



Submission to the Transport, Housing and Local Government Committee

Produced by the Building Services Authority

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Submission to the Transport, Housing and Local Government Committee

by the Queensland Building Services Authority

Background to submission

On 2 August 2012, the Queensland Parliament agreed to a motion that the Transport, Housing and Local Government Committee (the Parliamentary Committee) inquire and report on the operation and performance of the Queensland Building Services Authority (QBSA) in its regulation of the industry, including the maintenance of proper standards in the industry.

The terms of reference for the Parliamentary Committee's Inquiry are as follows:

- *whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers;*
- *whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home;*
- *the effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers;*
- *the governance arrangements of and between the board and the general manager;*
- *the effectiveness of the Queensland Home Warranty Scheme and its protections;*
- *whether the current licensing requirements of the QBSA are adequate and that there is sufficient auditing processes to maintain proper standards;*
- *the number of trades licensed by the QBSA and whether industry groups could take a greater role within QBSA in terms of licensing standards and procedures for their members; and*
- *examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.*¹

This submission has been prepared in response to correspondence from the Parliamentary Committee to the General Manager of the QBSA, dated 7 August 2012, inviting the QBSA to make a submission relevant to the Inquiry's terms of reference.

¹ Queensland Hansard, 2 August 2012 at 1418.

Chapter 1: Functions and Constitution of QBSA

1.1 Establishment and Constitution of the QBSA

The QBSA commenced operation in 1992 and replaced the former Builder's Registration Board of Queensland. The QBSA is established under the *Queensland Building Services Authority Act 1991* and is a body corporate.² The QBSA has in connection with the performance of its functions all the powers of a natural person.³

The QBSA consists of the Queensland Building Services Board (QBS Board), the General Manager and the organisational unit under the control of the General Manager.⁴

Under the current administrative arrangements for the Queensland Government, the QBSA is within the portfolio responsibilities of the Minister for Housing and Public Works.

1.2 Statutory functions and responsibilities of the QBSA

The QBSA has statutory functions and responsibilities under the following legislation:

- *Queensland Building Services Act 1991* (QBSA Act);
- *Domestic Building Contracts Act 2000* (DBC Act);
- *Building and Construction Industry Payments Act 2004* (BCIP Act);
- *Building Act 1975* (Building Act).

1.3 QBSA Act functions

The objects of the QBSA Act are to:

- regulate the building industry to ensure the maintenance of proper standards in the building industry and achieve a reasonable balance between the interests of building contractors and consumers;
- provide remedies for defective building work; and
- provide support, education and advice for those who undertake building work and consumers.⁵

The QBSA has a broad range of functions under the QBSA Act relevant to the regulation and licensing of persons who carry out, or undertake to carry out, building work in Queensland. Building work is defined in Schedule 2 of the QBSA Act and includes the erection or construction of any fixed structure. The Schedule 2 definition also provides that building work does not include work of a kind excluded by regulation.

Section 5 of the *Queensland Building Services Authority Regulation 2003* (QBSA Regulation) prescribes types of work which are not building work regulated under the QBSA Act. Work excluded from the ambit of the QBSA Act includes:

- work of a value of \$3300 or less, unless the work requires an occupational licence or constitutes hydraulic services design work.

² Section 5, QBSA Act.

³ Section 5(3), QBSA Act.

⁴ Section 6, QBSA Act.

⁵ Section 3, QBSA Act.

- work performed by an architect in the architect's professional practice including, for example, carrying out a completed building inspection;
- work performed by an engineer in the engineer's professional practice;
- work performed by a licensed surveyor in the surveyor's professional practice;
- electrical work under the *Electrical Safety Act 2002*;
- installation of insulation for acoustic or thermal control;
- work consisting of earthmoving and excavating;
- construction work in mining;
- certification work performed by a building certifier under the Building Act in the certifier's professional practice; and
- prescribed civil construction such as the construction of public roads, dams, bridges.

Further detail about the definition of building work under the QBSA Act is provided in Chapter 4.

The QBSA also administers the Queensland Home Warranty Scheme established under the QBSA Act. The Queensland Home Warranty Scheme provides warranty cover in relation to residential construction work carried out in Queensland. The parameters of cover provided under the Scheme are determined by the QBSA Act, QBSA Regulation and the applicable Insurance Policy Conditions made by the QBS Board.⁶

Under the QBSA Act, the General Manager has all executive powers of the QBSA and the responsibility for the overall management of the QBSA.⁷ Section 18(2) of the QBSA Act provides a non-exhaustive list of the functions and responsibilities of the General Manager under the QBSA Act. These functions and responsibilities include the following:

- administration of the licensing system established by the QBSA Act;
- administration of a system of inspection established by the QBSA Act;
- issuing directions for rectification of building work under the QBSA Act;
- taking disciplinary and other proceedings under the QBSA Act;
- assessing and approving payment of insurance claims under the Queensland Home Warranty Scheme;
- undertaking strategic planning, having regard especially to cyclical industry conditions, to ensure that the QBSA's available revenue base, and its assets and reserves, are enough to allow the QBSA to maintain the services it is required to provide;
- issuing warnings to the public or any section of the public;

⁶ See in particular Part 5 (*Statutory Insurance Scheme*) of the QBSA Act and Part 2, Division 2 (*Residential Construction Work*) of the QBSA Regulation. The most recent edition of the Insurance Policy Conditions is Edition 8 which commenced on 1 July 2009. An electronic copy of Edition 8 can be accessed at:

<http://www.bsa.qld.gov.au/SiteCollectionDocuments/Home%20Owner/Publications/Insurance%20Policy%20Edition%208.pdf>

⁷ Section 18(1), QBSA Act.

- providing and promoting consumer education;
- providing an advisory service to consumers about—
 - their statutory rights and obligations;
 - insurance claims that may arise about building work;
 - the QBSA's role, functions and operating procedures; and
 - any incidental matters;
- providing courses of instruction for—
 - persons seeking to obtain licences;
 - licensees;
 - persons proposing to carry out building work as owner builders; and
 - other persons seeking to acquire knowledge or expertise in subjects related to the building industry.

1.4 DBC Act functions

The DBC Act regulates domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners, and to maintain appropriate standards of conduct in the building industry.⁸

The QBSA's functions in relation to the DBC Act include the investigation and prosecution of breaches of the DBC Act.⁹ Breaches of the DBC Act are most commonly dealt with through the issue of an infringement notice under the *State Penalties Enforcement Act 1999*.

The DBC Act authorises the QBSA to prepare and publish suggested forms of domestic building contracts.¹⁰ The QBSA also approves contract information statements for the purposes of the Act.¹¹

1.5 BCIP Act functions

The object of the BCIP Act is to ensure that a person is entitled to receive and is able to recover progress payments where a person undertakes to carry out construction work under a construction contract, or undertakes to supply related goods and services under a construction contract.¹² Section 8 of the BCIP Act states that the object is to be achieved by:

- granting an entitlement to progress payments whether or not the relevant contract makes provision for progress payments; and
- establishing a procedure that involves—

⁸ Section 3, DBC Act

⁹ Examples of offences in the DBC Act include section 26 (*Contracts must be in writing*); section 27 (*General contents of contracts*) and section 64 (*Deposits*). For further information, see discussion at Chapter 2 of this submission.

¹⁰ Section 32, DBC Act

¹¹ Sections 40 and 99 DBC Act. For further information about the QBSA's obligations in regard to contract information statements and the approval and content of contract information statements, see discussion at Chapter 2 of this submission.

¹² Section 7, BCIP Act

- the making of a payment claim by the person claiming payment;
- the provision of a payment schedule by the person by whom the payment is payable;
- the referral of a disputed claim, or a claim that is not paid, to an adjudicator for decision; and
- the payment of the progress payment decided by the adjudicator.

The BCIP Act establishes an Adjudication Registry consisting of the Adjudication Registrar and registry staff.¹³ The Adjudication Registrar is responsible for managing the registry and the administrative affairs of the registry.¹⁴ The Adjudication Registrar and registry staff are appointed by the QBSA.¹⁵ The Adjudication Registrar is subject to the direction of the General Manager of the QBSA.¹⁶

In addition to the BCIP Act, the *Subcontractor's Charges Act 1974* provides a mechanism for securing monies owed to a subcontractor by a contractor through the lodging of a charge in the Courts. The *Subcontractor's Charges Act 1974* does not give the QBSA any powers or functions in relation to its operations.

1.6 Building Act functions

Amongst other matters, the Building Act:

- regulates private certifiers and other building certifiers and the performance of building and private certifying functions;
- regulates the engagement of private certifiers; and
- provides for the licensing of, and complaints, investigations, and disciplinary proceedings against, private certifiers and other building certifiers.

The QBSA has the following functions under the Building Act:

- license individuals as building certifiers and give private certification and development approval endorsements;
- monitor compliance by building certifiers with specified provisions of the Building Act;
- carry out audits of building and private certifying functions;
- investigate written complaints made to it about alleged unsatisfactory conduct or professional misconduct by building certifiers or former building certifiers;
- take disciplinary action against building certifiers or former building certifiers for unsatisfactory conduct or professional misconduct;
- give the chief executive, at least once each year, a list of building certifiers and a summary of disciplinary action taken against building certifiers;
- keep a register of building certifiers.¹⁷

¹³ Section 36, BCIP Act. The functions and powers of the Adjudication Registrar are stated in section 38 of the BCIP Act.

¹⁴ Section 38(1), BCIP Act.

¹⁵ Section 37(2), BCIP Act.

¹⁶ Section 38(1), BCIP Act. Note also section 18(1)(c) of the QBSA Act which states that the General Manager of the QBSA has the power to carry out any function the General Manager is authorised under another Act to carry out.

¹⁷ Section 133, Building Act.

1.7 Other functions

In addition to its statutory functions, the QBSA carries out a range of functions to assist consumers, the general community, the building industry and the Queensland Government. These functions include:

- disaster recovery assistance;
- technical support for the Queensland Civil and Administrative Tribunal and parties to building disputes; and
- community information support.

Disaster recovery assistance

Since 2006, the QBSA has contributed to the Queensland Government's response to natural disasters. The QBSA has provided services to assist communities recovering from natural disaster events including Cyclone Larry, the Mackay and southwest Queensland Floods, the Gap storms, Brisbane and central Queensland floods and Cyclone Yasi.

A key role played by the QBSA in the above disasters was to provide information to affected community members on matters associated with rebuilding after a natural disaster. In addition to staffing information stands at shopping centres, the QBSA also conducted seminars in conjunction with building industry groups such as Construction Skills Queensland and Timber Queensland, providing information about:

- the importance of properly drying out homes and when repair work should commence;
- how to choose a contractor and making sure the contractor has a QBSA licence;
- the importance of home owners signing contracts and having cover under the Queensland Home Warranty Scheme.¹⁸

Following Cyclone Yasi, the QBSA immediately established a temporary office in Tully. QBSA staff helped the recovery effort in the region by providing advice and assistance to local consumers and contractors and whenever necessary, assisting the Recovery Taskforce.¹⁹

The QBSA also provided assistance to consumers by providing information as to contractors and suppliers who were available to undertake flood and cyclone-related repair and rebuilding work. Information was provided, including on the internet, as to the availability of approximately 6,000 licensed contractors and suppliers.²⁰

At the request of the Queensland Government Recovery Taskforce, the QBSA assisted consumers who were eligible for Premier's Disaster Relief Appeal funding by organising a qualified and licensed builder to provide a repair quotation. More than 800 homeowners availed themselves of this service.²¹ In addition, the QBSA administered

¹⁸ *Queensland Building Services Authority Annual Report 2010-2011.*

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

the special grants program for Grantham residents which offered \$35,000 to help them move their homes to higher ground.²²

As part of its regulatory functions, the QBSA conducted ongoing audits of contractors carrying out work in disaster affected areas to ensure that they were appropriately licensed to carry out the work and the opportunity for rogue contractors to take advantage of disaster victims was minimised.

Technical support for the Queensland Civil and Administrative Tribunal

The QBSA provides technical services to the Queensland Civil and Administrative Tribunal (QCAT) in relation to building work. At the request of the President of the QCAT, the QBSA provides expert reports to the QCAT and may act as an assessor in a proceeding concerning building work.²³

If appointed as an assessor in a proceeding concerning building work, the QBSA may provide one or more of the following services as requested by the QCAT:

- give expert evidence about the building work;
- sit with the QCAT and give advice about the building work related matters relevant to the proceeding;
- decide a question of fact about the building work and give the tribunal a written report stating the decision and the reasons for it;
- give advice to the tribunal about the building work, including conducting an inquiry or investigation into a matter and give a written report of the assessor's findings in the inquiry or investigation.

The QBSA does not charge for the above services, including the provision of expert reports where the QBSA is not a party to the dispute.

The administration and funding of the QBSA and the QCAT are entirely independent.

Community information support

The QBSA has a contact centre which provides telephone and online services to building industry stakeholders. Services include a phone-pay service which enables licensees to pay their renewal fees and Queensland Home Warranty Scheme premiums by telephone.

The QBSA contact centre provides referral services for the building industry, consumers and other stakeholders in relation to building related matters. It is common for contractors and consumers to contact the QBSA about building issues that include matters outside its jurisdiction.

Examples of such matters include:

- local government and planning issues;
- employment arrangements, including relevant awards;

²² Ibid.

²³ For additional information on the role and appointment of Assessors to QCAT see Chapter 2, Part 6, Division 7 *Queensland Civil and Administrative Tribunal Act 2009*.

- contractual disputes in the QCAT (not involving defective building work or the QBSA);
- Australian Standards and Codes applicable to building work;
- disputes relating to engineering, architectural or electrical work; and
- queries relating to the occupational licensing of plumbers, drainers, gasfitters and electricians.

The QBSA assists the public to identify and contact the appropriate regulator or service provider relevant to their enquiry.

1.8 Queensland Building Services Board

The QBS Board is established under section 8 of the QBSA Act and has the following statutory functions:

- to make and review policies governing the administration of the QBSA Act;
- to provide guidance and leadership to the General Manager and monitor the General Manager's management of the QBSA;
- in conjunction with the General Manager, to establish the strategic direction for the QBSA;
- to advise the Minister on issues affecting—
 - the building industry;
 - consumers;
 - the administration of the QBSA Act; and
 - the administration of the QBSA;
- to give advice to the Minister about unfair or unconscionable trading practices affecting security of payments to subcontractors;
- to consult with, and advance the interests of, the building industry and its consumers consistently with the objects of the QBSA Act.²⁴

The QBSA Act authorises the QBS Board to make and review policies governing the administration of the Act.²⁵ To have effect, a policy of the QBS Board must be approved by regulation and published in the gazette.²⁶ Schedule 1A of the QBSA Regulation lists the QBS Board policies which have been approved.

The policies of the QBS Board which are currently in effect are:

- *Financial Requirements for Licensing* policy;
- *Insurance Policy Conditions*;
- *Rectification of Building Work* policy.

The QBS Board consists of 8 members comprising:

- 3 members who are licensees, or directors of companies that are licensees, subject to the following conditions:
 - at least one of the licensees must be a licensed builder;

²⁴ Section 9, QBSA Act

²⁵ Section 9(a), QBSA Act

²⁶ Section 9A, QBSA Act

- at least one of the licensees must be a licensed contractor other than a licensed builder; and
- 2 members appointed as representatives of consumers; and
- 1 member appointed as a representative of either or both of the general insurance industry and the accounting profession; and
- 1 member appointed as a representative of building and construction unions; and
- 1 member appointed as a public service officer.²⁷

All members of the QBS Board, other than the public service member, are voting members.²⁸

The Chair and members of the QBS Board are appointed by the Governor in Council. Members of the QBS Board are appointed for a term of no longer than 3 years.²⁹ However, the Chair or members may be reappointed at the expiry of a term.

Current members of the QBS Board are provided in Table 1.1.

Table 1.1: Membership of the QBS Board as at 3 September 2012

QBS Board position	Name
Chair and representative of licensed builders	John Gaskin
Representative of licensed contractors	Christopher Taylor
Representative of licensed contractors other than builders	Jean Althoff
Representative of Consumers	Karen Dare
Representative Consumers	James Russell
Representative of the accounting profession	Susan Carter
Representative of building and construction unions	Wallace Trohear
Public Service Officer (non-voting)	Director General, Department of Housing and Public Works

The QBS Board or the Minister may appoint committees for the purpose of advising the Board on a particular subject or subjects.³⁰ The following committees are currently appointed:

- Policy Committee;
- Finance and Audit Committee;
- Insurance Committee;
- Licensing Committee; and
- Fire Protection Occupational Licensing Committee.

Further information as to the role of these committees is provided in subsequent chapters.

²⁷ Section 10, QBSA Act.

²⁸ Ibid.

²⁹ Section 10A, QBSA Act.

³⁰ Section 14, QBSA Act.

Chapter 2: Performance of the QBSA in achieving a balance between the interests of building contractors and consumers

2.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers.*

2.2 Issuing of directions for defective or incomplete building work

Legislation

The QBSA is a statutory authority established under the QBSA Act. One of the stated objects of the QBSA Act is to *achieve a reasonable balance between the interests of building contractors and consumers*.³¹

Under section 72 of the QBSA Act, the QBSA may direct a person who carried out defective or incomplete building work to rectify the work. Consistent with the above stated objective, section 72(14) provides that the QBSA:

“is not required to give a direction under this section to a person who carried out building work for the rectification of the building work if the authority is satisfied that, in the circumstances, it would be unfair to the person to give the direction”.

The section provides the following example of when it may not be appropriate for the QBSA to issue a direction:

Example for subsection (14)—

The authority might decide not to give a direction for the rectification of building work because of the amount payable but unpaid under the contract for carrying out the building work.

If a consumer makes an application for the QBSA to consider whether to direct rectification of defective or incomplete building work,³² section 71A(4) of the QBSA Act provides that the QBSA may require the consumer to comply with a process established by the QBSA to attempt to resolve the matter with the person who carried out the work.

Process for issuing a direction to rectify

Where a complaint about defective building work is received by the QBSA, the QBSA will initially contact the parties with a view to clarifying the issues and resolving the matter without the need for further intervention. In many cases, disputes can be resolved through the provision of information to the parties, including information regarding their statutory responsibilities.

³¹ Section 3(a)(ii), QBSA Act.

³² Section 71A, QBSA Act.

In 2011/12, approximately 27% of disputes were resolved without the need for further QBSA intervention, including a site inspection.³³ This percentage is consistent with that achieved in the financial years 2008-2011.³⁴

If the dispute cannot be readily resolved at first contact, the QBSA will invite both parties to attend a site meeting with a QBSA building inspector. All QBSA building inspectors hold at minimum a Builder – Medium Rise licence and have at least 5 years' relevant building industry experience. The site meeting offers the parties an opportunity to further clarify issues in dispute and obtain independent assessment by the QBSA building inspector as to whether the work under dispute is defective building work under the QBSA Act. This site meeting can narrow the issues in dispute allowing the parties to focus on the real problems with the building work.

The provision of an independent assessment can also result in parties being more willing to resolve issues in dispute. For example, the contractor may decide to rectify the work without further involvement of the QBSA or the need for the issuing of a direction to rectify. Similarly, the consumer may reconsider their complaint where the QBSA building inspector opines that the work complies with relevant Australian Standards.

If the dispute cannot be resolved voluntarily between the parties, the QBSA building inspector will decide whether to issue the building contractor with a direction to rectify defective or incomplete building work. In making this decision, the QBSA building inspector has a statutory obligation to take into account all circumstances that are reasonably relevant.³⁵

Rectification of Building Work Policy

When making a decision under section 72 of the QBSA Act, the QBSA has regard to the *Rectification of Building Work Policy* of the QBS Board.³⁶ The *Rectification of Building Work Policy* provides guidance to the QBSA in relation to when it is fair and reasonable for the QBSA to give a direction to rectify or complete building work to a building contractor. The policy includes guidance in relation to:

- what constitutes defective building work;
- categories of defective building work; and
- reasonable time frames for the notification by consumers of defective building work.

Consistent with section 72 of the QBSA Act, the *Rectification of Building Work Policy* provides that it is a guideline policy of the QBS Board that a building contractor who carries out defective building work should be required to rectify that work, unless in the circumstances rectification is unfair or unreasonable.

³³ Information sourced from the QBSA database.

³⁴ The percentage of complaints mediated in previous years without the need for a site inspection were as follows: 2008/09: 26%; 2009/10: 27% and 2010/11: 26%. See QBSA Annual Reports for each year.

³⁵ Section 72(2), QBSA Act.

³⁶ The *Rectification of Building Work Policy* is discussed in detail in Chapter 4 of this Submission. The policy is available in electronic form at the following link:
http://www.bsa.qld.gov.au/SiteCollectionDocuments/Builders_Contractors/Fact%20Sheets/Rectification%20Of%20Building%20Work%20Policy.pdf

The *Rectification of Building Work Policy* provides an indicative guide regarding when a delay in notifying the QBSA as to the defect may result in the issuing of a direction being unfair or unreasonable in the circumstances. In this regard, the policy states:

“(1) It is a guideline policy of the Board that if a consumer wants the Queensland Building Services Authority (BSA) to issue a direction to a building contractor to rectify defective building work, the consumer should not delay making their application for a direction if the delay would result in the issue of the direction being unfair or unreasonable in the circumstances.

