



# Best Practice for Tendering Remedial Works

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## Presentation Topics



1. Overview of tendering process.
2. Key Tendering Principles .
3. Contract Insights
4. Tools and guides for owners. Compliance with statutory requirements.
5. Case Studies

## Facts for Consideration - Remediation

1. Remedial work is often a result of failure due to material or workmanship first time around.
2. Often failure occurs well before the expected life span (eg not maintenance related)
3. Original contractors are very difficult to pursue for accountability and rectification
4. Owners regularly pay to get failures rectified

### How many times do we fix?

It is likely **poor decisions** and **lack of due diligence** contributed to the original building element failure the **first time**

**Repeat the same process** and you will get the **same results** the **second time**.

### Three attempts is common!

If a building element has failed **once**, you need to **rectify the issue properly** to prevent it failing a **second time**.

Work often fails a second time due to **rushed decisions** and/or **lack of due diligence** where a **third attempt** is required at further cost to the OC.

Owners / Managers **must** keep this at the **forefront** of their minds and not be persuaded by **short term** gains that can create **long term issues**.

## Where do I start?

### Informal Path often followed

### Points often missed



Find contractors who will tender

What experience, capability, capacity, qualifications, reputation ?



Request prices from each

What scope? Is it compliant?



Select the most competitive offer

Are comparisons apples for apples? Short term vs long term?



Get started as soon as possible

Due diligence, contracts, deposits, program, interruptions?

## Formal Procurement



- Establishing a suitable panel for tendering
- Establishing the “Principal Contractor” risk acceptance.
- Site familiarisation / meetings
- Tender submissions and evaluation of offers
- Establishing the true “best value” offer based on cost, time, inclusions, risk acceptance
- Establishing “add on’s” such as variation rates, delay costs
- Suitability for engagement eg, capacity, other commitments, commencement dates
- Methodology (sole access vs occupied)

## Before you Start Define the “Objective”

Define what you need and expect from the remedial works

Example - You need all of the leaking balconies fixed.

You therefore will expect

- They are fixed to comply to statutory requirements,
- They will be warranted for a reasonable period of time
- The contractor will return and fix any issues at no cost to the OC
  - The OC will not have to contribute again to remediation



## Extent of Work is CRITICAL

### 4 Key Items



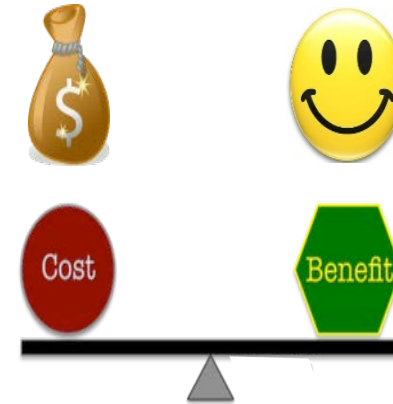
**YOU NEED IT TO BE**  
All inclusive  
(covering direct and  
indirect work)



**YOU NEED IT TO**  
Conform with the  
current statutory  
requirements  
(Local, State and  
National)



**YOU NEED A**  
Warranty or  
guarantee  
(Unconditional and  
transferable)



**YOU NEED TO**  
**ENSURE**  
The extent and costs  
are balanced with  
the benefits

## Defining an Extent of Work

### Must Achieve 2 Fundamentals

1. Address the objective
2. Comply with statutory requirements

You cant have one without the other  
You cant contravene building codes and regulations

Eg – you ask for a contractor to replace a damaged plasterboard ceiling. However the ceiling is standard plasterboard, and it should be fire rated to achieve fire compartment separation.

Non-compliance can impact insurance coverage



**All Inclusive** - Has everything been addressed or have we just resolved one issue to create another? Often many adjoining elements need to be considered when rectifying one to ensure the work is successful. Unexpected additional work during the remediation phase can be extremely costly and can be avoided with proper attention before commencement.

**Conformance** – Most owners expect any remediation work will comply to the current regulatory building codes and standards. However what assurance do you have this will occur? Non-conforming work is performed regularly in our industry and can impact the performance of products, effectiveness and even the ability to claim insurance if required.

**Warranties** – Everyone expects a warranty for work performed however will you be getting one and how comprehensive is it? Has the contractor excluded warranties, or do they propose to use a product or material that carries a limited warranty? Finding this information out on completion of the work, or when the issues begin can be devastating, but can be avoided.

