



Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012

Report No. 14
**Transport, Housing and Local
Government Committee**
November 2012

Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012

Report No. 14

**Transport, Housing and Local Government
Committee**

November 2012

Transport, Housing and Local Government Committee

Chair	Mr Howard Hobbs MP, Member for Warrego
Deputy Chair	Mrs Desley Scott MP, Member for Woodridge
Members	Mr John Grant MP, Member for Springwood Mr Darren Grimwade MP, Member for Morayfield Mr Trevor Ruthenberg MP, Member for Kallangur Mr Anthony Shorten MP, Member for Algester Mrs Tarnya Smith MP, Member for Mount Ommaney Mr Bill Byrne MP, Member for Rockhampton
Staff	Ms Kate McGuckin, Research Director Ms Rachelle Stacey, Principal Research Officer Ms Danielle Cooper, Principal Research Officer Ms Emily Booth, Principal Research Officer Ms Susan Moran, Executive Assistant Ms Lisa Van Der Kley, Executive Assistant
Contact details	Transport, Housing and Local Government Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7486
Fax	+61 7 3406 7070
Email	thlgc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/thlgc

Acknowledgements

The Committee thanks those who participated in the inquiry process.

Contents

Abbreviations	vi
Glossary	vii
Chair’s foreword	viii
Recommendations	ix
1 Introduction	1
1.1 Role of the Committee	1
1.2 Inquiry process	1
1.2.1 <i>The referral</i>	1
1.2.2 <i>Reporting deadline</i>	2
1.2.3 <i>Public submissions</i>	2
1.2.4 <i>Public briefing</i>	2
1.2.5 <i>Public hearing</i>	2
2 QBSA – functions and responsibilities	3
2.1 Functions and responsibilities under the <i>Queensland Building Services Act 1991</i>	3
2.1.1 <i>Functions and Responsibilities of the General Manager of the QBSA</i>	3
2.1.2 <i>Administration of the Queensland Home Warranty Scheme under the QBSA Act</i>	4
2.2 Functions and responsibilities under the <i>Domestic Building Contracts Act 2000</i>	4
2.3 Functions and responsibilities under the Building and Construction Industry Payments Act 2004	5
2.4 Functions and responsibilities under the <i>Building Act 1975</i>	5
2.5 Technical support for the Queensland Civil and Administrative Tribunal	6
2.6 Other functions of the QBSA	6
2.7 Functions and responsibilities of the Queensland Building Services Board	6
2.8 Overview of Statistics (2011-12)	7
3 The governance arrangements of and between the QSA Board and the General Manager	8
3.1 Background – governance arrangements of the QBSA Board	8
3.2 Background - Governance arrangements between the QBSA Board and the General Manager	8
3.3 Evidence received on governance arrangements of the QBS Board and between the Board and the General Manager	9
4 Does the QBSA achieve a balance between the interests of building contractors and consumers	11
4.1 Introduction - QBSA’s statutory obligations to achieve a “reasonable balance”	11
4.2 Overview of evidence received on whether the QBSA’s achieves a “reasonable balance”	12
4.2.1 <i>Background to the evidence provided on ‘reasonable balance’</i>	12
4.2.2 <i>Examples of evidence received that QBSA genuinely seeks to achieve balance</i>	12
4.2.3 <i>Examples of evidence that the QBSA has a bias against consumers</i>	13
4.2.3 <i>Examples of evidence that the QBSA has a bias against builders</i>	14

4.3	Recommendations from submissions suggesting organizational reform of the QBSA	15
5	Dispute resolution - directions to rectify defective or incomplete work	21
5.1	Directions to Rectify - Background	21
	5.1.1 <i>Legislative requirements</i>	21
	5.1.2 <i>Rectification of Building Work Policy</i>	21
	5.1.3 <i>Statistics on directions to rectify</i>	22
5.2	Issues raised in evidence about directions to rectify	22
	5.2.1 <i>Issues of concern raised by property owners about the directions to notify process</i>	22
	5.2.2 <i>Issues of concern raised by builders about the directions to notify process</i>	24
5.3	Solutions suggested in submissions to enhance the directions to rectify process	26
	5.3.1 <i>Education and training for consumers, building inspectors and licensees</i>	27
	5.3.2 <i>Prevention through contract administration</i>	27
	5.3.3 <i>Increased penalties to encourage timely rectification</i>	28
	5.3.4 <i>Building product compliance</i>	28
	5.3.5 <i>Independent arbitration</i>	29
	5.3.6 <i>Early intervention and mediation</i>	29
	5.3.7 <i>Ability to intervene in contractual disputes</i>	30
5.4	Tendering for and performing rectification work on behalf of the QBSA	34
5.5	QCAT review of rectification decisions	36
	5.5.1 <i>Introduction</i>	36
	5.5.2 <i>Concerns about QCAT's role raised in evidence</i>	36
	5.5.3 <i>Concerns raised about the use of QCAT as a delaying mechanism</i>	38
	5.5.4 <i>HIA recommendations in relation to QCAT</i>	38
5.6	Contracts and contract management	39
	5.6.1 <i>Introduction</i>	39
	5.6.2 <i>Quality of Documentation and Communication - Plans and Specifications</i>	40
	5.6.3 <i>Proposals for a uniform contract</i>	40
	5.6.4 <i>Contract management</i>	41
5.7	Support, Education and advice for both those who undertake building work and consumers	42
	5.7.1 <i>Background</i>	42
	5.7.2 <i>Evidence provided on consumer and contractor education programs</i>	44
5.8	Systemic issues raised in evidence about the organisational culture of the QBSA	47
6	Queensland Home Warranty Scheme	49
6.1	Introduction	49
	6.1.1 <i>Home warranty schemes</i>	49
	6.1.2 <i>The Queensland Home Warranty Scheme</i>	49
6.2	Evidence received on the QHWS	50
	6.2.1 <i>Conflict of interest</i>	51
	6.2.2 <i>Subsidence</i>	53
	6.2.3 <i>Scheme exclusions</i>	53
	6.2.4 <i>Education, training and access to information</i>	54

6.2.5	<i>Resolution of insurance issue disputes</i>	55
7	QBSA licensing function	57
7.1	Background information on the QBSA licensing regime	57
7.1.1	<i>Licence grades and classes</i>	57
7.1.2	<i>Eligibility requirements to hold a licence</i>	57
7.1.3	<i>Banned, disqualified and excluded persons</i>	59
7.1.4	<i>Auditing (licensing and financial)</i>	60
7.2	Adequacy of the QBSA licensing requirements and auditing processes	60
7.2.1	<i>Licence ‘creep’</i>	60
7.2.2	<i>Eligibility requirements</i>	61
7.2.3	<i>Section 42 of the QBSA Act: Unlawful carrying out of building work</i>	63
7.2.4	<i>Disciplinary regime</i>	64
7.2.5	<i>Auditing processes</i>	67
7.2.6	<i>Online licence search facility</i>	68
7.2.7	<i>Continuing Professional Development (CPD) for contractors</i>	69
7.3	The coverage of trades by the QBSA and the role of industry groups	71
7.3.1	<i>Background</i>	71
7.4	National licensing	74
8	Reducing regulation to lower the cost of building a home	76
8.1	Introduction	76
8.2	Evidence received by the committee on reducing regulation	76
	Appendices	79
	Appendix A – List of Submissions	79
	Appendix B – Witnesses at the public briefing	83
	Appendix C – Witnesses at the public hearing	84
	Statement of reservation	86

Abbreviations

AHSCA	The Association of Hydraulic Services Consultants Australia
AIB	The Australian Institute of Building
AIBS	The Australian Institute of Building Surveyors
APRA	Australian Prudential Regulation Authority
the Assembly	Legislative Assembly of Queensland
BCG	Brisbane Certification Group
BCIP Act	<i>Building and Construction Industry Payments Act 2004</i>
BDAQ	Building Designers Association of Queensland
BSA	Queensland Building Services Authority (see also QBSA)
Building Act	<i>Building Act 1975</i>
the Committee	Transport, Housing and Local Government Committee
CPD	Continuing Professional Development
DBC Act	<i>Domestic Building Contracts Act 2000</i>
DHPW	Department of Housing and Public Works
FRL	<i>Financial Requirements for Licensing policy</i>
HIA	Housing Industry Association
LGAQ	Local Government Association of Queensland
MB	Master Builders
MSG	Major Sub-contractors Group
PQC	Queensland Government Prequalification System
QBSA	Queensland Building Services Authority (see also BSA)
QBSA Act	<i>Queensland Building Services Act 1991</i>
QBS Board	Queensland Building Services Board
QCAT	Queensland Civil and Administrative Tribunal
QHWS or the Scheme	Queensland Home Warranty Scheme (see also the Scheme)
the Scheme	Queensland Home Warranty Scheme (see also QHWS)
Standing Orders	Standing Rules and Orders of the Legislative Assembly
TQ	Timber Queensland Ltd

Glossary

Category 1 defective building work	<p>Defective building work (other than residential construction work causing subsidence) that is faulty or unsatisfactory because it does one or more of the following:</p> <ul style="list-style-type: none"> a) adversely affects the structural performance of a building b) adversely affects the health or safety of persons residing in or occupying a building c) adversely affects the functional use of a building d) allows water penetration into a building.
Category 2 defective building work	<p>Defective building work (other than category 1 defective building work or residential construction work causing subsidence) that is faulty or unsatisfactory because:</p> <ul style="list-style-type: none"> a) it does not meet a reasonable standard of construction or finish expected of a competent holder of a contractor's licence of the relevant class; or b) it has caused a settling in period defect in a new building.
Firewall	<p>A firewall is a legal barrier set up between divisions of an organisation to prevent them from sharing inside information when this might lead to a conflict of interest.</p>
Judgement debtor	<p>Where a court has issued a monetary judgement in your favour, the person who must pay you this money is the 'judgement debtor'.¹</p>
Licensee	<p>Includes all licensed grades and classes under the QBSA Act as well as certifiers licensed un the Building Act.</p>

¹ http://www.commerce.wa.gov.au/consumerprotection/PDF/Publications/if_they_dont_pay.pdf/ accessed 23 November 2012.

Chair's foreword

On behalf of the Transport, Housing and Local Government Committee (the Committee) of the 54th Parliament of Queensland, I am pleased to present the Committee's report number 14 – Inquiry into Operation and Performance of the Queensland Building Services Authority (QBSA).

On 2 August 2012, the Legislative Assembly agreed to a motion that the Committee inquire and report on the operation and performance of the QBSA in its regulation of the industry, including the maintenance of proper standards in the industry.

The Committee has consulted widely and gathered evidence from key consumer and industry groups as well as numerous individual consumers and builders throughout the inquiry. I would like to acknowledge those who have briefed the Committee, provided written submissions, and others who have informed the Committee's deliberations through their participation in the inquiry process.

The Committee is particularly appreciative of the effort taken by the many individual homeowners and contractors (licensees) who have made the effort to provide evidence even though it has taken considerable energy to re-experience what for many has been an emotionally and financially distressing experience. As one submission has noted "Building or renovating a house is often one of the most expensive and emotionally charged experiences in a consumer's life."²

The Committee notes that in general the construction industry in Queensland is overwhelmingly compliant with a high percentage of builders completing projects to an acceptable standard and that relatively few residential building projects end in dispute. This is evidenced by the figures for 2011-12 where there was a total of 73,256 insurable building contracts, with 4,726 complaints received by the QBSA, and 896 directions to rectify issued. However, the Committee is also very aware that for the small percentage of homeowners who are in dispute with a building contractor and proceed to claim, it is often a very stressful experience both emotionally and financially.

The Committee has received a significant amount of detailed evidence from submitters and witnesses. Given the limited timeframe for the Inquiry, the Committee has taken a strategic approach to the evidence and has recommended changes to the current building services framework and functions which it believes will help to alleviate some of the issues raised by making the process more straightforward and transparent. The Committee has also referred a number of issues to the Minister for Housing and Public Works to undertake further examination in consultation with industry and consumers.

I wish to thank the members of the Committee for their detailed consideration of the issues covered by the inquiry. I also thank the Committee's secretariat for their support and assistance throughout the inquiry process.

I commend the report to the House.



Howard Hobbs MP
Chair

November 2012

² Builders Collective of Australia, *Submission No.26*, p.4.

Recommendations

Recommendation 1 19

The Committee recommends that in the interests of improved confidence and transparency, the “one stop shop” model for the provision of Queensland government building services be discontinued and that the Queensland Building Services Authority be disbanded as soon as alternative mechanisms for delivering its functions can be established.

Recommendation 2 19

The Committee recommends that the Minister for Housing and Public Works restructure the building services currently provided by the QBSA so that there is a clear and transparent divide between the roles of licensing; management of directions to rectify and complete work; and management of the limited home warranty scheme.

Recommendation 3 19

The Committee recommends that the Minister for Housing and Public Works, consider the following model as a restructuring option for the new building services authority.

Establish a new statutory authority with each of the following functions legislatively “firewalled” from each other and managed by a general manager who is directly accountable to, and reports through, a decision making board (possibly through a sub-committee) to the responsible Minister:

- registration and regulation of licensees and certifiers
- management of the limited home warranty scheme
- management of directions to rectify and complete.

Recommendation 4 19

The Committee recommends that the Minister for Housing and Public Works ensure that any new Board is a governing (not advisory) board and the membership of the board is truly representative and impartial.

Recommendation 5 20

The Committee recommends that Minister for Housing and Public Works ensure the Department of Housing and Public Works includes a specialist building capability to provide the Minister with independent advice on the provision of building services.

Recommendation 6 20

The Committee recommends that Building Codes Queensland remain in the Department of Housing and Public Works.

Recommendation 7 20

The Committee recommends that the Minister for Housing and Public Works ensure that the reformed building services provided by the Queensland Government continue to be self-funding.

Recommendation 8 20

The Committee recommends that the Minister for Housing and Public Works take the views of stakeholders into account when examining the appropriate structure for the reformed building authority and Board.

- Recommendation 9** **33**
- The Committee recommends that building inspectors employed by the building authority be required to undertake regular training **and assessment** on their knowledge of current building regulations, standards and codes to ensure they can make informed decisions on whether building work requires rectification.
- Recommendation 10** **33**
- The Committee recommends that building inspectors employed by the building authority be provided with dispute resolution training to ensure they have the skills required to negotiate an agreed outcome between homeowners and builders whenever possible.
- Recommendation 11** **33**
- The Committee recommends that the Minister for Housing and Public Works examine options to enable early intervention and mediation in disputes over defects and incomplete work with a view to resolving as many as possible before they escalate further.
- Recommendation 12** **33**
- The Committee strongly recommends that the Minister for Housing and Public Works seek amendment to the legislation to extend the powers of the new building authority to intervene when disputes arise during a contract period.
- Recommendation 13** **33**
- The Committee recommends that the Minister for Housing and Public Works seek amendment to the regulations and/or legislation to ensure the new building service authority is required to respond to requests to identify defects promptly and to ensure the rectification work is also carried in a timely manner and to an appropriately high standard.
- Recommendation 14** **34**
- The Committee recommends that the Minister for Housing and Public Works investigate ways in which to improve the building certification system in Queensland to ensure private certifiers are held accountable where they approve illegal or defective works, and to ensure the works are rectified.
- Recommendation 15** **34**
- The Committee recommends that the Minister for Housing and Public Works investigate ways in which licensees who construct and certifiers who approve unlawful or defective work (for example where a building is structurally unsound or built partially outside the property boundary) can be made responsible for rectification of the works.
- Recommendation 16** **36**
- The Committee recommends that the Minister for Housing and Public Works review the current tendering process for rectification work and completion work with a view to ensuring a transparent and accountable process is put in place.

- Recommendation 17** 39
- The Committee recommends that the Minister for Housing and Public Works re-examine the use of QCAT as the only mechanism for reviewing QBSA decisions, to ensure the review process is more streamlined and user friendly and that the Minister consider introducing legislated timeframes for reviewing decisions of the new building authority.
- Recommendation 18** 39
- The Committee recommends the Minister for Housing and Public Works resolve the conflict whereby QCAT relies on QBSA building advice, for example by establishing an independent advisory board or using the Department of Public Works and Housing to provide specialist building advice to QCAT.
- Recommendation 19** 42
- The Committee recommends that the Minister for Housing and Public Works amend legislation to introduce a mandatory standard building contract for domestic building work and require contractors to use this contract as part of their licensing conditions.
- Recommendation 20** 42
- The Committee recommends that the Minister for Housing and Public Works seek amendment to legislation to require that homeowners seek legal advice before signing a building contract, or require them to sign a statement if they decide against seeking legal advice.
- Recommendation 21** 42
- The Committee recommends that if the Minister for Housing and Public Works decides against introducing a mandatory standard contract, the Minister use the evidence submitted as part of this inquiry as the basis for a review of all building contracts drafted by industry groups with a view to discouraging any inherent bias towards the building contractor.
- Recommendation 22** 42
- The Committee recommends that the Minister for Housing and Public Works review the evidence provided to the inquiry about payments and contractual issues relating to subcontractors with a view to improving the current system.
- Recommendation 23** 46
- The Committee recommends that the Minister for Housing and Public Works consider transferring:
- the consumer advice function to the Office of Fair Trading which is responsible for consumer rights and responsibilities and
 - the consumer and contractor information and training function to Building Codes Queensland in the Department of Housing and Public Works.
- Recommendation 24** 46
- The Committee recommends that the Minister for Housing and Public Works establish a telephone service in the Department of Housing and Public Works to provide a single point of inquiry for consumers to ensure they are directed to the appropriate building services provider/authority.

- Recommendation 25** **48**
- The Committee recommends that the Minister for Housing and Public Works ensure QBSA staff undergo training in customer relations and receive the training necessary to carry out their roles and responsibilities in the new authority or relevant government department to the highest possible standard.
- Recommendation 26** **53**
- The Committee recommends that the Minister for Housing and Public Works consider extending the Scheme to provide for:
- a tiered approach where homeowners can select the level of cover they wish to purchase, for example levels may be determined by the type of work being undertaken, the level of risk associated with the work and the maximum amount of cover desired and
 - the opportunity to take out cover for building works that do not need a building approval.
- Recommendation 27** **54**
- The Committee recommends that the Minister for Housing and Public Works consider extending the Queensland Home Warranty Scheme to the construction or renovation of all homes irrespective of the method of construction and to swimming pools and ancillary structures.
- Recommendation 28** **55**
- The Committee recommends that an information pack and fact sheet be developed by the new building authority and that building contractors should be required to provide these to each person taking out insurance for residential construction works before a contract is signed in order to:
- ensure consumers fully understand the limited nature of the insurance before they sign the building contract and
 - educate consumers about important provisions of the Scheme, including what the insurance does and does not cover.
- Recommendation 29** **55**
- The Committee recommends the fact sheet referred to in the previous recommendation be published on all relevant departmental websites as well as the building authority's website.
- Recommendation 30** **55**
- The Committee recommends that Queensland Home Warranty Scheme be renamed to better reflect its function, for example *Limited Home Warranty Scheme*.
- Recommendation 31** **56**
- The Committee recommends that the Minister for Housing and Public Works investigate processes for reviewing building authority decisions in relation to the Limited Home Warranty Scheme including the option of introducing a mediation process for dispute resolution.
- Recommendation 32** **63**
- The Committee recommends that the Minister for Housing and Public Works use evidence provided to this inquiry on the current licensing regime to undertake an independent review of all existing licenses to test for fitness for purpose, eligibility requirements, costs and benefits.

- Recommendation 33** 64
- The Committee recommends that Section 42 of the QBSA Act, which provides that “a person must not carry out, or undertake to carry out, building work...unless that person holds a contractor’s licence of the appropriate class under this Act”, be revised to make it clear that there is no breach of the Act if the “building work” is carried out by an appropriately licensed builder.
- Recommendation 34** 65
- The Committee recommends that:
- the Minister for Housing and Public Works investigate the value of establishing a structure and/or process for the review of disciplinary decisions (prior to escalation to QCAT) and
 - in implementing the disciplinary regime, the new building authority incorporate the provision of explanations for banning, disqualification and exclusion decisions to the licensees/applicants.
- Recommendation 35** 65
- The Committee recommends that the Minister for Housing and Public Works seek amendment to the QBSA Act to provide that where an individual’s ‘relevant bankruptcy event’ and ‘a relevant company event’ stem from the same financial incident, that they be deemed one event for the purposes of penalties.
- Recommendation 36** 67
- The Committee recommends that the new building services authority:
- review the current disciplinary regime for licensees with a view to strengthening penalties where appropriate
 - implement the regime in a comprehensive and consistent manner and
 - establish a rigorous ongoing auditing process to ensure compliance.
- Recommendation 37** 68
- The Committee recommends that the new building authority:
- retain the current audit regimes (i.e. licence and financial audits) with a view to increasing the numbers and effectiveness of these regimes and
 - implement a new audit regime to check routinely for compliance with building standards and codes.
- Recommendation 38** 69
- The Committee recommends that the online search facility be reviewed to ensure that consumers are able to access as much relevant and substantiated information as legally possible about a builder’s status and that provision be made by the new building authority for the database to be maintained on a regular and ongoing basis.
- Recommendation 39** 70
- The Committee recommends that the Minister for Housing and Public Works investigate:
- the benefits of mandatory Continuing Professional Development (CPD) for all licensees and
 - the potential to link mandated CPD to licence eligibility requirements.

Recommendation 40

73

The Committee recommends that the Minister for Housing and Public Works use the evidence provided to the inquiry to examine ways in which the industry groups can take a greater role within the newly formed building authority in terms of licensing standards and procedures for their members.

Recommendation 41

75

The Committee recommends that the Minister for Housing and Public Works take the recommendations contained in this report into consideration before agreeing to any timeframes for the introduction of the draft Regulations stemming from the National Occupational Licensing System.

1 Introduction

1.1 Role of the Committee

The Transport, Housing and local Government Committee (the Committee) is a statutory Committee established on 18 May 2012 by the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly (the Standing Orders).³ The Committee consists of both government and non-government members and its primary areas of responsibility include transport, main roads, housing, public works, and local government.⁴

In relation to its areas of responsibility, the Committee:

- examines legislation, including subordinate legislation, to consider the policy to be enacted and the application of the fundamental legislative principles set out in part 4, section 24 of the *Legislative Standards Act 1992*
- considers the Appropriation Bills (acting as an estimates committee)
- assesses the public accounts and public works of each department in regard to the integrity, economy, efficiency and effectiveness of financial management and
- has a responsibility to consider any other issue referred to it by the Assembly, whether or not the issue is within a portfolio area.⁵

The Committee may deal with these matters by considering them and reporting and making recommendations about them to the Assembly.⁶

1.2 Inquiry process

1.2.1 The referral

On 2 August 2012, the Legislative Assembly (the Assembly) agreed to a motion that the Committee inquire and report on the operation and performance of the Queensland Building Service Authority (QBSA) in its regulation of the industry, including the maintenance of proper standards in the industry and that, in undertaking this inquiry, the Committee should consider:

- whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers
- whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home
- the effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers
- the governance arrangements of and between the board and the general manager
- the effectiveness of the Queensland Home Warranty Scheme and its protections
- whether the current licensing requirements of the QBSA are adequate and that there are sufficient auditing processes to maintain proper standards
- the number of trades licensed by the QBSA and whether industry groups could take a greater role within QBSA in terms of licensing standards and procedures for their members and
- examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.

³ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.

⁴ Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.

⁵ Section 92(2) *Parliament of Queensland Act 2001*.

