

CONSTRUCTING

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Links

A BUILDING SERVICES AUTHORITY PUBLICATION



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GENERAL MANAGER'S REPORT



Ian Jennings
General Manager,
Building Services Authority

BSA HERE TO HELP QUEENSLANDERS BUILD BETTER

BSA's vision is for Queensland to Be Recognised as Australia's Leading Building Environment. We aim to achieve this through our licensing regime, dispute prevention and resolution processes and education, training and awareness initiatives.

Constructing Links is aimed to educate and promote awareness among workers in the commercial sector of the industry. It will be produced twice yearly, in Spring and Autumn.

Building and construction work in Queensland is at record levels and I believe all operators in the industry should remain abreast of industry issues and developments.

Please remember that BSA can offer you assistance on matters including contracts and licensing requirements.

Should you find yourself involved in a building dispute, BSA's trained staff can assist you through our dispute resolution process.

If the dispute is about payment you may be able to use *The Building and Construction Industry Payments Act* to help recover payment.

If you require any assistance or information on building matters please phone BSA on 1300 272 272.

We hope you find *Constructing Links* a useful source of information.

MINISTER'S REPORT



Robert Schwarten MP
Minister for Public Works, Housing and
Information and Communication Technology

BSA IS ADDING VALUE TO THE INDUSTRY

I am pleased to welcome the BSA's current effort to establish improved communication with the non-residential sector of the Queensland building industry.

The BSA adds real value to the industry by demanding technical competency from licensees, monitoring compliance with building standards, researching building issues and promoting practices likely to ensure the continuing viability of businesses.

Side by side with industry the BSA continues to grow "smarter" in terms of planning, the use of technology and environmental awareness. In future the BSA will be taking a more pro-active approach in promoting regulatory compliance.

As a result of Queensland's booming economy, non-residential building commencements in Queensland

increased by an estimated 8% in 2006/07 to a record level, driven by a 27% growth in commercial and industrial building commencements. The value of non-residential building commencements in 2006/07 was an estimated \$5.64 billion.

In the current hectic environment, it may be easy to overlook regulations designed to protect contractors and consumers. *Constructing Links* will ensure that contractors in the non-residential sector are kept up to date with important topics.

In this first issue, please take a look at the information provided about Queensland's prequalification system. While there continues to be strong interest from prequalified contractors to tender for projects within the Brisbane region, regional areas are still reporting difficulty in getting sufficient tenderers for projects.

CHAIRMAN'S REPORT



John Gaskin
Chairman,
Queensland Building Services Board

DOCUMENTATION IS VITAL

It is an inevitable fact of the times we live in that a fair degree of documentation is required for all business enterprises. This is particularly the case in the building industry, where documentation plays a crucial role in the avoidance of, and if unavoidable, the winning of disputes.

In my experience it is vital for successful businesses in this industry to have good procedures in place for contracts and related documents. This ensures your rights are protected, and prevents disputes from arising.

First and foremost contractors must ensure that the head contract and all subcontracts are in writing, and comply with the requirements of Part 4A of

the *Queensland Building Services Authority Act 1991*. Compliance with this legislation is easy if standard form contracts, available from all major industry organisations, are used and properly filled out.

Not only must you ensure a contract is in place, you must adhere to it. Read your contract to make sure you protect your rights in relation to site instructions, variations, extensions of time and the like. Also, avail yourself of the protection of the *Building and Construction Industry Security of Payment Act*, and ensure you comply with its requirements.

Taking care up front will protect your rights and prevent costly disputes.

Commercial building

Commercial building

The **Certification Process** in Commercial Building Work

Most developers and builders involved in commercial building work know the processes required for a building project to be successful from concept to completion.

The process will involve a number of consultants including engineers, architects and town planners.

One consultant who will play a significant role in the success of the project will be the building certifier. Building certifiers may be private building certifiers in their own practices or building certifiers who work for local governments. Some building certifiers who work for local governments may also hold private certifier endorsement which allows them to certify throughout the State.

The difference between a private certifier and a local government building certifier is the private certifier is legally required to hold professional indemnity insurance and to have successfully completed a course in issuing development permits. This course focuses very heavily on town planning and its impact on the building certification process.

