Parliamentary Committees

Plumbing and Drainage Bill 2018

Report No. 3, 56th Parliament
Transport and Public Works Committee
April 2018

Transport and Public Works Committee

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Acknowledgements

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Contents

Abbreviations

ABCB	Australian Building Codes Board
the Act or the new Act	*Plumbing and Drainage Act 2018*
AMCA	Air Conditional and Mechanical Contractors' Association
ARA	Australian Refrigeration Association
ARCtick	Australian Refrigeration Council license identification
ARMA	Australian Refrigeration Mechanics Association
BCC	Brisbane City Council
the Bill	Plumbing and Drainage Bill 2018
the Building Plan	Queensland Building Plan
CoGC	City of Gold Coast
the code	Queensland Plumbing and Wastewater Code
the committee	Transport and Public Works Committee
the former committee	the former Public Works and Utilities Committee of the 55th Parliament
the department	Department of Housing and Public Works
ETU	Electrical Trades Union
FLP	Fundamental legislation principles
HIA	Housing Industry Association
HVAC&R	Heating, Ventilation, Air Conditioning & Refrigeration industry
IPIQ	Institute of Plumbing Inspectors Qld Inc
LCC	Logan City Council
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
MBRC	Moreton Bay Regional Council
MBQ	Master Builders Queensland

the Minister	Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport Minister
MPAQ	Master Plumbers Association of Queensland
OQPC	Office of Queensland Parliamentary Counsel
PCA	Property Council of Australia
the Planning Act	*Planning Act 2016*
the Plumbing Union	Plumbing and Pipe Trades Employees Union
PWUC	The former Public Works and Utilities Committee of the 55th Parliament
QBCC	Queensland Building and Construction Commission
QCAT	Queensland Civil and Administrative Tribunal
QPW	Queensland Plumbing and Wastewater Code
RAC	Refrigeration and Air Conditioning
SLC	Former Scrutiny of Legislation Committee
STC or the council	Service Trades Council
2017 Bill	Plumbing and Drainage Bill 2017

Chair's foreword

This report presents a summary of the Transport and Public Works Committee's examination of the Plumbing and Drainage Bill 2018.

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

The committee's inquiry was helped by the work of the former Public Works and Utilities Committee (PWUC) which considered a previous version of the Bill which lapsed due to the dissolution of the Parliament for the 2017 election. The former committee's actions, which included calling for submissions and holding a public departmental briefing, assisted the committee in its own endeavours.

The committee has made three recommendations, including that the Bill be passed. There were several submitters who presented evidence that was outside the scope of the Bill, both in written submissions and at our public hearing. Some of these were concerning enough for us to recommend that the Minister consider looking at them in the future.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and met with the Committee at its public hearing. I also thank the Parliamentary Service staff, the Department of Housing and Public Works, and the Queensland Building and Construction Commission.

I commend this report to the House.

Mr Shane King MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Transport and Public Works Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly. The committee's primary areas of responsibility are Transport and Main Roads, Housing, Public Works, Digital Technology and Sport.[1]

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Plumbing and Drainage Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee is to report to the Legislative Assembly by 9 April 2018.

1.2 Inquiry process

On 22 February 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. The committee also wrote to those individuals and organisations who provided submissions on the Plumbing and Drainage Bill 2017 advising that their submissions would be included in the committee's evidence unless they advised otherwise. Sixty-five submissions were received. (See Appendix A for a list of submissions).

The committee received a public briefing about the Bill from the Department of Housing and Public Works (the department) on 5 March 2018 (see Appendix B for a list of officials). The committee also held a public hearing on 19 March 2018 (see Appendix C for a list of witnesses). The committee also invited the department to a further briefing on 19 March 2018 to respond to issues raised by stakeholders (see Appendix D for a list of officials).

The committee received written advice from the department in response to matters raised in submissions. The committee also received written responses to questions taken on notice at the public briefing and the public hearing.

The submissions, correspondence from the department and transcripts of the briefings and hearing are available on the committee's webpage.

1.2.1 Plumbing and Drainage Bill 2017

The Plumbing and Drainage Bill 2017 (2017 Bill) was referred to the former Public Works and Utilities Committee (PWUC) prior to the dissolution of Parliament for the 2017 election. PWUC held a departmental briefing and received 16 submissions. The Bill lapsed when the 55th Parliament was dissolved. The 2018 Bill is substantially the same as the previous Bill; however, the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport Minister (the Minister) advised of the following differences:

- original Part 7 relating to QBCC investigators has been omitted with resulting related amendments
- commencement date has been amended

[1] Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 15 Feb 2018.

- insertion of the word 'not' in clause 78(2), which was omitted in error in the previous Bill.

The Minister further explained these changes from the 2017 Bill in his introductory speech for the Bill:

> *Part 7 of the 2017 bill contained provisions that related to QBCC investigators. They provided for matters such as the appointment, functions and powers of QBCC investigators. These provisions were originally included in the bill as they were needed to ensure the effective compliance and enforcement of the new Plumbing and Drainage Act. However, amendments to the* Queensland Building and Construction Commission Act 1991 *made by the* Building Industry Fairness (Security of Payment) Act 2017 *have established standardised provisions that relate to QBCC investigators and investigations. As these standardised provisions apply to the Plumbing and Drainage Act, part 7 can be omitted. The omission of part 7 has also resulted in a number of minor amendments to the bill. The commencement date in the bill has also been amended from 2 July 2018 to a date fixed by proclamation. This change ensures sufficient time for industry, local government and the community to prepare for the new Plumbing and Drainage Act.*
>
> *Finally, the bill contains a minor amendment to insert the word 'not' in clause 78(2). This was omitted in error in the previous bill. This change will clarify the obligation on the owner of a premises which discharges kitchen greywater in an unsewered area.*[2]

1.3 Policy objectives of the Bill

The Bill provides for the repeal of the *Plumbing and Drainage Act 2002* and the introduction of a new Act, the *Plumbing and Drainage Act 2018* ('the Act' or 'the new Act'), which establishes a new legislative framework for plumbing and drainage in Queensland.

The explanatory notes state that the key objectives of the Bill are to:

1. Establish a contemporary, streamlined and flexible legislative framework for plumbing and drainage that is clear and simple for the end user by repealing the *Plumbing and Drainage Act 2002* and replacing it with a new Act. This will ensure both public health and the environment are protected, and will meet industry and community expectations over the next decade.

2. Provide authority for the making of a contemporary plumbing regulation that will be clear and easy for practitioners to use, reduce the regulatory burden on consumers, industry and local government, and include improved regulatory requirements for obtaining approvals for plumbing and drainage work.

3. Provide authority for the making of a contemporary plumbing code that will include all plumbing standards required to vary and complement national plumbing standards.

4. Protect public health and safety through the regulation of mechanical services work, including medical gas work, under the Queensland Building and Construction Commission (QBCC).[3]

[2] Record of Proceedings, 15 February 2018, pp 123-124.

[3] Plumbing and Drainage Bill 2018 explanatory notes, p 1.

1.4 Government consultation on the Bill

The explanatory notes advised that a 'comprehensive' consultation program on the Bill had been conducted including:

- preliminary consultation with key plumbing and building stakeholders was followed by the release of a discussion paper for a six weeks' public consultation and a series of state-wide information forums
- in late 2016 the plumbing reforms were rolled into the Queensland Building Plan (the Building Plan), and a discussion paper containing potential or planned reforms was released
- an exposure draft of the Bill was released for public consultation in November 2016, together with an exposure draft of the draft regulation, for a three-month consultation period for the Building Plan
- key industry stakeholders reviewed and provided verbal feedback on an initial draft of the Bill and early versions of the draft regulation and Queensland Plumbing and Wastewater Code in workshops held by the department in December 2016 and February 2017
- state-wide industry and community consultation sessions on the Building Plan were held throughout 15 local government areas in February and March 2017, in which stakeholders were invited to provide verbal feedback
- feedback was invited from stakeholders on a consultation draft of the Bill that was circulated to key industry stakeholders in August 2017.[4]

The proposed new mechanical services licence was also the subject of consultation with key stakeholders and with the Office of Best Practice Regulation which advised that the proposal would benefit from further analysis in the form of a Regulatory Impact Statement (RIS) – the explanatory notes advised that a RIS will be finalised prior to the commencement of the transition process.[5]

During the briefing, the department provided further information regarding consultation:

> *As I mentioned earlier, a comprehensive consultation process was completed over a three-year period. In 2014, a three-day workshop involving initial consultation with key plumbing and building stakeholders informed proposals which were released in a discussion paper later that year. Proposed plumbing reforms including feedback from that discussion paper and an exposure draft of the plumbing bill were included in the Queensland Building Plan, which was released for stakeholder feedback between November 2016 and March 2017. This was supported by information sessions conducted across Queensland.*
>
> *In total, over the last three years representatives from 41 key industry organisations have come together on 22 separate occasions to represent their members' interests and provide technical expertise. A total of 25 statewide roadshows have been held to encourage participation, and 813 online survey responses and 364 written submissions were received from industry, licensees and the community over the course of the plumbing review.*[6]

4 Plumbing and Drainage Bill 2018 explanatory notes, p 8.

5 Plumbing and Drainage Bill 2018 explanatory notes, p 8.

6 Department of Housing and Public Works, public briefing, Brisbane, 5 March 2018, p 3.

1.4.1 Stakeholder feedback on consultation

The committee notes that while the Plumbing and Pipe Traders Employees Union (the Plumbing Union) advised that it had been involved in 'extensive consultation sessions throughout Queensland', the Heating, Ventilation, Air Conditioning and Refrigeration (HVAC&R) industry representatives held contrary views.[7]

Australian Refrigeration and Mechanics Association (ARMA) expressed strong views regarding the consultation with the HVAC&R industry on the new mechanical services occupational licence:

> *The deliberate exclusion of consultation with the Heating, Ventilation, Air Conditioning and Refrigeration industries people and total disregard of a specialist field is indicative of the plumbing industries attempt to take ownership of the HVACR industry through the union controlled plumbing industries. (note: no HVACR industries listed in the Explanatory notes under consultation)*
>
> *…*
>
> *The refrigeration and air conditioning industry totally excluded from industry consultation at the time of drafting the bill. Establish and maintain "gate keeping mechanisms" in the decision-making process. To ensure regulatory impacts proposed by regulatory instruments are made fully transparent in advance.*[8]

Australian Refrigeration Association (ARA) stated that the Bill fails 'to provide the appropriate legislation to protect the HVAC&R industry and consumers with regulations and an appropriate trade license.'[9]

In this regard, both ARA and ARMA sought a Regulation Impact Statement (RIS). ARMA stated that a consultative RIS would 'provide additional licensing scope to existing refrigeration within licensing structures and a cost- benefit analysis, this makes sense if governments want the highest net benefit'.[10] ARA stated that the RIS would be 'a mechanism for gathering a broader consultative process on the refrigeration and air conditioning industry in support of a HVAC&R industry who rightfully deserve its own license as are plumbers and electricians.'[11]

The explanatory notes state:

> *The establishment of a new mechanical services licence was the subject of consultation with key stakeholders. Consultation was also undertaken with the Office of Best Practice Regulation who advised that the proposal would benefit from further analysis in the form of a Regulatory Impact Statement (RIS). A RIS will be finalised prior to the commencement of the transition process.*[12]

The department advised that it has 'committed to undertaking a RIS prior to the implement of the proposed mechanical services licence.[13] The department also advised:

> *The commencement of the licensing is once we have worked through the regulation with industry to identify when industry would be ready, so I cannot put a time frame on that. The regulatory impact assessment will be done prior to that.*[14]

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7 Plumbing and Pipe Trades Employees Union, submission 12, p 1.

8 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 4.

9 Australian Refrigeration Association, submission 21, p 1.

10 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 4.

11 Australian Refrigeration Association, submission 21, p 2.

12 Plumbing and Drainage Bill 2018 explanatory notes, p 8.

13 Department of Housing and Public Works, response to submissions, p 65.

14 Department of Housing and Public Works, public hearing transcript, Brisbane, 19 March 2018, p 21.

In response to comments on consultation on the Bill, particularly relating to the introduction of the mechanical services occupational licence, the department advised:

> *Under the QBP discussion paper, industry and consumers were consulted about the proposed introduction of a mechanical services licence based on the Victorian mechanical services licensing model and the regulation of medical gas.*
>
> *684 online surveys responded to the proposed creation of a new mechanical services licence and 188 responded to the proposal to regulate medical gas. A further 159 written submissions were received in response to the proposed licensing reforms in the QBP discussion paper.*
>
> *The consultation identified broad industry concern about Queensland adopting the Victorian mechanical services licensing model. Consequently, the Bill modifies the Victorian model to reflect the feedback, especially the need to recognise the specialist streams of mechanical services work. For example, air-conditioning and refrigeration and plumbing work on heating and cooling systems.*
>
> *The revised model aims to maintain the community protection element in high risk buildings whilst recognising industry expertise.*
>
> *The proposal to introduce a new licence class to regulate "medical gas" received strong support from industry and the community. Respondents recognised the serious implications of this work being undertaken by individuals who are not appropriately qualified and licensed.*[15]

The department advised that it had met with HVAC&R representatives:

> *In addition to the QBP consultation, the Department has meet with the HVCAR industry associations and held separate meetings with industry representatives to ensure that their concerns were fully appreciated and considered as a part of the policy development process.*[16]

At the committee's public hearing, the ARMA representative advised:

> *We did not know about the draft bill or the consultation processes that were taking place. From memory, we were actually a day or two away from the survey closing online. I had spoken to ARA, ARC, RACCA and AMCA of course and none of us were aware. This is a common problem here in Queensland where the actual industry is not being consulted. Once we found out what was happening—and I have to truly give credit to the minister's department; they have been working with us and keeping us appraised of everything that is happening.*[17]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Plumbing and Drainage Bill 2018 be passed.

15 Department of Housing and Public Works, response to submissions, 16 March 2018, p 12.

16 Department of Housing and Public Works, response to submissions, 16 March 2018, p 66.

17 ARMA, public hearing transcript, Brisbane, 19 March 2018, p 10.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Plumbing and drainage law reforms

The Bill proposes to repeal the *Plumbing and Drainage Act 2002* and introduce a new Act, the *Plumbing and Drainage Act 2018* ('the Act' or 'the new Act'), to establish a new legislative framework for plumbing and drainage in Queensland. The Bill would achieve this objective by:

- providing for the making of a new regulation to consolidate and streamline the existing regulatory framework.
- introducing a new plumbing code, which will include the technical requirements that were previously set out in the Queensland Plumbing and Wastewater Code, the *Plumbing and Drainage Act 2002* and the *Standard Plumbing and Drainage Regulation 2003.*
- establishing a contemporary and consistent penalty framework for offences for the purposes of ensuring public health and the environment are protected and greater consistency across the statute book. The explanatory notes advise: 'To achieve this consistency, the maximum penalties for offences under the new Act have been aligned with those that apply for similar offences under Queensland's building laws'.[18]
- prohibit WaterMark products by regulation, which will be products that are considered to be unsuitable or unsafe despite their WaterMark certification.[19]

2.1.1 Background

The plumbing law reforms were triggered by the 10-year review of the plumbing regulations under the *Statutory Instruments Act 1992*, and driven by the government's commitment to further improve the high standards in Queensland's plumbing industry.[20]

The explanatory notes advised that during the course of the review stakeholders identified the approval process for 'compliance assessable' plumbing work as a key area of reform, with significant potential to reduce timeframes and costs. Stakeholders also expressed concern that the plumbing laws were difficult to interpret and not readily understood by users.[21]

The explanatory notes advised that there were several areas not included in the review and where no 'material' change has been proposed, nor the policy intent behind these provisions, but have been replicated in the Bill in a modern form. These areas include:

- the existing licensing regime for plumbers and drainers, which is currently the subject of a separate review
- the role, functions and powers of the commissioner of the QBCC
- the role, functions and powers of the Service Trades Council (STC or the Council), which was recently established under the Plumbing and Drainage and Other Legislation Amendment Bill 2015.[22]

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18 Plumbing and Drainage Bill 2018 explanatory notes, p 3.

19 Plumbing and Drainage Bill 2018 explanatory notes, p 3.

20 Plumbing and Drainage Bill 2018 explanatory notes, p 1.

21 Plumbing and Drainage Bill 2018 explanatory notes, p 2.

22 Plumbing and Drainage Bill 2018 explanatory notes, p 2.

2.1.2 Stakeholder issues

A number of stakeholders expressed support for the Bill.[23] The Plumbing Union stated:

> *The Plumbers Union strongly believes that there is no doubt that not passing this Bill in its current form will put the Queensland community at risk.*[24]

In contrast, HIA expressed the view that the Bill 'duplicates administration and complicates the regulatory framework for little perceived gain.'[25] In addition, some submitters from within the HVAC&R raised concerns relating to the introduction of the mechanical services occupational licence. Their concerns are discussed in section 2.2.2 below.

In relation to the Bill's provisions concerning the regulation of plumbing and drainage, stakeholders raised a number of matters for the committee's consideration.

2.1.2.1 Local government issues

While local governments stakeholders and the Institute of Plumbing Inspectors Qld. Inc provided 'in principle support' for the objectives of the Bill, they also advised that 'some unresolved priority local government issues' remained in the Bill, including:

- use of the terms 'inspection certificate' / 'final inspection certificate' (clause 69)
- a lack of clarity regarding the types of on-site sewage facilities that a local government must monitor (clauses 136/137)
- the disconnect between the Bill (clauses 146/147) and the *Planning Act 2016* in relation to the penalties for contravening, or tampering with, enforcement notices
- the new definition for 'water service' (schedule 1).[26]

Other matters raised by local government include:

- unlicensed persons carrying out plumbing and drainage work[27]
- consultation on the Regulation and Queensland Plumbing and Wastewater Code[28]
- provisions relating to temporary events.[29]

These issues are discussed in more detail below.

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23 Master Builders Queensland, submission 4; SunWater, submission 25; National Fire Industry Association Australia, submission 20; Electrical Trades Union, submission 22; Plumbing and Pipe Trades Employees Union, submission 12; Air Conditioning and Mechanical Contractors' Association, submission 17.

24 Plumbing and Pipe Trades Employees Union, submission 12, p 1.

25 Housing Industry Association, submission 15, p 3.

26 Local Government Association of Queensland, submission 14, p 1; Logan City Council, submission 27, pp 1-2, Brisbane City Council, submission 3, pp 1-2; Moreton Bay Regional Council, submission 24 pp 1-2; The Institute of Plumbing Inspectors Qld. Inc, submission 28, p 2.

27 Local Government Association of Queensland, submission 14; Brisbane City Council, submission 3.

28 Brisbane City Council, submission 3.

29 City of Gold Coast, submission 64.

Inspection certificate vs final inspection certificate

Clause 69 of the Bill makes it an offence to use plumbing or drainage that is the result of permit work, unless an inspection certificate, or final inspection certificate, has been issued for the permit work stating the work is compliant and the plumbing or drainage that is the result of the work is operational and fit for use.[30] While the Local Government Association of Queensland (LGAQ) welcomed the inclusion of the clause in the Bill as it 'will assist local governments in finalising plumbing applications and ensures the risks to public health and safety and the environment are appropriately managed',[31] it expressed concern about the terminology of 'inspection certificate' and 'final inspection certificate':

> *The LGAQ understands that an 'inspection certificate' is intended to allow for partial completion of the permit work, such that home owners/occupants can continue to live in the premises when plumbing work is being undertaken for alterations.*
>
> *The flexibility incorporated in this provision is important, however there is a need to more clearly distinguish between the terminology 'inspection certificate' and 'final inspection certificate', particularly given that this provision applies to a home owner/occupant rather than the plumber or builder.*
>
> *This is consistent with the approach taken in various other legislative frameworks such as the use of a 'preliminary approval' and 'development permit' under the* Planning Act 2016*, and an 'interim certificate of classification' and a 'certificate of classification' under the* Building Act 1975*.*
>
> *It should be noted that the practice of having a preliminary/partial 'inspection certificate' and a 'final inspection certificate' issued for an individual dwelling (such as indicated by the example included in the Bill) is contrary to the current plumbing practice within many councils, of issuing one certificate at the completion of all works.*[32]

Brisbane City Council (BCC) was also concerned about the use of the terms 'inspection certificate' and 'final inspection certificate' and the effect on both local government and customers:

> *The issuing of an inspection certificate after each inspection is a new onerous administrative requirement. It is not clear what benefit the introduction of these new certificates will deliver. There is also concern that domestic customers will not call for final inspections if they have obtained inspection certificates for the bulk of the works performed.*[33]

To 'remove any potential confusion', the LGAQ made the following recommendation:

> *The LGAQ recommends that 'inspection certificate' is renamed in the Bill to more accurately align with the purpose of the certificate as an interim measure and clearly distinguish this from a 'final inspection certificate'. Possible suggestions include a 'preliminary inspection certificate' or 'partial inspection certificate'.*[34]

The LGAQ provided the following clarification regarding this recommendation:

> *This is consistent with the approach taken in various other legislative frameworks such as the use of a 'preliminary approval' and 'development permit' under the Planning Act 2016, and an 'interim certificate of classification' and a 'certificate of classification' under the Building Act 1975.*

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30 Plumbing and Drainage Bill 2018 explanatory notes, p 43.

31 Local Government Association of Queensland, submission 14, p 3.

32 Local Government Association of Queensland, submission 14, p 3.

33 Brisbane City Council, submission 3, p 1.

34 Local Government Association of Queensland, submission 14, p 3.

It should be noted that the practice of having a preliminary/partial 'inspection certificate' and a 'final inspection certificate' issued for an individual dwelling (such as indicated by the example included in the Bill) is contrary to the current plumbing practice within many councils, of issuing one certificate at the completion of all works.[35]

Moreton Bay Regional Council, whilst welcoming the inclusion of clause 69, advised that they consider that 'more clarity is necessary to distinguish between the terminology 'inspection certificate' and 'final inspection certificate', as the provision applies more to home owners and occupants rather than the plumber or builder who may be more familiar with the terms used in plumbing legislation.'[36] They suggested that it would be more appropriate that the inspection certificate be called a preliminary inspection certificate, an interim inspection or a partial inspection certificate, consistent with the approach taken in legislative frameworks such as the Planning Act 2016 and the Building Act 1975, to eliminate any doubt that an inspection certificate could be confused with a final inspection certificate.[37]

The department responded to the LGAQ recommendation as follows:

The Department believes the proposed terminology which has been used for many years in the construction industry both in Queensland and interstate will clearly differentiate between the two certificates. Both certificates are issued by local government after they have inspected the completed work and found it complies with the code requirements and plumbing laws.

1. *An inspection certificate is issued after each prescribed applicable stages of work.*
2. *A final inspection certificate is issued when either:*
   (a) *All the work applied for under a permit is completed. For example, when all the work for a Class 1 dwelling is completed; or*
   (b) *When a distinct part of the work applied for under a permit is fully completed. For example, although a single permit may have been obtained for a complex of town houses, a final inspection certificate can be issued whenever an individual townhouse is completed. The new plumbing regulation will further clarify the use and basis for issue of the two certificates.*[38]

In response to BCC's suggestion that the requirement to issue inspection certificates would impose an onerous administrative burden on local government, the department advised:

…that these changes [in the Bill] *respond to concerns raised by industry stakeholders.*

Under the current system a local government decision on whether permit work complies with the code requirements can only be challenged after all work under a permit is completed. Industry stakeholders suggested that issuing inspection certificates after each stage would allow for a quicker resolution of issues as they arise. This proposal will also ensure that there are readily accessible records of local government inspections and provide a consistent process for licensees who operate across local government boundaries.

It is anticipated that the use of electronic communication via emails or apps will minimise the administrative burden identified by BCC.[39]

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35 Local Government Association of Queensland, submission 14, p 3.