⁶ Section 92(3) *Parliament of Queensland Act 2001*.

Further, the Assembly asked the Committee to consult with key industry groups including home builders and building contractors, industry participants and relevant experts.

1.2.2 Reporting deadline

The Committee has been asked to report to Parliament by Friday 30 November 2012.

1.2.3 Public submissions

The Committee advertised its inquiry in August 2012 by seeking submissions through:

- a media release to 364 media outlets
- letters to 29 specific stakeholders including industry and consumer representative bodies.
- emailing 351 subscribers registered to receive information from the Committee and
- placing advertisements in the Roma Western Star 10 August 2012, Courier Mail, Townsville Bulletin, Rockhampton Morning Bulletin, Toowoomba Chronicle 11 August 2012, Qld Country Life 16 August 2012 and Cairns Post 18 August 2012.

The Committee received and considered 109 submissions. A list of submissions is included at Appendix A. Submissions have been made public (other than those which submitters requested remain private) and are available at:

<http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries/INQ-BSA>.

1.2.4 Public briefing

On 27 August 2012, the Committee received a public briefing where it heard from 8 witnesses including the Building Advisory Group, the Housing Industry Association, Master Builders Queensland, officers from the QBSA and the Chair of the Queensland Building Services Board. A list of witnesses who appeared is included at Appendix B.

1.2.5 Public hearing

On 8 October 2012, the Committee held a public hearing where it heard from 34 witnesses including home owners and their representatives, builders, tradespeople and their representatives, academics, lawyers and officers from the QBSA. A list of witnesses who gave evidence at the hearing is included at Appendix C.

Transcripts from the public briefing and the public hearing, as well as the QBSA's responses to Questions on Notice taken at the public hearing have been published and are available at: <http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries/INQ-BSA>.

2 QBSA – functions and responsibilities⁷

The QBSA was established in 1992 as a single ‘one stop’ shop entity to carry out licensing, dispute resolution and Qld Home Warranty Scheme functions. It is established under the *Queensland Building Services Act 1991* (QBSA Act) as a body corporate which replaced the Builders Registration Board of Queensland.

The QBSA consists of the Queensland Building Services Board (QBS Board), the General Manager and the organisational unit which is under the control of the General Manager. The specific functions of the QBSA are detailed below. Further detail about each of these functions is provided throughout the report.

2.1 Functions and responsibilities under the *Queensland Building Services Act 1991*

The objects of the QBSA Act are to:

- regulate the building industry to ensure the maintenance of proper standards in the industry and achieve a reasonable balance between the interests of building contractors and consumers
- provide remedies for defective building work and
- provide support, education and advice for those who undertake building work and consumers.

The QBSA has a broad range of functions under the QBSA Act relevant to the regulation and licensing of persons who carry out, or undertake to carry out, building work in Queensland. “Building work” is defined under the QBSA Act as the erection or construction of any fixed structure.

The *Queensland Building Services Authority Regulation 2003* (QBSA Regulation) prescribes types of work that are not building work to be regulated under the Act, including:

- work of a value of \$3,300 or less, unless the work requires an occupational licence or constitutes hydraulic services design work
- work performed by an architect, engineer or licensed surveyor in each of their professional practice
- electrical work under the *Electrical Safety Act 2002*
- installation of acoustic or thermal control
- work consisting of earthmoving and excavating
- construction work in mining
- certification work performed by a building certifier under the *Building Act 1975* (Building Act) in the Certifier’s professional practice and
- prescribed civil construction such as the construction of public roads, dams and bridges.

2.1.1 Functions and Responsibilities of the General Manager of the QBSA

The General Manager has all executive powers of the QBSA and the responsibility for the overall management of the QBSA. The functions and responsibilities of the General Manager include:

- administration of the licensing system established by the Act
- administration of a system of inspection established by the Act
- issuing directions for rectification of building work under the Act
- taking disciplinary and other proceedings under the Act
- assessing and approving payment of insurance claims under the Qld Home Warranty Scheme
- undertaking strategic planning, having regard especially to the cyclical industry conditions, to ensure that the QBSA’s available revenue base, and its assets and reserves, are enough to allow the QBSA to maintain the services it is required to provide
- issuing warnings to the public or and section of the public

⁷ Unless otherwise referenced, section 2 of this report includes information provided by the QBSA in its *Submission No.65*.

- providing and promoting consumer education
- providing an advisory service to consumers about:
 - their statutory rights and obligations
 - insurance claims that may arise about building work
 - the QBSA's role, functions and operating procedures and
 - any incidental matters.
- providing courses of instruction for:
 - persons seeking to obtain licences
 - licensees
 - persons proposing to carry out building work as owner builders and
 - other persons seeking to acquire knowledge or expertise in subjects related to the building industry.

2.1.2 Administration of the Queensland Home Warranty Scheme under the QBSA Act

The QBSA administers a not-for-profit statutory home warranty scheme for residential construction work called the Queensland Home Warranty Scheme (the Scheme). The Scheme covers homeowners for loss suffered in the event of a contractor failing to complete a contract or carrying out defective residential construction work. The term of the Scheme's cover is 6.5 years.

The parameters of cover provided under the Scheme are determined by the QBSA Act, QBSA Regulation and the applicable Insurance Policy Conditions made by the QBS Board.

The maximum amount payable under the Scheme's insurance policy conditions for claims is:

- \$200,000 for claims of non-completion (including pre-completion defects), vandalism or forcible removal per policy (this includes an amount of up to \$5,000 for alternative accommodation and storage costs)
- \$200,000 limit for all claims relating to fire, storm or tempest per policy (this liability is subject to the lodgement of a valid non-completion claim prior to the event)
- \$200,000 per policy for claims for post-completion defects and subsidence (this amount includes and amount of up to \$5,000 for alternative accommodation and storage costs).

The QBSA Act requires that the Scheme is managed in accordance with the actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts paid from the Insurance Fund. The QBSA is required to calculate the premiums payable to ensure they are sufficient to meet the costs of administering the scheme and to the costs for paying out claims. Premiums increase incrementally with the value of the work (which includes the cost of labour and materials).

The appropriate insurance premium must be paid by the licensed contractor responsible for carrying out, or managing the construction work. In most instances this cost is added to the price for the contracted construction work. A copy of the Certificate of Insurance and the Insurance Policy Conditions are posted to the homeowner as soon as the premium is received.

The QBSA has advised that in 2011-12, 73,256 policies were issued. Approximately one-third were for new construction with the remainder being for work involving alterations and additions to existing homes. In 2011-12, 2,128 homeowners were assisted by the Scheme with a total amount of claims amounting to \$37.6 million.

2.2 Functions and responsibilities under the *Domestic Building Contracts Act 2000*

The *Domestic Building Contracts Act 2000* (DBC Act) regulates domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners, and to maintain appropriate standards of conduct in the building industry.

- The QBSA's functions include the investigation and prosecution of breaches of the DBC Act. Breaches of the DBC Act are most commonly dealt with through the issue of an infringement notice under the *State Penalties Enforcement Act 1999*.
- The DBC Act authorises the QBSA to prepare and publish suggested forms of domestic building contracts. The QBSA also approves contract information statements for the purposes of the Act.

2.3 Functions and responsibilities under the Building and Construction Industry Payments Act 2004

The object of the *Building and Construction Industry Payments Act 2004* (BCIP Act) is to ensure that a person is entitled to receive and is able to recover progress payments where a person undertakes to carry out construction work under a construction contract, or undertakes to supply related goods and services under a construction contract.

The BCIP Act states that the object is to be achieved by:

- granting an entitlement to progress payments whether or not the relevant contract makes provision for progress payments and
- establishing a procedure that involves:
 - the making of a payment claim by the person claiming payment
 - the provision of a payment schedule by the person by whom the payment is payable
 - the referral of a disputed claim, or a claim that is not paid, to an adjudicator for decision and
 - the payment of the progress payment decided by the adjudicator.

The BCIP Act establishes an Adjudication Registry consisting of a Registrar and registry staff. The Registrar is subject to the direction of the General Manager of the QBSA.

In addition to the BCIP Act, the *Subcontractor's Charges Act 1974* provides a mechanism for securing monies owed to a subcontractor by a contractor through the lodging of a charge in the Courts. The *Subcontractor's Act* does not give the QBSA any powers or functions in relation to its operations.

2.4 Functions and responsibilities under the Building Act 1975

Amongst other matters, the *Building Act 1975* (Building Act):

- regulates private certifiers and other building certifiers and the performance of building and private certifying functions
- regulates the engagement of private certifiers and
- provides for the licensing of, and complaints, investigations, and disciplinary proceedings against, private certifiers and other building certifiers.

The QBSA has the following functions under the Building Act:

- license individuals as building certifiers and give private certification and development approval endorsements
- monitor compliance by building certifiers with specified provisions of the Building Act
- carry out audits of building and private certifying functions
- investigate written complaints made to it about alleged unsatisfactory conduct or professional misconduct by building certifiers or former building certifiers
- take disciplinary action against building certifiers or former building certifiers for unsatisfactory conduct or professional misconduct
- give the chief executive, at least once each year, a list of building certifiers and a summary of disciplinary action taken against building certifiers and
- keep a register of building certifiers.

2.5 Technical support for the Queensland Civil and Administrative Tribunal

The QBSA provides technical services to the Queensland Civil and Administrative Tribunal (QCAT) in relation to building work. At the request of the President of the QCAT, the QBSA provides expert reports to the QCAT and may act as an assessor in a proceeding concerning building work.

If appointed as an assessor in a proceeding concerning building work, the QBSA may provide one or more of the following services as requested by the QCAT:

- give expert evidence about the building work
- sit with the QCAT and give advice about the building work related matters relevant to the proceeding
- decide a question of fact about the building work and give the tribunal a written report stating the decision and the reasons for it
- give advice to the tribunal about the building work, including conducting an inquiry or investigation into a matter and give a written report of the assessor's findings in the inquiry or investigation.

The QBSA does not charge for the above services, including the provision of expert reports where the QBSA is not a party to the dispute.

The administration and funding of the QBSA and the QCAT are independent of each other.

2.6 Other functions of the QBSA

In addition to its statutory functions, the QBSA carries out a range of functions to assist consumers, the general community, the building industry and the Queensland Government. These include:

- disaster recovery assistance (advice on rebuilding after natural disasters)
- technical support for QCAT in relation to building work and
- community Information Support through a contact centre (telephone and online) to building industry stakeholders. Services include a phone-pay service which enables licensees to pay renewal fees and Queensland Home Warranty Scheme premiums.

The QBSA has advised the Committee in its submission to the Inquiry that contractors and consumers often contact the QBSA about building issues that include matters outside its jurisdiction including:

- local government and planning issues
- employment arrangements, including relevant awards
- contractual disputes in the QCAT (not involving defective building work or the QBSA)
- Australian Standards and Codes applicable to building work
- disputes relating to engineering, architectural or electrical work and
- queries relating to the occupational licensing of plumbers, drainers, gasfitters and electricians.

The QBSA further advised the Committee that in these circumstances it assists the public to identify and contact the appropriate regulator or service provider to their enquiry.

2.7 Functions and responsibilities of the Queensland Building Services Board

The QBS Board is established under the QBSA Act and has the following functions:

- to make and review policies governing the administration of the QBSA Act
- to provide guidance and leadership to the General Manager and monitor the General Manager's management of the QBSA
- in conjunction with the General Manager, to establish strategic direction for the QBSA
- to advise the Minister on issues affecting:
 - the building industry
 - consumers

- the administration of the QBSA Act and
- the administration of the QBSA
- to give advice to the Minister about unfair or unconscionable trading practices affecting security of payments to subcontractors and
- to consult with, and advance the interests of, the building industry and its consumers consistently with the objects of the QBSA Act.

The QBSA Act authorises the QBS Board to make and review policies governing the administration of the Act. To have effect, a policy of the Board must be approved by regulation and published in the gazette. Policies that are currently in effect are:

- Financial Requirements for Licensing policy
- Insurance Policy Conditions
- Rectification of Building Work policy.

The QBS Board consists of 8 members comprising:

- Three (3) members who are licensees, or directors of companies that are licenses subject to the following conditions:
 - at least one of the licensees must be a licensed builder
 - at least one of the licensees must be a licensed contractor other than a licensed builder and
 - one other
- two (2) members appointed as representatives of consumers
- one (1) member appointed as a representative of either or both of the general insurance industry and the accounting profession
- one (1) member appointed as a representative of building and construction unions and
- one (1) member appointed as a public service officer (currently the Director-General, Department of Housing and Public Works).

All members of the QBS Board, other than the public service member, are voting members. The Chair and members of the QBS Board are appointed by the Governor in Council. Members of the QBS Board are appointed for a term of no longer than 3 years. However, the Chair or members may be reappointed at the expiry of a term.

The QBS Board or the Minister for Housing and Public Works may appoint committees for the purpose of advising the Board on a particular subject or subjects.³⁰ The following committees are currently appointed:

- Policy Committee
- Finance and Audit Committee
- Insurance Committee
- Licensing Committee and
- Fire Protection Occupational Licensing Committee.

2.8 Overview of Statistics (2011-12)

- There were approximately 4,726 building disputes regarding defective and incomplete work compared to 73,256 building contracts for insurable residential projects.
- The QBSA issued 896 directions to rectify.
- There were 60 reviews by QCAT regarding directions with decision being upheld in 95% of cases.
- 2,128 homeowners were assisted by the QHWS with a total amount of claims amounting to \$37.6 million.
- As at 30 June 2012, the QBSA had 84,436 licensees registered under the QBSA Act and 398 building certifiers licenced under the Building Act.

3 The governance arrangements of and between the QSA Board and the General Manager

3.1 Background – governance arrangements of the QBSA Board⁸

The QBS Board is established under the QBSA Act which provides the Board with the following governance functions:

- provide guidance and leadership to the general manager and monitor the General Manager's management of the authority
- in conjunction with the General Manager, to establish the strategic direction for the Authority and
- advise the Minister on issues affecting the administration of the QBSA.

The Chair and members of the QBS Board are appointed by the Governor in Council. The Board comprises eight members as detailed on page 7 of this Report. All members other than the public service member are voting members.

Section 14 of the QBSA Act provides that the Board, or the Minister, may appoint committees for the purpose of advising the Board on a particular subject or subjects. The QBS Board has established a number of committees including the Finance, Audit and Risk Committee, Insurance Committee and Policy Committee. The committees report directly to the QBSA Board. General Manager, relevant executive Managers and QBSA staff provide secretariat and other assistance to the committees.

The Finance, Audit and Risk Committee oversees internal auditing of the QBSA, including strategic and annual audit plans and management responses to the internal auditor's recommendations for improvement and strategic risk management. The Committee considers and oversees the QBSA's budgetary functions, financial statements and financial position. The Committee meets bi-monthly.

The Insurance Committee advises the QBS Board on the performance of the Queensland Home Warranty Scheme and associated issues.

The Policy Committee advises the QBS Board on policy issues relevant to the QBSA related legislation and is instrumental in developing new policies relating to the building industry.

Over the past four years, the Policy Committee has considered a number of issues including:

- subcontractor accountability
- requests to rectify defective building work procedure
- dispute management system procedures and
- national licensing reforms.

3.2 Background - Governance arrangements between the QBSA Board and the General Manager⁹

Under the QBSA Act, the General Manager has all the executive powers of the QBSA and the responsibility for the overall management of the Authority. The General Manager is independent of the QBS Board's control in performing the functions and responsibilities associated with the General Manager's executive powers and overall management of the QBSA. The QBSA Act requires the General Manager to report regularly to the QBS Board on the administration of the QBSA Act and, at the request of the Board, provide it with a special report on a particular subject.

While the General Manager is independent of the QBS Board in the exercise of executive powers and the overall management of the QBSA, the General Manager has a statutory obligation to give effect to the board's policies.

⁸ Information in this section has been drawn from QBSA *Submission No.65*. pp.42-43.

⁹ Information in this section has been drawn from QBSA *Submission No.65*. pp.43-43.

The General Manager is not appointed by the QBS Board. Under the QBSA Act the General Manager is appointed by the Governor in Council. The remuneration and conditions of appointment of the General Manager are determined by the Minister.

The QBSA Act also creates a statutory position of Insurance Manager for the QBSA. The Insurance Manager is appointed under the executive powers of the General Manager in consultation with the QBS Board. The role of the Insurance Manager includes reporting regularly to the QBS Board on the administration of the Queensland Home Warranty Scheme and, if asked by the QBS Board. The Insurance Manager is independent of the General Manager's direction in reporting to the QBS Board, but is otherwise subject to the General Manager's direction.

3.3 Evidence received on governance arrangements of the QBS Board and between the Board and the General Manager

While the Committee did receive comments in a number of submissions about the governance arrangements of the QBS Board and the arrangements between the Board and the Manager, in general this issue did not feature largely in the evidence received by the inquiry. Examples of the comments and issues raised are provided below:¹⁰

The Housing Industry Association (HIA):

*The QBS[A] Board is essentially an advisory body to the Authority. The General Manager does not formally report to the Board, rather to the Minister for Housing and Public Works. To operate effectively HIA believes it is important the General Manager report directly to the Board and be appointed by the Minister on a recommendation from the Board, as applies in other statutory authorities. This will deliver a clearer role for the Board and more transparent accountability for the General Manager.*¹¹

One building contractor notes:

*Remove the Board as a Board could never be found to satisfy such a diverse industry and could only hinder the operations of the BSA. In my 20 years as a licence holder I have never been informed of the Board or of anything they have done. The current members sadly are generally not at the coal face of the industry and would not therefore provide relevant input. The best information we received was through the BSA's own 3 monthly magazine, now not produced. This should be started again and also used as a tool for the BSA to both survey the industry and gather relevant information from licenced persons.*¹²

A number of licensees have questioned whether there is adequate representation of building trades and professions on the QBS Board:

*Arrangements between the board and the general Manager are outside my experience, but I question if the Board Members are chosen to represent a good cross section of the building trade.*¹³

*... we have 3 members on a seven[sic] person board that may only represent 10 - 20% of the registered builders in Queensland.*¹⁴

*No building professional disciplines are represented on the QBSA Board and, as such, the QBSA fails to adequately administer the licensing of professional building disciplines.*¹⁵

¹⁰ Other submissions which raised issues on governance include numbers 11, 13, 13a, 48,

¹¹ HIA, *Submission No.38*, p.27.

¹² Private *Submission No.60*. p.2.

¹³ Mr John Andrew, *Submission No.49*, p.2.

¹⁴ Michael Nash Constructions, *Submission No.15*, p.3.

Consumers have also raised concerns that consumers are not truly represented:

The Qld Building Services Board has one consumer member, reading [his] background in the BSA Annual Report 2010-2011, it is hard to see how his background in insurance and business qualifies him to represent consumers (if "consumer" means the ordinary home owner, among others). The board membership looks like it represents the sectors of the building industry.....it should have a larger representation of genuine "consumers".¹⁶

Committee comment

The Committee notes concerns raised by a small number of stakeholders about the representative make-up and membership of the Board.

The Committee is of the view that the QBSA Board should be truly representative and impartial.

The Committee has also noted a 2009 independent Review of Queensland Government Bodies (including statutory authorities) which recommended that the QBSA Board should be a governing board and the General Manager role should be accountable to, and report through, the governing board to the responsible Minister.¹⁷

The Committee has made a number of recommendations regarding structural reform of the QBSA and the QBSA Board at the end of section 4 of this report (see pages 19-20).

¹⁵ The Association of Hydraulic Services Consultants Australia, *Submission No.63*, p.1.

¹⁶ Mr Don Jender, *Submission No.32*, p.4.

¹⁷ S. Webbe and P. Weller, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, March 2009, p.136, recommendation 121.

4 Does the QBSA achieve a balance between the interests of building contractors and consumers¹⁸

4.1 Introduction - QBSA's statutory obligations to achieve a "reasonable balance"¹⁹

One of the stated objectives of the QBSA Act is to "achieve a reasonable balance between the interests of building contractors and consumers". This specifically relates to QBSA's role in issuing directions for defective or incomplete building work, its licensing functions, dispute resolution and Queensland Home Warranty Scheme functions.

Under section 18(2A) of the QBSA Act, the General Manager is prohibited from having regard to the implications for the statutory insurance scheme when deciding the action to be undertaken in relation to a licensee's licence and that under the QBSA organisational structure, decisions regarding payments of claims for insurance and decisions relating to the imposition of conditions, suspension and cancellation of licenses and prosecution of offences are made by two "entirely separate" divisions which are under the management of separate executive managers.

In its submission to the Inquiry the QBSA advises that decisions regarding payments of claims for insurance are made by assessment officers in the QBSA's "Resolution Services" division. Decisions relating to the imposition of conditions, suspension and cancellation of licences (e.g. for breach of financial requirements) and prosecution of offences are made by the QBSA's "Compliance" division. The QBSA also advises that decisions made by the two divisions are entirely separate.

Technical decisions on whether building work is defective or incomplete are determined by a building inspector. Building inspectors and insurance assessment officers are both located in the "Resolution Services" division of the QBSA. QBSA advises that these officers have distinct functions and delegations with respect to their areas of responsibility and expertise. The building inspector may provide technical advice to the insurance assessment officer on the work required to rectify or complete, including the scope of work relevant to the rectification or completion. In all other respects, the relevant officers make independent decisions in regards to their functions and delegations.

In its submission, QBSA goes on to detail that the QBSA Act provides safeguards in relation to decisions throughout the dispute and insurance process. Specifically, any affected party may apply to the QCAT for a review of any of the following decisions:

- a decision to direct or not to direct rectification or completion of building work
- a decision that building work undertaken at the direction of the QBSA is or is not of a satisfactory standard
- a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete residential construction work
- a decision to disallow a claim under the Queensland Home Warranty Scheme wholly or in part
- a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the Queensland Home Warranty Scheme.²⁰

¹⁸ This section provides a general overview on how well the QBSA achieves and is "perceived to achieve" a balance in relation to directions relating to defective or incomplete work, its licensing functions, and the Home Warranty Insurance Scheme. Sections 5 to 7 of this report examine these functions in more detail.

¹⁹ Unless otherwise specifically referenced this introduction is based on material provided by the QBSA *Submission No.65*, pp.16-17.

²⁰ QBSA, *Submission No.65*, p.17.

4.2 Overview of evidence received on whether the QBSA's achieves a "reasonable balance"

A review of submissions has provided the Committee with widely varying perspectives on the issue of whether the QBSA achieves balance in the performance of its duties. Views range from those purporting that the QBSA genuinely seeks to achieve balance, to those claiming the QBSA has a bias against consumers, and those claiming the QBSA has a bias against builders. The following pages provide some examples of the evidence provided.

One submitter observes that:

As someone who has been frequently involved with the QBSA, I wish to make the general personal observation that the organisation is overly bureaucratic and often seems to be more concerned with protecting its own position than protecting the interests of building contractors and consumers.²¹

4.2.1 Background to the evidence provided on 'reasonable balance'

The Builders Collective of Australia provides an insightful introduction to the concerns surrounding building or renovating a house:

Building or renovating a house is often one of the most expensive and emotionally charged experiences in a consumer's life. Builders and consumers rightly expect that the building regulatory regime will protect both consumers and builders by enabling fair outcomes for all. The industry expects arrangements to be in place to ensure minimum standards are set and met, qualifications for builders and other practitioners are obtained and maintained, compliance is monitored and enforced, dispute resolution is available to all parties and consumers and builders understand and comply with a standard contract fair to both consumer and builder.