Both private and local government certifiers must hold a BSA licence. Building certifiers are licensed at various levels depending on their qualifications and experience. These levels specify the size of the projects they are allowed to certify. The current levels are:

- Building Surveyor Technician (certain local governments only)
- Assistant Building Surveyors
- Building Surveyors

In addition to being licensed, building certifiers must adhere to a strict Code of Conduct and meet the requirements of the *Building Act*, regardless of who may be engaging them. BSA investigates allegations of certifiers not meeting these obligations.

What is the Building Certifier Role?

In simple terms the process goes from the preliminary design through to assessment and then final inspection. Let's examine each of these stages.

Preliminary Project Team

Building certifiers may form part of the initial project team during concept stage and may give

preliminary advice on potential problems. This needs to be carefully managed by the project team as it's against the building surveyors' Code of Conduct to actually be involved in the design process for the building.

Assessment Stage

Once the plans are completed building certifiers will assess the plans for compliance with various standards and codes, including the requirements of the Building Code of Australia. They may require supporting documentation and certificates (Form 15) from various consultants to assist them in ensuring the proposed works meet various standards. These consultants are referred to under the Building Act as "competent persons" and must be approved by the building certifier prior to supplying the certifications.

It is critically important for the building certifier to ensure the proposed plans are consistent with the town planning permit and meet any relevant conditions from the local authority which impact on the building certification process.

Construction Stage

After a permit has been issued a building certifier may carry out certain inspections during construction. These inspections are mandatory and are imposed as part of the permit decision notice and any attached conditions.

Prior to the building being occupied a building certifier must issue a Certificate of Classification. This certificate is issued when the building certifier deems the building has been constructed in accordance with the original permit and various supporting documentation including any certificates of inspections obtained from the competent persons. Any changes to the original permit must be approved by the building certifier.

As with all consultants the building certifier is an integral part of the project team.

If you have any questions about the certification process in commercial building work please contact BSA.

DEFECTS in the Commercial Sector

There is a misconception in the building industry that BSA only becomes involved in disputes in the residential sector. This is probably because BSA administers the Statutory Home Warranty Insurance Scheme in Queensland and in all other States and Territories this insurance is provided by private non-government insurers. Over recent years increasing numbers of complaints about defective building work on commercial buildings have been referred to BSA.

This article will highlight some common defects that, like all defective building work, are probably avoidable. In most cases defective work can be associated with inadequate supervision and the haste in adhering to tight construction schedules. The volume of work in the marketplace and the skills shortage also play a contributing part.

Defective fire separation is a major concern of BSA. Over the last four years BSA has concentrated its efforts on reducing fire separation defects in simple fire separation walls between townhouses and similar. An initial survey taken four years ago found a large percentage of fire separation walls in this type of building were defective. Following a program of education this non-compliance has significantly reduced. BSA believes the industry has responded to this education program and the trend of improvement will continue.

It is now time to turn the focus to fire separation in other commercial buildings. The proper selection, installation and certification of fire separation components including fire collars, riser ducts, cable tray penetrations, air conditioning dampers and fire doors is critical in providing safe buildings.

BSA inspectors have seen fire collars fixed into position using nylon anchors and other inappropriate fixings. In the event of fire these types of anchors will allow the collar to be dislodged very quickly - rendering the collar useless. In other cases the correct fixings may have been used, but they have been placed into a void former that has been left in position. The void former will disintegrate quickly

in a fire, rendering the collar useless. In both instances proper planning and supervision would have produced effective and safe buildings.

Basement water leaks have always been an issue in the building industry and more and more are reported to BSA each year. Poor drainage behind retaining walls and poor membrane protection layers or carelessly placed drainage medium that has damaged the waterproofing system are some of the common defects found. Choice of proper waterproofing systems and careful supervision can avoid expensive rectification when a retaining wall leaks.

Tile peaking and delamination is the third area of defective work that appears to have increased over the last few years. This usually occurs in podium slabs and balconies of high rise unit developments. In almost every case this can be attributed to the inadequate provision of room for expansion of the tiles. It is critical to provide expansion joints within the body of a tiled area and around any restrained perimeter.

