

BUILDING INSPECTOR SITE INSPECTION CHECKLIST

DATE:

ADDRESS OF SITE INSPECTION:

1. Take a photograph of the front of the building.	
2. Do not start the inspection until the appointed time. If the contractor is not present but has telephoned, use your discretion.	
3. Find a suitable location to discuss the documentation with both parties (e.g. kitchen bench top, kitchen table).	
4. Show QBCC identification and introduce yourself to all parties <i>"My name is John Smith and I am a building inspector with the QBCC"</i>	
5. Explain the Contractor Statement Form to contractor in front of both parties. Fill out Contractor Statement Form and have Contractor sign.	
6. Explain purpose of the inspection (i.e what QBCC's legislation provides).	
7. Explained Categories of defect, timeframes and whether Non-Structural defects may automatically be ruled out due to the age of the building work. <i>"I can only assess physical evidence. There are two types of defects Structural and Non-Structural defects."</i> Verbally advised the definition of Structural defective building work Verbally advised the definition of Non-Structural defective building work Advised both parties if Non-Structural defects do not apply due to the age of the building work.	
8. Verbally clarify which of the complaint items are or are not Residential Construction Work. <i>"This complaint item is/is not Residential Construction Work under the QBCC Regulation therefore may/may not be progressed to a File Manager for assessment under the Home Warranty Insurance Scheme."</i>	
9. Advise a decision will not be made at this time and the inspector will compile their report considering all relevant matters. Advise a copy of the report will be provided to both parties.	

<p>10. Explained the Direction to Rectify process if defect/s were found.</p> <p><i>"A Direction to Rectify will require the licensee to rectify defects within 28 days. The Direction to Rectify will not instruct the licensee how to fix the defect/s. Either party may telephone me to advise when the defect/s has been fixed.</i></p> <p><i>If the licensee does not comply with a Direction to Rectify I will prepare a Scope of Works and estimate of repair costs and QBCC will consider a possible claim under the Home Warranty Insurance Scheme."</i></p>	
<p>11. Advised both parties of the process to appeal the decision (IRU & QCAT)</p>	
<p>12. Inspect each item in the order of the Complaint Form and take photos of each item in the same order as each item is inspected, leaving a blank photo in between each set of photos for each item. Take handwritten notes about each defect item.</p> <p>Inspector's notes and documents are kept private during the inspection and are not able to be viewed by either party.</p>	
<p>13. If testing required, photograph evidence both before, during and after testing.</p>	<p>Yes / No / NA</p>
<p>14. Determine whether additional technical investigation is required at this stage e.g. plumbing test.</p>	<p>Yes / No / NA</p>
<p>15. Summarise verbally the inspection process</p> <ul style="list-style-type: none"> - Structural items (if applicable) - Non-Structural items (if applicable) - How any other issues may be relevant (e.g. outstanding monies, pre-purchase issues) - Timeframe for rectification (if applicable) - Outline the documentation each party will receive (both will receive a copy of the inspection report and the Direction to Rectify if issued). - Request either party to advise Inspector when rectification has been completed. - Outline the consequences for the licensee of not complying with a Direction to Rectify - Outline the next steps if a Direction to Rectify is issued and is not complied with (Scope of Works, estimate of repair costs, possible insurance assessment). 	

Guidance Statement – Confidential – For Internal Use Only



“Fit for Purpose”, Manufacturers Warranties, Appliances, Materials and the Board’s ‘Rectification of Building Work Policy’

QBCC is often confronted with matters that revolve around the issue of whether building work is “fit for purpose”.

Building disputes and complaints surrounding the quality of works can be complex and as with any matter before QBCC decisions need to be made on the specific issues and merits surrounding each case, this document attempts to provide guidance on how QBCC officers should approach these issues.

QBCC has a legislated responsibility to take into account all matters relevant to a particular case to determine if any discretion should be utilised in situations where it would for example be unfair to issue a Direction to Rectify to a building contractor.

Background

QBCC publishes a ‘Rectification of Building Work Policy’ (The Defects Policy), the current policy being effective 10 October 2014.

