

Minister for Housing and Public Works

Queensland Government Response to Transport, Housing and Local Government Committee Report No. 54

Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014

INTRODUCTION

On 8 October 2014, the Transport, Housing and Local Government Committee tabled its Report No. 54 on the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014.

The Queensland Government response to the Report's recommendations is provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

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

Queensland Government Response

The Government thanks the Committee for its consideration of the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 (the Bill) and appreciates the Committee's recommendation that the Bill be passed.

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* can be determined.

Queensland Government Response

It is understood that the reference in recommendation 2 to the *Domestic Building Contracts Act 2000* was intended to be a reference to the *Building Act 1975* (Building Act). On this basis, the Government agrees with the recommendation and will review the provisions concerning the provision of stage certificates following the outcomes of the Building Act and certification review.

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.

Queensland Government Response

It is considered the current requirement that designated stages contracts must include prescriptive payment stages, with set payment percentages for each stage, should be

removed so as to allow the parties the flexibility to determine, and describe in their contracts, the payment stages most appropriate to their domestic building contract. Consumer protection will be maintained, as proposed new section 34 of Schedule 1B introduces an overarching requirement which cannot be contracted out of, that all progress payments for any regulated contract must be directly related to progress of the work on site and proportionate to the value of the work that relates to the claim. The Bill provides for a regulation to prescribe when an amount is proportionate to the value of the work under a regulated contract, in the event that the Queensland Building and Construction Commission encounters emerging consumer protection issues in regulated contracts. For this reason, an amendment to the Bill is not supported.

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.

Queensland Government Response

The Government agrees with the recommendation that a review be conducted as to the suitability of current deposit maximums, bearing in mind that any increase in deposit maximums should be balanced against an increased risk to consumers and the flow on effects to insurance premiums. It is proposed that the review be conducted during 2015.

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.

Queensland Government Response

The Government considers that the Bill as drafted represents a fair balance between the interest of contractors and consumers and that any increase above this level is likely to place consumers at greater risk. While there are a number of sectors of the building industry in which a high proportion of the work is performed off site, it is considered that the most appropriate way to address this issue is via the introduction of increased allowable deposits (from 5 or 10%, depending on the contract price, to 20% where the value of off-site work is more than 50% of the contract price) rather than trying to provide a separate progress payment regime.

It is considered that any exemption from the general protective requirement that progress payments be directly related to the work on site could expose consumers to greater risk since any payments before work commences on site are payments for work which the consumer cannot inspect, control or take possession of in the event the contractor becomes insolvent. For this reason, an amendment to the Bill is not supported.

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.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes that amendments be made to section 31 in schedule 1B of the Bill as outlined in the recommendation.

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'.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes that the Bill be amended accordingly.

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).

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes that the Bill be amended accordingly.

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.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes that the Bill be amended accordingly.

Recommendation 10

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

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes to amend new section 29(3)(a) in Schedule 1B, to reduce the warranty period for non-structural defects to one year.

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.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes that the Bill be amended accordingly.

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.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes to amend the definition of 'written form' in new section 40 of Schedule 1B to include electronic communications, consistent with the *Electronic Transactions (Queensland) Act 2001*.

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.

Queensland Government Response

The Government agrees in-principle with the recommendation and proposes to address this matter by amending proposed new sections 13(5) and 14(11) to provide that the contract has effect only if it complies with sections 13(2) and 14(2), as applicable.

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 the process will not.

Queensland Government Response

The Government considers that proposed new section 67WB adequately states which parts of the manufactured/prefabricated homes process will not be covered by the statutory insurance scheme. Should further clarification or detail be required following consultation with consumers and industry, it would be included in an amendment to the *Queensland Building and Construction Commission Regulation 2003*. For this reason, an amendment to the Bill is not supported.

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.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes that the Bill be amended to provide that an additional insurance premium must be paid in circumstances where a variation results in an increase to the value of residential construction work of \$5,000 or more.

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.

Queensland Government Response

The Government notes this point of clarification and that the Minister for Housing and Public Works proposes to address this matter in the second reading speech during the debate of the Bill.

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.

Queensland Government Response

The Government notes this point of clarification and that the Minister for Housing and Public Works proposes to address this matter in the second reading speech during the debate of the Bill.

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 the QBCC Regulation in 2015.

Queensland Government Response

The Government agrees with the Committee's recommendation and proposes to conduct a comprehensive review of licensing categories, licensing scope and qualifications in 2015.