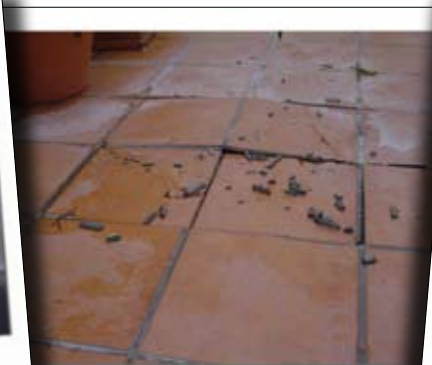
The frequency of the expansion joints needs to take into account the type of tile selected. Some tiles will expand at a greater and faster rate than others. Tiles are manufactured in a wide variety of factories around the world with considerable difference in quality. It is important to ensure tiles are well credentialed and specified before being laid. Proper supervision of the installation and spacing of expansion joints is critical.

The appropriate level of slip resistance of tiles is also an issue referred to BSA more often in recent times. This can be dangerous when wet and could also be expensive in the case of accident or injury.

With proper supervision and awareness each of the defects outlined above is avoidable. Avoiding these defects in the first instance would remove the need for contractors to return to rectify. Unnecessary rectification work is costly and undesirable and something that the industry can do without.



basement water leak



tile growth



penetrated fire wall

Commercial building



Queensland
Government
Public Works

Prequalification System for Contractors

Any building industry contractor seeking to undertake Government building projects valued at more than \$250,000 must first become registered on the Whole-of-Government Prequalification (PQC) System administered by the Department of Public Works (DPW).

The PQC System supports the tendering and selection process by providing clear and consistent performance requirements. The PQC System comprises:

- ❑ a central register of pre-qualified building industry contractors used by all Government departments;
- ❑ associated PQC application and performance reporting documents; and
- ❑ a series of related guidelines covering the use of the PQC System, the building industry contractor tendering and selection process, financial requirements and service risk assessment.

Building work between \$250,000 - \$500,000

The Department of Public Works has developed an entry-level application process for building contractors seeking *prequalification* for low risk (PQC Level 1) Government building projects estimated to cost from \$250,000 to \$500,000.

Under this arrangement, contractors in this area of the market will only be required to satisfy basic compliance requirements, including aspects such as correct corporate identity and appropriate BSA licensing.

Building work below \$250,000

Contractors wishing to carry out building work under the Department of Public Works Minor Works or Service Maintenance Contracts (generally below an estimated value of \$250,000) may wish to become a *Registered Contractor* with QBuild. Further information on this is available at www.qbuild.qld.gov.au.

Building work above \$250,000

There is a two stage process for contractors seeking prequalification for contracts above \$250,000. The first step involves the contractor completing an application form which enables the PQC Registrar to review mandatory requirements early in the PQC application process, including any relevant statutory requirements. The contractor also provides information on company details, office locations, licensing, financials and management systems.

Applicants that are successful in the first step can then proceed with the full application.

For further information visit www.build.qld.gov.au.



The image shows a sample of a Prequalification System application form for contractors. The form is titled 'Entry Level Application - Contractor PQC' and is divided into several sections. The 'Application Details' section includes fields for company name, ABN, and other identifying information. The 'Significant Business' section contains a list of questions about the contractor's financial and operational status. The 'Contract for this Application' section includes fields for the contractor's name, address, and contact information. The form is presented as a tilted document, suggesting it is a digital or scanned version.

Licensing requirements



CHANGES TO FINANCIAL REQUIREMENTS FOR LICENSING

Negative net tangible asset position no longer allowed

On July 1 2006 BSA changed its Financial Requirements for Licensing (FRL) Policy.

One of the significant changes to the FRL that may affect you is the prevention of contractors who have a negative Net Tangible Asset (NTA) position from holding a BSA licence. In the future, contractors must have at least the same amount of assets as liabilities.

This change is effective for any financial report supplied to BSA with a year end date of 1 July 2007 or later. (A financial report with a year end date of 30 June 2007 or earlier will not be subject to the negative NTA ban.)

If you or your company currently has a negative NTA position you must rectify this as soon as possible. BSA will be unable to accept a financial report with a year end date of 1 July 2007 or later that shows a negative NTA position and your BSA licence will have to be suspended until you increase your assets. If the negative NTA position is not rectified then BSA will be forced to cancel your licence.

You will still be able to use Deeds of Covenant and Assurance if you have a shortfall of NTA to meet your Allowable Annual Turnover (AATO), but only if your NTA is zero or above.