The purpose of the policy is to provide the industry with some general guidance and advice from which QBCC can make determinations on whether building work is or is not defective and the warranty timeframes that should revolve around the different categories of defective work.

Resolution Services Guidance Statement	RES-009
Created - December 2011	
Amended - November 2013; October 2014	
Rescinded - 10 August 2015	
Reinstated - 7 September 2015	
Reviewed – October 2016	

Being a guideline policy there will invariably be situations arising where industry practitioners and QBCC will have inconsistent views on whether building work the subject of a home owners complaint is defective or not.

In Queensland the ultimate arbiter of whether building work is defective or not will generally be the Queensland Civil and Administrative Tribunal (QCAT) which has the legislative power to make orders surrounding Domestic Building Disputes and/or Review Applications involving disputes about the quality and suitability of building works.

Both building contractors and home owners have the ability to access QCAT in the above matters.

“Fit for Purpose”

By way of background the term “fit for purpose” does not appear in the defects policy document.

The starting point when deliberating if building work is defective is to look at the definition of “Defective building work” in the policy.

“Defective building work” means building work that is faulty or unsatisfactory, and includes, for example, work that:

- (a) does not comply with the *Building Act 1975*, *Building Code of Australia* or an applicable Australian Standard
- (b) 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.

The key words in the above definition are **“faulty or unsatisfactory”**, these words mirror the definition of defective in the relevant QBCC legislation, examples of what could be considered defective are then provided in (a) and (b) above.

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If QBCC determines that building work is defective i.e. faulty or unsatisfactory, QBCC then decides which Category of defect is most relevant to the item of complaint.

QBCC's defects policy then provides guidance in the above regard by providing parameters around either structural or non-structural defective work.

Structural 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.

Non-structural defective building work means defective building work (other than structural 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 license of the relevant class; or
- (b) it has caused a settling in period defect in a new building.

A defect being described as not "fit for purpose" could fall into and be encapsulated by the broad definition of "faulty or unsatisfactory".

QBCC then has to determine whether the defect should be classified as a structural or non-structural defect.

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When one considers all of the above a decision that building work is not “fit for purpose” can have wide interpretation and can be both structural and non-structural defective work.

To attempt to give some guidance building work being described as not being “fit for purpose” it could be best defined as:

Building Work (being both materials and workmanship) could be regarded as not fit for purpose when the building work:

