Parliamentary Committees

Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014

Report No. 54

Transport, Housing and Local Government Committee

October 2014

Transport, Housing and Local Government Committee

Chair	Mr Howard Hobbs MP, Member for Warrego
Deputy Chair	Mrs Desley Scott MP, Member for Woodridge
Members	Mr John Grant MP, Member for Springwood
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	Mr Carl Judge MP, Member for Yeerongpilly
	Mr Anthony Shorten MP, Member for Algester
	Mr Jason Woodforth MP, Member for Nudgee
Committee Staff	Ms Kate McGuckin, Research Director
	Ms Danielle Cooper, Principal Research Officer
	Ms Rachelle Stacey, Principal Research Officer
	Ms Lisa Van Der Kley, Executive Assistant
	Ms Julie Fidler, Executive Assistant
Technical Scrutiny of Legislation Secretariat	Mr Renee Easton, Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Transport, Housing and Local Government Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7486
Fax	+61 7 3406 7070
Email	thlgc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/thlgc

Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its Inquiry. In particular the Committee acknowledges the assistance provided by the Department of Housing and Public Works.

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Abbreviations

AWCI	Association of Wall and Ceiling Industries of Queensland Inc.
BCIPA	Building and Construction Industry Payments Act 2004
BCQ	Building Codes Queensland
CCF	Civil Contractors Federation
CHP	Community housing provider
CPD	Continuing professional development
DBCA or DBC Act or the Building Act	Domestic Building Contracts Act 2000
FLP	Fundamental legislative principles
HPW or the Department	Department of Housing and Public Works
PEOLA	Professional Engineers and Other Legislation Amendment Bill 2014
QBCC Act	*Queensland Building and Construction Commission Act 1991*
QBCC Bill 2014 or the Bill	Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014
QBCC or the Commission	Queensland Building and Construction Commission
QBSA	Queensland Building Services Authority
QCAT or the Tribunal	Queensland Civil and Administrative Tribunal
RTRAA Bill 2013	Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2013

Chair's Foreword

This report presents a summary of the Committee's examination of the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear from members of the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

The Committee notes that this Bill represents the third stage in the Government's implementation of its Ten Point Action Plan, the Government's response to the recommendations contained in this Committee's *Report No. 14, Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 (the QBSA report)*, tabled in November 2012. In addition to a range of other amendments, this Bill proposes amendments to the licensing system, introduces an improved demerit point system, expands the Queensland Home Warranty Scheme, introduces an early dispute intervention process and introduces a two tier contract system.

The Committee is pleased that numerous recommendations made in its earlier *QBSA report* have already been implemented throughout stages 1 and 2 of the Government's implementation and that this Bill proposes amendments which will further implement the recommendations stemming from the *QBSA report*.

On behalf of the Committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the Committee's deliberations: the Committee's secretariat, officials from the Department of Housing and Public Works and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.

Mr Howard Hobbs MP
Chair

October 2014

Recommendations

1 Introduction

1.1 Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) was established by resolution of the Queensland Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

The Queensland Building and Construction Commission Bill 2014 (the Bill) was referred to the Committee on 7 August 2014, and the Committee is required to report to the Legislative Assembly by 8 October 2014.

The Committee was briefed by the Department of Housing and Public Works (the Department or HPW), and received 19 submissions (see Appendix A). The Committee held a public briefing by the Department on 27 August 2014 and a public hearing on 10 September 2014. The Committee heard from 11 witnesses and 6 departmental representatives at the hearing (see Appendix B). A transcript of the hearing and copies of the submissions are published on the Committee's website at http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries/INQ-QBCC.

1.2 Policy objectives of the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014

The Bill is structured effectively in two halves. The first half relates to the third implementation stage of the Ten Point Action Plan stemming from the Government's response to the recommendations of this Committee's report No. 14, Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012. The Bill also includes proposed amendments to enable the Queensland Building and Construction Commission (QBCC or the Commission) to become more effective in balancing the interests of consumers and licensees.[1]

The second half of the Bill proposes amendments to the *Housing Act 2003* and the *Residential Tenancies and Rooming Accommodation Act 2008* to support the Housing 2020 strategy goal of transferring management of 90 per cent of social housing to the community housing sector by 2020.[2]

1.2.1 Queensland Building and Construction Commission

The Bill implements the third implementation stage of the Government's Ten Point Action Plan by:

- implementing amendments to update and improve the licensing system
- introducing an improved demerit point system that includes heavier sanctions for recalcitrant contractors and better protection for consumers
- expanding the Queensland Home Warranty Scheme to extend coverage, including to new swimming pool construction and manufactured homes, as well as introducing optional additional cover and clarifying the provisions of the scheme to reduce uncertainty and assist with the management of claims

[1] QBCC Bill 2014 Explanatory Notes:1
[2] QBCC Bill 2014 Explanatory Notes:2

- introducing an early dispute intervention process to allow the QBCC to conciliate/mediate disputes between consumers and contractors at no cost
- repealing the *Domestic Building Contracts Act 2000* and introducing a new part into the *Queensland Building and Construction Commission Act 1991* (QBCC Act) which details the minimum requirements to be included in domestic building contracts and includes the introduction of Level 1 contracts and Level 2 contracts.

The Bill also includes additional amendments which are aimed at enabling the Commission to become more effective in balancing the interests of consumers and licensees. These amendments include dispute resolution prior to rectification orders being made, a new provision clarifying access to the Supreme Court and mirroring the powers contained in the *Home Building Act 1989* (NSW), service of documents, the granting of stop work orders, clarifying that the Commission can assist consumers who have been the victims of fraud and deceit through the entering of a contract with an unlicensed contractor by giving them access to the Queensland Home Warranty Scheme and empowering the QBCC to direct rectification of consequential damage on an adjacent residential site.[3]

1.2.2 Housing 2020 strategy

The Bill proposes amendments to the *Housing Act 2003* and the *Residential Tenancies and Rooming Accommodation Act 2008*:

- facilitating the transfer of confidential client information, protected by law, to support the provider to continue delivering services that are responsive and targeted to the needs of clients
- enabling the chief executive to delegate certain housing services functions to suitably qualified and experienced persons, which may include employees of an approved provider
- extending the statutory obligation on clients to not give false or misleading housing service information to providers delivering funded services, to ensure services are provided to eligible people in need
- allowing an approved provider to update and maintain records on the Housing Register
- amending the mechanism by which providers become the lessor of existing public housing tenancies by providing for a deemed termination and re-grant of the tenancy agreements after the provider gives the State notice.[4]

Committee comment

The Committee supports the general objectives of the Bill. The Committee's investigation of specific issues related to the Bill is detailed in the following sections of the Report.

Recommendation 1

The Committee recommends that the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 be passed.

[3] QBCC Bill 2014 Explanatory Notes:2
[4] QBCC Bill 2014 Explanatory Notes:3

2 Background and consultation

2.1 Background

2.1.1 Inquiry into the Operation and Performance of the Queensland Building Services Authority

On 2 August 2012 the Legislative Assembly agreed to a motion that the Transport, Housing and Local Government Committee inquire and report on the operation and performance of the Queensland Building Services Authority (QBSA) in its regulation of the industry, including the maintenance of proper standards in the industry. The Committee received 109 submissions and conducted both a public briefing and a public hearing. The Committee tabled its Report No.14 - Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012, containing 41 recommendations, on 30 November 2012. [5]

In May 2013, the Queensland Government's response to the Committee's recommendations was tabled in Parliament. The response included a Ten Point Action Plan to implement agreed recommendations relating to the Queensland Home Warranty Scheme, dispute resolution, building certification procedures, and licensing. The first implementation stage, involving the establishment of the QBCC to replace the former Queensland Building Services Authority (QBSA) and the appointment of a Commissioner, has been completed. The second stage of implementation includes the transfer of plumbing and drainage and swimming pool licensing functions from the Department to the QBCC, providing for the internal review of QBCC decisions and amendments regarding excluded individuals contained in the Professional Engineers and Other Legislation Amendment Bill 2014. The Committee tabled a report on this Bill on 18 august 2014.[6]

This Bill further implements the Government's Ten Point Action Plan in addition to other legislative amendments to enable the Commission to become more effective in balancing the interests of consumers and licensees.

2.1.2 Housing 2020 Strategy

The Housing 2020 Strategy was launched in July 2013. The strategy aims to:

> *… establish a flexible, efficient and responsive housing assistance system for our most vulnerable Queenslanders by 2020. It will provide a stronger service delivery role for community housing providers and expand the range of housing services available to low-income households, including opportunities to secure appropriate and affordable housing in the private rental market.*[7]

The legislative implementation of the strategy commenced with the Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2013 (RTRAA Bill 2013) introduced into the House on the 10 September 2013. The RTRAA Bill 2013 was passed with minor amendments on 30 October 2013. The RTRAA Bill 2013 aimed to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to allow for a smooth transition of tenancies from direct Government management to management by a Community Housing Provider (CHP); achieve greater consistency between public housing and community housing; and support the implementation of the Government's new Anti-Social Behaviour policy.

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5 http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/past-inquiries/INQ-BSA, accessed 12 September 2014

6 http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2014/5414T5678.pdf

7 http://www.hpw.qld.gov.au/aboutus/BusinessAreas/HousingServices/Pages/Housing2020.aspx, accessed 15 September 2014

2.2 Consultation

2.2.1 Queensland Building and Construction Commission

The Department advised that it has not undertaken its own consultation on this Bill referring instead to this Committee's consultations during its inquiry into the operation and performance of the former QBSA in October 2012:

> *… the Transport, Housing and Local Government Committee consulted with key industry groups including home builders and building contractors, industry participants and relevant experts. The Committee widely advertised its inquiry and received and considered 109 submissions, received a public briefing from eight witnesses representing industry and government organisations, and held a public hearing at which it heard from 34 witnesses that included home owners and their representatives, builders, tradespeople and their representatives, academics, lawyers and officers from the former QBSA.*[8]

Subsequent to the Committee's report in November 2012, the Government engaged KPMG to undertake consultation with industry, licensees/builders, consumer groups and individual consumers in Brisbane, Gold Coast, Townsville and Rockhampton. Consultation on the content of the Bill was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.[9]

Consultation on the contents of this Bill was undertaken with a number of government departments including the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General, Department of Local Government, Community Recovery and Resilience, Department of State Development, Infrastructure and Planning and the Office of the Queensland Parliamentary Counsel.[10]

2.2.2 Housing 2020 strategy

Extensive consultation was undertaken with stakeholders on the Housing 2020 Strategy, including the objective of transferring management of at least 90% of existing public housing to the community housing sector by 2020. The Department hosted Housing and Homelessness Forums across the State to share the government's vision for the future provision of housing and homelessness services to Queenslanders in need.[11]

Extensive consultation was undertaken with State agencies including the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General, Department of Communities, Child Safety and Disability Services on the proposed legislative amendments contained in the Bill.[12]

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8 QBCC Bill 2014 Explanatory Notes:6

9 QBCC Bill 2014 Explanatory Notes:6

10 HPW, written brief, September 2014:5

11 http://www.hpw.qld.gov.au/aboutus/BusinessAreas/HousingServices/Pages/Housing-and-Homelessness-Forums.aspx, accessed 2 September 2014

12 HPW, written brief, September 2014:5

3 Examination of the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014

3.1 New Schedule 1B of the *Queensland Building and Construction Commission Act 1991*

The QBCC Bill 2014 proposes to repeal the *Domestic Building Contracts Act 2000* and introduce a new part (Schedule 1B) into the *Queensland Building and Construction Commission Act 1991* (QBCC Act) which details the minimum requirements to be included in domestic building contracts and includes the introduction of Level 1 contracts and Level 2 contracts.

Submitters have raised concerns about a range of provisions in this new schedule and each of these are discussed below.

3.1.1 Stage inspection certificates

Clause 60 proposes to insert new Schedule 1B. New section 14(5) of Schedule 1B provides that a level 2[13] regulated contract must contain:

> *… a provision that states the contractor may not claim payment for the completion of any stated stage of the subject work unless the contractor has given the owner all certificates of inspection relevant for the stage.*[14]

Submitters have raised concerns that since certificates of inspection do not expediently align with stages of progression in building works, this provision has the potential to create significant delays in obtaining payment and could therefore stop work for weeks and seriously impact business cashflows.[15]

Master Builders stated:

> *The proposed amendments tie a building contractor's progress payment entitlements to providing the owner with certificates of inspection relevant for a stage (schedule 1B). In broad terms, Master Builders supports the basic proportion (sic) that progress claims should be proportionate to the progress of the works and accompanied with relevant certificates where appropriate.*
>
> *However, we believe that no matter what stages are nominated in a contract there will most likely be a disconnect between the Building Act and the stages nominated in a contract. The responsibility for giving the owner any certificates should be limited in the first instance to the building contractors' scope of work as detailed under the contract. We are also concerned that the amendments do not require the building certifier to have to issue a copy of their inspection certificate within a nominated timeframe.*[16]

Further where businesses do not have defined stages of work, this clause would delay the ability to make a final claim. As Altec stated:

> *We find this an extremely onerous clause. In Altec's case, we don't have defined stages of work per se, however, on practical completion of the work we obviously seek at that stage Form 21 certification. In our experience certification takes between two to four*

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13 The QBCC Bill proposes the introduction of a level 1 contract, which would apply to domestic building work valued from $3,300 to $20,000, and a level 2 contract, which would apply for domestic building work valued at over $20,000 (Don Rivers, Hansard Transcript, 27 August 2014:2)

14 QBCC Bill 2014, clause 60, section 14(5):114

15 Submissions 1, 2, 14, 17 and 18

16 Master Builders, submission 12:5

> *weeks. Clause 14(5) means that Altec would have to wait in some cases up to four weeks before making a final claim – a significant burden on our cash flow.*[17]

HIA submitted:

> *The Bill seeks to make stage inspection certificates from a certifier mandatory as a precondition for progress stage payments in domestic building contracts. Again while this might seem unexceptional on the surface, in practice certificates of inspection do not always align with stages of progression throughout contractual works. Even where the certificates of inspection do happen to align with progress stages in a building contract, smaller contractors may have to wait many days for certificates to be issued after an inspection depending on the pressures on their certifier. In the current busy conditions in the industry delays of two weeks are not unusual.*
>
> *This requirement will therefore have the potential to cause building contractors to cease work for weeks while the certificates of inspection are issued. The contractor will thereafter be required to wait until the client provides the certificates to their lender, and the lender issues the progress payment. These delays are not in the interest of the consumer or the contractor. Delays would affect not only work flows but also the cash flows of small businesses.*
>
> *Currently the Domestic Building Contracts Act 2000 ('the DBC Act') requires for certificates of inspection to be made available to a consumer as soon as practicable upon receipt. There are appropriate penalty units in place to discipline building contractors who fail to comply with this requirement.*
>
> *In light of the impracticalities in linking certificates of inspection to progress payments, and the real potential of consumer and building contractor detriment, it is HIAs position that the current provisions of the DBC Act should be retained, and the proposed amendments under Schedule 1B Section 14(5) of the Bill should be removed.*[18]

The Department advised that:

> *It is acknowledged that there is currently a review being undertaken of the Building Act* (Domestic Building Contracts Act 2000) *and the certification regime. It is proposed that the existing provisions concerning the provision of certificates be maintained and be considered following the outcomes of the Building Act and certification review… Consideration will be given to reinstating the current position under s39 of the DBC Act. This will involve amending the definition of practical completion in s1 of Schedule 1B, removing ss14(4) & 14(5) and retaining the general obligation in s17 for the contractor to give the owner each certificate of inspection issued by the building certifier "…as soon as practicable after receiving the certificate".*[19]

Committee comment

The Committee is concerned that there may be unforeseen consequences stemming from the proposed amendments to mandate stage certificates prior to progress payments. In response to issues raised in submissions, the Department has proposed to retain existing provisions concerning the requirement for stage certification pending the outcomes of the *Domestic Building Contracts Act 2000* review and the Committee supports this proposed amendment to the Bill.