For section (1), it may be unfair or unreasonable, for example, to issue a direction if any of the following apply:

- (a) for category 1 defective building work or residential construction work causing subsidence, the delay exceeds 3 months after the defective work became apparent; or*
- (b) for category 2 defective building work, the delay exceeds:*
 - (i) 6 months after the building work was completed or left incomplete; or*
 - (ii) 7 months, if the owner notified the contractor of the defect within 6 months after the building work was completed or left incomplete.”*

The terms ‘category 1’ and ‘category 2’ defective building work are defined in the *Rectification of Building Work* policy as follows:

“Category 1 defective building work means defective building work (other than residential construction work causing subsidence) that is faulty or unsatisfactory because it does one or more of the following:

- (a) adversely affects the structural performance of a building;*
- (b) adversely affects the health or safety of persons residing in or occupying a building;*
- (c) adversely affects the functional use of a building;*
- (d) allows water penetration into a building.*

Category 2 defective building work means defective building work (other than category 1 defective building work or residential construction work causing subsidence) that is faulty or unsatisfactory because:

- (a) it does not meet a reasonable standard of construction or finish expected of a competent holder of a contractor’s licence of the relevant class; or*
- (b) it has caused a settling in period defect in a new building.”*

Separate provision is made in the *Rectification of Building Work Policy* for residential construction work causing subsidence. In this regard, the policy provides a detailed list of matters that, if the building contractor satisfies, may result in it being unfair or unreasonable to issue a direction due to the reliance of the building contractor on engineering advice.

It should be noted that the mere fact that a building contractor is not issued a direction due to the contractor relying on inadequate engineering advice does not preclude a consumer from accessing assistance under the Queensland Home Warranty Scheme in relation to the subsidence. However, if a claim is approved, the QBSA does not seek recovery of the amount from the building contractor under section 71 of the QBSA Act.

Directions issued by the QBSA³⁷

Table 2.1 below states the number of directions issued by the QBSA under section 72 of the QBSA Act that were finalised in the last 4 financial years.

Table 2.1: Directions issued to rectify building work finalised in financial years 2008-2012³⁸

Financial Year	Number of directions finalised
2011-2012	896
2010-2011	852
2009-2010	1,188
2008-2009	849

Review of decisions relating to directions to rectify

Under section 86(1)(e) of the QBSA Act, the QCAT may review decisions of the QBSA to direct or not to direct rectification or completion of building work. When reviewing a decision of the QBSA, the QCAT hears and decides the review by way of a fresh hearing on the merits.³⁹

Table 2.2 below provides details as to the number and percentage of review decisions finalised in the QCAT in relation to directions to rectify building work. In the 2011/2012 financial year, 60 reviews of QBSA decisions were heard. The QBSA's decision was found satisfactory in 95% of the reviews (i.e. in 57 cases).

Table 2.2: Outcomes of QCAT reviews of QBSA decisions as to whether or not to issue a direction to rectify or complete work under section 72 of the QBSA Act⁴⁰

Financial year	No. of reviews of QBSA decisions regarding directions	% of reviews where QBSA's decision was found to be satisfactory
2011/12	60	95% (57 cases)
2010/11	104	90% (94 cases)
2009/10	129	86% (111 cases)
2008/09	120	92% (110 cases)

2.3 Decisions about claims under the Queensland Home Warranty Scheme

The Queensland Home Warranty Scheme provides warranty cover to a home owner in relation to defective or incomplete residential construction work carried out by a building contractor. The QBSA administers the Queensland Home Warranty Scheme in accordance with the QBSA Act, QBSA Regulation and the applicable Insurance Policy Conditions of the QBS Board. A detailed discussion about the Queensland Home Warranty Scheme is contained in Chapter 6 of this Submission.

³⁷ For a detailed discussion about complaints to the QBSA about defective or incomplete building work and compliance/outcomes relating to directions issued, see Chapter 4.

³⁸ Information sourced from the QBSA Annual Reports for the relevant years and the QBSA database.

³⁹ Section 20(2), *Queensland Civil and Administrative Tribunal Act 2009*.

⁴⁰ Information sourced from the QBSA database.

Pursuant to section 71 of the QBSA Act, if the QBSA makes any payment on a claim under the Queensland Home Warranty Scheme, the QBSA may recover the amount of the payment, as a debt, from the building contractor who carried out the work.

The Insurance Policy Conditions for the Queensland Home Warranty Scheme are contained in a policy of the QBS Board. In relation to claims for defective residential construction work under the Queensland Home Warranty Scheme, the Insurance Policy Conditions provide that the Scheme's liability (and therefore the contractor's liability for the payment as a debt under section 71 of the QBSA Act) will not arise in the following circumstances:

- where, in the opinion of the QBSA, the insured unreasonably refuses access to the contractor, or their agent, to undertake rectification;
- where the QBSA issues a direction to rectify defective building work, until the QBSA is satisfied that the contractor will not comply with that direction or the requirements of the QCAT or a Court in relation to that direction;
- where the contractor has a continuing obligation to complete the residential construction work (e.g. where the contract has not been terminated).⁴¹

Further, in deciding matters relevant to claims under the Queensland Home Warranty Scheme, the QBSA must make a wide range of assessments under the Insurance Policy Conditions relevant to whether a claim is payable, the scope of works for rectification and the amount payable. In making these assessments, the Insurance Policy Conditions requires the QBSA to apply tests based on reasonableness and necessity.⁴² The QBSA's assessments in this regard directly affect the financial interests of the building contractor and the consumer involved.

Under section 86 of the QBSA Act, the QCAT may review a range of decisions relating to the Queensland Home Warranty Scheme including decisions to disallow a claim under the Scheme.⁴³ Further, as mentioned above, when reviewing a decision of the QBSA, the QCAT hears and decides the review by way of a fresh hearing on the merits.⁴⁴

Table 2.3 states the outcomes of the QCAT reviews relating to the Queensland Home Warranty Scheme finalised in the last 4 financial years. Significantly, in 2011/12 the QBSA's decision was found to be satisfactory in 91% of cases.

⁴¹ Clause 4.3, *Insurance Policy Conditions, Edition 8*.

⁴² For example, clause 4.2(a) states that payment will be "*limited to the reasonable cost, as determined by the BSA, of undertaking those works necessary to rectify the defects*". Similarly, clause 4.2(b) provides for a payment in relation to the "*reasonable alternative accommodation of the Insured... as having been necessarily incurred by the Insured...*"

⁴³ See sections 86(1)(g), (h) and (i), QBSA Act. These sections relate to a decision about the scope of works to be undertaken to rectify or complete work; a decision to disallow a claim wholly or in part; and a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion.

⁴⁴ Section 20(2), *Queensland Civil and Administrative Tribunal Act 2009*.

Table 2.3: Outcomes of QCAT reviews of QBSA decisions relating to claims under the Queensland Home Warranty Scheme⁴⁵

Financial year	No. of reviews of QBSA decisions regarding Insurance	% of reviews where QBSA's decision was found to be satisfactory
2011/12	22	91% (20 cases)
2010/11	42	93% (39 cases)
2009/10	81	96% (78 cases)
2008/09	62	81% (50 cases)

2.4 Outcomes of all QCAT reviews of QBSA decisions

In addition to reviews about decisions relating to the issuing of a direction or the Queensland Home Warranty Scheme, section 86 of the QBSA Act provides that the QCAT may review the following decisions:

- a decision to refuse an application for a licence or a permit;
- a decision to refuse an application for renewal of a licence;
- a decision to impose or vary a condition of a licence;
- a decision to suspend or cancel a licence or permit;
- a decision that there are reasonable grounds for concern that a licensee does not satisfy the relevant financial requirements for a licence;
- a decision not to categorise an individual as a permitted individual for a relevant event;
- a decision that a person is an excluded individual or excluded company;
- a decision that an individual is still a director or secretary of, or an influential person for, a company;
- a decision that a person is a convicted company officer;
- a decision that a company that is a licensee has an individual who is a convicted company officer as a director or secretary of, or an influential person or nominee for, the company;
- a decision that an individual is a banned individual for a stated term;
- a decision that a company that is a licensee has an individual who is a banned individual as a director or secretary of, or an influential person or nominee for, the company;
- a decision that an individual is a disqualified individual for a stated term;
- a decision that a company that is a licensee has an individual who is a disqualified individual as a director or secretary of, or an influential person or nominee for, the company.

Table 2.4 provides the outcomes of all the QCAT reviews of QBSA decisions finalised for the last 4 financial years.⁴⁶

⁴⁵ Information sourced from the QBSA database.

⁴⁶ Note: the outcomes in Table 2.4 include outcomes for decisions relating to directions to rectify building work and decisions relating to the Queensland Home Warranty Scheme.

Table 2.4: Outcomes of QCAT reviews of all QBSA decisions finalised by financial year 2008-2012⁴⁷

Financial year	No. of reviews of QBSA decisions finalised	% of reviews of QBSA decisions found satisfactory
2011/12	162	86% (140)
2010/11	238	90% (214)
2009/10	312	88% (276)
2008/09	280	87% (244)

2.5 Separation of decisions relating to insurance functions and licensing and dispute resolution functions

The QBSA is established as a single ‘one-stop shop’ entity to carry out licensing, dispute resolution and Queensland Home Warranty Scheme functions.

Under section 18(2A) of the QBSA Act, in deciding the action to be taken in relation to a licensee’s licence, the General Manager is prohibited from having regard to the implications for the statutory insurance scheme.

Under the QBSA’s organisational structure, decisions regarding payments of claims for insurance are made by assessment officers in the QBSA’s “Resolution Services” division. Decisions relating to the imposition of conditions, suspension and cancellation of licences (e.g. for breach of financial requirements) and prosecution of offences are made by the QBSA’s “Compliance” division. The decisions made by the two divisions are entirely separate. Further, the divisions are under the management of separate executive managers.

As mentioned previously, decisions regarding whether building work is defective or incomplete are determined by a building inspector who holds at least a Builder – Medium Rise licence under the QBSA Act and has a minimum of 5 years’ experience in the building industry.

In determining whether building work is defective, the inspector has regard to whether:

- the building work complies with the *Building Act 1975*, *Building Code of Australia* or an applicable Australian Standard; and
- if the building work involves the use of a manufactured product, that product has been used, constructed or installed in a way that does not comply with the product manufacturer’s instructions.⁴⁸

If a building inspector decides that building work is defective or incomplete, the inspector, having regard to all the circumstances, may issue the contractor with a direction to rectify the work. The building inspector’s decision to direct or not to direct rectification is reviewable by the QCAT on application of either the building contractor or the consumer. As mentioned previously, in 2011/12, 95% of decisions reviewed by QCAT regarding the issuing of directions were found to be satisfactory (see Table 2.2).

⁴⁷ Information sourced from the QBSA database. Note: Reviews of QBSA decisions under the Building Act (in relation to certification matters) are also included in Table 2.4.

⁴⁸ *Rectification of Building Work Policy*, QBS Board.

If the building work is not rectified in accordance with the direction and the work is residential construction work, the matter is then referred to an insurance assessment officer to determine whether the consumer is entitled to a claim under the Queensland Home Warranty Scheme. The insurance assessment officer will determine whether a claim can be made under the Scheme by reference to the QBSA Act, QBSA Regulation and the applicable Insurance Policy Conditions. However, the decision made by the building inspector as to whether the building work is defective or incomplete is not revisited.

Building inspectors making technical decisions as to whether building work is defective or incomplete, and insurance assessment officers, are both located in the “Resolution Services” division of the QBSA. The officers, however, have distinct functions and delegations with respect to their areas of responsibility and expertise. The building inspector may provide technical advice to the insurance assessment officer as to the work required to rectify or complete, including the scope of work relevant to the rectification or completion. In all other respects, the relevant officers make independent decisions in regards to their functions and delegations.

Under section 74 of the QBSA Act, if rectification work in respect of residential construction work is required, the QBSA must seek tenders for carrying out the work. The QBSA may accept any tender that it considers appropriate, irrespective whether the tender was for the lowest cost.

Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the QBSA to be reasonable in the circumstances. Tenders are sought from a panel of rectifying contractors established under section 73 of the QBSA Act. Decisions in regard to the amount payable under the Scheme, are based on the quotations provided through the tender process.

The QBSA Act provides safeguards in relation to decisions throughout the dispute and insurance process. Specifically, any affected party may apply to the QCAT for a review of any of the following decisions:

- a decision to direct or not to direct rectification or completion of building work;
- a decision that building work undertaken at the direction of the QBSA is or is not of a satisfactory standard;
- a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete residential construction work;
- a decision to disallow a claim under the Queensland Home Warranty Scheme wholly or in part;
- a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the Queensland Home Warranty Scheme.

In relation to the above reviewable decisions, Table 2.5 states the number and outcome of decisions reviewed by QCAT for the last 4 financial years.

Table 2.5: Number and outcomes of QCAT reviews of QBSA finalised decisions relating to the issuing of directions and decisions relevant to the Queensland Home Warranty Scheme by financial year - 2008-2012⁴⁹

Financial year	No. of reviews of QBSA decisions regarding dispute and Insurance	% of reviews where QBSA's decision was found to be satisfactory
2011/12	82	94% (77)
2010/11	146	91% (133)
2009/10	210	90% (189)
2008/09	182	88% (160)

2.6 Domestic building contracts

The purpose of the DBC Act is to regulate domestic building contracts with a view to achieving a reasonable balance between the interests of building contractors and building owners and maintaining appropriate standards of conduct in the building industry.⁵⁰

Actions taken for breaches of the DBC Act

A key function of the QBSA in relation to the DBC Act is the investigation and prosecution of offences stated in the DBC Act.⁵¹

In most instances, breaches of the DBC Act are dealt with by way of issuing an infringement notice under the *State Penalties Enforcement Act 1999* (infringement notice). Table 2.6 provides information as to the number of infringement notices issued and prosecutions taken in relation to breaches of the DBC Act for the last 4 financial years.

Table 2.6: Infringement notices issued and prosecutions taken in Court for breaches of the DBC Act offences 2008 – 2012⁵²

Action	2011/12	2010/11	2009/10	2008/09
Number of infringement notices issued	401	304	305	286
Number of offences finalised in Court prosecutions	16	17	7	0
Total actions taken	417	321	312	286

The most common breaches of the DBC Act are:

- Failure to put contract in writing (section 26 of the DBC Act);
- Failure to give the owner a contract information statement (section 40(1) of the DBC Act);
- Receiving a deposit in excess of the limits (section 64(1) of the DBC Act) ; and

⁴⁹ Information sourced from the QBSA database.

⁵⁰ Section 3, DBC Act.

⁵¹ Examples of offences in the DBC Act include section 26 (*Contracts must be in writing*); section 27 (*General contents of contracts*) and section 64 (*Deposits*).

⁵² Information sourced from the QBSA database.

- Failure to ensure contract complies with formal requirements (section 27 of the DBC Act).

The above offences comprise approximately 90-95% of all prosecutions and infringement notices issued for DBC Act offences for the last four years.

In 2011/12 all prosecutions undertaken by the QBSA for DBC Act offences were successful. Prosecutions for breaches of the DBC Act over the last 3 financial years are outlined in Table 2.7. Data is not provided for 2008/09 financial year, as all breaches for DBC Act offences for this year were dealt with through the issuing of an infringement notice.

Table 2.7: Number and outcomes of prosecutions finalised for offences under the DBC Act for the financial years 2009-2012⁵³

DBC Act provision	2011/12		2010/11		2009/10	
	No.	Successful outcome	No.	Successful outcome	No.	Successful outcome
Section 26 Failure to put contract in writing	7	7	4	3	0	0
Section 27 Failure to ensure contract complies with formal requirements	1	1	3	2	3	3
Section 33(4) Calculable delays	0	0	1	1	0	0
Section 40(1) Failure to give the owner a contract information statement	3	3	5	3	1	1
Section 55(1) and (2) Unlawfully entering into a cost plus contract	0	0	0	0	1	1
Section 64(1) Receiving a deposit in excess of the limits	3	3	2	1	2	2
Section 65(2) Demanding payment in excess of progress of the work	2	2	2	2	0	0

Contract information statements

Under section 40 of the DBC Act, a building contractor must give the building owner a copy of an appropriate contract information statement when entering into a contract regulated under the DBC Act for domestic building work. A contract information statement contains general information about contracts regulated under the DBC Act and is for the benefit of building owners. Failure to provide the owner with a copy of a contract information statement incurs a maximum penalty of 20 penalty units.

Under section 99 of the DBC Act, the QBSA approves all contract information statements in regard to regulated contracts or classes of regulated contracts.

Preparation and publication of domestic building contracts

The QBSA is legislatively authorised to prepare and publish suggested forms of domestic building contracts.⁵⁴ The QBSA publishes various forms of domestic building

⁵³ Information sourced from the QBSA database.

⁵⁴ Section 32, DBC Act

contracts, including contracts for major and minor works. The contracts are available on the QBSA website for use by consumers and contractors without charge.

Industry participants are not required to use the QBSA published contracts. There are a number of other standard form contracts available on the market. For example, a number of industry associations publish contracts for use by their members. Contractors may also opt to develop their own contracts for use with their clients provided that the contracts comply with the DBC Act.

2.7 Contractual disputes

The QBSA Act provides the QBSA with dispute resolution powers with respect to defective or incomplete building work. The QBSA's functions and responsibilities under the QBSA Act and the DBC Act in relation to contractual issues are limited to the enforcement of relevant offence provisions.

The QBSA is not a judicial body and cannot make decisions regarding the resolution of contractual disputes such as the ordering of damages, injunctive relief and compensation. Further, under the QBSA Act, the QBSA does not have functions or powers in relation to formal conciliation or arbitration services in regard to building disputes.

It also should be noted that while the QBSA has a role in the appointment of the Registrar and registry staff under the BCIP Act, it does not have a decision making function under the BCIP Act in relation to the resolution of progress payment disputes. The QBSA is not an adjudicator or approved nominating authority⁵⁵ under the BCIP Act. Adjudicators and approved nominating authorities are non-government entities which operate on a commercial basis.

⁵⁵ An approved nominating authority is an organisation registered under the BCIP Act to receive adjudication applications and nominate adjudicators to decide an application.

Chapter 3: The QBSA and costs of building a home

3.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home*

3.2 Costs associated with the Queensland Home Warranty Scheme

Under the QBSA Act, the QBSA administers a not-for-profit statutory home warranty scheme for residential construction work called the Queensland Home Warranty Scheme (the Scheme). The Scheme covers homeowners for loss suffered in the event of a contractor failing to complete a contract for residential construction work or carrying out defective residential construction work.

In general terms, the maximum amount payable under the Scheme's insurance policy conditions for claims is as follows:

- \$200,000 for claims for non-completion (including pre-completion defects), vandalism or forcible removal per policy (This maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs).⁵⁶
- \$200,000 limit for all claims relating to fire, storm or tempest per policy (This liability is subject to the lodgement of a valid non-completion claim prior to the event).⁵⁷
- \$200,000 per policy for claims for post-completion defects and subsidence (This maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs of up to \$5,000).⁵⁸

The term of the Scheme's cover is 6.5 years.

Pursuant to section 26A of the QBSA Act, the QBSA must ensure that the Scheme is managed in accordance with actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts to be paid from the Insurance Fund.

Section 68D of the QBSA Act requires the QBSA to state the premiums payable under the Scheme, or the way it is calculated, in the Government Gazette. Before stating the premium, or the way it is calculated, the QBSA must—

- have regard to its obligation under section 26A; and
- ensure premiums are sufficient to meet the costs of administering the Scheme and the costs of paying out claims; and
- obtain the Minister's approval.

⁵⁶ Clauses 6.2, 6.4, 6.6 and 6.7, *Insurance Policy Conditions, Edition 8*

⁵⁷ Clauses 6.8 and 6.9, *Insurance Policy Conditions, Edition 8*

⁵⁸ Clause 6.3, *Insurance Policy Conditions, Edition 8*

Under the QBSA Act, the appropriate insurance premium must be paid by the licensed contractor responsible for carrying out or construction managing the work.⁵⁹ In most instances, this cost is added to the construction price for the contracted residential construction work.

Premiums increase incrementally with the value of the residential construction work. The value of residential construction work includes the cost of labour and materials.⁶⁰

Table 3.1 states the premium payable for residential construction work valued at various amounts between the minimum premium payable (for work valued at \$20,000 or less) and the maximum premium payable (for work valued at \$600,000 or more).

Table 3.1: Summary of premiums currently payable under the Queensland Home Warranty Scheme

Contract value	Premium payable	Contract value	Premium payable
\$ 20,000 or less	\$197.40	\$300,000	\$2802.75
\$ 50,000	\$492.35	\$350,000	\$3191.05
\$100,000	\$984.65	\$400,000	\$3579.20
\$150,000	\$1495.95	\$450,000	\$3967.40
\$200,000	\$1994.55	\$500,000	\$4355.60
\$250,000	\$2414.60	\$600,000 or more	\$5132.00

Upon receipt of the premium, the QBSA posts a copy of the Certificate of Insurance and the Insurance Policy Conditions applicable for the residential construction work to the homeowner.⁶¹ The Insurance Policy Conditions are also available on the QBSA website.

In the 2011/12 financial year, 73,256 policies were issued. Approximately one third of the policies taken out in the financial year were for new constructions with the remainder being for work involving alterations and additions to existing homes.