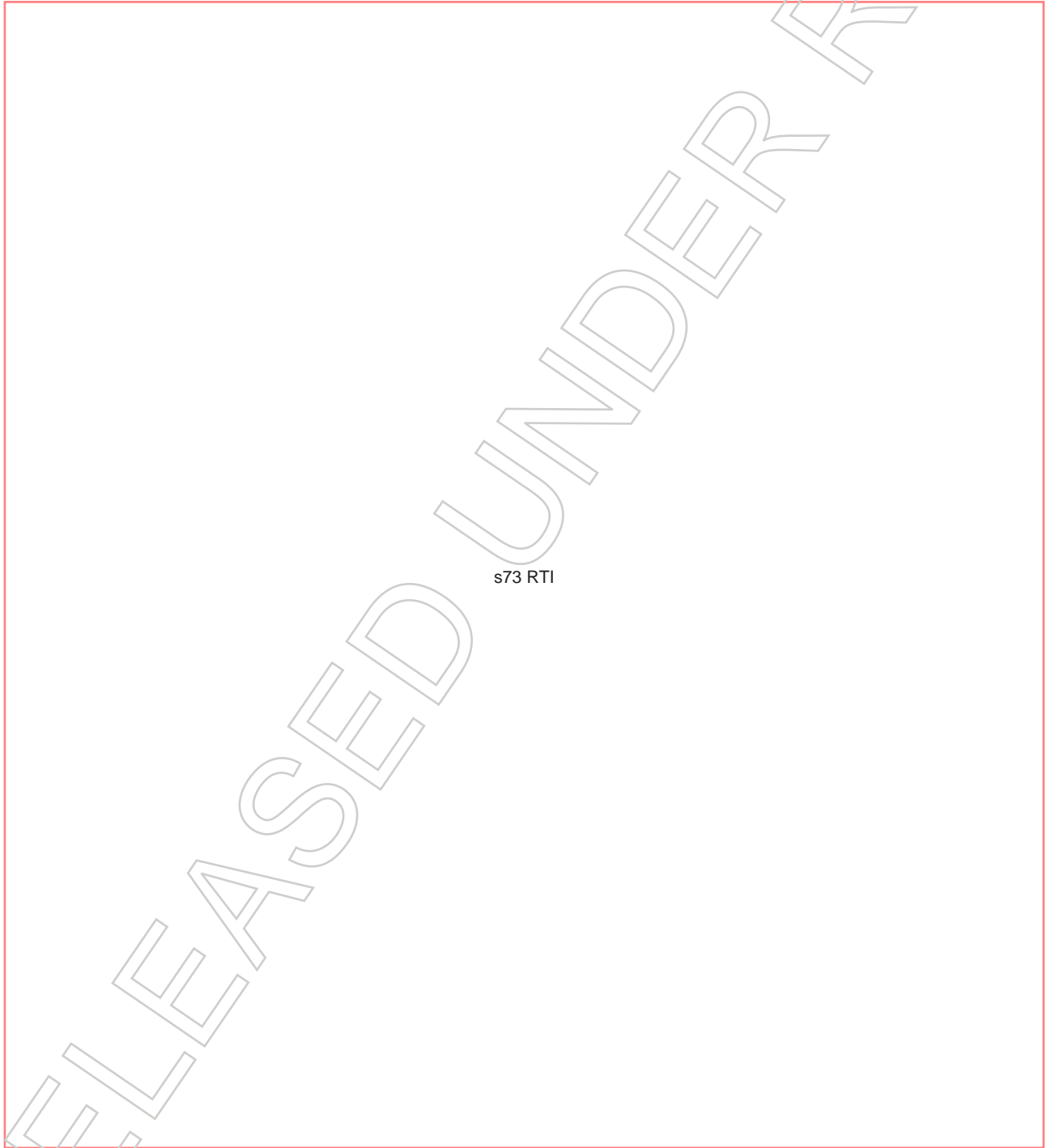
- 1) Does not comply with relevant building legislation such as the Building Act, Building Code of Australia or a relevant Australian Standard.
- 2) Involves the use of a manufactured product, and that product has been used, constructed or installed in a way that does not comply with the product manufactures instructions.

The key issue when assessing whether a manufactured product used in building work is defective is whether the product has to have been “**used, constructed or installed**” in a way that does not comply with the manufacturer’s instructions.

QBCC staff should be aware that the Statutory Warranty period that contractors are obliged to provide is not intended to extend a product manufacturers normal warranty timeframe and QBCC will only hold contractors accountable for defective work when they have used, constructed or installed materials or products in contravention of the manufacturers instructions.

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Examples of when QBCC has made determinations relating to defective work that was not “fit for purpose” and the considerations behind those decisions follow:



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To summarise, QBCC needs to firstly determine whether the building work the subject of a complaint is defective.

If determined defective then a decision is made whether the defective work is Structural or Non-structural.

Once a category of defect has been determined, QBCC then needs to consider whether any discretion needs to be exercised in that relevant circumstances exist that would make it unfair to issue a direction to rectify upon the building contractor.

Product Manufacturer's Warranties

Product manufacturer's warranties also need to be considered often in complaints that are investigated by QBCC relating to defective building work.

Generally speaking, QBCC's powers to issue directions to rectify defective building work (within 6 years and 3 months of completion), should not be interpreted as allowing for the extension of the normal warranty timeframe supplied by the product manufacturer.

An example of the above situation may arise where for example an appliance such as a gas hot water system / oven or the like installed by a building contractor and provided with a 12 month warranty fails after 18 months.

QBCC would not issue a direction to rectify the defective appliance if the product manufacturer's warranty had already expired.

