

21 February 2022

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Hon Mick de Brenni
Minister for Energy, Renewables and Hydrogen
Minister for Public Works and Procurement
1 William Street
BRISBANE QLD 4001

VIA EMAIL: epw@ministerial.qld.gov.au

Dear Minister,

RE: UNFAIR PAYMENT OUTCOMES

I am writing to seek your assistance to address an important policy issue that is unfairly impeding the ability of licensed contractors in the building industry to get appropriately paid for the work that they do.

The issue of concern relates to the operation of section 42 of the *Queensland Building and Construction Act 1991* (QBCC Act). This provision provides that unlicensed contractors are “not entitled to any monetary or other consideration” for building work they have carried out, other than claims for reasonable remuneration amounts expressly provided for in section 42(4).

An unintended consequence of the provision is that the Supreme Court in successive decisions has held that where section 42 applies it operates to prohibit “*the very process of formation of a contract*”. The result is that even if the smallest part of contracted works is outside a licensed contractor’s licence, the licensee has no contractual entitlement to be paid, including for the work that was within the scope of their licence.

For example, if a licensed contractor performs 1 per cent of contracted works outside of their licence, the licensee will not be able to access adjudication for monies owing for the 99 per cent of work that was lawfully performed under their licence. Further, because there is no contractual entitlement to be paid, the licensee is also unlikely to successfully make a monies owed complaint to the QBCC for monies owed on the work that was lawfully performed.

The potential for unfair financial harm to head contractors and subcontractors is exacerbated by the lack of clarity in the drafting of many of the scopes of works for licence classes prescribed in the *Queensland Building and Construction Regulation* (QBCC Regulation). Contributing to this lack of clarity, is the fact that many of the prescribed scopes of work have not been updated to reflect the new technologies and work practices that have emerged over the last 20 years. The ambiguity in the QBCC Regulation is now at such a level that even the regulator has taken an operational policy position that it can no longer provide licensing education and guidance to licensees as to the work they may carry out under their licence scope.

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Having regard to the above, you will appreciate how easy it is for licensees to perform contracted works inadvertently and unintentionally outside the scope of work for their licence. Unfortunately, the consequence to these licensees for such an error is disastrous. Members have also reported to Master Builders that some contracting parties appear to be deliberately taking advantage of this situation to obtain a “windfall outcome” for contracted works or to delay payment.

To address the unfair consequences arising from the operation of section 42 of the QBCC Act, Master Builders asks that you consider making legislative amendments to achieve the following:

- A licensee can access adjudication (and other payment provisions in the QBCC Act) for any contracted works lawfully carried out by a licensee under their licence. Further, this access is to be permitted notwithstanding that the licensee may have also performed other works under the same contract that were outside the scope of their licence.
- The scopes of work for licence classes prescribed under schedule 2 of the QBCC Regulation be reviewed and updated to ensure they are unambiguous and reflect current technologies and work practices.

Thank you for considering this submission.

Yours sincerely



Grant Galvin
CEO