Furthermore industry and consumers see this as a government responsibility to administer these functions to deliver consumer protection as a Government can operate as an honest broker with a degree of accountability and governance not possible from the private sector. Consumers also look for protection in the event that a builder does not, or cannot, complete contracted work and that the builder returns to rectify defects during an agreed statutory 'warranty' period.²²

The Australian Master Tilers Association comes to the conclusion that it is almost inevitable that there will be a perception of bias:

Due to the emotion involved in any dispute, it is almost inevitable that, when the BSA is required to make a ruling, one side or the other will be under the impression that the BSA is taking sides. This is true for both the Consumer and the Building Contractor, depending on the outcome of the ruling (i.e. whether a direction to rectify is issued or not).²³

4.2.2 Examples of evidence received that QBSA genuinely seeks to achieve balance:²⁴

BDAQ [Building Designers Association of Queensland] believes that BSA seeks to achieve a balance between the interests of building contractors and consumers. Unfortunately, they get to deal with contractors and consumers at a time of heightened emotions and in such a state there is always a potential for miscommunication. Whenever BSA is required to intervene in an issue, the result is a significant cost to one party or the other and a ruling against one side will always give an impression of the authority "taking sides".

²¹ Mr Lev Mizikovsky, *Submission No.41*, p.2.

²² Builders Collective of Australia, *Submission No.26*, pp.4-5.

²³ The Australian Master Tilers Association, *Submission No.90*, p.2.

²⁴ For further examples see submissions 26, 69, 90

Building designers deal with both sides of the building contract and are aware that, for as many consumers who believe that the BSA protects builders, an equal number of builders believe that BSA takes the side of consumer.²⁵

.....

It is our view that Queensland Building Services Authority currently operates effectively within the parameters established by legislation. There is never a satisfactory answer when something goes wrong during a building project and regardless of the outcome one party will feel hard done by.²⁶

Timber Queensland Ltd (TQ) agrees:

It is TQ's experience in matters we have been party to with the QBSA that relate to technical assessment and opinions in respect to the use and application of timber, that the BSA have provided a fair and reasonable balance between the interests of the consumer and contractor. This has been demonstrated where directions have been re-visited based upon our independent expert advice. We have also noted, that on occasion, they have encouraged a 'natural justice' outcome where matters have not been within the legal bounds of their legislative framework.²⁷

4.2.3 Examples of evidence that the QBSA has a bias against consumers

A significant number of submissions (mostly consumers) argue that the QBSA has a bias against consumers²⁸. A submission from Mr and Mrs Cedaro sums up many peoples concerns as follows:

I question how an organisation who accepts annual dues from builders can possible purport to independently and impartially oversee disputes between consumers and builders who pay an annual fee t[o] them.²⁹

A confidential submission raises a concern that:

The residential building industry in Queensland has become a David and Goliath struggle with the cards stacked clearly with the industry.

Extreme prejudice, bullying, outright denial of natural justice and manipulation of the facts, system and due process has translated into nothing less than assault emotionally and financially toward consumers.³⁰

Mr and Mrs Wyeth's submission provides the following detailed argument:

This State controlled "system" which includes a number of diverse responsibilities, allows the General Manager of the BSA and his staff to manipulate the QBSA Act in whatever way they choose as they are only accountable to an occasional Board meeting and QCAT. There is no transparency, no independent arbitration or an Ombudsman that a consumer can appeal to and with all its differing obligations, the BSA has and does demonstrate a clear "conflict of interest" that favours their licensees.

For example:

- *As managers of the Home Warranty Insurance Scheme, the BSA are in a unique position. Having licensed the builders and tradespeople in the first instance they then receive annual fees and insurance premiums from them, (which is the BSA's income) so they are obliged to protect them.*

²⁵ Building Designers Association of Queensland (BDAQ), *Submission No.27*, p.2.

²⁶ BDAQ, *Submission No.27*, p.7.

²⁷ Timber Queensland Ltd, *Submission No.18*, p.2.

²⁸ For further examples of perceived bias against consumers see submissions 68, 71, 75, 99, 102,

²⁹ Mr and Mrs Cedaro, *Submission No.2*, p.1.

³⁰ Confidential *Submission No.99*, p.14.

- *Any claim upheld by the Home Warranty Insurance Scheme is an admission of failure by the BSA (the managers of the HWI scheme) to properly assess the licensee's competence in the first place and to hold a licence.*
- *The BSA under the QBSA Act are then obliged to recover any money paid out by the Insurance Scheme from their offending licensee. In other words they could seriously financially damage, even bankrupt their licensee, so it is in the BSA's interest to minimise the damage and the insurance payout.*
- *By denying independent arbitration for consumers and by putting all decision making in the BSA and QCAT's hands (both State Government Agencies) the BSA does not have to carry out any "cost benefit analysis" of claims and can (and I would suggest does) deliberately select non legally represented[sic] consumers to contest and deny their justifiable insurance claims in order to maintain its required APRA [Australian Prudential Regulation Authority] payout percentage.*
- *In denying self represented consumers claims (self represent because they cannot afford to pay large legal fees) the BSA does not have to worry about what it costs them. The BSA can run up (and does) unlimited expense in contesting claims. As shown in their Annual report, in addition to their own "in house" legal team, they hire "top of town lawyers" and consultants (at over \$4m) to represent them in disputes and at QCAT, and use unlimited time of their own staff to contest a claim. These costs can be, and are, out all proportion to the cost of settling the claim. In this regard the BSA use their financial resources in the hope of "breaking" the consumer or by forcing them to withdraw. The General Manager claims that it usually takes 3-4 years to have a claim heard at QCAT! What an affront to consumers, is this equality?*
- *In addition of course, there are the cost[s] incurred of a claim that are eventually heard at QCAT. The QCAT costs have to be met by taxpayers.*
- *The BSA is a very profitable organisation (it has accumulated over \$50million in assets) and it is easy to see why. Its income is derived from license fees and insurance premiums. Under "the system", it is compulsory for every builder and tradesperson working in Queensland to be licensed by the BSA and every licensee, carrying out work over \$3,000, has to pay BSA insurance — there is no competition, it is a State Government monopoly.*
- *Insurance companies normally invest the premiums received and payout claims from their investment income. BUT, the BSA is able to invest both the licence fees it receives and the insurance premiums and waste enormous sums of money in employing administrative staff (approximately 350) in fighting comparatively small claims — and "then is able to recover any money paid out, from its licensee"! WHY?³¹*

4.2.3 Examples of evidence that the QBSA has a bias against builders

In contrast, a number of submitters (mostly builders) have claimed that the QBSA has a bias against building contractors³², for example Mr Rick Rendell submits:

The balance between the interests of the consumers and contractors is in my opinion and experience with disputes, skewed in favour of the consumer. There seems to be a mindset that contractors are cowboys and that there is dishonesty and chicanery being practiced upon the consumer. Contractors are just ordinary people with families and dependants, with responsibilities and risks arising from their relationship[s] with consumers. My experience is with building disputes and with owners who will at times utilise the BSA process to void

³¹ Mr and Mrs Wyeth, *Submission No.30*, pp.3-5.

³² For further examples of perceived bias against contractors see submissions 79 and 80.

*making payments due under the contract. The contractor frequently has no recourse except through the courts, a costly, lengthy process with still no guarantee of being paid. I believe the BCIPA process needs to be available for a contractor's action against a resident home owner to recover monies. I have seen many more shonky consumers than contractors. The safeguards provided to consumers by the home warranty scheme ensure a reasonable outcome in the event of a contractor's demise or misbehaviour. This is of course premised upon the consumer complying with the policy conditions and this cannot be relaxed as the scheme requires administrative rigor to remain viable.*³³

The HIA provides the following useful insight into the question of real and perceived conflict of interest in relation to the QBSA:

The perceived advantage of this broad role for the QBSA is that it can provide a "one-stop-shop" for both consumers and contractors. But this is also its fundamental weakness – the QBSA is caught trying to be all things to all people. For the most part the QBSA is able to successfully juggle these conflicts but there is a sizeable minority of cases where the internal contradictions in the QBSA's role inhibit good outcomes. There is no other jurisdiction in the country that combines all of these functions into the one body.

The QBSA faces a number of challenges in relation to equity for the parties, perceived bias from both consumers and contractors and confusion by the public over their role. QBSA inspectors are constantly put in a position by consumers and contractors expecting them to address contractual/legal matters which the QBSA is unable to do. From the contractor's perspective they may be being told by the QBSA that they have to repair defective or incomplete work even though their client may owe the contractor tens of thousands of dollars. If the work is not repaired then their licence is at risk of cancellation.

.....

*The one-stop-shop structure of the QBSA creates the perception and the potential for conflicts of interest to arise among its functional areas. From the perspective of licensed building and trade contractors there is a perception that the QBSA acts, especially when resolving disputes, to use its licensing powers to coerce contractors into resolving disputes that they would otherwise contest. From a consumer's perspective there is always a suspicion that the QBSA will err on the side of saying work is not defective with a view to protecting the insurance scheme from potential claims.*³⁴

4.3 Recommendations from submissions suggesting organizational reform of the QBSA

A number of submitters were satisfied with the current structure of the QBSA, including the Australian Institute of Building (AIB) which *"supports the 'one-stop shop' model of the BSA, but there should be vigilance to ensure the integrated model does not impact on the BSA's independence and objectivity."*³⁵

However, many submissions from both the building industry and consumers provided advice to the Committee on how the QBSA could be structurally reformed to enhance assistance to both industry and consumers. Some examples are provided below.³⁶

The HIA recommends that the functions currently undertaken by the QBSA be separated and that an independent governing board oversee the regulation and licensing function which would be the only function to remain with the QBSA.

³³ Mr Rick Rendell, *Submission No.11*, pp.1-2.

³⁴ HIA, *Submission No.38*, p.3.

³⁵ AIB, *Submission No.84*, p.2.

³⁶ For further examples see submissions 60, 75, 80

It is because of these fundamental conflicts built into the current one-stop-shop structure of the QBSA that HIA recommends that the functions of the QBSA need to be separate.

... the policy framework for the building industry's regulation should be managed by one body Building Regulation Queensland, and governed by an independent board. Put simply HIA's recommended approach is to reallocate the QBSA's functions so that:

- *contractor licensing functions remain with the QBSA;*
- *dispute resolution moves under a judicial umbrella in a specialist division of QCAT that is funded by an allocation from the QBSA licensing fees;*
- *warranty insurance to have claims managed by the private sector and underwriting to be managed by the Treasury's Insurance Division;*
- *consumer education to be undertaken by the Office of Fair Trading; and*
- *regulation of contracting relationships to be developed by the newly established Building Regulation Queensland.³⁷*

Later in its submission the HIA also recommends that contractor information be provided by industry associations and by Building Codes Queensland.³⁸

LK & HM Young, General Builders, agree that there needs to be a significant restructure:

The only recommendation I believe is available is complete dissolution of the department of Queensland Building Services Authority and replace this service with a new body group to assist the construction Industry with specialized professionals available for training, education, dispute management in these described scopes of professions.³⁹

The Australian Institute of Building Surveyors (AIBS):

The AIBS ask that the enquiry consider a clear delineation and transparency of separation between Government and Judiciary matters and consider the maintenance of private Certifier/Building Surveyor rights to mitigate potential damage.⁴⁰

RICS Oceania has provided its own organisational structure as a possible alternative for the QBSA:

... RICS is charged through its Royal Charter to act in the public interest. Because of this public interest mandate RICS has established a separate Regulatory Board. This board sits alongside, rather than under, the Management Board of RICS.

The Regulatory Board maintains issues such as complaints, discipline, rules of conduct and codes of ethics, as well as providing regulatory services to firms, providing security to the public as members are regulated by a body that can oversee structures of compliance.

RICS sees that a system such as this may benefit the operations of QBSA and the Queensland Government by streamlining the process for building surveyors through certification to licensing.⁴¹

Mr Malcolm Cronk suggests appointment of an independent person to head the QBSA:

It is absolutely essential that the head of the QBSA not have any conflicting interests such as being the head of or member of any other building industry body such as the QMBA, HIA, etc. Such affiliations absolutely prejudice the rights of the consumer.⁴²

³⁷ HIA, *Submission No.38*, p.4.

³⁸ HIA, *Submission No.38*, p.27.

³⁹ LK&HM Young *Submission No.10*, p.5.

⁴⁰ AIBS, *Submission No. 50*, p.3.

⁴¹ RICS Oceania, *Submission No.97*, pp.2-3.

⁴² Mr Malcolm Cronk, *Submission No.9*, p.2.

A private submitter recommends the QBSA be disbanded and reconstituted “...under a new act which clearly defines, in laymans terms, its operation and responsibilities.”⁴³

Mr Wayne Orenshaw recommends:

- *This Inquiry be extended, or a new Inquiry be set up with extended objectives, to allow more input from Queensland builders most of whom are not aware of the Inquiry.*
- *The Minister restructures the QBSA in consultation with consumers and the building industry.*
- *As part of that restructure a body be set up to supervise the activities of the QBSA and deal with complaints against it.*
- *A new leadership with knowledge of the building industry but with no history of employment with the QBSA be appointed.*⁴⁴

Numerous submitters have also recommended non-structural solutions to improve the operation and performance of the QBSA for example Mr Glen Place’s suggestions detailed below.⁴⁵ Operational proposals such as these are examined in detail in later sections of this report.

QBSA should play a greater role in:

- *mediation between Contractor and Client.*
- *inspecting of all contractors work.*
- *introduce Continuous Professional Development (CPD)*
- *improving the quality of contract documentation and communication.*
- *introducing Codes of Practice and Codes of Conduct.*
- *carry out more audits and monitoring on Building Certifiers and their work practices.*
- *ensure Building Certifiers properly carry out their certification services.*
- *carry out audits and monitoring on Licensed Holders and their work practices.*
- *carry out audits and monitoring on Licensed Holders that have produced defective work where rectification has been necessary.*
- *work actively to remove Un-licensed persons from the industry.*
- *increase penalties for Un-licensed persons performing illegal building work.*
- *give the BSA the tools to carry out the work.*
- *introduce “Early Intervention”.*
- *increase the minimum experience requirements for Building Designers.*⁴⁶

David and Jenny da Costa sum up what many submitters are appealing for:

*What the public is seeking is an organisation who has the resources, expertise, bureaucratic muscle and the willingness to genuinely listen to and act upon issues raised, so that the outcome will be one of fairness and equity to all parties concerned.*⁴⁷

⁴³ Private, *Submission No.60*, p.1.

⁴⁴ Mr Wayne Orenshaw, *Submission No.89*, p.12.

⁴⁵ See also Building Advisory Group, *Submission No.102*, p.1.

⁴⁶ Mr Glen Place, *Submission No.80*, p.6.

⁴⁷ David and Jenny da Costa, *Submission No.40*, p.2.

Committee comment

The Committee generally agrees with Deborah Brown's observation that *"It is probably impossible for the BSA to balance the interests of both parties so that both are happy, since to some extent their interests are opposed."*⁴⁸

However, the evidence provided to the Committee shows there is a strong perception by both consumers and builders that the QBSA is biased in one way or another and the Committee is of the view that there is a fundamental weakness in the "one stop shop" structure of the QBSA which facilitates and perpetuates the strong perception that the QBSA has an essential conflict of interest in carrying out its functions and responsibilities.

The Committee believes the perception of conflict of interest is further exacerbated by the role of the General Manager who is concurrently responsible for:

- licensing and the collection of fees from licensees and certifiers
- administration of licensee audits and disciplinary action
- attempting to resolve disputes about rectification of defective or incomplete work
- issuing directions to rectify defective or incomplete work
- managing the tendering process for allocation of rectification and completion work to builders
- providing building advice to QCAT when QCAT is reviewing decisions made by the QBSA
- assessing and approving payments of insurance claims under the Home Warranty Insurance Scheme
- administering the Home warranty Insurance Scheme in accordance with the actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts paid from the Insurance Fund
- undertaking strategic planning to ensure the QBSA's available revenue base, and its assets and reserves, are enough to allow the QBSA to maintain the services it is required to provide.

The Committee is strongly of the view that there must be a clear and transparent divide between the roles of licensing; dispute management over directions to rectify and complete; and management of the insurance scheme. This means that each of these functions must at a minimum be legislatively or organisationally firewalled⁴⁹ from each other and report through separate general managers to a Board or Director-General of a department.

While the Committee is recommending a firewall be put in place to separate these functions it has no objection to the back office functions of these three agencies being merged to achieve operating efficiencies in functions such as human resources, finance, communication, data and evaluation, regional accommodation and support.

As noted on page 10 in the previous 'Committee comment', the Committee agrees with the spirit of the 2009 independent Review of Queensland Government Bodies which recommended that the QBSA Board should be a governing board and the General Manager role should be accountable to, and report through, the governing board to the responsible Minister.⁵⁰

The Committee believes that the Department of Housing and Public Works should include a specialist building capability to ensure the Minister for Housing and Public works receives independent advice on the provision of building services and the Committee is of the view that Building Codes Queensland should remain in the Department of Housing and Public Works.

⁴⁸ Ms Deborah Brown, *Submission No.29*, p.1

⁴⁹ See Glossary for definition of a firewall.

⁵⁰ S. Webbe and P. Weller, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, March 2009, p.136, recommendation 121.

Sections 5.3.1 and 5.7 of this report examine the consumer and industry advice functions undertaken by the QBSA and the Committee makes recommendations about these functions on page 46.

The Committee also strongly recommends that the Minister for Housing and Public Works take the views of building and consumer stakeholders into account when examining any major changes to building services provided by the Queensland Government.

Sections 5-7 of this Report provide more evidence explain in more detail why the Committee is making the recommendations below as well as making further recommendations regarding the operation and performance of the QBSA.

Recommendation 1

The Committee recommends that in the interests of improved confidence and transparency, the “one stop shop” model for the provision of Queensland government building services be discontinued and that the Queensland Building Services Authority be disbanded as soon as alternative mechanisms for delivering its functions can be established.

Recommendation 2

The Committee recommends that the Minister for Housing and Public Works restructure the building services currently provided by the QBSA so that there is a clear and transparent divide between the roles of licensing; management of directions to rectify and complete work; and management of the limited home warranty scheme.

Recommendation 3

The Committee recommends that the Minister for Housing and Public Works, consider the following model as a restructuring option for the new building services authority.

Establish a new statutory authority with each of the following functions legislatively “firewalled” from each other and managed by an general manager who is directly accountable to, and reports through, a decision making board (possibly through a sub-committee) to the responsible Minister:

- registration and regulation of licensees and certifiers
- management of the limited home warranty scheme
- management of directions to rectify and complete.

Recommendation 4

The Committee recommends that the Minister for Housing and Public Works ensure that any new Board is a governing (not advisory) board and the membership of the board is truly representative and impartial.

Recommendation 5

The Committee recommends that Minister for Housing and Public Works ensure the Department of Housing and Public Works includes a specialist building capability to provide the Minister with independent advice on the provision of building services.

Recommendation 6

The Committee recommends that Building Codes Queensland remain in the Department of Housing and Public Works.

Recommendation 7

The Committee recommends that the Minister for Housing and Public Works ensure that the reformed building services provided by the Queensland Government continue to be self-funding.

Recommendation 8

The Committee recommends that the Minister for Housing and Public Works take the views of stakeholders into account when examining the appropriate structure for the reformed building authority and Board.

5 Dispute resolution - directions to rectify defective or incomplete work

5.1 Directions to Rectify - Background⁵¹

5.1.1 Legislative requirements

Under section 72 of the QBSA Act, the QBSA may direct a person who carried out defective or incomplete building work to rectify the work. Section 72(14) provides that the QBSA:

Is not required to give direction under this section to a person who carried out building work for the rectification of the building work if the authority is satisfied that, in the circumstances, it would be unfair to the person to give the direction.....

[for example]

The authority might decide not to give a direction for the rectification of building work because of the amount payable but unpaid under the contract for carrying out the building work.

The QBSA has advised that where a complaint about defective building work is received initial contact is made with the parties to clarify the issues and try and resolve the matter without the need for further intervention. In 2011-12 approximately 27% of disputes were resolved in this way.

If the dispute cannot be resolved in this way a site meeting is held with both parties and QBSA building inspector who must hold at minimum a Builder – Medium Rise licence and five years relevant building experience. The meeting provides an opportunity to further clarify the issues in dispute and obtain independent assessment by the building inspector as to whether the work under dispute is defective building work under the QBSA Act. At this stage the contractor may decide to rectify without the QBSA issuing a direction to rectify or the consumer may reconsider their complaint if the inspector determines that the work complies with the relevant Australian Standards.

If the dispute cannot be resolved voluntarily, the QBSA makes a decision about whether to issue the building contractor with a direction to rectify defective or incomplete work. In making this decision, the QBSA building inspector has a statutory obligation to take into account all circumstances that are reasonably relevant.

5.1.2 Rectification of Building Work Policy

The QBSA Board has developed a *Rectification of Building Work Policy* to guide inspectors in relation to when it is fair and reasonable for the QBSA to give direction to rectify. The policy is publicly available and includes guidance in relation to:

- what constitutes defective building work
- categories of defective building work and
- reasonable timeframes for the notification by consumers of defective building work.

Consistent with section 72 of the QBSA Act, this policy provides that a building contractor who carries out defective work would be required to rectify that work, unless in the circumstances rectification is unfair or unreasonable. The policy provides examples of where it might be unfair or unreasonable to issue a direction where a consumer has delayed making their application for example:

- for category 1 defective building work⁵² or residential construction work causing subsidence, the delay exceeds 3 months after the defective work became apparent or
- for category 2 defective building work⁵³, the delay exceeds 6 months after the work was completed or left incomplete.

⁵¹ This section is based on information provided by the QBSA, *submission no.65*, pp.10-12.

⁵² See Glossary for definition of Category 1 defective building work.

5.1.3 Statistics on directions to rectify

The number of complaints about defective or incomplete building work received by the QBSA in the 2011-12 financial year was 4,726 – 73% of these came from southeast Queensland and the remaining 27% came from regional Queensland.⁵⁴ The average number of directions to rectify building work finalized per annum over the last four financial years is 946. The number of directions has remained fairly steady over the last four years with a slightly larger number - 1,188 in 2009-10.

Under section 86(1)(e) of the QBSA Act, QCAT may review decision of the QBSA to direct or not to direct rectification or completion of building work. In the 2011-12 financial year 60 reviews of QBSA decisions were heard by QCAT with the QBSA decision being upheld in 57 cases or 95% of cases. The average number of reviews which upheld the QBSA decision on directions to rectify is 91% over the last four years.

5.2 Issues raised in evidence about directions to rectify

The QBSA's management of decisions on directions to rectify has featured strongly in the evidence provided to this inquiry and significant concerns have been raised by both home owners and builders. Specific issues raised in the evidence include:

- lack of compliance with building codes and standards
- lack of compliance with legislative and regulatory requirements
- QBSA not auditing or monitoring building work to ensure building standards are being met
- onus being placed on homeowner to identify defective work
- building inspectors lacking appropriate knowledge and experience to make decisions to rectify
- building inspectors having personal links with building contractors and failing to disclose their conflict of interest
- perception of bias (both ways) in directions to rectify
- narrow definition of what a defect is
- timeliness and quality of the rectification work
- onus being placed on the homeowner to assess whether the rectification work is to an acceptable standard
- tendering for and performing of rectification work on behalf of the QBSA and
- inability of the QBSA to intervene when a contract is still in place

5.2.1 Issues of concern raised by property owners about the directions to notify process⁵⁵

The Walkers raise the following concerns:

The QBSA does not appear to monitor the quality of work performed by contractors. Rather the QBSA dumb down the expectations, as long as there is an absence of serious structural defects they think it's OK. This is consistently evident in transcripts and published decisions for QCAT and CCT cases, where independent experts markedly differ with the BSA approach. The BSA should ensure that contractors consistently provide workmanship that would be expected from a reasonably competent contractor.