Please ensure you seek advice from your accountant about your options.

More information regarding the FRL and these changes can be found on our website www.bsa.qld.gov.au or by phoning BSA on 1300 272 272.



BUILDERS BE AWARE OF LICENSING REQUIREMENTS FOR YOUR SUBCONTRACTORS

You, as the building contractor for the project, are responsible for ensuring your subcontractors are licensed in the appropriate class. All subcontractors engaged directly by the builder must be licensed to perform the works they are undertaking.

The onus on checking that their licence is current and appropriate for the work lies with you. It is an offence to engage an unlicensed subcontractor and you may be liable for prosecution. As a minimum you should sight a current licence card, perform a free on-line licence search, or call BSA to verify the validity of your subcontractor's licence.

Remember, only subcontractors who contract directly with you need a BSA licence. Sub-trade contractors do not require a BSA licence. Sub-trade contractors are those who do not contract directly with builders or consumers but contract solely to other BSA-licensed contractors in the same trade. For example, if a builder engages a BSA-licensed carpenter for a project, other carpenters in the gang are not required to hold a BSA licence.

BSA'S HEAD OFFICE HAS RELOCATED

BSA is now *Helping Queenslanders Build Better* from a new location at 299 Montague Rd, West End.

"The relocation was necessary to allow BSA to continue to provide more pro-active customer service. The new office space was chosen based on its generous space which will give BSA the ability to host industry and consumer functions," said BSA's General Manager Ian Jennings.

The south east corner of Queensland is undergoing significant growth which is placing greater demands on the building and construction industry. As the regulator, BSA needs to position itself for the future by evolving today.

"Over the past five years BSA has focused on providing better services to its customers and as a result is now recognised throughout Australia as the leading building regulator and provider of consumer protection," said Mr Jennings.

To further enhance its service delivery, BSA is undergoing internal change aimed at establishing an organisation which is more flexible and responsive to its customers and the industry.

"Greater emphasis will now be placed on new initiatives and strategies to address industry performance. This may include: assisting contractors to understand BSA's Financial Requirements for Licensing; more contractor and consumer education; and collaborating with industry to address performance deficiencies," said Mr Jennings.

The change will help BSA further improve its business.



Legislative changes

BSA's Legislation is Changing

Amendments are occurring to the *Queensland Building Services Authority Act 1991* and the *Domestic Building Contracts Act 2000*. All the amendments except the occupational fire licensing take effect in late December 2007. The occupational fire licensing will take effect from 1 July 2008. Details of some changes are outlined below.

Occupational Licensing for Fire Protection Work

The Childers Report, commissioned after the Palace Backpackers Hostel fire, recommended the introduction of a fire licensing system for fire protection workers in Queensland to ensure the testing and maintenance of fire safety installations in buildings is undertaken by competent persons.

Under the amendments an occupational fire licensing system will be developed and administered by the BSA. The system will reap many benefits including improved compliance with building fire safety regulations, better training and improved safety for fire protection workers, and reduced risk to fire fighters responding to fire emergencies.

Supervision of Building Work

Each year BSA receives approximately 5,000 complaints about defective building work and BSA research shows that up to 60% of defective building work can be attributed to a lack of supervision of work.

The amendments introduce a BSA licensing system for building site supervisors.

Previously, to get a BSA Supervisor Licence, site supervisors had to obtain a Contractor's Licence or a Company Nominee Licence. The amendments introduce a Site Supervisor Licence developed to specifically suit the role of site supervisor.

Issuing Directions to Developers to Rectify Defective Work

BSA has recently seen cases where defective building work has been performed in Queensland under the direction of developers. This has resulted in costly and protracted disputes between the developers, contractors and consumers involved.

The amendments give BSA the power to issue developers a direction to rectify defective work.

Under the amendments BSA will have the power to issue developers directions to rectify defective building work and hold developers accountable if they intentionally enter into an agreement with a building contractor to use materials or carry out work that is likely to result in defective building work.