36 Moreton Bay Regional Council, public hearing transcript, Brisbane, 19 March 2018, p 13.

37 Moreton Bay Regional Council, public hearing transcript, Brisbane, 19 March 2018, p 13.

38 Department of Housing and Public Works, response to submissions, 16 March 2018, p 18.

39 Department of Housing and Public Works, response to submissions, 16 March 2018, p 19.

LGAQ also recommended:

> *The LGAQ recommends that local governments maintain discretion in relation to their plumbing practices, i.e. the process for issuing inspection/final inspection certificates, and that the example used in the Bill in relation to an individual dwelling be re-worded to clarify the policy intent of the provisions relating to staged developments e.g. multi-tenancies.*[40]

In regard to this recommendation, the department advised:

> *The proposed regulation will add further clarity to the issuing of inspection certificates. The legislation will allow a final inspection to be issued when part of the work covered by the permit is complete for example individual town houses in a complex.*
>
> *The example given in the Bill was inserted at the suggestion of stakeholders to show that a house could still be occupied when plumbing and drainage work was being undertaken but any new or changes to the plumbing and drainage would need to be inspected prior to their use.*
>
> *The intent of this new section was to provide clarity that new buildings were not to be occupied unless the plumbing and drainage work had been inspected and signed off as compliant. It also assists local government with the finalising of the permits/approvals for the property.*[41]

In regard to these matters, the department does not propose any changes to the Bill.

Monitoring particular on-site sewage facilities

Clause 137 is based on section 143C of the repealed *Plumbing and Drainage Act 2002* and 'allows a regulation to prescribe the types of on-site sewerage facilities that local governments must monitor.'[42] The explanatory notes stated:

> *A local government must monitor each greywater use facility that is prescribed, to ensure the facility is operated in accordance with the permit for the installation of the facility and any conditions of the permit, and that the facility is not adversely affecting public health or safety, or the environment.*[43]

LGAQ and Logan City Council (LCC) noted that section 143C of the repealed *Plumbing and Drainage Act 2002*, on which clause 137 is based, 'specifies that each local government must monitor on-site sewerage facilities installed for 'testing' purposes only.'[44] Local government submitters expressed concern that 'there is currently no regulatory support for local government to monitor on-site sewage facilities that are not for testing purposes.[45] LCC explained further

> *This is despite the potential of on-site sewage facilities to adversely affect public health or safety, or the environment, and local government responsibility in relation to the enforcement and compliance of plumbing and drainage work.*[46]

Both LGAQ and LCC noted that under the current framework all greywater use facilities in sewered areas must be monitored by local government, which provides a 'more proactive approach' according to LGAQ.[47]

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40 Local Government Association of Queensland, submission 14, p 3.

41 Department of Housing and Public Works, response to submissions, 16 March 2018, p 40.

42 Plumbing and Drainage Bill 2018 explanatory notes, p 71.

43 Plumbing and Drainage Bill 2018 explanatory notes, p 71.

44 Local Government Association of Queensland, submission 14, p 4; Logan City Council, submission 27, p 3.

45 Logan City Council, submission 27, p 3; Brisbane City Council, submission 3, p 1; Moreton Bay Regional Council, submission 24, p 1.

46 Logan City Council, submission 27, p 3.

47 Local Government Association of Queensland, submission 14, p 4; Logan City Council, submission 27, p 3.

In this regard, LCC recommended:

> *that local governments should be afforded the regulatory authority to monitor any on-site sewage facility, not just those for testing purposes only, to ensure the risks to public health or safety, or the environment are appropriately managed.*[48]

LGAQ recommended the following as a way to proceed:

> *The LGAQ requests that the Department of Housing and Public Works engage with local government and the LGAQ in drafting the new plumbing regulation (and plumbing code) requirements, including the types of on-site sewage facilities a local government must monitor in its local government area to ensure a balance between reactive and proactive approaches to monitoring.*[49]

In response to concerns that there is a lack of regulatory support for local government to monitor on-site sewage facilities that are not for testing purposes, the department advised:

> *As noted under clause 136 the plumbing regulation may prescribe the types of on-site sewage facilities a local government must monitor in its local government area".*
>
> *There was support from many local government stakeholders for mandatory monitoring of onsite sewage facilities that are not for testing purposes. The Department will continue to consult with relevant industry stakeholders on outstanding issues as part of the ongoing review into the draft plumbing regulation and codes.*
>
> *As part of the QBP* [Queensland Building Plan] *certain technical plumbing issues including onsite sewage facilities will be reviewed in more detail.*[50]

In this regard, the department does not propose any changes to the Bill.

Enforcement notices

Clause 147 sets out the penalties relating to contravening, or tampering with, an enforcement notice. Under clause 147, the maximum penalty for contravening or tampering with an enforcement notice is 250 penalty units. The explanatory notes advised:

> *This amount is consistent with the highest penalties under the Act. It aligns contravention of an enforcement notice with other serious offences that involve acting outside of the plumbing and drainage framework, including for example, carrying out work without a licence and offences that have the potential to pose a risk to public health and safety.*[51]

Both LGAQ and BCC expressed concern that the enforcement penalties would not align with the *Planning Act 2016* (the Planning Act) as is the case currently under the *Plumbing and Drainage Act 2002*. LGAQ advised:

> *Plumbing or drainage work is still considered to be development under the* Planning Act 2016*. Currently, an enforcement notice given under the* Plumbing and Drainage Act 2002 *(clause 118) is taken to be an enforcement notice given under the* Planning Act 2016*; with the maximum penalty for contravening an enforcement notice under the* Planning Act 2016 *being 4500 penalty units (up from 1665 penalty units).*

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48 Logan City Council, submission 27, p 3.

49 Local Government Association of Queensland, submission 14, p 4.

50 Department of Housing and Public Works, response to submissions, 16 March 2018, p 40.

51 Plumbing and Drainage Bill 2018 explanatory notes, pp 76-77.

> *There is concern that by removing the link with the* Planning Act 2016 *in relation to enforcement notices, the penalties associated with contravening or tampering with an enforcement notice under the plumbing and drainage framework are significantly lower than currently applied.*[52]

BCC stated that '[t]his indicates that contravening a Plumbing Act Notice is not considered as significant as a Planning Act Notice which is of great concern.'[53]

In this regard, LGAQ recommended:

> *that the existing link between the* Plumbing and Drainage Act 2002 *and the* Planning Act 2016 *be re-established/maintained in the Bill (clause 147), such that enforcement notices under plumbing and drainage framework are taken to be an enforcement notice under the* Planning Act 2016 *or at least, consistent with the same penalties in relation to contravening, or tampering with, an enforcement notice.*[54]

In response, the department advised:

> *Targeted consultation occurred on this issue and a consensus was not forthcoming.*
>
> *The Department considers that the increase from 1665 to 4500 MPU ($210, 040 to $567,675) as introduced under the* Planning Act 2016 *was not appropriate for plumbing and drainage enforcement notices.*
>
> *Enforcement notices under the* Planning Act 2016 *generally relate to unauthorised building work including the demolition of heritage buildings.*
>
> *Given the significant economic benefits that can accrue from this type of unauthorised development it is necessary to have significant penalties in place to act as a sufficient deterrent.*
>
> *Plumbing and drainage work is generally ancillary to development under Planning Act. In addition, the Department does not consider the same financial incentives apply to failing to comply with plumbing and drainage requirements. As a result, it is difficult to justify retaining the alignment between the two Acts.*
>
> *The Department believes that the proposed standalone MPU of 250 is appropriate as this amount is consistent with the highest penalties under the proposed Act that relate to public health and safety issues.*
>
> *It aligns contravention of an enforcement notice with other serious offences that involve acting outside of the plumbing and drainage framework, including for example, carrying out work without a licence and offences that have the potential to pose a risk to public health and safety.*[55]

In this regard, the department does not propose any changes to the Bill.

Inclusion of a new definition for 'water service'

Several stakeholders expressed concern about the inclusion of the definition for 'water service' in schedule 1 of the Bill to clarify the services provided by a water service provider and the scope of a 'retail water service.'[56]

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52 Local Government Association of Queensland, submission 14, p 4.

53 Brisbane City Council, submission 3, p 1.

54 Local Government Association of Queensland, submission 14, pp 4-5.

55 Department of Housing and Public Works, response to submissions, 16 March 2018, pp 19-20.

56 Local Government Association of Queensland, submission 14, p 5; Institute of Plumbing Inspectors Queensland, submission 28, p 3; Logan City Council, submission 27, p 3; Moreton Bay Regional Council, submission 24, p 1; Brisbane City Council, submission 3, p 1; Master Plumbers' Association of Queensland, submission 8, p 2.

Stakeholders explained their concerns as follows:

> *The current* Plumbing and Drainage Act 2002 *does not contain a definition of 'water service', and it appears the new definition of 'water service' that is used in the Bill, has been replicated from the* Water Supply (Safety and Reliability) Act 2008 *and reads:*
>
> *water service means—*
>
> *(a) water harvesting or collection, including, for example, water storages, groundwater extraction or replenishment and river water extraction; or*
>
> *(b) the transmission of water; or*
>
> *(c) the reticulation of water; or*
>
> *(d) drainage, other than stormwater drainage; or*
>
> *(e) water treatment or recycling.*
>
> *The LGAQ is concerned that the scope of the definition is too broad for the plumbing and drainage work intended to be captured by the new legislation. For example, 'water harvesting or collection' such as groundwater extraction or replenishment and river water extraction, is not work that is appropriate in the context of plumbing and drainage.*
>
> *In addition, water storages such as rainwater tanks are now only required with new houses and/or commercial buildings where a local government has been approved to opt-in to the Queensland Development Codes (QDC) for:*
>
> - *residential buildings: Mandatory Part 4.2–Rainwater tanks and other supplementary water supply systems (QDC 4.2), and*
> - *commercial buildings: Mandatory Part 4.3–Supplementary water sources (QDC 4.3).*
>
> *Rainwater harvesting could be captured by the proposed definition included in the Bill and is sufficiently broad to also be outside the scope of relevant work regulated by the plumbing and drainage framework.*
>
> *The definition of 'water service' included in AS-NZS 3500.0: 2003 Plumbing and drainage - Part 0: Glossary of terms is currently used in the plumbing and drainage framework and limits water services to the '…pipework from the water main up to and including the outlet valves at fixtures and appliances'.*[57]

In this regard, LGAQ, the Institute of Plumbing Inspectors Qld (IPIQ) and the LCC recommended:

> *that the proposed definition of 'water service' in the Bill, taken from the* Water Supply (Safety and Reliability) Act 2008*, be reconsidered in the context of AS-NZS 3500.0: 2003 to ensure that it is appropriate for and aligned with the plumbing and drainage framework.*[58]

[57] Local Government Association of Queensland, submission 14, p 5.

[58] Local Government Association of Queensland, submission 14, p 5; Logan City Council, submission 27, p 4; Institute of Plumbing Inspectors Qld. Inc, submission 28, p 4.

Moreton Bay Regional Council (MBRC) advised that:

> *The definition of water service, which is another point in the bill, refers to, in part, groundwater extraction and replenishment of river water extraction. This work is not in the context of plumbing and drainage. The definition of water service in the bill refers to drainage other than stormwater drainage; therefore, drainage could be considered sanitary drainage. Sanitary drainage is also another definition in the bill. Industry will be confused by the broadened definition of water service contained in the bill and how in its context it applies to the plumbing and drainage framework.*[59]

MBRC advised that they would like the definition to 'revert back to how it is now'[60] and consider that the 'reference in the glossary of terms is sufficient to identify how plumbing and drainage is to be applied to satisfy provisions in Queensland.'[61]

The MPQ agreed with MBRC advising:

> *It does not really deal with watercourses. It certainly does not deal with drainage and other things that are led.*[62]

In response to the concern that the definition of 'water service' was too broad for plumbing and drainage work, the department advised:

> *This definition in the Bill only relates to a* ***water service provider's*** *water service and not the water service on the property.*
>
> *This definition is required to be used to be able to differentiate between the two types of water service and to ensure water meters (which are part of the water service provider's infrastructure) are not plumbing work in rural areas.*
>
> *(b) does not include—*
>
> *(i) an irrigation service or a bulk water service in any area; or*
>
> *(ii) the supply of recycled water in any area.*[63]

The department also responded to the recommendation that the definition be reconsidered in the context of AS-NZS 3500.0: 2003:

> *The definition of water service in the AS 3500 glossary relates only to the that part of the cold water supply pipework from the water main up to and including the outlet valves at the fixtures and appliances.*[64]

In this regard, the department did not propose any changes to the definition of 'water service' within the Bill.

Regulatory making powers: plumbing regulation and Queensland Plumbing and Wastewater Code

Local government stakeholders were also concerned about that the 'absence of the proposed plumbing regulation and the proposed new plumbing code inhibits the ability to fully consider and identify the range of implications for local government.'[65]

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59 Moreton Bay Regional Council, public hearing transcript, Brisbane, 19 March 2018, p 11.

60 Moreton Bay Regional Council, public hearing transcript, Brisbane, 19 March 2018, p 11.

61 Moreton Bay Regional Council, public hearing transcript, Brisbane, 19 March 2018, p 11.

62 Master Plumbers' Association of Queensland, public hearing transcript, Brisbane, 19 March 2018, p 18.

63 Department of Housing and Public Works, response to submissions, 16 March 2018, p 60.

64 Department of Housing and Public Works, response to submissions, 16 March 2018, p 61.

65 Local Government Association of Queensland, submission 14, p 2; Brisbane City Council, submission 3.

LGAQ explained:

> *The Bill entrusts a number of aspects to the proposed plumbing regulation outlined in clause 157 of the Bill and throughout various other provisions, and is significantly more expansive than the current regulation-making powers under the* Plumbing and Drainage Act 2002*.*
>
> *Many of the additional regulation-making powers relate to and may impact on the roles, responsibilities and functions of local government, for example by providing for:*
>
> - *the inspection of permit work and notifiable work and the giving of action notices, inspection certificates or final inspection certificates for the work;*
> - *the types of on-site sewage facilities and greywater use facilities a local government must monitor;*
> - *circumstances when a local government is not required to inspect particular plumbing or drainage work, and for the giving of notices about the work;*
> - *the registers the commissioner or a local government must keep and the information that must or may be included in each register; and*
> - *matters relating to plumbing or drainage work, generally.*[66]

BCC stated that '[w]ithout being able to review the proposed plumbing regulation and proposed new plumbing code', … Council's feedback is restricted and may not address future issues identified once these drafts become available.'[67]

For these reasons, local government stakeholders called on the government to consult with them on the regulation:

> *It is important that local governments and the LGAQ be closely engaged in the development of the proposed plumbing regulation to ensure that all potential implications for local government can be thoroughly considered and addressed.*[68]

Local government stakeholders were also concerned in relation to the Queensland Plumbing and Wastewater Code (the code) and the lack of consultation to date, given that local government will be responsible for enforcing the code.[69] LGAQ stated:

> *Similarly, clause 7 of the Bill provides the authority to make the Queensland Plumbing and Wastewater Code but details of the proposed new plumbing code have not been provided with the current version of the Bill.*
>
> *It is understood that the new plumbing code will set out the Queensland specific plumbing and drainage technical standards that were previously set out in the Queensland Plumbing and Wastewater Code, the* Plumbing and Drainage Act 2002 *and the Standard Plumbing and Drainage Regulation 2003. Local governments will be responsible for enforcing the code requirements and therefore should be closely consulted as the code is prepared*.[70]

Master Builders Queensland also sought collaboration on the Regulation and the code.[71]

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66 Local Government Association of Queensland, submission 14, p 2.

67 Brisbane City Council, submission 3, p 2.

68 Local Government Association of Queensland, submission 2, p 2.

69 Local Government Association of Queensland, submission 14, p 2; Institute of Plumbing Inspectors Qld. Inc, submission 28, p 2; Logan City Council, submission 27, p 2; Brisbane City Council, submission 3, p 2.

70 Local Government Association of Queensland, submission 14, p 2.

71 Master Builders Association, submission 4, p 2.

The Bill provides for a new regulation 'that will implement a streamlined plumbing permit process, which stimulates both cost and time savings through faster approvals and reduced construction time frames, benefitting the construction industry and Queensland home owners.' The department advised that the Bill would also 'reduce current permit approval time frames on most residential buildings by 18 days and will save Queensland home owners an estimated $640 in holding costs for a $255,000 block of land.' According to the department, 'these savings are the result of reducing current permit approval time frames for most residential buildings from 20 to two business days.'[72]

The department also confirmed that the Bill 'entrusts a number of aspects to the proposed plumbing regulation as outlined in clause 191 of the Bill and throughout various other provisions, and is significantly more expansive than the current regulation-making powers under the current Plumbing and Drainage Act 2002.'[73]

In regard to consultation with industry on the Regulation and code, the department advised:

> *Key Industry stakeholders have participated in workshops which informed the drafting of the new plumbing regulation and draft QPW code. The draft Regulation was also released for public comment in November 2016. Future consultation is to occur once the Bill is finalised to refine the draft Regulation and draft QPW code.*[74]

Unlicensed person

In relation to clauses 56, 57 and 58, BCC raised a concern that a licenced person could employ unlicensed persons to undertake any and all drainage work so long as they are directly supervised by a licenced person. BCC explained:

> *It is identified under section 58(1)(c), that a person does not commit an offence against section 56 or 57(1), (2) or (3) if the person is an unlicensed person carrying out the drainage work and a licensed person for the work is responsible for directly supervising the unlicensed person carrying out the work.*
>
> *However, under section 121(c) of the* Plumbing and Drainage Act 2002*, there is no direct reference to an unlicensed person. This implies that a licensed person could employ an unlicensed person to undertake drainage works so long as they are directly supervised by a licensed person*.[75]

Central Highlands Regional Council agreed and stated that if the person is 'unlicensed' then the person is unlicensed to carry out any trade work (drainage) and that this should apply even if the person is supervised.[76]

The department advised that the clause 'replicates the existing law contained in section 121(c) of the PDA 2002 that allows an unlicensed person to undertake drainage work where they are directly supervised by a person who holds a drainage licence.' The department confirmed that it is 'intending to produce a guideline on this issue and will consult with relevant industry stakeholders on any proposed guidelines.'[77]

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72 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 2.

73 Department of Housing and Public Works, response to submissions, 16 March 2018, p 14.

74 Department of Housing and Public Works, response to submissions, 16 March 2018, p 14.

75 Brisbane City Council, submission 3, p 2.

76 Central Highlands Regional Council, submission 9, p 1.

77 Department of Housing and Public Works, response to submissions, 16 March 2018, p 17.

Temporary events

The City of Gold Coast (CoGC) noted that provisions do not exist within the *Plumbing and Drainage Act 2002* or the Bill that allow for the temporary nature of events such as the Commonwealth Games. CoGC also noted that the *Major Events Act 2014* does not allow for works regulated under the *Plumbing and Drainage Act 2002* to be exempted. CoGC stated that had led to the following situation:

> *… where the City of Gold Coast must insist installations comply with the "*Deemed to Satisfy*" provisions or a relevant "*Performance Solution*" of the Plumbing Code of Australia which given the temporary nature of the event is 'practically' impossible; and which has the effect of the City of Gold Coast not being able to issue a Compliance Certificate for the work.*[78]

CoGC recommended the:

> *State identify that works of a temporary nature, which are part of a declared Major Event be excluded from the Plumbing and Drainage Act; and instead allow for these types of works to be the subject of a risk assessment process administered by the relevant Local Authority with any liability for identified risks being applied to the organiser of the event.*[79]

The department proposed no change advising:

> *The Bill provides the regulatory framework for plumbing and drainage and outlines the relevant performance and assessment requirements.*
>
> *Both building and plumbing legislation allow for temporary installations but in both cases full compliance with the relevant legislative requirements must be achieved. Regardless of the type of event there should not be a lessening of any public health and safety standards just because the event may be temporary.*
>
> *Section 65(1)(f) of the Bill does however allow for a regulation to prescribe systems or products that are approved for installation as plumbing or drainage. This head of power does provide greater flexibility in this area.*
>
> *Under this provision, a Regulation could be passed to allow designated systems or products to be installed subject to conditions.*
>
> *The Department considers that this provision could be extended to deal with short term and temporary installations — including installations for events similar to those referred to by CoGC in their submission — on a case by case assessment. This would include assessing the level of risk posed to the community as a result of the temporary installation.*
>
> *The Department will continue to consult with relevant industry stakeholders on any outstanding issues as part of the ongoing review into the draft plumbing regulation and codes.*[80]

2.1.2.2 Industry issues

Industry representatives also raised concerns about certain provisions within the Bill relating to:

- offences and penalties[81]
- timeframes for the granting of a licence[82]

78 City of Gold Coast, submission 64, p 1.

79 City of Gold Coast, submission 64, p 2.

80 Department of Housing and Public Works, additional response to submissions, 22 March 2018, p 3.

81 Housing Industry Association, submission 15; Queensland Law Society, submission 16.

82 Housing Industry Association, submission 15.

- third party certification[83]
- changing the terminology of 'compliance assessable work' to 'permit work'[84]
- local laws and local planning instruments[85]
- licensee to have regard to particular guidelines and carrying out work without appropriate licence[86]
- referral of particular disciplinary action to QCAT.[87]

These matters are discussed in detail below.

Offences and penalties – clauses 56, 57, 186 and 187

HIA considered 'many' of the penalties and offences in the Bill to be 'punitive relative to the scale of the offence.' HIA is concerned 'some penalties include fines in excess of $30,000 and prison sentences of up to 12 months.[88] HIA stated further:

> *Clause 56 Carrying out work without an appropriate License – Penalties:*
>
> *Clause 56 (2) provides for a maximum of 350 penalty units or 1 year's imprisonment. HIA acknowledges the need to treat offences seriously, but the imprisonment of a person for up to 1 year is harsh and unreasonable. Clause 57 (2) makes it an offence to direct a person to do plumbing and drainage work if the person is not licensed for the work. Likewise this provision allowing for very large fines and a year of imprisonment is harsh and excessive.*
>
> *Clause 64 –Complying with Code Requirements -*
>
> *This clause contains concerning provisions which penalise drafters and designers up to 100 penalty units or over $12,000, for making an error in the drafting plans for plumbing and drainage. This will not, as stated in the Explanatory Notes minimise delays or costs in revising plans, and should not be the subject of punitive fines. HIA is unsure how this matter is to be enforced, what are the penalties for an inexperienced designer who has prepared these plans with minor errors? By contrast it is not uncommon in subdivisions for experienced RPEQ level engineers, to submit drainage plans that require extensive changes which are negotiated between Council and the engineer. This process does not seek to penalise engineers or designers who prepare such plans.*[89]

QLS was of a similar view:

> *The penalties imposed by the proposed legislation are objectively harsh when compared with other like offences in similar acts and when reviewing the purpose of this Bill. The explanatory material provided compares the penalties with the* Building Industry Fairness (Security of Payment) Act 2017*, however, QLS objected to the penalties placed in this act due to their severe nature.*

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83 Housing Industry Association, submission 15; Property Council of Australia, submission 13.