The BSA takes a soft approach towards building contractors who fail to comply with the Domestic Building Contracts Act (DBCA). They are reluctant to issue penalties and even investigate non-compliance. They take occasional action (We say to publicly demonstrate some enforcement) but are inconsistent in their approach. This legislation was written to set

⁵³ See Glossary for definition of Category 2 defective building work.

⁵⁴ QBSA, *Submission No.65*, p26.

⁵⁵ Numerous submissions covered these issues including submission Nos 57, 66, 90, 93

the expectations for the conduct of domestic construction. Failure of the BSA to enforce these expectations has numerous consequences including:

- *leaves consumers vulnerable to what contractors term “usual practice” of non-compliance and the risks that poses to consumers*
- *leaves consumers unable to discern between honest contractors and those who flout the legislation when viewing licensee history displayed on the QBSA website*
- *contractors know they are likely to get away with non-compliance or at most receive a slap on the wrist with no true consequences thus reinforcing poor practices.*⁵⁶

Mr Don Jender raises the issue of lack of compliance with building codes and standards and also raises a concern that while consumers are not building experts they are often the only person responsible for identifying defects and are left to determine whether the rectification work meets appropriate standards:

My view as a consumer is that the BSA does not do enough to enforce the standards which builders are supposed to adhere to. The general position should be that the consumer is entitled to expect that a house will be built to satisfy all relevant standards. When it is not, the BSA should force the builder to rectify to meet those standards. It is important to realise that consumers are not building experts, so may not realise that work is substandard (or indeed that there is a defect). But when a consumer identifies a probable defect and reports it to the BSA, the BSA should investigate and enforce building standards. In my experience, BSA performance here is variable.

.....

*For instance, BSA might ask/direct a builder to rectify a defect. On my experience, the onus is on the home owner to verify that remedial work which the builder has done is satisfactory. BSA does not check that rectification work the builder proposes to fix defects will meet standards, nor that the work when actually done does meet standards. But a home owner will often not have the expertise to make such assessments.So I think BSA should do more to support the home owner in verifying that remedial work does meet standards.....*⁵⁷

Ms Deborah Brown argues that legislative and regulatory requirements are simply not being met by builders and that no-one is enforcing their compliance:

*It is just accepted that builders do not do the provide documentation etc. nor keep records as required to fulfil their legislative and regulatory obligations. If this is accepted practise then all the changes in the world to regulations etc. won't make ONE BIT of difference because they are not enforced. The problem is that the regulations and legislation are not effectively enforced, there is no accountability. There is NO ATTEMPT by the Builder to set in place correct procedure because they KNOW it is accepted by BSA and QCAT and Master Builders that Builder's will not provide the correct documentation and whatever they do provide will be GOOD ENOUGH.*⁵⁸

The following issues are frequently raised by consumers in submissions:

- building inspectors not having the skills/knowledge to undertake the inspections at the 'expertise level' required (this is also an issue for many builders - see section 5.2.2 of the report) and

⁵⁶ G & M Walker, *Submission No.75*, p.1.

⁵⁷ Mr Jender, *Submission No.32*, pp.2-3.

⁵⁸ Ms Deborah Brown, *Submission No.29*, p.1.

- building inspectors having personal links with building contractors and failing to disclose their conflict of interest.⁵⁹

The Walkers also raise a concern about QBSA's narrow interpretation of "a defect":

....the QBSA stick to their narrow interpretation of defects. They would need to have a complete shake up of their culture. The concept of "it might not be what you asked for or wanted, but it's not defective" has to change if they are to have involvement in dispute resolution. The QBSA personal would need to shift their expectations for involvement dispute resolution because if work is not the quality expected of a reasonably competent contractor, or not the product specified in the contract, or the dimensions in the contract etc then it is not good enough.

Other submissions raise the issue of the QBSA not ensuring that rectification work is undertaken in a timely manner, for example:

Builders use regulations and legislation as a door stop not as a point of reference. The time frames allow for issues to stretch into years, this is TOTALLY UNACCEPTABLE.⁶⁰

Submissions also raise concerns about the issue of substandard rectification work⁶¹ and the fact that "There doesn't appear to be any recourse for poor rectification work that is not up to the required standard."⁶²

Mathews Hunt Legal raises a concern specific to body corporate owners:

...in large-scale developments with defective building works, they face significant rectification works often worth hundreds of thousands of dollars.

In our experience, the QBSA has been ineffective in providing appropriate remedies for such defective building works. For example, the QBSA has closed files based on so-called evidence produced by the builder regarding their compliance with QBSA directives, without allowing the Body Corporate to make submissions on whether the directives were completed in a satisfactory manner. This has resulted in the owners of the scheme being forced to foot the bill to remedy the situation, when the builder's repairs are inadequate, or faulty.⁶³

Finally, homeowners often raise a concern that there is a bias toward the building contractor⁶⁴ while this is countered by contractors feeling there is a bias toward consumers (see section 5.2.2).

5.2.2 Issues of concern raised by builders about the directions to notify process

From a builder's perspective, LK & HM Young are also concerned that standards are not being referenced:

The QBSA provide no remedies for identified defective work. The BSA inspectors simply agree with the consumer, that they feel, based on their own personal opinion, that the contractor has not completed the task in dispute to their standard, no reference is ever made about an Australian standard etc., and then this inspector would issue a direction to rectify. Within this document of direction to rectify, and from my own personal experiences with dealings with the BSA, they will not and cannot offer suggestions on their personal expectations in regards to rectifying work deemed unsatisfactory by the property owner.⁶⁵

⁵⁹ See for example Building Advisory Group, *Submission No.102*, p.1.

⁶⁰ Deborah Brown, *Submission No.29*, p.1.

⁶¹ David and Jenny Da Costa, *Submission No.40*, p.1.

⁶² Mathews Hunt Legal, *Submission No.88*, p.3.

⁶³ Mathews Hunt Legal, *Submission No.88*, p.1-2.

⁶⁴ See for example, Private, *Submission No.93*, p.1.

⁶⁵ LK & HM Young, *Submission No.10* p.4.

While building inspectors must hold at minimum a building licence and have at least five years relevant building experience a number of submissions have raised concerns about whether BBSA building inspectors have the knowledge required to make decisions on rectification. Others have queried the dispute resolution skills of QBSA staff⁶⁶. The submission from builders LK & HM Young illustrates the concern raised:

I know that many Inspectors employed by the QBSA do not have the professional academic knowledge development to be able to manage and mediate disputes between the stakeholders involved in issues of disagreement.....

As this issue of the interaction of QBSA to resolve building disputes is clearly not within the Professional knowledge required by their employees, disputes always end up being resolved either by legal professionals when the issue concerns contract disagreements or by engaging independent professional legal advice when the issue of dispute is addressing construction law.⁶⁷

I have been present on numerous occasions, on the behalf of Principle contractors, where a complaint has been made to the BSA in regards to defective work.... BSA staff present at these site meetings, have made outrageous statements about the installation of structural elements within s structure, for me, then to inform the BSA, that they incorrectly advised the principle contractor of minimum standards required.

During this exchange of correction by me to the BSA, the staff clearly expressed to me that they were not aware of these every important manufacturers specifications in regards to exposure to the elements, to which I was then asked and did provide to the BSA staff, the correct manufacturers specification for elements to be protected as required. This simple fact once again highlights the incompetence and lack of academic knowledge obtained by staff employed by the BSA.⁶⁸

Asset Outdoor Additions agree that “[T]here is also definitely an inconsistency of the knowledge from one inspector to another and also their ability to correctly categorise defective workmanship” and goes to express a concern when QBSA inspectors attend a site, “..we are always requested to fix something. It is fairly obvious that this done to appease the customer.”⁶⁹

The view that building inspectors take “the easy way out” is confirmed by builders LK and HM Young: *QBSA involvement has only increased the element of frustration between the parties and to achieve a resolution, further costs now have been introduced for both parties having to proceed to court with legal representation to gain a positive solution for all stakeholders involved. Costs incurred by this incompetent, laissez-faire nature displayed by the QBSA inspectors in their ability to work with both parties to resolve a disagreement....⁷⁰*

Carl Martin (building contractor and certifier) goes on to report that:

These BSA inspectors have considered all the facts and have a good regard to the natural justice process with a high degree of fairness. In the some cases I have witnessed where the contractor will be asked to repair defects that are not confirmed as defects by the BSA but the contractor will generally fix the matter in favour of the consumer. It is important that when the consumers’ are unhappy that they cannot seek a political fix to minister to back door the process if the consumer is unhappy with the umpire’s decision⁷¹.

⁶⁶ For example see *Submission No. 67*

⁶⁷ LK & HM Young, *Submission No.10* p.4.

⁶⁸ LK & HM Young, *Submission No.10* p.6.

⁶⁹ Asset Outdoor Additions, *Submission No.83*, p.2.

⁷⁰ LK&HM Young, *Submission No.10* p.4.

⁷¹ Mr Carl Martin, *Submission No.98*, p.2.

5.3 Solutions suggested in submissions to enhance the directions to rectify process

A number of recommendations have been made to the Committee on how to remedy issues surrounding directions to rectify and the dispute resolution process.

The Australian Institute of Building (AIB) provides the following suggestions:

- *There should be a greater focus on proactive inspections by BSA to improve the overall standard of building works;*
- *There needs to be additional support for building inspectors through a commitment to training and quality;*
- *The BSA should consider introducing an adjudications process to manage residential disputes and a triage approach to prioritise and effectively manage disputes.*
- *BSA should a one-stop shop for disputes between consumers, builders and trade contractors, and the Queensland Civil and Administrative Tribunal (QCAT) should only be used for appeals.....*
- *The BSA should provide greater clarity to consumers and contractors regarding what is a reasonable standard of construction and clearer definition of a defect; and*
- *Information on the most common building defects is needed for industry training.⁷²*

Mr Glen Place also provides a comprehensive strategy:

... the answer lies in being able to intervene in an issue before it gets to the stage where conflicted emotions mean that there is never going to be a satisfactory outcome for all parties. The problems that arise, in what must be acknowledged is a tiny percentage of the total building work in Queensland, could be further reduced;

- *if BSA was enabled to intervention earlier during a contract,*
- *if consumers engaged an independent third party to manage the building contract,*
- *if BSA carries out monitoring and audits of Building Certifiers.*
 - *Stop Building Certifiers' Offices maned/run by certifier cadets.*
 - *Carrying out mandatory inspections.*
 - *Must not be just "Ticket Collectors". (I.e. collecting Form 15, 16 & 21, etc.)*
 - *Review the use of Competent Persons.*
- *if BSA carries out audits and monitoring of licensed builders, building designers and trade contractors' work,*
- *if BSA was involved in controlling or providing guidance regarding the minimum quality of construction documentation,*
- *if communication improved.⁷³*

Specific suggested solutions made by submitters can be categorized into:

- education and training for consumers and licensees
- training of building inspectors in both building requirements and dispute resolution
- prevention through contract administration
- increased penalties to encourage timely rectification
- building product compliance
- independent arbitration
- early intervention and mediation
- ability to intervene in contractual disputes.

⁷² AIB, *Submission No.84*, p.3.

⁷³ Mr Glen Place, *Submission No.80*, p.2.

Examples of these suggested approaches are detailed below in no particular order.

5.3.1 Education and training for consumers, building inspectors and licensees (see also section 5.8)

A number of submissions suggest that the direction to rectify process would be improved by increased education for consumers, building inspectors and builders.⁷⁴ Examples are provided below.

Mr Glen Place suggests:

*Homeowners should be provided free of charge access to the Building Codes of Australia, Australian Standards, the National Construction Code and any other reference to help them investigate whether a defect is exactly that. This could possibly reduce claims as well as clarify to homeowners the BSA findings. This information should be made available via the BSA website. This will also allow a fair level playing ground.*⁷⁵

Building Approvals Queensland provides a suggested method for keeping licensees up-to-date:

*An effective way to inform license holders on relevant changes in legislation would be I feel, to email such information to the applicable license holders advising of changes (where obviously Q.B.S.A. have email addresses of those licensees). This proactive measure would assist in informing changes to licensees on legislation ensuring possible legal compliance being more readily achieved at a minimal cost to Q.B.S.A.*⁷⁶

Master Builders suggest that:

*We believe the BSA needs to be tightly focused in its operations. The BSA should not be competing in the marketplace. For example, rather than providing information to builders on industry-related issues such as building practices and apprentices pay rates – which industry bodies such as Master Builders and the Housing Industry Association are well positioned to do – the BSA should upgrade its systems to collect detailed information on the nature of building defects. This would provide groups such as Master Builders and the Housing Industry Association with a basis for targeted industry training. One of the BSA's strengths in this regard is its network of regional offices. We support maintaining a strong regional presence.*⁷⁷

What is desperately needed is detailed information on the nature of building defects. Each month the BSA publishes the top 10 defects; however, there is insufficient detail to ascertain the cause of the problem. BSA should upgrade its systems to collect detailed information on the nature of building defects. This would provide groups such as Master Builders and the Housing Industry Association with a basis for targeted industry training.

*Following on from this, the BSA should work with industry in setting standards and tolerances to comprehensively define what defective means for various elements of building work. This would provide certainty to all of the parties involved (consumers, contractors and BSA's inspectors).*⁷⁸

5.3.2 Prevention through contract administration

The Building Designers Association of Queensland attempts to identify ways in which the process can be improved at the "front end" by ensuring there is adequate contract administration and thereby minimising the chance that things will go wrong:

Some solutions may come at an additional up-front cost to the consumer but these have the potential to save significantly more than the up-front cost. Based on "Getting it Right the First

⁷⁴ Consumer and industry education is discussed in more detail in sections XX and xx of this report.

⁷⁵ Private, *Submission No.93*, p.8.

⁷⁶ Building Approvals and Consultancy, *Submission No.78*, p.1.

⁷⁷ Master Builders, *Submission No. 61*, p.7.

⁷⁸ Master Builders, *Submission No.61*, p.5.

Time", BDAQ contends that an additional 1— 3% of the construction cost at the beginning of projects for quality documentation can result in a potential saving of 10 — 15% over the construction period where a full and quality service by the building designer is delivered. A number of published submissions to this inquiry indicate that consumers are relying on BSA to undertake contract administration and quality management on building projects. BDAQ submits that this is not and should not be the role of BSA or the Home Warranty Scheme. Contract administration by the designer has the potential to deal with issues before they become problems.⁷⁹

5.3.3 Increased penalties to encourage timely rectification

Other submissions suggest an increase in penalties, for example:

Legislation should be changed and should state that if defects are not complete with 6 weeks of practical completion the builder will be fined \$1000 for each day defects are outstanding and points will be placed against their license. This would solve or at the very least dramatically decrease this issue of builders not completing defects in a timely manner over night as long as QBSA ENFORCED IT.⁸⁰

Ms Jill Van Dorssen agrees that increased penalties will have an impact:

Power to apply and enforce realistic consequence on contractor for non-compliance during the term of contract in addition to 'penalty points'. Where the cause of the dispute is determined to be the contractors responsibility, the owners should be entitled to immediate financial compensation for hardship and associated costs including but not limited to rent associated with delays, legal costs etc. This could be by way of authorised back charge provisions on contractor's right to payment.⁸¹

5.3.4 Building product compliance

Timber Queensland puts the case for QBSA being given additional responsibilities for building material and product compliance as it believes:

A high percentage of defective building works are related to inappropriate or non-compliant building products being supplied to and used by contractors. Contractors and builders typically purchase building products 'in good faith' in the belief that they are both compliant with minimum standards and are 'fit for purpose'. Unfortunately, many building product suppliers have scant knowledge of what their obligations are and do not deliver compliant or fit for service product. Builders and contractors generally do not have the detailed technical expertise to be able to assess delivered product for compliance. In respect to timber products this invariably relates to non-compliance with Building Code of Australia (BCA) or Australian Standards (AS) requirements regarding durability, preservative treatment or moisture content.

TQ believe that the legislation and powers of the QBSA should be expanded to enable QBSA to undertake building material and product compliance auditing and enforcement direct on suppliers and manufacturers (where required, by-passing the builder). The auditing for compliance should be to BCA and relevant AS requirements where they exist, or on a 'fit for purpose' basis, if no standards exist.⁸²

⁷⁹ BDAQ, *Submission No.27*, p.7.

⁸⁰ Ms Deborah Brown, *Submission No.29*, p.2.

⁸¹ Ms Jill Van Dorssen, *Submission No.70*, p.3.

⁸² Timber Queensland, *Submission No.18*, p.2.

5.3.5 Independent arbitration

Other submitters have suggested that arbitration must be undertaken by an independent body, for example Mr Malcolm Cronk argues *“The Queensland Government [should] immediate[ly] implement an independent home owners’ advocate to ensure that home owners are treated fairly and without the obvious bias and negligence that is currently cultural within the QBSA.”*⁸³

Ms Jill Van Dorssen agrees:

*True fair and equitable dispute resolution should be provided by an independent body that has the ability to provide basic impartial advice to consumers on all matters, defective work, errors and emissions, minor legal matters relating directly to the contract, and/or contractor, without causing consumers additional legal costs.*⁸⁴

The Australian Master Tilers Association proposes early advice from an independent expert:

*We do note, however, that independent expert advice is, at times, not sought early enough. Although the BSA is an independent body, often the Consumer believes that the BSA will protect the interest of the Building Contractor and vice versa. With the early assistance of an independent expert, funded equally by both sides of the dispute, disputes may well be resolved in a more timely and cost effective manner through a consultation and mediation process, rather than the BSA making a ruling in favour of one side.*⁸⁵

Mr Michael Nash also argues for independent advice:

*It is critical that the role of looking after consumer and contractor interests be kept independent and not self regulated, the swimming pool industry being a prime example.*⁸⁶

5.3.6 Early intervention and mediation

There appears to be a general consensus amongst licensees and consumers that early intervention would go a long way towards preventing protracted, costly and distressing disputes.

*..... probably just as important, is the apparent lack of action by the BSA especially in the initial stages of problems becoming apparent. I have personally been involved in a number of these cases where, it is my opinion that if proactive action had been taken in the early stages the situation would not have blown out to the protracted and always distressing and costly and documented episodes I know have already been submitted.*⁸⁷

Timber Queensland suggests availability of expertise and advice in the early stages of disputes would assist:

*Builders, sub-contractors and consumers could be assisted and would benefit where there was greater, freely available access to expertise and advice in the early stages of building design and construction. Whilst members of industry associations have access to this expertise in the respective fields, it is generally not available to non-members and the public. With appropriate resourcing, there may be opportunities for the QBSA to provide rapid response support services in this respect.*⁸⁸

Mr John Andrew, a builder, suggests enforced compliance with standards, and mediation in the early stages, would assist in keeping disputes out of the court system:

.... if the QBSA were to try all avenues of mediation before litigation, fees could be reduced. And less time would be spent in the courts. Compliance with Australian Standards and

⁸³ Mr Malcolm Cronk, *Submission No.9*, p.2.

⁸⁴ Ms Jill Van Dorssen, *Submission No.70*, p.3.

⁸⁵ Australian Master Tilers Association, *Submission No.90*, p.2.

⁸⁶ Mr Michael Nash, *Submission No.15*, p.7.

⁸⁷ Building Advisory Group, *Submission No.102*, p.4.

⁸⁸ Timber Queensland, *Submission No.18*, p.4.

*Building Code of Australia is the price we as a community are going to have to live with if we want a high standard of building.*⁸⁹

Mr Don Jender, a consumer, agrees:

*The current system seems to rely on consumers formally complaining to the BSA about defective work. Since consumers might not recognize defective work, BSA should do more auditing of building work at critical stages. This would give builders more incentive to build to standards. In addition, defective work in some areas (eg foundations, slab, frame) is very expensive or impossible to fix later on. More auditing should reduce the number of defects consumers need to complain about to the BSA, thus saving the BSA eventual work and saving consumers money, time and stress.*⁹⁰

Timber Queensland refers to recent changes undertaken by QBSA in response to the KPMG Report⁹¹:

*TQ strongly support the KPMG findings regarding early intervention and mediation to try and resolve disputes before they escalate and become overly emotive and irrational, by either party. On numerous occasions we have undertaken inspections on completed houses where homeowners have applied hundreds of 'post it's' to highlight perceived imperfections where their initial concerns may have only related to a few more significant and justifiable issues which if addressed early could have quickly resolved issues. It is encouraging to see QBSA have pro-actively responded to this KPMG recommendation.*⁹²

The Australian Master Tilers Association also refers to a recent initiative by the QBSA to improve the process:

The recent establishment of the BSA's "Technical Standards Unit" should go a long way to help in reducing the incidences of defective building work and disputes. The AMTA welcomes and supports the formation of this proactive unit. We believe that inspections and examinations of building work during construction can only lead to positive outcomes for both the Consumer and the Building Contractor. Early intervention into a potential problem before it becomes a defect is far better than handling a later dispute.

*Industry groups, like the AMTA, could potentially enhance the effectiveness of this unit and could be called upon to assist in providing technical advice and information to contractors and the Technical Standards Unit when industry specific problem need to be resolved.*⁹³

5.3.7 Ability to intervene in contractual disputes

There appears to be consensus amongst most homeowners and contractors that the QBSA powers should be extended to allow it to intervene in contractual disputes. There are however, notable exceptions such as the submission by Mr Mick Rendell where he stresses that the QBSA should not be involved in adjudicating contractual issues.⁹⁴

The evidence provided in submissions illustrates confusion amongst home owners about the QBSA's power to intervene in contractual disputes.

The QBSA clarifies its roles and responsibilities in relation to contracts in its submission. It advises that the purpose of the DBC Act is to regulate domestic building contracts with a view to achieving a reasonable balance between the interests of building contractors and building owners and maintaining appropriate standards of conduct in the building industry.

⁸⁹ Mr John Andrew, *Submission No.49*, p.2.

⁹⁰ Mr Don Jender, *Submission No.32*, p.6.

⁹¹ KPMG, *Queensland Building Services Authority Organisational Review Project*, June 2011.

⁹² Timber Queensland, *Submission No.18*, p.2.

⁹³ The Australian Master Tilers Association, *Submission No.90*, p.3.

⁹⁴ Mr Mick Rendell, *Submission No.11*, p.2.

A key function of the QBSA in relation to the DBC Act is the investigation and prosecution of offences stated in the DBC Act. In most instances, breaches of the DBC Act are dealt with by way of issuing an infringement notice under the State Penalties Enforcement Act 1999 (infringement notice).