**Cost vs Benefit** – “You get what you pay for” is a saying we are all familiar with and is especially relevant to building work. Firstly, have you weighed up the options of selecting a product that may have a limited or longer life span, what are the short and long term cost impacts, what are the warranty impacts and most importantly, what assurance do you have the product you chose has been used and installed properly? We have all been sold an inferior product at some stage expecting it was better quality and this is no different and can occur.

## Defining an Extent of Work

## Diagnostics



- Experts engaged to diagnose defect or issue
- Inspection and Testing to determine cause
- Exploratory work – Many issues are not clearly visible
- Monitoring

## Scope of Work – Documentation



- A Detailed Scope of Work defines requirements
- Must be comprehensive and encompass all advice from specialists and Building Consultant
- Other documentation including material specifications, schedules, drawings.
- Outlines compliance and conformity to statutory requirements
- Product selections and warranties



## Project Planning

- Predicted duration established
- Predicted impact to property and occupants including disruptions, isolations, diversions
- Pilot Works considered. Eg Trial of 1 Unit to establish any unforeseen items. Assist in mitigating any surprises and additional costs
- Staging of the works considered
- Cost Analysis undertaken on whole works and stages to allow planning

## Contractor Selection

### Recommended

#### 1 x Principal Contractor Pro's

- Sole responsibility for Safety PCBU
- Integral, single overarching warranty irrespective of which trade is at fault
- Responsible for program, co-ordination of all trades and any delays between trades
- Single point of contact
- Low risk to OC

#### 1 x Principal Contractor Con's

- Builders margin applied often 10%

### NOT Recommended

#### Multiple Contractors Pro's

- Avoid the Builders 10% margin

#### Multiple Contractors Con's

- OC can be part responsible for PCBU
- Multiple warranties that can conflict and overlap
- OC co-ordinates and can be responsible for trade delays
- Multiple contact persons
- Very high risk to OC
- Cost exposure can well exceed the 10% saving

## Contractor Selection

- Business structure – ABN, ACN, directors, years in business
- Licencing and Qualifications in the State or Territory (existing disciplinary action)
- Experience and references in similar projects
- Capability's and staff
- Locality to project
- Current commitments
- Financial stability
- 3 x Tenders required minimum

## Probity and Submission

- Same information to all tenderers
- Changes issued to all tenderers
- Formal secured tender location e.g. electronic tender box
- Restricted access to approved staff
- Hard close date and time
- Extensions of time issued to all tenderers
- Joint review by tender panel (more than 1)



## What to look for?

Price is what you **PAY**

Value is what you **GET**

**Does the price represent true value?**

This question is key in understanding if you have a competitive offer.

*“Competitive pricing is facilitating the vetting of quotes to determine whether the extent of work has been captured and competitive rates have been obtained.”*

**Value and Competitiveness** can not be measured if you

1. Have not clearly defined what you need – **Objective – Extent of Work**
2. Have not compared and measured the market **equally**.



## Key Point when looking at a Quote

- You are not looking at the Contractors PRICE
  - You are looking at the Contractors OFFER
- A PRICE and an OFFER are two different considerations.
- An OFFER properly checked can often change the PRICE

## Initial Value / Competitive Checks:

- Firstly, checking that the extent of work has been captured correctly within a Contractors pricing.
- Are there exclusions and qualifications that deviate away from your objective?
- Do the exclusions and qualifications have a “value” that needs to be considered?
- Has the Service Provider confirmed any extra rates or costs for additional services. Essential for discussing potential variations when they arise, not if. When.
- What are the key products they have allowed for, and do they align with your extent of work. Cheap alternatives are out there.
- Have they included for the correct & competent supervision and quality checks?