Penalties for Offences

All people performing plumbing and draining, gas fitting or chemical termite management work must hold a

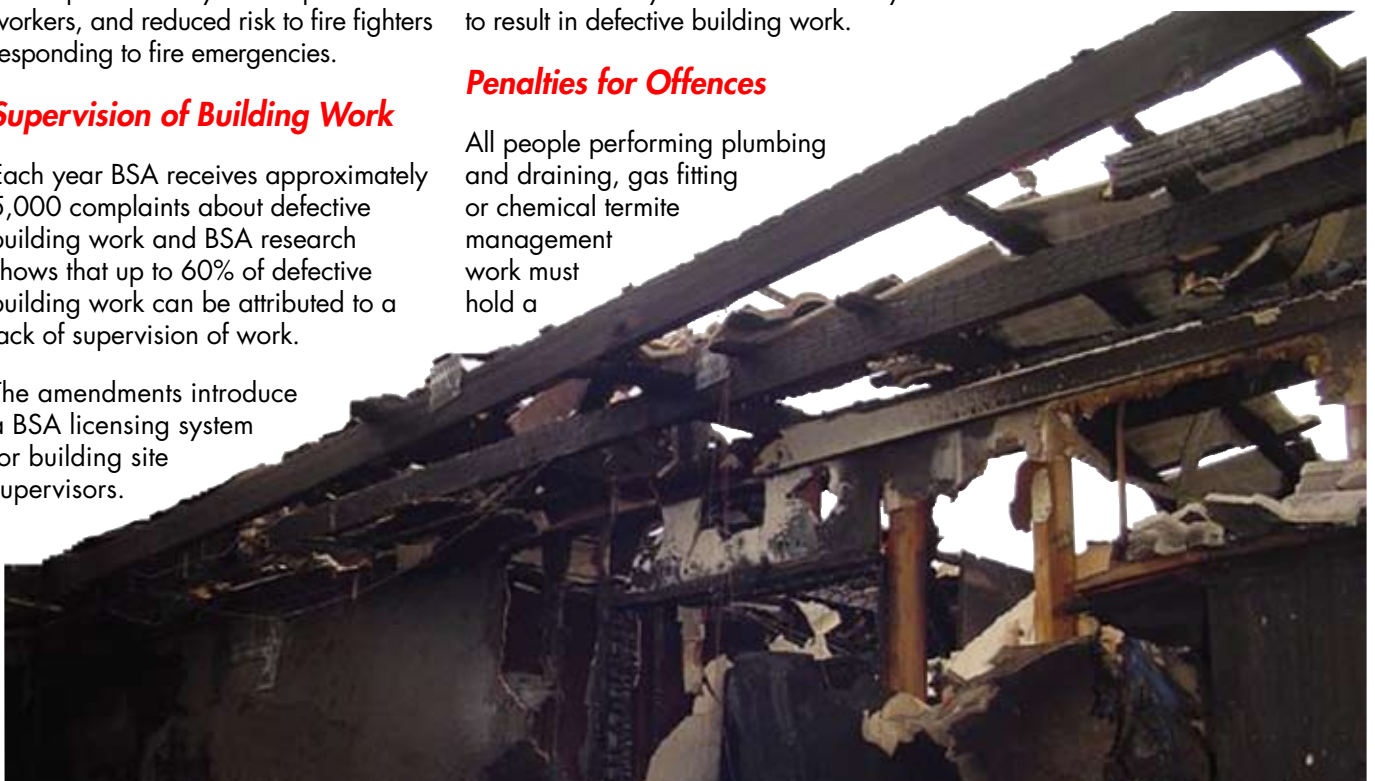
BSA licence regardless of the value of the work they are performing.

Under the amendments unlicensed persons performing other building work must clearly state in any advertising that they are only entitled to perform building work to the value of \$1,100 since they don't hold a BSA licence.

Non-compliance with this amendment will result in penalties of up to \$7,500 for an individual, and \$37,500 for a company.

Serious breaches, such as failing to comply with a BSA direction to rectify defective building work, will result in the allocation of demerit points against the offender's licence. Licensees who accumulate more than 30 demerit points over three years will be disqualified from holding a BSA licence.

More details on the amendments can be viewed on BSA's website at www.bsa.qld.gov.au.



Contractual issues

Contractors: know your contract

Builders and subcontractors often have trouble recovering payment for building and construction work (even if it has been completed on time and is free of defects) because they did not ensure that the obligations and responsibilities of both themselves and the builder were clearly outlined in writing.