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17 Altec, submission 6:3
18 HIA, submission 10:7-8
19 HPW, written brief (Attachment 1), September 2014:3-4

Recommendation 2

The Committee recommends that the Minister amend the Bill to retain existing provisions concerning the provision of stage certificates in the QBCC Act until the outcomes of the *Domestic Building Contracts Act 2000* review can be determined.

3.1.2 Regulation to prescribe progress payments

Proposed new section 34(2) of Schedule 1B provides that a regulation may prescribe when an amount is proportionate to the value of subject work under a regulated contract.[20]

HIA expressed concern that a regulation may prescribe progress payment schedules stating:

> *34(2) - It is HIA's understanding that the policy intention is to adopt similar provisions to that which apply in NSW under the Home Building Act 1989. However the drafting of this subsection suggests that the Regulations will prescribe progress payment schedules, or provide circumstances whereby progress payment percentages will be prescribed. The detail surrounding this is imperative to industry, and can have consequential outcomes should the detail not be consulted upon. Any rules regarding progress payment claims need to be included in the text of the substantive legislation. It is recommended that this subsection is removed.*
>
> *It is further recommended the stage definitions and/or percentages obtain further clarity to reflect contemporary building practice. Such clarity should be provided by way of explanatory notes (not Regulation), and/or 'building news flashes similar to those of BCQ* [Building Codes Queensland]*, which have regard to contemporary and most up to date industry practice. Such notes can be published on the QBCC website, with specific guides relating to categories of work (e.g. - alterations, additions and renovation guide, and kitchen and bathroom guide).*
>
> *The provision of such explanatory notes will enable the parties (including financiers) to have greater understanding in the claiming of and payment of progress claims, lessening the risk of disputation, and red tape burden. Furthermore such explanatory notes will quickly become the industry norm, with a likelihood of fewer issues as currently experienced with progress claim schedules.*[21]

The Department has advised that:

> *It is proposed to maintain this provision in s34(2) which allows for the introduction of a regulation which prescribes "when an amount is proportionate to the value of subject work under a regulated contract". Further consultation will be undertaken with industry stakeholders prior to any future regulation that prescribes the nature of progress payment requirements.*[22]

In further advice, the Department stated that:

> *The QBCC Bill proposes to entirely remove the requirement (in section 66, DBCA 2000) that designated stages contracts (i.e. contracts for work which involves one or more of the base, frame, enclosed and fixing stages) must include prescribed payment stages ('designated stages') and set payment percentages.*
>
> *The rationale for removing the specific payment stages and percentages, which currently apply only to designated stages contracts, is to reduce red tape and allow the parties the*

[20] QBCC Bill 2014, clause 60, section 34(2):128

[21] HIA, submission 10:32-33

[22] HPW, written brief (Attachment 1), September 2014:5

flexibility to determine, and describe in their contract, the payment stages and amounts appropriate to their particular domestic building project. Under proposed section 34 of Schedule 1B of the Queensland Building and Construction Commission Act 1991 the amount claimed in a progress claim for all regulated contracts must be directly related to the progress of work at the building site and be proportionate to the value of the work that relates to the progress claim or be less than that value.

It is not proposed to move the current provisions of section 66, DBCA 2000 to a regulation. However, proposed section 34(2) of Schedule 1B enables a regulation to prescribe when an amount is proportionate to the value of work under the contract. In the event that the Queensland Building and Construction Commission encounters emerging issues in particular regulated contracts this may justify such a regulation. It is intended there would be consultation with affected stakeholders before such a regulation was made.[23]

Committee comment

The Committee notes the Department's advice regarding the rationale for removing prescribed progress payments for designated stages contracts (through repealing the DBCA 2000).

However, the Committee believes that prescribing the stages of payments may afford some protection for consumers and therefore has concerns about the possible implications of the removal of these prescribed payments from the Act. Further, the Committee is not aware of evidence that the existing provisions, which prescribe staged progress payments, have caused undue issues or difficulties and therefore, is not convinced that the current approach is problematic.

Therefore, the Committee is recommending that the prescribed progress payments for designated stages contracts be retained but encapsulated in subordinate legislation.

Recommendation 3

The Committee recommends that the Minister ensure that the provisions relating to staged progress payments for designated stages contracts (which this Bill proposes be removed from the QBCC Act) be transferred to subordinate legislation under proposed section 34 (2) of Schedule 1B.

3.1.3 Deposits on contracts

Proposed new section 33 - *Deposits* - of Schedule 1B provides that:

(1) The building contractor under a regulated contract must not, before starting to provide the contracted services at the building site, demand or receive a deposit under the contract of more than—

(a) for a level 1 regulated contract (other than a contract mentioned in paragraph (c))—10% of the contract price; or

(b) for a level 2 regulated contract (other than a contract mentioned in paragraph (c))—5% of the contract price; or

(c) for a level 1 or 2 regulated contract under which the value of the off-site work is more than 50% of the contract price—20% of the contract price.

Maximum penalty—100 penalty units.

[23] HPW advice re clause 60, proposed section 34(2), 2 October 2014:1-2

Altec stated:

> *We welcome the introduction of clause S33(1)(c). We assume that since the majority of Altec's work is conducted offsite that this allows us the possibility of seeking a 20% deposit from the client. However, our understanding would be subject to the government regulator's interpretation of this section and how it should be applied.*[24]

Master Builders recommended that the initial deposit in regards to a Level 2 contract be raised to 7.5% (instead of 5%) of the contract price.[25]

The Department advised that:

> *The allowable deposits for different types of domestic building contracts are set out in section 33(1) of the Bill. While parts (a) and (b) of this subsection reflect the previous provisions in s64 of the DBC Act, part (c) is a new provision introduced specifically to help address the particular cash flow difficulties faced by contractors where the value of the work performed off-site (i.e. at a place other than where the work/product is to be finally installed) is more than 50% of the contract price. In these circumstances, when the Bill comes into force contractors will be entitled to take a deposit of 20% of the total contract price irrespective of the contract price (i.e. this 20% deposit may be taken for both level 1 and level 2 contracts)…*
>
> *While QBCC is concerned to ensure that upfront payments for domestic building contracts are not excessive, it recognises that the deposit maximums currently set out in s64 of the DBC Act were based on average building scenarios when the Act came into force in the year 2000 and that typical building practices and cost structures may have changed since then.* [26]

At the public hearing on 10 September 2014, Mr Steve Griffin, QBCC Commissioner, further commented on the prospect of an increase in the deposit for level 2 contracts stating:

> *Chair, it is not contemplated. Mr Bidwell also made the point that the price of construction also goes up, so ipso facto the five per cent becomes a much larger proportion. But acknowledging that there are additional things that need to be covered, we are sensitive to that issue.*[27]

Committee comment

The Committee supports the introduction of a higher deposit maximum for contracts where more than 50% of the contract value is conducted off-site.

Regarding the Master Builders recommendation that the deposit for level 2 regulated contracts be raised to 7.5%, the Committee notes the Department's acknowledgement that cost structures may have changed since the implementation of deposit maximums in 2000. The Committee encourages the Minister to review the deposit maximums proposed in this Bill.

Recommendation 4

The Committee recommends that the Minister review the suitability of deposit maximums proposed in this Bill given the period that has lapsed since the introduction of the 5% maximum in 2000.

[24] Altec, submission 6:3
[25] Master Builders, submission 12:4
[26] HPW, written brief (Attachment 1), September 2014:23-24
[27] Mr Steve Griffin, Hansard transcript, 10 September 2014:26

3.1.4 Progress payments for onsite work only

Proposed new section 34 – *Progress payments for regulation contracts* - provides that a contractor under a regulated contract must not claim an amount under the contract other than a deposit, unless the amount is directly related to the progress of carrying out the subject work at the building site; and is proportionate to the value of the subject work that relates to the claim, or less than that value. Critically, for this section:

> *a **building site**, for a regulated contract, does not include a place where the subject work has been, is being, or is to be, carried out if the work is required to later be installed or constructed at another place under the contract.*[28]

In regard to this provision, Altec stated:

> *In our opinion, this section and its interpretation by the governing body, has the potential to have the biggest impact within the construction industry….the clause really only caters for construction projects that have a significant on-site labour component. In Altec's case, the on-site component is not at all significant. The nature of Altec's work means that 85% to 90% of the contract value has already been expended prior to the actual installation of the materials at the client's site. The installation cost itself represents only between 10% to 15% of the total value of the contract. Therefore, we would argue that between 85% to 90% of the "proportionate" value of the works should be able to be claimed at the stage when our materials are delivered to the clients site, ie. prior to their installation.*[29]

Altec further stated that:

> *We do not agree with the governing body's (QBCC's) current stance that In Altec's case its progress claims are considered to be advance payments.* [30]

Altec suggested that a provision similar to section 65(3) of the *Domestic Building Contracts Act 2000* (proposed to be repealed) should be included in this amendment Bill. Section 65(3) provides that:

> *(3) Subsection (2) does not apply to a building contractor if—*
>
> *(a) the parties to the contract agree the subsection is not to apply; and*
>
> *(b) the agreement is made in the way, and satisfies any requirements, prescribed under a regulation.*

This provision has previously allowed what the QBCC considers to be advance payments to be claimed by companies operating like Altec where the bulk of the work occurs off-site and where the bulk of the expenditure similarly occurs before onsite installation. Altec has suggested a number of remedies, including that the definition of 'building site' for the purpose of this provision be amended to explicitly allow work carried out other than at the site of later installation.[31]

The Department advised that:

> *The allowable deposits for different types of domestic building contracts are set out in s33(1) of the Bill. While parts (a) and (b) of this subsection reflect the previous provisions in s64 of the DBC Act, part (c) is a new provision introduced specifically to help address the particular cash flow difficulties faced by contractors where the value of the work performed off-site (i.e. at a place other than where the work/product is to be finally*

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28 QBCC Bill 2014, clause 60, section 34(4):128
29 Altec, submission 6:4
30 Altec, submission 6:5
31 Altec, submission 6:5

installed) is more than 50% of the contract price. In these circumstances, when the Bill comes into force contractors will be entitled to take a deposit of 20% of the total contract price irrespective of the contract price (i.e. this 20% deposit may be taken for both level 1 and level 2 contracts).

S34 allows progress payments to be determined by the parties to suit the particular building project provided only that the payments at any given point (after the deposit) do not exceed the value of the work performed to date on site. Situations where a significant proportion of the work is performed off-site are now catered for via the increased deposit permitted under s33(1)(c).

S65(3) of the DBC Act permitted contracting out of the requirement in s65(2) for progress payments to be proportionate to the value of work performed on site. Such contracting out will not be permitted under the Bill.[32]

Committee comment

The Committee understands that proposed new section 34 will exclude companies that complete much of their work 'off-site' from claiming progress payments throughout the building project and that this new provision is, in part, intended to protect consumers by preventing the making of payments before the work is onsite. The Committee also notes the Department's advice that proposed new section 33 (where a building contractor can seek a deposit of 20% of contract price where the value of the off-site work is more than 50% of the contract price) is intended to cater for situations where a significant proportion of the work is performed off-site.

However, the Committee is concerned that, for companies like Altec, where the value of the off-site work is 85-90% of the contract price, a deposit of only 20% of the contract price will not support the necessary cashflow for either individual contracts nor for the business as a whole. The Committee is not convinced that the ability to claim a 20% deposit of the contract value will compensate for the removal of the ability of companies such as this to claim progress payments throughout the build.

The Committee believes that an exemption from the requirement that progress payments are only claimable for work that is carried out onsite is therefore justified for companies which carry out the bulk of their work off-site.

Recommendation 5

The Committee recommends that the Minister amend the Bill to ensure that builders whose work is predominantly carried out off-site are able to seek and receive appropriate progress payments (beyond the 20% deposit allowed by proposed new section 33 of Schedule 1B) in line with the progress of their work.

3.1.5 Foundations data

Proposed new section 31(2) of Schedule 1B provides that before entering into the contract, the building contractor must obtain the foundations data that is appropriate for the building site and attaches a maximum penalty of 100 penalty units.[33] It should be noted that both the requirement and the penalties remain unchanged from those which have applied under the DBCA for the past 14 years.[34]

[32] HPW, written brief (Attachment 1), September 2014:24-25
[33] QBCC Bill 2014, clause 60, section 31(2):124-125
[34] DBCA 2000, section 53

Submitters have raised concerns that this provision places building contractors at a significant commercial disadvantage when attempting to secure works:

> *The Bill retains significant penalties for contractors who enter into domestic building contracts without obtaining "foundations data". With so much land currently being purchased by consumers 'on disclosure' (where 'title' or ownership of the land may not be issued for many months), builders are unable to legally contract with their clients. This places building contractors at a significant commercial disadvantage when attempting to secure works.*[35]

HIA stated that:

> *Notwithstanding the need for this foundation data prior to a job starting, there is no need for it to be essential at the time of contracting with a consumer. Should a builder contract with a consumer in the absence of foundation data the legislation rightly then prohibits the builder from seeking additional payment should the soil conditions prove to be worse than the builder expected. So consumers are not exposed through removing this requirement.*
>
> *In the current housing market, it is almost the norm that land for residential building is being sold to consumers "on disclosure": that is where the land is sold in advance on title being issued for the block. Right now the delay between the land purchase and the issuing of the tile (sic) could be nine months or more. Where land is sold so far ahead of title being issued it is impossible to obtain accurate foundation data, leaving the builder and consumer in a state of uncertainty.*
>
> *In this environment the legislation is stopping builders and their clients from entering into a building contract and locking in prices, designs and selections, giving both parties no certainty about their dealings. This uncertainty is putting a break on industry activity and planning.*
>
> *HIA recommends to the Committee that Part 4 Division 1 clause 31(7) should be retained and all the other sections of this clause should be removed from the Bill. In this way parties would be able to get the certainty they are seeking and consumers would know that their contract price would not increase due to unexpected soil conditions.*[36]

The Department advised that:

> *The contractual obligations in the Bill concerning the need for contractors to obtain foundations data, and the penalties for non-compliance, are unchanged from those which have applied for the past 14 years under s53 of the Domestic Building Contracts Act 2000 (the 'DBC Act')… This requirement is designed to ensure that when the actual domestic building contract (the main contract) is entered into, the total contract price (including earthworks) is as accurate and realistic as possible because the foundations data has previously been obtained and factored into the final contract price... As these provisions are unchanged from the current Act, the provisions in the Bill do not add red tape and will not therefore have any effect on the cash flow of builders.*[37]

However, the Department also advised that it will consider amending proposed new section 31 to cover the specific circumstances raised by HIA where the builder is unable to obtain foundations data prior to contracting (because the title to the site is not yet available) but guarantees in the contract that there will be no price increase when the foundations data is subsequently obtained.

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35 Mr Peter Kent, submission 1:1-2; Parkhaven Homes, submission 2:1

36 HIA, submission 10:5-6

37 HPW, written brief (Attachment 1), September 2014:6-7

Committee comment

The Committee notes HIA's concerns regarding the requirement to obtain foundations data prior to entering into a domestic building contract but also notes that this provision, and associated penalties, remain unchanged from the existing *Domestic Building Contracts Act 2000*. The Committee further notes the Department's advice that it will consider amending the relevant clause to allow a contract to proceed where a guarantee is given that there will be no price increase subsequent to foundations data being obtained.

Recommendation 6

The Committee recommends that the Minister consider amending clause 60, proposed new section 31 to enable a domestic building contract to be entered into where the builder is not able to obtain foundations data but guarantees in the contract that there will be no price increase when the foundations data is subsequently obtained.

