themes emerged:

### **Enforcement is too biased in favour of the consumer.**

There was a concern that contractors are spending a lot of time and money to address claims that they feel are unwarranted or to undertake work that is not a rectification in order to avoid problems with the regulator. "Always guilty until proven innocent." There is also the need for natural justice. "Given a direction to rectify when the client denied us access." A more constructive approach would be to work with the builder to come to a solution and "spurious complaints with no grounds should be refused."

### **More support is needed for payment disputes.**

The QBCC should not be ignoring the payment side of the dispute. "Providing more support to the builder to work out why they are not getting paid can help prevent insolvencies". "If the builder doesn't get paid it makes it very difficult to pay the subcontractors."

### **Financial monitoring of licensees needs to be strengthened.**

Respondents felt that there are still too many builders getting into trouble financially without the QBCC being aware. For this reason, the industry welcomes the recent strengthening of the Minimum Financial Reporting requirements.

### **More timely resolution of complaints.**

There were reports of it taking months to resolve disputes; locking up sites and money. "Three months of stress. Three months of hell!"

### **More consistency and transparency in enforcement.**

The lack of transparency in the process leaves many feeling that they are being treated unfairly. "It is easier to direct a contractor to rectify work than to put up with whinging owners." There is also inconsistency between offices and different decisions are being made by different inspectors.

### **More reasonable audit and information request processes.**

The decision as to who is audited is not seen to be fair or strategic. Each audit has the potential to cost a business thousands. "We have been constantly audited for 12 months, we have satisfied their NTA ratios in every audit. There seems like no end."

## Inspectors need more building experience.

Some QBCC building inspectors lack the necessary experience. They often misinterpret the Building Code and do not apply their own Standards and Tolerances Guide when making decisions. "Those making decisions on defects do not have to be builders." "Assessing commercial work should be assessed by someone with an open licence."

## Builders should not be held solely accountable. All licensed trades and professions need to be held liable for their defective work.

There needs to be a greater appreciation of the 'chain of responsibility' in delivering buildings. "It always comes back to the builder not engineers, private certifiers etc." "As a builder we are not licensed to do specialised works, such as fire protection, plumbing or electrical, however the QBCC hold the builder responsible for these works." "Sub-contractors, in our experience, are not held accountable for poor workmanship."

## There must be more emphasis on non-licensed and out of scope trading.

It was felt that the QBCC are focusing a disproportionate amount of their enforcement resources on licensed contractors, while those undertaking unlicensed or out of scope work are largely ignored. "We can't compete cost wise when we pay insurance and registration fees and the unlicensed that undercut us." "Just please act upon the unlicensed."

## Request to rectify.

There was unanimous support for a system where contractors are requested to rectify defective work before being directed to rectify. It's seen as a way of resolving disputes more quickly and helping those who want to do the right thing to keep their record clean. It allows room for some discretion to be applied in the case of a good track record. It's also an opportunity to allow 'grey areas' to be tested and improve subcontractor accountability.

## Early dispute resolution addressing both defective work and payment.

Nearly 8 out of 10 respondents felt that an early dispute resolution system that addressed both defective work and payment would have a positive impact on their business. It would be good for consumers by providing the opportunity to maintain effective relationships. "It would prevent the issues festering and causing additional problems." For contractors it would have the added benefit of enabling disputes to be resolved while not tying up money. "Keeps clients happy and cash flow going." "It could prevent many builders going insolvent."

## Reporting non-conforming products.

Only a small percentage of respondents (6 per cent) had had any experience with reporting a non-conforming product to the QBCC. There were no reported examples where action was taken against the manufacturer. Products that were reported include non-compliant balustrading, windows and wall wrap.

## Impact on businesses.

The impact of the QBCC's current practices are first, the obvious costs on time, money and lost work. Also of concern, is that in not holding the right people to account, the underlying problems are not being addressed. Over the long-term their practices are "damaging otherwise successful businesses and business owners". People are leaving the industry or not growing their businesses. "I am exhausted and stressed from dealing with the QBCC. The system is designed to break people; not be solution orientated." "I am totally disillusioned with the building industry." "I am close to shutting down my building business as I see no future."