Further to the above, if a consumer provides materials/products or appliances for use in a building project the building contractor is not responsible for the performance of those items if properly installed. If a manufacturing defect or fault arises in that product / appliance the consumer would be responsible for pursuing a warranty claim with the relevant manufacturer.

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Building contractors are generally not involved in the manufacturing process of building materials, products or appliances and as such they have no ability to influence the quality or performance of a manufactured product providing they have been properly installed.

Broadly speaking providing a contractor installs a material or product correctly and in a manner that hasn't affected the performance of that material or product then it would be unfair for QBCC to hold a contractor responsible for any failure of that product or material.

Although the above information describes how QBCC generally adjudicates on complaints and warranties relating to defective building work, QBCC staff need to be cognisant of other legislation such as the Australian Consumer Law which also provides remedies to consumers who enter into contracts with building contractors.

QBCC staff should be aware that although QBCC may exercise discretion to not issue a Direction to Rectify upon a contractor, a consumer still may have redress through their common law rights against a building contractor who provides products, materials or appliances as part of the building contract.

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Rectification of Building Work Policy

Rectification of Building Work Policy

Queensland Building and Construction Board

On 20 June 2014, the Queensland Building and Construction Board made the *Rectification of Building Work Policy* under section 19 of the *Queensland Building and Construction Commission Act 1991*.

Pursuant to section 19 of the *Queensland Building and Construction Commission Act 1991*, the *Rectification of Building Work Policy* made by the Queensland Building and Construction Board is hereby published by way of this notice.

(1) Rectification of defective building work

1. It is a policy of the Queensland Building and Construction Board that a building contractor who carries out defective building work should be required to rectify that work.
2. To remove any doubt, subsection (1) applies despite the building contractor failing to comply with the contracted plans and specifications for the work.

(2) Rectification of defective residential construction work causing subsidence

1. It is a policy of the Queensland Building and Construction Board that a building contractor who carries out residential construction work causing subsidence should be required to rectify that work, unless in the circumstances rectification is unfair or unreasonable.
2. For section (1), it may be unfair or unreasonable, for example, to issue a direction if the building contractor in carrying out the work has complied with Schedule 1 (below).

(3) Notification of defects

1. It is a policy of the Board that if a consumer is seeking the assistance of the Queensland Building and Construction Commission (QBCC) to issue a direction to a building contractor to rectify defective building work, the consumer must lodge a formal complaint with the QBCC of defective building work as soon as possible but no later than within 12 months of becoming aware of the defects.
2. The QBCC will then consider the issuing of direction to rectify to a building contractor:
 - a. for structural defective building work, within 6 years and 3 months of the building work being completed; or
 - b. for non-structural defective building work, within 12 months of the building work being completed.

Note: This policy is not intended to extend manufacturers' product warranties, including whitegoods.

(4) Rescission of Board Policy

The Queensland Building Services Board policy named *Rectification of Building Work*, made by the Board on 12 May 2010, is rescinded as of the day that this policy takes effect.

(5) Definitions

In this policy –

Building see schedule 2 of the *Queensland Building and Construction Commission Act 1991*.

Building work see schedule 2 of the *Queensland Building and Construction Commission Act 1991*.

Defective building work means building work that is faulty or unsatisfactory, and includes, for example, work that:

- a. does not comply with the *Building Act 1975*, *Building Code of Australia* or an applicable Australian Standard
- b. 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.

Engineer see Schedule 2 of the *Queensland Building and Construction Commission Act 1991*.

Non-structural defective building work means defective building work (other than structural 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.

Related roofed building see the *Queensland Building and Construction Commission Regulation 2003*, section 9.

Residence see the *Queensland Building and Construction Commission Regulation 2003*, section 9.

Residential construction work see the *Queensland Building and Construction Commission Regulation 2003*, section 10.

Settling in period defect means building work that does not perform at a standard reasonably expected of work carried out by a competent holder of a contractor's licence of the relevant class.

Structural 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.

Subsidence means foundation movement that causes footing or slab deflection or other damage to a residence or related roofed building beyond that allowed for in applicable Australian Standards, including AS2870 and AS3600.