Table 3.2 provides information as to the policies issued under the Queensland Home Warranty Scheme over the past 4 financial years.

Table 3.2: Number of policies issued under the Queensland Home Warranty Scheme by financial year - 2008-2012⁶²

Number of policies issued under the Scheme	2011/12	2010/11	2009/10	2008/09
	73,256	73,603	87,582	78,300

In the 2011/12 financial year, 2,128 homeowners were assisted by the Scheme with total claims paid amounting to \$37.6 million.⁶³ For further information on the operation and protections provided by the Scheme see Chapter 6.

⁵⁹ Sections 68B and 68C, QBSA Act

⁶⁰ Schedule 2, QBSA Act

⁶¹ Section 69, QBSA Act

⁶² Information sourced from the QBSA Annual Reports for the relevant years and the QBSA database.

⁶³ Information sourced from the QBSA database

3.3 Owner Builder permits

An owner who wishes to build a home on their land may apply to the QBSA for an owner builder permit.⁶⁴ Under the permit an owner may carry out the work personally or engage 1 or more licensed contractors to carry out the work. The owner may also supervise, manage and provide administration services for the work. The cost of applying for an owner builder permit is \$334.80.⁶⁵

Generally, an owner is not required to hold a permit or a licence under the QBSA Act if the owner personally performs work on their land and the value of the work is \$11,000 or less.⁶⁶ Work personally performed by an owner in these circumstances is also not insurable under the Queensland Home Warranty Scheme.

Owners who carry out work under an owner builder permit are not covered under the Scheme and accordingly neither the owner nor the contractors engaged by the owner are required to pay a premium. The holder of an owner builder permit is not required to hold a contractor's licence under the QBSA Act.⁶⁷

To be eligible for an owner builder permit, an owner must complete a course prescribed in the QBSA Regulation or another course approved by the QBSA as being at least equivalent to the prescribed course.⁶⁸ The QBSA provides a list of owner builder course providers on its website.⁶⁹ Depending on the course provider, the cost of completing an owner builder course is generally between \$100 and \$300. The QBSA provides an 'Owner Builder Course Study Guide' free of charge on its website.⁷⁰ Material covered in the course includes relevant legislative requirements, building contracts, budgets, estimates and scheduling of building work.

If the QBSA issues an owner builder permit, the QBSA must notify the Registrar of Titles of the granting of the permit.⁷¹ On receipt of the QBSA's notification the Registrar of Titles must enter the notification in the file attached to the register. The notification may not be removed until 7 years has elapsed.⁷²

Prior to the sale of the property and within 6 years of the completion of the building work, the owner, and any subsequent owner, must before a contract of sale is signed by a purchaser, give the prospective purchaser a prescribed notice. The notice must contain details of the building work carried out under the permit and a warning that the work is not covered by the Scheme.⁷³ Under section 47(2) of the QBSA Act, if the notice is not given as required, the vendor will be taken to have given the purchaser a contractual warranty that the building work was properly carried out.

⁶⁴ Section 44(1), QBSA Act

⁶⁵ Schedule 1, QBSA Regulation

⁶⁶ Section 5, QBSA Regulation

⁶⁷ Section 42(6), QBSA Act

⁶⁸ Section 44B, QBSA Act and section 21, QBSA Regulation

⁶⁹ <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Owner%20Builder/Fact%20Sheets/Owner%20Builder%20Permit%20Course%20Providers.pdf>

⁷⁰ <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Owner%20Builder/Publications/Owner%20Builder%20Study%20Guide.pdf>

⁷¹ Section 46, QBSA Act

⁷² Section 46, QBSA Act

⁷³ Section 47, QBSA Act and section 22, QBSA Regulation

3.4 Licensing fees

Schedule 1 of the QBSA Regulation prescribes fees for licence applications and licence renewals. For contractor's licences, fees are linked to the annual turnover of the contractor. Table 3.2 provides a summary of the licensing fees for contractors prescribed under the Schedule.

Table 3.3: Summary of licence fees for contractors

Licence fee – type	Individual	Company
Trade Contractors - annual turnover is up to \$100,000		
Application fee	\$297.65	\$497.00
Annual Licence fee	\$227.25	\$454.45
Trade Contractors - annual turnover is between \$100,001 and \$300,000		
Application fee	\$340.15	\$567.40
Annual Licence fee	\$284.35	\$567.40
Builder Contractors - annual turnover is up to \$300,000		
Application fee	\$340.15	\$567.40
Annual Licence fee	\$284.35	\$567.40
All Contractors - annual turnover is between \$300,001 and \$12,000,000		
Application fee	\$469.05	\$780.10
Annual Licence fee	\$340.15	\$681.65
All Contractors - annual turnover is above \$12,000,001		
Application fee	\$639.10	\$1064.45
Annual Licence fee	\$511.70	\$1021.85

The extent to which a licence fee contributes to the cost of building a home will depend on the annual turnover of the building contractor and the proportion of work carried out under the licence that involves the construction of a home (as opposed for example to commercial building work).

The licensing of persons who carry out building work for the construction of a home provides indirect cost savings to consumers. These savings include reducing the risks for consumers, when selecting a contractor, associated with investigating the suitability, competency and financial viability of a prospective contractor.

Consumers also have free access to the Licensee Register established under the QBSA Act. The Licensee Register provides consumers with information about a prospective contractor's relevant work history including:

- classes of licence held by the contractor;
- directions issued to the contractor for defective building work;
- number and value of residential construction work previously undertaken by the contractor;
- demerit points allocated against the contractor's licence;
- offences for which the contractor has been convicted under the QBSA Act and DBC Act;

- infringement notices issued against the contractor for breach of the QBSA Act or DBC Act; and
- cancellations and suspensions of a licence held by the contractor under the QBSA Act.⁷⁴

3.5 Other QBSA activities which mitigate the cost of building a home

The QBSA activities which contribute to reducing the costs of building a home include:

- Under the DBC Act, all contracts must be in writing and comply with requirements stated in the Act.⁷⁵ The QBSA publishes a domestic building contract and associated documents suitable for the construction of a home. The published contract complies with the DBC Act and is available free of charge on the QBSA's website.
- The QBSA provides a free dispute resolution service in relation to complaints about defective or incomplete building work. This service minimises the costs that would otherwise be incurred by consumers and contractor in resolving a dispute, including costs associated with potential legal action.
- The QBSA provides free education seminars for consumers and contractors throughout the State relevant to the construction of a home. These seminars include information as to how to avoid common causes of dispute and defective building work. For more details about the education seminars provide by the QBSA, please refer to Chapter 4.

⁷⁴ Section 99, QBSA Act and Section 33 of QBSA Regulation.

⁷⁵ Sections 26 and 27, DBC Act

Chapter 4: Remedies for defective building work and support, education and advice for persons undertaking building work and consumers

4.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *the effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers.*

Part A – Remedies for defective building work

4.2 Meaning of defective building work

The QBSA Act provides an inclusive definition of what constitutes defective building work. This definition states that “*defective, in relation to building work, includes faulty or unsatisfactory*”.⁷⁶ No further guidance is provided in the QBSA Act.

The QBS Board has made a guideline policy (*Rectification of Building Work Policy*) under section 9 of the QBSA Act in regard to the issuing of directions for the rectification of defective building work. Under this policy, the QBS Board provides the following examples of what may constitute faulty or unsatisfactory building work:

- building work that does not comply with the *Building Act 1975*, *Building Code of Australia* or an applicable Australian Standard; and
- building work that involves the use of a manufactured product, and that product has been used, constructed or installed in a way that does not comply with the product manufacturer’s instructions.

4.3 Complaints about defective or incomplete building work

Table 4.1 below states the number of complaints about defective or incomplete building work received by the QBSA each financial year for the years 2008-2012.

Table 4.1: Number of complaints about defective or incomplete building work received by the QBSA by financial year 2008-2012⁷⁷

Number of complaints received by the QBSA about defective or incomplete building work	2011/12	2010/11	2009/10	2008/09
	4,726	5,625	6,113	5,805

In the 2011/12 financial year, 73% of complaints came from southeast Queensland and the remaining 27% came from regional Queensland.⁷⁸ This is broadly consistent with previous financial years.

Table 4.2 states the top ten defects based on complaints received for the 2011-2012 financial year.

⁷⁶ Schedule 2, QBSA Act

⁷⁷ Information sourced from the QBSA Annual Reports for the relevant years and the QBSA database

⁷⁸ Information sourced from the QBSA database.

Table 4.2: Top ten defects 2011-12⁷⁹

Ranking	Description of defective work	No. of complaints
1	Roof Drainage (R/W plumbing)	203
2	Wall/ceiling internal plasterboard (cladding/lining)	189
3	Shower recess (waterproofing)	159
4	Floor ceramic – installation including adhesive (tiling)	154
5	Driveway/path - concrete (landscaping)	122
6	Footings (foundations)	112
7	Steel sheet (roof cover)	105
8	Window/door timber - install (joint/finishing)	104
9	Paint external - application (painting)	97
10	Cement Render - external	96
10	Window/door Alum - install (joint/finishing)	96

4.4 Statutory remedy for defective or incomplete building work

The QBSA's ability to provide remedies for defective or incomplete building work is governed by the QBSA Act.

Under section 72 of the QBSA Act if the QBSA is of the opinion that building work is defective or incomplete, the QBSA may direct the person who carried out the building work to rectify the building work within the period stated in the direction. In deciding whether to give a direction, the QBSA may take into consideration all the circumstances it considers are reasonably relevant.⁸⁰

In general, a direction cannot be given by the QBSA more than 6 years and 3 months after the building work to which the direction relates was completed or left in an incomplete state. However, if the QCAT is satisfied (on application by the QBSA) that there is in the circumstances of a particular case sufficient reason for extending the time for giving a direction, QCAT may extend the time accordingly.⁸¹

Section 72 provides a broad range of persons who are taken for the purposes of the section to have carried out building work and therefore able to be subject to a direction.⁸² For example, a person, who for profit or reward provides advisory services, administration services, management services or supervisor services for building work that is defective may be issued a direction.⁸³

A direction may be given to a licensed or an unlicensed person. If an unlicensed person is issued a direction, the person must have the work carried out by a licensed contractor.⁸⁴

Table 4.3 below provides details as to the number of persons who fully complied with all directions issued and the number of persons who failed to comply with one or more

⁷⁹ Information sourced from the QBSA database.

⁸⁰ Section 72(2), QBSA Act

⁸¹ Section 72(8), QBSA Act

⁸² Sections 72(5) and 72(11), QBSA Act

⁸³ Section 72(11), QBSA Act

⁸⁴ Section 72(7), QBSA Act

directions issued based on the last 4 financial years. Significantly, 54% of all persons issued with directions, fully complied with these directions in 2011/12.

Table 4.3: Number of persons who fully complied with all finalised directions given and number of persons who failed to comply with one or more finalised directions - 2008-2012 financial years⁸⁵

Compliance with directions	2011/12	2010/11	2009/10	2008/09
Number of persons who fully complied with all directions given	332 (54%)	258 (45%)	253 (43%)	232 (43%)
Number of persons who failed to comply with one or more directions given	280 (46%)	313 (55%)	330 (57%)	307 (57%)
Number of persons issued with one or more directions	612 (100%)	571 (100%)	583 (100%)	539 (100%)

It is important to note that the number of persons issued with one or more directions is proportionately very small relative to the number of licensees who hold licences under the QBSA Act. For example, there were 84,436 licensees as at 1 July 2012. The number of persons issued with directions in the 2011/12 financial year was less than 1% of this number.

If a direction is given to a licensed contractor to rectify defective or incomplete residential construction work and the direction is not complied with, the consumer may be eligible for assistance from the Queensland Home Warranty Scheme. Detailed information and data about the remedies available to a consumer under the Queensland Home Warranty Scheme is provided in Chapter 6 of this submission.

4.5 Consequences if a contractor fails to comply with a direction to rectify

Under section 72(10) of the QBSA Act, a person who fails to rectify building work as required by a direction is guilty of an offence (maximum penalty: 250 penalty units).⁸⁶ A breach of section 72(10) may be dealt with by way of prosecution, disciplinary proceedings or through the issuing of a fine under the *State Penalties Enforcement Act 1999* (a SPER fine). The SPER fine is 20 penalty units.⁸⁷

The majority of breaches of section 72(10) are dealt with by the QBSA through the issuing of a SPER fine. Table 4.4 provides a summary of the number of SPER fines issued for a breach of section 72(10) of the QBSA Act over the last 4 financial years.

Table 4.4: SPER fines issued by the QBSA for section 72(10) breaches 2008-2012⁸⁸

No. of SPER fines issued for section 72(10) breaches	2011/12	2010/11	2009/10	2008/09
	317	434	226	267

Table 4.5 provides a summary of the number of prosecutions and disciplinary proceedings finalised in the financial years 2008-2012 in relation to a failure to comply with a direction to rectify under section 72(10) of the QBSA Act.

⁸⁵ Information sourced from the QBSA database.

⁸⁶ Section 72(10), QBSA Act

⁸⁷ Schedule 5, *State Penalties Enforcement Regulation 2000*

⁸⁸ Information sourced from QBSA database.

Table 4.5: Number of prosecutions in the Courts and disciplinary proceedings in QCAT for section 72(10) QBSA Act breaches finalised in 2008-2012⁸⁹

Financial Year	No. prosecutions finalised (Court)	No. disciplinary proceedings finalised (QCAT)	Total
2011/12	11	1	12
2010/11	15	6	21
2009/10	4	10	14
2008/09	0	9	9

A breach of section 72(10) of the QBSA Act is also a demerit offence under section 67AR of the QBSA Act. A breach of section 72(10) will result in the person incurring 2 demerit points.⁹⁰ If a person accumulates 30 demerit points within a period of 3 years the individual is disqualified from holding a contractor's licence under the QBSA Act for a period of 3 years.⁹¹ If a person is disqualified for a second time, the person is disqualified from holding a contractor's licence for life.⁹²

Table 4.6 states the number of demerit points issued by the QBSA for failing to comply with a direction to rectify, and the number of distinct persons who received those demerit points over the last 4 financial years. A number of persons were allocated demerit points for failure to rectify on more than 1 occasion during each relevant financial year.

Table 4.6: Number of demerit points issued by the QBSA for failure to rectify and number of affected persons by financial year 2008-2012⁹³

Demerit points relating to failing to comply with a direction to rectify building work	2011/12	2010/11	2009/10	2008/09
Number of demerit points issued	504	648	470	236
Number of persons issued with demerit points	181	175	176	90

Additional penalties also apply to licensees who have been issued a direction under section 72 of the QBSA Act. The renewal fee payable by the licensee, on renewal of their licence, increases by 1 penalty unit (\$110), up to a maximum of 10 penalty units, for each direction given to the licensee since the previous renewal.⁹⁴

It is very common for contractors who fail to comply with directions to have their licence cancelled either because of the action of the QBSA or because the contractor voluntarily surrenders and cancels their licence. Table 4.7 details the number of licensees who failed to comply with one or more directions and had their licence cancelled in the same financial year.

⁸⁹ Information sourced from the QBSA database.

⁹⁰ Section 67AW, QBSA Act

⁹¹ Section 67AZM, QBSA Act

⁹² Section 67AZM, QBSA Act

⁹³ Information sourced from the QBSA Annual Reports for the relevant years and the QBSA database.

⁹⁴ Section 37C, QBSA Act

Table 4.7: Contractors who failed to comply with one or more directions and had their licence cancelled in the same financial year – 2008-2012⁹⁵

Contractors who failed to comply with one or more directions	2011/12	2010/11	2009/10	2008/09
Licence cancelled - due to insolvency	54 (19%)	75 (24%)	100 (30%)	85 (28%)
Licence cancelled – other than due to insolvency	45 (16%)	70 (22%)	65 (20%)	65 (21%)
Licence not cancelled	181 (65%)	168 (54%)	165 (50%)	157 (51%)
Total number of contractors who failed to comply with one or more directions given	280 (100%)	313 (100%)	330 (100%)	307 (100%)

Section 99 of the QBSA Act establishes a register of licensees that must be kept by the QBSA. The register of licensees is published on the QBSA's internet site and is available for inspection at the QBSA's offices at any time the offices are open.⁹⁶ The register of licensees contains a note about various matters against the name of each licensee, including each direction of the QBSA requiring the licensee to rectify building work.⁹⁷

4.6 Circumstances where QBSA is unable to assist with defective work

The QBSA is unable to assist with providing a remedy for defective work if the work is not building work or a proceeding about the work has been commenced in the QCAT.

Work that is not building work

The QBSA's jurisdiction to provide remedies for defective or incomplete building work is limited by the definition of building work under the QBSA Act and the exclusions to the definition prescribed in the QBSA Regulation.

Schedule 2 of the QBSA Act defines building work as follows:

building work means—

- (a) *the erection or construction of a building; or*
- (b) *the renovation, alteration, extension, improvement or repair of a building; or*
- (c) *the provision of lighting, heating, ventilation, airconditioning, water supply, sewerage or drainage in connection with a building; or*
- (e) *any site work (including the construction of retaining structures) related to work of a kind referred to above; or*
- (f) *the preparation of plans or specifications for the performance of building work; or*
- (fa) *contract administration carried out by a person in relation to the construction of a building designed by the person; or*
- (g) *fire protection work; or*
- (h) *carrying out site testing and classification in preparation for the erection or construction of a building on the site; or*

⁹⁵ Information sourced from the QBSA database.

⁹⁶ Sections 103D and 103E, QBSA Act

⁹⁷ Section 99(3), QBSA Act

- (i) *carrying out a completed building inspection; or*
- (j) *the inspection or investigation of a building, and the provision of advice or a report, for the following—*
 - (i) *termite management systems for the building;*
 - (ii) *termite infestation in the building;*

but does not include work of a kind excluded by regulation from the ambit of this definition.

Work excluded from the definition of building work in the QBSA Act is prescribed in section 5 of the QBSA Regulation. Key exclusions include:

- work of a value of \$3300 or less, unless the work requires an occupational licence or constitutes hydraulic services design work;
- work performed by an architect in the architect's professional practice; including, for example, carrying out a completed building inspection;
- work performed by an engineer in the engineer's professional practice;
- work performed by a licensed surveyor in the surveyor's professional practice;
- electrical work under the *Electrical Safety Act 2002*;
- installation of insulation for acoustic or thermal control;
- work consisting of earthmoving and excavating;
- construction work in mining;
- certification work performed by a building certifier under the *Building Act 1975* in the certifier's professional practice; and
- prescribed civil construction such as the construction of public roads, dams, bridges.

Proceedings commenced in QCAT

Under section 83 of the QBSA Act, the QBSA generally cannot act in relation to a dispute if a proceeding about the building work has been started in the QCAT or removed from a Court to the QCAT. An exception is provided in the limited circumstance where the QBSA considers building work needs to be urgently rectified or completed. In this circumstance, the QBSA may apply to the QCAT for an order that building work be rectified or completed.⁹⁸

Table 4.8 below provides details of the number of complaints about defective or incomplete building work that have been referred to the QBSA where the QBSA has been unable to assist the complainant due to the operation of section 83.

Table 4.8: Number of complaints affected by the operation of section 83 of the QBSA Act⁹⁹

Financial Year	Number of cases
2011-2012	117
2010-2011	93
2009-2010	104
2008-2009	93

⁹⁸ Section 84, QBSA Act

⁹⁹ Information sourced from the QBSA database.

Part B - Support, education and advice for contractors and consumers

4.7 Education and support objects of the QBSA Act

One of the stated objects of the QBSA Act is to provide support, education and advice for those who undertake building work and consumers.¹⁰⁰

The QBSA activities which promote this object include:

- the provision of information and support services to customers by the QBSA's Contact Centre;
- the delivery of education seminars to consumers and contractors throughout Queensland;
- the provision of information and support services to consumers and contractors through the QBSA's website;
- the provision of a licensee register, which is freely available to search through the QBSA's website;
- the productions of factsheets and publications for contractors and consumers on a wide range of building industry related issues;
- the provision of technical and mediation services by QBSA building inspectors to parties in dispute or potential dispute about building matters;
- the provision of advisory assistance to licensed contractors who are experiencing financial stress.

4.8 Contact Centre services

The QBSA has a contact centre which provides telephone and online services to building industry stakeholders. Telephone services include a phone-pay service which enables licensees to pay their renewal fees and Queensland Home Warranty Scheme premiums. The QBSA's telephone and website services are well utilised and are highly rated by clients for usefulness and ease of use.¹⁰¹ The QBSA's Contact Centre assists 96% of callers at first point of contact, without calls having to be transferred to another part of the QBSA. This rate has been consistent over the past 4 years.¹⁰²

The Contact Centre handled 218,835 calls in the 2011/2012 financial year. Of these calls, 56% of calls related to general enquiries, for example: licensing, owner building and defective work-related calls, and 44% were for phone-pay services.¹⁰³ Table 4.9 below categorises the calls received by the contact centre in the last 4 financial years.

¹⁰⁰ Section 3, QBSA Act

¹⁰¹ Refer table 4.11

¹⁰² Queensland Building Services Authority Annual Reports 2008-2009, 2009-2010 and 2010-2011

¹⁰³ Information sourced from the QBSA database.