84 Master Plumbers' Association of Queensland, submission 8.

85 Housing Industry Association, submission 15.

86 Housing Industry Association, submission 15.

87 Housing Industry Association, submission 15.

88 Housing Industry Association, submission 15, p 2.

89 Housing Industry Association, submission 15, p 2.

> *In our submission, the penalties under clauses 56, 57, 186 and 187 of this Bill should be modelled on the* Building Act 1975 *and Electrical Safety Act rather than the* Building Industry Fairness (Security of Payment) Act 2017*. For example, section 126 of the* Building Act 1975 *imposes a maximum of 165 penalty units on a building certifier acting without a licence. We submit that similar penalties should be considered in this Bill.*
>
> *The QLS also opposes the imposition of jail terms as a penalty under this Bill. Such penalties are disproportionate to the objectives of the Bill. We also hold concerns with a regulation imposing a penalty which has not been subjected to parliamentary review and scrutiny.*
>
> *In addition, we consider that these offence provisions should not limit an excuse or defence that could appropriately apply in the circumstances. These clauses, where no defence or excuse is provided, should be amended to expressly state that a reasonable excuse is able to be provided. A tribunal, court or commission should be able to exercise appropriate discretion when funding that an offence has been committed.*[90]

With regard to clause 56, QLS suggested that:

> *…there is a 'three strikes' kind of process there. There is a lower penalty for a first offence, a slightly higher penalty for a second offence and then for a third or later offence or in a special other case there is a little bit of a higher penalty including a term of imprisonment. It would be quite possible in the circumstance to simply just give the one penalty and then leave it to the discretion of the judge to determine where the appropriate penalty is.*[91]

At the committee's public hearing QLS also advised:

> *While the Law Society completely concurs that the scheme is set up to promote safety and to ensure that work is done so that the workers and the public are not injured, we still think there needs to be a proportionate balance between the penalty that is imposed and what that might mean in terms of effect on livelihood, considering that the exemptions under I think it is clause 58 are an exhaustive list and maybe do not allow for another excuse to be provided or another defence.*[92]

During a briefing, the department advised that the Bill would introduce a 'stronger penalty framework to promote compliance' that would 'provide a greater deterrent for breaches of the plumbing laws, with similar offences aligned to promote consistency across other legislation.'[93] In regard to consultation with stakeholders, the department advised:

> *These provisions have been developed and refined in close consultation with stakeholders from industry and the community to minimise the risk unlicensed work poses to the community and to the environment.*[94]

The department provided further background and clarified its stance that the penalties are considered 'proportionate and appropriate':

> *During consultation on the draft Bill industry stakeholders expressed concern about defective plumbing and drainage work being performed by unlicensed persons. In particular, they noted that there was insufficient deterrent to prevent unlicensed persons from continuing to perform defective work. As a result, it was suggested that consumers were being left with defective work resulting in significant financial and safety risks. Similar issues relating to unlicensed building*

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90 Queensland Law Society, submission 16, p 2.

91 Queensland Law Society, public hearing transcript, Brisbane, 19 March 2018, p 3.

92 Queensland Law Society, public hearing transcript, Brisbane, 19 March 2018, p 3.

93 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 2.

94 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 2.

work were recently addressed in the Building Industry Fairness (Security of Payment) Bill 2017 (SOP Bill).

In the SOP Bill, the penalties were increased to align Queensland more closely with other states and territories. The proposed penalties are considered proportionate and appropriate for providing a deterrent to unlicensed persons entering the market. This, is turn, is expected to ensure a high rate of compliance with standards and protect consumers and licensees from loss. The possibility of imprisonment is particularly targeted at repeat, high-level offenders.[95]

In this regard, the department does not propose any changes to the Bill.

Timeframes for the granting of a licence

HIA expressed concern regarding the differences in timeframes imposed on an applicant (20 business days) and the Commissioner to consider and decide an application for a licence (40 business days) under clauses 17 to 19 of the Bill. HIA explained:

The act states the Commissioner may by notice given to the applicant take 40 business days (or a leisurely 8 weeks) to consider a matter and ask for an extension of time for a further 40 days and if the commissioner does not respond the request is automatically rejected (clause 19 deciding approvals). HIA would question any process outlined within legislation that facilitates a government department being allowed 16 weeks to consider an application. Conversely contractors must respond within 20 days or in some cases 10 business days. In the interests of balance and timeliness QBBC timeframes should be brought into line with the timeframes imposed on applicants ie maximum of 20 business days.[96]

In response to the suggestion that the timeframes be the same—a maximum of 20 business days—the department advised:

The role, functions and powers of the commissioner of the QBCC were excluded from this review as these provisions were recently established under the Plumbing and Drainage and Other Legislation Amendment Bill 2015.

Clause 17 replicates section 38, Clause 18 replicates section 39 and Clause 19 is based on aspects of sections 39, 40 and 43 of the current PDA 2002 and as such it is not proposed to change the intent of this provision in this Bill.[97]

Third party certification

HIA and the Property Council of Australia called for the Bill to include third party certification for plumbing approvals:[98]

While HIA welcomes proposed amendments that will reduce approval timeframes the Plumbing and Drainage Bill, provided the Queensland Government with an opportunity to introduce third party certification for plumbing approvals. Given the success of third party certification for building works this process should be replicated in the bill. HIA urges Government to amend the legislation to enable this critical efficiency.[99]

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95 Department of Housing and Public Works, response to submissions, 16 March 2018, p 46.

96 Housing Industry Association, submission 15, attachment, pp 1-2.

97 Department of Housing and Public Works, response to submissions, 16 March 2018, p 43.

98 Housing Industry Association, submission 15, attachment, p 1; Property Council of Australia, submission 13, p 1.

99 Housing Industry Association, submission 15, attachment, p 1.

The department did not propose any changes to the Bill and responded as follows:

> *Third party certification was discussed at the preliminary consultation stage of the plumbing law review in 2014. It is important to note that this policy position is not supported by the majority of industry stakeholders and does not form part of this Bill.*[100]

Clause 6 – changing 'compliance assessable work' to 'permit work'

The Master Plumbers Association of Queensland (MPAQ) was opposed to the changing of the term 'compliance assessable work' to 'permit work' under clause 6 as the change would serve 'no real purpose.[101] MPAQ advised:

> *Compliance assessable is a term readily used and understood by industry. This change will unduly confuse industry without measurable beneficial outcome.*
>
> *All references throughout the document should revert to "compliance assessable.*[102]

The department advised:

> *The Bill proposes to standardise terminology, timeframes, and administrative processes where possible. Similar provisions will be grouped together, and obsolete, redundant and duplicated laws will be removed allowing for a 25% reduction in the size of the new Act.*
>
> *For example, the Bill replaces the current category of work term 'compliance assessable work' with "permit work" as this clearly indicates to industry and consumers that a permit is required to perform the work.*[103]

The department does not propose any changes to the Bill for the following reasons:

> *The introduction of the two-stream application model means that a compliance assessment of the plans will no longer be undertaken prior to the issue of a permit for fast-track work. For this reason, the term compliance assessable is considered to no longer be an accurate description of the category of work covered.*
>
> *The Department considers that the term "permit work" is more appropriate as it clearly indicates to industry and consumers that a permit is required to perform the work.*[104]

Clause 134 – local laws and local planning instruments

HIA expressed a concern relating to clause 134, which 'provides that the Act does not exclude or limit the making of a local law or planning instrument about plumbing or drainage work, to the extent that it is not inconsistent with the Act,'[105] HIA's concern was that the ability of local government to implement local laws and planning instruments for plumbing and drainage 'has the ability to lead to inconsistency and inefficiency for the building sector.' For this reason, it submitted that the provision should be reconsidered.[106]

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100 Department of Housing and Public Works, response to submissions, 16 March 2018, p 14.

101 Master Plumbers' Association of Queensland, submission 8, p 1.

102 Master Plumbers' Association of Queensland, submission 8, p 1.

103 Department of Housing and Public Works, response to submissions, 16 March 2018, p 8.

104 Department of Housing and Public Works, response to submissions, 16 March 2018, p 22.

105 Plumbing and Drainage Bill 2018 explanatory notes, p 70.

106 Housing Industry Association, submission 15, p 3.

The department did not agree that the provision required amending and responded as follows:

> *Clause 134 is based on sections 3(2) and (3) of the Standard Plumbing and Drainage Regulation 2003 and was moved into the Bill as part of the restructure of the legislative framework.*
>
> *The Clause provides local governments with the ability to deal with local situations in an appropriate manner.*[107]

Licensee to have regard to particular guidelines and carrying out work without appropriate licence

While local government was concerned that clauses 56, 57 and 58 would allow an unlicensed worker to perform plumbing and drainage work under the supervision of a licenced worker, HIA expressed concern regarding the guidelines for licensees relevant to these activities.[108] HIA was specifically concerned that the Bill would establish a conflict with the *Queensland Building and Construction Commission Act 1991* in the following way:

> *In stating within the Bill that only a licensed plumber can supervise plumbing and Drainage Work the Bill establishes a direct conflict with the QBCC Act (section 43) which states that the head builder/ contractor must supervise and sign off on all trade contractors' work that is carried out on the site. HIA would argue that if the QBCC intends to hold principal contractors responsible for the supervision of all the work that occurs on site then these clauses need to be modified to reflect the provisions of the QBCC.*[109]

The department did not propose any change to the Bill in this regard and advised:

> *Although a QBCC licensed contractor is required to provide a general oversight to all the building work of the contract, they cannot supervise or direct plumbing or drainage work without holding the appropriate occupational licence as a plumber or drainer.*
>
> *Clauses 56 and 57 are based on existing sections 119, 120 and 121 of the PDA 2002.*
>
> *A licensed plumber is responsible for ensuring that their employees are appropriately licensed or exempted by Clause 58 of the Bill. The licensed plumber or drainer is also responsible for ensuring their work and the work of their employees comply with the code requirements and the plumbing legislation. They have an important role when supervising a trainee or unlicensed person carrying out plumbing or drainage work.*[110]

Referral of particular disciplinary action to QCAT

Clause 55 of the Bill prescribes 'how a disciplinary matter referred by the commission to QCAT under clause 51(3) should be dealt with, and the types of disciplinary action that may be taken by QCAT.'[111] The explanatory notes stated:

> *When heard by QCAT, a disciplinary matter must be heard by 3 members, including 1 legally qualified member. The clause requires 1 of the 3 members to be a person with at least 10 years' experience in the plumbing and drainage trade. This requirement recognises that the matters presented before QCAT under this Act will often involve complex plumbing and drainage matters that require expert knowledge.*[112]

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107 Department of Housing and Public Works, response to submissions, 16 March 2018, p 48.

108 Housing Industry Association, submission 15, attachment, p 2.

109 Housing Industry Association, submission 15, attachment, p 2.

110 Department of Housing and Public Works, response to submissions, 16 March 2018, p 44.

111 Plumbing and Drainage Bill 2018 explanatory notes, p 31.

112 Plumbing and Drainage Bill 2018 explanatory notes, p 31.

HIA stated that the provision would establish a standard that is 'significantly' different from the 'requirements that would apply to a panel considering a matter involving any other QBCC licensee.'[113] HIA explained:

> *This provision states that a QCAT member hearing a plumbing matter must show 10 years' experience in the plumbing and drainage trade. HIA is unconvinced of a need for the nexus between the hearing of disciplinary matters and needing to have 10 years' experience in plumbing. This requirement does not apply anywhere else in the Queensland judicial system to HIA's knowledge. For example QCAT members sitting on what can be technically and legally complex building matters, including disciplinary matters are not obliged to have 10 years' experience in the building industry or trades.*
>
> *HIA asserts that this proposed requirement is just another example of the excessive regulatory framework that is being built around the plumbing industry that began with the unnecessary establishment of the Services Trade Council when there was already a licensing regime in place at the Queensland Building and Construction Commission to deal with the licensing of every other building industry trade.*[114]

The department advised:

> *This requirement recognises that the matters presented before QCAT under this Act will often involve complex plumbing and drainage matters that require expert knowledge.*
>
> *The existing licensing regime for plumbers and drainers was excluded from the plumbing laws review. This provision is consistent with the existing requirement under section 70B of the* Plumbing and Drainage Act 2002*.*[115]

2.1.3 Prohibition of WaterMark products

Clause 65 prohibits a person from installing a thing as part of plumbing or drainage work, unless it is allowed to be installed under the clause.[116] Clause 65(1)(a) allows a person to install a WaterMark product[117], that complies with the code requirements, but prohibits the installation of a WaterMark product prescribed by regulation as a prohibited WaterMark product. It is intended that a regulation will prohibit the installation of particular WaterMark products that are considered to be unsuitable despite their WaterMark certification.

The ETU and Plumbing Union expressed support for the Bill's provisions that would allow for the prohibition of WaterMark products by regulation—those considered to be unsuitable or unsafe despite their WaterMark certification—but did not support the use of WaterMark beyond single components.

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113 Housing Industry Association, submission 15, attachment, p 2.

114 Housing Industry Association, submission 15, p 2.

115 Department of Housing and Public Works, response to submissions, 16 March 2018, p 45.

116 The word 'thing' is used for the provision to encompass the vast array of devices, products and items that could potentially be installed as part of plumbing or drainage work. Explanatory notes, p 39.

117 WaterMark products are manufactured to a particular standard (or model) under a nationally recognised scheme and certified by a Conformity Assessment Body. Only certified materials and products are identified by the WaterMark trademark. Explanatory notes, p 35.

The Plumbing Union stated:

> *The Plumbers Union Queensland does not support using WaterMark to abolish all accepted regulation within the plumbing trades. The National Certification Scheme is overstepping its' mandate of single components, and adopting standards for entire rooms is a new challenge facing our State-based regulation and therefore requires a State-level decision. We support the approach to this matter as outlined in the Bill.*[118]

The ETU was also concerned about WaterMark certification for bathroom PODs

> *It is completely unacceptable that right now anyone, anywhere in the world could be performing what should be regulated plumbing work in a bathroom PODs (and other similar situations) simply because it has a technical WaterMark certification.*
>
> *Technical certifications are not a replacement for a licensing system, especially those run by the current Federal Government. The current state of affairs put the people undertaking the installation at risk, they place family's investments in their residence at risk and more importantly they are putting lives at risk.*
>
> *We know that there are people who support the complete deregulation of licensed trades and this is what the WaterMarking of bathroom PODs is doing by stealth.*
>
> *Technical standards for products or items should not be used to encompass and* [sic] *entire room, set of rooms or a whole dwelling.*
>
> *Only a person with the appropriate skills, qualification and licence should be able to undertake this kind of complex work. Trades men and women across our State need the protection of these proposed laws*.[119]

The Plumbing Union agreed, expressing concern about 'the ability to WaterMark a room as a product' and the potential health and safety risk to the community as a result

> *It is clear that the ability of unskilled persons, anywhere in the world, to undertake regulated plumbing work in a bathroom POD represents not only an unacceptable health and safety risk to the community it also goes further than self-certification and is the deregulation of a significant portion of the plumbing trade. This deregulation is occurring in a sector where the community expects the work to be undertaken by a skilled, competent and licensed person.*
>
> *…*
>
> *We oppose the fact that right now there is no qualification or skill level required to undertake work that if it were not being performed on a WaterMarked POD, would be regulated plumbing work.*
>
> *…*
>
> *Recently WaterMark has over-stepped their industry supported scope and adopted a technical standard for the certification of Bathroom PODs, an entire bathroom, and its associated plumbing work. The WaterMarking of an entire room does not fall within the scope of certification supported by the plumbing industry.*
>
> *The plumbing industry is strongly opposed to the ability to WaterMark a room as a product. The prefabrication of rooms presents a new challenge to Government, which requires a policy decision. The plumbing industry contends that the best way to address this evolution is to include prefabrication work within the licensing system. This clearly and optimally protects the health and safety of the Queensland consumer, while meeting their clear expectations.*

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118 Plumbing and Pipe Trades Employees Union, submission 12, pp 4-5.

119 Electrical Trades Union, submission 22, pp 1-2.

…

The other relevant consideration (when reviewing the risks of leaving a growing and high risk part of the market beyond the reach of the Plumbing Regulations and relying on an imperfect product certification scheme) is the need to ensure Australian markets do not become seen internationally as having lower quality standards than other potential destination markets in our region. The strategic identification and infiltration of what are perceived to be low barrier markets is increasingly commonplace as international trade is freed up. This poses significant risks to consumers in those markets who are exposed to sub-standard products and systems. A robust plumbing regulatory framework – one that is sufficiently broad enough to capture all high-risk (and so regulated) plumbing work is key to ensuring we avoid becoming a dumping destination market, and all the consumer and public health risks associated with that.[120]

In contrast to the support from the Plumbing Union and ETU, several submitters were opposed to the provision relating to the prohibition of WaterMark products.[121] HIA stated the Bill 'represents over-regulation' and raised three issues with the provision that would allow for 'Queensland regulators to unilaterally prohibit a WaterMark product'[122]:

- The provision will lead to a loss of confidence in the WaterMark system and products because contractors will be required to undertake a 'second level of product checking beyond identifying the WaterMark label.'
- The proposal brings into question the testing regime that regulators will use to overturn the testing of the product that led to its gaining WaterMark approval.
- Adequate protection currently exists under the *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*, 'which allows for the recall of deficient products quickly if required.'[123]

Ai Group and the Property Council of Australia (PCA) agreed with these views. Ai Group stated that the term *prohibited WaterMark product* would introduce 'confusion and complexity' and recommended that 'the Queensland Government work through its representative on the ABCB Plumbing Code Committee to improve the current WaterMark scheme rather [than] creating an alternative to it.'[124] Master Builders Queensland (MBQ) made a similar suggestion.[125] HIA also suggested that any issues with WaterMark products 'should be addressed through the national system.'[126] The PCA agreed with this view.[127]

MBQ was of the view that the provision would have the opposite effect than was intended i.e. it would not strengthen the controls on non-conforming products by giving the Government the power to act quickly in the event that a failure is identified. According to MBQ, clear and robust 'evidence of suitability' pathways needed to be promoted for the system to be effective.[128]

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120 Plumbing and Pipe Trades Employees Union, submission 12, pp 5-7.

121 Housing Industry Association, submission 15, p 1; Master Builders Queensland, submission 4, p 1; Property Council, submission 13, p 1; Ai Group, submission 19, p 1.

122 Housing Industry Association, submission 15, pp 1-2.

123 Housing Industry Association, submission 15, pp 1-2.

124 Ai Group, submission 19, p 1.

125 Master Builders Queensland, submission 4.

126 Housing Industry Association, submission 15, p 1.

127 Property Council of Australia, submission 13, p 1.

128 Master Builders Queensland, submission 4, p 1.

HIA advised of their concern with any proposal to prohibit WaterMark products by regulation. They consider:

> *If there are problems with products, including things like bathroom pods, they can be remedied through nonconforming building product legislation. Any issues with the WaterMark process are inherently best dealt via the WaterMark certification scheme, which has mechanisms in place for review and revision on a nationally agreed basis. Prohibition is not the remedy.*[129]

MBQ advised:

> *We have been working quite proactively on the issue of nonconforming products for a number of years now. One thing that we have been advocating for across our alliance of industry associations and with our members is a robust, clear product certification system across all product types. The current system is incredibly complicated, confusing and difficult to navigate. We really welcomed the NCP legislation that came through last year that had the required information to pass along the chain. We saw that as a good step forward, but we are still such a long way from having a clear shared understanding of what product information needs to pass along the chain and how a product certification system can work.*
>
> *Plumbing products and WaterMark are the one exception to that and are the envy of a lot of other product areas in that we have a good, strong product certification system that is mandatory and backed up by government. We are concerned that this idea for a prohibited WaterMark undermines trust in that system, and trying to set up something in parallel is going to make things even more confusing and therefore reduce the chances of compliance. There will be more complexity and it will make it harder to comply. The Queensland government does have a seat on the Australian Building Codes Board which manages WaterMark. That is the right avenue for change if there are problems with products going through WaterMark. We want them to reinforce this system and not undermine it with something separate.*[130]

It should be noted that industry stakeholders, including MBQ, HIA, MPAQ, Plumbing Union and Services Trades College Australia, at the committee's public hearing were in agreement with their concerns regarding bathroom PODs. HIA advised that changes are being considered by the ABCB.[131]

The committee sought additional information regarding how the process WaterMark Certification Scheme through the Australian Building Codes Board (ABCB) process differs from the process proposed by the Bill, for disallowing a product. MBQ advised:

> *The WaterMark rules include the process for the suspension or cancellation of a WaterMark Licence.*
>
> *There are a number of circumstances where the Conformity Assessment Body may cancel or withdraw a WaterMark Licence at any time, including:*
>
> - *for breach of the rules and procedures of the Scheme;*
> - *if a product is modified without the approval of the Conformity Assessment Body; or*
> - *if the product fails renewed certification after a change in the relevant applicable specification.*
>
> *The Assessment Body is then obligated to inform the ABCB of any suspension or cancellation within 7 days.*

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129 Housing Industry Association, public hearing transcript, Brisbane, 19 March 2018, p 14.

130 Master Builders Queensland, public hearing transcript, Brisbane, 19 March 2018, p 15.

131 HIA, public hearing transcript, Brisbane, 19 March 2018, p 16.

The ABCB regularly responds to complaints about non-compliant WaterMark products and has a well-tested process that could result in the removal of WaterMark within a matter of weeks.

If the Queensland Government became aware of any WaterMark product that no longer conformed it could bring this to the attention of the ABCB or the Assessment Body for immediate action. It could further expedite the process by providing a test certificate against the appropriate standard from a National Association of Testing Authorities (NATA) accredited laboratory as evidence of noncompliance.[132]

The committee sought information from the department regarding the length of time it takes for a product to be withdrawn through the ABCB process. The department provided the following example:

The one example that I am aware of was a douche toilet seat. I cannot give you the exact dates, but we became aware of it. We raised it at a national level and some time down the track, after we talked to the Commonwealth agency, the Australian Building Codes Board, about it, that particular conformity assessment body reviewed their own WaterMark and then withdrew it. There was a fair bit of time involved there. It was effectively a voluntary withdrawal by the assessment body as well.[133]

In response to industry concerns regarding the WaterMark provisions, the department clarified that the policy intent for providing plumbing regulation to prohibit certain WaterMark products was to:

provide an additional safety net to the existing WaterMark scheme by allowing the government to promptly enact the regulation to prohibit any plumbing product, including WaterMark products, if it's found to be defective or not fit for purpose or poses a public health risk.[134]

The department noted that this would include WaterMark products, 'whether it be a kitchen mixer tap or a prefabricated bathroom module (commonly referred to as a POD).'[135] The department also advised that this regulation would complement the government's non-conforming building product laws *(Non-conforming Building Products-Chain of Responsibility and Other Matters) Amendment Act 2017)* which would 'increase protection for consumers.'[136]

During a briefing, the committee queried how, under the new provision, consumers and tradespeople would know if a product had been prohibited. The department advised:

It is an interesting question about how we will let industry know that a particular WaterMark product, that has the WaterMark insignia on it, for instance, is prohibited in Queensland. What we are proposing to do there is to have a website that would obviously make people aware if they were looking for that as well. We would also use our communication tools—our news flashes and our guidelines and the like—to publish quite broadly to industry through the Master Plumbers, through the union, through HIA, through the Master Builders and other interested stakeholder organisations that a particular item is prohibited now and not fit to be used in Queensland.

132 Master Builders Queensland, correspondence dated 23 March 2018, p 2.

133 Department of Housing and Public Works, public hearing transcript, Brisbane, 19 March 2018, p20.

134 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 3.

135 Department of Housing and Public Works, response to submissions, 16 March 2018, p 8.

136 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 3; Department of Housing and Public Works, response to submissions, 16 March 2018, p 8.

> *We would also take steps in terms of the nonconforming building products to have that listed as part of the nonconforming building products register, which would go broader—I hope I am not getting this wrong, Mr Commissioner; please correct me if I am wrong—and also be highlighted to suppliers of products in Queensland to make them aware that the product was a prohibited WaterMark product and, as a result, could not be installed in Queensland. It then becomes a nonconforming building product and cannot be applied to anyone in Queensland. That is my understanding. We would have a fairly wide approach to ensure that the practitioner, at the end of the day, who has been given this product to install is aware that it is a prohibited item at the time he comes to install it.*[137]

The department advised that it would also consult with stakeholders in regards to the most effective way to notify industry and the community of changes to WaterMark certification in Queensland:

> *The Department will consult with stakeholders as part of the ongoing Regulation review on the most effective way to notify industry and the community if a product is listed in the plumbing regulation as a prohibited WaterMark product. This could involve using existing mechanisms implemented by the building regulator the QBCC to enforce the Building and Construction Legislation* (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017 *as passed on 24 August 2017 for non-conforming building and plumbing products.*[138]

The department provided an example of how the provision would create flexibility in the system to allow the government 'to deal with issues in Queensland in a very responsive way':

> *We had an experience in the past three or four years where a douche toilet seat was given a WaterMark by a certified assessment body under the WaterMark scheme. A number of the local governments in Queensland raised concerns with us. We then went to the WaterMark administrators in Canberra and said that we were not quite sure that the product met the requirements. As a result of that process, that WaterMark approval was withdrawn, as I understand it, because it did not meet the requirements for back flow for that particular device. What happened there was a slight delay of six or 12 months, or something like that, where the product still had a WaterMark and could be lawfully installed in Queensland. With the new legislation we are proposing, we will be able to pass a regulation in the meantime and immediately have that item put onto the prohibited list. As a result, it would then not be able to be installed in Queensland. It just provides us with a bit more flexibility to deal with the issues in Queensland in a very responsive way.*[139]

The department reiterated its stance that the WaterMark provisions within the Bill would enable a more timely response to WaterMark product issues as they arise while not detracting from the national scheme:

> *The Department agrees with the importance of maintaining a national approach to the WaterMark system and non-conforming building products generally.*
>
> *The Queensland Government has been very active in driving the national agenda around non-conforming building products and will continue to do so in the future.*
>
> *There have been examples of significant delays between jurisdictions raising concerns about a product with WaterMark certification and the issue being addressed.*

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137 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, pp 4-5.