CONTRACTS MUST BE IN WRITING

The Queensland Building Services Authority Act (QBSA Act) requires that head contracts for domestic construction work and contracts, subcontracts and sub-subcontracts for commercial work between developers, builders and subcontractors be in writing. Parties to such contracts that fail to put their arrangements in writing commit an offence under the QBSA Act and are liable to be prosecuted by BSA.

Other than plumbing, gasfitting, design drafting, completed building inspections, site classification, fire protection and pest controlling, work valued less than \$1,100 is not classed as building work and does not require a written contract.

CONTRACTS MUST CONTAIN:

- the scope of the work
- the completion date
- the amount to be paid for the work (or how the amount is to be calculated)
- the agreement between the parties about retentions and securities
- the names and licence numbers of the building contractors and
- the address where the work is being carried out

CONTRACTS SHOULD ALSO CONTAIN:

- the name and contact details of the parties involved
- the timing of payments for the contracted work
- a dispute resolution procedure.

Q When should builders and subcontractors be paid?

When builders or subcontractors carry out building work they are generally entitled to be paid under the terms of the contract. However, if the contractual arrangements between the parties are not put in writing then the relevant party who actually carried out the work (either a builder or subcontractor) may have difficulty in getting paid if the parties disagree on terms and conditions.

BSA strongly recommends contractors read any written contract they are asked to sign BEFORE they sign it and consider seeking legal advice if necessary. A builder is under no obligation to accept the terms and conditions outlined in a contract drawn up by a principle and may seek to amend the contract or ask the principle to sign a written contract that they would prefer be in place. The same situation applies for a subcontractor in their contractual dealings with a builder.

Please note: Even when there is a written contract in place, some contractual provisions may be void (i.e. have no legal effect). These include:

a. "pay-when-paid" clauses

A "pay-when-paid" provision is one which makes one person's payment dependent on another person's payment or on another contract. For example a builder cannot require a subcontractor to wait until they themselves are paid and must pay the subcontractor under the terms of the contract.

Contractual issues

Contractual rights and obligations

FAQs

b. excessive payment period

A clause in a subcontract between a subcontractor and builder is void if it states that the payment of a progress payment to a subcontractor will occur later than 25 business days after a payment claim is submitted. If the contract does not outline when a subcontractor can lodge a payment claim, the *Building and Construction Industry Payments Act 2004* (BCIPA) states that payment claims may be made at monthly intervals, with payment due 10 business days after the claim is made.

A clause in a commercial building contract between a builder and a principle is void if it states that the payment of a progress payment to a builder will occur later than 15 business days after a payment claim is submitted. If the contract does not outline when a builder can lodge a payment claim, the BCIPA states that payment claims may be made at monthly intervals, with payment due 10 business days after the claim is made.

Q The subcontractor has to provide securities and retentions. What percentage is reasonable?

Retentions and securities for subcontracts cannot exceed 5% of the total contract price, regardless of the contract and subcontractors cannot legally be required to provide more. This figure does not apply to security taken by the builder for amounts paid for something not yet installed.

Retentions from progress payments cannot exceed 10% of the progress payment amount and retentions for

defects liability cannot exceed 2.5% of the total contract price. Builders are not legally able to withhold more than these sums, regardless of the contract terms.

Q The builder has to provide securities and retention. What percentage is reasonable?

As a starting point, the same percentages and limitations apply to a builder in their dealings with a principle as outlined above for a subcontractor in their dealings with a builder.

However, as distinct to the situation applying to subcontractors, a builder and principle are legally entitled to agree under the contract to vary these arrangements.

Q Can a subcontractor replace cash held by a builder (as a retention or security) with a bank guarantee?

Yes. Regardless of the contract subcontractors have a legal right to substitute a valuable instrument (usually a bank guarantee) for a cash security or retention held by the builder

Q Can a builder replace cash held by a principle (as a retention or security) with a bank guarantee?

Yes. Regardless of the contract builders have a legal right to substitute a valuable instrument (usually a bank guarantee) for a cash security or retention held by the principle.

Q What if a builder or subcontractor is directed to perform a variation?

If a builder or subcontractor is directed to perform a variation under a contract, they can refuse to comply until the variation is presented in writing. If the subcontractor or builder decides to comply with a verbal direction, the relevant party (builder or principle) must confirm the variation in writing within 3 business days of it being given.