3.1.6 Extensions of time

Proposed new section 42(1) of Schedule 1B provides that the building contractor under a regulated contract may only claim for an extension of time under the contract if the claim is given to the building owner in writing and within 10 business days of the building contractor becoming aware of the delay or when the building contractor reasonably ought to have become aware of the delay and if the owner approves the claim by signing the claim.[38]

Submitters raised concerns about the proposed provision. Several submitters[39] concurred with the HIA which stated:

> *The Bill creates an obligation on the building contractor to provide an extension of time document within 10 business days of the building contractor becoming aware of the delay. This provision fails to consider that the extent of a delay may not be fully realised for a period of time beyond where the contractor first 'became aware of the delay'. The illogical consequence of this provision is that a contractor should make a claim for every day that it rains and every day that it takes for the site to dry. This can be avoided by adding "extent of" (the delay) to Schedule 1B Section 42 (1) (c).*
>
> *The Bill also requires extension of time claims to be signed by owners in order for the document to be enforceable. This provision purports to defy the common law doctrine of acceptance. Currently home owners under contract are given a reasonable period of time to dispute an extension to the building period, however are deemed to have accepted the extension if they do not respond or dispute in a given time. The proposed provision creates red tape and potential for unnecessary hold-ups in the construction schedule, with the obligation on the building contractor to continually follow up agreement with a signature. Furthermore this provision has the real potential to lead to disputes, especially where it is the actions of the client that has triggered the delay: Why would a client agree to an extension when they have caused the delay, and they have contractual entitlement to delay damages?*
>
> *Furthermore the Bill introduces an obligation on the building contractor to give a signed copy of the extension of time within 5 business days of the owner approving the claim, with penalty units attached should the building contactor (sic) fail to comply with the provision. This provision is a further red tape burden to industry, and presents a substantial risk through the risk of penalty units by failure to provide a copy of the*

[38] QBCC Bill 2014, clause 60, section 41(1)(c):136

[39] Submissions 1, 2 and 9

document. This is a harsh and unnecessary consequence, which distracts from the building process.

Accordingly HIA recommends that the Schedule 1B Section 42 of the Bill is amended to enable a contractor to claim an extension of time within 10 business days of the 'cause and the extent' of the delay being realised. Furthermore it is recommended that the Bill is amended to remove the obligation on the owner to approve the claim, and the obligation on the building contractor to provide a copy of the signed document.[40]

The Master Builders further added:

An owner has to agree in writing to a building contractors extensions of time claim before the building contractor is entitled to an extension of time (s.42(2)). Master Builders does not support this deeming provision which allows the owner to unilaterally decide whether the building contractor is entitled to an extension of time. Furthermore we are concerned the amendments are silent on what happens should the owner refuse to sign the extension of time claim. In fact under this amendment the owner can completely ignore the claim without suffering any consequences. Any lack of proper communication to the other party should not be encouraged by legislation no matter who the party. If the owner will not sign or reasonably believes the building contractor is not entitled to a claim then they should be required to advise the building contractor in writing of their decision. If the owner disputes or rejects the building contractor's claim the building contraction should still be entitled to a fair and reasonable extension of time of the date of practical completion until such time until decided otherwise. Master Builders recommends that the owners deeming provision for refusal of an extension of time claim be removed and the building contractor's entitlement to a claim for an extension of time remain until decided otherwise. [41]

The Department advised that:

An extension of time is a type of variation to the contract which has the effect of extending the construction period… and may have a consequential financial impact on the owners (e.g. additional rental and furniture storage costs, increased mortgage payments, etc.). This new statutory provision (which has in practice been incorporated in the QBCC home construction contracts for many years), proposes that for contractual certainty, extension of time claims, like variations to the scope of agreed work, should be promptly presented by the contractor and responded to by the owner in some written form. It is anticipated that these provisions will improve contractual certainty and assist in reducing the incidence of disputes which arise from confusion regarding the adjusted date for practical completion… It is considered that the proper recording and documentation of variation requests and extensions of time requests and the owner's response to them is essential for both parties for contractual certainty and dispute avoidance.[42]

The Department further advised that it will consider:

- *amending clause 42(1)(c) so that the obligation falls on the builder to notify the consumer within 10 business days of becoming aware of 'the cause and extent' of the delay, and*

[40] HIA, submission 10:8-9
[41] Master Builders, submission 12:5-6
[42] HPW, written brief (Attachment 1), September 2014:8-9

- *amending the reference to the owner approving the claim by signing to the owner approving the claim in writing. This is consistent with other provisions in the bill, e.g. a variation to the contract must be approved by the owner in writing. This will allow use of provisions of Electronic Transactions Act 2001 regarding requirements in writing.*[43]

Committee comment

The Committee notes the impositions of the proposed new provisions including the requirement for a contractor to provide a claim for an extension of time within ten business days of the contractor becoming aware of the delay, the requirement for the owner to sign the agreement in order for it to be enforceable and the requirement for the contractor to provide the owner with a copy of the signed agreement within five business days. The Committee is of the view that these are fairly burdensome new requirements, however, notes the Department's advice that it will consider amending the clause to condition the awareness of delay to include 'extent' of the delay and also to require the owner to approve the claim in writing (which will enable email communication), rather than by signing. The Committee supports these amendments.

Recommendation 7

The Committee recommends that the Minister amend clause 60, proposed new section 42 of the Bill to condition 42(1)(c) to require consideration of the cause and extent of a likely delay to building construction and to enable the approval of a time extension claim by the owner to be 'in writing', rather than 'by signing'.

3.1.7 Practical completion

Proposed new section 1 - *Definitions* - of Schedule 1B provides the following definitions for 'practical completion':

***practical completion**, for a regulated contract, means the day when—*

(a) for a level 1 regulated contract—the subject work is completed in compliance with the contract, including all plans and specifications for the work; or

(b) for a level 2 regulated contract—

(i) all approvals required by law for occupation have been obtained and copies of the official documents evidencing the approvals have been given to the building owner; and

(ii) the subject work has been completed—

(A) in compliance with the contract and all statutory requirements applying to the work; and

(B) without any defects or omissions other than minor defects or minor omissions for which the rectification or completion is not practicable at the time of completion and will not unreasonably affect occupation; and

(iii) if the building owner claims there are minor defects or minor omissions—the building contractor gives the building owner a defects document for the defects or omissions.[44]

[43] HPW, written brief (Attachment 1), September 2014:8-9
[44] QBCC Bill 2014, clause 60, section 1:99-100

Several submitters raised the following concerns about these new definitions:

> *The definition of practical completion contemplates that practical completion has only been reached when all certificates of inspection have been received [for level 2 regulated contracts]. This is a fundamental flaw, as the definition fails to consider the delays in receipt of such certificates, as well as contracting scenarios whereby the homeowner may be responsible for completing a portion of the works which require certification.*[45]

The Master Builders raised further concerns:

> *For Level 1 regulated contracts practical completion will require the subject work to be completed without minor defects or omissions (schedule 1B). This dictates the building must be perfect. While all building contractors strive for perfection the reality is given the nature and complexity of some designs, materials and the varying skill level of trades and the best endeavours of these building contractors it is a reality that some minor defects and omissions will occur. Of course, in these smaller jobs most owners in spite of these defects still enjoy the advantage of having the works completed to practical completion. For these smaller contractors cash flow is critical and small delays of payment can have a huge impact on their business operations. Master Builders recommends that practical completion definition incorporate the words "minor defects and omissions" as recommended for this definition in Level 2 regulated contracts.*
>
> *For Level 2 regulated contracts the definition of practical completion requires that there be no minor defects or omissions unless it was "not practicable" to fix them (schedule 1B). This wording if left unchanged will result in costly and in our opinion unnecessary disputes between the parties arguing about what is "not practicable". The inclusion of "not practicable" gives no certainty to either party in deciding if or when practical completion has been reached. The definition in its current form does not assist owners to make an informed decision as to whether or not the building contractor has fulfilled their contractual obligations in reaching practical completion and should now be paid their final progress payment. Master Builders recommends the words "not practicable" be deleted.* [46]

HIA raised further concerns:

> *… However the Bill complicates this approach by adding concepts of "not unreasonably affect occupation". This is totally inappropriate as not all building contracts cover the construction of a home to an "occupation" stage as many consumers want to do some of the work themselves… Furthermore attaching practical completion with the provision of a defects document to the owner is flawed. Practical completion occurs as a matter of fact- it does not occur when the owner subjectively is satisfied the works have reached practical completion… HIA recommends the Practical Completion is defined for both Level 1 and Level 2 contracts as 'the day where the works are completed in accordance with the contract, except for minor defects and omissions'.*[47]

The Department has advised that it will consider the following amendments to the Bill:

> *An amendment to clause (a) of the definition of practical completion for level 1 regulated contracts in s1 to expressly allow for the presence of minor defects and minor omissions;*
>
> *An amendment to clause (b)(ii)(B) of the definition of practical completion in s1 to remove the qualification regarding any minor defects of (sic) minor omissions present at*

[45] Submissions 1, 2, 11 and 14
[46] Master Builders, submission 12:3-4
[47] HIA, submission 10:9

completion that it must be "not practicable" to rectify or complete them at the time of completion; and

Limiting the application of the suitability for occupation requirement to contracts for work intended to carry through to a stage suitable for occupation [this will require amendments to clause (b)(ii)(B) and the insertion of a new provision (b)(ii)(C)] .[48]

Regarding the requirement for a contractor to provide a defects document to the owner, the Department has further advised that this requirement is currently specified in section 67 of the current DBCA.[49]

Committee comment

The Committee is satisfied that the requirement to provide a defects document to the owner to complete practical completion is currently a requirement under the *Domestic Building Contracts Act 2000*. The Committee notes the Department's advice that it will consider amendments to the definitions of 'practical completion' for both level 1 and level 2 regulated contracts and supports the proposed amendments.

However, the Committee also notes that the Department has not responded to the concerns raised about the new requirement for the provision of certificates of inspection in order to meet 'practical completion' requirements. The Committee is concerned that there are significant issues in introducing this requirement to the definition of level 2 regulated contracts and that the requirement for these certificates needs to be conditioned in clause (b)(i) to provide for circumstances where a third party is responsible for completing part of the works which require certification.

Recommendation 8

The Committee recommends that the Minister amend the definitions of practical completion for both level 1 and level 2 regulated contracts in the Schedule 1B dictionary to include minor defects and omissions in the case of level 1 regulated contracts, to remove references to 'not practicable at the time of completion' from level 2 contracts and to limit the application of the suitability for occupation test in (b)(ii)(B).

Recommendation 9

The Committee further recommends that the Minister consider conditioning (b)(i) to provide exemption where part of the works required to be certified is being undertaken by a third party.

3.1.8 Proceedings for breach of warranties

Proposed new section 29 - *Proceedings for breach of warranties* - of Schedule 1B provides that:

(1) Proceedings for a breach of a statutory warranty must be started before the end of the warranty period for the breach.

(2) However, if the breach of statutory warranty becomes apparent within the last 6 months of the warranty period, proceedings may be started within a further 6 months after the end of the warranty period.

*(3) The **warranty period** for a regulated contract—*

(a) is 6 years for a breach that results in a structural defect, as prescribed by regulation, or 2 years in any other case; and…

[48] HPW, written brief (Attachment 1), September 2014:10-11
[49] HPW, written brief (Attachment 1), September 2014:10-11

Submitters raised concerns about two aspects of this provision – the extension of the non-structural defects warranty period and the requirement for an additional defence for defendants in such proceedings.

Numerous submitters expressed concern about the potential overlap between true defects and homeowner maintenance issues resulting from the extension of the non-structural defects warranty period, stating:

> *The defects liability period for minor defects has been extended to two years from the current six months. Considering the scope of issues which may be 'minor defects', a two year defects period is not only excessive but also makes it difficult to distinguish between true defects and homeowner maintenance issues.*[50]

The Master Builders concurred stating:

> *The warranty period for non-structural defects is increased from 7 months to 2 years and 6 months (s.29 (1)&(2) schedule 1B). This provision extends the builders' liability significantly to cover what primarily amounts to owner maintenance issues. There is no data or evidence demonstrating that building standards for non-structural items have been a major concern for consumers Master Builders does not support increasing the warranty period for non-structural defects to two years and 6 months.*[51]

HIA expressed the following concerns:

> *This provision places a significant onus on the building contractor, which will certainly drive up contract prices for home owners, in turn effecting housing affordability. Furthermore the substantial extension of the warranty period further pressures the Commissions functions, in turn placing a greater financial burden on industry through the Commissions insurance, compliance, and dispute resolution functions. If the Government has a mind to increase the warranty period for minor defects then doubling the period to one year should be more than adequate.*
>
> *The Bill also provides the consumer a further six months to notify minor or major defective work beyond the warranty period. This is at odds with how warranties work for consumer products where defects have to be notified within the warranty period. This is excessive and will generate an additional field of dispute between clients and contractors about when the defect actually occurred; within the warranty period or the additional notification period.*[52]

The Department advised that:

> *The QBCC is amending its rectification of defects policy, to provide a 12-month time limit on non-structural defects, structural defects will remain at six years three months. Changing the statutory defects liability period to be in line with the rectification of building work policy will increase certainty and ensure that decisions to issue direction are subject to the same time limits as claims under the defects liability period … An amendment is proposed to clause 29(3)(a) of the Bill, reducing the warranty period for non-structural (Category 2) defects to 1 year. This will align with a recently approved change to the QBC Board Defective Building Work Policy.*[53]

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50 Submissions 1, 2, 11, 14, 17 and 18
51 Master Builders, submission 12:4
52 HIA, submission 10:10
53 HPW, written brief (Attachment 1), September 2014:13-14

Committee comment

The Committee notes the general concern from submitters that extending the timeframe for the statutory warranty period for non-structural defects to 2 years (and six months, in some cases) is problematic and the Department's advice that it will propose an amendment to revise this time period down to 12 months, in line with a recent QBCC Board change to the Defective Building Work Policy.

Recommendation 10

The Committee recommends that the Minister amend the Bill to reduce the statutory warranty period for non-structural defects to one year.

Proposed new section 29(6) provides that:

> *In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the written advice of the defendant or the person who did the work.*[54]

In regard to defences available to defendants under this section, HIA stated:

> *HIA supports the provision of this defence (29(6)). HIA notes that this mirrors similar amendments recently made by NSW Parliament to the Home Building Act (NSW) 1989. Erroneously however this Bill fails to include the additional defence available under section 18BA of that legislation, in particular a duty to provide reasonable access to the building contractor to rectify an alleged defect. Section 18BA imposes certain duties on persons who have the benefit of statutory warranty, including:*
>
> *- a duty on the person to mitigate their loss arising from a breach of the warranties (which extends to a person entitled to the same rights as those a party to the contract has in respect of the statutory warranties);*
>
> *- requiring the person to make reasonable efforts to notify a person against whom the warranty can be enforced within 6 months of a defect becoming apparent;*
>
> *- a person must not unreasonably refuse the person who is in breach of the statutory warranty such access to the site as that person reasonably requires to rectify the work; and*
>
> *- a failure to comply with a duty may be taken into account by the Court or Tribunal in subsequent proceedings or, in the case of refused access, must be taken into account*
>
> *This defence importantly balances the rights of building owners/consumers and their advocates within the Commission, and may reduce the Insurance fund's exposure to unreasonable and vexatious claims. HIA recommends the inclusion in the Bill of a defence mirroring Section 18BA of the Home Building Act (NSW).*[55]

The Department advised that:

> *The additional defence available under s18BA of the Home Building Act (NSW) 1989 referred to by HIA would seem to be reasonable. Some further checking of the operation of this NSW provision will, be required before a final decision can be reached… Consideration will be given to the introduction of an amendment to s29 to include a further defence similar to s18BA of the Home Building Act (NSW) 1989.*[56]

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54 QBCC Bill, clause 60, section 29(6):123

55 HIA, submission 10:39

56 HPW, written brief (Attachment 1), September 2014:47

Committee comment

The Committee agrees with the Department that the additional defence provided in the Home Building Act (NSW) 1989 (a duty to provide reasonable access to the building contractor to rectify an alleged defect) seems reasonable. In order to ensure the optimal balance between the rights of the claimant and those of the defendant, the Committee believes such a defence is appropriate and should be introduced.