The most common breaches of the DBC Act are:

- *Failure to put contract in writing (section 26 of the DBC Act);*
- *Failure to give the owner a contract information statement (section 40(1) of the DBC Act);*
- *Receiving a deposit in excess of the limits (section 64(1) of the DBC Act); and*
- *Failure to ensure contract complies with formal requirements (section 27 of the DBC Act).*

The above offences comprise approximately 90-95% of all prosecutions and infringement notices issued for DBC Act offences for the last four years.⁹⁵

The QBSA goes on to explain that the QBSA Act provides the QBSA with dispute resolution powers with respect to defective or incomplete building work. The QBSA's functions and responsibilities under the QBSA Act and the DBC Act in relation to contractual issues are limited to the enforcement of relevant offence provisions. The QBSA is not a judicial body and cannot make decisions regarding the resolution of contractual disputes such as the ordering of damages, injunctive relief and compensation. Further, under the QBSA Act, the QBSA does not have functions or powers in relation to formal conciliation or arbitrations services in regard to building disputes.⁹⁶

A number of submitters recommend that legislation be amended to allow the QBSA to intervene in contractual disputes in order to prevent disputes escalating. Mr Carl Martin clearly articulates the issue of concern:

There is no clearly definable dispute management process during construction adequate to resolve matters detected that are minor but escalates into a major incidence if not attended. The consumer matter turns into a major dispute and contractual nightmare if the matter is not addressed to the consumer satisfaction at this earlier point. I have witnessed instances where the consumer has then caused the breakdown of the contract during construction, requiring the BSA to finish the construction.

The BSA cannot generally get involved during the construction as matters are contractual. It would be good if there was a process that allows an easy intervention when a defect was detected or perceived defect or noncompliance with the regulations/NCC/BCA was capable of being instigated. Other state jurisdiction, the insurance underwriter of the Act insurance/fidelity fund allows a monitoring process. The inspection may either cause the builder to fix problem or face higher insurance fees. This reduces the claims to their insurance fund. This would assist in diminishing the number of disputes and disgruntled consumers.⁹⁷

The Building Designers Association of Queensland goes on to explain:

The answer lies in being able to intervene in an issue before it gets to the stage where conflicted emotions mean that there is never going to be a satisfactory outcome for all parties.⁹⁸

.....

BDAQ understands that legislation prevents BSA from becoming involved in disputes about building work until the building contract has been completed (after Practical Completion).

⁹⁵ QBSA, *Submission No.65*, p.18.

⁹⁶ QBSA, *Submission No.65*, p.20.

⁹⁷ Mr Carl Martin, *Submission No.98*, p.2.

⁹⁸ BDAQ, *Submission No.27*, p.2.

*Disputes between building designers and their clients generally occur before the completion of the building contract and thus are outside the influence of BSA. Experience with disputes between building designers and their clients is that early intervention and mediation will prevent issues from becoming disputes.*⁹⁹

Master Builders argue that “*The scope of the BSA’s involvement in resolving disputes needs to be expanded to include contractual disputes*”¹⁰⁰ and builder, Mr Glen Place agrees this “*Change to allow for BSA involvement during the contract period... would help reduce construction cost as the dispute could be resolved before the work was completed.*”¹⁰¹

Some homeowners also contend that the powers of the QBSA should be extended to intervene at the contract stage, for example Mr and Mrs Walker advocate:

*We believe that the QBSA provides minimal remedies for defective building work. There are too many “outs” or excuses (whether legislatively correct or not) used by the QBSA to not be involved. For example, we can’t be involved in “contractual matters”, we can’t be involved while the contract is “afoot”, once a proceeding is commenced at QCAT the BSA cannot be involved.*¹⁰²

Committee comment

The Committee is concerned at the substantial evidence provided that the current QBSA direction to rectify and complete process has numerous weaknesses both legislative and operational including:

- lack of compliance with building codes and standards
- lack of compliance with legislative and regulatory requirements
- QBSA not auditing or monitoring building work to ensure building standards are being met
- onus being placed on homeowner to identify defective work
- building inspectors lacking appropriate knowledge and experience to make decisions to rectify
- building inspectors having personal links with building contractors and failing to disclose their conflict of interest
- perception of bias (both ways) in directions to rectify
- narrow definition of what a defect is
- timeliness and quality of the rectification work
- onus being placed on the homeowner to assess whether the rectification work is to an acceptable standard
- tendering for and performing of rectification work on behalf of the QBSA and
- inability of the QBSA to intervene when a contract is still in place.

The Committee has examined the possible solutions presented by witnesses and submitters and has made specific recommendations (detailed below) where it is confident a proposed course of action will have both a positive impact and will be relatively straightforward to implement.

With regards to more complex proposals the Committee recommends that the Minister for Housing and Public Works undertake further examination of the proposed solutions.

⁹⁹ BDAQ, *Submission No.27*, p.6.

¹⁰⁰ Master Builders, *Submission No.61*, p.2.

¹⁰¹ Mr Glen Place, *Submission No.80*, p.3.

¹⁰² Mr G & Mrs M Walker, *Submission No.75*, p.2.

The Committee believes that some of the emotional and financial distress that it has witnessed during this inquiry may well be avoided if there was earlier intervention in the dispute process (both contractual and non-contractual) and if building inspectors are provided with the skills to negotiate an agreed outcome at the early stages of a dispute. The Committee is therefore recommending early intervention and mediation in disputes and for legislative amendment to extend the powers of the new building authority to intervene when disputes arise during a contract period.

Sufficient evidence has been provided to convince the Committee that regulations and/or legislation should be amended to ensure the new building service authority responds to requests to identify defects promptly and to ensure the rectification work is also carried in a timely manner and to an appropriately high standard.

Members of the Committee are concerned that even where the relevant authorities have determined that a building has been constructed unlawfully, for example with structural faults or across a property's boundary, no process is put in place to ensure the rectification of the unlawful works.

Recommendation 9

The Committee recommends that building inspectors employed by the building authority be required to undertake regular training **and assessment** on their knowledge of current building regulations, standards and codes to ensure they can make informed decisions on whether building work requires rectification.

Recommendation 10

The Committee recommends that building inspectors employed by the building authority be provided with dispute resolution training to ensure they have the skills required to negotiate an agreed outcome between homeowners and builders whenever possible.

Recommendation 11

The Committee recommends that the Minister for Housing and Public Works examine options to enable early intervention and mediation in disputes over defects and incomplete work with a view to resolving as many as possible before they escalate further.

Recommendation 12

The Committee strongly recommends that the Minister for Housing and Public Works seek amendment to the legislation to extend the powers of the new building authority to intervene when disputes arise during a contract period.

Recommendation 13

The Committee recommends that the Minister for Housing and Public Works seek amendment to the regulations and/or legislation to ensure the new building service authority is required to respond to requests to identify defects promptly and to ensure the rectification work is also carried in a timely manner and to an appropriately high standard.

Recommendation 14

The Committee recommends that the Minister for Housing and Public Works investigate ways in which to improve the building certification system in Queensland to ensure private certifiers are held accountable where they approve illegal or defective works, and to ensure the works are rectified.

Recommendation 15

The Committee recommends that the Minister for Housing and Public Works investigate ways in which licensees who construct and certifiers who approve unlawful or defective work (for example where a building is structurally unsound or built partially outside the property boundary) can be made responsible for rectification of the works.

5.4 Tendering for and performing rectification work on behalf of the QBSA

QBSA advises in its submission that under section 74 of the QBSA Act, if rectification work in respect of residential construction work is required, the QBSA must seek tenders for carrying out the work. The QBSA may accept any tender that it considers appropriate, irrespective whether the tender was for the lowest cost. Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the QBSA to be reasonable in the circumstances. Tenders are sought from a panel of rectifying contractors established under section 73 of the QBSA Act. Decisions in regard to the amount payable under the Scheme, are based on the quotations provided through the tender process.¹⁰³

A number of concerns have been raised by builders about the way in which QBSA selects builders to undertake rectification work. For example:

My understanding of Qld government purchasing policy is that goods and services over a certain value are required to be delivered by Pre-Qualified Contractors or PQC [Queensland Government Prequalification System] registrants. I will not go into the PQC system but it is handled by a significant section of the Qld government and people who wish to deal with the Qld government need to comply with a myriad of terms and conditions.

Only PQC registered organizations can build houses for the Queensland government bodies such as Project services. Why does the BSA choose not to use this system?

I am PQC qualified, yet when I have brought this policy to the BSA's attention it is as if I am from another planet, they simply have chosen NOT to comply with the government's own policy. I request that the policy be utilized especially in relation to rectification works. There is a pool of underutilised PQC qualified contractors who are being overlooked because the BSA has it's own separate criteria for selection. Consistency, and removal of duplication is all we look for.¹⁰⁴

Another concern from builders LK & HM Young:

The simple fact, that the BSA has this power [to contract builders to perform rectification work], can be foreseen as scam to perform work by a preferred supplier thus costing the principle contractor hard earned money in compensation payable to the BSA to re-inburst their preferred trade contractor. This whole process is a scam abused by the BSA to minimise

¹⁰³ QBSA, Submission No.65, p.17.

¹⁰⁴ Michael Nash Constructions, Submission No.15, p.6.

their [l]egal liability for rectification work performed on the behalf of an identified trade contractor's defect.¹⁰⁵

Mr Wayne Orenshaw adds:

The QBSA accepts sub standard work and pays excessive prices to the sub contractors it appoints to rectify consumer complaints or complete projects, with numerous instances of QBSA hired subcontractors performing unnecessary and ill-conceived work to the detriment of the project and the consumer. The unnecessary costs that the QBSA incurs are a cost on government and consequently on taxpayers.¹⁰⁶

Mr Michael Nash proposes that the current process of tendering is inadequate:

Currently the pricing of rectification work is by a panel of selected contractors decided on by the BSA, in a closed, limited tender.

To allow full transparency these bids should be done on an open public tender basis by PQC registered contractors only. This would bring consistency to the way building work is handled by the government and increase competition and value for money for the taxpayers.

Utilising the web based tender system would also make sense. Dollar values would need to be determined to justify what was tendered and what was not, however, smaller value jobs could be bundled together to get better value for the government as well as better continuity for the contractor.¹⁰⁷

Mr Glen Place also raised the issue of lack of instruction on how to carry out the rectification work and suggests:

Currently BSA gives the contractor a direction to rectify. BSA does not provide suggestion or instructions on how the rectification may be carried out.

It may be considered a step in the right direction if BSA were to give instructions on how to carry out the rectification work.

BSA should insist that all rectification meets at least the minimum Australian & industry stand. If a schedule of work was provided it should go a long way to reduce the amount of rework.¹⁰⁸

Mr Lev Mizikovsky, who was until recently Managing Director and CEO of Tamawood Limited, also raises the following concerns about the tendering process:

Under the statutory scheme, from time to time the QBSA engages building contractors to rectify defective or complete building work. This happens, for example, where a consumer's house has construction defects but the contract builder has failed or refused to rectify them (perhaps because of bankruptcy).

The cost of such rectification works is borne, in the first instance, by the insurance scheme. The QBSA is empowered to recover that cost, if it can, from the contract builder.

My complaint is that the process by which the QBSA engages the rectification builders is not transparent. I understand that the QBSA, in each particular case, seeks quotations from several potential rectification builders. Obviously, that is appropriate. I also understand that, from time to time, the USA advertises for expressions of interest from builders for consideration of participation on its Tender Panel.

¹⁰⁵ LK & HM Young, *Submission No.10* p.5.

¹⁰⁶ Mr Wayne Orenshaw, *Submission No.89*, p.12.

¹⁰⁷ Mr Michael Nash, *Submission No.15*, p.6.

¹⁰⁸ Mr Glen Place, *Submission No.80*, p.3.

However, the decision as to which rectification builders are placed on the Panel, or asked to quote on particular jobs, does not seem to be subject to public scrutiny.

More importantly, for the purpose of my submission, it does not seem that the QBSA ever seeks rectification quotations from the large building companies, such as Tamawood. To my knowledge, none of those lower cost companies has ever been approached by the QBSA in that regard.¹⁰⁹

Committee Comment

The Committee is concerned to ensure that appropriate tendering processes are used for contracting builders to undertake rectification and completion work. The committee believes that a review of the current processes should be undertaken to ensure that they are transparent and accountable.

Recommendation 16

The Committee recommends that the Minister for Housing and Public Works review the current tendering process for rectification work and completion work with a view to ensuring a transparent and accountable process is put in place.

5.5 QCAT review of rectification decisions

5.5.1 Introduction

In its submission, QBSA states that the QBSA Act provides safeguards in relation to decisions throughout the dispute process. Specifically, any affected party may apply to the QCAT for a review of the following decisions:

- a decision to direct or not to direct rectification or completion of building work and
- a decision that building work undertaken at the direction of the QBSA is or is not of a satisfactory standard.¹¹⁰

5.5.2 Concerns about QCAT's role raised in evidence

Homeowners have provided substantial evidence that the QCAT review process is unsatisfactory as it is ineffective, time-consuming and costly as submitted by the Walkers *"The QCAT process is lengthy and expensive even for self-represented parties. The cost of engaging expert witnesses alone is extremely high."*¹¹¹

For example, Mr and Mrs Tucker argue that an alternative model should be developed as:

The problems in housing or housing construction are generally framed by problems of disadvantage and surveys display an imbalance accordingly. Drawing attention to the different moral judgments applied to a powerful industry such as building than to those (judgments) applied to an individual consumer, is a central aspect of the state's role (for example by a parliamentary committee).

Therefore shifts to informal systems of justice without exorbitant costs and inbuilt intimidations which disempower the individual consumer is a compelling argument for a parliamentary committee to address. This would be even more so for matters involving a

¹⁰⁹ Mr Lev Mizikovsky, *Submission No.41*, p.2.

¹¹⁰ QBSA, *Submission No.65*, p.17.

¹¹¹ G and M Walker, *Submission No.75*, p.4.

quantum lacking sufficient gravity to impose a formal system which may produce an escalation in conflict over time.

While Section 3 and Section 4 of the QCAT Act proscribe objects and functions endeavouring to overcome such problems; for example:

- *S3(b) to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick;*
- *S4(c) ensure proceedings are conducted in an informal way that minimizes costs to parties, and is as quick as is consistent with achieving justice;*

the case study presented demonstrates a need for an alternative model, where appropriate, that is functional rather than one that aspires.¹¹²

The Tuckers go on to propose a detailed alternative model in their submission.¹¹³

Mr Cronk also contends that QCAT is not the appropriate body to look review building disputes:

Removal of all building disputes from QCAT. QCAT is not tied to rules of evidence and the Members are not technically knowledgeable in this area, and therefore cannot make decisions that are respectful of the evidence. We were constantly pressured by QCAT members to pay our builder. The evidence of the significant and dangerous extent builder's poor work was not considered by QCAT Members who were incredibly protective and biased toward the builder from the outset¹¹⁴.

The Wyeths agree that QCAT is not an independent arbiter:

QCAT in their role in "the system", have shown to us and to many consumers that they are not Arbitrators and they are not independent, as claimed by the BSA in their annual report. QCAT are part of a State Government monopoly system and their role is to review the decisions of the BSA, that is all.

In reviewing the BSA's decisions, QCAT must "stand in the shoes of the Authority". How can this be Arbitration? In reviewing their fellow State Government Agency's decision, they deny natural justice to consumers, fail to fairly assess a self represented consumer claim against the BSA as the BSA are legally represented and refuse to award costs and damages to successful self represented consumers, in accordance with the QBSA Act. These costs would of course be levied against their fellow State Government Agency, "so there is no chance!"¹¹⁵

The Building Advisory Group raises the following concerns:

- *QCAT members not experienced to make decisions ie building works, which by nature are multifactorial and complex*
- *The BSA/QCAT are not responsible for the actions in that QCAT process takes 4-5 years and should be reduced of between 6 weeks to 6 months*
- *Challenging a QCAT decision is costly and bias towards the QBSA or Contractor as the Contractor is seen as the expert, even if they are the perpetrator*
- *Delaying tactic to support contractor and remove the QBSA*
- *BSA loses in QCAT are rare, if they do, they change policy to adjust example 'may' or 'at the discretion of the BSA', or as resources permit*
- *Current legislation confined to QCAT no other court jurisdictions.¹¹⁶*

¹¹² Mr and Mrs Tucker, *Submission No.39*, p.2.

¹¹³ Mr and Mrs Tucker, *Submission No.39*, p.3.

¹¹⁴ Mr Malcolm Cronk, *Submission No.9*, p.3.

¹¹⁵ M & H Wyeth, *Submission No.30*, p.5.

¹¹⁶ Building Advisory Group, *Submission No.102*, p.1.

Mr Wathib Jabouri raises a concern that too many defect cases end up in QCAT:

*The BSA needs to be forced to deal with the customers complaints without frequently throwing this responsibility on the shoulder of the ..QCAT that cannot have its decisions self-enforced, that is crippled by a mass of corruption/misconduct/incompetency of many of its members and staff. Moreover, applications to QCAT proved to be unnecessarily wasting of time and money of homeowners who were betrayed by BSA that refused to take direct actions against their rogue licencees, and ignored considering the massive evidence of facts and legal provisions that support the customers' cases against the licencees.*¹¹⁷

5.5.3 Concerns raised about the use of QCAT as a delaying mechanism

The Committee also received evidence that the QCAT review process is often used as a delaying mechanism.

To provide background information on this issue QBSA advises in its submission that under section 83 of the QBSA Act, the QBSA generally cannot act in relation to a dispute if a proceeding about the building work has been started in the QCAT or removed from a Court to the QCAT. An exception is provided in the limited circumstance where the QBSA considers building work needs to be urgently rectified or completed. In this circumstance, the QBSA may apply to the QCAT for an order that building work be rectified or completed.¹¹⁸

Concerns have been raised in a number of submissions that builders can, and do, use section 83 of the QBSA Act to their advantage, for example, Russell and Clare Bach request that “... the restriction on the powers of the QBSA to investigate a builder (section 83 QBSA Act) whilst there is a contractual dispute before the Tribunal be removed.”¹¹⁹

Mr Don Jender argues:

*The current system whereby a builder can file a QCAT complaint which has the effect of "freezing" action about defects should be changed. Currently a home owner can be stranded in a prolonged defect limbo because of this situation.*¹²⁰

Dwyer Builders Collective concur that “recalcitrant” builders misuse the system:

*If there were to be any tweaking of the QBSA system we would simply recommend that the scope of dispute resolution be expanded to also include contractual disputes. Our feedback is that recalcitrant builders can merely claim a 'contractual dispute' to the QBSA which has the consequence of sidelining and sidestepping the intent of the consumer protection system.*¹²¹

5.5.4 HIA recommendations in relation to QCAT

In contrast to many submissions the HIA has recommended that QCAT take on an even greater role and recommends that:

- *Building disputes under \$25,000 be managed through QCAT's current consumer and trader dispute processes;*
- *QCAT be the body to manage all building disputes over \$25,000 through a specialist building division;*
- *The building division of QCAT be funded by the proportion of licensing fees that the QBSA currently applies to dispute resolution. It is envisaged that the current building inspectors of the QBSA would transfer to QCAT to become specialists to assist in dispute resolution;*

¹¹⁷ Dr Wathib Jabouri *Submission No.68*, p.7.

¹¹⁸ QBSA, *Submission No.65*, p.31.

¹¹⁹ Russell and Clare Bach, *Submission No.72*, p.3.

¹²⁰ Mr Don Jender, *Submission No.32*, p.7.

¹²¹ Dwyer Builders Collective, *Submission No.26*, p.7.

- *That fees be introduced for claims made to the specialist building division of QCAT;*
- *That the specialist division of QCAT would have a broad range of dispute resolution tools at its disposal including mediation, conciliation, expert determination and full hearings;*
- *Where QCAT orders rectification of building work that any disputed funds are held in trust by QCAT as a condition of the work proceeding;*
- *That industry standards be drawn from existing industry standards and tolerances guides in addition to the provisions of building law; and*
- *The extension of the BCIPA processes for resolving payment disputes to contracts between licensed contractors and home owners.¹²²*

Committee comment

The Committee notes the concerns raised by a significant number of consumers about the unsatisfactory process of having to go through the QCAT process if they disagree with a decision made by the QBSA or if their builder decides to refer an issue to QCAT prior to the consumer being able to involve the QBSA in their dispute.

The Committee is concerned that the QCAT process appears to be costly and time consuming and that it rarely results in a QBSA decision being overturned. The Committee is further concerned that the high success rate for QBSA decisions being upheld may be a direct result of the fact that QCAT relies on technical advice from QBSA on building issues.

The Committee notes the recommendations made by the HIA but has decided against recommending that a specialist building division of QCAT be established and instead recommends that the Minister for Housing and Public Works look at establishing an advisory board to provide independent building advice to QCAT or that QCAT draw on the building expertise of the Department of Housing and Public Works (see also recommendation 5).

Recommendation 17

The Committee recommends that the Minister for Housing and Public Works re-examine the use of QCAT as the only mechanism for reviewing QBSA decisions, to ensure the review process is more streamlined and user friendly and that the Minister consider introducing legislated timeframes for reviewing decisions of the new building authority.

Recommendation 18

The Committee recommends the Minister for Housing and Public Works resolve the conflict whereby QCAT relies on QBSA building advice, for example by establishing an independent advisory board or using the Department of Public Works and Housing to provide specialist building advice to QCAT.

5.6 Contracts and contract management

5.6.1 Introduction

The QBSA advises that it is legislatively authorised to prepare and publish suggested forms of domestic building contracts. The QBSA publishes various forms of domestic building contracts, including contracts for major and minor works. The contracts are available on the QBSA website for use by consumers and contractors without charge. However it further advises that industry participants are

¹²² HIA, *Submission No.39*, p.11.

not required to use the QBSA published contracts and that there are a number of other standard form contracts available on the market. For example, a number of industry associations publish contracts for use by their members. Contractors may also opt to develop their own contracts for use with their clients provided that the contracts comply with the DBC Act.¹²³ (Sub

5.6.2 Quality of Documentation and Communication - Plans and Specifications

The Building Designers Association Queensland believes that many disputes within the building industry begin with inadequate plans and specifications.

*BDAQ has been working hard to improve the quality of documentation produced by members. Our ultimate aim must be to avoid contract variations which are a significant cause of disputes. We have had an impact on the work of participating members. Unfortunately we cannot influence those who are not members or members who choose not to participate in our professional development programs. BDAQ understands the reluctance to mandate professional development throughout the builder and trade contractor licence regime but would argue that CPD is common practice amongst regulated professions and could easily be introduced for Building Design licensees. The Association already operates a voluntary pilot scheme which could be rolled out and managed by BDAQ.*¹²⁴

5.6.3 Proposals for a uniform contract

A number of submissions call for a mandatory uniform building contract including the HIA.¹²⁵ The 2011 KPMG Organisation Review of the QBSA also recommended the introduction of one mandatory uniform contract or a series of contracts for domestic building work.¹²⁶

Ms Jill Van Dorssen has provided an in-depth analysis and critique of the Master Builders building contract in her submission.¹²⁷

A standard contract would provide for standard clauses and definitions which would resolve the problem identified below:

*Legal loopholes used by the BSA and contractors to catch consumers out need to be identified and the legislation improved to protect parties. One in particular is the complex interpretation of "lawful termination". This can impact on QCAT decisions and on BSA insurance coverage. Our situation with regard to "lawful termination" and our home warranty insurance was not tested. This term needs to be simplified with a set of clear compulsory provisions in all domestic building contracts. This could be legislated, as is the definition of practical completion.*¹²⁸

The Major Subcontractors Group recommends the government:

*Introduce a standard form contract for all Queensland Government and Local Council commercial building contracts; and include the specific requirement that the building contractor must pass through the contract terms to the sub-contractor without amendment. Such a contract will reintroduce reasonableness tests for performance in good faith.*¹²⁹

The Committee has received evidence in a number of submissions raising concerns about sub-contractor payments and contract issues. While these issues are not within the terms of reference of

¹²³ QBSA, *Submission No.65*, pp.19-20.

¹²⁴ BDAQ, *Submission No.27*, pp.4-5.

¹²⁵ HIA, *Submission No.38*, p.18.