Q What should a builder or subcontractor (contracted party) do if the contracting party breaches the contract?

If the contract is for commercial work the relevant contracted party should consult the dispute resolution terms of their contract and consider seeking legal advice.

Under the *Commercial and Consumer Tribunal Act 2003*, commercial disputes under \$50,000 may be resolved through the Commercial and Consumer Tribunal (CCT). Both parties may also agree to have disputes over \$50,000 dealt with by the CCT. The BCIPA can also assist with dispute resolution (see page 8 for more information).

Q Where can subcontractors get contracts from?

BSA has produced two fair subcontracts which will soon be available for free download from both the BSA website www.bsa.qld.gov.au and the BCIPA website www.bcipa.qld.gov.au. More information about these contracts will be coming soon.

Payment legislation



Michael Chesterman
Adjudication Registrar
Building and Construction Industry
Payments Agency

GET PAID QUICKER USING THE BCIPA!

The *Building and Construction Industry Payments Act 2004* (BCIPA) has now been in operation for almost three years. In this time it has proven to be a very effective method for builders and subcontractors to quickly and cheaply resolve payment disputes, particularly in the commercial sector.

The BCIPA establishes a system of adjudication for the quick resolution of payment disputes by an appropriately qualified and independent adjudicator.

Adjudication allows payments to flow quickly down the contractual chain because the party with the most commendable case, as decided by the adjudicator, retains the monies in dispute.

The adjudication process gives disputed parties an opportunity to resolve the payment dispute without entering the court system.

467 adjudication applications were lodged during the 2006/07 financial year, representing a 63% increase on the 293 applications lodged during 2005/06. The applications lodged during 2006/07 represented payment claims totalling \$142M.

A major benefit of the BCIPA is that it encourages improved lines of communication between dispute parties. Communication is improved so much that for every payment dispute resolved under the BCIPA through adjudication, "default" statutory debt options or suspension of work, many, many more

matters are resolved through negotiation between the parties.

Has the BCIPA specifically delivered improved payment outcomes for builders and subcontractors?

For many decades builders and subcontractors have been plagued by payment issues. The BCIPA was delivered specifically to assist builders and subcontractors get paid for work carried out, and in this regard it has proven to be very successful.

During the 2006/07 financial year 320 of the 467 adjudication applications were lodged by subcontractors (68%), representing payment claims totalling almost \$44.5M. The results of adjudication outcomes for subcontractors have been outstanding. 58 subcontractors lodged adjudication applications for payment claims in the \$10,000 - \$24,999 category. The average decided amount for these claims is \$16,111.54 and in 66% of matters the subcontractors received the full amount claimed.

In 2006/07 builders did not use the BCIPA as frequently. Builders lodged 102 adjudication applications representing payment claims totalling \$89.1M. The builders that lodged these applications obtained excellent outcomes. 17 builders lodged adjudication applications for payment claims in the \$10,000 - \$24,999 category. The average decided amount for these claims is \$16,455.65 and in 70% of cases the builder received the full amount claimed.

The Payments Agency expects increasing numbers of builders and subcontractors will use the BCIPA in the future as the Payments Agency and BSA continue to engage in education and awareness initiatives to inform subcontractors, head contractors, suppliers and consultants on their payment rights under the BCIPA.

Can Unlicensed Contractors use the BCIPA?

NO! In a recent landmark decision the Queensland Court of Appeal [Cant Contracting Pty Ltd (Cant) v Casella (2006) QCA 538] determined that a person who has carried out building work as defined under the *Queensland Building Services Authority Act 1999* (QBSA Act) and at the time of carrying out the work was unlicensed or did not hold the required licence, cannot use the BCIPA.

Under the contract in question Cant agreed to manufacture, supply and erect poultry sheds for Casella. During the course of the contract a payment dispute arose between the parties, resulting in Cant serving a payment claim on Casella under the BCIPA. Casella failed to respond to Cant's payment claim. Ordinarily this would mean that Cant would be entitled to go to court and obtain a judgement debt against Casella for the monies owed. However, in this case Casella sought to oppose judgement being handed down on the grounds that Cant was unlicensed.

The QBSA Act stipulates that an unlicensed person is not "entitled to any monetary or other consideration" other than being able to recover the costs they incurred in the supply of materials or the engaging of labour assistance in carrying out the building work.