Table 4.9: Calls received by the QBSA contact centre

Year	No. of calls received	Phone Pay Services	General and other enquiries
2011/12 ¹⁰⁴	218,835	44%	56%
2010/11 ¹⁰⁵	223,730	42%	58%
2009/10 ¹⁰⁶	241,811	39%	61%
2008/09 ¹⁰⁷	238,850	35%	65%

In this financial year, the Contact Centre responded to 1,038 telephone enquiries regarding the Brisbane and Central Queensland floods (January 2011) and Tropical Cyclone Yasi (February 2011). This followed from 5,153 telephone enquiries in the previous year regarding natural disasters.¹⁰⁸ The QBSA continues to provide information and advice to persons in areas still recovering from the natural disasters.

The QBSA contact centre also operates as an outbound call centre when urgent information is required to be disseminated to customers, for example, when a major building company collapses.

In the 2011/12 financial year, the QBSA's Contact Centre undertook a number of surveys to identify the levels of customer satisfaction with its telephone and counter services. Consistently, ratings of 85-95% were received regarding satisfaction levels with the ease of access to telephone and counter services. It also achieved a consistent 90-95% satisfaction rating for the overall quality of these services.

The QBSA conducted seven surveys of 3,187 of its customers in 2011/12, of which 2,074 were consumers and 1,113 were licensees. The surveys revealed the following:

- The majority of consumers – 78.2% - indicated confidence in the building industry and a willingness to go through the process again.
- 84% said they would use the same builder.
- 79.2% of consumers experienced no problems during construction
- When licensees were asked about the QBSA's overall performance, the average rating was 7.6 based on a scale of 1-10 (with 1 being poor and 10 excellent)
- Regarding the QBSA's telephone service, 97.7% of all respondents indicated they received polite/friendly service and 93.1 % had their issues dealt with in a timely manner.

Table 4.10 provides a comparison of the customer satisfaction surveys conducted in the 2011/12 and 2010/11 financial years.

¹⁰⁴ Information sourced from the QBSA database.

¹⁰⁵ *Queensland Building Services Authority Annual Report 2010-2011*

¹⁰⁶ *Queensland Building Services Authority Annual Report 2009-2010*

¹⁰⁷ *Queensland Building Services Authority Annual Report 2008-2009*

¹⁰⁸ *Queensland Building Services Authority Annual Report 2010-2011*

Table 4.10: Customer satisfaction survey comparison between 2011/12 and 2010/11 financial years

Activity	2011/12 ¹⁰⁹	2010/11 ¹¹⁰
Number of Surveys conducted	7	7
Number of customers surveyed	3,187	4,320
Number of customers that were consumers	2,074	2,926
Number of customers that were licensees	1,113	1,394
% of consumers who indicated confidence in the building industry and a willingness to go through the process again	78.2%	87.6%
% of consumers said they would use the same builder	84%	82.6%
% of consumers who experienced no problems during construction	79.2%	80.4%

Table 4.11 below summarises the overall level of satisfaction with QBSA telephone and counter services over the last four financial years (2008-2012) based on surveys conducted.

Table 4.11: Overall level of satisfaction with QBSA telephone and counter services by financial years 2008-2012

Year	Satisfaction level (where 1 is poor and 10 is excellent)	Other
2011/12 ¹¹¹	Contractors – 7.6	Averages for politeness of service – 97.7% Timeliness of correct information – 93.1%
2010/11 ¹¹²	Contractors – 7.4	Averages for politeness of service – 98.1% Timeliness of correct information – 93.5%
2009/10 ¹¹³	Contractors – 7.43	Averages for politeness of service – 96.5% Timeliness of correct information – 90.4%
2008/09 ¹¹⁴	Contractors – 7.68 Homeowners – 8.75	Averages for politeness of service – 96.3% Timeliness of correct information – 92%

In 2011, the QBSA's Contact Centre entered the national Australian Teleservices Association Awards for the first time. The QBSA Contact Centre was judged Best Queensland Contact Centre (under 50 full time employees) and was a finalist for the National award. In 2012 the QBSA Contact Centre was awarded Best Queensland Contact Centre (31-80 full time employees) and is a National Award Finalist. The National Award winner is to be announced in September 2012. The judging criteria for the Australian Teleservices Association Awards include continuous improvement processes, quality assurance measures and best practice standards for overall customer service.

The QBSA Contact Centre also provides referral services to building industry stakeholders. This referral service is discussed in Chapter 1 of this Submission.

¹⁰⁹ Information sourced from the QBSA database.

¹¹⁰ *Queensland Building Services Authority Annual Report 2010-2011*

¹¹¹ Outcomes of contact centre survey conducted during the 2011/12 financial year.

¹¹² *Queensland Building Services Authority Annual Report 2010-2011*

¹¹³ *Queensland Building Services Authority Annual Report 2009-2010*

¹¹⁴ *Queensland Building Services Authority Annual Report 2008-2009*

4.9 Education seminars

The QBSA delivers education programs for contractors and consumers. These programs aim to provide current information and advice to address issues prevalent in the Queensland building industry. For example, the seminars for contractors include technical information to address common defects identified in complaints received by the QBSA.

The QBSA in conjunction with Construction Skills Queensland, BUSSQ and QLeave delivers major education seminars (Better Building Supershows) for industry participants throughout Queensland. These seminars are for all licensees, their staff and subcontractors. The 2012 program includes roof drainage, timber balustrades, business strategies workshops, external waterproofing, timber durability and QBSA's industry update and feedback forum. The program features presentations by industry experts and QBSA staff.

In the 2011/12 financial year over 1,265 contractors attended the Better Building SuperShows with 97.9% of attendees surveyed indicating they would recommend the Better Building Supershow to others.¹¹⁵

Regional Contractor Education Seminars are held throughout Queensland. These programs address common technical defects, new standards and regulations and provided demonstrations of best practice methods.

The QBSA also provides trade-specific seminars throughout the year. In 2011/12 98 trade specific seminars were held throughout the State with attendance reaching 4,638 individuals, an increase of 1,066 on the previous year.¹¹⁶ These seminars targeted different sectors of the industry, to ensure maximum relevance and benefit. Topics included contractual obligations, how to avoid concreting and block and bricklaying defects and the new timber framing code. Coinciding with the introduction of fire protection occupational licensing in January 2009, the QBSA provided a series of seminars for the fire protection industry explaining the new licensing requirements and responding to industry concerns.¹¹⁷

The QBSA also delivers a home owner education program to guide home owners through the building and renovating process, from deciding on a project to choosing a contractor, entering into a building contract, dealing with building disputes and maintaining the work after completion. The QBSA also provided information and advice to thousands of attendees at nine home shows throughout the State.

¹¹⁵ *Better Building SuperShows Feedback Report 2011*, QBSA, December 2011 at 38.

¹¹⁶ Information sourced from the QBSA database

¹¹⁷ Fire occupational licensing commenced on 1 January 2009 with a two year transitional period. Mandatory licensing requirements commenced on 1 January 2011.

Table 4.12: Seminars conducted by the QBSA

Year	Seminars	Relevant topics
2011/12 ¹¹⁸	<ul style="list-style-type: none"> • 19 Better Building Supershows • 16 Regional Contractor Education seminars • 98 trade-specific seminars • 9 Home Shows 	Common technical defects, new standards and regulation, demonstrations of best practice methods, business management principle and contractual obligations. Technical information as to how to avoid concreting and block and bricklaying defects and the new timber framing code.
2010/11 ¹¹⁹	<ul style="list-style-type: none"> • 11 Better Building Supershows • 18 Regional Contractor Education Seminars • 98 trade-specific seminars 	In addition to information about common technical defects, new standards and regulation, demonstrations of best practice methods, business management principle and contractual obligations. The QBSA conducted a Build a Better Business series of 7 modules (business planning and project management and supervision).
	<ul style="list-style-type: none"> • 27 home-owner seminars 	Information about building and renovating process, deciding on a project, choosing a contractor, entering into a building contract, dealing with building disputes and maintaining the work after completion.
	<ul style="list-style-type: none"> • 14 Consumer and 9 contractor flood rebuilding information seminars 	Rebuilding information relevant to flood and disaster affected areas.
2009/10 ¹²⁰	<ul style="list-style-type: none"> • 13 Better Building SuperShows • 18 Regional Contractor Education Seminars • 96 trade-specific seminars 	Common technical defects, new standards and regulation, demonstrations of best practice methods, business management principles. Opportunity for a free one-on-one consultation with an independent financial expert or attend a free workshop run by an industry expert. Information as to the introduction to the building industry in Queensland and industry guide for first-year and future apprentices. Written material and free DVD set provided
	<ul style="list-style-type: none"> • 54 home-owner education seminars 	Information about building and renovating process, deciding on a project, choosing a contractor, entering into a building contract, dealing with building disputes and maintaining the work after completion.
2008/09 ¹²¹	<ul style="list-style-type: none"> • 20 Building Better Businesses Shows • 21 Education Seminars • 50 trade-specific seminars 	Common technical defects, new standards and regulation, demonstrations of best practice methods, business management principles. Opportunity for a free one-on-one consultation with an independent financial expert or attend a free workshop run by an industry expert.
	<ul style="list-style-type: none"> • 32 home-owner seminars 	Information about building and renovating process, deciding on a project, choosing a contractor, entering into a building contract, dealing with building disputes and maintaining the work after completion.

¹¹⁸ Information sourced from the QBSA database

¹¹⁹ Queensland Building Services Authority Annual Report 2010-2011

¹²⁰ Queensland Building Services Authority Annual Report 2009-2010

¹²¹ Queensland Building Services Authority Annual Report 2008-2009

The above educational programs are supported by the QBSA YouTube channel (launched in 2011), which features a variety of video clips providing information and advice to consumers and contractors about building and renovation projects.

4.10 QBSA website

The QBSA operates a website providing a range of information and links to relevant sites to building industry participants and stakeholders. The website provides access to the licensee database and to specific fact sheets, forms and other publications.

Online licence search facility

Under the QBSA Act the QBSA is required to keep a register of licensees.¹²² The Licensee Register contains particulars about each licensee including information regarding:

- the classes of licence held;
- directions given to the licensee requiring rectification of building work;
- offences committed by the licensee against the QBSA Act or the DBC Act and other disciplinary history;
- the application of demerit points;
- licence suspensions and cancelations; and
- the number and value of residential construction work carried out by the licensee.¹²³

The Licensee Register is available for inspection at the offices of the QBSA and on the QBSA's internet site.¹²⁴ The QBSA provides an online licence search facility on its internet site. The search facility enables consumers and building industry participants to confirm that a contractor is appropriately licensed and review the contractor's licence history prior to entering into a contract for building work.

Table 4.13 indicates the number of online licence searches conducted for the past 4 financial years.

Table 4.13: Number of searches conducted on the QBSA's online licence search facility

Year	Number of online licence searches conducted
2011/2012	436,430 ¹²⁵
2010/2011	412,236 ¹²⁶
2009/2010	285,500 ¹²⁷
2008/2009	358,392 ¹²⁸

¹²² Section 99, QBSA Act

¹²³ Section 99, QBSA Act; Section 33, QBSA Regulation

¹²⁴ Sections 103D and 103E of the QBSA Act.

¹²⁵ Information sourced from the QBSA database.

¹²⁶ *Annual Report 2010-2011*, QBSA

¹²⁷ *Annual Report 2009-2010*, QBSA

¹²⁸ *Queensland Building Services Authority Annual Report 2008-2009*

4.11 Fact sheets and publications

The QBSA publishes a range of documents to assist applicants for licences, licensees, consumers, the building industry and the general public. These documents, which include fact sheets, licensing information statements and technical information, are available on the QBSA website free of charge. The QBSA also publishes a regular newsletter for contractors, '*Building Links*', which is designed to keep contractors informed of new legislative requirements, building regulations and codes and assistance on how to comply with regulations.

Table 4.14 provides a list of factsheets and publications currently available on the QBSA Website.

Table 4.14: Fact sheets and other publications available on the QBSA website

Type of document	Title of document
Homeowner Fact Sheets¹²⁹	<ul style="list-style-type: none"> • Cost Plus Contracts - Consumer Supplement • H - 01 Maintaining Your Home • H - 02 The Older Persons Guide to the Building Process • H - 03 Swimming Pools • H - 04 Termite Management - What Owners Need to Know • H - 05 Contract Checklist • H - 06 Reducing the Risk of Things Going Wrong • H - 07 Seven Easy Steps to Building or Renovating • H - 08 Asbestos Removal • H - 09 Natural Disasters - BSA's Tips and Tricks • H - 10 Terminating a Contract Due to Non-Completion • H - 11 Choosing a Contractor • H - 12 Emergency Access • H - 13 Homeowner's Guide to Subsidence • H - 14 Your Guide to BSA's Resolution Services Process • Statutory Warranties • Rectification of Building Work Policy
Owner Builder Fact Sheets¹³⁰	<ul style="list-style-type: none"> • OB - 2 How to Obtain an Exemption from the Owner Builder Course • OB - 3 How to Become an Owner Builder Course Provider • OB - 4 Owner Builder Permits • Owner Builder Course Providers • LIS - 018 Owner Builder Permits - Multiple Dwellings • LIS - 028 Owner Builder Permits - Plans and Specifications
Contractor Fact Sheets¹³¹	<ul style="list-style-type: none"> • Approved Managerial Courses • BCA Classification Table • Building & Construction Industry Contacts • C - 01 Accessible Housing • C - 02 Advertising Requirements for Licensees • C - 03 Advertising Requirements for Unlicensed Contractors

¹²⁹ <http://www.bsa.qld.gov.au/FormsPublicationsProducts/Factsheets/Pages/HomeOwner.aspx>

¹³⁰ <http://www.bsa.qld.gov.au/FormsPublicationsProducts/Factsheets/Pages/OwnerBuilder.aspx>

¹³¹ <http://www.bsa.qld.gov.au/FormsPublicationsProducts/Factsheets/Contractor/Pages/FactSheets.aspx>

	<ul style="list-style-type: none"> • C - 04 Company Nominees • C - 05 Tips for Running a Successful Business • C - 06 Companies and Licensing • C - 07 Building Disputes and How to Avoid Them • C - 08 Employee or Contractor? • C - 09 Excluded Individual • C - 10 Licensing Requirements for Fence Builders • C - 11 How to Apply for a Builder Licence • C - 12 How to Apply for a Trade Contractor or Designers Licence • C - 13 Important Information for Final Year Apprentices • C - 14 Judgment Debts • C - 16 Using Your BSA Personal Identification Number • C - 17 Requirements for Site Signage • C - 18 Supervision of Building Work • C - 19 What is BSA? • C - 20 Statutory Warranties • C - 21 Contract Information Statements • C - 22 Subtrade Contractors • C - 23 Excluded Company • C - 24 Site Supervisor Licence • C - 25 Fire Occupational Licensing FAQ's • C - 26 BSA's Dispute Resolution Process • C - 27 Don't Give Up Your BSA Licence • C - 28 Partnerships • C - 29 Insolvency Events • ASIC Historical Company Extract Providers • Contractual Responsibilities • Insurance Premium Table From 15/07/08 to 30/06/09 • Insurance Premium Table From 01/07/09 - 30/06/10 • Insurance Premium Table From 01/07/10 - 30/06/2011 • Insurance Premium Table From 01/07/2011 - 22 July 2012 • Insurance Premium Table From 23 July 2012 • List of Authorised Nominating Authorities(BCIPA) • List of Licence Classes Available • Professional Indemnity Insurance Brokers • Rectification of Building Work Policy • Registered Training Organisations and Technical Assessment Organisations
Licensing Information Statements ¹³²	<ul style="list-style-type: none"> • LIS - 001 The Installation of Smoke Alarms and Fire Detection Systems • LIS - 002 The Construction of Shade Sail Structures • LIS - 003 Painters Applying Texture Coating Systems • LIS - 004 Builders Performing Work in Buildings Higher than One and Three Storeys • LIS - 005 Building Work Performed by an Electrical Contractor - replaced with LIS - 025 • LIS - 006 The Installation of Swimming Pool and Spa Heating Systems • LIS - 007 Installation of Security Screens • LIS - 008 Interim Gas-Fitting Licence

¹³² <http://www.bsa.qld.gov.au/FormsPublicationsProducts/Factsheets/Contractor/Pages/InformationStatements.aspx>

	<ul style="list-style-type: none"> • LIS - 009 Notice To Building Certifiers • LIS - 010 The Construction of Retaining Walls • LIS - 011 The Construction of Tennis Courts • LIS - 012 Concreting To Simple Forms • LIS - 013 The Assessment of Buildings and Building Designs for Energy Efficiency • LIS - 014 House Restumping • LIS - 015 Building Work Performed by Pest Controllers • LIS - 016 The Construction of Cold Rooms • LIS - 017 Labour Hire Businesses • LIS - 018 Owner Builder Permits - Multiple Dwellings • LIS - 019 Spray On Paving • LIS - 020 Concrete Cancer or Concrete Spalling Repair • LIS - 021 Pool Plumbing, Moulding and Shaping • LIS - 022 Building Inspections • LIS - 023 Lift and Elevator Installation • LIS - 024 Structural Metal Fabrication • LIS - 025 Installation of Split System Air-Conditioning Units • LIS - 026 Roof Repair and Restoration • LIS - 028 Owner Builder Permit - Plans and Specifications • LIS - 029 Builder Restricted to Special Structures - Signs • LIS - 030 Sheet Piling - Temporary and Permanent • LIS - 031 Superintendents • LIS - 032 Rainwater Tanks and On-site Domestic Waste Water Tanks • LIS - 033 Project Managers • LIS - 034 Floating Floors • LIS - 035 Change of Grade to Site Supervisor • LIS - 036 Quantity Surveyors
Technical information ¹³³	<ul style="list-style-type: none"> • Fire Separation - Ensuring that the construction of fire separating walls are to prescribed manufacturer's specifications and that prescribed by the Building Code Australia 1996 Volume Two • Fire Separating Walls Part 1 - Providing information about fire separating walls in multi-residential constructions • Fire Separating Walls Part 2 - Advice for contractors on fire separating walls systems in Class 1(a) buildings (references Building Code Australia 1996 Volume 2) • Floor Tiles - Lack of Movement Joints - Information on the importance of joints in tile systems. Additional information is available at: Standards Australia (AS3958.1 - 1991 Ceramic Tiles) • Leaking Shower Membrane Failure - Membrane failures caused by poor installation practices • Leaking Shower Screen - Issues caused by leaking shower screens. Additional information is available at: Standards Australia (AS3740 - 1994 Waterproofing of wet areas Building Code of Australia - Part 3.8 Health and Amenity in Wet Areas (3.8.1) • Leaking Shower Tap - Flange Failure - Problems caused by inadequate sealing • Painting Case Study - External Paint Applications - Re-paintwork system and lack of adequate preparation prior to application

¹³³ <http://www.bsa.qld.gov.au/FormsPublicationsProducts/Factsheets/Contractor/Pages/TechnicalFactSheets.aspx>

	<ul style="list-style-type: none"> • Prevent Defects in Brick and Blockwork, Concrete Work, Window Installation and Timber Decks • Rectification of Building Work Policy - BSA Guidelines • Stormwater Drainage - Correctly installing stormwater drainage • Tie-downs for Storm Damage Repairs - Guidelines on the repair of roofs following storm damage. Covers roof battens to top plates. • Waterproofing Standard AS3740 - Important information about waterproofing • Water Stains on Plaster Ceilings - Issues with roof sheeting installation
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4.12 Other support offered to contractors

The QBSA offers contractor support services to identify and monitor licensees who are, or may be, in financial distress. In mid-2009, the QBSA formed a panel of external financial experts to assist selected licensed contractors who are identified as being financially unstable but may benefit from free “business turnaround” advice. The advice is aimed to assist the contractor better manage their business with a view to preventing financial failure or, where financial failure is unable to be avoided, minimising the impact of any such failure.

In 2010/11, the QBSA reported that business turnaround service resulted in savings to creditors of approximately \$1.3 million.¹³⁴

The following are two examples of the savings that the turnaround process has provided to the industry in 2009/10:

- A licensee came to the QBSA’s attention when their licence renewal was being assessed, and was placed under audit shortly after. The licensee agreed to participate in the QBSA’s turnaround process, with a report being produced by a panel member. Ultimately, the company was placed into administration in November 2009, and its licence was cancelled by the QBSA. However, the QBSA’s involvement, including the facilitation of the business turnaround advice, resulted in a reduction of debts owed to trade creditors of approximately \$1.9 million.
- The QBSA became aware that a licensee could potentially be in some financial difficulty. A workout proposal was put to the creditors, which the QBSA supported. Payments made to the creditors throughout the workout process exceeded \$1 million.

The QBSA’s actions in the two turnaround examples provided above resulted in a savings to trade creditors of approximately \$2.9 million.¹³⁵

¹³⁴ Information sourced from the QBSA database.

¹³⁵ Information sourced from the QBSA database.

Chapter 5: Governance arrangements of and between the QBS Board and the General Manager

5.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *the governance arrangements of and between the board and the general manager.*

5.2 The QBS Board – Constitution

The Chair and members of the QBS Board are appointed by the Governor in Council. The QBS Board consists of 8 members comprising:

- 3 members who are licensees, or directors of companies that are licensees, subject to the following conditions:
 - at least one of the licensees must be a licensed builder;
 - at least one of the licensees must be a licensed contractor other than a licensed builder; and
- 2 members appointed as representatives of consumers; and
- 1 member appointed as a representative of either or both of the general insurance industry and the accounting profession; and
- 1 member appointed as a representative of building and construction unions; and
- 1 member as a public service officer.

