

QUEENSLAND BUILDING SERVICES BOARD POLICY

Section 72: Power to require rectification of building work

Section 71: Recovery from building contractor etc.

(To be read in conjunction with the *Queensland Building Services Authority Act 1991* and the *Queensland Building Services Authority Regulation 2003*)

Subsidence / Settlement – Responsibility for Rectification

The BSA requires that all work performed by contractors be in accordance with the Building Act and completed in a good and workmanlike manner. When a contractor fails to satisfy this requirement, the Authority may direct the contractor to rectify the work.

Under Section 72 of the QBSA Act, the Authority maintains a discretion as to whether to direct a contractor to rectify defective work. Under Section 4 of the Act, “defective” includes faulty or unsatisfactory work.

Contractors will usually not be held responsible for the subsidence or settlement of a building where:

- (a) the cause is due to the actions of the owner
- (b) the cause is due to the actions of a third party
- (c) in the opinion of the Authority, the contractor has taken “reasonable care” to ensure that subsidence or settlement would not occur

Explanatory Notes

- With regard to (a) above, the action of the owner could include planting of trees near or adjacent to the building or not maintaining site drainage. The owner may be the first or subsequent owner.
- With regard to (b) above, the actions of a third party may include trees on an adjoining allotment of land which are in close proximity to the building.
- With regard to (c) above, “reasonable care” on the part of the contractor would include the requirement that the contractor has constructed the footings and slab of the building (or footings or slab where only one is applicable) in accordance with the design prepared by the designing engineer. The contractor must comply with all components of the engineer’s design including but not limited to the installation of control joints and site drainage where required for the performance of the footing/slab system.

Compliance with Engineer’s Design - Verification

Proof that design details have been met rests with the contractor and will usually require that the contractor obtains an independent verification acceptable to the

Authority. Acceptable verifications are limited to verifications by an Engineer, Local Government Certifier or Private Certifier.

Defects about which a Direction will Normally be Issued

When footing and/or slab movement occurs and the Authority is of the opinion the contractor is responsible, a Direction to Rectify may be issued pursuant to Section 72 of the Queensland Building Services Authority Act 1991.

Where a Direction is issued and the contractor fails to rectify, the Authority may proceed under the statutory insurance scheme, to have the work rectified. The Authority may also institute disciplinary or other proceedings before the Queensland Building Tribunal, in relation to the defective work where appropriate.

Recovery of Insurance Claims

If the Authority undertakes rectification in accordance with the provisions of the statutory insurance scheme in circumstances where the contractor is held responsible for defects, it will usually seek to recover the amount of the claim and costs from the contractor or any other party it considers has caused or contributed to the footing and/or slab movement.

This Policy was made by the Queensland Building Services Board on 31 May 2000 and took effect from 30 June 2000.