The Court of Appeal allowed the appeal by Casella and held that a person's ability to use the BCIPA is subject to the limits imposed by the QBSA Act. In other words, the Court decided that an unlicensed person who has no "entitlement to any monetary or other consideration" for doing work under the contract cannot have an entitlement to be able to claim a progress payment under the BCIPA.

Look for more news on the BCIPA in the next edition of *Constructing Links*.

Payment legislation

Recent Adjudication Decisions

AFTER ADJUDICATION

What happens if a party ordered to pay an adjudicated amount of money fails to do so?

If an unsuccessful party fails to pay the whole or any part of the adjudicated amount by the 'relevant date' the successful party may:

- ask the Authorised Nominating Authority (ANA) with which they lodged the adjudication application to provide an *Adjudication Certificate*; and/or
- suspend future work or the supply of goods or services, by serving of a notice of their intentions.

If requested the ANA will provide an Adjudication Certificate stating the:

- name of the claimant
- name of the respondent
- adjudicated amount
- date on which the respondent was required to pay the adjudicated amount to the claimant

The 'adjudicated amount for an Adjudication Certificate' is made up of:

- the adjudicated amount determined by the adjudicator, and
- may also include:
 - the amount of interest payable on the adjudicated amount and
 - reimbursement to the claimant of the respondent's share of the adjudication fees, if these fees were paid by the claimant.

An Adjudication Certificate, together with an Affidavit from the claimant stating that the whole or part of the adjudicated amount has not been paid may be filed as a judgment debt, so that payment can be enforced by the Courts.

Which court will depend on the adjudicated amount (ie Magistrates Court, District Court or Supreme Court). The issuing of an Adjudication Certificate allows a successful party the opportunity to convert an adjudication decision into a decision of a competent court of jurisdiction.

Nestview Pty Ltd t/as The Paver Trader (subcontractor) Vs Tony Dender t/as Cobble Charm (builder)

The subcontractor lodged a payment claim against the builder for the supply of bricks and pavers to various sites. The claim was not paid by the due date so the subcontractor proceeded to adjudication. The builder did not provide any form of response and the subcontractor was awarded \$25,596.61. The builder was also found liable for all the adjudication fees and expenses.



Airpath Ductwork P/L (subcontractor) Vs Laurie Lindner Constructions Pty Ltd (builder)

Airpath Ductwork Pty Ltd (Airpath) were contracted by Laurie Linder Constructions Pty Ltd (Laurie Linder) to perform air-conditioning mechanical services. Airpath served a payment claim on Laurie Linder for \$59,495.70, which Laurie Linder didn't accept. Airpath proceeded to adjudication and was awarded \$57,695.70. Laurie Linder was also found liable to meet the total amount of adjudication fees and expenses.



Vantage Holdings Pty Ltd t/a Vantage Commercial (subcontractor) Vs Hertford (Aust) Pty Ltd (builder)

Vantage Holdings constructed a childcare facility and performed associated civil works. Vantage Holdings lodged a final progress claim with the respondent for \$25,439.62. Hertford did not pay so Vantage Holdings referred the matter to adjudication and were awarded the full amount they claimed. Hertford was also held liable for all the adjudication fees and expenses.





BSA OFFICE LOCATIONS

BRISBANE

299 Montague Rd
West End QLD 4101
Fax: 3225 2999

GOLD COAST

Robina Super Centre
86 Robina Town Centre Dr
Robina QLD 4230
Fax: 5575 7666

SUNSHINE COAST

Unit 7
Credit Union Australia Plaza
Cnr Baden Powell St &
Maroochydore Rd
Maroochydore QLD 4558
Fax: 5459 9655

TOOWOOMBA

Clestrain Mall
131A Herries St
Toowoomba QLD 4350
Fax: 4638 1917

ROCKHAMPTON

164 Berserker St
Cnr Elphinstone St
North Rockhampton QLD 4701
Fax: 4926 1377

TOWNSVILLE

AAMI Building
287 Ross River Rd
Aitkenvale QLD 4814
Fax: 4725 3401

MACKAY

25 River St
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CAIRNS

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MARYBOROUGH

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INNISFAIL

Shop 1, 56 Rankin St
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For further information on BSA's services
call BSA's Customer Contact Centre on

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or visit the website at

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