¹²⁶ KPMG, *Queensland Building Services Authority Organisational Review Project*, June 2011, p.83.

¹²⁷ Ms Jill Van Dorssen, *Submission No.70*.

¹²⁸ G & M Walker, *Submission No.75*, p.4.

¹²⁹ Major Subcontractors Group, *Submission No.35*, p.4.

this inquiry, the Committee recommends that the Minister for Housing and Public Works review the evidence provided to the Committee on sub-contractor issues.¹³⁰

5.6.4 Contract management

The Building Designers Association of Queensland has raised a concern that problems often occur when consumers take on responsibility for monitoring contracts themselves.

.... 99% of complaints received from consumers at the BDAQ office are about design work carried out with no written contract in contravention of Part 4A.

Contracts between builders and consumers will generally comply with the legislation as a number of complying standard contract forms are available. Problems can occur when consumers take on responsibility for administering the contracts themselves. Contract administration by a third party, particularly the designer of the building, would act as a buffer to prevent issues from becoming disputes and would advise owners about progress payments and workmanship issues.

BDAQ has identified product substitution as one cause of dispute where a less expensive product is used compared to what was specified.....Contract administration is one way of lowering the risk of substitution with sub-standard product.

Information about the requirements of Part 4A of the Act should be promoted as applicable to building design and documentation work and be included in information provided to consumers.

Contract administration by the person or entity who designed the building should be promoted to consumers or mandated for all building contracts.¹³¹

Committee comment

The Committee is of the view that significant benefits would flow from having a standard home building contract including that homeowners, their legal advisers and contractors would be fully aware of the contract clauses and conditions and of their rights and obligations.

The Committee is concerned that many consumers only appear to seek legal advice about their building contract once something goes wrong. The Committee is therefore strongly of the view that homeowners should seek legal advice before signing a contract to build a new home or renovate an existing house, while recognizing that some people will wish to opt out of receiving such advice.

The committee is concerned that builders currently use contracts developed by industry associations which contain clauses that favour the licensee. The Committee is therefore recommending that builders be required to use the new standard contract as part of their licensing conditions.

If the Minister decides against introducing a mandatory standard contract the Committee recommends that the new building authority review the current building contracts drafted by industry groups with a view to discouraging any inherent bias towards the building contractor.

The Committee has received evidence raising concerns about contractual and payment issues relating to sub-contractors. While these issues are not within the terms of reference of this inquiry, the Committee recommends that the Minister for Housing and Public Works review the evidence provided to the Committee on these sub-contractor issues with a view to improving the current system.

¹³⁰ For example, see submission nos 11, 13, 13a, 15, 35, 38, 61, 82

¹³¹ BDAQ, *Submission No.27*, p.5.

Recommendation 19

The Committee recommends that the Minister for Housing and Public Works amend legislation to introduce a mandatory standard building contract for domestic building work and require contractors to use this contract as part of their licensing conditions.

Recommendation 20

The Committee recommends that the Minister for Housing and Public Works seek amendment to legislation to require that homeowners seek legal advice before signing a building contract, or require them to sign a statement if they decide against seeking legal advice.

Recommendation 21

The Committee recommends that if the Minister for Housing and Public Works decides against introducing a mandatory standard contract, the Minister use the evidence submitted as part of this inquiry as the basis for a review of all building contracts drafted by industry groups with a view to discouraging any inherent bias towards the building contractor.

Recommendation 22

The Committee recommends that the Minister for Housing and Public Works review the evidence provided to the inquiry about payments and contractual issues relating to subcontractors with a view to improving the current system.

5.7 Support, Education and advice for both those who undertake building work and consumers

5.7.1 Background¹³²

One of the stated objects of the QBSA Act is to provide support, education and advice for those who undertake building work and consumers.

The QBSA activities which promote this object include:

- the provision of information and support services to customers by the QBSA's Contact Centre
- the delivery of education seminars to consumers and contractors throughout Queensland
- the provision of information and support services to consumers and contractors through the QBSA's website
- the provision of a licensee register, which is freely available to search through the QBSA's website
- the productions of factsheets and publications for contractors and consumers on a wide range of building industry related issues
- the provision of technical and mediation services by QBSA building inspectors to parties in dispute or potential dispute about building matters
- the provision of advisory assistance to licensed contractors who are experiencing financial stress.

¹³² Information in this section is taken from *QBSA Submission No.65*, p.32.

QBSA Contact Centre

The QBSA has a contact centre which provides telephone and online services to building industry stakeholders. Telephone services include a phone-pay service which enables licensees to pay their renewal fees and Queensland Home Warranty Scheme premiums. The QBSA advises that its telephone and website services are well utilised and are highly rated by clients for usefulness and ease of use. The QBSA's Contact Centre assists 96% of callers at first point of contact, without calls having to be transferred to another part of the QBSA. This rate has been consistent over the past 4 years.

The Contact Centre handled 218,835 calls in the 2011-2012 financial year. Of these calls, 56% of calls related to general enquiries, for example: licensing, owner building and defective work-related calls, and 44% were for phone-pay services.

QBSA Education Seminars

The QBSA delivers education programs for contractors and consumers. These programs aim to provide current information and advice to address issues prevalent in the Queensland building industry. For example, the seminars for contractors include technical information to address common defects identified in complaints received by the QBSA.

The QBSA in conjunction with Construction Skills Queensland, BUSSQ [Building Super] and QLeave delivers major education seminars (Better Building Supershows) for industry participants throughout Queensland. These seminars are for all licensees, their staff and subcontractors. The 2012 program includes roof drainage, timber balustrades, business strategies workshops, external waterproofing, timber durability and QBSA's industry update and feedback forum. The program features presentations by industry experts and QBSA staff.

In the 2011-12 financial year over 1,265 contractors attended the Better Building SuperShows with 97.9% of attendees surveyed indicating they would recommend the Better Building Supershow to others.

Regional Contractor Education Seminars are held throughout Queensland. These programs address common technical defects, new standards and regulations and provided demonstrations of best practice methods.

The QBSA provides trade-specific seminars throughout the year. In 2011-12 98 trade specific seminars were held throughout the State with attendance reaching 4,638 individuals, an increase of 1,066 on the previous year. These seminars targeted different sectors of the industry, to ensure maximum relevance and benefit. Topics included contractual obligations, how to avoid concreting and block and bricklaying defects and the new timber framing code. Coinciding with the introduction of fire protection occupational licensing in January 2009, the QBSA provided a series of seminars for the fire protection industry explaining the new licensing requirements and responding to industry concerns.

The QBSA publishes a range of documents to assist applicants for licences, licensees, consumers, the building industry and the general public. These documents, which include fact sheets, licensing information statements and technical information, are available on the QBSA website free of charge. The QBSA also publishes a regular newsletter for contractors, *'Building Links'*, which is designed to keep contractors informed of new legislative requirements, building regulations and codes and assistance on how to comply with regulations.

The QBSA delivers a home owner education program to guide home owners through the building and renovating process, from deciding on a project to choosing a contractor, entering into a building contract, dealing with building disputes and maintaining the work after completion. The QBSA also provided information and advice to thousands of attendees at nine home shows throughout the State.

5.7.2 Evidence provided on consumer and contractor education programs

Again, submitters varied in their views about QBSA's consumer and contractor education programs. Some examples are provided below.

Timber Queensland submits that education programs are essential:

Again, TQ strongly support the KPMG finding that the role and functions that QBSA undertake in contractor and consumer education is vital and should be reinforced to reduce the incidence of defective building work. The proactive contractor and consumer education and training programs undertaken by QBSA address the high priorities identified by their own top 10 defects issues together with other priorities that industry groups such as TQ bring to their attention. These activities including the Trade Specific shows, Super Shows and the newly developed 'You Tube' site are highly valued by building industry material suppliers and associations.....

It has been identified that participation by the building industry in ongoing education and training initiatives undertaken by the QBSA and by building industry groups invariably attracts participation by the same practitioners and licensees over and over again and that a very high percentage of the industry who would most benefit from this education do not avail themselves of these initiatives. ...

It is understood that many of the initiatives that QBSA undertake in this regard are funded by external support from organisations such as Construction Skills Queensland (CSQ) who have significant resources for up-skilling and training in the building and construction industry. We would encourage the Queensland Government to foster continued on-going support from CSQ resources (committed 3 year funding programs would be desirable) to enable these programs to be efficiently delivered.¹³³

Builder Mr Mick Rendell commends the QBSA:

BSA is well placed to ... to educate stakeholders, considerable effort is on-going to bring contractor's skills into line with requirements through BSA's seminar program and the fact sheets available on line on the web site. BSA's web site is to be commended and it provides excellent assistance to all stakeholders.¹³⁴

Whereas builders LK & HM Young are less enthusiastic and suggest that Construction industry training seminars need to be conducted by professionals within these areas of scope, being either contract law or construction law because:

The education programs occasionally advertised and conducted by the BSA for public information seminars, are conducted by BSA staff, who have limited skills in verbal communication, thus endeavour to justify their lectures or presentations with pathetic humour as a way of disguising their lack of public speaking communication training or skill development. These BSA conducted public seminars are a waste of tax payer's money.¹³⁵

A number of stakeholders have identified that the ongoing education and training of contractors is inadequate, poorly attended or attended by same practitioners.

Mr John Andrew states that:

Road shows etc. don't seem to be working with DVD's and lectures poorly presented. The presentations seem to be targeting builders rather than tradesmen. Tradesmen are unaware of these presentations and, after speaking to contractors on site today, most would be unable to attend a day time function anyway. All agreed that if they were run after hours or

¹³³ Timber Queensland, *Submission No.18*, p.3.

¹³⁴ Mr Mick Rendell, *Submission No.11*, p.2.

¹³⁵ LK & HM Young, *Submission No.10*, p.4.

*weekends, attendance would be greater...tradesmen are travelling further west from coastal regions and these tradesmen certainly do not appear to be as knowledgeable as tradesmen from the Darling Downs. I have observed a lack of auditing and training with these alien tradesmen.*¹³⁶

Ms Deborah Brown provides positive comment about service at the centres but not the telephone service:

*One thing that I can say as a positive for the BSA is the service at the counter at its centres was good and when you get an experience advisor on the telephone then this service is of help. I was misled on a few occasions by staff missing fundamental information out but overall the system is helpful.*¹³⁷

Mr Don Jender:

*It also seems that more needs to be done to educate builders and tradespeople in the required standard of work. I know BSA does some work in this area already, in terms of seminars and publications. It seems that a more intensive and perhaps regulatory effort is needed. After all, licensed builders and tradespeople are supposed to know how to do work properly before they start working on houses.*¹³⁸

Mr Glen Place adds:

The BSA Road Shows are effective education tools for contractors and are always topical being based on real experience in managing building defects and disputes.

*As a building designer I only form a small part of the licensing regime and have very specific training needs and often don't get full value out of the BSA shows.*¹³⁹

Asset Outdoor Additions provides:

There is definitely an inadequate information process for builders. There-needs to be a division set up to professionally handle inquiries such as mine without the need to be directed to the legal department.

The BSA also needs to provide more in-house training for builders particularly in regards to their obligations under the QBSA Act and the DBC Act. This should become a mandatory process when a builder first gets their licence. This would go some way to producing better informed builders and better compliance with regulations.

*Unfortunately at present, the builder receives a couple of booklets that, I am sure most builders don't even bother to read. The BSA then perform audits for compliance, there is no consultation if breaches are found, there is just instant breach notices sent to the builder. If you want to dispute the notice your only recourse is to go the QCAT to have the matter reviewed. This is often a lengthy and costly exercise for both parties.*¹⁴⁰

BDAQ:

BDAQ believes that BSA provides effective support, education and advice to licensees and consumers. The BSA Road Shows are effective education tools for contractors and are always topical being based on real experience in managing building defects and disputes. The consumer sessions BDAQ has been involved in are seen as providing invaluable consumer education. The BSA web site provides plenty of information for anyone involved in the building process.

¹³⁶ Mr. John Andrew, *Submission No. 49*, pp.2-3.

¹³⁷ Ms Deborah Brown, *Submission No.29*, p.7.

¹³⁸ Mr Don Jender, *Submission No.32*, p.3.

¹³⁹ Mr Glen Place, *Submission No.80*, p.3.

¹⁴⁰ Asset Outdoor Additions, *Submission No.83*, p.4.

As building designers are a small part of the licensing regime and have very specific training needs they often don't get full value out of the BSA shows. This is one by-product of building designers being part of the trade contractor licensing. This is an area where BDAQ as an industry body can provide assistance in improving the process. It would simply be a matter of BSA supporting or endorsing the existing BDAQ programs.¹⁴¹

The Building Advisory Group provides the following evidence:

This leads me to a further point where the BSA could be more proactive in relation to the qualifications and ongoing training of those in the building industry. Whilst I applaud the BSA and associated organizations ie the HIA and Master Builder's Association in running seminars, they are only voluntary and obviously not attended by those most in need. Other professional groups, eg Architects and engineers must do yearly courses just to keep their registrations, so why not the tradespeople at the pointy and most critical end of the process? The incentives could be on a rewards basis rather than a penalty basis.¹⁴²

The HIA has recommended that the consumer education functions of the QBSA should become part of the role of the Office of Fair Trading and that the contractor information be undertaken by industry associations and Building Codes Queensland.¹⁴³

Committee comment

The Committee is concerned that consumers are provided with independent advice on Queensland Government building services and is therefore recommending that the consumer advice function should be transferred to the Office of Fair Trading.

The Committee is also of the view that the consumer and contractor information and training function would be best undertaken by Building Codes Queensland.

Recommendation 23

The Committee recommends that the Minister for Housing and Public Works consider transferring:

- the consumer advice function to the Office of Fair Trading which is responsible for consumer rights and responsibilities and
- the consumer and contractor information and training function to Building Codes Queensland in the Department of Housing and Public Works.

Recommendation 24

The Committee recommends that the Minister for Housing and Public Works establish a telephone service in the Department of Housing and Public Works to provide a single point of inquiry for consumers to ensure they are directed to the appropriate building services provider/authority.

¹⁴¹ BDAQ, *Submission No.27*, p.3.

¹⁴² Building Advisory Group, *Submission No.102*, p.4.

¹⁴³ HIA, *Submission No.38*, p.27.

5.8 Systemic issues raised in evidence about the organisational culture of the QBSA

The Committee has noted that a large number of submissions include references to QBSA staff behaving in an unprofessional manner when interacting with both consumers and licensees.

Consumers and licensees report that they regularly receive incorrect and inconsistent advice and are often treated with disrespect. The Committee has received consistent reports of harassment, intimidation and bullying. Some examples are provided below and many other submission raise similar concerns¹⁴⁴:

Builders LK & HM Young claim:

....staff employed by QBSA, to be unskilled in areas of expertise, and often making rude and unfounded statements.

It is a known fact that QBSA employees demonstrate bias, rudeness, bad behaviour and incompetent decisions always favouring the property owner.

During My dealings with the QBSA, in all capacities, whether, being employed by the BSA to rectify works completed by other trade contractors, or endeavouring to work with the BSA to resolve disputes with the public, I have always been harassed, threatened and been presented with unreasonable options which the BSA intends to enforce regardless of true underlying facts of the dispute.¹⁴⁵

Mr and Mrs Conway concur:

.....the QBSA and its representatives actions and interpretations have at most times been ad-hoc, bullying, unprofessional and deceptive, leading us with no choice to but to seek tribunal action that was not necessary.¹⁴⁶

Mr Wayne Orenshaw adds:

Intimidation and harassment has become commonplace for the staff and is now part of the culture of the QBSA. Builders are afraid to stand up to the QBSA because of the power it wields.¹⁴⁷

A private submission from a certifier raises serious concerns:

The stress and aggravation caused by the current Manager to several Private Certifiers has resulted in an exit of a great number of good men with years of experience, integrity, loyalty, dedication and pride in the building industry - so much so, that the impact upon those men's families due to victimisation is far more reaching than realised eg nervous breakdowns, financial hardship, marital problems, and death from strokes & heart attacks. In my own instance, it became so great that I handed in my licence rather than subject my wife to further medical problems caused by constantly occurring court proceedings & litigation.¹⁴⁸

Builder Mr Jonathon MacDonald suggests that the culture of the QBSA should be reformed in the following way:

Examining opportunities for reform of the Authority with a view to enhance assistance for both industry and consumers; I would suggest that the QBSA be re branded as an advocate for good building practice not just the Authority this would go some way to gain respect from all stakeholders as being the licensing Authority for all trades and a source of sound advice on good building practice and to develop a better understanding of the relevants[sic] of the BCA

¹⁴⁴ Submissions which raise similar concerns include nos 1,2,3,5,6,8,17,19,20,21 22,23,24,25,29,30,31,42,44,46,47,53,57,58,59,62,87, 91,92,93,99,101,105

¹⁴⁵ LK & HM Young, *Submission No.10*, p.6.

¹⁴⁶ Mr and Mrs Conway, *Submission No.85*, p.7.

¹⁴⁷ Mr Wayne Orenshaw, *Submission No.89*, p.12.

¹⁴⁸ Private, *Submission No.94*, p.1.

*by builders and consumers, the staff of the Queensland Building Regulator (suggestion) should be polite, helpful and knowledgeable and that the field Officers should be competent and possess an understanding of building practice as well as the BCA and not to take a judgmental stance, the Officers would have the training to act in a mediator role to defuse potential conflict.*¹⁴⁹

Committee comment

The Committee is concerned at the extent of the evidence that points to an unprofessional organisational culture in the QBSA, particularly in relation to staff dealings with individual consumers and contractors.

The Committee has noted reports that both consumers and licensees regularly receive incorrect and inconsistent advice and are often treated with disrespect. The Committee is particularly concerned by the consistent reports of harassment, intimidation and bullying.

The Committee believes that the establishment of a new building authority will provide an opportunity for staff to receive training in customer relations and also to be provided with whatever training is necessary to undertake their roles and responsibilities in the new authority or relevant government department to the highest possible standard.

Recommendation 25

The Committee recommends that the Minister for Housing and Public Works ensure QBSA staff undergo training in customer relations and receive the training necessary to carry out their roles and responsibilities in the new authority or relevant government department to the highest possible standard.

¹⁴⁹ Mr Jonathon MacDonald, *Submission No.48*, p.4.

6 Queensland Home Warranty Scheme

6.1 Introduction¹⁵⁰

6.1.1 Home warranty schemes

Home warranty schemes are mandatory requirements in all jurisdictions in Australia except Tasmania. Home warranty insurance protects homeowners against financial loss arising from defective or incomplete building work, and also provides protection for subsequent owners. Schemes differ between Australian jurisdictions.

6.1.2 The Queensland Home Warranty Scheme

Under the QBSA Act, the QBSA administers a not-for-profit statutory home warranty scheme for residential construction work called the Queensland Home Warranty Scheme ('the QHWS' or 'the Scheme'). The Scheme covers homeowners for loss suffered in the event of a contractor failing to complete a contract for residential construction work or carrying out defective residential construction work.

The term of cover is 6.5 years, and in general terms, the maximum amount payable under the Scheme's insurance policy conditions for claims is as follows:

- \$200,000 for claims for non-completion including pre-completion defects, vandalism or forcible removal per policy. The maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs.
- \$200,000 limit for all claims relating to fire, storm or tempest per policy. This liability is subject to the lodgment of a valid non-completion claim prior to the event.
- \$200,000 per policy for claims for post-completion defects and subsidence. This maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs of up to \$5,000.

Pursuant to section 26A of the QBSA Act, the QBSA must ensure that the Scheme is managed in accordance with actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts to be paid from the Insurance Fund.

Section 68D of the QBSA Act requires the QBSA to state the premiums payable under the Scheme, or the way it is calculated, in the Government Gazette. Before stating the premium, or the way it is calculated, the QBSA must:

- have regard to its obligation under section 26A,
- ensure premiums are sufficient to meet the costs of administering the Scheme and the costs of paying out claims and
- obtain the Minister's approval.

Under the QBSA Act, the appropriate insurance premium must be paid by the licensed contractor responsible for carrying out or construction managing the work. In most instances, this cost is added to the construction price for the contracted residential construction work. Premiums increase incrementally with the value of the residential construction work. The value of residential construction work includes the cost of labour and materials.

The QHWS provides warranty cover to a home owner in relation to defective or incomplete residential construction work carried out by a building contractor. If there is building work that is not rectified in accordance with a direction and the work is residential construction work the matter is referred to an insurance assessment officer to determine whether the consumer is entitled to a claim under the QHWS. The assessment officer makes this decision based on the QBSA Act, QBSA Regulation and the

¹⁵⁰ Information taken from QBSA, *Submission No.65*, pp.13 and 21-22.

applicable Insurance Policy Conditions. The decision made by the building inspector about the building work being defective or incomplete is not revisited.

Pursuant to section 71 of the QBSA Act, if the QBSA makes any payment on a claim under the QHWS, the QBSA may recover the amount of the payment, as a debt, from the building contractor who carried out the work.

The Insurance Policy Conditions for the QHWS are contained in a policy of the QBS Board. In relation to claims for defective residential construction work under the QHWS, the Insurance Policy Conditions provide that the Scheme's liability, and therefore the contractor's liability for the payment as a debt under section 71 of the QBSA Act, will not arise in the following circumstances:

- where, in the opinion of the QBSA, the insured unreasonably refuses access to the contractor, or their agent, to undertake rectification
- where the QBSA issues a direction to rectify defective building work, until the QBSA is satisfied that the contractor will not comply with that direction or the requirements of the QCAT or a Court in relation to that direction and
- where the contractor has a continuing obligation to complete the residential construction work e.g. where the contract has not been terminated.

Further, in deciding matters relevant to claims under the QHWS, the QBSA must make a wide range of assessments under the Insurance Policy Conditions relevant to whether a claim is payable, the scope of works for rectification and the amount payable. In making these assessments, the Insurance Policy Conditions requires the QBSA to apply tests based on reasonableness and necessity.⁴² The QBSA's assessments in this regard directly affect the financial interests of the building contractor and the consumer involved.

Under section 86 of the QBSA Act, the QCAT may review a range of decisions relating to the QHWS including decisions to disallow a claim under the Scheme.⁴³ Further, as mentioned above, when reviewing a decision of the QBSA, the QCAT hears and decides the review by way of a fresh hearing on the merits.

Refer to pages 46-58 of Submission No. 65 from the QBSA for additional background on the Scheme, including the history of the Scheme, work and persons covered, work and persons excluded, other key features, the role of the QCAT and the process for making a claim.

6.2 Evidence received on the QHWS

Some inquiry participants consider that the existing Scheme is effective in protecting consumers, is cost effective and one of the best schemes in Australia. On the other hand, others identified issues such as administration of the Scheme; an actual or perceived conflict of interest resulting from the functions of the QBSA; issues regarding payout for certain types of insurance claims and dispute resolution.

The current Scheme is considered to be one of the best in Australia by some people, providing a more cost effective option and greater protection for consumers and contractors than those in other jurisdictions.¹⁵¹ Master Builders Queensland expressed strong support for the Scheme, noting that it offers value for money insurance and is the envy of other states and territories.¹⁵²

The BDAQ considers the Scheme to be effective, but could be improved.¹⁵³ However, any improvements to the Scheme would, as considered by Mr Glen Place, increase the cost of housing if

¹⁵¹ See for example submissions 27, 61, 80 and 82.

¹⁵² Master Builders, *Submission No.61*, pp.5-6.