## Initial Value / Competitive Checks:



- Does the offer include all certificates, warranties, operation & maintenance manuals, As Built drawings where required?
- Are the Contractors comparable in what they can deliver? (size of business and resources)
- Can the Contractors deliver what they promise in a time frame that is acceptable to you? (are they already over committed and you will be waiting)
- And finally..... How does the PRICE compare

*Remember – A competitive OFFER is not necessarily the lowest PRICE, where price often changes if you apply a VALUE to the points above.*

Construction Cost experts “Quantity Surveyors” can provide comparative estimates in line with market value if you can not obtain multiple quotes

## Service Provider Quote Comparison

<i>Project Example - Cost Break Down</i>					
Items	Contractor #1	Contractor #2	Contractor #3	Contractor #4	Contractor #5
Preliminaries and Site Establishment	\$ 20,000.00	\$ 38,000.00	\$ 15,000.00	\$ 19,000.00	\$ 36,000.00
Design and Documentation Incl. Consultants	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 3,500.00	\$ 2,300.00
Permits, Fees, Authority Charges	\$ 15,000.00	\$ 19,000.00	\$ 1,000.00	\$ -	\$ 6,000.00
Scaffolding, access, hoardings and hoisting	\$ 12,000.00	\$ 15,000.00	\$ 8,000.00	\$ 25,000.00	\$ 34,000.00
Demolition and Removal, including Disposal	\$ 3,000.00	\$ -	\$ -	\$ -	\$ -
Wall framing	\$ 6,000.00	\$ 7,000.00	\$ 2,200.00	\$ 23,000.00	\$ 4,000.00
External insulation, sarking and thermal	\$ 4,000.00	\$ 2,000.00	\$ 4,500.00	\$ 2,100.00	\$ -
Fire separation	\$ 5,000.00	\$ 3,000.00	\$ 2,500.00	\$ 3,400.00	\$ 5,000.00
Cladding/Façade Materials	\$ 36,000.00	\$ 45,000.00	\$ 26,000.00	\$ 23,000.00	\$ 42,000.00
Waterproofing and Membranes	\$ 1,000.00	\$ 500.00	\$ 2,300.00	\$ 2,000.00	\$ 3,000.00
Floor Finishes including Ceramic Tiling	\$ 1,500.00	\$ 1,400.00	\$ 3,000.00	\$ 2,500.00	\$ 3,500.00
Metal Roofing, Guttering and Downpipes	\$ -	\$ -	\$ -	\$ -	\$ -
Rendering and applied Coatings	\$ -	\$ -	\$ -	\$ -	\$ 45,000.00
Carpentry Fit Out	\$ 3,400.00	\$ 700.00	\$ 200.00	\$ 4,500.00	\$ 5,000.00
Mechanical Services	\$ 2,000.00	\$ 2,500.00	\$ 1,500.00	\$ 1,500.00	\$ -
Electrical Services	\$ 1,500.00	\$ 2,000.00	\$ 2,000.00	\$ 1,500.00	\$ -
Hydraulic and Gas Services	\$ 1,500.00	\$ 2,000.00	\$ 2,000.00	\$ 1,500.00	\$ -
Fire Protection Services	\$ -	\$ -	\$ -	\$ -	\$ -
Landscaping and external make good works	\$ 500.00	\$ -	\$ -	\$ 1,000.00	\$ -
Provisional Sum - Light Fittings	\$ -	\$ 2,000.00	\$ -	\$ 1,000.00	\$ 6,000.00
<b>Totals =</b>	<b>\$ 113,900.00</b>	<b>\$ 142,100.00</b>	<b>\$ 71,700.00</b>	<b>\$ 114,500.00</b>	<b>\$ 191,800.00</b>
<b>Average=</b>	<b>\$ 126,800.00</b>				

*Creating a simple tracking sheet where you can compare all inclusions and items within individual contractor's offer is the first step and one of the most important.*

- Deviations and exclusions will become more obvious.
- Clarifications and/or exclusions should be included in the tracking sheet with a price value, if necessary to allow for true comparison.
- Allowances and Provisional sum items ARE NOT fixed and can change. What has been allowed for and why is it not fixed?
- Is there obvious low or high prices in a breakdown compared to others indicating an error or lack of understanding?
- If you have a lack of quotes and need to engage an expert Quantity Surveyor to assess, they will provide comparative trade estimates.