138 Department of Housing and Public Works, response to submissions, 16 March 2018, pp 13-14.

139 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 5.

> *The Department expects that the power to prohibit a plumbing product that has WaterMark certification will be used sparingly and as a last resort, for example where delays in the National process have the potential to cause significant health and safety risks for the Queensland community.*[140]

Committee comment

The committee is satisfied with the department's explanations in response to issues relating to WaterMark products raised by stakeholders.

2.2 Mechanical services

One of the objectives of the Bill is to protect public health and safety through the regulation of mechanical services work, including medical gas work, under the QBCC. The Bill would achieve this by establishing a new mechanical services occupational licence to expand the scope of work regulated through contractor licence classes and providing for a regulation to divide the mechanical services occupational licences into classes.[141] The department advised the following in regard to the proposed four classes for the licence:

> *Four classes of medical services licence are proposed to recognise the specialised trades that perform this type of work including air-conditioning and refrigeration practitioners, plumbers and gas work technicians. Many submitters have suggested the technical qualifications for the mechanical services licence should also reflect this breakup.*[142]

The department also provided further information on how it proposes the licence will work and how it will be administered:

> *The bill establishes a new mechanical services licence that will improve health and safety protections for the community in high-risk buildings such as hospitals, residential apartments and shopping centres. Currently, there is no occupational licence in Queensland for either mechanical services work or medical gas work. This reform reflects the need for an occupational licence and will address stakeholder concerns about the health and safety risks associated with this type of work. This licence will regulate the construction, installation, replacement, repair, alteration, maintenance, testing and commissioning of mechanical heating and cooling systems. It also includes the installation of medical gas systems and work associated with large-scale air-conditioning systems where legionella comprised the highest risk.*
>
> *The new mechanical services occupational licence targets larger risk buildings, which was identified following consultation with industry. Owners of class 1A and class 10 buildings, which covers detached houses, townhouses, sheds or garages, will not be affected. The bill also excludes the manufacture of pipe or ducting, gas work regulated under the Petroleum and Gas (Production and Safety) Act 2004 and the installation of single head split air-conditioning systems from the occupational licensing requirements. However, if the value of work exceeds $3,300, a contractor's licence will be needed for the installation of the single head split air-conditioning systems.*

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140 Department of Housing and Public Works, response to submissions, 16 March 2018, pp 20-21.

141 Plumbing and Drainage Bill 2018 explanatory notes, pp 1-3.

142 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 3.

The reforms in the bill will require licensees to attain benchmark technical qualifications and licensing requirements for mechanical services work including medical gas work in Queensland. Stakeholders requested the regulation of medical gas work to minimise the risk to vulnerable members of society. In the initial committee briefing, the department's director-general referred to the tragedies that occurred involving medical gas installations and two infants in 2016 in a New South Wales hospital.

The new mechanical services licence will be administered through the Queensland Building and Construction Commission, which is well positioned to both administer and regulate this type of work. Consultation was undertaken as part of the Queensland Building Plan process, with the proposed licence initially based on the Victorian mechanical services licensing model. The consultation also included the regulation medical gas. In response to stakeholders' feedback, which expressed concerns about applying the Victorian model in Queensland, the mechanical services licence class was refined.[143]

2.2.1 Background

Mechanical services work involves the mechanical heating or cooling of buildings and relates to medical gases used in hospitals, medical facilities and dentists' rooms for patient care, therapeutic and diagnostic purposes and surgical tools.[144] The explanatory notes provide further background on the reason for introducing a mechanical service license:

In 2016, two incidents occurred where babies at the Bankstown-Lidcombe hospital in New South Wales were administered the incorrect gas, because the oxygen outlet was incorrectly emitting nitrous oxide. One child died and the other child suffered permanent brain damage. These incidents highlight the importance of this work and the need to regulate the work performed on medical gas systems.

The establishment of a new mechanical services licence will protect the general community who live and work in urbanised areas from the risk of exposure to harm that can arise form complex heating, cooling and air-conditioning systems found on large buildings, such as residential apartment blocks, commercial retail centres, modern office buildings, hospitals and other clinical centres and recreational establishments, such as an aquarium.[145]

On 10 October 2017, during his introductory speech on the 2017 Bill, the Minister tabled the draft Queensland Building and Construction Commission (Mechanical Services Licence) Amendment Regulation 2017.

143 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 3.

144 Plumbing and Drainage Bill 2018 explanatory notes, p 2.

145 Plumbing and Drainage Bill 2018 explanatory notes, pp 2-3.

The Minister advised:

> *The draft regulation sets out the detail of the licence, including the proposed classes of medical gas, air conditioning and refrigeration unlimited design, air conditioning and refrigeration limited design, and plumbing, as well as the scope of work for each class.*[146]

2.2.2 Stakeholder comments

Several submitters expressed their support for the introduction of a mechanical services occupational licence as provided for by the Bill and in particular the occupational licensing of medical gas work.[147] The ETU stated:

> *The ETU supports a strong licensing system across all trades. The fact that vital and complex work on items such as the ones that control the pressure and quality of air into hospitals is unlicensed undermines the integrity of our whole Queensland licensing regime.*
>
> *The mechanical services licence will address a scope of work that should be performed by skilled and qualified people. The air temperature, quality and pressure to buildings such as hospitals, health facilities, universities and schools is work that can no longer be performed by unskilled labour. We proudly support the adoption of a mechanical services occupational licence in Queensland. We further support that the Certificate III in Plumbing – Mechanical Services stream is the appropriate qualification to underpin it.*[148]

The National Fire Industry Association submitted its 'support for the creation of a mechanical services occupational licence to complement the contractor licence regime that is currently in place' because '[m]echanical services work is complex and also vital to the ongoing health and safety of the community within our built environment.'[149]

In relation to the occupational licencing of medical gas, stakeholders expressed support. The Air Conditioning and Mechanical Contractors' Association (AMCA) submitted its support as follows:

> *AMCA supports the occupational licensing of medical gas work and associated work. We are all aware of the recent tragic events at Bankstown-Lidcombe Hospital and other similar instances. The risks in this area are too great for it to remain unlicensed and for workers and contractors to remain untrained via a recognized form of competence given the significant number of Queenslanders who undergo some form of clinical procedure which may require the application of medical gas assistance during their procedures. In a national training package context, medical gas work falls within the Certificate Ill in Plumbing (Mechanical Services) package and as such we consider it important that training in this critical area be undertaken by all who engage in the installation, repair and commissioning of Medical Gas systems to ensure that graduates are suitability qualified.*

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146 Hon M de Brenni, Minister for Housing and Public Works and Minister for Sport, Record of Proceedings, 20 October 2017, p 2941.

147 Plumbing and Pipe Trades Employees Union, submission 12, p 4; Electrical Trades Union, submission 22, p 1; Air Conditioning and Mechanical Contractors' Association, submission 17, p 1, 4-5, Logan City Council, submission 27, p 1.

148 Electrical Trades Union, submission 22, p 1.

149 National Fire Industry Association Australia, submission 20, p 1.

Additionally, we support a course for experienced plumbers from other streams to upskill and undertake this work.[150]

The Plumbing Union also supported training for the installation of medical gas:

It is clearly unacceptable that medical officers who have no training in the installation or workings of this pipework and associated work are signing off the work as meeting the Australian Standards.

The two main risks that exist in this area are the possibility of fatal cross connections and the contamination of pipelines. The later occurs with pipelines are not maintained correctly causing the pipelines to become contaminated which results in the failure of equipment. This may also be fatal.

The Union thanks the Government for acting in this important area. We note that the relevant competency units are part of the Certificate III in Plumbing Mechanical Services stream and as such graduates should be licensed to undertake medical gas work. Further, a licensed Plumber that has graduated from a different stream but completed 'Install Medical Gas Pipeline Systems' (CPCMS3034A) which is a three to four day course for experienced persons should also be able to undertake this work.[151]

However, a number of submitters from within the HVAC&R industry expressed their concerns about the Bill's provisions relating to the introduction of the licence and the impact on air-conditioning and refrigeration workers.[152] Key issues for these stakeholders are discussed below.

2.2.2.1 Impact on the HVAC&R industry

Several submitters commented that the proposed occupational licence would further disadvantage the HVAC&R industry – also disadvantaged previously 'with the introduction and implementation of the 'Certificate 11' Air Conditioning and Installation licence which allows plumbers, electricians, builders and other ancillary trades to impose on our trade.'[153] The submitter advised:

This has also had an adverse effect on some business owners and has put them under increased financial pressure, as they cannot compete price wise, in an already saturated market.

…

Consideration must be given to us, the HVAC&R tradespeople. This affects our livelihood and the deliverance of a consistent workplace health and safety environment across the industry. The industry must be regulated to essentially reduce accidental deaths resulting from inadequately trained operators attempting to undertake highly skilled work.[154]

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150 Air Conditioning and Mechanical Association, submission 17, pp 4-5. The committee notes that, in its submission, AMCA advised that the following organisations also supported the proposed reforms and the statements made within its submission: Refrigeration and Air Conditioning Contractors' Association – Australia; Australian Institute of Refrigeration, Air-conditioning and Heating; Refrigerants Australia; Air-conditioning and Refrigeration Equipment Manufacturers' Association, p 1.

151 Plumbing and Pipe Trades Employees Union, submission 12, p 4.

152 Cool Air Conditioning Pty Ltd, submission 2, p 1; Australian Refrigeration Association, submission 21, p 1; Australian Refrigeration Mechanics Association, submission 11, p 1; Nathan Schofield, A1 Cooling Pty Ltd, submission 10; Craige and Claire Parkin, submission 5, pp 2-3; Daniel O'Neill, submission 6, p 1; Brendon McEwan, submission 7, p 1; Glenn Sharplin, submission 63, p 1; Mitchell Worthington, submission 65, p 1.

153 Cool Air Conditioning, submission 2, p 1.

154 Cool Air Conditioning, submission 2, pp 1-2.

Also in this regard, Mr Schofield of A1 Cooling Pty Ltd stated:

> *As the owner of a HVACR business, I am concerned for our future generation. We currently have three refrigeration apprentices working with us. The impact of the proposed Plumbing and Drainage Bill on our area of trade may jeopardise the value of their training, as well as their employment opportunities. If this proposed Bill is passed these tradespeople will not be able to perform the job they are trained for without the appropriate license.*
>
> *…*
>
> *As a stakeholder within this industry I believe this Bill, if passed will be introducing a law that will prevent me as a business owner and my staff from completing the jobs that we are qualified. This in turn will impact our clients as they will require further trades to complete a task we currently perform, affecting our business, staff and client's income, growth potential. I believe this Bill will cripple the HVACR industry and therefore I do not and will not support the proposed Plumbing and Drainage Bill 2018*.[155]

ARMA also supported the view that the Bill would have a financial burden on their members:

> *The current draft of the bill will have significant financial burden on business by providing greater prominence of business advertising and consumer distortion on installation and repair for air-conditioning work associating plumbers and electricians not HVACR technician. Essential measurements of compliance costs flowing from new and amended regulation, such as using the Commonwealth Office of Small Business' costing model.*[156]

Craige and Claire Parkin, owners of an air conditioning and refrigeration business, also added the following as potential impacts of the introduction of the mechanical services licence on the HVAC&R industry:

- lack of proper voice for air conditioning and refrigeration industry
- lack of incentive for current apprentices to carry on in the air conditioning and refrigeration trade
- fewer job applicants and skill shortage as experienced tradesmen quit the trade or move to a state where the air conditioning and refrigeration trade is properly recognised
- increased competition in the air conditioning and refrigeration field will not improve the quality of the trade[157]

2.2.2.2 Training and licencing structure

Submitters commented on three key areas regarding training and the licencing structure of the proposed new mechanical services occupational licence, including:

- the lack of recognition of the training required to work within the HVAC&R industry
- queries around the technical qualifications and the proposed licencing structure.

Lack of recognition for the training of HVAC&R tradespeople

[155] Nathan Schofield, A1 Cooling Pty Ltd, submission 10, pp 2-4.

[156] Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 4.

[157] Craige and Claire Parkin, submission 5, pp 3-4.

Some submitters expressed the view that the Bill and its approach to regulating the HVAC&R industry lacked recognition of the four-year apprenticeship and training required to become appropriately qualified in the air conditioning and refrigeration trade:

> *They* [apprentices] *are specifically trained, OVER 4 YEARS, to fault find and to be aware of the many potential deadly hazards and risks that may occur, and due to their extensive training are equipped with the ability to quickly recognise any hazards or risks and implement procedures to avoid any serious damage. Other trades and licensees trying to intrude on our trade are not experienced and therefore not aware of the many potential dangers to both the consumer and other trades people.*
>
> *…*
>
> *I have also had feedback from customers that many of these fast-track licence holders are unable to answer the most basic of questions regarding refrigerant or the unit itself. This proving that the government is merely pushing through licences without licence holders needing to demonstrate their understanding of the environmental impact of their work.*
>
> *…*
>
> *You have failed the HVAC&R industry with the introduction of varying licence types to appease these different trade sectors, and in doing so you are reducing competencies just so they can gain compliance.*[158]

ARMA supported this view, stating that the Bill 'completely ignored the vital importance of a specialized field undertaken by HVACR tradespeople skills who perform all refrigeration and air-conditioning scope of works.'[159] ARMA further stated:

> *Scope of work detailed under the amendment Regulation 2017 Licence Classes for mechanical services – plumbing suggests an unsafe "**Open Slather**" strategy for the plumbing trade to carry out much of the HVACR scope of works, with no regard to the LIMITED skills achieved by plumbers in the HVACR trade, safety to workers or consumers. Only plumbers who gain the correct qualification in a Certificate III in HVACR would be considered competent and no recognition of HVACR technical qualifications mentioned within the amendment.*[160]

Mr Schofield from A1 Cooling Pty Ltd held a similar view:

> *This legislation, which supports the creation of a mechanical services licence, has led to serious concerns about plumbers carrying out work that should be undertaken by refrigeration and air conditioning tradespeople. Plumbers are not qualified to ensure the safe insulation, commissioning and decommissioning of refrigerated air conditioning systems. A refrigeration and air-conditioning mechanic, has completed a four year apprenticeship to achieve their qualification which enables them to conduct Mechanical services and HVAC work. They are governed by a code of practices, standards and ARCtick regulations, to ensure their work is compliant.*[161]

Craige and Claire Parking were concerned that 'insufficiently trained workers working on highly pressurised, flammable machinery' would lead to an 'increasingly dangerous working environment.'[162]

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158 Cool Air Conditioning, submission 2, pp 1-2.

159 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 1.

160 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 4.

161 Nathan Schofield, A1 Cooling Pty Ltd, submission 10, pp 1-2.

162 Craige and Claire Parkin, submission 5, p 4.

2.2.2.3 Technical qualifications and licencing structure for the mechanical services occupational licence

The Bill proposes to establish a new mechanical services occupational licence, 'expanding the scope of work regulated through contractor licence classes and providing for a regulation to divide the mechanical services occupational licences into classes.'[163] The committee heard different views regarding the Bill's proposal to regulate a new mechanical services occupational licence in this way.

Several submitters expressed support for the Bill's approach to regulating the industry and structuring the licence as one licence with four classes.[164] AMCA stated:

> *The AMCA and our contractor members support the licensing of mechanical services plumbers at an occupational level. The Queensland Plumbing Certificate III (Mechanical Services) that is currently being delivered. In discussions with Queensland based providers, they have provided confidence in their ability to deliver the qualification to match the scope of work proposed in the Government's reforms. We advocate that the appropriate qualification for this license class is the Certificate III in Plumbing (Mechanical Services) – CPC32513.*
>
> *As a principle AMCA believes that an individual who is employed in a training position or otherwise engaged under a contract of training should be permitted to progress through the training at a pace which is in keeping with their ability to master the theoretical and practical aspects of the training program. Assessment of their progress in both theory and practice can only be carried out by appropriately qualified people. To date our experience with the Certificate Ill in Plumbing (Mechanical Services) aligns with this principal* [sic].*[165]*

The Plumbing Union and the Service Trades College Australia 'support the adoption of the mechanical services plumbing licence'.[166]

However, many HVAC&R industry submitters expressed concern that the 'watering down of training'[167] to obtain the mechanical services occupational licence would be insufficient to ensure public health and safety.[168]

In this regard, ARMA recommended that instead of the proposed one mechanical services occupational licence with four classes, a HVAC&R trade licence be introduced and that it be part of a four-year apprenticeship. This issue is discussed further in section 2.3 of this report.

In regards to plumbers working within the HVAC&R industry, ARMA expressed support for the introduction of a mechanical services – plumber occupational licence only as '[p]lumbers who also carry out associated HVACR works do not have the appropriate skillsets to work with high pressure refrigerated systems, inclusive of Co2, ammonia and hydrocarbon refrigerants.'[169]

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163 Plumbing and Drainage Bill 2018 explanatory notes, p 3; clause 183 of the Plumbing and Drainage Bill 2018.

164 Australian Refrigeration Mechanics Association, submission 11. Plumbing and Pipe Trades Employees Union, public hearing transcript, Brisbane, 19 March 2018, p 15

165 Air Conditioning and Mechanical Contractors' Association, submission 17, p 2, p 4.

166 Services Trades College Australia, public hearing transcript, Brisbane, 19 March 2018, p 15.

167 Craige and Claire Parkin, submission 5, p 3.

168 Nathan Schofield, A1 Cooling Pty Ltd, submission 10, p 3; Australian Refrigeration Mechanics Association, submission 11, attachment part 2, pp 2-3; Australian Refrigeration Association, submission 21, p 1; Craige and Claire Parkin, submission 5, p 3.

169 Australian Refrigeration Mechanics Association, submission 11, p 3.

ARMA submitted:

> *governments must provide clear, concise scope of works ensuring work by mechanical services plumbers is contained to the skills they have acquired and do not allow for mechanical services – plumbers to work on refrigerated systems.*[170]

In this regard, ARMA recommended:

> *mechanical services – plumber occupational licence only, with HVACR associated scope of work to be correctly worded as associated HVACR works. Mechanical services - plumbers work associated to HVACR systems must continue to require supervision by RAC tradespeople ensuring the "Total System" is correctly installed. ARMA support the Mechanical services – medical gas occupational licence.*[171]

At the Committee's public hearing, the AMCA noted that the legislation is about a mechanical services plumbing licence advising:

> *I think we need to be careful with the wording in the licence and not overreach with the wording for what the scope of work is. These guys go through a four-year apprenticeship to do all the work with medical gases, universities.*
>
> *It is more about moving water and air around a building rather than refrigerant. We obviously employ both trades. What we find with our mechanical services plumbers is they do nothing on the refrigeration side of it apart from install pipework, which they are trained to do at tech college, but it gets commissioned by the refrigeration and air-conditioning mechanics. I cannot vouch for every business in Queensland and I am sure that it does not get done that way in some respects. What we are looking for is a licence for those guys—and then I think we are getting mixed up in the fact that we also are looking for occupational licensing for the RAC trade as well. That is where these guys are going. I think it is really important that we do not mix the whole thing up.*[172]

However, the AMCA indicated their concern regarding the work able to be undertaken under the proposed occupational licences. They advised:

> *I think it is the wording in the legislation around what they are able to do with their occupational licensing that we need to be very careful with. There is some wording in there about repair and maintenance that probably should not be in there. I would not expect mechanical services plumbers to do any electrical work based on their training. It is just that we need to be very careful with some of that wording in that licence and then work hard to get an occupational licence up for the RAC trade as well. If we can roll that all into this legislation that would be a perfect scenario for the industry. I am not sure how easy that is; I suspect it is not.*[173]

The ARA also highlighted their concern with the definition of scope of work advising:

> *We support the medical and we support the mechanical services plumbers. We just ask that the definition of 'scope of work' be better worded. The other thing that is a concern is duct work. The only trade technically competent to understand the full system—and we are talking about the duct work through to the air flow to the system that operates, even the condensate drain and the effects of that back on the system. The duct work must be included in the occupational licence for RAC.*

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170 Australian Refrigeration Mechanics Association, submission 11, p 3.

171 Australian Refrigeration Mechanics Association, submission 11, p 4.

172 AMCA, public hearing transcript, Brisbane, 19 March 2018, p 8.

173 AMCA, public hearing transcript, Brisbane, 19 March 2018, p 8.

This draft bill, the 2018 one, suggests the exclusion of duct work for all four mechanical services. While the refrigeration mechanic is the technically competent person, they do not turn around and manufacture the duct work; they will go to a supplier who has it already prepared or a sheet metalist, and that is fine. However, to exclude the word 'duct work', you are actually excluding what the refrigeration mechanic needs to do, which is install. There are huge issues with clearance for working inside roofs and things like that.[174]

ARMA also expressed concern that ductwork was excluded from the Bill. ARMA submitted that duct work be included in the Bill:

In respect to sheet metal workers who are highly skilled to carry out duct work however, we ask why RAC qualified tradespeople have been excluded from the ductwork in the proposed draft bill. Although, we note ductwork continues to be included within the scope of works for RAC contracting licenses.

Therefore, clarifying reasoning to the inclusion of ductwork is because HVACR works has the primary skillset which should be acknowledged in line with trade qualifications, understanding relationship between ductwork, air flow and high pressured refrigerated systems. Therefore, we request ductwork to be inclusive of the scope of refrigeration and air conditioning occupational licensing. This inclusion will remove unnecessary costing on domestic dwellings, applies best practice and benefits to consumers who otherwise would require another trade to complete the installation of air-conditioning. Exclusion would also deliver a licence which is not matched/consistent with skills outcomes of the RAC trade.[175]

2.2.2.4 Department's response to issues regarding introduction of mechanical services licence

Interaction with federal legislation

The department noted that ARMA, ARA and Bradley Crick specifically mentioned the Australian Refrigeration Council (ARA) and questioned how the proposed mechanical services licence will operate in relation to federal legislation. The department advised:

ARC administers the national licensing model for individuals working with ozone depleting substances and greenhouse gases. The model is established under the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 *(Clth) and aims to protect the environment by controlling how these gases are used. While a refrigerant handling licence issued by ARC is currently required in Queensland to undertake HVACR work because of the Commonwealth legislation, Queensland has a separate and specialised licence class, which requires completion of an apprenticeship. The Queensland licence is aimed at protecting the broader health and safety of consumers by ensuring a high standard of work is being performed*.[176]

Definition of 'mechanical services work'

In response to a number of submissions (submission 5, 7, 11, 30 to 62) suggesting that a) the definition of 'mechanical services work' be expanded to include work on refrigerants, single head split systems, duct work, restricted electrical work or associated incidental work such as roofing and b) that a mechanical services - plumber licence class be created that excludes licence holders from working on refrigerated systems and HVACR switchboards, or requires plumbers to be supervised by HVACR tradespeople, the department advised the following:

Some of the types of work suggested by the submissions, including duct work and roofing work, are already regulated by existing QBCC licences. The proposed mechanical services occupational licence targets larger high risk buildings such as hospitals, residential apartments and shopping

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174 ARA, public hearing transcript, Brisbane, 19 March 2018, p 9.