¹⁵³ BDAQ, *Submission No.27*, p.3.

implemented.¹⁵⁴ These improvements could include better informing consumers, including clear definitions of warranty triggers, better contract management by consumers and improving the quality of documentation and communication between parties.¹⁵⁵

Mr Don Jender does not consider the Scheme to be satisfactory, and believes that the insurer (the QBSA) will attempt to find any reason to avoid paying a claim:

Insofar as homeowners know about the BSA and QHWS at all, the impression seems to be that it is a scheme to assist homeowners with defective housing (defects identified within 6.5 years). Indeed this was the impression we had initially — people told us how lucky we were that BSA provided insurance coverage for faults.

In practice it seems to me the QHWS is designed to provide an image of support for homeowners. However, like all insurance policies, it is written by the insurer to support the interests of the insurer, not the policy beneficiary (the home owner). The devil is in the fine detail of the policy clauses and the exemptions they give the BSA.¹⁵⁶

Builders, LK and HM Young believe that the Scheme has been mismanaged and is biased towards property owners,¹⁵⁷ while the Building Advisory Group notes the poor administration of the BSA¹⁵⁸. Mr and Mrs Walker consider that the Scheme has “... let many consumers down” due to the low standards applied by the BSA when assessing claims.¹⁵⁹ There is also concern that the Scheme “... does not function in the spirit of s3(b) of QBSA Act to ‘provide remedies for defective building work’.”¹⁶⁰

The Master Plumbers Association is concerned that the Scheme does not “... adequately protect the consumer from defective works. Often, defective work is not picked up by the BSA inspections or is incorrectly identified.”¹⁶¹

A number of additional issues with the Scheme were identified, and are considered in the following sections.

6.2.1 Conflict of interest

A real or perceived conflict of interest in the administration of the Scheme was identified in evidence received by the Committee, reportedly resulting from the many roles fulfilled by the QBSA.¹⁶² These include roles of licensor, regulator, assessor and insurer within a single organisation. Mr John Andrew, a builder, noted that it is likely that officers that handle claims are also aware of budgetary considerations of the organisation which may influence their decisions in this regard.¹⁶³

A number of inquiry participants recommend that the insurance function be transferred to the private sector.¹⁶⁴ HIA notes “... the inherent potential for conflicts of interest in the QBSA’s “one-stop-shop” structure are sufficiently serious that its functions, especially its warranty insurance functions, need to be devolved.”¹⁶⁵ Although HIA would prefer to see a competitive market for this type of insurance, the

¹⁵⁴ Mr Glen Place, *Submission No.80*, p.4.

¹⁵⁵ Mr Glen Place, *Submission No.80*, p.4.

¹⁵⁶ Mr Don Jender *Submission No.32*, p.4.

¹⁵⁷ LK and HM Young, *Submission No.10*, p.5.

¹⁵⁸ Building Advisory Group, *Submission No.102*, p.4.

¹⁵⁹ G and M Walker, *Submission No.75*, p.2.

¹⁶⁰ Mr and Mrs Conway, *Submission No.85*, p.7.

¹⁶¹ Master Plumbers Association, *Submission No.81*, p.2.

¹⁶² See for example submissions 9, 32, 38, 49 and 99.

¹⁶³ Mr John Andrew, *Submission No.49*, p.2.

¹⁶⁴ See for example, Submissions 9, 32 and 38.

¹⁶⁵ HIA, *SubmissionNo. 38*, pp.24-26.

organisation acknowledges that this may not be achievable in the current insurance market. As a move towards competitive insurance, HIA recommends the following:

- insurance policy be developed by the new 'Building Regulation Queensland',
- premiums be collected by contracted agencies such as post offices, insurance brokers and private certifiers,
- claims management be tendered to private sector claims management companies, and
- the Scheme's finance and underwriting arrangements be undertaken by State Treasury.¹⁶⁶

In addition, HIA believes that the type of work being undertaken and the level of risk associated with this work should be taken into consideration in the calculation of the premium payment. This would reportedly "... allow the consumer to easily understand who is a responsible builder and those that are in constant trouble and will reward responsible builders with increased work."¹⁶⁷

Mr Don Jender also believes that the insurance function should be transferred to the private sector, similar to insurance provided for motor vehicle third party insurance, noting that this would support competition and innovation.¹⁶⁸

InterRISK Queensland did not identify issues regarding conflict of interest within QBSA, however, recommended an alternative structure to the current insurance scheme in-line with that described above. That is, home warranty insurance would be a consumer based product whereby consumers could purchase this insurance in the same way that homeowner insurance is currently purchased. The consumer would be the insured and beneficiary of any claim, and would pay, for example, monthly premiums.¹⁶⁹

Electrite Pty Ltd considers that, "[i]f the warranty scheme was left to the insurance industry to underwrite that system would very quickly sort out who will be issued the necessary insurance cover to allow a building permit to be issued for the residence to be constructed and who will not."¹⁷⁰

Committee comment

The Committee is concerned about the issues experienced by individuals, organisations and contractors with regard to the Queensland Home Warranty Scheme. For consumers to have faith in the Scheme, the conflict of interest, whether actual or perceived, must be eliminated. The Committee considers it essential to reduce the conflict of interest through separating the insurance role from the other functions.

The Committee has recommended in recommendation 2 of this report (page 19) that the Minister for Housing and Public Works separates the insurance function currently undertaken by the QBSA from other functions, such as licensing and dispute resolution, by either a legislative and/or organisational firewall within a new building authority or by an alternative appropriate mechanism.

The Committee agrees that insurance premiums should reflect the type of work being undertaken, the level of risk associated with the work, and the desired level of cover in-line with many other types of insurance available.

¹⁶⁶ HIA, *Submission No.38*, pp.24-26.

¹⁶⁷ HIA, *Submission No.38*, pp.24-26.

¹⁶⁸ Mr Don Jender, *Submission No.32*, pp.4-5.

¹⁶⁹ InterRISK Queensland, *Submission No.37*, pp.2-3.

¹⁷⁰ Electrite Pty Ltd, *Submission No.7*, p.1.

Recommendation 26

The Committee recommends that the Minister for Housing and Public Works consider extending the Scheme to provide for:

- a tiered approach where homeowners can select the level of cover they wish to purchase, for example levels may be determined by the type of work being undertaken, the level of risk associated with the work and the maximum amount of cover desired and
- the opportunity to take out cover for building works that do not need a building approval.

6.2.2 Subsidence

Issues regarding insurance for the subsidence of houses were identified by some inquiry participants.¹⁷¹ There has been an increase in the number of insurance claims resulting from subsidence, and hence increased stress on the Scheme.¹⁷² Master Builders advises that most subsidence problems are caused by faulty engineering design and as such, engineers should be held to account rather than the builders involved.¹⁷³

Although there is a 'no-fault' policy with regard to subsidence, Mr Jender believes this only applies to the builder and that homeowners are often found to be 'at fault', for example if they have not implemented relevant drainage requirements or met appropriate Australian Standards:

*The BSA then uses any alleged home owner fault as a reason to deny a QHWS claim. The effect of this is to disadvantage home owners who are not building/drainage/soil experts and who are unlucky enough to have a house with subsidence problems. The above BSA Annual Report (page 25) notes that subsidence claims are increasing, so the BSA has an incentive to fight claims if at all feasible, in order to defend its insurance fund ... No doubt the BSA does provide help for home owners under the QHWS when there is no scope for denying a claim (eg when a builder becomes bankrupt). However, a home owner who has a QHWS claim denied then labours under huge disadvantages if he wishes to dispute the BSA decision.*¹⁷⁴

Dispute resolution with regard to insurance complaints is considered further in section 6.2.5 of this report.

6.2.3 Scheme exclusions

Currently, the Scheme does not insure manufactured homes or swimming pools that are not constructed at the same time the adjoining house is constructed. The HIA recommends that the Scheme be expanded to cover both of these items.¹⁷⁵

The areas where HIA believes that the coverage of the insurance is inadequate is its current exclusion of manufactured housing. The definition of what is manufactured housing is becoming increasingly blurred as more and more major components of new homes can be assembled off-site. The principle should be that the insurance is available to anyone buying a new home for their or a tenant's long term occupation, irrespective of how it is built and irrespective of the titling arrangements for the land on which the home is located.

There is also an inconsistency in the scheme's coverage of swimming pools. If the pool is part of a contract that includes a home, then the pool will be covered, but a standalone pool contract will not be covered. HIA acknowledges that there is some private insurance available for pools but only members of the Swimming Pool Association have access to the insurance

¹⁷¹ See for example submissions 32 and 61.

¹⁷² Master Builders, *Submission No.61*, pp.5-6.

¹⁷³ Master Builders, *Submission No.61*, pp.5-6.

¹⁷⁴ Mr Don Jender, *Submission No.32*, pp.4-5.

¹⁷⁵ HIA, *Submission No.38*, pp.24-26.

*for their clients. Insurance coverage for pools should be available from the QBSA scheme on a voluntary basis.*¹⁷⁶

The Scheme only covers building work that requires building approval, such as for a kitchen or a bathroom. The HIA considers that insurance should be available on a voluntary basis for works that do not require building approval.¹⁷⁷

Committee comment

The Committee is concerned that the QHWS does not cover manufactured homes given the increase in the construction of this type of housing. The Committee also believes that consideration should be given to including swimming pools when they are built as a stand-alone item under the Scheme, as they are already included under the Scheme when constructed with a house.

Recommendation 27

The Committee recommends that the Minister for Housing and Public Works consider extending the Queensland Home Warranty Scheme to the construction or renovation of all homes irrespective of the method of construction and to swimming pools and ancillary structures.

6.2.4 Education, training and access to information

The level of understanding about the Scheme by consumers is of concern to the Brisbane Certification Group (BCG).¹⁷⁸ The organisation believes this reflects the imprecise information asserted by the QBSA, which is that consumers are protected for all possible eventualities. To address this, the BCG recommends that a publication that explains the Scheme be developed and be required to be provided to all consumers during contract negotiations for the construction of new homes, renovations or the sale of a new home.¹⁷⁹

ATFA considers there needs to be "... more education for both contractors and consumers around the Home Warranty Scheme."¹⁸⁰ Mr Jender advises that subsequent homeowners should also be educated on the Scheme, because there are time limitations on complaints about defects.¹⁸¹ To address this issue, he recommends that a method of informing subsequent owners about the Scheme should be developed, by an organisation other than the QBSA due to the conflict of interest issues identified above.

The name of the Scheme is of concern to the HIA, which believes that it is potentially misleading to consumers:

Consumers will have built up an expectation of what a warranty will deliver through their experience with consumer goods, but the QBSA's policy is unlike the warranty on a consumer good in many ways, especially in that there is a dollar limit on the amount of cover available.

*What the QBSA's scheme really provides is a performance bond: if the contractor does not perform the contract satisfactorily there is an amount of money available to complete the conditions of the contract. "Completion Bond" might be a preferable way of describing the consumer protection that is being offered.*¹⁸²

¹⁷⁶ HIA, *Submission No.38*, pp.25.

¹⁷⁷ HIA, *Submission No.38*, pp.25.

¹⁷⁸ BCG, *Submission No.96*, p.3.

¹⁷⁹ BCG, *Submission No.96*, p.3.

¹⁸⁰ AFTA, *Submission No.33*, p.2.

¹⁸¹ Mr Don Jender, *Submission No.32*, pp.4-5.

¹⁸² HIA, *Submission No.38*, p24.

To address this issue, the HIA recommends that the name of the Scheme be renamed as a completion bond.

Committee comment

The Committee agrees with the Brisbane Certification Group, that the mandatory provision of standard information to consumers at key periods during contract negotiation would be of great assistance to educate consumers about the Scheme and ensure they are not misled about inclusions and exclusions.

The Committee believes that the name of the Scheme does not accurately reflect its nature and may mislead consumers. Therefore, it is recommended that the Scheme be renamed, to clearly communicate that the Scheme is limited.

Recommendation 28

The Committee recommends that an information pack and fact sheet be developed by the new building authority and that building contractors should be required to provide these to each person taking out insurance for residential construction works before a contract is signed in order to:

- ensure consumers fully understand the limited nature of the insurance before they sign the building contract and
- educate consumers about important provisions of the Scheme, including what the insurance does and does not cover.

Recommendation 29

The Committee recommends the fact sheet referred to in the previous recommendation be published on all relevant departmental websites as well as the building authority's website.

Recommendation 30

The Committee recommends that Queensland Home Warranty Scheme be renamed to better reflect its function, for example *Limited Home Warranty Scheme*.

6.2.5 Resolution of insurance issue disputes

Asset Outdoor Additions believes that the QCAT, or an alternative independent body, requires the power to be able to review the findings of the QBSA. This body should be able to review the facts of the case, the findings of the BSA and the timeframes and "... *make a decision based on reasonable outcome for the consumer instead of a commercial decision for the BSA.*"¹⁸³

The inequitable position that home owners find themselves in when attempting to dispute a QBSA decision was highlighted by Mr Jender:

*No doubt the BSA does provide help for home owners under the QHWS when there is no scope for denying a claim (eg when a builder becomes bankrupt). However, a home owner who has a QHWS claim denied then labours under huge disadvantages if he wishes to dispute the BSA decision.*¹⁸⁴

¹⁸³ Asset Outdoor Additions, *Submission No.83*, p.5.

¹⁸⁴ Mr Don Jender, *Submission No. 32*, pp.4-5.

Mr Don Jender provides some of the reasons why the QBSA is potentially in a stronger position than those in dispute with the organisation over matters such as insurance, include because the QBSA:

- developed the policy for the Scheme and interprets it
- has expertise in building matters
- has access to legal advice through the in-house legal department and through external legal advisors if needed
- has more time, knowledge and financial resources than the average home owner and
- has legal representation at QCAT hearings, whereas home owners are more likely to represent themselves with limited building industry, engineering and legal background.¹⁸⁵

Mr Jender recommends that a mechanism to “... facilitate mediated or compromise settlement of BSA/home owner disputes under the QHWS” be introduced.¹⁸⁶

Committee comment

The Committee acknowledges the concerns that some submissions have raised regarding the dispute resolution of insurance issues, including the potentially inequitable position some consumers find themselves in when attempting to address disputes that involve the QBSA.

Recommendation 31

The Committee recommends that the Minister for Housing and Public Works investigate processes for reviewing building authority decisions in relation to the Limited Home Warranty Scheme including the option of introducing a mediation process for dispute resolution.

¹⁸⁵ Mr Don Jender, *Submission No. 32*, pp.4-5.

¹⁸⁶ Mr Don Jender, *Submission No.32*, pp.4-5.

7 QBSA licensing function

7.1 Background information on the QBSA licensing regime¹⁸⁷

7.1.1 Licence grades and classes

Under the QBSA Act, it is an offence for a person to carry out building work or provide building work services for the work unless that person holds an appropriate licence under the Act.

A person who carries out building work under an owner builder permit is exempted from this requirement and, with the exception of fire protection work, an employee of a licensed contractor who performs building work for the contractor, but does not supervise the work, is also exempt from the requirement to hold a licence. In most instances, work of a value of \$3,300 or less is not building work and does not require a contractor's licence or supervisor's licence to carry out.¹⁸⁸

The QBSA Act provides for the following grades of licences:

Contractor's licence – a licence which authorises a person to carry out all classes of building work or carry out building work for one or more classes specified in the licence; under the QBSA Act a contractor's licence may be issued to an individual or a company; contractor's licences are categorised under the QBSA Regulation as builder contractor's licences and trade contractor's licences.

Nominee Supervisor's licence – a licence which authorises an individual to personally supervise building work, or if the individual is the company's nominee provide supervisory services for building work and perform the functions required of a nominee under the QBSA Act.

Site Supervisor's licence – a licence which authorises an individual, while the individual is an officer or employee of a licensed contractor, to personally supervise building work carried out under the contractor's licence.

Fire Protection Occupational licence – authorises an individual, while the individual is an employee of a licensed contractor, to personally carry out and personally supervise fire protection work carried out under the contractor's licence.

In addition to the licensing system under the QBSA Act, the QBSA also licences building certifiers under the *Building Act 1975*.

The QBSA Act provides that licences be divided into classes by regulation. The commencement of the QBSA Regulation in 2003 substantively changed and reduced the licence classes available under the QBSA Act and so there remain 39 classes of licence which the QBSA continues to renew¹⁸⁹ even though those classes of licence are no longer issued by the QBSA.

7.1.2 Eligibility requirements to hold a licence

The eligibility requirements for all licence grades can be seen in Table 1 below. Specific requirements for all licence classes are prescribed in Schedule 2 of the QBSA Regulation.

¹⁸⁷ The information in this section is taken from the QBSA, *Submission No.65*, pp.61-79.

¹⁸⁸ Section 5 of the QBSA Regulation prescribes the range of work where a licence is required for the work regardless of value.

¹⁸⁹ Section 43 of the QBSA Regulation specified the classes of licences that may be held and renewed after commencement of the Regulation.

Table 1: Licensing requirements according to licence grade

Licensing requirement	Contractor licence (Individual)	Nominee Supervisor licence	Site Supervisor licence	Fire protection occupational licence
Able to lawfully work in Queensland	Yes	Yes	Yes	Yes
Technical qualifications	Yes	Yes	Yes	Yes
Managerial qualifications	Yes	Yes	No	No
Experience requirements	Yes	Yes	No	No
Financial requirements	Yes	No	No	No
Fit and proper	Yes	Yes	Limited	Limited
No unpaid judgement debt under section 71 (QHWS)	Yes	Yes	No	No

Financial licensing requirements

An applicant for a contractor’s licence must satisfy the requirements stated in the *Financial Requirements for Licensing policy* (the FRL policy)¹⁹⁰ of the QBSA Board. The stated objectives of the FRL policy are to “*promote financially viable businesses and foster professional business practices in the Queensland building industry*”. The FRL policy provides minimum requirements relating to:

- Net tangible assets - licensed contractors must hold prescribed levels of assets or capital to support the annual turnover permitted under their licence
- Business liquidity - licensed contractors must satisfy a liquidity test to establish that they have sufficient current assets to meet debts as they fall due and
- Professional indemnity insurance - licensed contractors providing advice and design services must hold prescribed minimum levels of professional indemnity insurance.

Fit and proper licensing requirement

All licence classes are subject to the ‘fit and proper’ licensing requirement. The QBSA Act provides a non-exhaustive list of relevant factors that the QBSA may have regard to in deciding whether a particular individual is fit and proper to hold a licence including:

- grossly defective building work constituting tier 1 defective work (a person may become a banned individual under Part 3D the QBSA Act if they have carried out tier 1 defective work)
- commercial and other dealings in which that person has been involved and the standard of honesty and integrity demonstrated in those dealings
- any failure by that person to carry out commercial or statutory obligations and the reasons for the failure and
- if the person is an enforcement debtor under an enforcement order for an infringement notice offence for the QBSA Act or for the *Domestic Building Contracts Act 2000* – where the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.

¹⁹⁰ <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Accountants/Publications/Financial%20Requirements%20for%20Licensing.pdf> accessed 28 November 2012.

7.1.3 Banned, disqualified and excluded persons

Banned individuals

A person classified as a banned individual under the QBSA Act is taken not to be fit and proper to hold a licence for the term of the ban. The QBSA must not issue a licence to a person who is a banned individual or to a company for which a banned individual is a director, secretary, influential person or nominee. A person may become a banned individual under the QBSA Act if they have carried out tier 1 defective work.¹⁹¹ Under the QBSA Act, an individual given a notice for tier 1 defective work is banned from holding a licence for 3 years. If the individual is banned for a subsequent time, the term of the ban is for life. QBSA advises that, in the last 4 financial years, 2 individuals have been categorised as banned individuals for a period of 3 years and, to date, no permanent bans have been made under the QBSA Act.

Disqualified individual:

Under the QBSA Act, contractors incur demerit points if they are convicted of a demerit point offence or become a judgement debtor for an unsatisfied judgement debt in relation to a building contract or a domestic building contract. A person who is convicted of a demerit point offence attracts 2 demerit points against their licence. A person who is a judgment debtor for an unsatisfied judgement debt attracts 10 demerit points. In the case of licensed contractors, demerit points are recorded on the licensee register and are available to be viewed free of charge on-line by homeowners, contractors and suppliers.

The QBSA Act specifies a range of offences in the QBSA Act and *Domestic Building Contracts Act 2000* as demerit offences, including failure to rectify building work as required by a direction issued by the QBSA. Other offences that attract demerit points include offences relating to contracts (disclosures, contents, etc.), licensing, insurance and payments (deposits, progress payments, completion payments etc.)

A person who accumulates 30 demerit points within a three-year period is disqualified from holding a contractor's licence or nominee supervisor's licence under the QBSA Act for three years ("disqualified individual"). If the person within 10 years of the first ban, accumulates a further 30 demerit points over a three-year period, they are disqualified from holding a contractor's licence or nominee supervisor's licence under the QBSA Act for life. QBSA advises that, in the last 4 financial years, ten (10) people have been disqualified for three years and no persons have been disqualified for life.

The number of contractors allocated with demerit points is small¹⁹² when compared to the number of contractors licensed under the QBSA Act (e.g. 84,436 licensees as at 30 June 2012 with only 399 contractors allocated demerit points in 2011/12).

Excluded individuals and excluded companies:

The QBSA Act provides for the exclusion of an individual from holding a contractor's or nominee supervisor's licence if:

- the individual takes advantage of the laws of bankruptcy or becomes bankrupt (relevant bankruptcy event) and 5 years have not elapsed since the relevant bankruptcy event happened or
- the individual was a director, secretary of or influential person for a company which has within 12 months had a provisional liquidator, liquidator, administrator or controller appointed, wound up, or ordered to be wound up (the relevant company event) and 5 years have not elapsed since the event happened.

¹⁹¹ Tier 1 defective work is defined in Part 3D of the QBSA Act.

¹⁹² For the number of demerit points issued based on financial year (2008-2012), see QBSA *Submission No. 65*, p.69.

The QBSA Act also provides that a company may be excluded from holding a contractor's licence (an excluded company), if an individual who is a director or secretary of, or an influential person for, the company is an excluded individual.

An individual may be permanently excluded from holding a licence if the individual has twice been an excluded individual for a relevant bankruptcy or company event and the QBSA has given the individual a notice under the QBSA Act in relation to the event. In the 2003-2012 financial years, a total of 402 individuals have been permanently excluded under the QBSA Act from holding a contractor's or nominee supervisor's licence.

7.1.4 Auditing (licensing and financial)

Licence audits: The QBSA ordinarily conducts a licensing audit twice a year. This involves QBSA inspectors visiting building sites and interviewing all persons performing building work to ensure they are appropriately licensed.¹⁹³ However, in 2011-12 the QBSA assisted the Queensland Reconstruction Authority in the assessment of the rebuilding efforts following the widespread flooding of Queensland in early 2011 and the impact of Cyclone Yasi. Instead of conducting two licensing audits of random sites QBSA instead conducted a large number of audits focussing on disaster affected areas. In 2011-12, 2,229 contractors were interviewed at 932 building sites. A relatively high incidence of unlicensed contractors was detected due to the volume of natural disaster work being undertaken.

The QBSA also undertook 20,868 disaster recovery assessments on behalf of the Queensland Reconstruction Authority. This involved quarterly inspections to measure the rate of residential building recovery, inspecting and providing advice on building work, policing licensing and assisting contractors and consumers to ensure they had the appropriate contractual and home warranty insurance arrangements in place.