Recommendation 11

The Committee recommends that the Minister amend the Bill to introduce an additional defence into proposed new section 29 which establishes a duty for the building owner to provide reasonable access to the building contractor to rectify an alleged defect.

3.1.9 Consumer Building Guide

Proposed new section 35 - *Right of building owner to withdraw from contract in cooling-off period* - of Schedule 1B provides that:

> *(2) Also, if the building owner under a level 2 regulated contract does not receive the consumer building guide before receiving a copy of the signed contract, the owner may withdraw from the contract within 5 business days after the day on which the owner receives the consumer building guide.*
>
> *(3) If 5 business days have elapsed from the day the contract was entered into and the owner has not received from the building contractor a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide, the owner may withdraw from the contract.*
>
> *(4) Nothing in subsection (3) affects the right of the building owner to withdraw from the contract under subsection (1) or (2) if the owner subsequently receives from the building contractor a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide.*

Numerous submitters have raised concerns that these new provisions are excessively harsh stating:

> *The Bill provides homeowners with the ability to withdraw from a contract at any time if they don't receive the consumer building guide. If the Guide is not given due to an administrative oversight, the consequence is excessively harsh.*[57]

Altec further stated that:

> *… It seems to imply that there is intent on the contractor's behalf to deceive the client as opposed to a simple administrative or oversight on the contractor's behalf… In discussions with HIA it is our understanding that the QBCC are insisting that their "consumer building guide" will not be able to modified in any way (unlike the current contract information statement). We do not support this stance by the QBCC…* [58]

The Department advised that:

> *The cooling-off period rights for owners under the Bill are essentially unchanged from those which have applied under ss72 and 74 of the DBC Act since its introduction 14 years ago.*

[57] Submissions 1, 2, 10, 14, 17 and 18
[58] Altec, submission 6:6

> *Contractors are able to limit the timeframe of the owner's right to withdraw to 5 business days after the contract is entered to, by simply giving the Consumer Building Guide to the owner just before or at the same time as they present the completed contract to the owner for signature.*
>
> *The change in the cooling-off provisions is a procedural one - the requirement in s18(2) of the Bill for the contractor to give the owner the Consumer Building Guide* ***"..before the owner signs the contract".*** *Given that the Consumer Building Guide will provide key information on the rights and responsibilities of owners, together with information about the building process generally, it is considered that this requirement should be maintained and, by better informing owners, may reduce the likelihood of owners exercising their cooling-off right to withdraw.*
>
> *The proposed Consumer Building Guide replaces the Contract Information Statement in the DBC Act… While the QBCC will determine the details, general information on the contents of the Guide is provided in s46(2) of Schedule 1B of the Bill…*
>
> *With regard to the owner's rights under the cooling-off provisions, the provisions set out in s35 of the Bill are virtually identical to the corresponding provisions in the DBC Act (ss72 & 74). The builder's entitlements where an owner withdraws under these provisions are set out in s38 and are also unchanged from the corresponding DBC Act provisions (s76). With regard to the suggestion that builders ought to have the right to "..walk out of the contract with a profit percentage if the client becomes suspect or unreasonable", it should be noted that under the leading industry contracts there is no such reciprocal right for owners to withdraw for these reasons.*[59]

Committee comment

The Committee notes the concerns raised by submitters about the proposed new consumer building guide and associated cooling-off provisions in the Bill but believes that they are necessary to ensure consumers are fully informed before entering into a contract and that, in the long term, these provisions will serve to protect builders from uninformed owners. The Committee supports the proposed new provisions.

3.1.10 Variations must be in writing

Proposed new section 40 - *Variations must be in writing* - of Schedule 1B provides that, in (2), the building contractor must give the building owner a copy of the variation in a written form before any domestic building work the subject of the variation starts and that, in (5), the building contractor must not start to carry out any domestic building work the subject of the variation before the building owner agrees to the variation in writing. Both provisions attract maximum penalties of 20 penalty units.

The Master Builders raised concerns about these provisions stating:

> *The building contractor must not start to carry out any domestic building work the subject of a variation before the owner agrees to the variation in writing (s.40). A contravention of any of the variation requirements has a maximum penalty of 20 penalty units. The penalty for a company is 100 penalty units. In our opinion these penalty units seem excessive particular for what amounts to in most instances an administrative over-sight by the builder's staff or if the owner will not sign the variation documents. For example, there are times when owners request a variation but for reasons best known to them they will not sign a variation agreement no matter how hard a building contractor*

[59] HPW, written brief (Attachment 1), September 2014:11-13

> *tries to get them to comply with these legislative requirements. In these circumstances where a building contractor can demonstrate that they have made all reasonable effort to try to get an owner to sign a variation form but have not succeed then they ought not to be prosecuted.*
>
> *Furthermore, the building contractor should not be prevented from claiming an extension of time in respect of the variation. Master Builders recommends that a building contractor who commences a variation without the owner signing the form because of the owner's refusal to do so should not be penalised and if required should be able to lodge an extension of time claim for the variation.*[60]

HIA made the following recommendations concerning these provisions:

> *40(2)- Recommend the 'written form' definition be redefined to include electronic communications such as emails as per HIA's recommendation in Section 1.*
>
> *40(3)(c)- Recommend the drafting simplified by removal of 'on the building owner by the building contractor'.*
>
> *40(5)- Recommend the term 'writing' is replaced with 'written form' for consistency.*[61]

The Department advised:

> *While proper documentation and recording of variations is essential for both parties (for contractual certainty and dispute avoidance), it is recognised there is a need to accommodate modern (and more expeditious) means of communication, including emails and any other medium provided for in the contract… The provision will be reviewed to ensure that the in writing requirement for variations can be satisfied by electronic communications consistent with the Electronic Transactions (Queensland) Act 2001.*[62]

Committee comment

The Committee notes the Department's advice that the 'variations must be in writing' provisions will be reviewed to ensure that the 'in writing' requirement will specifically include electronic communications. The Committee has no objection to such an amendment.

Recommendation 12

The Committee recommends that the Minister amend proposed new section 40 of Schedule 1B to explicitly incorporate electronic communication into the definition of 'in writing' for the purposes of agreeing variations in writing.

3.1.11 Requirements for Level 1 and Level 2 contracts

Proposed new sections 13 and 14 of Schedule 1B detail the requirements for both level 1 and level 2 contracts respectively. Submitters have raised concerns about several provisions proposed in these new sections.

New section 13(5) and 14(11) provide that "*the contract has effect only if it complies with this section*."[63]

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60 Master Builders, submission 12:5

61 HIA, submission 10:34

62 HPW, written brief (Attachment 1), September 2014:50-51

63 QBCC Bill 2014, clause 60, sections 13(5) and 14(11):112 and 114

The Master Builders stated that:

> *Both Level 1 and 2 contracts will only have 'effect' if they comply with the requirements for a contract as detailed in sections 13 and 14 respectively. This means for both levels of contract if any one requirement is missed the contract in total is treated as never existing. This is too harsh, the consequence being disputes between the parties over payment entitlements.*
>
> *Master Builders argues that any breach of these contract requirements should not collapse the contract in whole but the breach should be treated on its merit by addressing the effect it has on the disadvantaged party. The effect should be putting them back to where they would have been had the breach not occurred. Master Builders recommends that ss.13(5) and 14(5) be deleted from the requirements for contracts.*[64]

HIA submitted that each of these provisions leave:

> *… the whole contract unenforceable, leaving parties who fail to comply with this section with no remedies for resolution. This provision is not a productive contracting clause. Parties who fail to comply with this provision will be forced to result to statutory means to determine the ability to enforce the contract, and any potential remedies for failure to comply with the provision. The consequence of an inadvertent oversight will be the detriment of both the consumer and owner, and does little to protect the rights of either party. It is recommended that this provision is removed from the scope of the Act.*[65]

The Department advised that consideration will be given to removal of both subsections.[66]

Committee comment

The Committee agrees that the consequence (that the contract is deemed invalid) of non-compliance with any of the requirements of proposed new section 13 (for level 1 contracts) and proposed new section 14 (for level 2 contracts) is disproportionate, especially considering that in both the case of level 1 contracts and level 2 contracts, additional requirements may be prescribed in regulation.

The Committee notes the Department's advice that consideration will be given to removing these clauses from the Bill and supports their removal.

Recommendation 13

The Committee recommends that the Minister remove proposed new 13(5) and 14(11) from Schedule 1B to provide that contracts are not deemed invalid for failure to comply with all requirements of those respective sections.

3.2 Disciplinary action

3.2.1 Disciplinary action against licensee for non-payment of sub-contractors

Clause 38 proposes to insert new section 74B(n) which grants additional powers for the QBCC to take disciplinary action against a licensee for non-payment of sub-contractors.

Several submitters have expressed concern that the Bill does not define non-payment which makes the power broad and discretionary, and that it is more appropriate to deal with disciplinary actions through BCIPA which currently defines non-payment and governs related disputes and disciplinary action including demerit points and loss of licence.[67] The HIA stated:

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64 Master Builders, submission 12:4

65 HIA, submission 10:26-27

66 HPW, written brief (Attachment 1), September 2014:42

67 Submissions 1, 2 10

> *The Building and Construction Industry Payments Act 2004 ('BCIP Act') provides a mechanism for resolution of payment disputes. The QBCC already has sufficient power to act upon the failure to make payment of a judgement debt, such as non-compliance with a BCIP Act decision, through the Financial Requirements for Licencing (as revised from 1 October 2012). An unsatisfied judgement debt can result in outcomes of licence suspension and/or cancellation, fines, and demerit points. Importantly these outcomes rely upon a decision under a regulatory mechanism not that of a 'discretionary' type judgement as provided for in the Bill.*[68]

However, the Association of Wall and Ceiling Industries of Queensland Inc. (AWCI) supported the new provision stating*:*

> *The AWCI agrees with the inclusion of clause (n) failure to pay a sub-contractor as grounds for taking disciplinary action against a licensee. It is part of the logic for having a license – i.e. the licensee is required to fulfill all duties reasonably expected of them.*[69]

Seapointe Homes expressed concern that:

> *… there is no provision for a builder to seek recourse against a contractor for incomplete or unsatisfactory work… If a builder has a problem with a contractor, the builder has to go to QCAT for a slow, often fruitless, and expensive outcome.* [70]

The Department advised that:

> *The Queensland Building and Construction Commission (QBCC) often receives complaints from sub-contractors in relation to head contractors not paying in accordance with the contract, or using commercial leverage to force sub-contractors to accept lower amounts than originally agreed. Providing the Commission with the power to take disciplinary action in relation to failure to pay sub-contractors as per the terms of the contract means that the Commission will be able to take action against head contractors who regularly fail to honour their contracts for sub-contractors.*
>
> *It should be noted that these amendments also provide for such disciplinary proceedings to be reviewable in QCAT, in addition to the QBCC's Internal Review Service – head contractors who believe they have a legitimate reason for not paying the sub-contractor will be able to state their reasons through three separate processes. During the disciplinary process a 'show cause' notice is issued that will allow a head contractor to set out reasons for non-payment (e.g. contesting the quality of the work in court process). In these instances, it is unlikely that disciplinary action would be taken.*
>
> *Given that the power to take disciplinary action is linked to failing to pay a sub-contractor in compliance with the building contract, there will be no ambiguity and will mean that the power is quite narrow and not open to abuse, as the head contractor will only be held to an agreement into which he has already entered.*[71]

Committee comment

The Committee notes the submitters' concerns about the proposed new powers for the QBCC to take disciplinary action against a licensee for non-payment of sub-contractors but considers that there have been significant issues regarding the payment of subcontractors by contractors for many years. For instance, the issue was raised by numerous submitters to the Committee's Inquiry into the Operation and Performance of the Queensland Building Services Authority.

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68 HIA, submission 10:6
69 AWCI, submission 11:1
70 Seapointe Homes, submission 9:2
71 HPW, written brief (Attachment 1), September 2014:1-2

The Committee also considers that additional mechanisms are necessary as, clearly, the current mechanisms, as available in current legislation, are not mitigating the problem. Therefore, the Committee is supportive of these new measures which will facilitate the timely payment of subcontractors by contractors without having to go through a court process to arrive at a judgement debt.

3.2.2 Filing of certificate as judgment debt

Clause 38 proposes to insert new section 74H which provides that the Commission may prepare a certificate stating the name of the person liable to pay an amount, the person entitled to the amount, the amount and the date on which the amount is required to be paid. Under proposed new 74H(3), the certificate may be filed by the Commission as a judgment for a debt for the claimant, and the judgment may be enforced by the claimant, in a court of competent jurisdiction.

HIA opposes this provision stating:

> *It is wholly inappropriate that decisions of a non-judicial government agency be enforced as if they were the equivalent of a Court judgment.*
>
> *QBCC decisions in many instances will simply be the penultimate result of a subjective assessment or opinion of an individual within the bureaucracy. They are not the same and should not be considered the same as a decision emerging from an impartial judicial process which considers evidence from both sides of the dispute.*
>
> *Of further concern is the proposed s74H(6) that requires a respondent to pay into Court as security the unpaid part of any "judgment". The payment of monies into Court should remain at the discretion of the Court and subject to the usual considerations, such as the merits of the case, the assets of and capacity of the respondent to pay and the requirements of justice.*
>
> *It is recommended that this provision is removed.*[72]

The Department advised that:

> *This clause is necessary to allow the Commission to enforce fines that are issued as an outcome of undertaking disciplinary action against a licensee.*
>
> *Prior to action being taken by the Commission pursuant to section 74H a licensee will have been given the opportunity to have the Commission's decision to issue a fine relating to the disciplinary processes on two occasions. First via internal review and subsequently in QCAT. Decisions of QCAT can also be the subject of review.*
>
> *Section 74H applies when the aforementioned due process has occurred or the time periods for this to occur has expired. Section 74H is intended to ensure that the licensee does not have yet another avenue to re-prosecute matters which have already been through appropriate processes and forums.*
>
> *Section 74H(6) is a provision that proves to the Court that the respondent has the ability to satisfy the debt which is subject to the proceedings.*[73]

Committee comment

The Committee notes the HIA's concerns however has formed the view that the proposed provisions (to enable the QBCC to prepare and file debt certificates as debt judgments, and to require a respondent who commences proceedings to have the judgment set aside to pay into the court as

[72] HIA, submission 10:16

[73] HPW, written brief (Attachment 1), September 2014:35

security the unpaid portion of the amount) are reasonable, necessary and an appropriate use of the Commission's authority.

3.3 Removal of QCAT's ability to place 'stays' on QBCC action

Clause 40 of the Bill proposes to replace section 83 of the Act to explicitly provide that the Commission may now act in relation to a dispute which started in, or was removed from, a court to the tribunal. For example, the Commission could decide whether or not to give a direction to rectify or remedy, and decide to allow or disallow a claim under the statutory insurance scheme.

Clause 41 of the Bill proposes to omit section 84 of the Act which currently provides for urgent rectification or remedy applications from the Commission to the Tribunal.

Clause 44 proposes to insert new section 87A which places constraints on the Queensland Civil and Administrative Tribunal's (QCAT) ability to place 'stays', or temporary stops, on action by the QBCC. The implications of this are that the QBCC would be able to process rectification works through the Home Warranty Scheme even if the building contractor is appealing the initial direction to rectify through QCAT.

