

## Capital Works Management Framework

# Rectification of building defects or omissions after final completion

This policy advice note covers the process and steps that should be followed by departments for the rectification of defects or omissions that have been identified after final completion of government building projects.

### What constitutes defective work or omissions?

Defective building work is considered under the *Queensland Building Services Authority Act 1991* (the QBSA Act) to be faulty or unsatisfactory work.

Similarly, defects or omissions in the work under a typical contract, such as the conditions of contract issued under the *Capital Works Management Framework* (CWMF) (e.g. AS2124 with Special Conditions), are considered to include materials or work provided (or not provided as the case may be) by the contractor that are not in accordance with the contract.

### The effect of the final certificate on the contractor's responsibility for rectifying defects or omissions

Completion of the contract is evidenced by the issuing of the final certificate. Under most contracts, (except in cases of fraud, dishonesty or fraudulent concealment relating to the works, or any defect or omission in the works which was not apparent or would not have been disclosed upon reasonable inspection at the time of issuing the final certificate) the final certificate is evidence that the works have been completed in accordance with the terms of the contract. Accordingly, where the exceptions described above do not apply, the principal is unlikely to have any recourse against the contractor for breach of contract and the principal may have to proceed to rectify the works at its own cost.

In cases of fraud, dishonesty or fraudulent concealment relating to the works, or where there is a defect or omission in the works which was not apparent and would not have been disclosed upon reasonable inspection at the time of issuing the final certificate, the principal will have recourse against the contractor. However, as the contract has come to an end, there are no longer any remedies under the contract which are available to the principal and, if the contractor fails to rectify the defect or omission, it will be necessary to seek relief through legislation, the common law (via the courts) or by exercising rights of set off where it is possible to do so.



## Notify the contractor

Before notifying the contractor, the principal must establish that the defect or omission is a defect or omission in the works under the contract and that, despite the issuing of the final certificate, the principal has recourse against the contractor in respect of that defect or omission.

Having done so, the department which is principal under the contract should notify the contractor of the specific details of the defect or omission and request that the contractor inform the department of what action, and in what timeframe, the contractor proposes to undertake rectification works.

If there are access requirements or restrictions as to when the work can be inspected or undertaken, these should be clearly outlined in the department's notice.

Where the Department of Public Works provided the superintendency role during the contract period, departments may wish to contact their respective client representative within the Department of Public Works and request that their representative contact the contractor on their behalf.

In many instances, contractors may be willing to rectify defects or omissions in the works after final completion and, if the contractor completes the rectification works to a standard, and within a timeframe, acceptable to the principal, there is no need for further action to be taken.

## Defective work not rectified

If the contractor is unwilling to rectify any defects or omissions in the works for which they are responsible after final completion, or fails to complete the rectification works to a standard, and within a timeframe, acceptable to the principal, there are a number of possible actions that may be taken. The contractual, legal and technical experience of the Department of Public Works may be of value when determining the most appropriate action. The available mechanisms are outlined below:

- the review and sanction process under the whole-of-Government Prequalification (PQC) System
- the legislative provisions available to the Queensland Building Services Authority (QBSA) under the QBSA Act
- suing the contractor for (possibly among other things) breach of contract
- the set off of any costs to rectify the defect or omission against amounts otherwise due and payable to the contractor under any other current contract between the contractor and the principal.



## Rectification of building defects or omissions after final completion

In view of a possible impact on the contractor's PQC System status, in the first instance departments should advise the PQC Registrar, who administers the whole-of-Government Prequalification (PQC) System within the Department of Public Works, of the matter, outlining all action and negotiations to date.

The Department of Public Works will then attempt to negotiate resolution of the matter with possible reviews, sanctions or other recommended actions in relation to the contractor's prequalification status based on consultation with the contractor, relevant people involved when the contract was on foot, the Department's Legal Services Unit and Contract Services Unit and/or the QBSA as appropriate.

Where negotiation fails and the contractor clearly does not intend to carry out the rectification works in an acceptable manner, the Department of Public Works' Contract Services Unit is available to provide advice to assist departments to address the matter through legislation, the common law or by exercising the principal's rights of set off.

### Rectification of defects or omissions by others

In some cases, defects or omissions may give rise to safety concerns or, if not rectified, result in further damage to persons or property. There may also be a dispute in relation to liability for the defect or omission.

In these cases, departments may seek to have rectification work carried out by others (e.g. the Department of Public Works' commercialised business unit QBuild) with a view to recovering the costs incurred by means of set off or by commencing legal proceedings. Unless the defect or omission gives rise to safety concerns that require urgent rectification, the contractor must be notified of the defect or omission, as outlined earlier in this policy advice note (refer to [notify the contractor](#)), before any work is carried out.

In order to set off the costs incurred in rectifying the defect or omission, it must first be established that there is a debt payable by the contractor to the principal. Upon establishing that this is the case, departments may, under standard conditions of contract prescribed in the CWMF, be able to set off any costs incurred to rectify the defects or omissions against amounts that are otherwise due and payable to the contractor under another contract between the contractor and the principal.

### Involving the QBSA

The QBSA's charter is to regulate the building industry through the licensing of contractors; to make contractors aware of their legal rights and responsibilities; to handle disputes fairly and equitably; to protect consumers against loss through statutory insurance; and to implement and enforce legislative reforms and where necessary prosecute persons not complying with the law.

Departments also need to be aware that the QBSA can only become involved in work that is considered 'building work' under the QBSA Act.



## Rectification of building defects or omissions after final completion

Departments should first exhaust mechanisms available to them and the Department of Public Works prior to involving the QBSA in dedicating time and resources to the matter.

Accordingly, departments should not submit a Residential and Commercial Construction Work Complaint Form to the QBSA without first consulting with the PQC Registrar. If a department decides that such a form is to be submitted, a copy of the completed form is to be provided to the PQC Registrar concurrently.

### Timing

While the previously described process may appear to have a significant time element, departments should appreciate that the contractor needs to be notified of the work considered to be defective or omitted in the first instance and also needs to be given reasonable opportunity to rectify the work.

Additionally, if at any time during the process it is considered that remedial work needs to be undertaken to address or mitigate a threatening or serious situation; work can be undertaken by others as outlined earlier in this policy advice note (refer to [rectification of defects or omissions by others](#)).

Timeframes exist at law in which to instigate any proceedings for work performed under a contract or under seal. Contract Services Unit should be contacted for further information.

### For further information

**Building Policy Unit**  
Building Services and Works Division  
Department of Public Works  
GPO Box 2457  
Brisbane QLD 4001

Telephone: 07 3224 5482  
Fax: 07 3224 5498  
Email: [bpu@publicworks.qld.gov.au](mailto:bpu@publicworks.qld.gov.au)  
Web: [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au)

July 2011  
(Originally published December 2006)

© The State of Queensland  
(Department of Public Works)