## What is a Competitive Term?

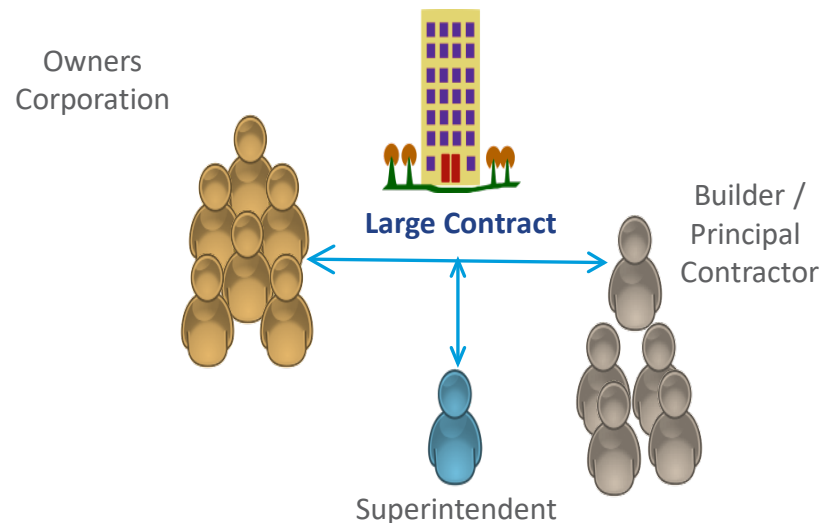
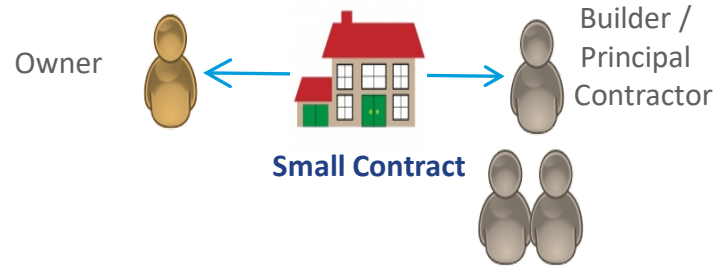
*Often terms and conditions are added to Contractors offers that impact the value they offer and ultimately price. These can be obvious and, in some cases, not obvious and in the fine print.*

Some examples of Typical Terms to look out for:

- A deposit or prepayment for services prior to anything being provided.
- Stipulation of a particular contract to be used. (there could be traps in the fine print)
- The words “Allowance”, “Estimate” or “Provisional sum”. These all indicate a price is not fixed and may change.
- Exclusions of permits, approvals, levy's etc. (These can be very expensive)
- Exclusions for insurances or the level of coverage provided. (Could be a limit that will expose the OC to costs)
- Working in occupied properties, protection of surfaces, use of amenities etc.
- Restriction on attendance e.g. “We have only allowed for 3 site visits” What if 4 are needed? What are the associated costs if that occurs?
- Delay costs if the OC hold up the Service Provider. (These can prove costly)
- Sales pitches and “sign up quick to avoid price increase” terms.



## Contractor selection and appointment



## Building Contract

- Form of contract established e.g.
- Lump Sum, Cost Plus.
- Contract terms established e.g.
  - Time Frames,
  - Delay Costs,
  - Liquidated Damages,
  - Defects Liability Periods
  - Provisional Sums