175 Australian Refrigeration Mechanics Association, submission 11, p 3.

176 Department of Housing and Public Works, response to submissions, 16 March 2018, p 15.

centres. While certain work such gas work regulated under the Petroleum and Gas (Production and Safety) Act 2004*, the installation of split systems and work involving class 1a and 10 buildings (such as detached houses, townhouses, sheds or garages) will not be captured by the occupational licensing requirements, a contractor licence will still be needed for work over the value $3,300.*[177]

In regard to ARMA's recommendation to include duct work in the Bill, the department advised that it did not propose any changes due to the following:

Duct work is regulated by a number of existing QBCC licences. While duct work is not captured by occupational licensing requirements, a contractor's licence is needed for the installation of duct work where the value of the work exceeds $3,300. It is proposed that ductwork will continue to be regulated through the contractor licence which permits HVACR licensees to undertake this work.[178]

Heating, ventilation, air conditioning and refrigeration as a specialist trade

As noted above, many submissions expressed concern (2, 5, 6, 7, 10, 11, 29, 30-62) that mechanical services work would be a subset of plumbing work under the Bill and that a plumbing qualification will be required to obtain the licence, similar to the current Victorian mechanical services licensing model. In this regard, they submitted that HVACR work be recognised as a specialist trade and that plumbers do not have the appropriate qualifications to undertake this work. The department advised:

As noted previously, initial consultation under the Queensland Building Plan discussion paper was based on the existing Victorian model. However, the proposed mechanical services licence was refined as a result of stakeholders' feedback.

The classes of mechanical services licence are not contained in the Bill and will be prescribed by regulation. However, it is intended that these will recognise the specialised trades that perform this type of work, such as air-conditioning and refrigeration practitioners, plumbers and gas work technicians. This may address the concerns of those submitters who favoured an occupational licence for HVACR work with a $0 licensing threshold, as the proposed mechanical services licence will essentially achieve this.[179]

Technical qualifications and training

As noted above, some submitters made recommendations about the training and experience that should be required to perform mechanical services work. The department noted that '[t]here was no consensus on technical qualifications across the submissions.'[180] The department advised:

For example, submission 12 suggests that completion of a Certificate III in Plumbing–Mechanical Services is the appropriate qualification for mechanical services work, submission 11 proposes a Certificate III in Air Conditioning and Refrigeration. Another submission (8) suggests that it is not necessary to create a separate mechanical services licence class for medical gas systems as the plumbing qualification includes a unit of competency for this work.

These submissions do not necessarily contemplate the different streams of mechanical services work and the department's intention to prescribe separate licence classes, as foreshadowed in the draft Queensland Building and Construction Commission (Mechanical Services Licence) Amendment Regulation tabled by the Minister on 10 October 2017 along with the Plumbing and Drainage Bill 2017. The department will work closely with industry to determine the appropriate

177 Department of Housing and Public Works, response to submissions, 16 March 2018, pp 15-16.

178 Department of Housing and Public Works, response to submissions, 16 March 2018, p 65.

179 Department of Housing and Public Works, response to submissions, 16 March 2018, p 16.

180 Department of Housing and Public Works, response to submissions, 16 March 2018, p 16.

training and experience requirements and ensure that there are sufficient pathways for those currently performing the work to obtain a licence.[181]

In regard to some submitters' concerns that sheet metal work and mechanical services plumbing work do not have the skillset to ensure that HVAC&R systems are correctly installed and should be supervised by HVAC&R tradespeople, the department advise:

It is intended that the mechanical services licence classes will recognise the specialised trades that perform this type of work and the technical qualifications will be developed so that individuals have the appropriate training and expertise to enable them to undertake the scope of work for the licence without supervision.[182]

The committee notes the department's advice that the matter of training has not yet been finalised, but that it is consulting with registered training organisations to determine the cost of training. The department indicated that it would be consulting with industry. The committee also notes that the department was unable to provide a timeframe for the commencement of training during the public briefing:

We have been consulting with the registered training organisations. I certainly cannot give you a specific cost because, again, it depends on the individual needs. Again, to use the example of the air-conditioning refrigeration contractors, there would be zero cost if they meet the new requirements once they are determined. In relation to the mechanical services plumbing licence, again we have to work with the registered training organisations and the relevant organisations to identify exactly what the training is. It may be a case that industry already has individuals out there with those qualifications. New people coming in, like with any licence, would have to meet those qualifications. Yes, we will be working with registered training organisations and industry before we finalise the qualifications and ascertain the costs in relation to those.

The legislation for the mechanical services will start upon proclamation. That gives us sufficient time to work with industry and identify what would be sufficient time frames to have industry ready and to undertake the qualifications or, alternatively, they may get recognised prior learning.

…

Again, I cannot specify a time frame because it will depend on what we find out. When we are talking to industry they may say, 'Yes, we have people who are suitably qualified now,' or, alternatively, they may say, 'No, we need additional time.'[183]

In response to a question regarding the structure of the training, the department advised:

Because there are four different licence classes and there is different expertise, we would envisage that they would be apprenticeships, which is currently the case for air-conditioning refrigeration to obtain the contractor licence. Even though there is not an occupational licence, plumbing work is usually an apprenticeship and we would envisage that that would be the case again. In relation to the medical gas, there is an additional unit of competency that is currently at a national training level and we would be looking at whether that would be suitable in addition to an apprenticeship.[184]

181 Department of Housing and Public Works, response to submissions, 16 March 2018, p 16.

182 Department of Housing and Public Works, response to submissions, 16 March 2018, p 66.

183 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, pp 6-7.

184 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 7.

The department also addressed the issue that RAC contractors may not have to upgrade their skills once the training requirements have been finalised:

> *There are a number of things to work through with the training. For example, you have air-conditioning refrigeration contractors. Depending on where we land with the technical qualifications, they could potentially already have the qualifications needed, so there will be no requirement for them to upskill. In relation to the installation of medical gas, again we have to work with industry to identify exactly what the skill set is that is out there. We are also looking at generous transitional provisions and working with industry so that there is sufficient time to identify and upskill people in relation to it, if that is needed.*[185]

The committee noted the HVAC&R's concerns that the Bill would be an upskilling of the plumbing industry and sought clarification from the department on this issue. The department advised:

> *We have established a licence under the act. There was a draft regulation that was tabled in October last year. That indicates that there are four licence classes. Even though there is one licence, just like you have one provision for unlicensed contracting work, there are a number of licences that exist in the regulation. We recognise the specialist streams. In the draft regulation we recognise that there is plumbing work associated with mechanical services work. We recognise that there is specialist air-conditioning refrigeration work. We also recognise that working with medical gas is specialist work. Even though we need to work with industry to finalise the regulation and what would be the appropriate training qualifications, they are four distinct licence classes, and we would envisage that they would need qualifications that are adequate for that licence class.*[186]

Committee comment

The committee is satisfied with the department's explanations in response to issues raised by stakeholders.

In relation to the proposed training, the committee wishes to highlight the need to continue consultation with all stakeholders to ensure the appropriate outcomes are achieved.

2.2.2.5 Role of Service Trades Council

Division 3 of the Bill provides that the proposed mechanical services occupational licence will be regulated under the *Queensland Building and Construction Commission Act 1991.*

The STC is established under the *Plumbing and Drainage Act 2002* to represent Queensland's service trades. The STC was created to:

- promote and enhance the QBCC's licensing of plumbing and drainage, fire protection and air-conditioning and mechanical services tradespeople
- support the QBCC's investigation of complaints relating to regulated and unlicensed work by the above service trades and to take appropriate enforcement action where necessary
- be a responsive regulator in addressing issues of concern raised by the Minister or representatives of the Council
- assist the QBCC in promoting acceptable standards of competence for the above trades.[187]

185 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 6.

186 Department of Housing and Public Works, public hearing transcript, Brisbane, 19 March 2018, p 21.

187 Queensland Building and Construction Commission, 'Services Trades Council', https://www.qbcc.qld.gov.au/service-trades-council-stc/voice-service-trades.

Division 3 of the Bill also outlines the establishment, function, powers, membership and business of the STC. The explanatory notes state:

> *The council is an independent regulatory body that represents Queensland service trades. It was formed in 2016 to protect public health and safety, and the environment, and to replace the Plumbing Industry Council, whose powers were transferred to the QBCC in 2014.*[188]

In regards to the establishment and structure of the STC, the explanatory notes clarify:

> *Clause 105 provides that the Services Trades Council established under the repealed Plumbing and Drainage Act 2002, section 5 continues, and notes that under the QBCC Act, section 6(c), the council constitutes part of the QBCC.*
>
> *As a part of the QBCC, the council is subject to the guidance and leadership provided by the Queensland Building and Construction Board (QBC board), which is the QBCC's governing body. In addition to providing guidance and leadership, the QBC board decides the strategies and the operational, administrative and financial policies to be followed by the QBCC. It also ensures the QBCC performs its functions and exercises its powers in a proper, effective and efficient way.*[189]

The committee notes that according to the explanatory notes, there has been no 'material' change proposed to the role, functions and powers, nor the policy intent behind the provisions, of the STC, which was established under the Plumbing and Drainage and Other Legislation Amendment Bill 2015.[190]

However, a number of submitters expressed varying views regarding the role of the STC in regulating the area of mechanical services plumbing. The Plumbing Union supported the view that mechanical services plumbing should fall under the responsibility of the STC:

> *The mechanical services plumbing licence must be included within the purview of the Services Trades Council within the QBCC to ensure that its regulation, oversight and general policy framework remains consistent with the other services trades of plumbing and fire protection.*[191]

AMCA also agreed:

> *We note that even though it is included within the Plumbing and Drainage Bill, the proposed mechanical services plumbing licence will be regulated through the Queensland Building and Construction Commission Act and we support this approach. We urge the Committee to recommend that mechanical services plumbing be specifically included as part of the remit of the Services Trades Council (STC). Air-conditioning and Mechanical Services is part of the services trades with plumbing, drainage and fire protection. Further, AMCA is a member of the Council itself. Consolidating these trades within the QBCC was the intention of introducing the STC and not including mechanical services and Refrigeration and Air-conditioning Occupational licensing would undermine the reforms and create inefficiency.*[192]

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188 Plumbing and Drainage Bill 2018 explanatory notes, p 59.

189 Plumbing and Drainage Bill 2018 explanatory notes, p 60.

190 Plumbing and Drainage Bill 2018 explanatory notes, p 2.

191 Plumbing and Pipe Trades Employees Union, submission 12, p 2.

192 Air Conditioning and Mechanical Contractors' Association, submission 17, p 2.

However, other submitters were opposed to the STC having a role in regulating mechanical services plumbing. For example one submitter stated:

> *We do not believe that the Services Trade Council can work with impartiality with regard to the introduction of a new Mechanical Services Licence in the Queensland Building and Construction Commission Act 1991. The STC was formed under the* Plumbing and Drainage Act 2002*.*
>
> *…*
>
> *We believe that* if *air conditioning and refrigeration has to fall under the STC there should be equal number of interested parties on the board and involved in decision making. Currently on the board there are four members with strong affiliations to the Plumbing Industry out of ten members and only one for the air conditioning trade.*[193]

ARMA queried the inclusion of air conditioning and mechanical services within the remit of the STC and sought clarification about its role given that STC's website stated air conditioning and mechanical services were part of its responsibility despite STC having 'NO MANDATE over the HVACR trade…'.[194]

HIA requested that the membership of the STC also include representatives from the broader building industry.[195] Engineers Australia requested that it be considered for membership of the STC.[196] The department noted that '[t]he role, functions and powers of the Service Trades Council were excluded from this review as these provisions were established under the Plumbing and Drainage and Other Legislation Amendment Bill 2015.' The department also advised that the STC 'may have as many representatives appointed to it as deemed necessary to provide appropriate industry representation.'[197]

The department noted that out of the nine submissions (5, 8, 11, 12, 15, 17, 20, 21 and 23) that commented on the role of the STC, four supported including the new licence within the scope of the STC's responsibilities to ensure consistency across the plumbing and fire protection industries while two submitted that the STC should not have responsibility for the new mechanical services licence.[198]

Committee comment

The committee encourages the department to ensure a suitable balance of the membership of the STC in line with its advice that there would be appropriate industry representation.

193 Craige and Claire Parkin, submission 5, pp 1-2.

194 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 3.

195 Housing Industry Association, submission 15.

196 Engineers Australia, submission 23.

197 Department of Housing and Public Works, response to submissions, p 47.

198 Department of Housing and Public Works, response to submissions, p 15.

2.2.2.6 Transitional provisions

The committee notes support from both the AMCA and Plumbing Union regarding the transitional provisions for the mechanical services occupational licence for those individuals working within the industry:

> *We support appropriate transitional arrangements to ensure that all those who are working within the industry currently are afforded the opportunity to continue to do so, provided they are able to display the appropriate competencies.*[199]

In regard to medical gas, the Plumbing Union supported 'transition provisions for persons currently working in this area; including a period of time for them to prove their abilities or upskill.'[200]

In relation to mechanical services and transitional provisions, the Plumbing Union stated:

> *We, as a Union, do not support anyone currently undertaking this work not being able to continue to do so. As such we consider that all workers who are able to display they are currently working in this sector or be given an appropriate period of time to transition via proving their skills. All new entrants into the industry should be required to undertake the relevant Certificate III.*
>
> *We consider that this may impact around 1,000 people that currently undertake this work in commercial construction and a small number of people that perform part of this work in a domestic context. All of who should be given time to have their skills recognised including if they chose to only continue to perform the small scope of work they currently do. If any person is unable to successfully complete a trade test they should not be undertaking this work.*[201]

The department advised:

> *We are also looking at generous transitional provisions and working with industry so that there is sufficient time to identify and upskill people in relation to it, if that is needed.*[202]

Whilst the department did not advise of a specific timeframe they advised:

> *In relation to the technical qualifications, I know there has been a lot of discussion about a certificate II and a certificate III. The department is still working through with industry to refine that so that we have the right scope of work for each of the licence classes that will be prescribed in a regulation and that includes technical qualifications. They have not been finalised. What I would like to mention though is that a certificate II is not a state requirement. That is actually Commonwealth legislation and that is to do with a refrigerant-handling licence. That is ozone depleting gases. Any person who works with that must have the Commonwealth licence. That is the requirement for a certificate II. Currently in Queensland to have a contract for air-conditioning refrigeration, it is actually an apprenticeship, which is a certificate III.*[203]

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199 Air Conditioning and Mechanical Contractors' Association, submission 17, p 5.

200 Plumbing and Pipe Trades Employees Union, submission 12, p 4.

201 Plumbing and Pipe Trades Employees Union, submission 12, pp 2-3.

202 Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 6.

203 Department of Housing and Public Works, public hearing transcript, Brisbane, 19 March 2018, p20.

2.3 Other issues

A number of other issues, not within the scope of the Bill, were drawn to the committee's attention. These issues are discussed in this section.

2.3.1 Certification process for medical gas

As noted above, the explanatory notes provide a background on the reasons for the proposed amendments including the New South Wales incidents where the incorrect gas was administered. The committee sought additional information regarding who certifies that the correct gas is available. The department advised:

> *At the moment there is an Australian Standard that applies to the installation of medical gas pipeline systems. As a part of that standard—it has not been called up by the National Construction Code, so it is not mandatory across the country but it is actually applied—the head anaesthetist of the hospital is responsible for signing off and certifying that the gas system has been installed correctly. I also understand from discussions with Queensland Health that they have policies and procedures in place, but I am unable to comment in relation to what those policies and procedures are.*[204]

After consulting Queensland Health, the department advised:

> *AS2896:2011—Medical gas systems – Installation and testing of non-flammable medical gas pipeline systems (AS2896) is the Australian Standard which sets out the requirements for the construction, testing and certification, operation and maintenance of non-flammable medical gas pipeline systems used for patient care, therapeutic, diagnostic and for operating surgical tools.*
>
> *AS2896 requires a designated competent person to carry out specified tests. The person must be competent to test and verify the piping systems and determine that the concentration of medical gas is correct and there is no contamination. Where non-respirable medical gases such as nitrous oxide and carbon dioxide are piped, AS2896 provides that testing shall be performed by the anaesthetist-in-charge or a delegated anaesthetist.*
>
> *The Australian and New Zealand College of Anaesthetists (ANZCA) is responsible for the training, examination and specialist accreditation of anaesthetists and for the standards of clinical practice in Australia and New Zealand and is one of Australia's largest specialist medical colleges. ANZCA is one of the nominated organisations represented on Standard Australia's Technical Committee to provide input into the development of AS2896.*[205]

In relation to private hospitals the department advised:

> *Queensland Health have advised that the Chief Health Officer has the legislative responsibility for the Private Health Facilities Act 1999. Section 39 of the Act states "that a person must not operate a private health facility unless that person holds a licence for the facility". A private health facility is defined as a day hospital or a private hospital.*
>
> *Section 42 of the Private Health Facilities Act 1999 requires an application to be submitted to the Chief Health Officer before a private health facility is issued with a licence. Section 63 of the Act requires an application to be submitted to the Chief Health Officer before any alterations or renovations occur at a licensed private health facility.*

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[204] Department of Housing and Public Works, public briefing transcript, Brisbane, 5 March 2018, p 8.

[205] Department of Housing and Public Works, correspondence dated 12 March 2018, p 1.

As part of these application processes, the applicant must provide a copy of the medical gases installation certificate or correspondence stating that the installation has occurred in accordance with AS2896. They are also required to provide a copy of the testing sheets which have been signed by the installer and an anaesthetist or a designated person who is competent in testing medical gases. A licence to operate or an approval to use the renovated area/s will not be issued until these documents and other requested certificates are provided to the Chief Health Officer.[206]

The committee noted that the Bill deals with the licensing aspect for installation of the pipes and does not cover the certification process.

2.3.2 Occupational licensing for refrigeration and air-conditioning mechanics

The committee received a number of submissions from individuals that were supportive of the introduction of an occupational licence for the refrigeration and air conditioning trade under the QBCC, inclusive of all refrigerants and split systems.

Whilst supporting for the introduction of an occupational licence for mechanical services plumbers, the AMCA advised the committee:

Mechanical services plumbing is a highly specialised form of air-conditioning work in refrigeration and air conditioning, and air-conditioning technicians also function in that space of the whole of the trade. We have mechanical services plumbing, then we also have refrigeration and air-conditioning technicians working in that space and we would also be advocating to work towards having refrigeration and air-conditioning mechanics occupationally licensed at some stage in the future.[207]

They further advised:

We need to continue down the path with occupational licensing for mechanical services plumbers but then push really hard for that occupational licensing for the RAC guys as well and not get mixed up. They are two very different scopes of work.[208]

The ARMA also raised the issue of a separate occupational licence advising:

A more progressive option to the proposed reforms that is to introduce under QBCC legislation an occupational skills based trade licence, inclusive of all refrigerated systems for the HVAC&R Industry and regardless of value of works– As a balanced and progressive option, which does provide a reform to benefit industry, the environment and consumers, within a practical fiscal structure.

Of the proposed reforms presented, ARMA believes -The scope of work associated within the refrigeration and air conditioning occupational licence should only be undertaken by a full qualified HVAC&R tradesperson who has undertaken a full 4-year apprenticeship.[209]

206 Department of Housing and Public Works, correspondence dated 12 March 2018, p 1.

207 AMCA, public hearing transcript, Brisbane, 19 March 2018, p 5.

208 AMCA, public hearing transcript, Brisbane, 19 March 2018, p 8.

209 Australian Refrigeration Mechanics Association, submission 11, p 3.

ARMA advised that structuring the licence in this way would reduce risks to workers and the public:

> *Underestimating the vital importance and safety requirements of a skill based trade licence instead of a mechanical service licence will undoubtedly determine the HVAC&R industries survival and parity alongside other peripheral trades like plumbers and electricians. Consequently, implementing a HVAC&R trade licence ensures greater risk mitigation for workers handling all refrigerants, and public safety in view of the imminent proliferation of flammable refrigerants.*[210]

ARMA also made further recommendations regarding its proposed RAC occupational licence to be regulated under the current structure of the QBCC:

- The licence should be inclusive of the restricted electrical work which includes interconnect wiring (Associating Building Works) in line with RAC skills
- The licence should be inclusive of hydrocarbon refrigerants, as with all other refrigerants
- Establish an expert industry group to oversee the appropriate licencing requirements within the QBCC legislative framework.[211]

ARMA recommended the:

> *…introduction of a refrigeration and air conditioning occupational licence under the current structure of the QBCC inclusive of associated HVACR ductwork and under the sheet metal trade's scope of work to be correctly worded as associated HVACR works. Sheet metal work associated to HVACR systems must continue to require supervision by RAC tradespeople ensuring the "Total System" is correctly installed.*[212]

ARMA advised the committee:

> *ARMA supports the need for a medical gas licence and, to a lesser extent, a mechanical services plumbing licence. Our concerns lie with the latter, with the broad description of scope of works, and we seek improved wording to ensure the latter is literally not let loose to work on high-pressure refrigerants nor the systems. The exclusions I have just mentioned are specialised areas of HVAC&R and we urge extreme caution.*[213]
>
> *….*
>
> *ARMA is seeking support for the removal of the two refrigeration and air-conditioning occupational licences under the draft mechanical services licences, to develop RAC occupational licensing under the QBCC with the related existing contractors RAC licensing. I note that it is possible to do that. It may take a little bit more time, but we already have the fire protection licences which exist that are not a contractors licence. HVAC&R is heating, ventilation, air conditioning and refrigeration. It is a specialised industry and requires a specific skill set. Competencies to carry out this work are achieved by completion of an apprenticeship in either the UEE 32211 refrigeration and air conditioning or the least preferred, which is the MEM 30205 RAC stream.*[214]

ARMA advised the committee that New South Wales recognises the three specialist trades and licences accordingly and Victoria is developing a stand-alone RAC trade.[215]

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210 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, p 1.

211 Australian Refrigeration Mechanics Association, submission 11, p 4.

212 Australian Refrigeration Mechanics Association, submission 11, p 3.

213 ARMA, public hearing transcript, Brisbane, 19 March 2018, p 5.

214 ARMA, public hearing transcript, Brisbane, 19 March 2018, pp 5-6.

215 ARMA, public hearing transcript, Brisbane, 19 March 2018, p 6.

The ARA also agreed cautioning against proceeding under the current proposed scope and definition. They advised:

> *Queensland has a unique opportunity to be a leader in developing a strong working model of a graded occupational licensing system, particularly if there is a trade of refrigeration and air conditioning, that can be replicated in other states. However, this requires careful planning and further industry consultation, in addition to better alignment of the current government legislation unique to Queensland, such as the Queensland Petroleum and Gas (Production Safety) Act 2004 and the Petroleum and Gas (Production and Safety) Regulation 2004 relating to the use of natural refrigerants. In particular, section 8 of the regulation sets out the requirement of converting existing equipment from synthetic greenhouse gases to natural refrigerants.*[216]

In regards to training, ARMA expressed the view that the HVAC&R industry should have 'a defined training package' that recognises it is a 'singular PRIMARY trade'. ARMA explained:

> *HVACR is a singular PRIMARY trade with a specific skillset on completion of refrigeration and air Conditioning under the UEE32211 RAC or the least supported MEM30205 RAC training package streams. More importantly we express concerns based on differing training packages for the industry not only reflective of two peripheral trades, but also understandably the shortcomings of governments not ensuring the establishment of an independent HVACR Industry Reference Committee to alleviate the confusion by providing a defined training package for HVACR rightly deserving of recognition.*
>
> *The technical intricacies of mechanical services package (MEM 30205) serves a wide breath of industries not limited to plumbing but also covers engineering and manufacturing industries. Therefore, qualifications issued to plumbers based on the metals package MEM is contextualized to suit the plumbing codes requirements.*
>
> *However, the MEM 30205 (specializing in refrigeration and air-conditioning) stream, has a small percentage of core and elective competencies within this package relating to refrigeration systems. The sole purpose of this package is to gain the environmental, non-technical, licence from the Australian Refrigeration Council (ARC) to work with refrigerants, as well as an avenue to allow plumbers access to the HVACR industry.*[217]

ARMA stated:

> *Indeed, training in the HVACR trade requires a deep respect of all refrigerants used, particularly natural refrigerants. The implications in mechanical applications, under the plumbing act does not imply any understanding of psychometrics, thermodynamic systems, and refrigerant pressures. Terminology such as "**Thermodynamic systems**" or "**Refrigerant vessels**" typically avoided by peripheral trades and governments to support inappropriate and unsafe licensing structures. Subsequently, these applications are ignored in the QBCC explanatory notes posing significant safety risks to industry and the public.*
>
> *Also since the establishment of the ARCtick licensing scheme in 2005 to handle refrigerants, this has seen the proliferation of lesser qualifications in a Certificate II training packages for split/systems installers (substandard courses offered over 1 and 2 days). The substandard courses have resulted in unsafe, inefficient works carried out by electricians, plumbers' even gardeners. Neither plumbers nor electricians have acquired the skillset to work with high pressure refrigerants, the tragic death of a plumber in Nambour in 2009 is testament to this.*

[216] ARA, public hearing transcript, Brisbane, 19 March 2018, p 7.

