

3 May 2017

Our Ref: SP:JN:14109

Mick Logan  
Executive Director  
NECA QLD

Dear Mick,

### **Electrical Contractors and Form 16 Inspection Certificates**

You have instructed us to provide a legal opinion in respect of a QBCC letter dated 23 March 2017 cautioning electrical contractors to refrain from using Form 16s for Fire Protection work, without holding the appropriate QBCC license.

### **Brief Background**

Before we respond to specific issues raised, we consider the relevant legislative background that applies to Form 16s in QLD.

The *Building Act 1975* and *Building Regulation 2006* regulates the design and construction of buildings in Queensland including:

- Application of the National Construction Code (previously the BCA);
- Accrediting bodies of Building Certifiers;
- Assessment of Development Applications; and,
- Building Inspections and Certifications;

The legislation requires a Building Certifier to independently check and approve building work to ensure that the work complies with the relevant standards and building codes.

The *Building Regulation 2006* also allows competent persons and QBCC licensees to assist Building Certifiers in the assessment of a building application and inspection of building work. Furthermore, the *Building Regulation* provides that a Building Certifier may accept and rely on certificates issued by QBCC licensees or competent persons in the process of assessing a building application and inspecting and certifying building work<sup>1</sup>.

However, the *Building Regulation 2006* also requires that any inspection certificate must be given in the approved form<sup>2</sup>. Form 16 is the approved form for an inspection certificate issued under the *Building Act 1975*.<sup>3</sup>

The Form 16 Inspection Certificates may be completed in respect of a building stage (for example the pouring of a slab) or in respect of an aspect of building work (for example waterproofing or emergency lighting).

<sup>1</sup> Refer to section 49 of the Building Regulation 2006.

<sup>2</sup> Refer to section 48 of the Building Regulation 2006.

<sup>3</sup> Form 16 is the approved form issued pursuant to s 254 of the Building Act 1975 and approved by the chief executive of the QBCC.

## Who can sign a Form 16?

There are only three persons who may sign a Form 16 pursuant to the *Building Regulation* namely a:

1. Building Certifier;
2. QBCC licensee; or
3. Competent person

### QBCC Licensee

QBCC licensees may only sign a Form 16 in respect of an aspect of building work completed by the licensee, provided that the licensee holds the appropriate QBCC licence to complete the relevant aspect work under the *QBCC Regulation 2003*<sup>4</sup>.

The *Building Regulation* also allows a QBCC licensee who is the holder of a certification license to certify aspect work. A certification license is a specific QBCC class of license which allows the holder to give a QBCC licensee certificate for the aspect work. For example there are two classes of QBCC Emergency Lighting licenses, Class 1 – Certify and Class 2 Inspect and Test. The holder of Class 2 license may sign the Form 16 for the licensee's own work, while the holder of the Class 1 license may also sign a Form 16 for work completed by others.

### Competent Persons

The *Building Regulation* also allows competent persons to provide inspection help to a Building Certifier. It is important to note that the term "competent person" is clearly defined in the *Building Regulation*<sup>5</sup> as a person who a Building Certifier decides is competent to perform functions that help the certifier to carry out building certifying functions for the inspection of assessable building work.<sup>6</sup>

Part 5 of the *Building Regulation* prescribes the requirements for a competent person under the Building Regulation including in summary the following:

1. Procedures for Building Certifiers to decide whether a person is competent to provide help with building certifying functions (for example inspection or design help)<sup>7</sup>;
2. Restrictions on qualifications of persons who may assist with certifying functions for specific aspects (for example a person must be a cadastral surveyor to be competent to give inspection help for boundary clearances)<sup>8</sup>;
3. Building Certifiers' obligations to keep records for 5 years of decisions about competency of persons<sup>9</sup>;

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<sup>4</sup> Refer to requirements for QBCC licensee certificates in Part 7, Division 1 of Building Regulation 2006

<sup>5</sup> Refer to the definition of competent person in Schedule 4 Dictionary of Building Regulation 2006

<sup>6</sup> Refer to section 17(1)(b) of the Building Regulation 2006.

<sup>7</sup> Refer to section 17 of the Building Regulation 2006

<sup>8</sup> Section 18 and 18A of the Building Regulation 2006

<sup>9</sup> Refer to section 19 of the Building Regulation 2006

Section 22 of the Building Regulation provides that a competent person can only give inspection help if the Building Certifier has already decided the person is a competent person for the work. Section 22 clearly requires the Building Certifier to assess any prospective competent person's qualifications first and decide that the person is indeed a competent person, before the inspection is performed and the Form 16 is completed and signed by the competent person.

### **Electrical Contractors**

The holder of an electrical contractor license issued by the Electrical Safety Office under the *Electrical Safety Act 2002* can sign a Form 16 as a competent person, but not as a QBCC licensee (unless of course the relevant contractor also holds the appropriate QBCC licence for the work).

However, section 22 of the Building Regulation states that a competent person can only give inspection help if the Building Certifier has already decided that the person is a competent person for the work. We recommend that any contractor that do not hold the appropriate QBCC licence and may be required to sign a Form 16 in relation to a specific project, must liaise with the relevant builder certifier as early as possible to ensure that their qualifications are assessed and approved by the Building Certifier as a competent person to inspect the work.

Finally in order to assist Building Certifiers to decide whether our members are competent to provide inspection help, members may refer Building Certifiers to the definition of "competent person" in the *Electrical Safety Regulation 2013*:<sup>10</sup>:

**Competent person**, in relation to a task, means a person who has acquired, through training, qualifications, experience or a combination of these, the knowledge and skill to carry out the task.

*Note— Electrical work may only be performed by a person if the person—*

- (a) is the holder of an appropriate electrical licence authorising the work; or*
- (b) is otherwise authorised to perform the work under the Act*

Should you have any queries, please do not hesitate to contact me.

Yours sincerely  
**NECA Legal Pty Ltd**



Jacques Nel  
**Senior Solicitor**

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<sup>10</sup> Refer to Schedule 9 of the Electrical Safety Regulation 2013