All members of the QBS Board, other than the public service member, are voting members.

5.3 The QBS Board – Governance functions

The QBS Board is established under section 8 of the QBSA Act. The role of the QBS Board is stated in section 9 of the QBSA Act (see discussion in Chapter 1). This role includes the following governance functions:

- provide guidance and leadership to the general manager and monitor the general manager's management of the authority;
- in conjunction with the general manager, to establish the strategic direction for the authority;
- advise the Minister on issues affecting the administration of the QBSA.

Section 14 of the QBSA Act provides that the Board, or the Minister, may appoint committees for the purpose of advising the Board on a particular subject or subjects. To facilitate its governance functions under section 9 of the QBSA Act, the QBS Board has established a number of committees including the Finance, Audit and Risk Committee, Insurance Committee and Policy Committee.

Finance, Audit and Risk Committee

The Finance, Audit and Risk Committee oversees internal auditing of the QBSA, including strategic and annual audit plans and management responses to the internal auditor's recommendations for improvement and strategic risk management. The Committee considers and oversees the QBSA's budgetary functions, financial statements and financial position.

The Committee meets on a bi-monthly basis to monitor the QBSA's financial performance and viability to ensure QBSA funds are used appropriately. The Committee considers and endorses the outcomes of the mid-year budget review to the QBS Board and assesses and approves the proposed QBSA annual budget.

The Committee also assists in developing the QBSA's investment policy and strategies. The Committee monitors the performance of the QBSA's fund managers, Queensland Investment Corporation and Queensland Treasury Corporation. In its deliberations, the Committee considers the advice of the QBSA's actuaries, fund managers, QBSA management, and other information from relevant sources.

The Committee operates independently of the QBSA executive management and reports directly to the QBS Board. The Committee is chaired by the member representing the accounting profession on the QBS Board. The Committee also comprises other members of the QBS Board. The General Manager, relevant Executive Managers and finance staff provide secretariat and other assistance to the Committee.

Insurance Committee

The Insurance Committee advises the QBS Board on the performance of the Queensland Home Warranty Scheme and associated issues. The Insurance Committee is chaired by the member representing consumers and also comprises two other QBS Board members. The General Manager, the Insurance Manager and QBSA staff provide secretariat and other assistance to the Committee as required.

The Insurance Committee reviews the risk profiles for non-completion, defects and subsidence claims under the Queensland Home Warranty Scheme. In its deliberations the Insurance Committee considers the advice of the QBSA's actuary, QBSA management, and other information from relevant sources. The Insurance Committee also plays an important role in assessing the reinsurance needs of the Scheme, including the percentage of risk to be reinsured.

Policy Committee

The Policy Committee advises the QBS Board on policy issues relevant to the QBSA related legislation and is instrumental in developing new policies relating to the building industry. The Policy committee comprises members who represent the major industry associations and consumer representatives (including a representative of the Queensland Consumer Association).

Over the past four years, the Policy Committee has considered issues in relation to:

- subcontractor accountability,
- requests to rectify defective building work procedure,
- dispute management system procedures,
- National licensing reforms,

- QBS Board policies, and
- clarifying minimum criteria for relief of responsibility for subsidence to residential footings.

Other committees

Other committees of the QBS Board include the Licensing Committee, Fire Protection Occupational Licensing Committee and the Rapid Adjudication Committee. These committees are discussed in Chapter 8.

5.4 The QBS Board and the General Manager – Governance relationship

Under the QBSA Act, the General Manager has all executive powers of the QBSA and the responsibility for the overall management of the QBSA.¹³⁶ The General Manager is independent of the QBS Board's control in performing the functions and responsibilities associated with the General Manager's executive powers and overall management of the QBSA.¹³⁷ Examples of the executive powers of the General Manager include:

- administration of the licensing system established under the QBSA Act;
- administration of a system of inspection;
- issuing directions for rectification of building work;
- taking disciplinary and other proceedings under the QBSA Act;
- assessing and approving payment of insurance claims;
- issuing warnings to the public or any section of the public;
- providing and promoting consumer education; and
- providing an advisory service to consumers.¹³⁸

The QBSA Act requires the General Manager to report regularly to the QBS Board on the administration of the QBSA Act and, at the request of the Board, provide it with a special report on a particular subject.¹³⁹

As outlined in Chapter 1, one of the roles of the QBS Board is to make and review policies governing the administration of the Act.¹⁴⁰ To have effect, a policy of the QBS Board must be approved by regulation and published in the gazette.¹⁴¹ The policies of the QBS Board which are currently in effect are:

- *Financial Requirements for Licensing policy;*
- *Insurance Policy Conditions;*
- *Rectification of Building Work policy.*

¹³⁶ Section 18(1), QBSA Act.

¹³⁷ Section 19, QBSA Act.

¹³⁸ Section 18(2), QBSA Act. Further information relevant to the role of the General Manager, including examples of the General Manager's functions and responsibilities are provided in Chapter 1.

¹³⁹ Section 18(3), QBSA Act.

¹⁴⁰ Section 9(a), QBSA Act.

¹⁴¹ Section 9A, QBSA Act.

While the General Manager is independent of the QBS Board in the exercise of executive powers and the overall management of the QBSA, the General Manager has a statutory obligation to give effect to the board's policies.¹⁴²

The General Manager is not appointed by the QBS Board. Under the QBSA Act the General Manager is appointed by the Governor in Council.¹⁴³ The remuneration and conditions of appointment of the General Manager are determined by the Minister.¹⁴⁴

5.5 Insurance Manager – governance arrangements

The QBSA Act creates the statutory position of Insurance Manager for the QBSA. Under the QBSA Act, the Insurance Manager is to be appointed by 'the Authority'.¹⁴⁵ In practice, the Insurance Manager is appointed under the executive powers of the General Manager in consultation with the QBS Board.

The role of the Insurance Manager is provided for by section 22 of the QBSA Act. Under this provision the Insurance Manager must report regularly to the QBS Board on the administration of the Queensland Home Warranty Scheme and, if asked by the QBS Board, must give the Board a special report on a particular subject. The Insurance Manager is independent of the General Manager's direction in reporting to the QBS Board, but is otherwise subject to the General Manager's direction.¹⁴⁶

¹⁴² Section 19(2), QBSA Act.

¹⁴³ Section 17, QBSA Act.

¹⁴⁴ Ibid.

¹⁴⁵ Section 21, QBSA Act.

¹⁴⁶ Section 22, QBSA Act.

Chapter 6: The effectiveness of the Queensland Home Warranty Scheme and its protections

6.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *the effectiveness of the Queensland Home Warranty Scheme and its protections.*

6.2 Background

Home warranty

Home warranty schemes are mandatory requirements in all jurisdictions in Australia except Tasmania. Home warranty insurance protects homeowners against financial loss arising from defective or incomplete building work, and also provides protection for subsequent owners.

Home warranty insurance, like other insurances, is the pooling of the risk of uncertain future events. Insurers spread the risk across the entire domestic building sector. Contractors pay a premium to the insurer on behalf of the property owner with the funds used to compensate the homeowner in the event that the building work is not completed, or is defective.

Home warranty cover is referred to in the insurance industry as a “long tail” class of business. This means the insurer is liable for claims that can be made in the years following the year the premium was paid (and the policy was written). There is a protracted period of time between payment of the premium and establishing the cost of claims.

Home warranty schemes differ between Australian jurisdictions. The Queensland Home Warranty Scheme provides cover where incomplete or defective work is established, even in circumstances where the contractor is still trading or the homeowner has other civil rights that could be pursued. This is commonly referred to as ‘first resort’.

In all other Australian jurisdictions, home warranty provides cover where the builder is unable to complete the work because the builder is deceased, has disappeared, or is insolvent – defined events. Some jurisdictions also include a fourth defined event, being the suspension or cancellation of the builder’s licence. This type of warranty is commonly referred to as ‘last resort’. In a last resort scheme, the homeowner is required to take civil action against the builder for compensation at their own expense if the builder is alive, locatable and solvent. Legal costs incurred prior to the point at which the insurance cover is triggered are usually not covered by this type of insurance product.

History of the Queensland Home Warranty Scheme

In 1977 Queensland introduced a system of Home Warranty Insurance providing cover for the construction or renovation of a single detached dwelling, if the value of the work exceeded \$1,000 (increased to \$3,000 in 1979).¹⁴⁷ The cover provided was for non-

¹⁴⁷ *Builders’ Registration and Home-owners’ Protection Act 1979.*

completion, defects and subsidence (excluding design defects by persons other than the builder) and was first resort insurance. The maximum amount of cover was \$36,000.

In 1992 the QBSA Act commenced operation. The QBSA Act established the Queensland Home Warranty Scheme (the Scheme) with the QBSA to administer the Scheme.¹⁴⁸ The QBSA Act provides that the terms of the insurance are to be stated in the policies of the QBS Board.¹⁴⁹

From 1992, cover offered by the Scheme was extended to multi-unit construction of not more than 3 storeys and roofed buildings related to a residence constructed by a house builder, such as garages, gazebos, sheds and carports. Subsidence cover was extended to include design defects prepared by consultants to the builder. The maximum amount of cover was \$45,000, plus an additional \$5,000 for necessary alternate accommodation and removal costs.

In 1997, the maximum amount of cover under the Scheme was increased to \$100,000 with an additional \$5,000 for alternate accommodation and removal costs. In 1999, the maximum amount of cover available under the Scheme was increased to \$200,000 including within that limit a maximum of \$5,000 for necessary alternate accommodation and removal costs. Cover was also extended at this time to include work carried out by licensees who were not builders, such as trade contractors performing bathroom, kitchen and laundry renovations.

Reflecting the introduction of the goods and services tax (GST), on 1 July 2000 the value of residential construction work for the Scheme to apply was increased to a minimum amount of more than \$3,300 (including GST).

In 2006, the maximum amount of cover under the Scheme was increased to \$400,000 as follows:

- \$200,000 for non-completion and defects or subsidence apparent prior to practical completion; and
- \$200,000 for defects and subsidence that becomes apparent after practical completion.

In 2009, the Scheme was expanded to include cover for loss arising from vandalism, forcible removal, fire, storm and tempest for an incomplete building subject to a claim under the Scheme for non-completion. The maximum amount of cover was amended as follows:

- \$200,000 prior to practical completion in relation to claims for defective building work, non-completion, subsidence, vandalism and forcible removal;
- \$200,000 for fire, storm or tempest damage to incomplete works during the time between lodgement of a non-completion claim under the Scheme and the earlier of the engagement of a new contractor or the resumption of works on site; and
- \$200,000 for defects and subsidence that becomes apparent after practical completion.¹⁵⁰

¹⁴⁸ Part 5, QBSA Act.

¹⁴⁹ The QBS Board's policies are contained in applicable editions of the Insurance Policy Conditions. The most recent edition is Edition 8, which became effective on 1 July 2009.

¹⁵⁰ *Insurance Policy Conditions, Edition 8* (commenced 1 July 2009).

6.3 Building work covered by the Scheme

The Scheme provides cover for loss suffered by an *insured* in relation to defective or incomplete residential construction work. The term “*residential construction work*” is defined as primary building work and associated building work.¹⁵¹

In this regard, *primary building work* is specified building work carried out by a building contractor, for a residence or related roofed building which is of a value of more than \$3,300. The specified building work is any of the following:

- construction of a new residence that is a single detached dwelling or duplex;
- construction of a multi-unit residential building no more than 3 storeys high (excluding the lowest storey if it consists mainly of a car park);
- construction of a private garage, shed, carport, toilet building or change room on, or proposed to be placed on, the site of an existing or proposed residence (“related roofed building”);
- building work that affects the structural performance of the residence or related roofed building;
- building work for relocation or replacement of a roof, wall, internal partition, floor or foundation;
- building work for replacement or refitting of fixtures or fittings in a bathroom or kitchen in the residence or related roofed building;
- building work for an unenclosed, elevated platform or verandah, including a deck, attached to a residence;
- building work that increases the covered floor area of the residence or related roofed building;
- building work for installation or repair of the primary water supply to, or sewerage or drainage for, the residence or related roofed building.¹⁵²

The QBSA Regulation defines ‘*associated building work*’ as work other than primary building work which forms part of a contract for primary building work, provided it is for residential purposes.¹⁵³ The QBSA Regulation provides the following examples of associated building work:

- landscaping;
- painting;
- airconditioning;
- driveways, paths or roads;
- water heaters including units for heating swimming pools;
- refrigeration; roller shades and shutter screens;
- security doors and grills;

¹⁵¹ Section 10, QBSA Regulation (See also Part 1, Division 2, QBSA Regulation generally and section 13 (*building work that is not classified as residential construction work*), QBSA Regulation).

¹⁵² Section 11, QBSA Regulation.

¹⁵³ Section 12, QBSA Regulation.

- solar power units and associated electrical components;
- swimming pools, or spas that are not part of a bathroom;
- water tanks that are not part of a primary water supply for the residence or related roofed building.¹⁵⁴

The Scheme covers primary building work for non-completion, defects and subsidence. Associated building work is covered for non-completion only.

6.4 Work expressly excluded from protection under the Scheme

To be covered by the Scheme the building work must be for a *residence* or *related roofed building*. The QBSA Regulation expressly states that the term ‘residence’ does not include a building designed as a temporary building (including, for example, a demountable building), a boat, caravan, manufactured home, motor vehicle, tent, trailer or train.¹⁵⁵ Accordingly, building work associated with these structures will not be covered by the Scheme.

Section 13 of the QBSA Regulation excludes specific building work from the definition of residential construction work. Building work not classified as residential construction work under section 13, and accordingly not covered by the Scheme, includes:

- building work on, or on the site of, a building or proposed building that is or forms part of any of the following—
 - a multiple dwelling of more than 3 storeys;
 - a backpacker’s accommodation, boarding house, caravan park, guest house, holiday accommodation, hostel, hotel, lodging house or motel;
 - a correctional centre, lockup, prison, reformatory or watch-house;
 - a hospital, nursing home or other health care building;
 - an orphanage or children’s home;
 - a retirement village under the *Retirement Villages Act 1999*;
 - an educational institution;
 - group accommodation for persons with a physical or mental disability;
 - commercial or industrial premises, if the building or proposed building—
 - also serves the commercial or industrial purpose carried on at the commercial or industrial premises; and
 - is the only residential unit in the premises, e.g. a caretaker’s flat on industrial premises constructed for a caretaker responsible for the care or security of the premises or goods on the industrial premises;
- building work carried out by a building contractor for a person who is the holder of an owner builder permit covering the work;
- loading, unloading or transporting a building; or
- off-site prefabrication of the whole of a building.

¹⁵⁴ Section 11(3) QBSA Regulation.

¹⁵⁵ Definition of *residence*, Section 9, QBSA Regulation.

6.5 Persons covered by the Scheme

The insured

While the licensed building contractor who carried out, or construction managed, the residential construction work is responsible under the QBSA Act to pay the premium under the Scheme for the work, the building contractor is not insured under the Scheme.

The policy terms for the Scheme are stated in the policies of the QBS Board (Insurance Policy Conditions). For the purpose of this submission, a reference to the Insurance Policy Conditions is a reference to Edition 8 of the policy which took effect from 1 July 2009.

The Insurance Policy Conditions define the “insured” as:

- the owner of the land; or
- a consumer who has entered into a contract with the contractor to have residential construction work carried out in Queensland.¹⁵⁶

In general, the Scheme only covers residential construction work carried out by a licensed contractor who is obligated to pay the relevant premium for the work. However, section 69 of the QBSA Act operates to deem the existence of insurance cover in circumstances where a premium has not been paid or the contractor is not licensed.

Section 69 provides that a policy of insurance comes into force if a consumer:

- enters into a contract for the performance of residential construction work with a licensed contractor; or
- enters into a contract with a person fraudulently claiming to hold a licence under which the person may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme.

Exclusion from cover

Liability under the Scheme is excluded in specified circumstances. These circumstances include:

- Where the contractor has been released from liability, or the insured agrees to indemnify the contractor, in relation to insured works, the Scheme is released from liability to the same extent.¹⁵⁷

This commonly occurs where the insured and the contractor are involved in a domestic building dispute in the QCAT and reach an agreement at mediation to resolve the dispute. The Insurance Policy Conditions prevent the insured from making a claim in relation to the same work that has been subject to a release of liability or an indemnity provided. It is noted that the QBSA may recover amounts paid on a claim under the Scheme from the building contractor who carried out the work.¹⁵⁸

¹⁵⁶ Clause 11.1, *Insurance Policy Conditions, Edition 8*.

¹⁵⁷ Clause 6.15, *Insurance Policy Conditions, Edition 8*.

¹⁵⁸ Section 71, QBSA Act.

- Where the work has been rectified or completed without the prior written approval of the QBSA.¹⁵⁹
- Where a subsequent purchaser buys the land and residential construction work on it, and the defect or subsidence was evident at the time of purchase.¹⁶⁰
- Defective design of a multiple storey dwelling by a consultant engaged by the insured.¹⁶¹
- Defects or subsidence caused by fair wear and tear, lack of maintenance, or neglect by the insured.¹⁶²
- Loss caused by the insured or their agents.¹⁶³
- Where the insured is also the building contractor, or is a related party of the building contractor, the insured is not entitled to cover for non-completion or defects.¹⁶⁴
- Developers having 3 or more living units constructed at the same time, including for example 3 or more houses, or a block of 3 or more units.¹⁶⁵

6.6 Key features of cover provided under the Insurance Policy Conditions

The cover provided by the Scheme includes the following:

- Non-completion cover – cover for loss suffered by the insured as a result of the building contractor's failure to complete work
- Defects cover (other than for subsidence) – cover for loss suffered by the insured as a result of the building contractor carrying out defective building work other than defective building work causing subsidence;
- Subsidence cover – cover for loss suffered by the insured as a result of the building contractor carrying out defective building work causing subsidence.

Further information regarding the details of the key features of cover offered by the Scheme is provided below.

6.7 Non-completion cover

The Scheme provides cover to the insured where a contractor fails to complete a contract for residential construction work¹⁶⁶ provided:

- The contract is for a fixed price;¹⁶⁷ and
- The insured has terminated the contract due to the default of the contractor.¹⁶⁸

¹⁵⁹ Clause 7.1, *Insurance Policy Conditions, Edition 8*.

¹⁶⁰ Clause 7.2, *Insurance Policy Conditions, Edition 8*.

¹⁶¹ Clause 7.4(a)(i), *Insurance Policy Conditions, Edition 8*.

¹⁶² Clause 7.4(b), *Insurance Policy Conditions, Edition 8*.

¹⁶³ Clause 7.5, *Insurance Policy Conditions, Edition 8*.

¹⁶⁴ Section 70A, QBSA Act; See also clause 7.6, *Insurance Policy Conditions, Edition 8*.

¹⁶⁵ Clause 7.10, *Insurance Policy Conditions, Edition 8*.

¹⁶⁶ Clause 1.1, *Insurance Policy Conditions, Edition 8*.

¹⁶⁷ Clause 1.2, *Insurance Policy Conditions, Edition 8*.

¹⁶⁸ Clauses 1.2 and 11.1, *Insurance Policy Conditions, Edition 8*.

The Scheme is not liable for a non-completion claim relating to the following:

- the construction of multi-unit residential buildings other than a duplex;
- the construction of more than 2 dwellings for the insured by the one contractor;
- Where the insured exercises their right to withdraw from the contract during the “cooling off” period” under the *Domestic Building Contracts Act 2000*.¹⁶⁹

Amount payable under the Scheme

If building work has not commenced, cover is limited to the amount of any un-refunded lawful deposit for residential construction work paid by the Insured (5% of the contract price for contracts with a contract price of \$20,000 or more; 10% in contracts with a contract price of less than \$20,000) plus interest.¹⁷⁰

Where building work has commenced, cover is limited to the QBSA’s assessment of the reasonable cost to complete the contract less the insured’s remaining liability under the contract. The Scheme also includes cover for an amount the QBSA determines is reasonable for necessary alternate accommodation, removal and storage costs. The total cover under the Scheme (for completion and accommodation) is limited to a maximum of \$200,000.¹⁷¹

The amount payable in response to a claim for non-completion may be reduced in the following circumstances:

- Where the contract is ‘underpriced’¹⁷² - the amount payable by the Scheme is to be reduced by the amount of the underpricing; and
- Where the Insured made a payment to the contractor before it was due to be paid under the contract – the amount payable by the Scheme is to be reduced by the amount of the prepayment.¹⁷³

Time periods applicable to non-completion claims

Cover for non-completion claims under the Scheme expires 2 years from the earlier of the date the premium was paid and the date the contract was entered into.¹⁷⁴ To be entitled to cover for non-completion, the Insured must make a claim within 3 months of properly terminating the contract, or within such further time as the QBSA may allow.¹⁷⁵

Non-completion – acts of vandalism and forcible removal

Following the lodgement of a valid claim for non-completion, the Scheme provides cover to the Insured for loss to standing but incomplete residential construction work caused by another person through vandalism or forcible removal.¹⁷⁶

¹⁶⁹ Clause 1.9, *Insurance Policy Conditions, Edition 8*.