[217] Australian Refrigeration Mechanics Association, submission 11, p 2.

Commonwealth statutory declarations and pictures will be provided to the committee in confidence.[218]

The ARA supported this view and stated:

Currently we are witnessing an increasing number of incidents involving A2L flammable refrigerants and there has already been one international death. We are still awaiting the coroner's report of the two deaths in Victoria, but early indications suggest it is highly likely that the two Victorian deaths were a result of unlicensed persons working on a non-compliant refrigeration system containing a flammable refrigerant. If these gases are installed and serviced by appropriately trained and qualified HVAC&R technicians they offer a high degree of safety, significant energy reductions and in the case of natural refrigerants are environmentally benign.[219]

2.3.3 Dangers of refrigerants

The issue of the dangers of refrigerants was canvassed in both submissions and at the public hearing. The ARA advised:

We commenced the HFC refrigerant phase down on 1 January this year. As this phase down begins to take effect, the working fluids used as a refrigerant in all vapour compression refrigeration systems will either be toxic, flammable or operate at extreme pressures. Ninety per cent of the current workforce have not had experience with the properties of such fluids and are presently not qualified to work with such fluids. A massive retraining program is required within our industry. Therefore, it is in the interests of both public and worker safety that a well-designed, properly scoped state occupational licence is developed with a minimum educational level being cert III refrigeration and air conditioning under the UEE32211 or, alternatively, a mechanical services. However, the UEE is quite clearly the better program.[220]

…

The game has changed and changed significantly as from 1 January. I cannot emphasise enough the danger of the refrigerants, whether they be classed A2L, mildly flammable refrigerants, or A3 refrigerants. We will have ammonia, flammable refrigerants inclusive of hydrocarbons and synthetic refrigerants and we will have carbon dioxide, which operates at pressures of up to 100 bar. The skill sets need to increase significantly. We should not be in this position, but we are. Therefore, we really are asking the legislators to proceed cautiously and slowly and to work closely with the industry to produce the right type of licensing structure that will prevent the injuries to the public and to the workforce.

What we are seeing are explosions. We believe it is from the diesel effect. That is where air contaminates a system because it has not been installed correctly; it has not been evacuated correctly. We are starting to see these R32 split systems, which only have a minimal charge, have severe explosions. We have seen a death in India of a worker and we have seen in the Netherlands the ramifications of a severe explosion from a split system. In both cases the underlying commonality was that the systems had not been evacuated properly. We know anecdotally that that is quite a common practice amongst the certificate II qualified people. We are very clearly saying that we need to raise this standard and have a minimum entry level when working on any refrigerant that is flammable, whether it be A2L or A3.[221]

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218 Australian Refrigeration Mechanics Association, submission 11, attachment part 2, pp 2-3.

219 Australian Refrigeration Association, submission 21, p 1.

220 ARA, public hearing transcript, Brisbane, 19 March 2018, p 7.

221 ARA, public hearing transcript, Brisbane, 19 March 2018, pp 8-9.

Committee comment

Whilst acknowledging that the above issues are outside the scope of the Bill, the committee is concerned for the welfare of workers dealing with refrigeration fluids and single head split systems.

Recommendation 2

The committee recommends the Minister consider investigating ways to help ensure the safety of contractors when installing and working with refrigeration fluids and single head split systems.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' 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, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

The committee noted that the Bill repeals the current *Plumbing and Drainage Act 2002* (the 2002 Act). Much of the content of the 2002 Act is replicated in the Bill. The committee canvassed issues of fundamental legislative principles in those provisions, although generally these are not mentioned in the explanatory notes for the Bill.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Right to privacy regarding personal information

Clause 120 essentially replicates section 19 of the 2002 Act. It allows the chief executive to apply to the Police Commissioner for a criminal history report on a candidate for appointment as a member, deputy member or temporary member of the Service Trades Council (STC).

Three caveats on this power act as safeguards against potential abuse of the power:

- Although a person cannot become a member, deputy member or temporary member of the STC unless they give consent under this section, the applicant's written consent is required before the chief executive can apply for the applicant's criminal history.
- The chief executive must destroy any information received under the section as soon as practicable after it is no longer needed for deciding whether an applicant is a suitable person for appointment to the STC.
- section 122 makes it an offence punishable by a maximum penalty of 100 penalty units for a person to, without authorisation, disclose information received under section 120 or 121. [Disclosure is permitted where it is necessary to perform a function under the Act, where the disclosure is authorised under an Act or otherwise required or permitted by law, or where the applicant to whom the information relates consents to the disclosure.]

New section 121 requires a member, deputy member or temporary member to immediately give the chief executive written notice of any conviction during the term of the person's appointment. The notice must include details of the offence and any sentence. The failure to notify attracts a maximum penalty of 100 penalty units unless the member has a reasonable excuse.

Potential FLP issues include permitting the criminal history of applicants for the STC or members of the STC to be obtained by the chief executive, and requiring members to notify any convictions to the chief executive, raises issues regarding that person's right to privacy with respect to their personal information.

The present explanatory noters are silent on this issue.

In 2015, in considering the Bill giving rise to the equivalent provision currently in the 2002 Act (s19), the relevant committee commented:[222]

> *…the safeguards that will be put into place by proposed sections 19-21 with respect to information obtained about an applicant's criminal history or changes to a member's criminal history, are as follows:*
>
> - *the criminal history of an applicant can only be obtained with their consent*
> - *there are strict limits on further disclosure of that information*
> - *the information must be destroyed when it is no longer required for the purpose for which it was obtained.*
>
> *The Committee also notes that if an applicant does not wish their criminal history disclosed to the chief executive then they can simply not give consent for it to be obtained and withdraw their application for membership of the Service Trades Council.*
>
> *The Committee considers that, with the above safeguards, there appears to be sufficient protections for the privacy of an applicant or member of the Service Trades Council.*

The same safeguards are in the current Bill.

Committee comment

The committee is satisfied that there are sufficient protections for the privacy of an applicant or member of the STC, noting the view of the previous committee and that the previous section and safeguards are being replicated.

3.1.1.2 Ordinary activities should not be unduly restricted

Clauses 186 to 188: Part 9, division 3, of the Bill (clauses 182 and following – see in particular clauses 186 to 188) amends the *Queensland Building and Construction Commission Act 1991* to provide for a new licensing regime regarding mechanical services, including for medical gas supply installations – an area not presently subject to any licensing requirements.

Potential FLP issues include the concept of liberty requires that an activity (including business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

The explanatory notes state: [223]

> *Individuals who are currently working unlicensed (for example, labourers who are employed by a contractor licensee) or unregulated will be required either to complete the necessary qualifications or demonstrate that they have the appropriate skills and experience. They will then need to obtain an occupational licence in order to continue this work. To minimise disruption to the industry, and any potential cost impacts or displacement of unlicensed individuals, the Bill provides for a transitional period. This will ensure that industry has sufficient time to satisfy either of these requirements. In addition, existing licensees will be able to transition into a new licence class with limited disruption.*
>
> *Despite the potential impacts, the new mechanical services licence is considered necessary to improve the standard of work in the industry and address the significant health and safety impacts that can arise when work is undertaken by unlicensed or underqualified persons, as demonstrated by the tragic incidents at Bankstown-Lidcombe Hospital in New South Wales noted above.*

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222 Transportation and Utilities Committee, report No. 13, 55th Parliament, *Plumbing and Drainage and Other Legislation Amendment Bill 2015*, March 2016, p 24.

223 Plumbing and Drainage Bill 2018 explanatory notes, pp 6-7.

The introduction of an occupational licensing framework will ensure mechanical services work is always undertaken by a licensed person who is suitably qualified, and will ensure that consumers have an avenue to resolve any concerns through the QBCC as regulator.

There is an appropriate transitional scheme in the Bill.

Committee comment

Given the policy intents and the significant risks and harms being addressed, the committee is satisfied that the new licensing regime is appropriate, and has sufficient regard to rights and liberties of individuals.

3.1.1.3 Penalties imposed for offences are proportionate and relevant to the actions to which the consequences are applied

The following clauses of the Bill contain offences in relation to unlicensed work:

- clause 56 - carrying out work without appropriate licence
- clause 57 - supervising or directing work without appropriate licence
- clause 186 - insertion of new s42CA - unlawful carrying out of mechanical services work
- clause 187 - insertion of new s42DA - licensed contractor must not engage or direct unauthorised person for mechanical services work.

In determining whether legislation has sufficient regard to the rights and liberties of individuals, it is necessary to consider whether the penalties imposed for offences are proportionate and relevant to the actions to which the consequences are applied by the legislation.

There are many offence provisions in the Bill (refer section 3.2 of this report). For some, the penalties are relatively high. Some offence provisions replicate those in the current Act, on occasion with increased penalties. There are also some new offence provisions.

Each of the four provisions mentioned above will have a sliding scale of penalties:

- first offence— maximum 250 penalty units[224]
- second offence—maximum 300 penalty units
- third and subsequent offences—maximum 350 penalty units or 1 year's imprisonment.

By contrast there is a maximum penalty of 165 penalty units in the current Act for the equivalent offences to those in clauses 56 and 57 (in current sections 119 and 120 respectively).

The maximum penalty of 350 penalty units or 1 year's imprisonment will also apply to offences that involve grossly defective work under schedule 1 of the Bill or tier 1 defective work under the *Queensland Building and Construction Commission Act 1991*.

With regard to a penalty being proportionate to the offence, the OQPC Notebook states:

The desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

…

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[225]

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[224] As at the date of this report one penalty unit is $126.15.

[225] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

The explanatory notes provide the following background and justification:[226]

> *During consultation on the draft Bill industry stakeholders expressed concern about defective plumbing and drainage work being performed by unlicensed persons. In particular, they noted that there was insufficient deterrent to prevent unlicensed persons from continuing to perform defective work. As a result, it was suggested that consumers were being left with defective work resulting in significant financial and safety risks.*
>
> *Similar issues relating to unlicensed building work were recently addressed in the Building Industry Fairness (Security of Payment) Bill 2017 (SOP Bill).*
>
> *In the SOP Bill, the penalties for sections 42, 42B, 42C and 42D were increased to align Queensland more closely with other states and territories. For example, the maximum penalty in both Victoria and New South Wales is 500 penalty units, with the possibility of 12 months' imprisonment in New South Wales for second and subsequent offences.*
>
> *The proposed penalties in the Bill mirror the approach taken for unlicensed building work under the SOP Bill. This will ensure consistency with the* [Queensland Building and Construction Commission Act 1991] *for similar offences involving unlicensed work. The proposed penalties are considered proportionate and appropriate for providing a deterrent to unlicensed persons entering the market. This, is turn, is expected to ensure a high rate of compliance with standards and protect consumers and licensees from loss. The possibility of imprisonment is particularly targeted at repeat, high-level offenders.*

The level of some of the maximum penalties has been criticised by the HIA and the QLS in submissions to the committee.[227]

In its consideration of the Bill giving rise to the current Act, the former Scrutiny of Legislation Committee drew to the attention of the Parliament the level of the 'very substantial' maximum penalties in that Bill.[228]

Committee comment

The committee considers, on balance, the high penalties in the Bill are proportionate and appropriate and justified in the circumstances.

3.1.2 Onus of proof

Section 4(3)(d) of the *Legislative Standards Act 1992* identifies that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

3.1.2.1 Clause 95

Clause 95, in summary, provides that a certificate, purporting to be signed by certain senior officers, and stating any of certain specified matters, is evidence of the matter. In full, it provides:

> *95 Other evidentiary aids*
>
> *(1) A certificate purporting to be signed by the chief executive, commissioner, chairperson or assistant commissioner and stating any of the following matters is evidence of the matter—*
>
> *(a) a stated document is 1 of the following things made, granted, given, issued or kept under this Act—*
>
> *(i) an appointment, approval or decision;*

[226] Plumbing and Drainage Bill 2018 explanatory notes, p 6.

[227] Submissions 15 and 16 respectively.

[228] Scrutiny of Legislation Committee, *Alert Digest No 12 of 2002*, p 1.

(ii) a direction, notice or requirement;

(iii) a licence;

(iv) a record;

(v) the register of licensees;

(b) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a);

(c) on a stated day, or during a stated period, a person's appointment as an investigator or an inspector was, or was not, in force;

(d) on a stated day, or during a stated period, a licence—

(i) was or was not in force; or

(ii) was or was not subject to a stated condition;

(e) on a stated day, a stated person was given a stated notice or direction under this Act;

(f) on a stated day, a stated requirement was made of a stated person.

(2) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

(a) a stated document is a copy of, or an extract from or part of—

(i) the Plumbing Code of Australia; or

(ii) the Queensland Plumbing and Wastewater Code; or

(iii) the Queensland Development Code

(b) an edition, version or part of a document mentioned in paragraph (a) was in force at a stated time or during a stated period.

Clause 95 is a reverse onus provision. Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence.

> *For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positions to disprove guilt.*[229]

It has been argued that provisions that state that something is evidence, without requiring it to be proved, assist one party in the making of their case, to the detriment of the other party.

The explanatory notes state:[230]

> *It is normal for legislation to provide that a certificate is evidence of a fact stated in the certificate if the certificate is signed by a person administering a law. This recognises the impracticality of requiring the person administering the law having to attend court to prove purely administrative issues, for example whether a person held a licence at a given time or what the code requirements for plumbing or drainage work were at a particular time.*
>
> *Often these issues will not be in dispute in a proceeding and allowing evidence to be obtained through a certificate serves to expedite proceedings.*

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229 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

230 Plumbing and Drainage Bill 2018 explanatory notes, p 4.

To ensure that this process is not abused, the provision specifically provides that it operates only in the absence of contrary evidence. This allows a defendant to challenge any assertion made in a certificate and to introduce evidence in support of their challenge.

The evidentiary matters able to be included in the certificate are largely formal or administrative in nature and likely to be non-contentious.

The explanatory notes continue:[231]

To ensure that this process is not abused, the provision specifically provides that it operates only in the absence of contrary evidence. This allows a defendant to challenge any assertion made in a certificate and to introduce evidence in support of their challenge.

Committee comment

The committee found that first statement is incorrect. The clause contains no such specific provision. [Contrast clause 90.]

At the same time, the clause provides that the content of the certificate is 'evidence' of the matter, not conclusive evidence. It is therefore likely that, as noted, the accuracy or veracity of the information contained in any certificate is able to be challenged by contrary evidence put forward by a defendant if required.

Such evidentiary provisions are fairly common, administratively convenient and avoid the need to unnecessarily protract court hearings in that the prosecution is not required to waste the court's time adducing evidence to prove matters that are not likely to be in contention anyway.

The committee is therefore not be unduly concerned about clause 95.

3.1.2.2 Clause 96

In summary, clause 96 provides that in a proceeding for an offence against the proposed Act, the state of mind of a person's 'representative', acting within the scope of their actual or apparent authority, is deemed to be that of the person. Further, conduct engaged in by a person by their representative within the scope of their authority is taken to have been engaged in also by the person. 'Representative' includes an agent, employee of an individual or corporation, and an executive officer of a corporation. The clause in full reads:

96 Conduct of representatives

(1) If it is relevant to prove a person's state of mind about particular conduct, it is enough to show—

(a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(2) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority, is taken to have also been engaged in by the person unless the person proves—

(a) the person was not in a position to influence the representative in relation to the conduct; or

(b) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct.

231 Plumbing and Drainage Bill 2018 explanatory notes, p 4.

(3) In this section—

engaging, in conduct, includes failing to engage in conduct.

representative means—

(a) for a corporation—an agent, employee or executive officer of the corporation; or

(b) for an individual—an agent or employee of the individual.

state of mind, of a person, includes the person's—

(a) belief, intention, knowledge, opinion or purpose; and

(b) reasons for the belief, intention, opinion or purpose.

Clause 96 is based on section 140 of the current Act. It can be seen as amounting in effect to a reverse onus provision.

In considering the clause that became section 140, the former Scrutiny of Legislation Committee observed:[232]

Clearly, the effect of these provisions is to enable the person to be charged with offences committed by their representative. The clause provides a defence, namely, that the person took reasonable steps to prevent the representative's conduct, or was not in a position to influence the representative in relation to the conduct. The clause places the onus of establishing this defence upon the person.

As the committee has frequently stated in relation to provisions of this type, it considers they create a reversal of the onus of proof.

The Explanatory Notes relevantly state (at page 5):

> *To ensure there is effective accountability at a corporate level, it is appropriate that a corporation be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation.*

While the committee is appreciative of the difficulties surrounding this issue, particularly in relation to corporations, it does not generally support the use of such provisions. The committee notes that cl.140 contains what is effectively a reversal of the onus of proof. The committee refers to Parliament the question of whether such a reversal of onus is reasonable in the circumstances.

The explanatory notes for the current Bill do not traverse this issue regarding the present clause 96.

Committee comment

The committee considers that, on balance, the reversal of onus of proof and the imposition of presumed responsibility is justified in the circumstances.

3.1.3 Protection against self-incrimination

Section 4(3)(f) of the *Legislative Standards Act 1992* identifies that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides appropriate protection against self-incrimination.

[232] Scrutiny of Legislation Committee, *Alert Digest No 12 of 2002*, p 3.

Clause 48 authorises the QBCC commissioner (or an inspector) in certain circumstances to issue a notice to a licensee requiring copies of, or information about, documents (specified in the notice) which the commissioner reasonably requires to decide whether the licensee or employed licensee is, or has been, complying with the requirements under section 83. Any such notice must state that—

- the licensee or employer must comply with the notice even though complying might tend to incriminate the licensee, employer or employed licensee or expose the licensee, employer or employed licensee to a penalty; and
- under section 97, there is a limited immunity against the use of the information in a proceeding.

A person given the notice must comply with the notice within 10 business days after receiving the notice, unless the person has a reasonable excuse. (The maximum penalty is 100 penalty units.)

Clause 48(6) provides that it is not a reasonable excuse ... if complying with the notice 'might tend to incriminate the person or expose the person to a penalty'.

Clause 97 does provide a limited immunity for the purposes of clause 48:

97 Evidential immunity for individuals complying with particular requirements

…

(2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

(3) Subsection (2) does not apply to -

(a) a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or

(b) a proceeding against a licensee for an offence against this Act; or

(c) a disciplinary proceeding against a licensee under part 2, division 10.

Legislation should provide appropriate protection against self-incrimination.[233] The OQPC Notebook states: [234]

This principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself.

Denial of the protection afforded by the self-incrimination rule has seen as only potentially justifiable if –

(a) The questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that would be difficult or impossible to establish by any alternative evidential means.

(b) The legislation prohibits use of the information obtained in prosecutions against the person.

(c) In order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).[235]

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233 *Legislative Standards Act 1992*, s 4(3)(f).

234 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 52.

235 Alert Digest 2000/1, p 7, para 57; *Alert Digest 1999/31*; and *Alert Digest 1999/*4, p 9, para 1.60.

QLS submission 16[236] states:

> ***The right to claim privilege against self-incrimination***
>
> *The right to claim privilege against self-incrimination. This is a longstanding, fundamental right which should not be removed unless appropriately justified, and as a last resort.*
>
> *Clause 48 relates to the supply of documents and information in audit. We submit that instead of abrogating the right to claim privilege, a more proportionate result of the failure to provide the requisite documents and information would be that practically, the person fails the audit or has other action taken against them because this information cannot be used during to make a favourable decision.*
>
> *We do not consider that it is appropriate for a penalty to be imposed for the failure to give this information and documents as this contradicts this fundamental right and thus should be considered a "reasonable excuse".*
>
> *Further clauses 97(3)(b) and (c) of the Bill also clearly breach the right to claim privilege without sufficient justification. While subsection (2) of this clause has specifically referred to this right, the extremely broad nature of s97(3)(b) and (c) removes any protection this right gives.*[237]

QLS advised:

> *Reviewing the objects and purpose of this legislation, though it is designed to promote safety and good work, we do not think the balance is right. You then go to clause 97 and particularly 97(3), where it again refers to this clause 48 and it says that potentially this privilege may be able to be protected but then subclauses (b) and (c) say 'except where there is an offence against this act or a disciplinary proceeding'. In the previous subclause you give the person the right to claim privilege but then you take it away in the next few subclauses so it essentially has the effect of taking that right away, which we object to.*[238]

The department advised:

> *It is considered that abrogation of the privilege against self-incrimination is justified on two public policy grounds.*
>
> *Firstly, the information in question relates to a statutory framework that is charged with maintaining the health and safety of the community. Failures to comply with this framework have the potential to cause significant health risks (for example, the spread of pathogens from untreated sewage, or the transmission of legionella bacteria from a poorly maintained hot water system).*
>
> *Secondly, licensees are voluntary participants in a regulatory scheme that is intended to reduce the risk to public health posed by plumbing or drainage work. As suggested by the QLRC Report No. 59, the community is entitled to insist on the provision of information that will disclose whether a licensee is abiding by the requirements of the regulatory scheme.*

As such, the department did not propose any changes to these clauses.

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236 Queensland Law Society, submission 16, pp 1-2

237 Queensland Law Society, submission 16, pp 1-2.

238 Queensland Law Society, public hearing transcript, Brisbane, 19 March 2018, p 4.

Further, the explanatory notes provide this justification for the limited nature of the immunity in clause 97:[239]

> *It is considered that this limited immunity is justified on two public policy grounds.*
>
> *Firstly, the information in question relates to a statutory framework that is charged with maintaining the health and safety of the community. Failures to comply with this framework have the potential to cause significant health risks (for example, the spread of pathogens from untreated sewage, or the transmission of legionella bacteria from a poorly maintained hot water system).*
>
> *Secondly, licensees are voluntary participants in a regulatory scheme that is intended to reduce the risk to public health posed by plumbing or drainage work. As suggested by the QLRC Report No. 59, the community is entitled to insist on the provision of information that will disclose whether a licensee is abiding by the requirements of the regulatory scheme.*

Committee comment

The committee considers that the reference in the explanatory notes to the QLRC report 59 warrants some examination. The QLRC observed:[240]

> *Abrogation … may also be justified in a situation where an individual is required to co-operate with a legislative regulatory system to which the individual has voluntarily subjected himself or herself.*
>
> *For example, some regulated activities require government authorisation in the form of a licence or permit in order to engage lawfully in that activity. There is a persuasive argument that society is entitled to insist on the provision of certain information from those who voluntarily submit themselves to such a regulatory scheme. The basis of the argument is that participation in the scheme is a matter of choice and, if undertaken, necessarily involves acceptance of submission to the requirements of the scheme, including compulsion to provide information. In other words, in some situations, participation in a regulated activity may be considered to amount to a waiver of privilege. This may be particularly so in the context of records that are required to be kept as part of a mechanism for ensuring compliance within a regulatory framework.*
>
> *A regulatory authority's need to secure compliance with the requirements of a legislative scheme is likely to be of particular relevance in relation to the abrogation of the penalty privilege.*

It can be noted that the QLRC continued[241]:

> *However, the Commission is concerned that the argument that voluntary submission to a regulatory scheme justifies abrogation should not be taken too far. There are many activities that are government regulated, and while, in theory, participation in these activities is voluntary, often they are activities that are an essential part of daily life.*

Thus, it is arguably a little simplistic to describe licensees as 'voluntary participants' in a regulatory scheme that governs their very livelihoods. It is arguable whether this claimed second ground is of itself a separate 'public policy' ground. Rather, the second ground is essentially a re-statement of the first.