> *The insertion obliges the QCAT not to grant a stay of the decision if a person applies under section 87 to the tribunal for a review. The decisions this applies to include a direction for rectification or completion of building work, rectification of consequential damage, whether the work is of a satisfactory standard and other decisions mentioned in the section.*[74]

Two submitters have stated:

> *These constraints could lead to negative impacts on fairness and natural justice for both consumers and licensees. For example, if approved in its current form, the Bill would allow the QBCC to process rectification works through the QBCC Home Warranty Insurance Scheme even if the building contractor is trying to appeal the initial direction to rectify through QCAT.*[75]

The Australian Timber Flooring Association stated "*this requires further clarification as it appears that remedial works can be undertaken, not sure by whom, prior to a tribunal outcome*."[76]

HIA shares these concerns submitting:

> *The right of a Court or Tribunal to stay execution of judgement in the appropriate circumstances is crucial for the proper administration of justice. Further, a decision of the QBCC should be treated as an administrative decision, and therefore be capable of judicial challenge, and if necessary be stayed.*
>
> *… HIA appreciates that there may be some limited circumstances in which it is desirable to rectify work quickly to prevent further damage occurring...This is why the Government amended the Queensland Building and Construction Commission Act 1991 ('the QBCC Act') in September 2013, to give the QBCC power to have an expedited hearing in QCAT to enable the Commission to process these urgent insurance claims while a dispute was being considered by QCAT.*
>
> *In some instances a stay will be necessary to preserve evidence. This will particularly be relevant in disputes over alleged defective materials or workmanship that will require testing of evidence at trial.*

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74 QBCC Bill 2014 Explanatory Notes:18
75 Submissions 1 and 2
76 ATFA, submission 3:2

> *To give the QBCC carte blanche to act in this way is dangerous and extremely prejudicial to the interests of licensees who would essentially being coerced into rectifying work themselves even if they believed that the work was of an acceptable standard. It is unacceptable for licensees to be exposed to this potential for coercion to address delays that the QBCC may be experiencing in accessing quick decisions from QCAT. The remedy is surely in a fine tuning of QCAT's processes to expedite urgent insurance matters.*
>
> *HIA accordingly recommends that the provisions of Section 83 and 84 of the QBCC Act (as amended in September 2013) be preserved. Furthermore, for building disputes that the Tribunal has the continued right to grant a stay on the terms already afforded in Sections 22(3) and 22(6) of the Queensland Civil Administrative Tribunal Act 2009 ('QCAT Act').*[77]

Regarding clause 40 (proposed new section 83), the Department advised that:

> *In the past, some parties have used section 83 as a way of preventing Commission involvement by filing spurious disputes that deny the other party access to the Commission. This has resulted in consumers and contractors suffering long delays in the domestic building dispute prior to being able to have the matter resolved by the Commission. By allowing the Commission to act in spite of the fact that a domestic building dispute is on foot in the Tribunal, such delays are avoided. This is particularly important given that the Commission now offers early dispute resolution and internal review processes which are likely to resolve disputes far more quickly than a domestic building dispute in the Tribunal. The decisions made by the Commission when a domestic building dispute is on foot will take into account that dispute, and will remain reviewable via the usual process.*[78]

The Department further advised that:

> *The proposed new section 87A has been drafted to ensure that defective or incomplete work can be quickly addressed, while still preserving contractor's rights and making sure all parties are afforded natural justice. Delays in the resolution of reviews in QCAT have resulted in defective or incomplete work being unaddressed for long periods.*
>
> *The insertion of section 87A allows the Commission's insurance scheme to run in the same way as commercial insurance schemes. For example, if you are in a car accident your insurance company simply repairs your car and argues with the other parties insurance company; it does not ask you to prove that the other driver did something wrong.*
>
> *Section 87A does not stop the contractor or consumer from exercising their rights in QCAT. If the Commission decides that work should be rectified under the insurance scheme the contractor is still able to dispute that the work is defective or incomplete, or that the repair work proposed is excessive. The contractor's review rights are preserved and given that evidence of defective or incomplete work is collected prior to the issuing of a direction and in the presence of the contractor, the contractor will not be disadvantaged in any review of the decisions of the Commission.*[79]

[77] HIA, submission 10:6-7
[78] HPW, written brief (Attachment 1), September 2014:21-22
[79] HPW, written brief (Attachment 1), September 2014:2-3

Committee comment

The Committee is aware that delays in the resolution of reviews in QCAT have resulted in defective or incomplete work being unaddressed for long periods and supports the need for swift remedy without compromising the contractors' or consumers' rights in QCAT.

Therefore, the Committee supports the suite of amendments regarding the interactions between the Commission and QCAT.

The Committee is satisfied that the proposed new process, whereby the QBCC can act in spite of the fact that a domestic building dispute is on foot in the Tribunal, and QCAT's ability to place 'stays' on QBCC actions is restrained, is an appropriate remedy for the issues being addressed.

3.4 Revised sanctions regime

Several proposed amendments to the QBCC Act introduce new or increase existing penalties (see Appendix D for a full summary).

Several submitters have expressed concerns about the new demerit regime:

> *Master Builders is however opposed as a matter of principle to heavy handed regulation as a way of ensuring compliance for example, the substantial increase in both demerit and penalty points. For example, increasing the number of demerit points for a single audit or investigation have been raised from 6 to 20 demerit points (s.67AZB). The increase is harsh given once a building contractor receives 30 demerit points their license can be cancelled. These increases do not take account of the size of the builders business; it is a one size fits all whether they build two houses a year or 600. We understand that the QBCC intends to develop a guideline about how the penalties will be applied. This may resolve our concerns.*[80]

The Department advised:

> *The new administrative disciplinary system is designed to avoid the need for lengthy disciplinary proceedings in the courts or the tribunal, which will reduce costs for consumers and licensees. The QBCC will, when it believes that disciplinary proceedings are warranted, issue a 'show cause' notice allowing the licensee to respond. If the QBCC remains of the view that disciplinary action is justified one of the actions listed in Section 74D will be taken.*
>
> *A decision by the QBCC to take disciplinary action is a reviewable decision as per section 86 (1)(r), so if the licensee is aggrieved by the disciplinary action it can be referred to QCAT for review. This not only preserves the licensee's right to dispute the decision to take action, it also removes that dispute from a disciplinary/prosecutorial framework to an administrative framework, meaning that the QBCC disciplinary actions are subject to the oversight of QCAT. The effect of the amendment is to increase the rights available to licensees and ensure the QBCC follows due process.*[81]

Committee comment

The Committee recognises that the new and increased offences and penalties introduced in this Bill are, in some cases, significant but also believes that such a disciplinary regime is necessary to restore the integrity of the construction industry. For this reason, the Committee supports the revised disciplinary regime.

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[80] Master Builders, submission 12:1-2

[81] HPW, written brief (Attachment 1), September 2014:15-17

3.5 Continuing professional development

Clause 58 introduces proposed new section 116 - *Regulations* - which provides that the Commission may introduce continuing professional development (CPD) through regulation.

HIA opposed this amendment stating:

> *HIA opposes this clause which purports to enable the Commission to introduce compulsory CPD via Regulation.*
>
> *It is noted that the Government's response to the Inquiry into the Operation and Performance of the Building Services Authority, Recommendation 39, provided for the introduction of a voluntary system of CPD.*
>
> *CPD is a poorly targeted instrument for achieving improved performance in any industry. Professional development needs are unique to the individual professional: someone actively performing in a profession would have very different need for professional development than a passive person. Yet CPD programs do not target the type of development activity the professional needs. This leads to CPD programs catering for the average professional in the most cost and time-effective way. The value of formal CPD programs in larger building firms where one individual, the nominee, is meant to undertake a CPD program is also questionable. The scope for abuse of CPD is substantial.*
>
> *QBCC licensees who are active in the industry would currently all be engaged in some form of professional development. All of these sources of professional development would be targeted at the specific needs of the individual licensee. However to document and verify this "on-the-job CPD" would be difficult for licensees to administer and would need a significant incentive for it to be worthwhile to manage voluntarily. There would also be a significant administrative burden on the Commission.*
>
> *HIA recommends removal of this clause.* [82]

However, the Master Builders disagreed stating:

> *… we believe there are other ways to achieve compliance with regulation and thereby offer protection for consumers namely, the introduction of Continuing Professional Development (CPD). While CPD can lift technical and contractual standards across the industry it also has the potential to bring building contractors together, be a source of support and enable sharing of experiences. All contractors, especially new entrants in the industry would benefit from a CPD scheme.*[83]

The Department advised that:

> *This amendment provides heads of power only. The Commission will conduct substantial consultation with industry prior to bringing forward any amendment regulation.*[84]

Committee comment

The Committee notes that Recommendation 39 of its *Report 14: Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012* recommended that the Minister for Housing and Public Works investigate the benefits of mandatory Continuing Professional Development for all licensees and the potential to link mandated CPD to licence eligibility requirements. The Committee remains supportive of CPD for construction industry licensees and therefore, of the proposed amendment to enable a regulation to provide for CPD.

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82 HIA, submission 10:22:
83 Master Builders, submission 12:2
84 HPW, written brief (Attachment 1), September 2014:40

The Committee also notes that the Bill proposes only to allow for the regulation of CPD but does not make it compulsory.

3.6 Home Warranty Scheme

3.6.1 Prefabricated Homes

Clause 36 proposes to replace Part 5 with a new Part 5 – The statutory insurance scheme. Submitters have expressed concern about the clarity of this new part, specifically regarding manufactured and prefabricated homes.

> *Master Builders supports swimming pools and manufactured homes being included under the Home Warranty Insurance Scheme. However, it is not clear under what circumstances manufactured /prefabricated/modular homes will be covered by Home Warranty Insurance. In our view sections 67WA and 67WB (1) (d) are not clear. Currently 67WB indicates a modular home is not covered under the statutory insurance scheme. The supply and installation of a manufactured/prefabricated /modular home should be covered, similar to any other type of home, for the full insurable value. Master Builders recommends the legislation be amended making it clear that manufactured/ prefabricated/modular home is residential construction work covered under the statutory insurance scheme.*[85]

The Department advised that:

> *Among other things, the Queensland Home Warranty Scheme will provide assistance to consumers who have suffered loss as a result of a building contractor carrying our defective or incomplete primary insurable work. Primary insurable work is defined in the new section 67WC(1)(a) of the Bill to include the erection or construction of a residence.*
>
> *A residence is defined to include any single detached dwelling in section 67WE (Meaning of residence) regardless of the method of construction or dwelling type (e.g. manufactured home, prefabricated home, modular home).*
>
> *The effect of section 67WB(1)(d) is that it makes it clear that it is not proposed to require persons who fabricate the whole or part of a building in a factory to pay a premium for the work. It should also be noted that factory work does not require a licence or is in anyway regulated under the QBCC Act. If such a policy position were adopted this would significantly disadvantage Queensland manufacturers when competing with interstate and overseas suppliers of building related materials.*[86]

Committee comment

The Committee supports the inclusion of swimming pools and manufactured/prefabricated homes in the insurance scheme however, agrees with the submitter that there is a tension between proposed section 67WE and 67WB(1)(d). One appears to include manufactured/prefabricated homes in the insurance scheme and the other appears to exclude them.

Recommendation 14

The Committee recommends that the Minister amend the Bill to explicitly state which parts of the manufactured/prefabricated homes process will be covered by the statutory insurance scheme and which parts of that process will not.

[85] Master Builders, submission 12:2
[86] HPW, written brief (Attachment 1), September 2014:52

3.6.2 Additional insurance premium for variations

Proposed new section 70 – *Residential construction work carried out under a contract with a consumer* - provides that:

> *(1) This section applies if—*
>
> *(a) the residential construction work to be carried out under a contract with a consumer is to be varied; and*
>
> *(b) the commission is satisfied that the value of the residential construction work will change because of the variation.*
>
> *(2) If the value of the residential construction work will increase because of the variation, the licensed contractor carrying out the work must pay an additional insurance premium on behalf of the consumer for the work to the commission before any work relating to the variation starts.*
>
> *Maximum penalty—100 penalty units.*

Numerous submitters have raised concerns about this new provision:

> *Master Builders argues that the requirement is unnecessary and adds another layer of administrative burden on the building contractor. It would be more appropriate to allow the building contractor to pay an additional premium based on the combined totals of all variations prior to them submitting their final invoice at practical completion. In addition in the interest of business efficiency a premium not be required to be paid until the total of all variations exceed $5,000.*
>
> *Residential owners have a reputation for making numerous changes to the specifications throughout the course of a contract. The amendments require the building contractor to halt the works to get both a signed variation and pay the insurance premium. We have no issue with getting the variation in writing subject to the owner agreeing to sign the variation form. However, the variation could simply be for an additional light switch to be installed at a cost of $120 thus requiring an additional premium. This situation could occur numerous times throughout the course of the construction requiring the building contractor on each separate occasion to not proceed with the works until such time as the insurance premium is paid. This is not conducive to a building contractor trying to administer an efficient business. Delays cost building contractors money. In these cases the building contractor never recovers the full costs. Master Builders recommends that until the sum of all variations exceed $5000 no additional insurance premium should be paid however if the amount exceeds $5000 the premium should be paid by the building contractor prior to invoicing for the practical completion payment.*[87]

HIA shared these concerns stating:

> *The imposition of requiring a contractor to ensure each additional variation is covered through the warranty scheme as work progresses is unnecessary, and creates a further red tape burden. For various reasons, variations are required through the course of construction. Many of these variation requests are initiated by the consumer because they have had a change of mind on a particular detail or aspect of the scope of works or materials to be used. The requirement to pay additional premiums on a per variation basis creates an unreasonable administrative burden and is impractical. In some instances builders as a general rule will simply refuse to agree to any owner initiated*

[87] Master Builders, submission 12:6

> *variations. Further the demerit points associated with such failure to continually purchase insurances throughout the works are wholly unfair, as the variation works are in more cases a reactive outcome to a client's request to omit or change something within the scope of the contract.*
>
> *It is recommended that the Act is varied to require a building contractor to make payments for additional variations at the completion of the project or alternatively at the relevant progress stage where the variation works were carried out. Furthermore it is recommended that the demerit points for this provision are removed.*[88]

The Department advised that:

> *Under the current law, a building contractor has an obligation to pay additional premium if they enter into an agreement with a consumer to vary a building contract and the variation has the effect of increasing the value of the work insured. This is a common everyday occurrence and the Commission is not aware of any evidence to support that it has caused any issues for building contractors. This is not a change from the current provisions in the QBCC Act.*[89]

At the public hearing on 10 September 2014, Mr Steve Griffin, QBCC Commissioner further advised that*:*

> *… we do hear the issue as to should it be a $400, $500, $1,000 or $5,000 variation threshold before a variation should result in an additional premium being paid. That is another one of those issues that we will have a look at and further discuss in consultation with industry. There may be some regulation that can be thought of as to a threshold that would be met. It would seem to me to be silly and an additional red-tape burden for us to require a builder to give the extra premium for $300, $400 or $500 if those sorts of increments happen to a number of variations over a period of time. Obviously when there are substantial variations of $50,000 or $100,000, you would expect that there would be a premium flowing from that to cover the potential risks of the scheme.*[90]

Committee comment

The Committee notes the Department's advice that the provision (requiring the payment of an additional insurance premium if the value of residential construction work will increase because of a variation) has been retained from the current QBCC Act and understands that the requirement is currently prescribed through a combination of QBCC Act, QBCC Regulation and Queensland Government Gazette provisions. The Committee supports the clarification of this requirement clearly into the QBCC Act however, notes that the provision, as drafted, appears to create an unnecessary red-tape burden for builders and is potentially impractical.

Recommendation 15

The Committee recommends that the Minister amend clause 36 of the Bill to include variation thresholds in proposed new section 70 which requires a contractor to pay an additional insurance premium where the value of a residential construction work will increase because of a variation before the variation work can commence.

88 HIA, submission 10:13-14

89 HPW, written brief (Attachment 1), September 2014:32

90 Mr Steve Griffin, Hansard transcript, 10 September 2014:26

3.6.3 Scope of homeowner's claim under the scheme

Proposed new section 71B – *Statutory insurance scheme not to affect licensing decisions* – provides that the Commissioner must not have regard to the implications for the statutory insurance scheme in deciding actions to be taken in relation to a licensee's licence.