¹⁷⁰ Clause 1.4, *Insurance Policy Conditions, Edition 8*.

¹⁷¹ Clause 1.5 and Part 6, *Insurance Policy Conditions, Edition 8*.

¹⁷² ‘Underpricing’ refers to circumstances where the value of the contracted works clearly exceeds the price payable under the contract. See also Clause 1.6(a), *Insurance Policy Conditions, Edition 8*.

¹⁷³ Clause 1.6, *Insurance Policy Conditions, Edition 8*.

¹⁷⁴ Clause 1.7, *Insurance Policy Conditions, Edition 8*.

¹⁷⁵ Clause 1.8, *Insurance Policy Conditions, Edition 8*.

¹⁷⁶ Clauses 2.1 and 2.2, *Insurance Policy Conditions, Edition 8*.

In the event that standing work is damaged as a result of vandalism or forcible removal after a non-completion claim has been lodged, the Insured must:

- Make a formal complaint to the police about the event prior to lodging a claim under the Scheme for the resulting loss;¹⁷⁷
- Lodge a claim within 14 days of the event causing the loss.¹⁷⁸

An excess of \$2,500 is payable for each event for which loss is claimed.¹⁷⁹

Cover under the Scheme for acts of vandalism or forcible removal expires on the earliest of the following:

- 6 months from the date of termination of the contract;
- the date the Insured enters into a contract for the completion of the contracted works; and
- 7 days after the QBSA approves a non-completion claim.¹⁸⁰

To be entitled to cover for vandalism or forcible removal, the insured must be entitled to a non-completion claim.¹⁸¹

Non-completion – fire, storm or tempest

The Scheme provides cover to the insured for loss to the standing but incomplete residential construction work caused by fire, storm or tempest which occurs after the lodgement of a claim for non-completion.¹⁸² Claims under the Scheme relating to loss caused by a fire, storm or tempest event must be made within 14 days of the event occurring.¹⁸³

Under clause 3.6 of the Insurance Policy Conditions, cover expires on the earliest of the following:

- 6 months from the date of termination of the contract;
- the date the insured enters into a contract for the completion of the contracted works;
- 7 days after QBSA approves a non-completion claim.

To be entitled to cover for fire, storm or tempest the insured must be entitled to a non-completion claim.¹⁸⁴

¹⁷⁷ Clause 2.4, *Insurance Policy Conditions, Edition 8.*

¹⁷⁸ Clause 2.3, *Insurance Policy Conditions, Edition 8.*

¹⁷⁹ Clause 2.5, *Insurance Policy Conditions, Edition 8.*

¹⁸⁰ Clause 2.8, *Insurance Policy Conditions, Edition 8.*

¹⁸¹ Clause 2.10, *Insurance Policy Conditions, Edition 8.*

¹⁸² Clauses 3.1 and 3.2, *Insurance Policy Conditions, Edition 8.*

¹⁸³ Clause 3.3, *Insurance Policy Conditions, Edition 8.*

¹⁸⁴ Clause 3.8, *Insurance Policy Conditions, Edition 8.*

6.8 Defective building work (other than subsidence)

The Scheme provides cover for the cost of rectifying defects in primary building work.¹⁸⁵ There is no cover for defects in associated building work.¹⁸⁶

The amount of cover the insured is entitled to is reduced by any remaining liability under the contract for the work.¹⁸⁷ The Scheme also provides cover for reasonable alternate accommodation, removal and storage costs necessarily incurred due to the need to rectify the defects.¹⁸⁸

Liability under the Scheme for defects does not arise in the following circumstances:

- the insured unreasonably refuses access to the contractor to undertake rectification work;
- the QBSA has issued a direction to rectify the work until the QBSA is satisfied that the contractor will not comply with the direction or the requirements of the QCAT or a court in relation to the direction; or
- the contractor has a continuing obligation to complete the residential construction work (e.g. the contract has not been terminated).¹⁸⁹

The period of cover and the time limit for making a claim under the Scheme for defective building work will vary according to the nature of the defect.¹⁹⁰ The Insurance Policy Conditions provides 2 categories of defect: category 1 defects and category 2 defects.

The Insurance Policy Conditions define a Category 1 defect as *building work that is faulty or unsatisfactory because it either:*

- *adversely affects the structural performance of a building;*
- *adversely affects the health or safety of persons residing in or occupying a building.*
- *adversely affects the functional use of the building; or*
- *allows water penetration into a building.*¹⁹¹

A 'category 2 defect' is defined as *building work that is faulty or unsatisfactory, other than a category 1 defect, because:*

- *it does not meet reasonable standards of construction or finish; or*
- *it has caused a "settling in period" defect in a new building.*¹⁹²

¹⁸⁵ Clause 4.1, *Insurance Policy Conditions, Edition 8.*

¹⁸⁶ Clause 4.6, *Insurance Policy Conditions, Edition 8.*

¹⁸⁷ Clause 4.2(a), *Insurance Policy Conditions, Edition 8.*

¹⁸⁸ Clause 4.2(b), *Insurance Policy Conditions, Edition 8.*

¹⁸⁹ Clause 4.3, *Insurance Policy Conditions, Edition 8.*

¹⁹⁰ Clause 4.4, *Insurance Policy Conditions, Edition 8.*

¹⁹¹ Clause 11.1, *Insurance Policy Conditions, Edition 8.*

¹⁹² Clause 11.1, *Insurance Policy Conditions, Edition 8.*

Under the Insurance Policy Conditions, cover for category 1 defects expires:

- Where it takes 6 months or less to reach practical completion - 6 years and 6 months from the date of the contract or the date of payment of the insurance premium (whichever is the earlier); or
- Where it takes more than 6 months for the works to reach practical completion - 6 years from the date of practical completion¹⁹³

A claim relating to a category 1 defect must be made within 3 months of the defect becoming evident, or within such further time as the QBSA may allow.¹⁹⁴

The cover under the Scheme for category 2 defects expires 6 months after practical completion.¹⁹⁵ A claim under the Scheme relating to a category 2 defect must be made within 7 months of the date of practical completion or with such further time as the QBSA may allow.¹⁹⁶

6.9 Subsidence

The Scheme provides cover to the insured for the cost of remedying subsidence or settlement damage to the primary building work.¹⁹⁷ There is no cover for subsidence damage to associated building work.¹⁹⁸

For the purposes of the Scheme, *“Subsidence or settlement” means movement in the foundations of the residential construction work which adversely affects the structural adequacy or serviceability, performance or functional use of that work.*¹⁹⁹

The Scheme provides cover to homeowners for defective building work causing subsidence in circumstances where the building contractor has relied on a faulty design prepared by a registered professional engineer.

The amount payable to the insured in relation to a claim for subsidence is reduced by any remaining liability under the contract for the work.²⁰⁰ The cover also includes reasonable alternate accommodation, removal and storage costs necessarily incurred due to the need to remedy the subsidence.²⁰¹ The Scheme will not be liable to make a payment in circumstances where the Insured unreasonably refuses access to the building contractor to undertake rectification.²⁰²

Under clause 5.4 of the Insurance Policy Conditions, subsidence cover expires:

- where it takes 6 months or less to reach practical completion - 6 years and 6 months the date of the contract or the date of payment of the insurance premium (whichever is earlier); or
- where it takes more than 6 months for the works to reach practical completion - 6 years from the date of practical completion

¹⁹³ Clause 4.4, *Insurance Policy Conditions, Edition 8.*

¹⁹⁴ Clause 4.5(a), *Insurance Policy Conditions, Edition 8.*

¹⁹⁵ Clause 4.4(b), *Insurance Policy Conditions, Edition 8.*

¹⁹⁶ Clause 4.5(b), *Insurance Policy Conditions, Edition 8.*

¹⁹⁷ Clause 5.1(a), *Insurance Policy Conditions, Edition 8.*

¹⁹⁸ Clause 5.6, *Insurance Policy Conditions, Edition 8.*

¹⁹⁹ Clause 5.1(b), *Insurance Policy Conditions, Edition 8.*

²⁰⁰ Clause 5.2(a)(i), *Insurance Policy Conditions, Edition 8.*

²⁰¹ Clause 5.2(b), *Insurance Policy Conditions, Edition 8.*

²⁰² Clause 5.3, *Insurance Policy Conditions, Edition 8.*

A claim for subsidence must be made within 3 months of the subsidence or settlement becoming evident or within such further time the QBSA may allow.²⁰³

6.10 Maximum amount of cover

The Insurance Policy Conditions do not apply an excess for claims for non-completion, fire, storm, tempest, defects or subsidence. Claims for vandalism or theft are subject to an excess of \$2,500.²⁰⁴

The Insurance Policy Conditions limit the amount of liability through the application of maximum liabilities, including maximum amount for types of claims under each Policy, maximum amount for all claims made under a Policy and a maximum amount payable under the Scheme (regardless of the number of policies applicable) for common property.

- The total maximum amount of cover under a single policy is \$600,000.²⁰⁵
- The maximum liability for claims relating to common property is \$1M (common property is subject to multiple policies under the Scheme).²⁰⁶
- A \$200,000 limit applies to claims for non-completion (including pre-completion defects), vandalism or forcible removal per policy (This maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs).²⁰⁷
- A \$200,000 limit applies to all claims relating to fire, storm and tempest per policy (This liability is subject to the lodgement of a valid non-completion claim prior to the event).²⁰⁸
- A \$200,000 limit per policy applies to claims for post-completion defects and subsidence (This maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs of up to \$5,000).²⁰⁹

6.11 Claims paid by the Scheme

Table 6.1 states the number and total value of claims approved by the Scheme over the last 4 financial years. The table also provides this information based on claim type.

²⁰³ Clause 5.5, *Insurance Policy Conditions, Edition 8.*

²⁰⁴ Clause 2.5, *Insurance Policy Conditions, Edition 8.*

²⁰⁵ Clause 6.10, *Insurance Policy Conditions, Edition 8.*

²⁰⁶ Clauses 6.5 and 6.6, *Insurance Policy Conditions, Edition 8.*

²⁰⁷ Clauses 6.2, 6.4, 6.6 and 6.7, *Insurance Policy Conditions, Edition 8.*

²⁰⁸ Clauses 6.8 and 6.9, *Insurance Policy Conditions, Edition 8.*

²⁰⁹ Clause 6.3, *Insurance Policy Conditions, Edition 8.*

Table 6.1: Number and total value of claims approved²¹⁰ based on type of cover and financial year 2008-2012²¹¹

Year of Approval	Non-completion		Defects		Subsidence		Annual total	
	No.	\$	No.	\$	No.	\$	No.	\$
2011/12	421	11,150,130	1,509	17,337,090	894	9,077,929	2,824	37,565,149
2010/11	521	13,768,314	1,500	14,607,619	894	10,791,062	2,915	39,166,995
2009/10	918	21,287,996	1,423	13,821,930	656	7,081,259	2,997	42,191,185
2008/09	621	12,409,615	1,073	8,077,792	820	7,992,100	2,514	28,479,507

6.12 Process for making a claim

The process for making a claim under the Scheme for defective or incomplete residential construction work may be summarised as follows:

1. If a consumer believes that residential construction work is defective (including subsiding) or incomplete, they should first notify the contractor to give the contractor a reasonable opportunity to rectify or otherwise resolve the consumer's concerns to the satisfaction of both parties.
2. If the contractor fails to rectify, or is insolvent or deceased, the insured may lodge a written complaint form with the QBSA.²¹² For non-completion claims the insured must also provide proof that the contract has been terminated due to the default of the contractor.²¹³
3. If the dispute cannot be resolved at the time of initial contact with the QBSA, a QBSA building inspector will inspect the works and invite both parties to attend the inspection. If the works are incomplete, defective or subsiding, the QBSA may direct the contractor to rectify the work.²¹⁴
4. If the contractor fails to rectify or complete the work, the complaint will be referred to the Queensland Home Warranty Scheme as a claim. If the consumer is entitled to a claim under the Insurance Policy Conditions, the QBSA will prepare a scope of work to rectify or complete the works and call tenders from its panel of rectifying builders. The insured may also arrange for appropriately licensed contractors to tender on the works.²¹⁵
5. The QBSA will approve a claim under the Scheme, usually based on the lowest tender. The insured is informed of the approved amount. The insured may enter into a contract for completion or rectification with the approved tenderer, or any other appropriately licensed contractor.
6. The QBSA pays the rectifying builder in accordance with the progress of work. In some cases the QBSA may cash settle with the insured, rather than pay the rectifying builder.²¹⁶

²¹⁰ Note: it is possible for there to be more than one claim approval per complaint referred to the Scheme.

²¹¹ Information sourced from the QBSA database.

²¹² Section 71A, QBSA Act.

²¹³ Clause 1.2, *Insurance Policy Conditions, Edition 8*.

²¹⁴ Section 72, QBSA Act. See also discussion in Chapters 2 and 4 of this submission.

²¹⁵ See sections 73 and 74, QBSA Act.

²¹⁶ Clause 9.1, *Insurance Policy Conditions, Edition 8*.

6.13 Premiums payable under the Scheme

For a detailed discussion about premiums payable under the Scheme and the setting of premiums, see discussion in Chapter 3.

6.14 QCAT reviews of QBSA decisions relating to the Scheme

Under section 86 of the QBSA Act, the QCAT may review a range of decisions relating to the Queensland Home Warranty Scheme including decisions to disallow a claim under the Scheme and the scope of work approved for rectification.²¹⁷ When reviewing a decision of the QBSA, the QCAT hears and decides a review by way of a fresh hearing on the merits.²¹⁸

Table 6.2 states the outcomes of the QCAT's reviews relating to the Queensland Home Warranty Scheme. Significantly, for 2011/12, in 91% of cases the QBSA's decision was found to be satisfactory.

Table 6.2: Outcomes of QCAT reviews of QBSA decisions relating to claims under the Queensland Home Warranty Scheme²¹⁹

Financial year	No. of reviews of QBSA decisions regarding Insurance	% of reviews where QBSA's decision was found to be satisfactory
2011/12	22	91% (20 cases)
2010/11	42	93% (39 cases)
2009/10	81	96% (78 cases)
2008/09	62	81% (50 cases)

6.15 Reports assessing home warranty schemes in Australia

There have been a number of reports published in relation to home warranty schemes operating in Australian Jurisdictions. These reports include the following:

- *Economic Regulation Authority of Western Australia, Inquiry into the effectiveness of Western Australia's home indemnity insurance arrangements*, Issues paper, 5 July 2012.
- *Victorian Domestic Building Consumer Protection Framework Public Consultation Paper*, Victorian Department of Treasury and Finance, April 2012.²²⁰
- *Queensland Building Services Authority – Organisation Review Project – Final Report 2011* (KPMG Report), KPMG June 2011.²²¹
- *Victorian Auditor-General's audit report on Compliance with Building Permits* 2011.

²¹⁷ See section 86(1)(g), (h) and (i), QBSA Act. These sections relate to a decision about the scope of works to be undertaken to rectify or complete work; a decision to disallow a claim wholly or in part; and a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion.

²¹⁸ Section 20(2), *Queensland Civil and Administrative Tribunal Act 2009*

²¹⁹ Information sourced from the QBSA database.

²²⁰ See also submissions at <http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/DTF-projects-domestic-building-consumer-protection-framework>

²²¹ See Chapter 9 of this submission.

- *Victoria, Legislative Council Standing Committee on Finance and Public Administration, Inquiry into Builders Warranty Insurance*, Final Report, October 2010.
- *Commonwealth Senate's Standing Committee on Economics Inquiry into Australia's Mandatory Last Resort Home Warranty Insurance Scheme* 2008.
- *Productivity Commission's Review of Australia's Consumer Policy Framework* 2007-08.
- *Victorian Competition and Efficiency Commission Housing Regulation in Victoria: Building Better Outcomes* 2005.
- *Final Report of the NSW Home Warranty Insurance Inquiry* chaired by Richard Grellman, 30 September 2003 (see www.nswhwi-inquiry.com for a copy of the full report).
- *Inquiry into the Home Building Amendment (Insurance) Act 2002*, Standing Committee on Law and Justice, Parliament of NSW, Legislative Council [Chaired by Hon Ron Dyer and Hon John Ryan], September 2002.
- *National Review of Home Builders Warranty Insurance and Consumer Protection* – Report prepared for the National Ministerial Council on Consumer Affairs, Professor Percy Allan, 25 June 2002.
- *Joint Select Committee on the Quality of Buildings*, Parliament of NSW, Legislative Assembly. [Chaired by David Campbell], July 2002.
- *Consumer Protection and Industry Reform – Response to Changes in Builders' Warranty Insurance*, Background Paper, Victorian Building Commission, May 2002.
- *Public Benefit Test – Queensland Building Services Authority Act 1991 and Regulations*, Qld. Economic Insights Pty Ltd, Feb. 2002.
- *Internal Review of Building Indemnity Scheme*, NT Government, March 2002.
- *National Competition Policy Review of the Building Works Contractors' Act 1995* – Supplementary Review (of Building Indemnity Insurance Scheme), SA Govt., Oct. 2001.
- *Report of the Home Indemnity Insurance Forum on Options for Changes or Alternatives to the Current Scheme*, Dept. of Consumer and Employment Protection, WA, Sept. 2001.
- *Residential Building Indemnity Scheme – Discussion Paper*, Dept. of Lands, Planning and Environment, NT, Aug. 2001.
- *Review of Domestic Building Insurance Issues*, Victorian Building Control Commission V. Kirtton (undated - possibly 2001).
- *Statutory Review of the Home Indemnity Insurance Scheme*, Ministry for Fair Trading, WA, (Issues Paper and Draft Report), Nov. 1999, (Update) June 2001.
- *National Building Framework*, Builders Licensing Australia, Canberra, 1999.
- *Residential Building Work Insurance Discussion Paper*, Dept. of Urban Services, ACT, May 1998.
- *Proposed Reforms of Home Building Industry*, Dept. of Fair Trading, NSW, July 1996.

- *Inquiry into Outstanding Grievances with the Building Services Corporation* (Crawford Report), NSW, Dec. 1995.
- *Review of Victorian Housing Guarantee Fund*, Parliamentary Public Accounts and Estimates Committee, Vic., Sept. 1994.
- *Home Building – Consumer Problems and Solutions*, Trade Practices Commission, Cth, Nov. 1993.
- *Inquiry into NSW Building Services Corporation* (Dodd Report), Department of Fair Trading, NSW, Feb. 1993.

Chapter 7 – Adequacy of current licensing requirements and auditing processes to maintain proper standards

7.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *whether the current licensing requirements of the QBSA are adequate and that there is sufficient auditing processes to maintain proper standards.*

7.2 Grade of licence issued under the QBSA Act

The QBSA Act establishes a licensing system for contractors and supervisors carrying out building work and for workers performing fire protection work.

The QBSA Act provides for the following grades of licences:

- Contractor's licence – a licence which authorises a person to carry out all classes of building work or carry out building work for 1 or more classes specified in the licence;²²²
- Nominee Supervisor's licence – a licence which authorises an individual to personally supervise building work, or if the individual is the company's nominee provide supervisory services for building work and perform the functions required of a nominee under the QBSA Act;²²³
- Site Supervisor's licence – a licence which authorises an individual, while the individual is an officer or employee of a licensed contractor, to personally supervise building work carried out under the contractor's licence;²²⁴ and
- Fire Protection Occupational licence – authorises an individual, while the individual is an employee of a licensed contractor, to personally carry out and personally supervise fire protection work carried out under the contractor's licence.²²⁵

7.3 Requirement to hold a licence

Under the QBSA Act, it is an offence for a person to carry out building work or provide building work services for the work unless that person holds an appropriate licence under the Act.²²⁶ The maximum penalty for this offence is 250 penalty units.²²⁷ A person who carries out building work under an owner builder permit is exempted from this requirement. With the exception of fire protection work, an employee of a licensed contractor who performs building work for the contractor, but does not supervise the work, is also exempt from the requirement to hold a licence.

²²² Section 30, QBSA Act.

²²³ Section 30A, QBSA Act.

²²⁴ Section 30B, QBSA Act.

²²⁵ Section 30C, QBSA Act.

²²⁶ Section 42(1), QBSA Act. The term 'building work services' is defined in Schedule 2 of the QBSA Act as one or more of the following for building work – administration services, advisory services, management services, supervisor services.

²²⁷ Section 42(9), QBSA Act. The value of a penalty unit is currently \$110.

The QBSA Act includes specific licensing provisions for individuals who perform or supervise fire protection work as an employee or officer of an appropriately licensed contractor.²²⁸ However, the QBSA Act allows employees and officers to perform fire protection work without a licence under the Act, if the performing of the work is otherwise authorised under legislation.²²⁹ For example, the holder of a licence under the *Plumbing and Drainage Act 2002* can perform fire protection work without a QBSA Act fire protection occupational licence as an employee or an officer of an appropriately licensed contractor to the extent the work is authorised under their licence without breaching the QBSA Act.

The classes of contractor's, nominee supervisor's, site supervisor's and fire protection occupational licence are prescribed under the QBSA Regulation.

Classes of contractor's and nominee supervisor's licences are available for all building work under the QBSA Act.²³⁰ Classes of site supervisor's licences are available for building work other than fire protection work.²³¹ For further information about the classes of licence for building work see discussion at Chapter 8.