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239 Plumbing and Drainage Bill 2018 explanatory notes, p 5.

240 Queensland Law Reform Commission, report 59, *The Abrogation of the Privilege against Self-Incrimination*, December 2004, pp 54-55.

241 Queensland Law Reform Commission, report 59, *The Abrogation of the Privilege against Self-Incrimination*, December 2004, p 55.

Nonetheless, the committee regards the proffered justification for the limited nature of the immunity as adequate in light of the need to protect the community from risks to public health. As noted by the QLRC:[242]

> *It can also arise in the context of a legislative regulatory scheme, where one of the requirements of participation in the regulated activity is the keeping of specified records. In such a situation, it might be argued that the keeping and production on demand of the records are conditions of authorisation to participate in the activity in question, and that participation therefore involves the waiver of the right to refuse to produce the records on the grounds of self-incrimination or self-exposure to a penalty. It might also be argued that to allow a claim of privilege in relation to such records would thwart the purpose of the legislation, since it would facilitate a failure to keep the records, or their destruction or falsification, with little fear of detection.*
>
> *These considerations have given rise to an argument that there may be a case for abrogating the privileges in relation to certain documents:*
>
> > *Plainly enough the case for protecting a person from compulsion to make an admission of guilt is much stronger than the case for protecting a person from compulsion to produce books or documents which are in the nature of real evidence of guilt and not testimonial in character.*

3.1.4 Retrospectivity

Section 4(3)(g) of the *Legislative Standards Act 1992* identifies that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Clause 174 provides for a transitional regulation-making power, in the following terms:

> *(1) A regulation (a transitional regulation) may make provision about a matter for which—*
>
> *(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and*
>
> *(b) this Act does not provide or sufficiently provide.*
>
> *(2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commenced.*
>
> *(3) A transitional regulation must declare it is a transitional regulation.*
>
> *(4) This section and any transitional regulation expire 1 year after the day this section commenced.*

Clause 174(2) allows that any transitional regulation 'may have retrospective operation to a day not earlier than the day this section commenced.' The LSA provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

A strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[243] However, the explanatory notes are silent on the issue of retrospectivity.

The scope of subject-matter of any regulation made under clause 174 is quite broad. The potential content of any regulation pursuant to the clause is unknown.

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[242] Queensland Law Reform Commission, report 59, *The Abrogation of the Privilege against Self-Incrimination*, December 2004, p 37.

[243] See Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p54.

The QLS submission states:

> *Transitional regulation-making power*
>
> *Clause 174 of the Bill which contains a transitional regulation-making power allows the legislature to by-pass the parliamentary process. Although the purpose of the power is to facilitate a smooth transition into the new scheme, any material that imposes obligations or affects the rights of individual should be included in the primary legislation.*
>
> *We make the same submission in respect of clause 157.*[244]

The Explanatory Notes state:

> *The inclusion of clause 174 is justified because it is intended to be a temporary measure to facilitate a smooth transition to the new legislative scheme by enabling a regulation to be made to address any emerging or unforeseen transitional issues. Importantly, the potential contravention of FLPs is mitigated in that the Bill provides for the expiry of the transitional regulation-making power one year after the day of commencement.*[245]

The department also provided the following response on this issue and did not propose any changes to the Bill:

> *Clause 174 of the Bill contains a transitional regulation-making power to allow provisions of a saving or transitional nature to be made where not sufficiently provided for by the Act. Transitional regulation-making powers of this kind may raise FLP issues about whether the Bill has sufficient regard for the institution of Parliament.*
>
> *The inclusion of clause 174 is justified because it is intended to be a temporary measure to facilitate a smooth transition to the new legislative scheme by enabling a regulation to be made to address any emerging or unforeseen transitional issues. Importantly, the potential contravention of FLPs is mitigated in that the Bill provides for the expiry of the transitional regulation-making power one year after the day of commencement.*[246]

Clause 157 provides for a broad standard regulation-making power making power:

> *157 Regulation-making power*
>
> *(1) The Governor in Council may make regulations under this Act.*
>
> *(2) A regulation may—*
>
> *(a) fix the fees payable under this Act and the way, time, place, and the person by and to whom the fees must be paid; or*
>
> *(b) provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation; or*
>
> *(c) provide for matters relating to the licensing of plumbers or drainers; or*
>
> *(d) provide for matters relating to plumbing or drainage work; or*
>
> *(e) provide for permits for permit work or notifiable work; or*
>
> *(f) provide for the inspection of permit work and notifiable work and the giving of action notices, inspection certificates or final inspection certificates for the work; or*

244 Queensland Law Society, submission 16, p 2.

245 Plumbing and Drainage Bill 2018 explanatory notes, p 5

246 Department of Housing and Public Works, response to submissions, 16 March 2018, p 50.

(g) provide for administrative matters, including the requirement for a person to give a notice to an entity, in relation to plumbing or drainage work; or

(h) require the maintenance, testing and inspection of particular plumbing or drainage work; or

(i) provide for approvals for—

(i) on-site sewage treatment plants; or

(ii) greywater treatment plants; or

(j) provide requirements about reporting on servicing on-site sewage facilities, greywater use facilities or greywater treatment plants; or

(k) provide for circumstances when a local government is not required to inspect particular plumbing or drainage work, and for the giving of notices about the work; or

(l) require a person to carry out plumbing or drainage work on premises to comply with a requirement of this Act, and to provide for payment of the costs of carrying out the work; or

(m) provide for a local government to recover costs from the owner of premises for costs incurred by the local government carrying out plumbing or drainage work on the premises; or

(n) provide for the registers the commissioner or a local government must keep and the information that must or may be included in each register.

Committee comment

The committee's comments on this issue are included in the next section.

3.1.5 Institution of Parliament – delegation of legislative power

Section 4(4) of the *Legislative Standards Act 1992* identifies that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill:

a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

c) authorises the amendment of an Act only by another Act.

As noted above, both clauses 157 and 174 provide for regulation making power.

A potential FLP issue is whether this an appropriate delegation of legislative power. Transitional regulation-making powers are discussed in the OQPC handbook, based on comments by the former Scrutiny of Legislation Committee.

That committee regarded it as an inappropriate delegation to provide that a regulation may be made about any matter of a savings, transitional or validating nature 'for which this part does not make provision or enough provision' because this anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation. The form of transitional regulation-making power most objectionable has the following aspects:

a) it is expressed to allow for a regulation that can override an Act

b) it is so general as to allow for a provision about any subject matter, including those that should be dealt with by Act as opposed to subordinate legislation

c) it is not subject to any other control, for example, a sunset clause.

Section 4(4)(a) of the *Legislative Standards Act 1992* provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the Office of the Queensland Parliamentary Counsel FLP Notebook, this matter is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

Committee comment

The committee acknowledges that the clause is very broad in scope, especially noting the wording of 174(1)(b). Moreover, and not mentioned in the explanatory notes in considering the issue, the clause is expressed to have retrospective effect.

However, both the clause itself and any transitional regulation expire 12 months from the date the clause commences. The committee therefore considers the sunset clause and the subsequent disallowance powers of the House are enough for clause 174 to have sufficient regard to the institution of Parliament, noting that there does not appear to be any urgency with the Bill. The committee also notes that Clause 174 is identical with clause 208 of the lapsed 2017 Bill.

3.1.6 Scrutiny by the Legislative Assembly

Section 4(4)(b) of the *Legislative Standards Act 1992* identifies that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

As provided in clause 3(2)(b), one of the ways in which the Act will achieve its purpose of regulating plumbing or drainage work is by 'requiring plumbing or drainage work to be carried out in compliance with the code requirements for the work'.

Clause 9 explains what is meant by the term 'code requirements'. It includes two codes – the *Queensland Plumbing and Wastewater Code* (QPW) and the *Plumbing Code of Australia* (referred to below), and any relevant local law requirements (not inconsistent with the codes or the Act).

Clause 7 provides that the QPW is a document of that name made by the chief executive published on the Department's website, as amended from time to time. (Clause 7(2) provides that each version of the code does not take effect until it is approved by a regulation.)

It is intended that the first version of the QPW Code will be replaced by new versions from time to time. A version of the QPW was in force under the repealed *Plumbing and Drainage Act 2002*. It is proposed that a new, contemporary version of the code will be prescribed under clause 7 of the Act.[247]

Clause 8 defines the term 'Plumbing Code of Australia'.

In turn, clause 154 provides in part:

> *(1) The chief executive may make guidelines for matters within the scope of this Act to help compliance with this Act.*
>
> *(2) Without limiting subsection (1), the chief executive may make the following guidelines—*
>
> *(a) a guideline about carrying out plumbing or drainage work, including ways of complying with the code requirements for plumbing or drainage work*

The chief executive must publish the guidelines on the department's website (clause 154(3)).

[247] Plumbing and Drainage Bill 2018 explanatory notes, p 13.

Failure by licensees to have regard to guidelines (and, by extension, the codes) or to comply with the codes can result in disciplinary action and orders (see clause 49 and 55) or enforcement notices (clause 143(1)), or can amount to an offence, for example:

> *64 (1) A person who carries out plumbing or drainage work must ensure the work complies with the code requirements for the work.*
>
> *Maximum penalty—100 penalty units.*

The Bill places extensive reliance on external documents, which will not necessarily have the status of subordinate legislation or need to be approved by regulation. It can be seen that the impact of these documents on individual's rights and obligations is significant.

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.[248]

The explanatory notes are silent on this point.

The former Scrutiny of Legislation Committee (SLC) commented adversely on provisions allowing matters, which it might reasonably be anticipated would be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to the tabling and disallowance provisions of the *Statutory Instruments Act 1992*.

In considering whether it is appropriate that delegated matters be dealt with through an alternative process to the subordinate legislation, the Scrutiny of Legislation Committee has taken into account:

- the importance of the subject dealt with
- the practicality or otherwise of including those matters entirely in subordinate legislation
- the commercial or technical nature of the subject matter, and
- whether the provisions were mandatory rules or merely to be had regard to.

The SLC also considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance there is less concern raised.[249]

The SLC also determined if a document that is not subordinate legislation is intended to be incorporated into subordinate legislation, then an express provision should require the tabling of the document at the same time as the subordinate legislation.[250] Similar considerations apply when a non-legislative document is required to be approved by an instrument of subordinate legislation.[251]

In considering the effect of such external documents, the committee noted the context of the subject matter of the Bill and the relevant clauses, in light of the four factors detailed above. In addition, it considered that there has been in more recent times, in respect of such documents, an increased quality of the drafting, increased public access and increased accountability to the public and Parliament.

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248 See the discussion in Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 155.

249 *Alert Digest 2004/3*, pp 5-6, paras 30-40; *Alert Digest 2000/*9, pp 24-25, paras 47-56.

250 *Alert Digest 2001/8*, p 16, para 7; *Alert Digest 1996/*5, p 9, para 3.8.

251 *Alert Digest 2003/11*, p 23, paras 33-40.

3.2 Proposed new or amended offence provisions

The following table details the proposed new or amended offence provisions:

Clause	Offence	Proposed maximum penalty
40	**Returning licence for amendment or replacement** (1) This section applies if a licensee receives— (a) an information notice, under section 38(4)(b), about a decision to change a condition; or (b) a notice, under section 38(6), about a decision to remove a condition. (2) The licensee must return the licensee's licence to the commissioner within 10 business days after receiving the notice, unless the licensee has a reasonable excuse. Maximum penalty—10 penalty units. (3) On receiving the licence, the commissioner must— (a) amend the licence in an appropriate way and return the amended licence to the licensee; or (b) if the commissioner does not consider it practicable to amend the licence—issue a replacement licence to the licensee.	10 penalty units
44	**Notice of change in circumstances** (1) This section applies if any of the following changes happens for a licensee— (a) the licensee's name, residential or email address or phone number changes; (b) the licensee is convicted of an offence against this Act or the repealed Act; (c) if the licensee holds an interstate or New Zealand licence— (i) a condition is imposed on the licence; or (ii) the licence is suspended or cancelled. (2) The licensee must give the commissioner notice of the change within 20 business days after the change. Maximum penalty— (a) if the offence relates to a change of name, address or phone number—1 penalty unit; or (b) if the offence relates to another change—10 penalty units. (3) The notice must be given in the way approved by the commissioner.	1 penalty unit 10 penalty units
48	Supplying documents or information (4) Also, the notice must state that— (a) the licensee or employer must comply with the notice even though complying might tend to incriminate the licensee, employer or employed licensee or expose the licensee, employer or employed licensee to a penalty; and	

	(b) under section 97, there is a limited immunity against the use of the information in a proceeding. 5) The person given the notice must comply with the notice within 10 business days after receiving the notice, unless the person has a reasonable excuse. Maximum penalty—100 penalty units. (6) It is not a reasonable excuse for a person to fail to comply with the notice on the basis that complying with the notice might tend to incriminate the person or expose the person to a penalty. (7) In this section— **employ** includes engage on a contract for services or commission, whether or not for reward. **reasonably suspects** means suspects on grounds that are reasonable in the circumstances.	100 penalty units
52	**Disciplinary action that may be taken by commissioner** (1) If the commissioner decides to take disciplinary action against a licensee, the commissioner may do 1 or more of the following— (a) reprimand the licensee; (b) order plumbing or drainage work be rectified to comply with— (i) the code requirements for the work; or (ii) if the work is permit work—the permit or any condition of the permit for the work; (c) change conditions, or impose new conditions, on the licensee's licence; (d) suspend the licensee's licence for a period of not more than 1 year; (e) require the licensee to pay an amount of not more than the equivalent of 100 penalty units to the commissioner, within a reasonable stated period. (2) If the commissioner requires the licensee to pay an amount under subsection (1)(e) and the licensee does not pay the amount to the commissioner within the stated period, the commissioner may recover the unpaid amount from the licensee as a debt.	100 penalty units
55	**Referral of particular disciplinary action to QCAT** (1) This section applies if, under section 51(3), the commissioner refers a matter to QCAT to decide whether or not to make an order against a licensee in relation to the matter. (2) For hearing the matter, QCAT must be constituted by 3 members. (3) The members must include— (a) 1 legally qualified member; and (b) 1 QCAT member who has at least 10 years experience in the plumbing and drainage trade. (4) If, after hearing the matter, QCAT decides a ground exists to take disciplinary action against the licensee, QCAT may do 1 or more of the following—	

	(a) reprimand the licensee; (b) order plumbing or drainage work be rectified to comply with— (i) the code requirements for the work; or (ii) if the work is permit work—the permit or any condition of the permit for the work; (c) change conditions, or impose new conditions, on the licensee's licence; (d) suspend the licensee's licence for the period decided by QCAT; (e) cancel the licensee's licence; (f) order the licensee to pay an amount of not more than the equivalent of 250 penalty units to the commissioner within a reasonable stated period. (5) In this section— **legally qualified member** means a legally qualified member under the QCAT Act. **QCAT member** means a member under the QCAT Act.	250 penalty units
56	**Carrying out work without appropriate licence** (1) Subject to section 58, a person must not carry out plumbing or drainage work unless the person holds a licence for the work. Maximum penalty— (a) for a first offence—250 penalty units; or	250 penalty units
56	(b) for a second offence—300 penalty units; or	300 penalty units
56	(c) for a third or later offence, or if the plumbing or drainage work is grossly defective work—350 penalty units or 1 year's imprisonment. *Note—* A person may be required to hold a contractor's licence under the *Queensland Building and Construction Commission Act 1991* in addition to a licence under this Act to lawfully carry out particular plumbing or drainage work. See section 42 of that Act.	350 penalty units or 1 year's imprisonment
56	(2) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment commits a crime.	350 penalty units or 1 year's imprisonment
57	**Supervising or directing work without appropriate licence** (1) Subject to section 58, a person (a supervisor) must not supervise another person carrying out plumbing or drainage work unless the supervisor holds a licence for the work. Maximum penalty— (a) for a first offence—250 penalty units; or	250 penalty units
57	(b) for a second offence—300 penalty units; or	300 penalty units

57	(c) for a third or later offence, or if the plumbing or drainage work is grossly defective work—350 penalty units or 1 year's imprisonment.	350 penalty units or 1 year's imprisonment
57	(2) Subject to section 58, a licensee must not supervise another person carrying out plumbing or drainage work unless the other person holds a licence for the work. Maximum penalty— (a) for a first offence—250 penalty units; or	250 penalty units
57	(b) for a second offence—300 penalty units; or	300 penalty units
57	(c) for a third or later offence, or if the plumbing or drainage work is grossly defective work—350 penalty units or 1 year's imprisonment.	350 penalty units or 1 year's imprisonment
57	(3) Subject to section 58, a licensee must not direct another person to carry out plumbing or drainage work unless the other person holds a licence for the work. Maximum penalty— (a) for a first offence—250 penalty units; or	250 penalty units
57	(b) for a second offence—300 penalty units; or	300 penalty units
57	(c) for a third or later offence, or if the plumbing or drainage work is grossly defective work—350 penalty units or 1 year's imprisonment. (4) For subsections (1) and (2), a person (a consumer) is taken not to supervise another person carrying out plumbing or drainage work only because the consumer entered into a contract for carrying out the plumbing or drainage work, other than a contract of employment.	350 penalty units or 1 year's imprisonment
57	(5) An individual who contravenes subsection (1), (2) or (3) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment commits a crime.	350 penalty unit or 1 year's imprisonment
59	**Directly supervising trainees or unlicensed persons** (1) If a licensee is responsible for directly supervising a trainee carrying out plumbing or drainage work or an unlicensed person carrying out drainage work under section 58(1)(b) or (c), the licensee must— (a) provide direction to the trainee or unlicensed person on how to carry out the work; and (b) ensure the work complies with this Act. Maximum penalty—100 penalty units. (2) For subsection (1), a licensee is responsible for directly supervising a trainee carrying out plumbing or drainage work, or an unlicensed person carrying out drainage work, if the licensee— (a) is the trainee's or unlicensed person's employer; or (b) is directed by the trainee's or unlicensed person's employer to directly supervise the trainee or unlicensed person.	100 penalty units

	(3) A licensee contravenes subsection (1) if the licensee fails to have regard to a guideline that is relevant to licensees directly supervising trainees carrying out plumbing or drainage work or unlicensed persons carrying out drainage work.	
60	**Contravening licence conditions** A licensee must not contravene a condition of the licensee's licence. Maximum penalty—100 penalty units.	100 penalty units
61	**Limits on provisional licensees** (1) A provisional licensee must not carry out plumbing or drainage work under the licensee's provisional licence unless supervised by a person who holds a licence to carry out the work. Maximum penalty—100 penalty units. (2) This section does not apply to plumbing or drainage work that is work mentioned in section 58(1)(a), (d) or (e).	100 penalty units
62	**Returning suspended or cancelled licence** (1) This section applies if the commissioner or QCAT suspends or cancels a licence. (2) The licensee must return the licence to the commissioner within 10 business days after receiving an information notice about the suspension or cancellation, unless the licensee has a reasonable excuse. Maximum penalty—10 penalty units. (3) If the licence is suspended, the commissioner must return the licence to the licensee as soon as practicable after the suspension ends. (4) In this section— ***licensee***, for a cancelled licence, means the person who was the licensee for the licence while the licence was in force.	10 penalty units
63	**Surrendering licence** (1) A licensee may surrender the licensee's licence by notice given to the commissioner. (2) The surrender takes effect— (a) on the day the notice is given to the commissioner; or (b) if a later day is stated in the notice—on the later day. (3) The licensee must return the licence to the commissioner within 10 business days after the day the surrender takes effect, unless the licensee has a reasonable excuse. Maximum penalty—10 penalty units.	10 penalty units
64	**Complying with code requirements for plumbing and drainage work** (1) A person who carries out plumbing or drainage work must ensure the work complies with the code requirements for the work. Maximum penalty—100 penalty units.	100 penalty units

	(2) A person who prepares a plan for plumbing or drainage work must ensure the plan complies with the code requirements for the work. Maximum penalty—100 penalty units. (3) It is irrelevant for an offence against subsection (1) or (2) whether a permit was issued for the plumbing or drainage work. *Note—* See sections 9 and 46.	100 penalty units
65	**Installing things as part of plumbing or drainage work** (1) A person must not install, as part of plumbing or drainage work, a thing unless the thing is— (a) a WaterMark product that— (i) complies with the code requirements for plumbing or drainage work; and (ii) is not a prohibited WaterMark product; or (b) if the thing is all or part of a secondary on-site sewage treatment plant—a thing for which a treatment plant approval has been granted; or (c) if the thing is all or part of an on-site sewage treatment plant other than a secondary on-site sewage treatment plant—a thing that complies with the code requirements for plumbing or drainage work; or *Example—* septic tank (d) an environmentally relevant on-site sewage facility; or (e) if the thing is all or part of a greywater treatment plant— a thing for which a treatment plant approval has been granted; or (f) a thing prescribed by regulation as a thing that is approved for installation as plumbing or drainage. Maximum penalty—100 penalty units. (2) In this section— ***secondary on-site treatment plant*** means an on-site sewage treatment plant that produces effluent of a quality equal to or higher than secondary quality effluent. ***secondary quality effluent*** see the Queensland Plumbing and Wastewater Code.	100 penalty units
66	**Permit required for permit work** (1) A person must not carry out permit work unless— (a) a permit has been issued for the work; and (b) the person carries out the work in compliance with the permit and any conditions of the permit. Maximum penalty—250 penalty units.	250 penalty units

66	(2) A person must not direct another person to carry out permit work unless a permit has been issued for the work. Maximum penalty—250 penalty units. (3) In a proceeding for an offence against subsection (2), it is a defence for the person to prove that the person did not know, and could not reasonably be expected to have known, that the work the person is directing another person to carry out is permit work.	250 penalty units
67	**Directing persons to carry out non-compliant work** (1) A person must not direct another person to carry out plumbing or drainage work in a way that does not comply with the code requirements for the work. Maximum penalty—100 penalty units.	100 penalty units
	(2) In a proceeding for an offence against subsection (1), it is a defence for the person to prove that the person did not know, and could not reasonably be expected to have known, that the way in which the person is directing another person to carry out plumbing or drainage work does not comply with the code requirements for the work. (3) A person must not direct another person to install, as part of plumbing or drainage work, a thing unless the thing is a thing mentioned in section 65(1)(a) to (f). Maximum penalty—100 penalty units. (4) In a proceeding for an offence against subsection (3), it is a defence for the person to prove that the person did not know, and could not reasonably be expected to have known, that the thing the person is directing another person to install, as part of plumbing or drainage work, is not a thing mentioned in section 65(1)(a) to (f). *Note—* See sections 9 and 46.	100 penalty units
68	**Polluting water service provider's water service or sewerage service provider's sewerage system** (1) In carrying out plumbing work, a person must not do anything likely to pollute water in a water service provider's water service. Maximum penalty—250 penalty units.	250 penalty units
68	(2) In carrying out drainage work, a person must not do anything likely to pollute a sewerage service provider's sewerage system. Maximum penalty—250 penalty units.	250 penalty units
69	**Using plumbing or drainage before inspection certificate or final inspection certificate issued for permit work** (1) A person must not use plumbing or drainage that is the result of permit work, unless an inspection certificate or final inspection certificate has been issued for the permit work stating— (a) the work the subject of the certificate is compliant; and (b) the plumbing or drainage resulting from work the subject of the certificate is operational and fit for use.	