Mr Don Jender stated:

> *I believe this section should also say that decisions about Directions to Rectify must not have regard to implications for the statutory insurance scheme. Possibly this is implied in the current wording, but my proposal would make this clear. The point is that some Decisions to Rectify (by finding builder fault) could strengthen a homeowner's claim under the insurance scheme.*
>
> *As a general comment about the insurance scheme, the amendments do not seem to change the general nature of the scheme. They are more about details, eg adding consequential damage. The problems with the scheme are in the details of the insurance policy, whose wording is presumably completely at the discretion of QBCC.*
>
> *I believe the amendments should give more guidance to QBCC about the spirit of the scheme (eg claims not to be denied on minor legalistic grounds). Also there should be a mechanism which does not involve the effort and expense of a QCAT appeal, whereby a homeowner can appeal against a QBCC decision to deny an insurance claim.*[91]

A similar concern was raised about the terms and conditions of the insurance cover by a private submitter who stated:

> *The Home Insurance Scheme you are forced to pay but before you can get the terms and conditions of the Insurance you have to have a contract signed with a builder and only then do you find out how ineffective it is and how limited its coverage goes. I ask what over insurance does this, you get the terms an(d) conditions first and then you are able to decide if you want to accept these conditions.*[92]

The Department has advised that:

> *… The extent to which the issuing of a direction to rectify work may impact on or be relevant to eligibility to make a claim is a matter of detail appropriately dealt with in subordinate regulation.*
>
> *The Bill inserts a new section 67Y (Assistance available under the statutory scheme). This provision states that the terms of cover under which a person is entitled to assistance under the Scheme will be prescribed by regulation. The regulation will be subject to consultation with relevant stakeholders, including the QBCC given its statutory function to manage the Scheme…*
>
> *The QBCC will be required to manage the Scheme in accordance with the requirements stated in the QBCC Act and its regulation.*
>
> *The Professional Engineers and Other Legislation Bill 2014, currently before the Queensland Parliament, will allow a person without cost to seek an internal review of a reviewable decision under the QBCC Act. A reviewable decision includes:*
>
> - *a decision about the scope of work to be undertaken under the statutory insurance scheme to rectify or complete work; and*

[91] Mr Don Jender, submission 7:1

[92] Private, submission 13:1

- *a decision to disallow a claim under the statutory insurance scheme, wholly or in part; and*
- *a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the Scheme.*[93]

Committee comment

The Committee notes the Department's advice that the impact or relevance of a direction to rectify on an insurance claim is appropriately dealt with in subordinate legislation (ie. regulation) and that proposed new section 67Y provides that the terms of the statutory insurance cover will be prescribed in a regulation. The Committee further notes that the Department has undertaken to consult with stakeholders regarding this regulation.

The Committee is satisfied that, between the QBCC Act and its regulation, the QBCC will have sufficient guidance to implement the insurance scheme and that the PEOLA Bill, currently before the House, proposes to introduce a mechanism for the internal review of QBCC decisions, including insurance scheme decisions.

3.6.4 Renewed dispute under warranty period after resolution with contractor reached

At the public hearing on 10 September 2014, Mr Warwick Temby, HIA, alerted the Committee to an outstanding issue that the Bill will not address stating:

> *There is another area where we think there has been an opportunity missed in the bill to fix up what is, in our view, a serious injustice in the current bill where a client and a contractor can reach a settlement over a dispute—typically a cash settlement—yet the client retains the right to have the commission come in and issue a direction against the contractor for the same dispute. In our view that element of double-dipping is a serious injustice, and it is a particular injustice when it is the original owner that does it but it can also happen when subsequent owners make a claim to the commission for work that they think is defective where the contractor had already reached a settlement with the previous owner.*[94]

Mr Temby went on to clarify:

> *I should stress that this is not just a theoretical problem. There are some real live cases on the go right now where this is happening. I think the QBCC bill needs some fundamental amendments so that it expressly says that if that particular alleged defective work and the dispute over that defective work have been resolved then there should be no further claims by any party, whether the current owner or subsequent owner, during the warranty period for that issue.*[95]

Committee comment

The Committee considered that, even though this is not a common situation, the opportunity for owners to re-dispute a resolved matter appears contrary to natural justice principles. The Committee is also of the view that there may be legitimate circumstances where it is necessary for an owner (or a new owner) to re-open a previously resolve dispute.

The Committee does not have sufficient information about this matter to make a judgement and so seeks clarification from the Minister about the circumstances in which this 'double-dipping' is able to occur under current legislation and the implications for owners and builders.

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93 HPW, written brief (Attachment 1), September 2014:26-28

94 Mr Warwick Temby, Hansard transcript, 10 September 2014:2

95 Mr Warwick Temby, Hansard transcript, 10 September 2014:5

Point of clarification 1

The Committee requests that the Minister clarify, in his second reading speech, the circumstances in which an owner is able to re-dispute a resolved matter and how the current legislation enables this approach.

3.7 Tenders for rectification work

Clause 34 proposes to insert new section 71AC which provides a new streamlined framework for the Commission to seek and accept tenders to carry out rectification work. The new section would allow the Commission to seek a tender from only one licensed contractor if a person is entitled to assistance under the statutory insurance scheme and the estimate to rectify is less than $20,000, thus reducing red tape associated with rectifying such work.

Additionally, proposed new section 71A provides that the Commission may seek tenders for building work if it is of the opinion that a person may be entitled to assistance under the statutory insurance scheme, and the Commission may accept whatever tender it considers appropriate even if it isn't the lowest.[96]

Concerns have been raised about the lack of accountability in the Commission being able to seek a tender from only one licensed contractor in some cases and that the Commission is not required to accept the lowest tender where multiple tenders are sought and received.

> *While there is a need to cut red tape, to seek and accept the tender from just one licensed contractor needs to have controls in place and there is no indication as to what such controls may be… Again with regard to this it is not clear as to what controls are in place when not accepting the lowest tender or on what grounds higher tenders may be accepted.*[97]
>
> *The other condition that concerns me is, about the QBCC is this, the builders and engineers (etc.) that are on the QBCC panel should be rotated at a regular basic Say about every Five years so as to avoid a conflict of interest.*[98]

The Department advised that:

> *Following a review of the tendering process used by the Commission for rectification work under the Scheme, the Commission has identified that better consumer outcomes can be achieved, including faster timeframes for completion of rectification, if the tendering of work were outsourced to an external provider. Clause 36 facilitates this outcome by inserting a new section 71AC (Tendering for rectification work) into the Queensland Building and Construction Commission Act 1991. Under the new section the Commission will have the ability to authorise an external claims management consultant to act for the Commission in calling tenders for rectification work. The new section also allows the Commission to authorise the consumer to call tenders for rectification work should that better suit the consumer's needs.*
>
> *When appointing an external claims management consultant the Commission is obliged to follow standard government processes and procedures governing tendering for such work.*
>
> *The Commission has always had the ability to seek and accept a tender for carrying out defective work from a single licensed contractor. It has generally always done so for*

[96] HPW, written brief (Attachment 1), September 2014:18
[97] ATFA, submission 3:2
[98] Private, submission 13:1

work valued at under $15,000. Where this occurs the building contractor is selected at random by a computer generated result. The quotation and method of achieving the scope of work to be undertaken is also independently checked by a qualified building inspector to make sure it is reasonable and appropriate.

Where an external claims management consultant carries out the tender process, they are contractually obliged to follow a similar safeguarding process for work under $20,000...

Where multiple tenders are called, it is generally the practice of the Commission to accept the lowest quotation received. However, there will be occasions where it is not appropriate to accept the lowest quotation. For example, the quote may be based on using inferior materials or an unsuitable method of work. Where this is identified another tender may be accepted in the interests of the consumer.[99]

Committee comment

The Committee notes the Department's advice regarding the process to be followed in obtaining a single tender in projects valued at up to $20,000 and also the justification for not accepting the lowest tender in certain circumstances. The Committee is satisfied that there are appropriate mechanisms and controls in place to support the tendering process.

3.8 Directions to rectify consequential damage

Clause 37 proposes to insert new section 72 – *Power to require rectification of building work and remediation of consequential damage* – which provides that the Commission may direct the person who carried out the building work to, for consequential damage, remedy the damage. New section 71H defines consequential damage as including "*damage to a residential property at the relevant site, containing the relevant site or adjacent to the relevant site*" [author's emphasis].[100]

HIA raised strong concerns about this new involvement of the QBCC in consequential damage stating:

HIA repeats its comments above and wholly disagrees with this clause in relation to the ability to issue directions to properties 'adjacent to the relevant site'. There is no established contractual relationship between parties to enable access, nor would appropriate insurances be affected on site. It is recommended that the words 'or adjacent to the relevant site' are removed from 71H(1)(b).[101]

At the public hearing on 10 September 2014, the following discussion was also had regarding the involvement of the QBCC in consequential damage:

Mr Bidwell: For the first time it is contemplated that consequential damage on a neighbour's property is going to be sheeted back to the builder. If I am building a house and I undermine the neighbour's fence, the QBCC can get involved. While we understand the issue, it is very complex, because if the QBCC can direct the builder to fix it and the builder is going to fix it anyway, but if they can direct him to fix it and if he does not there are all sorts of things that can happen and, ultimately, he could lose his licence. If the adjoining owner says, 'I'm not letting you onto the property,' what is going to happen? Again, we were relying on the QBCC's discretion. In many cases that might work, but in some cases it might not…

[99] HPW, written brief (Attachment 1), September 2014:18
[100] QBCC Bill 2014, clause 37, secction71H:55
[101] HIA, submission 10:15

Mr Temby: The other reality in that particular situation is that a builder's public liability policy and products liability policy would cover the next-door neighbour for that kind of damage in any event.

CHAIR: … A neighbour should not have a serious impact because someone is building next to them as well.

Mr Bidwell: We understand the issue. It is just how they get around to fixing it. As Warwick said, if the public liability will cover it then why do we need the regulator to get involved? There is no contract between the adjoining owner and the builder. It has nothing to do with it.[102]

The Department has advised that consequential damage is not proposed to be covered by the Home Warranty Scheme but has not otherwise advised on the involvement of the QBCC in issuing directions to rectify consequential damage.[103]

Committee comment

The Committee notes that the major building/construction and housing industry associations have raised concerns with the new provisions which would involve the QBCC in issuing rectification directions for consequential damage. The Committee also notes HIA's view that builders' public and product liability insurances would protect adjacent sites in the case of such damage and that QBCC involvement is unnecessary.

The Committee is concerned about the implications of rectification works carried out on adjacent sites given the lack of any contractual arrangement with the adjacent site owner and the consequential lack of insurance coverage for this work. The Committee fully supports the Government's desire to protect neighbouring sites from building damage but is not satisfied that this legislative approach is the best solution.

Point of clarification 2

The Committee seeks advice from the Minister in his second reading speech regarding the practical implications for the builders and for the owner of any damaged adjacent site of a QBCC direction to rectify consequential damage.

3.9 Civil construction to be exempted

The Civil Contractors Federation (CCF) is the peak industry body representing Australia's civil construction industry. Civil construction includes the construction and maintenance of Australia's infrastructure, including roads, bridges, pipelines, drainage, ports and utilities and also earthmoving and land development services to the residential and commercial building construction industry.[104]
The CCF has raised numerous issues with section 42, and item 8 of Schedule 1A of the QBCC Act, neither of which are proposed to be amended in this Bill, and recommended the following amendments to the Act:

(a) Create a definition of 'civil contractor' and define specifically the activities which that type of contractor might complete without the need to have a building licence;

(b) Schedule 1A of the QBCC Act be amended to confirm that where a contract is predominantly for works exempted from the term "building work" under the Regulation Schedule 1AA, the contractor does not breach section 42(1) if it subcontracts building work to a licensed subcontractor;

[102] Hansard transcript, 10 September 2014:7
[103] HPW, written brief (Attachment 1), September 2014:33
[104] Civil Contractors Federation, submission 16:1

> *(c) Schedule 1A of the QBCC Act be amended to clarify that carrying out "building work services" for such subcontracted work does not contravene section 42(1);*
>
> *(d) As an extension or alternative to (c), amendment be made so that "building work services" can be carried out provided the fee payable does not exceed a prescribed amount;*
>
> *(e) The above only apply in the commercial setting and the distinction contained in the current section 8 of Schedule 1A (regarding residential construction work and domestic building work), be maintained.*
>
> *(f) Define 'car park' under Schedule 1AA of the Regulation and exclude from building work.* [105]

The CCF stated that:

> *The impact of the above issues had become clearly evident following the Supreme Court decision of Ooralea Developments Pty Ltd –v- Civil Contractors Australia Pty Ltd where building works were found to include certain roadworks and plumbing and drainage works in a proposed residential estate. Such works historically have not been considered building work and this interpretation resulted in the contractor being found to be unlicensed, exposed to being penalised under the QBCC Act and also unable to claim under BCIPA.*
>
> *Many civil contractors do not hold a building licence under the QBCC legislation.* [106]

A range of amendments were made to section 42 of the QBCC Act on 1 December 2013 which "went some way to overcoming the issues faced by civil contractors, particularly in respect to the construction of structures which usually form part of civil works".[107]

> *It was broadly believed pre-amendment of the QBCC Act (and widely published to the industry post amendment) that Section 8 relieved civil contractors from being required to have a QBCC licence, if a civil contractor subcontracted the whole of the building works to one or more licensed subcontractors.* [108]

However, the QBCC has interpreted item 8 of Schedule 1A to mean:

> *(a) a head contractor or development manager, which on behalf of a client or an associated entity, contracts the whole of the construction works (including any building work) to a licenced contractor, is not guilty of unlicensed contracting despite having agreed to carry out building work*
>
> *(b) the head contractor or development manager cannot separately engage different contractors to perform parts of the work as in those circumstances, it is completing building work services (within the meaning of that term in the QBCC Act) and therefore carrying our building works in breach of section 42(1) QBCC Act; and*
>
> *(c) an unlicensed contractor, who subcontracts part of the works which require a licence to a subcontractor, continues to perform unlicensed building work and breaches section 42(1) of the QBCC Act, as it continues to perform building works services in managing the subcontractor to which the works are subcontracted.* [109]

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105 Civil Contractors Federation, submission 16:3-4
106 Civil Contractors Federation, submission 16:2
107 Civil Contractors Federation, submission 16:2
108 Civil Contractors Federation, submission 16:2
109 Civil Contractors Federation, submission 16:3

The CCF advised that the scenario where a civil contractor wholly subcontracts all the works under a civil contract (not just the building work) to a licenced third party never in practice arises. All other possible avenues for completing the building work (including a head contractor engaging different contractors to perform parts of the work or an unlicensed contractor who subcontracts the building work to a licensed subcontractor) would both result in building works being carried out in breach of section 42(1) of the QBCC Act.[110]

The CCF advised that:

> *(a) To the extent that any component of the civil contract relates to building works, whether that component is completed by the civil contractor or by a licenced subcontractor, the civil contractor will be required to hold a licence;*
>
> *(b) The civil contractor will be obliged to comply with the technical and financial requirements of licensing. In this regard it ought be noted that:*
>
> *(i) When determining the annual allowable turnover for that licence, regard will be had to all the works completed by the civil contractor, irrespective of how much of those works comprise building work – this assessment has a significant "flow on" impact to the other financial requirements; and*
>
> *(ii) Additional costs are usually associated with engaging a licensed contractor as the company's nominee/supervisor.*[111]

The Department advises:

> *The licensing proposals by the CCF raise policy issues which have not been considered by Cabinet or been subject to detailed policy analysis and broad industry consultation. It is recommended that the proposed reforms raised by the CCF be considered as part of a comprehensive review of the licensing provisions in the QBCC Act and QBCC Regulation in 2015.*[112]

At the public hearing on 10 September 2014, Mr Steve Griffin, QBCC Commissioner advised, in regard to civil contractors, that:

> *I would need to know more about how they are caught up with this act. I think the intent was to extricate them in the December amendments to the regulations. We need to have a look at that and see how they are captured, whether it is an interpretation on the QBC's part. I need to have a look at that. It may be our misinterpretation of it and if it is, then I will correct that misinterpretation. If it is a technical issue that is still embedded in the regulation then we will have a look at that and come back to government.*[113]

Committee comment

The Committee notes that the issues raised by the Civil Contractors Federation are specific to civil construction work. However, as the issues are significant and were not resolved in the December 2013 amendments, the Committee recommends that the matters raised by the Federation be further investigated with a view to legislative resolution.