In most instances, work of a value of \$3,300 or less is not building work and does not require a contractor's licence or supervisor's licence to carry out.²³² However, there are prescribed types of work for which a lower value is set. For example, section 5 of the QBSA Regulation prescribes a range of work where a licence is required for the work regardless of value. The types of work which fall into this category typically have health and safety implications for the public and include gasfitting, plumbing, drainage and fire protection work.²³³

7.4 Eligibility requirements to hold a contractor's licence – individual

Under the QBSA Act a contractor's licence may be issued to an individual or a company.

Under section 31 of the QBSA Act, an individual is entitled to a contractor's licence if the QBSA is, on application by the individual, satisfied that the individual —

- has the qualifications and experience required by regulation in relation to a licence of the relevant class;
- is a fit and proper person to hold the licence and can lawfully work in Queensland;
- is not an individual who is excluded, disqualified or banned from holding a licence under the QBSA Act;
- satisfies the relevant requirements stated in the *Financial Requirements for Licensing* policy of the QBS Board; and

²²⁸ Section 30C, QBSA Act.

²²⁹ Section 42C, QBSA Act.

²³⁰ Sections 30 and 30A, QBSA Act. See also Schedule 2 QBSA Regulation for prescribed classes of licence available under the QBSA Act.

²³¹ Section 14B, QBSA Regulation.

²³² Work requiring an occupational licence, such as plumbing and gasfitting work, is building work regardless of its value. A lower threshold of \$1,100 applies to the carrying out of hydraulic services design work.

²³³ Chapters 1 and 4 provide more details as to work excluded from the definition of building work for the purposes of the QBSA Act.

- does not have an unpaid judgment debt for an amount the QBSA may recover under section 71 in relation to a claim under the Queensland Home Warranty Scheme.

The technical qualifications and experience requirements for all classes of contractor's licences issued under the QBSA Act are prescribed in Schedule 2 of the QBSA Regulation. Contractor's licences are categorised under the QBSA Regulation as builder contractor's licences and trade contractor's licences.

In most instances, the technical qualifications for builder contractor's licences are prescribed in Schedule 2 of the QBSA Regulation at a Certificate IV qualification or higher under the Australian Qualifications Framework. Certificate IV qualifications include technical and management subjects relevant to the role of a builder contractor. The experience requirement for a builder contractor's licence is ordinarily set at 4 years' relevant experience.

The technical qualifications for a trade contractor's licence are typically prescribed at a Certificate III level with the experience requirement being set at 2 years' relevant experience. For those classes of trade contractor's licence where there is a separate occupational licensing system in place under other legislation (e.g. plumbing, drainers and gasfitters), the holding of an occupational licence under the other legislation is sufficient for the applicant to meet both the technical and experience requirements for a trade contractor's licence.

In addition to technical qualifications, an applicant for a trade contractor's licence must also complete an approved managerial qualification. An approved managerial qualification is a course provided by a registered training organisation and containing the following subjects, or another course delivered by a registered training organisation that the QBSA is satisfied is at least equivalent:

- accounting and bookkeeping;
- understanding financial statements;
- budgeting;
- cash management;
- business structures;
- taxation;
- financial management;
- business planning;
- insurance for business;
- statutory requirements;
- health and safety;
- communications and marketing;
- contracting in the construction industry;
- estimating;
- QBSA licensing.²³⁴

²³⁴ Schedule 3, QBSA Regulation.

In addition to technical, managerial and experience requirements, the applicant for a contractor's licence must also be a fit and proper person to hold the licence. The QBSA Act provides a non-exhaustive list of relevant factors that the QBSA may have regard to in deciding whether a particular individual is fit and proper to hold a licence. These factors include:

- commercial and other dealings in which that person has been involved and the standard of honesty and integrity demonstrated in those dealings; and
- any failure by that person to carry out commercial or statutory obligations and the reasons for the failure; and
- grossly defective building work constituting tier 1 defective work under Part 3D of the QBSA Act; and
- if the person is an enforcement debtor under an enforcement order for an infringement notice offence for the QBSA Act or for the *Domestic Building Contracts Act 2000* – where the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.

An applicant for a contractor's licence must also satisfy the requirements stated in the *Financial Requirements for Licensing* policy of the QBS Board (the FRL policy).

The stated objectives of the FRL policy are to “*promote financially viable businesses and foster professional business practices in the Queensland building industry*”.²³⁵ The requirements stated in the FRL policy include minimum requirements relating to:

- *Net tangible assets* - licensed contractors must hold prescribed levels of assets or capital to support the annual turnover permitted under their licence;
- *Business liquidity* - licensed contractors must satisfy a liquidity test to establish that they have sufficient current assets to meet debts as they fall due; and
- *Professional indemnity insurance* - licensed contractors providing advice and design services must hold prescribed minimum levels of professional indemnity insurance.

A copy of the FRL policy is available at the following link:

<http://www.bsa.qld.gov.au/SiteCollectionDocuments/Accountants/Publications/Financial%20Requirements%20for%20Licensing.pdf>.

In addition to the above, persons who are otherwise banned, disqualified or excluded from holding a licence under the QBSA Act, or who cannot lawfully work in Queensland, are not entitled to hold a contractor's licence under the Act.

7.5 Eligibility requirements to hold a contractor's licence – companies

To hold a contractor's licence, a company must appoint an individual as a nominee supervisor. The company's nominee must hold a contractor's or nominee supervisor's licence in the same class of building work for which the licence is sought by the company.

²³⁵ Paragraph 1.1, FRL policy.

A company seeking a contractor's licence must also satisfy the QBSA (on application by the company) of the following:

- the directors, secretary and influential persons for the company are fit and proper persons to exercise control or influence over a company that holds a contractor's licence;
- the company satisfies the relevant requirements stated in the FRL policy of the QBS Board;
- the company is not an excluded company;
- the company is not a company for which a banned or disqualified individual under the QBSA Act is a director, secretary, influential person or nominee;
- neither the company, nor a director, secretary, influential person or nominee of the company has an unpaid judgment debt for an amount the QBSA may recover under section 71 in relation to a claim under the Queensland Home Warranty Scheme.

7.6 Eligibility requirements to hold a nominee supervisor's licence

Nominee supervisor's licences are only able to be issued to individuals, not companies. The classes of nominee supervisor's licence available under the QBSA Act are the same as those available in the contractor grade of licence.²³⁶

The eligibility requirements to hold a nominee supervisor's licence are the same as those applicable to a contractor's licence other than that the individual is not required to comply with the requirements stated in the FRL policy.²³⁷

7.7 Eligibility requirements to hold a site supervisor's licence

Site supervisor's licences are only able to be issued to individuals. With the exception of fire protection work, the classes of site supervisor's licence available under the QBSA Act are the same as those available in the contractor or nominee supervisor grades of licence.²³⁸

An individual is entitled to a site supervisor's licence if the QBSA is, on application by the individual, satisfied that the individual:

- has the qualifications required by regulation for a licence of the relevant class;
- can lawfully work in Queensland;
- is not an individual who is banned from holding a licence under the QBSA as a result of carrying out tier 1 defective building work; and
- the applicant is a fit and proper person to hold the licence.

The technical requirements prescribed under the QBSA Regulation for holding a site supervisor's licence are the same as that applicable to a contractor's or nominee supervisor's licence of the relevant class.

²³⁶ Section 14A, QBSA Regulation.

²³⁷ Section 32, QBSA Act.

²³⁸ Section 14B, QBSA Regulation.

In deciding whether an applicant is a fit and proper person to hold the licence, the QBSA may have regard only to:

- tier 1 defective building work carried out by the applicant; and
- if the person is an enforcement debtor under an enforcement order for an infringement notice offence for the QBSA Act or the DBC Act, whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.²³⁹

7.8 Eligibility requirements to hold a fire protection occupational licence

An individual is entitled to a fire protection occupational licence if the QBSA is, on application by the individual, satisfied that the individual:

- has the qualifications required by regulation for a licence of the relevant class;
- can lawfully work in Queensland;
- is not an individual who is banned from holding a licence under the QBSA as a result of carrying out grossly defective building work; and
- is a fit and proper person to hold a licence.

The technical requirements to hold a fire protection occupational licence are prescribed in Schedule 2A of the QBSA Regulation. Where a fire protection class of licence is provided, the technical requirements prescribed in Schedule 2A reflect those prescribed for the corresponding fire protection contractor licence in Schedule 2. The QBSA Regulation does not prescribe an occupational licence class for fire protection work which is already subject to occupational licensing requirements under other legislation. For example, workers installing a fire sprinkler system must hold an appropriate licence under the *Plumbing and Drainage Act 2002*.

In deciding whether an applicant is a fit and proper person, the QBSA may only have regard to:

- tier 1 grossly defective work carried out by the applicant, and
- if the person is an enforcement debtor under an enforcement order for an infringement notice offence for the QBSA Act or the DBC Act—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.

7.9 Summary of licensing requirements under the QBSA Act

The licensing requirements stated in the QBSA Act vary depending on the grade of licence. Table 7.1 outlines the requirements for licensing applicable to licensees depending on the grade of licence held.

²³⁹ Section 32AA, QBSA Act.

Table 7.1: Licensing requirements according to licence grade

Licensing requirement	Contractor licence ²⁴⁰	Nominee Supervisor licence ²⁴¹	Site Supervisor licence ²⁴²	Fire protection occupational licence ²⁴³
Able to lawfully work in Queensland	Yes	Yes	Yes	Yes
Technical qualifications	Yes	Yes	Yes	Yes
Managerial qualifications	Yes	Yes	No	No
Experience requirements	Yes	Yes	No	No
Financial requirements²⁴⁴	Yes	No	No	No
Fit and proper	Yes	Yes	Limited	Limited
No unpaid judgment debt under section 71 (QHWS)	Yes	Yes	No	No

7.10 Persons prohibited from holding a licence under the QBSA Act

Banned individual

A person classified as a banned individual under the QBSA Act is taken not to be fit and proper to hold a licence for the term of the ban.²⁴⁵ The QBSA must not issue a licence to a person who is a banned individual or to a company for which a banned individual is a director, secretary, influential person or nominee.²⁴⁶

A person may become a banned individual under the QBSA Act if they have carried out tier 1 defective work. Tier 1 defective work is work that falls below the standard reasonably expected of a licensed contractor and either:

- adversely affects the structural performance of a building to the extent that a person could not reasonably be expected to use the building for the purpose for which it was, or is being, erected or constructed; or
- is likely to cause the death of, or grievous bodily harm to a person.²⁴⁷

For a person to become a banned individual, the QBSA must give the individual a notice under Part 3D of the QBSA Act. This Part also sets out procedural provisions for the issuing of a notice and provides the individual with the opportunity to make appropriate representations before the decision to issue a notice banning the individual is made. In addition, a decision by the QBSA that an individual is a banned individual for a stated term may be reviewed by the QCAT.²⁴⁸

Under the QBSA Act, an individual given a notice for tier 1 defective work is banned from holding a licence for 3 years.²⁴⁹ If the individual is banned for a subsequent time, the term of the ban is for life.²⁵⁰

²⁴⁰ Section 31, QBSA Act and Section 15 QBSA Regulation.

²⁴¹ Section 32, QBSA Act and Section 16, QBSA Regulation.

²⁴² Section 32AA, QBSA Act and section 16A, QBSA Regulation.

²⁴³ Section 32AB, QBSA Act and section 16B, QBSA Regulation.

²⁴⁴ Requirements stated in the *Financial Requirements for Licensing* policy of the QBS Board.

²⁴⁵ Section 67AC, QBSA Act.

²⁴⁶ Section 67AE, QBSA Act.

²⁴⁷ Section 67AB, QBSA Act.

²⁴⁸ Section 86(1), QBSA Act.

²⁴⁹ Section 67AO, QBSA Act.

In the last 4 financial years, 2 individuals have been categorised as banned individuals for a period of 3 years. To date, no permanent bans have been made under the QBSA Act.²⁵¹

Disqualified individual

Under the QBSA Act, contractors incur demerit points if they are convicted of a demerit point offence or become a judgement debtor for an unsatisfied judgement debt in relation to a building contract or a domestic building contract.²⁵²

A person who is convicted of a demerit point offence attracts 2 demerit points against their licence. A person who is a judgment debtor for an unsatisfied judgement debt attracts 10 demerit points.²⁵³

A person who accumulates 30 demerit points within a three-year period is disqualified from holding a contractor's licence or nominee supervisor's licence under the QBSA Act for three years ("disqualified individual").²⁵⁴ If the person within 10 years of the first ban, accumulates a further 30 demerit points over a three-year period, they are disqualified from holding a contractor's licence or nominee supervisor's licence under the QBSA Act for life.²⁵⁵

Table 7.2 provides the information about the number of persons who have been disqualified for 3 years as a result of the accumulating 30 demerit points in a 3 year period. No persons have been disqualified for life.

Table 7.2: Number of persons that have been disqualified due to the accumulation of demerit points by financial year – 2008-2012²⁵⁶

Disqualified persons	2011/12	2010/11	2009/10	2008/09
Persons disqualified for 3 years	4	1	5	0

The QBSA Act specifies a range of offences in the QBSA Act and DBC Act as demerit offences.²⁵⁷ Demerit offences include a breach of 72(10) of the QBSA Act which relates to failing to rectify building work as required by a direction issued by the QBSA.²⁵⁸

Other offences that attract demerit points are as follows:

- Section 67G (*Building contract to be in writing*) of the QBSA Act;
- Section 67I (*Directions given under building contracts*) of the QBSA Act;
- Section 67V (*Offence of not warning that contract is construction management trade contract*) of the QBSA Act;
- Section 42B (*Carrying out building work without a nominee*) of the QBSA Act;

²⁵⁰ Section 67AO, QBSA Act.

²⁵¹ Information sourced from the QBSA database.

²⁵² Part 3E, QBSA Act.

²⁵³ Section 67AW, QBSA Act.

²⁵⁴ Section 67AZM, QBSA Act.

²⁵⁵ Section 67AZM, QBSA Act.

²⁵⁶ Information sourced from the QBSA database.

²⁵⁷ Section 67AR, QBSA Act.

²⁵⁸ Section 67AR(2), QBSA Act.

- Section 68(1) (*Payment of insurance premium for residential construction work*) of the QBSA Act;
- Section 26 (*Contracts must be in writing*) of the DBC Act;
- Section 27(2)(f) (*General contents of contracts*) of the DBC Act;
- Section 64 (*Deposits*) of the DBC Act;
- Section 65 (*Progress payments for contracts other than designated stages contracts*) of the DBC Act;
- Section 66 (*Progress payments for designated stages contracts*) of the DBC Act; and
- Section 67 (*Completion payments*) of the DBC Act.

Table 7.3 provides information, over the last 4 financial years, as to the number of demerit points allocated for breaches of demerit offences under the QBSA Act and DBC Act, or for unsatisfied judgment debts. Table 7.4 provides information as to the number of distinct contractors issued with demerit points for offences under the QBSA Act or DBC Act or unsatisfied judgment debts. Some contractors were allocated demerit points for multiple offences or unsatisfied judgment debts.

Table 7.3: Number of demerit points issued based on financial year (2008-2012)²⁵⁹

Number of demerit points issued	2011/12	2010/11	2009/10	2008/09
QBSA Act offences and unpaid judgment debts				
Section 72(10) (<i>Power to rectify building work</i>)	504	648	470	236
Section 68(1) (<i>Payment of insurance premium for residential construction work</i>)	154	116	164	50
Section 67G (<i>Building contract to be in writing</i>)	30	26	26	52
Section 67V (<i>Offence of not warning that contract is construction management trade contract</i>)	0	0	0	0
Section 42B (<i>Carrying out building work without a nominee</i>)	2	0	4	12
Unsatisfied judgment debts	710	450	990	860
DBC Act offences				
Section 26 (<i>Contracts must be in writing</i>)	222	196	208	88
Section 27(2)(f) (<i>General contents of contracts</i>)	12	26	2	12
Section 64 (<i>Deposits</i>)	184	108	118	102
Section 65 (<i>Progress payments for contracts other than designated stages contracts</i>)	14	4	8	10
Section 66 (<i>Progress payments for designated stages contracts</i>)	0	0	2	0
Section 67 (<i>Completion payments</i>)	2	4	4	2
Total	1834	1578	1996	1424

²⁵⁹ Information sourced from applicable QBSA Annual Reports for the relevant years and the QBSA database.

Table 7.4: Number of distinct contractors issued with demerit points based on financial year - 2008-2012²⁶⁰

Number of single contractors issued with demerit points	2011/12	2010/11	2009/10	2008/09
QBSA Act offences and unpaid judgment debts				
Section 72(10) (<i>Power to rectify building work</i>)	181	175	176	90
Section 68(1) (<i>Payment of insurance premium for residential construction work</i>)	52	45	60	14
Section 67G (<i>Building contract to be in writing</i>)	11	12	8	11
Section 67V (<i>Offence of not warning that contract is construction management trade contract</i>)	0	0	0	0
Section 42B (<i>Carrying out building work without a nominee</i>)	1	0	2	6
Unsatisfied judgment debts	62	37	68	69
DBC Act offences				
Section 26 (<i>Contracts must be in writing</i>)	108	89	89	39
Section 27(2)(f) (<i>General contents of contracts</i>)	6	8	1	2
Section 64 (<i>Deposits</i>)	81	41	53	41
Section 65 (<i>Progress payments for contracts other than designated stages contracts</i>)	6	2	4	3
Section 66 (<i>Progress payments for designated stages contracts</i>)	0	0	1	0
Section 67 (<i>Completion payments</i>)	1	2	2	1
Distinct contractors who were allocated demerit points in the financial year²⁶¹	399	335	389²⁶²	245

The total number of contractors allocated with demerit points is small when compared to the number of contractors licensed under the QBSA Act. For example, the total number of contractors allocated with demerit points in 2011/12 for breaches of the QBSA Act or DBC Act was 399. However, as at 30 June 2012, there were 84,436 licensees under the QBSA Act.

In the case of licensed contractors, demerit points are recorded on the licensee register and are available to be viewed free of charge on-line by homeowners, contractors and suppliers.²⁶³

Table 7.5 lists the number of persons who have demerit points against their licence as at 30 June 2012. The number of persons disqualified from holding a licence as a result of accumulating at least 30 demerit points in a period of 3 years is stated in Table 7.2.

²⁶⁰ Information sourced from the QBSA database.

²⁶¹ Contractors may incur demerit points for multiple offences or unsatisfied judgement debts. Contractors who have allocated demerit points for multiple offences in the same financial year are only counted once.

²⁶² This figure has been incorrectly recorded in the Building Services Authority Annual Report 2009/10 and in the Building Services Authority Annual Report 2010/11. Due to a typographical error, the Annual reports for these years record the number as 462. The error is to be corrected in future annual reports.

²⁶³ Section 99, QBSA Act.

Table 7.5: Number of persons who have demerit points against their licence at the end of each financial year²⁶⁴

Financial year	Demerit points held by all persons (including licensees)		
	1- 10	10-19	20 or more
2011/12	819	141	27
2010/11	679	129	30
2009/10	534	162	30
2008/09	339	168	29

Excluded individuals and excluded companies

The QBSA Act provides for the exclusion of an individual from holding a contractor's or nominee supervisor's licence if:

- the individual takes advantage of the laws of bankruptcy or becomes bankrupt (relevant bankruptcy event) and 5 years have not elapsed since the relevant bankruptcy event happened; or
- the individual was a director, secretary of or influential person for a company which has within 12 months had a provisional liquidator, liquidator, administrator or controller appointed, wound up, or ordered to be wound up (the relevant company event) and 5 years have not elapsed since the event happened.²⁶⁵

The QBSA Act also provides that a company may be excluded from holding a contractor's licence (an excluded company), if an individual who is a director or secretary of, or an influential person for, the company is an excluded individual.²⁶⁶

Table 7.6 below states the number of company and individual licences cancelled due to the application of the excluded individual and company provisions in the QBSA Act. In 2011/12 a total of 410 licences (99 company licences and 311 individual licences) were cancelled due to the holder being identified as excluded under the QBSA Act from holding a licence.

Table 7.6: Number of individual and company licence cancellations due to exclusion 2008-2012

Licence cancellations due to exclusion	2011/12 ²⁶⁷	2010/11 ²⁶⁸	2009/10 ²⁶⁹	2008/09 ²⁷⁰
Individual licences cancelled due to exclusion	311	264	151	113
Company licences cancelled due to exclusion	99	88	66	79
Total number of licences cancelled due to exclusion	410	352	217	192

An individual may be permanently excluded from holding a licence if the individual has twice been an excluded individual for a relevant bankruptcy or company event and the QBSA has given the individual a notice under the QBSA Act in relation to the event.²⁷¹ In

²⁶⁴ Information sourced from the QBSA database.

²⁶⁵ Section 56AC, QBSA Act.

²⁶⁶ Ibid.

²⁶⁷ Information sourced from the QBSA database.