	Example— A permit is given to a plumber for permit work for a new house. After inspecting the permit work for the ensuite, an inspector gives the plumber an inspection certificate for the work stating the plumbing work and drainage work for the ensuite is compliant and the toilet, shower and basin are operational and fit for use. A person does not contravene this section if the person uses the toilet, shower or basin in the ensuite after the inspection certificate is given. When the remainder of the permit work for the house is completed and after inspecting the work, an inspector gives the plumber a final inspection certificate for the work stating all the plumbing work and drainage work for the house is compliant and all the plumbing and drainage is operational and fit for use. A person does not contravene this section if the person uses a toilet, shower, basin, sink or any other plumbing or drainage that is the result of the permit work after the final inspection certificate is given. Maximum penalty—250 penalty units. (2) For subsection (1), plumbing or drainage work is ***compliant*** if the work complies with the matters prescribed by regulation. (3) This section does not apply to the following persons when testing the functionality of the plumbing or drainage, or checking the operation of a water supply system to confirm the system is operational and fit for use and that the apparatus installed in the system are functioning correctly— (a) a licensee carrying out the permit work; (b) a licensee supervising the carrying out of the permit work; (c) an inspector.	250 penalty units
70	**Owner's obligation for operating and maintaining plumbing and drainage** (1) The owner of premises must take all reasonable steps to ensure all plumbing and drainage on the premises is kept in good condition and operates properly. Maximum penalty—250 penalty units. (2) If a permit has been issued for permit work for plumbing or drainage on premises, the owner of the premises must ensure the plumbing or drainage is operated and maintained in compliance with the conditions of the permit. Maximum penalty—250 penalty units.	250 penalty units
71	**Backflow prevention devices Unless authorised under this Act or another Act, a person must not—** (a) remove a backflow prevention device installed at premises; or (b) do anything to a backflow prevention device installed at premises that makes the device inoperable. Maximum penalty—250 penalty units.	250 penalty units

72	**Temperature control devices** (1) Unless authorised under this Act or another Act, a person must not— (a) remove a temperature control device installed at premises; or (b) do anything to a temperature control device installed at premises that makes the device inoperable. Maximum penalty—250 penalty units. (2) In this section— ***temperature control device*** means— (a) a mixing valve that automatically controls the temperature from a mixed water outlet to a preselected temperature using a thermostatic element or sensor; or (b) a mixing valve that is temperature activated and used to control a hot water supply with cold water to deliver hot water at a lower temperature at 1 or more outlet fixtures; or (c) another device installed to deliver hot water at a lower temperature at 1 or more outlet fixtures.	250 penalty units
73	**Tampering with water meter** (1) A person must not tamper with a water meter. Maximum penalty—250 penalty units. (2) In this section— ***tamper***, with a water meter, includes tamper with the plumbing associated with the water meter in a way that may hinder the capacity of the meter to accurately measure the volume of water supplied to premises.	250 penalty units
74	**Discharging toilet waste and water** (1) The owner of premises must ensure waste and water from a toilet or soil fixture on the premises is discharged into— (a) for premises in a sewered area— (i) the sewerage system for the area; or (ii) if the premises have an on-site sewage treatment plant for which there is a treatment plant testing approval—the on-site sewage treatment plant; or (b) for other premises— (i) an on-site sewage facility; or (ii) an environmentally relevant on-site sewage facility. Maximum penalty—250 penalty units. (2) In this section— ***soil fixture*** see the glossary. ***toilet*** includes a bidet.	250 penalty units

75	**Permissible and prohibited discharges**	
	(1) A person must not discharge waste into an on-site sewage facility unless the waste is sewage that the facility is designed to receive.	
	Maximum penalty—250 penalty units.	250 penalty units
	(2) A person must not discharge a prohibited substance into an on-site sewage facility.	
	Maximum penalty—250 penalty units.	250 penalty units
	(3) However, a person does not contravene subsection (2) only because the person discharges a substance that has a temperature greater than 38ºC into an on-site sewage facility if—	
	(a) the substance was used for cooking food or cleaning; and	
	(b) the substance is discharged into the on-site sewage facility via a fixture on the premises on which the on-site sewage facility is installed.	
76	**Disposing of contents of on-site sewage facility**	
	(1) A person must dispose of effluent from an on-site sewage facility installed on premises only—	
	(a) if the facility is installed only for testing purposes—in a way stated in the permit for the installation of the facility; or	
	(b) otherwise—	
	(i) to common effluent drainage; or	
	(ii) in a way stated in the permit for the installation of the facility.	
	Maximum penalty—250 penalty units.	250 penalty units
	(2) The person must ensure—	
	(a) the effluent does not cause an odour that unreasonably interferes, or is likely to unreasonably interfere, with the use or enjoyment of other premises; and	
	(b) any ponding or run-off of the effluent does not cause a danger or health risk to anyone; and	
	(c) any ponding or run-off of the effluent is contained—	
	(i) if there is a land application area for the effluent— on the land application area; or	
	(ii) otherwise—on the premises.	
	Maximum penalty—100 penalty units.	100 penalty units
	(3) A person must dispose of the contents, other than effluent, of an on-site sewage facility only to a place, and in a way, stated in the permit for the installation of the facility.	
	Example of contents other than effluent—	
	sludge	
	Maximum penalty—250 penalty units.	250 penalty units
	(4) This section does not apply to effluent or other contents removed from an on-site sewage facility for testing.	

77	**Disposing of contents of greywater treatment plant** A person must not dispose of the contents of a greywater treatment plant into the sewerage system for the area in which the plant is located, unless the person has the local government's approval. *Example of contents—* sludge Maximum penalty—100 penalty units.	100 penalty units
78	**Discharging kitchen greywater** (1) The owner of premises must ensure kitchen greywater from plumbing or drainage on the premises is discharged into— (a) for premises in a sewered area—the sewerage system for the area; or (b) for premises not in a sewered area— (i) a greywater use facility that includes a greywater treatment plant; or (ii) an on-site sewage facility; or (iii) an environmentally relevant on-site sewage facility. Maximum penalty—250 penalty units. (2) If the premises are not in a sewered area, the owner of the premises must ensure— (a) the greywater does not cause an odour that unreasonably interferes, or is likely to unreasonably interfere, with the use or enjoyment of other premises; and (b) any ponding or run-off of the greywater does not cause a danger or health risk to anyone; and (c) any ponding or run-off of the greywater is contained— (i) if there is a land application area for the greywater—on the land application area; or (ii) otherwise—on the premises. Maximum penalty—100 penalty units.	250 penalty units 100 penalty units
79	**Discharging and using greywater, other than kitchen greywater** (1) This section applies to greywater, other than kitchen greywater, from plumbing and drainage on premises. (2) The owner of the premises must ensure— (a) the greywater does not cause an odour that unreasonably interferes, or is likely to unreasonably interfere, with the use or enjoyment of other premises; and (b) any ponding or run-off of the greywater does not cause a danger or health risk to anyone; and (c) any ponding or run-off of the greywater is contained— (i) if there is a land application area for the greywater—on the land application area; or (ii) otherwise—on the premises.	

	Maximum penalty—100 penalty units.	100 penalty units
79	(3) If the premises are in a sewered area, the owner of the premises must ensure the greywater is discharged— (a) into a greywater use facility; or (b) onto a garden or lawn on the premises using a hose or bucket; or (c) into the sewerage system for the area. Maximum penalty—250 penalty units. (4) If the premises are not in a sewered area, the owner of the premises must ensure the greywater is discharged— (a) into a greywater use facility; or (b) onto a garden or lawn on the premises using a hose or bucket; or (c) into an on-site sewage facility; or (d) into an environmentally relevant on-site sewage facility. Maximum penalty—250 penalty units.	250 penalty units 250 penalty units
79	(5) Also, the owner of premises in a sewered area must ensure the greywater is used on the premises only for— (a) if the greywater is discharged into a greywater use facility that includes a greywater treatment plant that is installed on the premises and treats water to the standard stated for the plant in the Queensland Plumbing and Wastewater Code— (i) washing a vehicle, path or exterior wall of the premises; or (ii) flushing a toilet; or (iii) supplying cold water to a washing machine; or (iv) supplying a closed loop laundry system; or (v) irrigating a garden or lawn; or (b) otherwise—irrigating a garden or lawn. Maximum penalty—250 penalty units.	250 penalty units
80	**Stormwater installation not to be connected to on-site sewage facility or sanitary drain** (1) The owner of premises must not allow any part of a stormwater installation for the premises to be connected to— (a) an on-site sewage facility; or (b) a sanitary drain. Maximum penalty—250 penalty units. (2) If an owner of premises becomes aware that a part of a stormwater installation for the premises is connected to an on-site sewage facility or sanitary drain, the owner must take all necessary steps to disconnect the stormwater installation from the facility or drain as soon as practicable. Maximum penalty—250 penalty units.	250 penalty units 250 penalty units

	(3) In this section— ***stormwater installation***, for premises— (a) means roof gutters, downpipes, subsoil drains and stormwater drainage for the premises; but (b) does not include any part of a local government's stormwater drainage.	
83	**Action after notifiable work is finished** (1) Subject to subsection (4), within 10 business days after notifiable work is finished, the relevant person for the work must give the following to the commissioner, unless the person has a reasonable excuse— (a) a notice, in the approved form, about the work; (b) the fee prescribed by regulation for giving the notice. Maximum penalty—60 penalty units. (2) However, the relevant person is not required to comply with subsection (1) if a permit has been issued for— (a) the notifiable work; or (b) work that includes the notifiable work. (3) Subject to subsection (4), within 20 business days after the notifiable work is finished, the relevant person must give a copy of the notice, and an explanatory statement, to— (a) an occupier of the premises; or (b) any other person who asked the relevant person to carry out the work. Maximum penalty—60 penalty units. (4) If the relevant person is a person mentioned in section 81(1)(c), (d) or (e), the relevant person complies with subsection (1) or (3) if the relevant person or the relevant person's nominated representative complies with the subsection. (5) The commissioner must make a copy of the notice available to the local government. (6) Making a copy of the notice available to the local government does not, of itself, require the local government to inspect the notifiable work. (7) In this section— ***explanatory statement***, accompanying a copy of a notice given under this section, means a document that states— (a) the notice was given to the commissioner; and (b) how a person may inspect the notice; and (c) the local government may contact an occupier to arrange for the local government to inspect the work.	60 penalty units 60 penalty units

84	**False or misleading information** (1) A person must not, in relation to the administration of this Act, give an authority information the person knows is false or misleading in a material particular. Maximum penalty—100 penalty units. (2) Subsection (1) does not apply to a person if the person, when giving the information in a document— (a) tells the authority, to the best of the person's ability, how the document is false or misleading; and (b) if the person has, or can reasonably obtain, the correct information—gives the correct information. (3) In this section— ***authority*** means— (a) the chief executive; or (b) the commissioner; or (c) the assistant commissioner; or (d) the council; or (e) a local government; or (f) an inspector.	100 penalty units
85	**Misleading representation by builder, manufacturer or supplier of on-site sewage treatment plant** (1) This section applies to a person who builds or manufactures, or is a supplier of, an on-site sewage treatment plant. (2) Unless a treatment plant approval is in force for the on-site sewage treatment plant, the person must not make a representation to another person that is to the effect that or that might reasonably suggest that— (a) a treatment plant approval is in force for the plant; or (b) the manufacture, installation, operation, service or maintenance of the plant complies with the conditions of a treatment plant approval. Maximum penalty—100 penalty units. (3) In this section— ***supplier***, of an on-site sewage treatment plant, includes a distributor or seller of on-site sewage treatment plants.	100 penalty units
86	**False advertising or misleading representation of particular things** A person must not advertise a thing as, or make a representation that a thing is, a thing mentioned in section 65(1)(a), (c), (d), (e) or (f) if it is not. Maximum penalty—100 penalty units.	100 penalty units

87	**Obstructing inspector** (1) A person must not obstruct an inspector exercising a power under this Act, unless the person has a reasonable excuse. Maximum penalty—100 penalty units. (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that— (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and (b) the inspector considers the person's conduct an obstruction. (3)In this section— ***obstruct*** includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.	100 penalty units
88	**Impersonating inspector** A person must not impersonate an inspector. Maximum penalty—100 penalty units.	100 penalty units
121	**Disclosing new convictions** (1) This section applies if a person who is a member, deputy member or temporary member is convicted of an offence during the term of the person's appointment. (2) The person must immediately give notice of the conviction to the chief executive, unless the person has a reasonable excuse. Maximum penalty—100 penalty units. (3) The notice must include— (a) the existence of the conviction; and (b) when the offence was committed; and (c) details adequate to identify the offence; and (d) the sentence imposed, if any, on the person. (4) The chief executive must destroy any information received under this section as soon as practicable after the information is no longer needed for the purpose for which the information was given.	100 penalty units
122	**Criminal history is confidential** (1) A person must not, directly or indirectly, disclose any information received under section 120 or 121 to another person unless the disclosure is allowed under subsection (2). Maximum penalty—100 penalty units. (2) The person may make the disclosure to another person— (a) to the extent necessary to perform the person's functions under this Act; or (b) for the purpose of the other person performing a function under this Act; or (c) if the disclosure is authorised under an Act; or	100 penalty units

	(d) if the disclosure is otherwise required or permitted by law; or (e) if the person to whom the information relates consents to the disclosure.	
147	**Contravening, or tampering with, enforcement notice** (1) A person must not contravene an enforcement notice. Maximum penalty—250 penalty units. (2) A person must not deal with an enforcement notice fixed to premises under section 145(3) in a way that is reasonably likely to prevent the person who was given the notice seeing it. Maximum penalty—250 penalty units.	250 penalty units 250 penalty units
148	**Application for permit in response to show cause or enforcement notice** (1) This section applies if a person applies for a permit in response to a show cause notice or as required by an enforcement notice. (2) The person must not withdraw the application, unless the person has a reasonable excuse. Maximum penalty—250 penalty units. (3) The person must take all necessary and reasonable steps to enable the application to be decided as soon as practicable, unless the person has a reasonable excuse. Maximum penalty—250 penalty units. (4) If the person appeals the decision on the application, the person must take all necessary and reasonable steps to enable the appeal to be decided as soon as practicable, unless the person has a reasonable excuse. Maximum penalty—250 penalty units.	250 penalty units 250 penalty units 250 penalty units
155	**Public access to documents** (1) A regulation may prescribe, for a person who has, or has had, powers or functions in relation to this Act— (a) the documents, including a register, relating to the person's functions, that the person must or may keep publicly available; and (b) where, and in what form, the documents must or may be kept; and (c) whether the documents, or a certified copy of the documents, must or may be kept; and (d) whether the documents must or may be kept available for inspection and purchase, or for inspection only; and (e) the period or periods during which the documents must or may be kept. (2) The person must comply with the regulation in relation to the documents prescribed for the person. Maximum penalty—50 penalty units.	50 penalty units

	(3) The person must not obstruct another person from inspecting or purchasing a document that must be kept available for inspection or purchase as prescribed by the regulation. Maximum penalty—50 penalty units.	50 penalty units
157	**Regulation-making power** (1) The Governor in Council may make regulations under this Act. (2) A regulation may— (a) fix the fees payable under this Act and the way, time, place, and the person by and to whom the fees must be paid; or (b) provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation; or (c) provide for matters relating to the licensing of plumbers or drainers; or (d) provide for matters relating to plumbing or drainage work; or (e) provide for permits for permit work or notifiable work; or (f) provide for the inspection of permit work and notifiable work and the giving of action notices, inspection certificates or final inspection certificates for the work; or (g) provide for administrative matters, including the requirement for a person to give a notice to an entity, in relation to plumbing or drainage work; or (h) require the maintenance, testing and inspection of particular plumbing or drainage work; or (i) provide for approvals for— (i) on-site sewage treatment plants; or (ii) greywater treatment plants; or (j) provide requirements about reporting on servicing on-site sewage facilities, greywater use facilities or greywater treatment plants; or (k) provide for circumstances when a local government is not required to inspect particular plumbing or drainage work, and for the giving of notices about the work; or (l) require a person to carry out plumbing or drainage work on premises to comply with a requirement of this Act, and to provide for payment of the costs of carrying out the work; or (m) provide for a local government to recover costs from the owner of premises for costs incurred by the local government carrying out plumbing or drainage work on the premises; or (n) provide for the registers the commissioner or a local government must keep and the information that must or may be included in each register.	20 penalty units
186	**Insertion of new s 42CA** After section 42C— *insert—* **42CA Unlawful carrying out of mechanical services work**	

	(1) An individual must not personally carry out, or personally supervise, mechanical services work unless the individual— (a) holds a mechanical services occupational licence; or (b) holds a licence, registration or authorisation under this Act or another Act that allows the person to personally carry out or personally supervise the work. Maximum penalty— (a) for a first offence—250 penalty units; or (b) for a second offence—300 penalty units; or (c) for a third or later offence, or if the mechanical services work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment. (2) Subsection (1) does not apply to an individual who personally carries out mechanical services work if the mechanical services work is a type prescribed by regulation. (3) Also, subsection (1) does not apply to— (a) an apprentice who personally carries out mechanical services work in a calling that requires the apprentice to carry out the work; or (b) a trainee who personally carries out mechanical services work in a calling that requires the trainee to carry out the work; or (c) a student who personally carries out mechanical services work as part of training under the supervision of teaching staff at— (i) a university; or (ii) a college, school or similar institution conducted, approved or accredited by the State or the Commonwealth; or (d) a student who, for work experience, personally carries out mechanical services work as part of a pre-vocational course. (4) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment commits a crime.	250 penalty units 300 penalty units 350 penalty units or 1 year's imprisonment 350 penalty units or 1 year's imprisonment
187	**Insertion of new s 42DA** After section 42D— *insert—* **42DA Licensed contractor must not engage or direct unauthorised person for mechanical services work** (1) A licensed contractor must not engage or direct an employee to carry out mechanical services work unless the employee is authorised to carry out the work under this Act or another Act. Maximum penalty— (a) for a first offence—250 penalty units; or (b) for a second offence—300 penalty units; or (c) for a third or later offence, or if the mechanical services work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment.	250 penalty units 300 penalty units 350 penalty units or 1 year's imprisonment

	(2) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment commits a crime. Note— This provision is an executive liability provision—see section 111B.	350 penalty units or 1 year's imprisonment

3.3 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* 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 are fairly detailed and, other than referred to below, they 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, the Explanatory Notes do not address issue of fundamental legislative principle relevant to clauses of the Bill which replicate, or substantially replicate, sections of the current Act.

Legislative Standards Act 1992 section 23(f) provides that an explanatory note must include:

> *a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency*

Two minor points regarding the explanatory notes:

- There is an incorrect statement regarding the content of clause 95 (relevant to an issue of fundamental legislative principle), as mentioned above.
- In reference to penalties, the notes make frequent reference (at pages 32 to 33) to a maximum penalty as being a number of 'MPU'. This acronym is not defined in the notes nor is it otherwise clear what is meant by it.

Recommendation 3

The committee recommends the Minister provide an explanation of what is meant by the acronym 'MPU' by way of clarification during the second reading of the Bill.

Appendix A – Submitters

Sub #	Submitter
001	Ian Decker
002	Cool Air Conditioning
003	Brisbane City Council
004	Master Builders Queensland
005	Craige and Claire Parkin
006	Daniel O'Neill
007	Brendon McEwan
008	Master Plumbers' Association of Queensland
009	Central Highlands Regional Council
010	Nathan Schofield
011	Australian Refrigeration Mechanics Association
012	Plumbing and Pipe Trades Employees Union
013	Property Council of Australia
014	Local Government Association of Qld
015	Housing Industry Association
016	Queensland Law Society
017	Air Conditioning and Mechanical Contractors' Association of Queensland
018	Renarda O'Neill
019	Ai Group
020	National Fire Industry Association Australia
021	Australian Refrigeration Association
022	Electrical Trades Union
023	Engineers Australia
024	Moreton Bay Regional Council
025	SunWater
026	Gerard Irwin

027	Logan City Council
028	Institute of Plumbing Inspectors QLD
029	Bradley Crick
030	Trevor Duffin
031	Max Losch
032	Vaughan Best
033	Danni Best
034	Don McLean
035	Dan May
036	Warran Palmer
037	Rob Muller
038	Nathan Storm
039	Shaun Robken
040	Leaha Perrin
041	Kylie Morgan
042	Patrick Hopkins
043	Ian Lilburne
044	Alex Hawkins
045	Stephanie Bond
046	Nathan Thompson
047	Brenton Gleeson
048	Barry Dever
049	Carolyn Woods
050	Malcolm Goschnick
051	Ivan Wells
052	Ian Whatman
053	Chris Muller
054	Blake Mills

055	Anthony Page
056	Corban Tolmie
057	Sam Rabjones
058	Ben Toner
059	Roanyn Banks
060	Matthew Harth
061	Jason Glore
062	Luke Bruce
063	Glenn Sharplin
064	City of Gold Coast
065	Mitchell Worthington

Appendix B – Officials at public departmental briefing – 5 March 2018

Department of Housing and Public Works

- Liza Carroll, Director-General
- Don Rivers, Assistant Director-General Building Industry Policy
- Harry Venmans, Executive Director, Building and Construction Maintenance
- Lindsay Walker, Director, Strategic Policy
- Anne Neuendorf, Manager, Strategic Policy

Queensland Building and Construction Commission

- Brett Bassett, Commissioner

Appendix C – Witnesses at public hearing – 19 March 2018

Queensland Law Society

- Matt Dunn, QLS Government Relations Principal Advisor
- Kate Brodnik, QLS Senior Policy Solicitor

Air Conditioning and Mechanical Contractors' Association (AMCA)

- Graham MacKrill, Executive Director, Qld and NSW
- Shane Bradford, President

Australian Refrigeration Mechanics Association (ARMA)

- Kim Limburg, CEO
- Don McLean, Member

Australian Refrigeration Association (ARA)

- Ian Tuena, President (via teleconference)

Logan City Council

- Eddie Denman, Development Engineering Program Leader

Moreton Bay Regional Council

- Brad Hodgkinson, Coordinator Plumbing Services

Master Plumbers' Association of Queensland

- Ernie Kretschmer, Technical Services Manager

Plumbing and Pipe Trades Employees Union

- Gary O'Halloran, State Secretary
- Glen Chatterton, Manager – Industry Engagements & Strategic Projects, Service Trades College Australia

Master Builders Queensland (MBAQ)

- Dyan Johnson, Manager Policy and Economics

Housing Industry Association (HIA)

- Kelvin Cuskelly, Assistant Director Building
- Garry Sharman, Assistant Director Planning and Development

Appendix D – Officials at public briefing – 19 March 2018

Department of Housing and Public Works

- Liza Carroll, Director-General
- Don Rivers, Assistant Director-General Building Industry Policy
- Lindsay Walker, Director, Strategic Policy
- Anne Neuendorf, Manager, Strategic Policy

Queensland Building and Construction Commission

- Brett Bassett, Commissioner

Statement of Reservation

Plumbing and Drainage Bill 2018

Ted Sorensen MP, Member for Hervey Bay, and Colin Boyce MP, Member for Callide

Whilst we have supported the passage of this Bill there are a number of issues that we have some concerns about.

We consider that the Refrigeration and Air Conditioning (RAC) industry should have a separate occupational licence.

Other areas of concern include:

- How to ensure everyone is suitably qualified/trained.
- Air Conditioning gases can be explosive under pressure and there are significant safety concerns about what could happen.
- We note stakeholders identified a disparity between refrigeration and air conditioning training courses. We wish to ensure that consultation between the department and industry ensures agreement across industry as to the suitability of training outcomes and requirements.

We would like for the Minister to confirm:

- that with the fitment of gas connections, it is mandatory for installers to certify connections; and
- there will be some flexibility for local authorities, particularly in rural Queensland, in the testing regime for grey water coming out of septic tanks

We would like the opportunity to expand on our statement of reservation at the second reading of the Bill.

Ted Sorensen MP
Member for Hervey Bay

Colin Boyce MP
Member for Callide

PO Box 1968
Mount Isa QLD 4825

Mount Isa
74 Camooweal Street
P: 07 4730 1100

Robbie Katter MP
Member for Traeger

Monday, April 9, 2018

RE: Statement of Reservation on the Plumbing and Drainage Bill 2018

I write to lodge a Statement of Reservation to the Transport and Public Works Committee on the proposed Plumbing and Drainage Bill 2018, currently before the committee.

My concerns relate to the uncertainty around the impact the changes proposed in the Bill will have on the Refrigeration & Air Conditioning Technician trade through the proposed introduction of a new Mechanical service licence class.

I believe it appropriate for more investigations to be done into safety issues for tradespeople working on job sites, as well as gaining a better understanding of the appropriate level of technical training required to safely and effectively install relevant.

I believe it would be prudent to better understand these matters prior to making a recommendation on the passage of the Bill.

Sincerely,

Robbie Katter
Member for Traeger