## Building Contracts

### Building Contracts – Risk Allocation

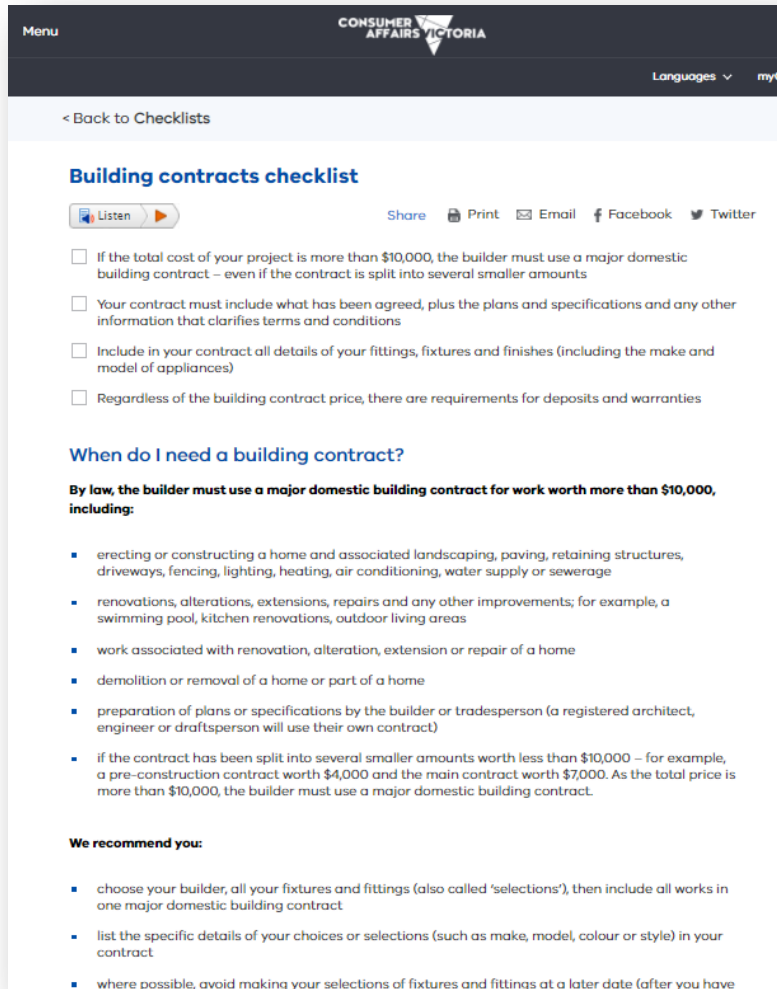
- Simple Form - 2 Party
  - Master Builders Association
  - RAIA
- Larger Works - Superintendent Administered
  - Australian Standard Suite – AS 4000
- Caution! Builder / Contractors own form of contracts are not usually balanced Risk allocation is not balanced



## Building Contract Guides

Refer to Building Contracts Checklists in each state for more info.

- <https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/building-contracts>
- <https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/guide-to-home-building-contracts>
- <https://www.qbcc.qld.gov.au/running-business/contracts/domestic-building-contracts>
- <https://www.commerce.wa.gov.au/consumer-protection/building-contracts>



The screenshot shows the 'Building contracts checklist' page on the Victorian Consumer Affairs website. The page has a dark header with 'Menu', 'CONSUMER AFFAIRS VICTORIA', and 'Languages' options. Below the header is a light blue bar with '< Back to Checklists'. The main content area is white and contains the following sections:

- Building contracts checklist**: Includes a 'Listen' button and social media sharing options (Share, Print, Email, Facebook, Twitter).
- Checklist items**: Four items with checkboxes:
  - ☐ If the total cost of your project is more than \$10,000, the builder must use a major domestic building contract – even if the contract is split into several smaller amounts
  - ☐ Your contract must include what has been agreed, plus the plans and specifications and any other information that clarifies terms and conditions
  - ☐ Include in your contract all details of your fittings, fixtures and finishes (including the make and model of appliances)
  - ☐ Regardless of the building contract price, there are requirements for deposits and warranties
- When do I need a building contract?**: A section explaining when a major domestic building contract is required by law.
- We recommend you:**: A section with three recommendations:
  - choose your builder, all your fixtures and fittings (also called 'selections'), then include all works in one major domestic building contract
  - list the specific details of your choices or selections (such as make, model, colour or style) in your contract
  - where possible, avoid making your selections of fixtures and fittings at a later date (after you have

## Key Summary Points

- ✓ Ensure you have a clear definition of the objective before seeking quotes.
- ✓ Gather as much information and documents as possible to assist the provider, such as existing plans.
- ✓ Select providers carefully based on measured criteria.
- ✓ Ensure all providers are given the exact same information and instructions.
- ✓ Compare quotes based on the providers offer overall, not just price.
- ✓ Factor in risks or allow contingency amounts when accepting terms and conditions.
- ✓ Get expert assistance if you are unsure OR don't have multiple quotes to compare.
- ✓ Ensure your "objective" will be achieved when accepting an offer.
- ✓ Ensure a contract is signed that addresses all requirements to hold the provider accountable.
- ✓ On completion ensure you check and have received what you signed up for.
- ✓ When a project is large or complex, get expert assistance in managing providers. *"The cost of an expert can easily be outweighed by project over runs"*

## Waterproofing gone wrong.

SUNDAY OCTOBER 25 2020 27

# Down the plughole

Toplace owner Jean Nassif, with his wife Nissy.

## Toplace steps up to replace 380 'flawed' unit bathrooms

**EXCLUSIVE**  
LINDA SILMALIS  
CHIEF REPORTER

ALMOST 380 bathrooms in a Sydney apartment complex have been voluntarily replaced after an inspection initiated by property developer Jean Nassif uncovered flaws in five.