²⁶⁸ *Building Services Authority Annual Report 2010 – 2011.*

²⁶⁹ *Building Services Authority Annual Report 2009 – 2010.*

²⁷⁰ *Building Services Authority Annual Report 2008 – 2009.*

²⁷¹ Part 3B, QBSA Act.

the 2003-2012 financial years, a total of 402 individuals have been permanently excluded under the QBSA Act from holding a contractor's or nominee supervisor's licence.²⁷²

The QBSA Act also provides a procedure to enable an excluded individual to apply to be categorised as a permitted individual. The effect of becoming a permitted individual is that the individual is taken not to be excluded for the relevant insolvency event, therefore removing this barrier to holding a licence.²⁷³

The QBSA may only categorise an individual as a permitted individual for a relevant insolvency event if the QBSA is satisfied that, on the basis of the application, the individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.²⁷⁴

In deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event, the QBSA must have regard to action taken by the individual in relation to the following—

- keeping proper books of account and financial records;
- seeking appropriate financial or legal advice before entering into financial or business arrangements or conducting business;
- reporting fraud or theft to the police;
- ensuring guarantees provided were covered by sufficient assets to cover the liability under the guarantees;
- putting in place appropriate credit management for amounts owing and taking reasonable steps for recovery of the amounts;
- making appropriate provision for Commonwealth and State taxation debts.

The QBSA may also consider other matters relevant to determining whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event.

Table 7.7 states the number of permitted individual applications that have been made to the QBSA over the last four financial years. In 2011/12, 146 applications were made to the QBSA.

Table 7.7: Number of permitted individual applications made to QBSA by financial year - 2008-2012²⁷⁵

Permitted Individual applications	2011/12	2010/11	2009/10	2008/09
Number of applications lodged with QBSA seeking categorisation as a permitted individual for a relevant event	146	186	309	286

Table 7.8 states the number of permitted individual applications made to the QBSA that resulted in the applicant being categorised as a permitted individual for the relevant event which was the subject of the application. The information provided is based on the

²⁷² Information sourced from the QBSA database.

²⁷³ Section 56AD, QBSA Act.

²⁷⁴ Section 56AD(8), QBSA Act.

²⁷⁵ Information sourced from the QBSA database.

last 4 financial years. In the 2011/12 financial year 17 applications resulted in the applicant being categorised as a permitted individual for the relevant financial event.

Table 7.8: Number of permitted individual applications accepted by the QBSA based on financial year 2008-2012²⁷⁶

Permitted Individuals	2011/12	2010/11	2009/10	2008/09
Number of applications resulting in the applicant being categorised as a permitted individual for the relevant financial event	17	52	36	23

A decision by the QBSA not to categorise an individual as a permitted individual for a relevant event is a reviewable decision by the QCAT.²⁷⁷ Decisions regarding permitted individual applications are based on the information presented by the individual to the QBSA when making their application. As reviews by the QCAT are a fresh hearing, it is common for additional information to be provided to the QCAT from that available to the QBSA at the time of making its decision. This occurs because the application for review is typically better prepared due to the pending legal proceedings and the involvement of legal representatives to assist the individual concerned.

Table 7.9 states the number of finalised reviews by financial year of QBSA decisions in regards to permitted individual applications and the percentage of those reviews where the decision of the QBSA was found to be satisfactory.

Table 7.9: Number and outcomes of QCAT reviews of QBSA decisions not to categorise an individual as a permitted individual for a relevant event by financial year 2008-2012²⁷⁸

Financial year	No. of reviews of QBSA decisions about permitted individuals	No. of reviews of QBSA decisions found satisfactory
2011/12	50	42 (84%)
2010/11	58	50 (86%)
2009/10	74	61 (82%)
2008/09	45	38 (84%)

7.11 Reporting of industry issues impacting on licensing requirements

As stated, the licensing requirements are prescribed under the QBSA Act. The QBSA administers the licensing functions including assessing of whether a person is eligible to hold or continue to hold a particular licence under the QBSA Act and conducting programs relating to education and compliance with the licensing requirements.

The QBSA, QBS Board and its Committees review the licensing requirements under the QBSA Act and monitor emerging issues, including those relating to compliance and course availability. The QBSA and QBS Board regularly report emerging industry issues impacting on licensing requirements and the licensing system to the relevant Minister for consideration.

²⁷⁶ Information sourced from the QBSA database.

²⁷⁷ Section 86(1)(j), QBSA Act.

²⁷⁸ Information sourced from applicable QBSA Annual Reports for the relevant years and the QBSA database.

7.12 Licensing audits

The QBSA ordinarily conducts a licensing audit twice a year. This involves QBSA inspectors visiting building sites and interviewing all persons performing building work to ensure they are appropriately licensed.

In 2011/12 the QBSA assisted the Queensland Reconstruction Authority in the assessment of the rebuilding efforts following the widespread flooding of Queensland in early 2011 and the impact of Cyclone Yasi. Instead of conducting two licensing audits of random sites QBSA instead conducted a large number of audits focussing on disaster affected areas.

The QBSA decided to concentrate its resources to these areas to protect homeowners from the unlicensed persons who target the victims of natural disasters. These audits also served to protect properly licensed contractors from unfair and unlawful competition.

In 2011/12, 2,229 contractors were interviewed at 932 building sites. A relatively high incidence of unlicensed contractors was detected due to the volume of natural disaster work being undertaken.

The QBSA also undertook 20,868 disaster recovery assessments on behalf of the Queensland Reconstruction Authority. This involved quarterly inspections to measure the rate of residential building recovery, inspecting and providing advice on building work, policing licensing and assisting contractors and consumers to ensure they had the appropriate contractual and home warranty insurance arrangements in place.

Table 7.10 provides details as to the licensing audits that QBSA conducted in the past 4 financial years (2008-2012).

Table 7.10: QBSA unlicensed contractors audit outcomes – 2008-2012²⁷⁹

QBSA licence audits	2011/12	2010/11	2009/10	2008/09
Site interviews conducted	2229	7222	9,594	7470
Suspected unlicensed contractors detected	57	64	123	120
Unlicensed rate in the industry	2.56%	0.9%	1.3%	1.6%
Disaster Recovery Assessments	20,686	-	-	-

Table 7.11 below states the number of unlicensed contracting investigations conducted by the QBSA and the number of infringement notices issued as a result of those investigations.

²⁷⁹ Information sourced from applicable QBSA Annual Reports for the relevant years and the QBSA database.

Table 7.11: Unlicensed contracting investigations and infringement notices issued for the financial years 2008-2012 ²⁸⁰

Unlicensed contracting investigations and infringement notices issued	2011/12	2010/11	2009/10	2008/09
Investigations conducted	780	618	677	639
Number of infringement notices issued	515	286	407	544

7.13 Financial audits

The QBSA conducts financial audits of licensed contractors as part of its compliance functions. The purpose of the audits is to ensure that licensed contractors continue to comply with the requirements stated in the *Financial Requirements for Licensing* policy of the QBS Board. Under section 35 of the QBSA Act, it is a statutory condition of holding a contractor's licence that the licensee's financial circumstances must at all times satisfy the financial requirements in the QBS Board's policies.

Table 7.12 provides details about the number and outcomes of financial audits of licensed contractors conducted by the QBSA in the last 4 financial years.

Table 7.12: Number of financial audits of licensed contractors and outcomes based on financial years 2008-2012 ²⁸¹

Activity	2011/2012	2010/2011	2009/2010	2008/2009
Financial audits conducted	451	512	538	255
Licence suspensions for non-compliance with audit	44	44	77	30
Licence suspensions for not meeting FRL resulting from financial audit	10	48	41	33
Licence cancellations for non-compliance with audit	31	30	56	25
Licence cancellations for not meeting FRL resulting from financial audit	40	50	77	55
Immediate suspension of licence due to insolvent trading or other serious risk.	10	11	10	14
Audits for suspected breach of turnover limit	963	898	1152	1237
Company licences cancelled due to exclusion	99	88	66	79
Individual licences cancelled due to exclusion	311	264	151	113
Permanent exclusions	114	101	43	39

²⁸⁰ Information sourced from applicable QBSA Annual Reports for the relevant years and the QBSA database.

²⁸¹ Information sourced from the QBSA database.

Chapter 8: Trades licensed by the QBSA and the role of industry groups within the QBSA

8.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *the number of trades licensed by the QBSA and whether industry groups could take a greater role within QBSA in terms of licensing standards and procedures for their members.*

8.2 Classes of licences

Pursuant to the QBSA Act, the QBSA may issue a licence authorising a licensee to carry out all classes of building work or to carry out building work of 1 or more classes specified in the licence.²⁸² In addition, the QBSA Act provides for the issuing of nominee supervisor's and site supervisor's licences for building work and occupational licences for fire protection work.²⁸³

The QBSA Act provides that licences be divided into classes by regulation.²⁸⁴ Schedule 2 of the QBSA Regulation prescribes classes of licence issued under the QBSA Act for contractors, nominee supervisors and site supervisors. Schedule 2A of the QBSA Regulation prescribes classes of fire protection occupational licences issued under the QBSA Act.

In addition, section 43 of the QBSA Regulation prescribes classes of licence that may be held and renewed by a person who held that class immediately before the commencement of the QBSA Regulation in 2003 but may no longer be issued.²⁸⁵ There are currently 39 classes of continuing licence that are still active. As at 8 August 2012, the number of licences continuing to be renewed under section 43 was 4655.²⁸⁶

Table 8.1 details the number of licensees who hold licences in each of the licence classes.

Table 8.1: Licence classes prescribed under Schedules 2 and 2A of the QBSA Regulation and the number of licensees who hold a licence in each class as at 8 August 2012²⁸⁷

Licence classes under the QBSA Regulation	No. of licensees
Licence classes prescribed for contractors, nominee and site supervisors	
Air Handling Duct Installation	84
Building Design - Low Rise	475
Building Design - Medium Rise	760
Building Design - Open	261
Bricklaying and Blocklaying	2,539
Builder - Low Rise	15,053

²⁸² Section 30, QBSA Act.

²⁸³ Sections 30A, 30B and 30C, QBSA Act.

²⁸⁴ Sections 30, 30A, 30B and 30C, QBSA Act.

²⁸⁵ Section 30(4), QBSA Act.

²⁸⁶ It is noted that a licensee may hold more than one continuing licence class.

²⁸⁷ Information sourced from the QBSA database.

Builder - Medium Rise	4,277
Builder - Open	13,298
Builder - Project Management Services	243
Builder Restricted to Kitchen, Bathroom and Laundry Installation	821
Builder Restricted to Shopfitting	639
Builder Restricted to Structural Landscaping	877
Builder Restricted to Swimming Pool Construction	735
Builder Restricted to Special Structures	109
Brick and Segmental Paving	311
Cabinet Making	1,133
Concreting	3,855
Carpentry	19,148
Completed Residential Building Inspection	721
Drainage	161
Floor Finishing and Covering (Hard Sector)	391
Fire Detection, Alarm and Warning Systems	445
Emergency Lighting	175
Emergency Procedures	154
Passive Fire Protection - Fire Doors and Shutters	292
Fire Hydrants and Hose Reels	1,246
Portable Fire Equipment and Hose Reels (Hose Reels Downstream of Stopcock Only)	493
Passive Fire Protection - Fire Collars, Penetrations and Joint Sealing	217
Fire Pumps	353
Special Hazard Suppression Systems	76
Fire Safety Professional	60
Sprinkler and Suppression Systems (Reticulated Water Based)	357
Passive Fire Protection - Fire and Smoke Walls and Ceilings	273
Foundation Work (Piling and Anchors)	144
Gasfitting	3,238
Glass, Glazing and Aluminium	1,212
Hydraulic Services Design	273
Irrigation	239
Joinery	11,694
Metal Fascias and Gutters	147
Non-Structural Metal Fabrication and Installation	985
Plumbing and Drainage	7,008
Plastering Drywall	2,664
Painting and Decorating	5,683
Plastering Solid	1,095
Refrigeration, Airconditioning and Mechanical Services Including Limited Design	1,499
Refrigeration, Airconditioning and Mechanical Services Including Unlimited Design	554
Roof Tiling	526
Roof and Wall Cladding	1,511
Site Classifier	72

Sheds, Carports and Garages	1,889
Shopfitting (Trade)	752
Steel Fixing	545
Structural Landscaping (Trade)	1,711
Structural Metal Fabrication and Erection	2,157
Swimming Pool Construction, Installation and Maintenance	308
Stonemasonry	290
Termite Management - Chemical	1,139
Termite Management - Physical	431
Wall and Floor Tiling	3,164
Waterproofing	903
Fire protection occupational licences	
Fire Detection, Alarm and Warning Systems - Occupational	516
Emergency Lighting - Occupational	404
Emergency Procedures - Occupational	159
Passive Fire Protection - Fire Doors and Shutters - Occupational	162
Fire Hydrants and Hose Reels - Occupational	350
Portable Fire Equipment and Hose Reels (Hose Reels Downstream of Stopcock Only) - Occupational	543
Passive Fire Protection - Fire Collars, Penetrations and Joint Sealing - Occupational	16
Fire Pumps - Occupational	33
Special Hazard Suppression Systems - Occupational	91
Fire Safety Professional - Occupational	10
Sprinkler and Suppression Systems (Reticulated Water Based) - Occupational	37
Passive Fire Protection - Fire and Smoke Walls and Ceilings - Occupational	11

The commencement of the QBSA Regulation in 2003 substantively changed and reduced the licences classes available under the QBSA Act. The regulatory impact statement for the QBSA Regulation is available from the Office of Queensland Parliamentary Counsel website.²⁸⁸ A regulatory impact statement was also released in 2008 in relation to classes of fire protection licence.²⁸⁹

In addition to the licensing system under the QBSA Act, the QBSA also licences building certifiers under the *Building Act 1975*. As at 8 August 2012, there were 398 building certifiers licensed by the QBSA recorded in the QBSA database.²⁹⁰

8.3 Building related professions and trades not licensed by the QBSA

The following building related professions and trades are not licensed or regulated by the QBSA under the QBSA Act:

- professional engineers registered under the *Professional Engineers Act 2002*;
- architects registered under the *Architects Act 2002*;

²⁸⁸ http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2003/03SL173R.pdf

²⁸⁹ http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2008/08SL347R.pdf

²⁹⁰ The QBSA has licensing and other regulatory functions for building certifiers under the *Building Act 1975*. See Chapter 1 for further details.

- electrical contractors and electrical mechanics licensed under the *Electrical Safety Act 2002*;
- plumbers and drainers (other than contractors) licensed under the *Plumbing and Drainage Act 2002*;
- gasfitters (other than contractors) licensed under the *Petroleum and Gas (Production and Safety) Act 2004*;
- surveyors registered under the *Surveyors Act 2003*.

8.4 Industry groups and their role within the QBSA

The role and membership of the QBS Board is discussed in Chapters 1 and 5 of this Submission. The QBS Board comprises eight members who represent stakeholder interests and includes 3 representatives of licensed builders/trade contractors.

Section 14 of the QBSA Act provides that the QBS Board, or the Minister, may appoint committees for the purpose of advising the Board on a particular subject or subjects. Committees currently appointed under this section are:

- Insurance Committee;
- Financial and Audit Review Committee;
- Policy Committee;
- Licensing Committee;
- Fire Occupational Licensing Committee.

Stakeholder groups take a role within the QBSA through representation on the Board and the above committees.

The functions and membership of the Insurance Committee, Financial and Audit Review Committee and Policy Committee are discussed in Chapter 5 of this Submission.

The *Licensing Committee* advises the QBS Board on licence eligibility requirements, which include experience, managerial and technical requirements. The Licensing Committee also monitors licence scopes of work to ensure that they continue to be appropriate for industry needs.

The *Fire Occupational Licensing Committee* advises the Board on scopes of work and requirements for occupational and contractor licensing in the fire protection industry. This committee was developed after the compulsory licensing of fire protection employees took effect on 1 January 2011. The committee has undertaken awareness activities and reviewed the scopes of work to ensure they are relevant to the work performed in the industry.

Chapter 9: Opportunities for reform of the QBSA with a view to enhancing industry and consumer assistance

9.1 Term of Reference

This chapter provides factual information relevant to the following Inquiry term of reference:

- *examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.*

9.2 Reviews and reports about home warranty schemes and the regulation of the building industry

There have been a number of reviews and reports published in relation to the home warranty schemes and regulatory systems for the building industry in Queensland and other Australian jurisdictions. These include:

- *Economic Regulation Authority of Western Australia, Inquiry into the effectiveness of Western Australia's home indemnity insurance arrangements*, Issues paper, 5 July 2012.
- *Victorian Domestic Building Consumer Protection Framework Public Consultation Paper*, Victorian Department of Treasury and Finance, April 2012.²⁹¹
- *Queensland Building Services Authority – Organisation Review Project – Final Report 2011* (KPMG Report), KPMG June 2011.²⁹²
- *Victorian Auditor-General's audit report on Compliance with Building Permits 2011*.
- *Victoria, Legislative Council Standing Committee on Finance and Public Administration, Inquiry into Builders Warranty Insurance*, Final Report, October 2010.
- *Commonwealth Senate's Standing Committee on Economics Inquiry into Australia's Mandatory Last Resort Home Warranty Insurance Scheme 2008*.
- *Productivity Commission's Review of Australia's Consumer Policy Framework 2007-08*.
- *Victorian Competition and Efficiency Commission Housing Regulation in Victoria: Building Better Outcomes 2005*.
- *Final Report of the NSW Home Warranty Insurance Inquiry* chaired by Richard Grellman, 30 September 2003 (see www.nswhwi-inquiry.com for a copy of the full report).
- *Inquiry into the Home Building Amendment (Insurance) Act 2002*, Standing Committee on Law and Justice, Parliament of NSW, Legislative Council [Chaired by Hon Ron Dyer and Hon John Ryan], September 2002.
- *National Review of Home Builders Warranty Insurance and Consumer Protection – Report prepared for the National Ministerial Council on Consumer Affairs*, Professor Percy Allan, 25 June 2002.

²⁹¹ See also submissions at <http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/DTF-projects-domestic-building-consumer-protection-framework>

²⁹² See Paragraph 9.3 of this submission.

- *Joint Select Committee on the Quality of Buildings*, Parliament of NSW, Legislative Assembly. [Chaired by David Campbell], July 2002.
- *Consumer Protection and Industry Reform – Response to Changes in Builders’ Warranty Insurance*, Background Paper, Victorian Building Commission, May 2002.
- *Public Benefit Test – Queensland Building Services Authority Act 1991 and Regulations*, Qld. Economic Insights Pty Ltd, Feb. 2002.
- *Internal Review of Building Indemnity Scheme*, NT Government, March 2002.
- *National Competition Policy Review of the Building Works Contractors’ Act 1995 – Supplementary Review (of Building Indemnity Insurance Scheme)*, SA Govt., Oct. 2001.
- *Report of the Home Indemnity Insurance Forum on Options for Changes or Alternatives to the Current Scheme*, Dept. of Consumer and Employment Protection, WA, Sept. 2001.
- *Residential Building Indemnity Scheme – Discussion Paper*, Dept. of Lands, Planning and Environment, NT, Aug. 2001.
- *Review of Domestic Building Insurance Issues*, Victorian Building Control Commission V. Kirton (undated - possibly 2001).
- *Statutory Review of the Home Indemnity Insurance Scheme*, Ministry for Fair Trading, WA, (Issues Paper and Draft Report), Nov. 1999, (Update) June 2001.
- *National Building Framework*, Builders Licensing Australia, Canberra, 1999.
- *Residential Building Work Insurance Discussion Paper*, Dept. of Urban Services, ACT, May 1998.
- *Proposed Reforms of Home Building Industry*, Dept. of Fair Trading, NSW, July 1996.
- *Inquiry into Outstanding Grievances with the Building Services Corporation (Crawford Report)*, NSW, Dec. 1995.
- *Review of Victorian Housing Guarantee Fund*, Parliamentary Public Accounts and Estimates Committee, Vic., Sept. 1994.
- *Home Building – Consumer Problems and Solutions*, Trade Practices Commission, Cth, Nov. 1993.
- *Inquiry into NSW Building Services Corporation (Dodd Report)*, Department of Fair Trading, NSW, Feb. 1993.

9.3 Organisation Review Project – KPMG Report (June 2011).

KPMG was engaged by the QBS Board and the former Minister for Public Works and Information and Communication Technology to achieve the following stated objectives:

- *An objective, critical and realistic look at the Queensland BSA – the current organisation, the external environment and stakeholder perceptions; and*

- *Provide a set of clear and robust recommendations that will shape the future of the QBSA and drive improved performance.*²⁹³

KPMG's final report was tabled in Parliament on 4 August 2011.²⁹⁴ At the Parliamentary Committee's request, a copy of the report has previously been provided to the Committee.

9.4 National licensing

On 3 July 2008, the Council of Australian Governments agreed to develop a National Occupational Licensing System as part of the *National Partnership Agreement to Deliver a Seamless National Economy* agenda.

Regulatory impact statements have been released in regard to the first wave of occupations proposed to be included in the national licensing system. First wave occupations currently licensed under the QBSA Act are:

- air-conditioning and refrigeration mechanics;
- plumbing;
- gasfitting; and
- water-based fire protection work.

The regulatory impact statements are available at <http://nola.gov.au/ris-consultations/>. The public consultation period ends on 5 October 2012.

²⁹³ *Queensland Building Services Authority – Organisation review project – Final report 2011* (KPMG Report), KPMG June 2011 at page 12.

²⁹⁴ An electronic copy of the report is available at:
<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2011/5311T5024.pdf>