Schedule 1

Rectification for residential construction work causing subsidence

For section (2) of this policy, to comply with this schedule the building contractor must do all of the following:

- a. give the following information to the engineer for the work, or if the engineer has been given the information by someone other than the building contractor, obtain written confirmation from the engineer that the engineer has the following information:

- I. *Location* – a site address, plan of survey or photograph to correctly identify the site;
 - II. *Site identification* - information relevant to the contours of the site; the location of trees on the site and adjoining sites,¹ existing overland flow provisions, footprint location of the proposed building and indication of platform levels, location of proposed cut and fill, and identification and extent of subdivisional fill;
 - III. *Land searches* - searches where available necessary to establish impediments to the proper performance or function of the footing or slab system having regard to the site's location and condition;²
- b. obtain written confirmation from the engineer that :

Site Classification

- I. the engineer or their representative has visited the site;
- II. the site investigation for soil testing has been undertaken by an engineer or a soil tester licensed under the Act;
- III. exploration positions or bore holes conducted by the site investigator have been undertaken in the proposed footprint of the building and below final platform level in accordance with Australian Standard AS2870;³
- IV. soil samples have been taken for laboratory testing in accordance with Australian Standard AS1289 to determine the site classification;
- V. if the proposed footing is supported on filling and the engineer's design does not include piers through the filling, irrespective of whether or not the filling is part of the building contract or Level 1 compaction certificates are available, the engineer has documented requirements for further testing of or improvements to the filling such that piers are not required, or the engineer has provided written advice of the reason why the engineer has determined that piers are not required;
- VI. for reactive clay sites the laboratory test and soil test report include ISS and YS values (obtained by shrink and swell tests) in accordance with Australian Standard AS1289 and AS2870;

Engineer Design

- VII. the design takes into account site conditions (eg location of trees, easements, fill etc) including all information provided to the engineer about location, site identification and land searches referred to in paragraphs (a)(i), (a)(ii) and (a)(iii) above;
- VIII. the design includes photographs of the site to correctly identify onsite and adjoining site topography prior to site specific earthworks;
- IX. the design complies with all relevant Australian Standards including AS2870, AS3600 and AS3700;

¹ This information indicates to the engineer, through the use of photographs or other means, any trees and vegetation in the vicinity of the footing or slab system, including those adjacent to the footing or slab system on adjoining sites. It is noted, however, that an additional site visit by the engineer may still be necessary to determine whether design precautions are needed.

² These searches may include flooding, underground infrastructure, easements, vegetation protection and subdivisional fill. The nature of the searches, however, will always be dependant on the site's location and condition.

³ A minimum of two exploration positions or bore holes are required as part of any site investigation, as well as any other additional investigation necessary to determine the characteristics of the site. It is also required that the bore holes extend to a depth to refusal on rock or to the depth of zone of seasonal influence and below final platform level.

- X. the design is certified by an engineer; and
 - XI. the design drawings include the selected footing systems, any special site works, means of diverting surface water away from the slab, actual location of control joints in brick and masonry construction (including necessary control joints in internal linings), location of retaining walls, and requirements for articulation (flexible joints) in storm water and sanitary drainage;
- c. obtain the design drawings;
 - d. comply with all components of the design, including the selected footing systems, any special site works, means of diverting surface water away from the slab, location of control joints in brick and masonry construction (including necessary control joints in internal linings), location of retaining walls, and requirements for articulation (flexible joints) in storm water and sanitary drainage;
 - e. construct the footing or slab system in accordance with all relevant Australian Standards, including AS2870, AS3600, AS3700 and AS3500;
 - f. ensure that an engineer or building certifier has certified that the design has been complied with by the contractor.

ENDNOTES

1. Made by the Queensland Building and Construction Board on 11 April 2014.
 2. Approved by regulation on 9 October 2014.
 3. Commences and takes effect on 10 October 2014.
 4. Not required to be laid before the Legislative Assembly.
 5. The administering agency is the Queensland Building and Construction Commission.
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