[110] Civil Contractors Federation, submission 16:3
[111] Civil Contractors Federation, submission 16:3
[112] HPW, written brief (Attachment 1), September 2014:53
[113] Mr Steve Griffin, Hansard transcript, 10 September 2014:26

Recommendation 16

The Committee recommends that the issues raised by the Civil Contractors Federation be considered as part of the planned comprehensive review of the licensing provisions in the QBCC Act and QBCC Regulation in 2015.

3.10 Permitted individual applications

Clause 20 proposes to repeal the previous "permitted individual" regime whereby an excluded individual (individuals who have taken advantage of the laws of bankruptcy or have been a director, secretary or influential person of a company which is liquidated, wound up, enters into administration or has a controller appointed) can continue to hold a contractor's licence if they successfully apply to the Commission to become a 'permitted individual'. Clauses 18-24 make a range of consequential amendments to give effect to this hairdressing business, and that business becomes insolvent, the contractor will not be excluded.

Mr AJ Milne raised concerns with the omission of the 'permitted individual' regime stating:

> *It seems to me unjust to completely withdraw the right (to pursue permitted individual applications) rather than attempt to better draw the provision to deal with some perceived inconsistency. This is especially so when these provisions deal with building practitioners livelihoods…The current proposed amendments result in some undeserving parties receiving less time [excluded] (three years) while deserving candidates for permitted individual applications are denied any right to become permitted.* [114]

The Department advised that:

> *… The policy justification for the permitted individual provisions has proved to be fundamentally flawed. The system has been a substantive and understandable cause of criticism from subcontractor and consumer creditors (who in some cases have lost their life savings, livelihoods or homes as a result of the bankrupt builder or insolvent building company). Not surprisingly, creditors who through no fault of their own have suffered significant financial loss and hardship are highly critical of a system that allows a bankrupt building contractor or the director of a liquidated building company to be permitted by the Commission or the Tribunal to continue to hold a building contractor's licence.*
>
> *In practice, the permitted individual provisions have also proved to be cumbersome and subject to much disputation. Most excluded building contractors as a matter of course seek a review of any Commission decision that does not allow them to be a permitted individual. Notably, almost half of all review decisions in QCAT involving the Commission relate to a decision about a permitted individual application.*
>
> *Conversely, the current provisions are also arguably unfair to affected building contractors to the extent that the period of the exclusion exceeds the period of the bankruptcy (i.e. the licensee is excluded for 5 years not 3 years) (and) a relevant event under the QBCC Act is not limited to the construction industry (e.g. if a bankruptcy occurs because the licensee is a director of a company set up with the licensee's spouse to run a Bed and Breakfast, this will result in a loss of licence).*
>
> *The amendments in the Bill address the above and achieve a reasonable balance between consumer protection and affected building contractors...*[115]

[114] Mr AJ Milne, submission 19:1-2

[115] HPW, written brief (Attachment 1), September 2014:54-57

Committee comment

The Committee is satisfied with the rationale provided by the Department for removing the 'permitted individual' regime from the Act and supports the amendments proposed in the QBCC Bill.

4 Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of parliament.

4.1 Rights and liberties of individuals

4.1.1 Right to privacy

Clause 66 inserts new part 8, division 2A – (Confidentiality) – into the *Housing Act 2003*. It will enable confidential client information to be transferred from departments to an approved provider.

Section 94B(1)(a) & (b) provides that the disclosure of confidential information applies to:

- the chief executive or an employee of the department to an approved provider; or
- an approved provider or an employee of the approved provider to the chief executive or another approved provider.

Section 94B(2) provides that the chief executive, an employee of the department, an approved provider or employee of the approved provider, is not criminally liable for the disclosure under any law, including, for example, under a confidentiality provision[116] **if the disclosure is made for the purpose of providing a housing service** [author's emphasis]. Section 94B(3) provides that the chief executive or employee of the department is not civilly liable if the disclosure is made for the purpose of providing a housing service. Pursuant to section 94B(4) an approved provider or employee of the approved provider is not civilly liable if the disclosure is made for the purpose of providing a housing service and the disclosure does not contravene a term of the funded provider's funding agreement or for another approved provider, does not contravene a term of the provider's contract or agreement with a funded provider.

Sections 94C, D & E apply to confidential information given to an approved provider or an employee of an approved provider which under the *Ambulance Service Act 1991*, section 49A; *Child Protection Act 1999*, section 188(2) and the *Corrective Services Act 2006*, section 341(2) must not be disclosed. These sections state that an approved provider or employee must not disclose the information to anyone else, other than for the purpose of providing a housing service. The maximum penalty for contravening the *Ambulance Service Act 1991* is 50 penalty units while the maximum penalty for contravening the *Child Protection Act 1999* and the *Corrective Services Act 2006* is 100 penalty units or 2 years imprisonment.

The disclosure of confidential client information pursuant to section 94 potentially breaches the fundamental legislative principle that sufficient regard be given to the rights and liberties of individuals pursuant to section 4(2)(a) of the *Legislative Standards Act 1992*.

The Explanatory Notes provide the following justification for the new provisions:

> *To deliver on the government objective of transferring management of at least 90% of existing public housing to the non-government sector by 2020, it is considered necessary to allow for the disclosure of confidential information to an approved third party*

[116] Means any of the following - The *Ambulance Service Act 1991*, section 49A, the *Child Protection Act 1999*, sections 186 and 188, the *Corrective Services Act 2006*, section 341, the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6, the *Criminal Law (Sexual Offences) Act 1978*, section 10 and the *Witness Protection Act 2000*, section 36.

including by providing immunity from certain provisions imposing criminal liability for disclosure of information. The disclosure of information is required to ensure that public housing, once transferred to an approved provider for management can continue to be provided in ways that are responsive and tailored to the circumstances and needs of clients.

The Bill ensures confidential information is disclosed only in relation to the provision of housing services and in ways that are lawful and appropriate. New section 94A provides that confidential information may only be disclosed to an authorised person and that the immunity from criminal and civil liability only applies where the information is disclosed for the purpose of providing housing services. This immunity is considered justified to protect those who perform housing services functions.[117]

Committee comment

The Committee notes that stringent restrictions have been set around the disclosure and use of the confidential information and that, should information be disclosed that does not relate to housing services, penalties will apply. The Committee is satisfied that there are appropriate conditions around both the initial disclosure and subsequent use of confidential information.

4.1.2 Delegation of administrative power

Clause 67 amends section 99A(2) of the *Housing Act 2003* to provide that the chief executive may delegate the chief executive's functions or powers to an 'appropriately qualified **person**'. Currently, the chief executive may delegate a function pursuant to section 99A(2) to an 'appropriately qualified **public service employee'**. Section 99A(3) provides that a delegation of a function or power may permit the sub-delegation and further sub-delegation of the function or power to an appropriately qualified person.

Clause 67 will allow the delegation of powers to persons other than a public service employee. This is a potential FLP breach in that powers should only be delegated to appropriately qualified officers or employees. In this instance it would appear that the chief executive's powers will be delegated to an approved provider as defined pursuant to the provisions of clause 66.

The Explanatory Notes provide the following justification for the delegated power:

It may be argued that the extension of delegated powers of the chief executive to persons other than public service employees may raise concerns. The Bill ensures that delegations only extend to appropriately qualified persons and are restricted to certain specified functions relating to the provision of service to clients.

In order that housing services can continue to be provided appropriately and responsively by an approved provider it is considered appropriate to empower providers through delegations to make specified 'housing service decisions'. These include decisions about eligibility for assistance, the type of assistance to provide and the conditions that attach to the provision of housing services. Certain chief executive functions under the Housing Act 2003 are currently delegated to public service employees. The Bill provides for delegation outside the public service only to an appropriately qualified person. Also new section 99B provides that a delegate performing delegated functions or exercising delegated powers is subject to the Crime and Corruption Act 2001, Judicial Review Act 1991, the Ombudsman Act 2001 and the Public Interest Disclosure Act 2010.[118]

[117] QBCC Bill 2014 Explanatory Notes:5

[118] QBCC Bill 2014 Explanatory Notes:5

Committee comment

The Committee notes the Department's advice that the delegations extend only to qualified persons and are restricted to certain specified functions. The Committee is satisfied that there are appropriate restrictions around the delegation of these powers.

4.1.3 Natural justice

Clause 44 inserts new section 87A – (No stay by QCAT of particular decisions of commission). Pursuant to section 87A(2) QCAT is not to grant a stay of a decision if a person applies to the tribunal under section 87 for a review. Section 87A(1)(a)-(e) lists the decisions where a stay cannot be granted by QCAT including- a direction for rectification or completion of building work, rectification of consequential damage, a commission decision whether work is of a satisfactory standard, and matters relating to the statutory insurance scheme.

Section 87A raises a potential FLP pursuant to section 4(3)(b) of the *Legislative Standards Act 1992* as to whether the section is consistent with the principles of natural justice. It could be argued that the right of QCAT to stay a judgement upon application for review by an individual or group is an essential element of the justice system and that procedural fairness has been removed by section 87.

The Committee reported on this matter earlier in the report. Refer section 3.3 *Removal of QCAT's ability to place 'stays' on QBCC action* of this report for the Committee's comments.

4.2 The institution of parliament

4.2.1 Amendment of an Act only by another Act

There are several clauses in the Bill allowing for various types of matters to be prescribed by regulation. The clauses which allow for regulations are the following: 11, 27, 28, 34, 36, 37, 47, 58, 60, 68 & 77. While some of the clauses such as 11 & 34 provide for a regulation making power in relation to fees, several others, some of which are discussed below, deal with more substantive matters.

Clause 27

Clause 27 amends the definition of a demerit offence so that it is an offence against a provision prescribed by regulation, or a contravention of a requirement imposed under the Act and prescribed by regulation. The effect of the amendment is that demerit offences are prescribed by regulation and not in the Act.

It is a FLP that a Bill should only authorise the amendment of an Act by another Act (section 4(4)(c) of the *Legislative Standards Act 1992*. A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. While there are certain circumstances which may justify this approach (eg. to facilitate transitional arrangements, to facilitate the application of national scheme legislation), the existence of these circumstances does not automatically justify the use of Henry VIII clauses.

The Department advised that:

> *… allowing offences and breaches which attract demerit points to be prescribed by regulation facilitates immediate executive action by Government to better address changes in trends in undesirable and harmful industry behaviour that are immediately affecting the community. It also places the Government in a better position to promptly address and discourage a rise in offending behaviour during natural disasters where consumers are unusually vulnerable.*
>
> *… it is noted that the proposed regulation making-power is not without recent precedent. For example, infringement notice offences and applicable fines for all legislation in the State are prescribed in the State Penalties Enforcement Regulation 2014. Additionally,*

the various regulations made under the Transport Operations (Road Use Management) Act 1995 provide examples of the administration of demerit points by of regulation, rather than an Act. For example, Schedule 3 of the Transport Operations (Road Use Management – Driver Licensing) Regulation 2010 (Qld) ("DL Regulation"), details the demerit points associated with offences under both the DL Regulation and the Transport Operations (Road Use Management – Road Rules) Regulation 2009 (Qld).[119]

Committee comment

The Committee notes that there is precedent for offences in regulation and is satisfied with the justification for allowing offences and breaches which attract demerit points to be prescribed by regulation.

Clause 60

Clause 60, schedule 1B, Part 2, 13(4) - Requirements for contract, level 1 regulated contract – states that a contract must also comply with all other requirements prescribed by regulation. It is arguable that the use of a regulation in this instance does not provide certainty in relation to the terms of a contract. A similar provision is contained at clause 60, 14(10) in relation to - Requirements for contract—level 2 regulated contract.

It is a FLP that a Bill should only authorise the amendment of an Act by another Act (section 4(4)(c) of the *Legislative Standards Act 1992*. A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. While there are certain circumstances which may justify this approach (eg. to facilitate transitional arrangements, to facilitate the application of national scheme legislation), the existence of these circumstances does not automatically justify the use of Henry VIII clauses.

The Department advised that the clauses re-enact the current provision of section 27(2)(h) of the *Domestic Building Contracts Act 2000*. The Department further advised that:

It is considered justified to retain these clauses on the basis that they are necessary "to facilitate immediate executive action" to address emerging and changing unfair contracting practices in the building industry. While the Bill contains a comprehensive list of requirements that are essential to be included in regulated contracts, it is impossible for the drafters of the Bill to foresee all potential contractual drafting practices that may be developed by building contractors which are designed to place consumers in an unfair and/or prejudicial contractual relationship. In this regard, it is noted that the contractual knowledge differential between building contractors and home owners is typically substantial thereby placing home owners at significant risk. It is therefore critical that the Government is able to promptly respond to address a new contractual practice that may cause significant harm to consumers. The proposed regulation making power in the subject provisions achieves this.

It is also proposed that before any regulation is made under the QBCC Act there will be consultation with all affected stakeholders so that any impacts can be taken into consideration in the drafting of the regulation before submission to the Governor in Council for approval.[120]

[119] HPW advice on FLP issues, 29 September 2014:2-3
[120] HPW advice on FLP issues, 29 September 2014:3-4

Committee comment

The Committee notes that the provision to enable a regulation to prescribe contract requirements currently exists in the DBCA 2000 and is satisfied with the Department's justification for retaining this provision, noting that consultation with all affected stakeholders will occur.