Mr Nassif, who is the owner and founding director of the Toplace Group, had invited NSW Building Commissioner David Chandler to inspect his buildings to showcase the work of his company.

Mr Chandler and his team chose a development in Pemberton Rd in Botany to visit as the principal certifier, Viero "Vic" Lilli, had recently had his accreditation cancelled.

Mr Lilli was banned for five years by NSW Fair Trading for the substandard way he signed off building work at an apartment block in Castle Hill, which was also being developed by Toplace.

The first site visit took place in May, with inspectors focusing on "moisture management" in internal and external

David Chandler.

broadened to include another two randomly-selected bathrooms, with similar concerns raised.

It is understood the "defect" related to the moisture management system in the wet areas, where a subcontractor had applied a thinner waterproof film than what was required.

After Toplace was informed of the flaws, it is understood the company voluntarily chose to undertake "significant, remedial works" in all bathrooms in the complex.

Better Regulation and Innovation Minister Kevin Anderson said: "I'm pleased Toplace voluntarily agreed to replace more than 300 bathrooms even before our tough new building legislation commenced."

A spokesman for Toplace said it had invited the commissioner in to view its work to provide "the strongest possible product to consumers".

A new principal certifier has been engaged by Toplace and he declared the works to be fully compliant with the Building Code of Australia, he said.

"Toplace is continuing to work with the Commissioner to develop industry best practice in various ways."

waterproofing. It is understood waterproofing was chosen as the focus because the previous principal certifier had failed to keep complete records of critical stage inspections that he had allegedly undertaken.

An independent waterproofing expert chosen by the Building Commissioner was then invited to undertake "destructive" testing of three bathrooms, including the removal of some tiles, to determine if the rooms were compliant.

The Sunday Telegraph understands the inspection uncovered flaws in each of the bathrooms examined.

As a result, the inspection was

## Key points and takeaways



- Moisture management identified as the key defect.
- The projects building surveyors accreditation was cancelled.
- Correct construction steps were not being monitored or followed.
- Destructive testing was undertaken on fully completed bathrooms post completion, to confirm the source of the apparent defect.
- The waterproof coating thickness was found to be thinner than what was required.
- 380 bathrooms in the complex, with 300 of them needing to be fully replaced.
- Since the issue was originally raised, tougher legislation has been brought in around the waterproofing requirements under the Building Code of Australia (BCA).
- A new building surveyor had been appointed by the company to oversee the repair works which have since taken place and have been certified.



## Roofing Replacement Project 2018

### The Objective and Procurement

- Three contractors asked to “quote” on new roof.
- All contractors inspected separately and provided offers for the work
- The lowest quote was \$90,000 which was 30% below others and contained a series of “allowances” for work required including batten replacement and insulation replacement.
- The lowest quote requested a 50% deposit. The other 2 offers did not have these conditions
- The lowest quote was accepted by an email. There was no legally binding contract entered.

### The Work

- The Contractor took 3 months to commence work, he was not obligated to start earlier as there was no start date negotiated.
- On commencement, the contractor removed the roof and discovered water damaged insulation and battens. The contractor provided a price of \$80,000 to replace. His allowance was only \$10,000 and was not fixed. As once the roof was removed, the OC had no ability to negotiate.
- The OC accepted the price, and the contractor replaced the battens, insulation and roof.

### The Outcome

- The OC paid a total cost of \$160,000 for the roof.
- The second lowest quote was \$120,000 fixed cost that included full batten and insulation replacement.

### The Storm

- A storm occurred 3 months later and minor damage to the roof occurred.
- A consultant was engaged to undertake an assessment.

### The Findings

- The wrong material had been used on the roof and did not comply with the low roof pitch. Was not suited to coastal environment.
- The wrong batten tie downs were used that did not comply.
- The roof was replaced illegally as it required building approval that never occurred.
- The roofing contractor used was unlicensed therefore uninsured.

### The Result

- There was no insurance coverage for the damage due to non-compliance exclusion.
- Second roof replacement and batten tie down required at the expense of the OC.
- Legal recovery from the contractor was pursued however failed as there was no contract and the business had liquidated.
- The OC paid in excess of \$300,000 for the roof replacement.



# Questions