4.3 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes provide some detail and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it would be helpful if the Explanatory Notes identified the specific clause(s) being discussed, when identifying the fundamental legislative principles.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Peter Kent
2	Parkhaven Homes Pty Ltd
3	Australian Timber Flooring Association
4	Jill Van Dorssen
5	Services Trades Queensland (STQ)
6	Altec The Spacemakers
7	Don Jender
8	Excluded
9	Seapointe Homes
10	Housing Industry Association (HIA)
11	Association of Wall & Ceiling Industries of Queensland Inc
12	Master Builders Queensland
13	Private
14	Paul Smith
15	Australian Institute of Building (AIB)
16	Civil Contractors Federation
17	Ron Musk
18	Wayne Bloomer
19	AJ Mylne

Appendix B – Witnesses at public briefing – Wednesday 27 August 2014

Department of Housing and Public Works
Mr Boyd Backhouse, Executive Director, Legal Services
Mr Jeremy Hill, Manager, Legislation and Reform, Strategy and Policy, Housing Services
Mr Don Rivers, Assistant Director-General, Building Industry and Policy
Mr Damien Walker, Deputy Director-General, Housing Services
Queensland Building and Construction Commission
Mr Steve Griffin, Commissioner
Ms Kellie Lowe, Director, Executive Office

Appendix C – Witnesses at public hearing – Wednesday 10 September 2014

Mr Paul Bidwell, Deputy Executive Director, Master Builders
Mr Phillip Breeze, Housing Services Manager, Master Builders
Mr Warwick Temby, Executive Director – Queensland, Housing Industry Association
Ms Laura Regan, Workplace Services Manager, Housing Industry Association
Mr Damian Long, President, Civil Contractors Federation
Mr Ross Williams, Legal Counsel, Civil Contractors Federation
Mr Ian Swann, Executive Director, Association of Wall and Ceiling Industries
Mr David Jenkins, Chief Financial Officer, Altec
Mr Darrell Rogers, Builder, Seapointe Homes
Mr Paul Smith, Licensed Builder
Ms Jill van Dorssen, Private capacity
Mr Boyd Backhouse, Executive Director, Legal Services, HPW
Mr Jeremy Hill, Manager, Legislation and Reform, Strategy and Policy, Housing Services, HPW
Mr Don Rivers, Assistant Director-General, Building Industry and Policy, HPW
Mr Damien Walker, Deputy Director-General, Housing Services, HPW
Mr Michael Chesterman, Adjudication Registrar and Director, Contractual Development, QBCC
Mr Steve Griffin, Commissioner, QBCC

Appendix D – Proposed new or amended offence provisions

Cl.	Offence	Proposed maximum penalty	Comment
	Queensland Building and Construction Commission Act 1991 (QBCC Act)		
36	Amended s.68B(2) The licensed contractor must collect from the consumer, and pay to the commission, the appropriate insurance premium before the first of the following to happen— (a) 10 business days elapse from the day the contract was entered into; (b) the residential construction work starts.	100 penalty units	**Minor change** The amendments merge current requirements contained in sections 68 and 68B of the QBCC Act to provide a single provision dealing with premiums for contracts for insured work entered with consumers. Minor amendments to the existing requirement include a specific time for payment, removing the uncertainty in the current legislation which refers only to "as soon as practicable". The maximum penalty is unchanged (s68 refers)
	Amended s.68B(3) A licensed contractor who is to carry out residential construction work that is speculative residential construction work must pay the appropriate insurance premium for the work before the work starts.	100 penalty units	**No substantive change** The amendment merges current requirements applicable to speculative residential construction work (sections 68 and 68B of the QBCC Act) into a single concise provision. Time frame and penalty are unchanged.
	Amended s.68C(2) If the construction manager holds a contractor's licence of the relevant class for the construction management contract, the manager must collect from the principal, and pay to the commission, the appropriate insurance premium before the first of the following to happen— (a) 10 business days elapse from the day the manager is engaged under the contract; (b) the residential construction work starts.	100 penalty units	**Minor change** The amendments merge current requirements contained in sections 68 and 68C of the QBCC Act to provide a single provision dealing with premiums for insured work subject to a construction management contract. Minor amendments to the existing requirement include a specific time for payment, removing the uncertainty in the current legislation which refers only to "as soon as practicable". The maximum penalty is unchanged (s68 refers)
	Amended s.68E(1) An assessment manager or compliance assessor must not, under the *Sustainable Planning Act 2009*, issue a development approval or a compliance permit for building work in relation to residential construction work unless— (a) the assessment manager or compliance assessor has written information from the commission showing that the appropriate insurance premium has been paid; or (b) the applicant produces satisfactory evidence that no insurance premium is payable.	20 penalty units	**No substantive change** The provision is substantially the same as section 68(2) of the QBCC Act. The provision does not include equivalent provisions to subsections 68(3) (which provides that a certificate of insurance issued by the Commission as being conclusive evidence) or 68(4) (which provides that the provision applies to private certifier who is acting as an assessment manager) of the QBCC Act.

Cl.	Offence	Proposed maximum penalty	Comment
	Amended s.70(2) Bill If the value of the residential construction work will increase because of the variation, the licensed contractor carrying out the work must pay an additional insurance premium on behalf of the consumer for the work to the commission before any work relating to the variation starts.	100 penalty units	**New offence** Currently the premium payable is calculated on the value of the residential construction work. If the value of the residential construction increases due to a variation, the appropriate premium payable by the contractor also increases. By implication, if the contractor fails to pay the appropriate premium for the work, a penalty under section 68 applies. While the amendment creates a specific offence provision to address this issue, in substance it replicates the existing law. Accordingly, there is no additional burden on contractors. The benefits of the amendment include improved clarity of drafting and greater awareness and understanding of the obligation. The maximum penalty is consistent with current penalty attaching to the requirement to pay the premium within the applicable time.
	Amended s.70A(2) If the value of the residential construction work will increase because of the variation, the licensed contractor must pay the additional insurance premium for the work to the commission before any work relating to the variation starts.	100 penalty units	**New offence** The comments above for section 70(2) of the Bill also apply to this amendment. Section 70A(2) amendment applies the same requirement as in 70(2) to pay additional premium (resulting from a variation) to licensed contractors who carry out speculative residential construction work. Similar to the proposed section 70(2), the amendment does not in substance impose an additional burden or penalty on the licensed contractors.
	Amended s.71E(1) A person must not use a declared expression in connection with selling the right to participate in any warranty or insurance scheme unless— (a) the scheme is that to which this Act relates; and (b) the person does so on behalf of the commission.	100 penalty units	**No change** The amendment replicates section 67Y(1) of the QBCC Act. The maximum penalty is unchanged.
	Amended s.71E(2) A person must not— (a) use any variation of a declared expression; or (b) use any word (either alone or in conjunction with any other word) similar in sight or sound to a declared expression; in connection with selling the right to participate in any insurance or warranty scheme, being a use likely to afford reasonable grounds for believing the scheme is or is associated with the scheme to	100 penalty units	**No substantive change** The amendment essentially replicates section 67Y(2) of the QBCC Act. The maximum penalty is unchanged.

Cl.	Offence	Proposed maximum penalty	Comment
	which this Act relates, unless— (c) the scheme in question is one to which this Act relates; and (d) the person does so on behalf of the commission.		
37	Replacement s.73 A person must not fail to rectify building work that is defective or incomplete, or to remedy consequential damage, as required by a direction given to the person under section 72(2).	250 penalty units	**No substantive change** The amendment makes the offence contained in section 72(10) of the QBCC Act a stand-alone provision. In substance it replicates the existing law. The maximum penalty is unchanged.
38	New 74D The types of disciplinary action the commission may take are— (a) for defective or incomplete building work carried out by the person for a building owner—directing the person pay, within a stated period, the building owner an amount sufficient to rectify the work; or (b) for consequential damage caused by, or as a consequence of, building work carried out by the person—directing the person pay, within a stated period, the owner of the residence affected by the consequential damage an amount sufficient to remedy the damage; or (c) directing the person to pay, within a stated period, compensation to someone else who has suffered loss or damage because of the act or omission that resulted in the disciplinary action; or (d) imposing a penalty on the person of not more than— (i) for an individual—an amount equivalent to 200 penalty units; or (ii) for a corporation—an amount equivalent to 1000 penalty units; or (e) if the person is a licensee— (i) reprimanding the licensee; or (ii) suspending the licence; or (iii) imposing conditions on the licence; or (iv) cancelling the licence.	200 penalty units (individual) 1000 penalty units (corporation)	**New provision – New power** Currently all disciplinary proceedings must be commenced in QCAT. The amendment provides the Commission with power to take disciplinary action independent of the Queensland Civil and Administrative Tribunal (QCAT). The amendments give the Commission new power to: - direct a person to pay an amount sufficient to rectify defective work, consequential damage, or other loss; - to impose a penalty on a person as part of disciplinary action (rather than through the issuing of an infringement notice for an offence); - to reprimand a licensee, impose licensing conditions or to suspend or cancel a licence. The amendments also provide clarity in relation to consequential damage. Currently the Commission has the power to issue a direction to rectify and/or complete work under section 72 of the QBCC Act.
48	Amended s.101(1) Failure by a licensee to advise the commission of a change to their licence particulars, within 14 days of the change occurring.	20 penalty units	**New offence for existing requirement** The amendment attaches an offence to a current requirement to advise the Commission of a change of particulars (section 101 of the QBCC Act refers). Currently no penalty attaches for breach of the requirement.

Cl.	Offence	Proposed maximum penalty	Comment
60	New Sch 1B, Div 2, s.15 Within 5 business days after entering into a regulated contract, the building contractor must give the building owner a readily legible signed copy of the contract, including any plans and specifications for the subject work.	60 penalty units	**Minor change and increased penalty** The amendment substantively replicates section 36 of the *Domestic Building Contracts Act 2000* (DBC Act). In addition, the amendment expressly includes any plans and specifications for the contracted work as part of the requirement. The amendment increases the maximum penalty for non-compliance from 20 penalty units to 60 penalty units.
	New Sch 1B, Part 2, Div 2, 16(2) Within 10 business days of starting the subject work at the building site, the building contractor must give the building owner a commencement notice signed by the contractor and stating— (a) the date the subject work started at the building site; and (b) the date for practical completion.	40 penalty units	**New provision** This is a new offence with no equivalent provision in current legislation.
	New Sch 1B, Part 2, Div 2, 17(2) The building contractor must give the building owner a copy of each certificate of inspection issued by the building certifier for the subject work as soon as practicable after receiving the certificate.	20 penalty units	**Minor change** The amendment is consistent with section 39(2) of the DBC Act. However the current provision also includes any certificates issued by persons other than building certifiers. In contrast the amendment is limited to certificates of inspection issued by the building certifier. The maximum penalty is unchanged.
	New Sch 1B, Part 2, Div 2, 18(2) The building contractor must give the building owner a copy of the consumer building guide before the owner signs the contract.	20 penalty units	**Minor change** The consumer building guide is to replace the contract information statement referred to in the DBC Act. Section 40 of the DBC Act requires building contractors to give the building owner a contract information statement for the contract when the contract is entered into or within 5 days of the contract being entered. The amendment ensures that the guide is provided before the contract is signed. The maximum penalty is consistent with the current requirement to provide an information statement.
	New Sch 1B, Part 4, Div 1, 30 The building contractor for a regulated contract must not start to provide the contracted services before the contract complies with the requirements of— (a) for a level 1 regulated contract—schedule	100 penalty units	**Change to existing provision and increased penalty** Section 26 of the DBC Act states the formal requirements for regulated contracts, but does not distinguish between levels of regulated contracts. The maximum penalty imposed by the DBC Act for

Cl.	Offence	Proposed maximum penalty	Comment
	section 13; or (b) for a level 2 regulated contract—schedule section 14.		breach is 20 penalty units.
	New Sch 1B, Part 4, Div 1, 31(2) Before entering into the contract, the building contractor must obtain the foundations data that is appropriate for the building site, having regard to the following— (a) the Building Code of Australia; (b) the need for a drainage plan; (c) the need for engineer's drawings and computations; (d) the need for information on the fall of the land at the building site.	100 penalty units	**No substantive change** The provision replicates section 53(2) of the DBC Act. The maximum penalty is unchanged.
	New Sch 1B, Part 4, Div 1, 31(4) The building contractor must give a copy of any foundations data obtained by the building contractor for this section to the building owner on payment by the building owner of the costs incurred by the building contractor in obtaining the data.	10 penalty units	**No substantive change** The provision replicates section 53(4) of the DBC Act. The maximum penalty is unchanged.
	New Sch 1B, Part 4, Div 2, 33(1) The building contractor under a regulated contract must not, before starting to provide the contracted services at the building site, demand or receive a deposit under the contract of more than— (a) for a level 1 regulated contract (other than a contract mentioned in paragraph (c))—10% of the contract price; or (b) for a level 2 regulated contract (other than a contract mentioned in paragraph (c))—5% of the contract price; or (c) for a level 1 or 2 regulated contract under which the value of the off-site work is more than 50% of the contract price—20% of the contract price.	100 penalty units	**Change to existing provision** The amendment replaces section 64 of the DBC Act in applying a maximum deposit for domestic building contracts. Similar to the DBC Act, the amendments impose a maximum deposit based as a percentage of the contract price with two value levels of contract. The value levels are to be prescribed by regulation. The amendment also recognizes contracts which include an off-site work component valued at more than 50% of the contract price. For these contracts a maximum deposit of 20% of the contract price applies. The maximum penalty is unchanged.
	New Sch 1B, Part 4, Div 2, 34(1) The building contractor under a regulated contract must not claim an amount under the contract, other than a deposit, unless the amount— (a) is directly related to the progress of carrying out the subject work at the building site; and	50 penalty units	**Change to existing provision** The amendment is similar to section 65 of the DBC Act which requires amounts demanded or received to be directly related to the progress of work being carried out under the contract. However, section 65 only applies to regulated contracts that are not 'designated stage contracts' whereas the

Cl.	Offence	Proposed maximum penalty	Comment
	(b) is proportionate to the value of the subject work that relates to the claim, or less than that value. *Example for paragraph (b)—* The claimed amount is for half of the contract price for a regulated contract, less a 5% deposit, and is demanded after the completion of half of the subject work.		amendment applies to all regulated contracts. In addition, the amendment requires the amount to be proportionate to the value to the work relevant to the claim. The DBC Act currently provides maximum percentage caps for the various stages a 'designated stages' contract. The amendment provides a uniform approach to progress payments for regulated contracts. The maximum penalty is unchanged.
	New Sch 1B, Part 6, 40(2) The building contractor must give the building owner a copy of the variation in a written form before the first of the following happens— (a) 5 business days elapse from the day the building contractor and the building owner agree to the variation; (b) any domestic building work the subject of the variation starts.	20 penalty units	**No substantive change** Section 83 of the DBC Act currently requires a building contractor to give the building owner a copy of an agreed variation in writing as soon as practicable, but within 5 days of the agreement. Section 83 contained additional requirements for the document to be readily legible and signed. The maximum penalty is unchanged.
	New Sch 1B, Part 6, 40(5) The building contractor must not start to carry out any domestic building work the subject of the variation before the building owner agrees to the variation in writing.	20 penalty units	**No substantive change** Section 79 of the DBC Act requires building contractors to ensure agreed variations are put into writing within the *shortest practicable time* and before the work subject to the variation is carried out. The maximum penalty is unchanged.
	New Sch 1B, Part 6, 41(1) The building contractor under a regulated contract must ensure a document evidencing a variation of the contract complies with the formal requirements for a variation.	20 penalty units	**No change** The amendment replicates section 80 of the DBC Act. The maximum penalty is unchanged.
	New Sch 1B, Part 6, 42(2) A building contractor under a regulated contract must not seek to rely on an extension of time under the contract unless the contractor claimed for the extension of time in compliance with subsection (1).	20 penalty units	**New offence** There is no equivalent provision in current legislation.
	New Sch 1B, Part 6, 42(3) A building contractor under a regulated contract must give the building owner a signed copy of a claim for an extension of time within 5 business days of the owner approving the claim.	20 penalty units	**New offence** There is no equivalent provision in current legislation.
	New Sch 1B, Part 7, 43(2) A building contractor who lodges a caveat	100 penalty units (for subsection	**No substantive change** The amendment replicates section 85(2) of the DBC

Cl.	Offence	Proposed maximum penalty	Comment
	claiming an interest in land of a building owner under a domestic building contract knowing the owner to be a resident owner commits an offence.	(2))	Act. The maximum penalty is unchanged.

Statements of Reservation

DESLEY SCOTT MP
SHADOW MINISTER FOR COMMUNITY SERVICES AND CHILD SAFETY
SHADOW MINISTER FOR MENTAL HEALTH
SHADOW MINISTER FOR WOMEN AND SENIORS
SHADOW MINISTER FOR MULTICULTURAL AFFAIRS
MEMBER FOR WOODRIDGE
PO Box 15057, City East QLD 4002
reception@opposition.qld.gov.au (07) 3838 6767

7 October 2014

Mr Howard Hobbs
Chair
Transport, Housing and Local Government Committee
Parliament House
George St
Brisbane QLD 4000

Dear Chair

Statement of Reservation – *Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014*

I wish to notify the Transport, Housing and Local Government Committee that the Queensland Opposition has reservations about aspects of Report No. 54 of the Transport, Housing and Local Government Committee into the *Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014.*

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

Desley C. Scott

Desley Scott MP
Member for Woodridge

Carl Judge MP
State Member for Yeerongpilly

8 October 2014

Howard Hobbs MP
Chair of the Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hobbs,

Statement of Reservation re Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014.

Please be advised that I do not support the Committee's recommendation that the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 be passed.

I intend to detail my reservations upon resumption of the second reading debate.

Yours sincerely,

Carl Judge MP
Member for Yeerongpilly

Yeerongpilly Office: 3/116 Beaudesert Road Moorooka Qld 4105
Phone: (07) 3848 4410 Fax: (07) 3892 2229
Email address: Yeerongpilly@parliament.qld.gov.au Website: www.carljudgemp.com.au