Financial audits: The QBSA also conducts financial audits of licensed contractors¹⁹⁴ as part of its compliance functions. The purpose of the audits is to ensure that licensed contractors continue to comply with the requirements stated in the *Financial Requirements for Licensing* policy of the QBSA Board.¹⁹⁵ Under section 35 of the QBSA Act, it is a statutory condition of holding a contractor's licence that the licensee's financial circumstances must at all times satisfy the financial requirements in the QBSA Board's policies.

7.2 Adequacy of the QBSA licensing requirements and auditing processes

While some stakeholders are generally supportive of the current licensing regime¹⁹⁶, there are many who believe it is too onerous, wasteful and inefficient for a range of reasons.

7.2.1 Licence 'creep'

A number of stakeholders have raised the issue of 'licence creep' and cite the increasing numbers and range of licences the QBSA is now requiring.

The Major Subcontractors Group (MSG) considers that:

There is significant merit in undertaking an independent review of all existing licenses to test for fitness for purpose, costs and benefits...This suggestion is based on MSG member concerns about the 'license creep' where the QBSA has continually sought to capture new parts of the industry that previously did not require licensing, and to introduce new licenses. Such decisions appear to have been largely based on the goals of the QBSA management rather

¹⁹³ For further information about numbers of site interviews, licence audit outcomes and infringement notices issued, please see the QBSA Submission No. 65, pp.74-75.

¹⁹⁴ Details of the number of these financial audits can be found in the QBSA Submission No. 65, p.75.

¹⁹⁵ <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Accountants/Publications/Financial%20Requirements%20for%20Licensing.pdf> accessed 28 November 2012.

¹⁹⁶ See submission nos 11, 18, 36, 61

*than on a transparent assessment of the costs and benefits (including consumer protection benefits) of expanding the range and coverage.*¹⁹⁷

Electrite Pty. Ltd. state that:

*(There is) no need to have any builder registration for persons or companies wanting to operate in the commercial building industry. And if the committee feels a must for a registration regime, then it should simply take the form of a register of those in the industry with a nominal fee with allowance for 5 year renewals.The current system of annual registration and financial reporting achieves nothing and frankly offers zero security to anyone. It is simply nothing more than another impost on business overheads and a total waste of time and money...The requirement for all the various trade registrations should be scrapped. By allowing all the various registrations you actually aid and abet fools coming into the industry.*¹⁹⁸

HIA expresses concerns about the requirement for an individual contractor who is operating under a company structure to also have to pay licence fees for a company licence stating that:

*Currently under the provisions of the QBSA Act an individual contractor who is operating under a company structure is required to not only maintain the licence fees associated with the individual trade licence, but also a company licence. The double dipping of licence fees on individuals is an impost that should be removed. This is particularly the case for contractor licence holders as they are small business operators and should not be made to pay almost a thousand dollars annually to have their QBSA individual and company licence. It is a significant burden on small building businesses in Queensland.*¹⁹⁹

The Australian Institute of Building Surveyors raises concerns about the QBSA continuing to maintain a licence class (Fire Safety Professional) even though it is now obsolete:

*The BSA implemented a license regime for individuals who intend to inspect and/or conduct audits on special fire services on existing buildings...Their intent was to fill a gap that existed at the time with persons conducting fire safety engineering practices, but inadvertently mixed the audit role with the fire safety engineering role. Since then, the Engineers Board have created a license class for fire safety engineers, thereby rendering obsolete, BSA's creation of that license. Discussions between the BSA and industry representatives have recognised this point and all agreed that the BSA drop this license class...We have been given to understand that the BSA Board is having second thoughts over what Industry has clearly expressed should happen...The problems of maintaining this license class are wide ranging, but of particular concern (is) the inability of Building Surveyors who perform this role at the approval stage, not being able to perform this same role, after the approval stage.*²⁰⁰

7.2.2 Eligibility requirements

Stakeholders have also made a range of suggestions in relation to improving the eligibility requirements for licensing in regard to the experience, financial and technical/qualification requirements.

The BDAQ believes that the current educational and financial requirements for licensing are generally adequate. However, BDAQ also submits that:

The current experience requirement for building designers to be granted a licence is two years. Common practice is to allow a range of experience gained during the time when the

¹⁹⁷ Major Subcontracts Group, *Submission No.35*, p.8.

¹⁹⁸ Electrite Pty. Ltd., *Submission No.7*, p.1.

¹⁹⁹ HIA, *Submission No.38*, p.15.

²⁰⁰ Australian Institute of Building Surveyors, *Submission No. 50*, pp.1-2.

*applicant is gaining the required qualification. BDAQ believes that two years of experience is inadequate to prepare a person for the responsibility required of a licensed building designer unless it includes experience across a specific range of duties which would be encountered by a building design practice. The experience requirement for a building design licence should be a minimum of two years full time in a building design or architecture office after the educational qualification has been gained.*²⁰¹

The HIA however would like to see the experience requirement removed altogether, stating that:

*In HIA's experience in dealing with licence applications it is the experience requirement that is the most vague and subjective part of the process. The type of work an applicant has done, the extent of that engagement and the quality of that work are all difficult to define and costly for applicants to comply with. Most importantly though HIA argues that the experience requirement is unnecessary as the applicant has already met acceptable industry standards of competence in their field through having the appropriate technical qualification. Duplicating this objective piece of information with opaque experience requirements is a red tape burden that adds no value to the licensing process. If there are views that the technical qualifications are inadequate those views should be channelled through the training authorities rather than add another complex experience requirement to holding a licence.*²⁰²

The Major Subcontractors Group has raised concerns about the financial requirements stating that:

*In relation to the (financial) auditing process, the cost for MSG members to secure externally audited reports required to satisfy the Financial Requirements for Licensing policy is an expensive, direct cost to the business...The MSG notes that in relation to the residential sector, it appears that notwithstanding QBSA's process for auditing licensees, there remains high numbers of business defaults.*²⁰³

Mr John Andrew believes that the technical/qualification requirements need to be improved stating that:

*I believe more training before issuing a licence is needed. Industry groups seem to have sped up the process, taking over from TAFE colleges. I'm not convinced this is a good thing although the material taught at TAFE colleges was sometimes dated. Apprenticeship training groups can only be as good as the tradesmen with whom the apprentice is placed. Last year I visited a job site where the apprentice was awaiting the arrival of his training officer. He seemed concerned about updating his log book; however upon the arrival of the training officer, the apprentice was only questioned regarding whether he was being bullied in any way etc. with no examination of competency of the training he was receiving.*²⁰⁴

Committee comment

In accordance with Recommendation 2 of this report, the Committee believes that the licensing and associated regulatory functions currently undertaken by the QBSA should be separated from the dispute resolution and insurance functions by either a legislative and organisational firewall within a new building authority or another appropriate mechanism.

The Committee believes that, while there is broad support for a licensing regime, sufficient concerns have been raised by a number of stakeholders about the current licensing system to warrant an independent review.

²⁰¹ BDAQ, *Submission No. 27*, p.6.

²⁰² HIA, *Submission no. 38*, p.15.

²⁰³ Major Subcontractors Group, *Submission No. 35*, p.8.

²⁰⁴ Mr John Andrew, *Submission No. 49*, pp.2-3.

Recommendation 32

The Committee recommends that the Minister for Housing and Public Works use evidence provided to this inquiry on the current licensing regime to undertake an independent review of all existing licenses to test for fitness for purpose, eligibility requirements, costs and benefits.

7.2.3 Section 42 of the QBSA Act: Unlawful carrying out of building work

Section 42 of the QBSA Act provides that “A person must not carry out, or undertake to carry out, building work (except exempt building work) unless that person holds a contractor’s licence of the appropriate class under this Act.”²⁰⁵

The Electrical Contractors Association has raised concerns that this section has the effect of preventing electrical contractors from submitting for jobs that involve an element, no matter how minor, of building work (such as a solar hot water installation). Currently, an electrical contractor is deemed to be in breach of this section for unlicensed contracting if they provide a single invoice to the customer even though the plumbing component of the solar hot water installation was performed by a plumber with the appropriate QBSA license. The Electrical Contractors Association states that:

*In several cases that were brought to our attention earlier this year licensed electrical contractors received substantial fines from the QBSA after installing solar hot water systems. In these instances, the electrical work was completed by fully licensed electrical contractors, while the plumbing component of the solar hot water installation was performed by a plumber with the appropriate QBSA license...In contrast, under section 56(3)(b) of the Queensland Electrical Safety Act a person conducting a business that includes the performance of electrical work, who does not hold an electrical contractors' licence, is not in breach of the unlicensed contracting provisions as long as the electrical work is to be sub-contracted to a person holding the appropriate electrical license. In the interests of ending a restrictive trade practice, the ECA proposes that this provision be replicated in the QBSA Act to allow electrical contractors to submit for the same work as their building counterparts.*²⁰⁶

A number of other stakeholders have raised this same issue.²⁰⁷

Clayton Utz has also raised concerns about the unintended consequences of Section 42 of the QBSA Act:

...The licensing provisions of the Act...have...the unintended consequences of putting at risk the enforceability of agreements entered into by commercial parties such as an owner of land agreeing to procure the construction of a building for a tenant (agreement for lease) or a purchaser of the land (development agreement)...The wide scope of section 42 of the Act...is likely to have the consequence that such parties are undertaking to carry out building work (even though), in those instances the party who has agreed to undertake building work will invariably engage a licensed builder to carry out the physical building work...The recent approach of the Queensland Courts has been to adopt a strict interpretation of the Act, and on such an interpretation the undertakings given by these parties under such agreements would likely be caught by section 42 of the Act. The Act could readily be amended without impacting on the objects of the Act by saying a party is not required to obtain a builder's licence if the party that actually performs the physical the building work is in fact appropriately licensed...We request the State consider amending the legislation to make it clear a party that agrees with another party to undertake building work will not be in breach

²⁰⁵ Section 42(1) of the QBSA Act 1991.

²⁰⁶ Electrical Contractors Association, *Submission No. 66*, p.2-3.

²⁰⁷ Submissions 35 and 64

of the Act (and therefore put the agreement with the other party at risk) if the actual building work is undertaken by an appropriately licensed builder.²⁰⁸

Committee comment

The Committee believes that Section 42 of the QBSA Act, which provides that “a person must not carry out, or undertake to carry out, building work...unless that person holds a contractor’s licence of the appropriate class under this Act”, has created unintended consequences for a range of stakeholders.

The Major Subcontractors Group has cited instances where the QBSA has issued penalty infringements and/or deemed licensed electrical contractors unfit to submit for work as a principal contractor where that work might require minor works to be sub-contracted to other licensed tradespeople, for example, minor plumbing works required in a substation refit.²⁰⁹

The Electrical Contractors Association provides the example (given above) of licensing arrangements surrounding solar hot water installations whereby an electrical contractor is deemed to be in breach of licensing laws because they act as a principal contractor and subcontract out the minor plumbing elements involved in a solar hot water installation.²¹⁰

The Committee believes that these unintended consequences can be removed without altering the intent of the section.

Recommendation 33

The Committee recommends that Section 42 of the QBSA Act, which provides that “a person must not carry out, or undertake to carry out, building work...unless that person holds a contractor’s licence of the appropriate class under this Act”, be revised to make it clear that there is no breach of the Act if the “building work” is carried out by an appropriately licensed builder.

7.2.4 Disciplinary regime

The HIA has expressed concerns that the QBSA is not currently required to provide a detailed explanation as to why or how a banning, disqualification or exclusion decision was reached. The HIA recommend that:

The QBSA should provide a clear and detailed explanation to licensees and applicants for licences as to what part of their licensing decisions.(sic) Decisions made by the QBSA can have a significant impact on the operation of a business, and could significantly affect the career and livelihood of an individual. A simple and concise explanation could assist the affected party plan their future.²¹¹

The HIA has also recommends that:

There should be a mechanism in place under the QBSA Act for the licence holder to have a decision regarding their licence internally reviewed within a limited timeframe of notification, say 28 days from receiving the statement of reasons, by an established panel made up of senior QBSA personnel and independent external people. This mechanism will enable for a decision within a shorter timeframe, without having major impacts on a contractor’s abilities to earn a livelihood. Licensees would still have the opportunity to appeal to QCAT if they did not accept the panel’s findings.²¹²

²⁰⁸ Clayton Utz, *Submission No. 45*, p.1.

²⁰⁹ Major Subcontractors Group, *Submission No. 35*, p.9.

²¹⁰ Electrical Contractors Association, *Submission No. 66*, p.2-3.

²¹¹ HIA, *Submission No.38*, pp.13-14.

²¹² HIA, *Submission No. 38*, pp.13-14.

Committee comment

The Committee believes that builders and trade contractors are entitled to an explanation for their banning, disqualification or exclusion from holding a licence. Further, the Committee is supportive of establishing a timely process for the review of banning, disqualification and exclusion decisions (prior to proceeding to QCAT) to provide for natural justice. However, the Committee does not agree with the HIA's suggestion for the QBSA to establish an internal process to review its own decisions.

Recommendation 34

The Committee recommends that:

- the Minister for Housing and Public Works investigate the value of establishing a structure and/or process for the review of disciplinary decisions (prior to escalation to QCAT) and
- in implementing the disciplinary regime, the new building authority incorporate the provision of explanations for banning, disqualification and exclusion decisions to the licensees/applicants.

Regarding the exclusion criteria, the HIA states that:

The current determinations of "excluded" and a "permitted" individual under the QBSA Act are ambiguous to say the least. The format of determining excluded and permitted status relies on 'event' deeming provisions. One 'event' can result in an individual becoming unlicensed for five years, whereas two 'events' can result in the individual becoming permanently excluded... The biggest concern is that what most people would regard as one event counts as two in the provisions of the Act. Where a building company fails this often results in the bankruptcy of the directors. While the failure of the business and the bankruptcy had the same cause, the Act requires these to be counted as two events resulting in permanent exclusion from the industry of the director.²¹³

Committee comment

The Committee is concerned that the QBSA's approach to the deeming of financial events (such as bankruptcy, insolvency, etc.) has an adverse and potentially unfair impact on licensees.

The QBSA currently deems the failure of a business and the consequential bankruptcy of the individual directors as two events. While one financial event recorded against an individual can result in that individual becoming unlicensed for five years, two financial events recorded against a licensee results in permanent exclusion.

Recommendation 35

The Committee recommends that the Minister for Housing and Public Works seek amendment to the QBSA Act to provide that where an individual's 'relevant bankruptcy event' and 'a relevant company event' stem from the same financial incident, that they be deemed one event for the purposes of penalties.

A range of other stakeholders have expressed concerns about the current banning, disqualification and exclusion regime, specifically, that the penalties are often not issued, that they do not act as a disincentive to building contractors and that the regime (of banning, disqualification and exclusion) is not fully and properly implemented.²¹⁴

²¹³ HIA, *Submission No. 38*, p.14.

²¹⁴ Submissions 2, 3, 5, 6, 17, 20, 21, 24, 29, 30, 46, 47, 59, 91, 92, 93, 101, 103

A confidential submitter states that:

*Then you find out later that many builders have lost licences before, and yet continue to spring straight back again with new companies, often taking a break to do an 'owner build' or own project during their period of suspension. They can apply again within three years. This is a ridiculous short time of penalty compared to the damage they cause to the consumer, when they should be banned for life.*²¹⁵

Ms Catherine Cleary states that:

- *Defective work is reduced in BSA Direction to Rectify.*
- *No repercussions for the builder for a Failure to Rectify.*
- *Unsatisfactory work is considered acceptable...*
- *Wrong doing such as "unlawful carrying out of building work" is overlooked and Demerit points are often not issued.*²¹⁶

Mr Mark Beilby states that:

*QBSA building inspectors repeatedly attempted to closes cases which had category 1 defects without rectification...(we were) offered cash settlement for monies to be paid into bank account of our choice with no conditions by the general manager of the QBSA. This would leave the dwelling with existing category 1 defects.*²¹⁷

One stakeholder, in a private submission, states that:

*Both the BSA Resolution Managers advised that this crack was a Category 1 defect and should be presented to the BSA if any future claims are presented (which there were). This defect was presented to the BSA in May 2012 claim of items however the BSA inspector found this item was not a defect. So I asked "was it" or "was it not" a defect? The BSA Inspector was advised of the comments from the two (2) BSA Resolution Managers however this information was ignored.*²¹⁸

Another private submitter states that:

*I believe the BSA has introduced a claim management technique...To achieve this goal, the BSA allows builders to trade insolvent until they announce insolvency giving these persons a fraudulent unjust enrichment opportunity...When consumers with costly tier one defects, are pushed into the tribunal by the BSA or dodgy builder, this practice saves the BSA and the builder the cost of rectification and allows the builder to continue trading with a clean licence (no directions).*²¹⁹

Rodney and Pieta Cedaro state that:

*The builder in question had been trading whilst insolvent for more than 12 months. The QBSA auditing system didn't manage to pick this up either. If it had (have) the builder in question would have been disqualified under the QBSA's guidelines, his license revoked and we'd have never been exposed to him. Another shortcoming of the QBSA.*²²⁰

Electrical Contractors Association states that:

Members have also suggested that in order to discourage builders from relying on liquidation laws to avoid debts, a comprehensive database should be kept by the QBSA which would record the details of builders who have become bankrupt and banned from conducting business for a period of time. If such a list were to be made publicly available, consumers would be reluctant to engage these businesses. This could act as a powerful deterrent to

²¹⁵ Confidential, *Submission No 54*, p.2.

²¹⁶ Buderim Clinic, *Submission No.43*, p.3.

²¹⁷ Mr Mark Beilby, *Submission No. 25*, p.2.

²¹⁸ Private, *Submission No. 93*, p.2.

²¹⁹ Private, *Submission No. 24*, p.7.

²²⁰ Rodney and Pieta Cedaro, *Submission No. 2a*, p.4.

*unscrupulous builders trying to avoid paying subcontractors by hiding under the shield of bankruptcy.*²²¹

Committee comment

The Committee is concerned that, while the current regulatory framework for disciplinary action seems sound, there appear to be numerous instances where the QBSA has failed to properly implement its own system which has resulted in untold numbers of licensees continuing to freely operate and has compromised the protection of the consumers. The Committee believes that the disciplinary regime should act as a disincentive for licensees to abrogate their responsibilities and obligations under all relevant legislation.

Recommendation 36

The Committee recommends that the new building services authority:

- review the current disciplinary regime for licensees with a view to strengthening penalties where appropriate
- implement the regime in a comprehensive and consistent manner and
- establish a rigorous ongoing auditing process to ensure compliance.

7.2.5 Auditing processes

A number of stakeholders expressed a range of views about the QBSA's auditing processes. While the Master Builders informed the Committee that it doesn't see the need for any additional auditing requirements²²², the Australian Timber Flooring Association submits that:

*It is felt that the QBSA don't police the timber flooring industry at all and don't pursue the unlicensed operators, the QBSA only penalise those who do the right thing, those who are licensed, regarding minor misdemeanours.*²²³

Timber Queensland also states that:

*Auditing of standards and processes could probably be increased and improved, but it is recognised that significant resources would be needed to achieve this.*²²⁴

Committee comment

The Committee considers that a significant number of the disciplinary regime issues raised in submissions (see Section 7.2.4) stem from the QBSA's inadequate implementation of its current auditing processes and systems. Further, the Committee considers the scale and volume of licensee breaches of building codes and standards in Queensland to be one of the critical issues in this inquiry and notes that the QBSA's current approach (to auditing licences and finances) fails to monitor or supervise this critical area.

The Committee also notes with concern the high rates of licence infringement notices issued in ratio to the number of investigations carried out.²²⁵ Therefore, the Committee believes that the new building authority should, in addition to the current audit regime and as a priority, introduce audits of building standards and codes to ensure standards of work across the State are maintained and that both consumers and licensees are protected.

²²¹ Electrical Contractors Association, *Submission No. 66*, p.5.

²²² Master Builders, *Submission No.61*, p.6.

²²³ ATFA, *Submission No. 33*, p.3.

²²⁴ Timber Queensland Ltd., *Submission No. 18*, p.4.

²²⁵ QBSA, *Submission No. 65*, p.75.

Recommendation 37

The Committee recommends that the new building authority:

- retain the current audit regimes (i.e. licence and financial audits) with a view to increasing the numbers and effectiveness of these regimes and
- implement a new audit regime to check routinely for compliance with building standards and codes.

7.2.6 Online licence search facility²²⁶

Under the QBSA Act the QBSA is required to keep a register of licensees. The Licensee Register contains particulars about each licensee including information regarding:

- the classes of licence held
- directions given to the licensee requiring rectification of building work
- offences committed by the licensee against the QBSA Act or the DBC Act and other disciplinary history
- the application of demerit points
- licence suspensions and cancelations and
- the number and value of residential construction work carried out by the licensee.

The Licensee Register is available for inspection at the offices of the QBSA and on the QBSA's internet site. The QBSA provides an online licence search facility on its internet site. The search facility enables consumers and building industry participants to confirm that a contractor is appropriately licensed and review the contractor's licence history prior to entering into a contract for building work.

Some stakeholders recommend the removal of the online public record altogether while others recommend that all complaints about a builder be included on the site.

HIA proposes that:

*The online public record be removed all together. Instead HIA proposes that the "builder rating" proposal (explained in detail in its submission) would be a more acceptable and easier method to use for all concerned.*²²⁷

Russell and Clare Bach recommend that:

*The QBSA make available on the builder's licence search section of the QBSA website all complaints about a builder investigated by the QBSA with the decision of the QBSA (e.g dismissed, guilty, recommended actions, warning issued, removal of licence) . This would then be similar to that for certifiers.*²²⁸

Building Approvals and Consultancy make the following suggestion:

*An easier way for persons to be able to identify licenses could be through more user friendly license information viewing via the computer system/web site of Q.B.S.A. i.e. outline current license type/s and restrictions being completely separate to history of licensee, all in easy readable versions. The Fire Licenses particularly tend to be complex currently and could be simplified.*²²⁹

²²⁶ Information in this section is taken from QBSA Submission No. 65, p.37 unless otherwise stated.

²²⁷ HIA, Submission No.38, p.15.

²²⁸ Russell and Clare Bach, Submission No. 72, p.3.

²²⁹ Building Approvals and Consultancy, Submission No.78, p.1.

Committee comment

The Committee is of the view that there is significant merit in retaining the current online licence search facility but acknowledges that, in disclosing information about a licensee's status, a balance must be struck between safeguarding the licensees and informing consumers.

The Committee has received numerous submissions²³⁰ which claim that the online search facility is not properly maintained with up to date information about a contractor's QBSA status.

Recommendation 38

The Committee recommends that the online search facility be reviewed to ensure that consumers are able to access as much relevant and substantiated information as legally possible about a builder's status and that provision be made by the new building authority for the database to be maintained on a regular and ongoing basis.

7.2.7 Continuing Professional Development (CPD) for contractors

Numerous stakeholders have suggested that Continuing Professional Development (CPD) be made compulsory within the building industry. Several stakeholders have further suggested that eligibility for licences be linked to ongoing, mandated CPD while others express support for the involvement of industry groups in the provision of CPD.²³¹

Mr Mick Rendell states that:

*A formal CPD scheme should be a prerequisite for licensing. This will cause practitioners to be current with their skills in an environment that is constantly changing and will eliminate those inactive licensees that no longer work in the industry.*²³²

As the Australian Master Tilers Association points out:

*The need for ongoing professional development for license holders has been identified in the past, but unfortunately a system where a license holder is required to attend a certain number of approved and endorsed educational sessions has not been put in place. We believe the implementation of a compulsory professional development program as condition for license renewal, should be considered. These programs could be delivered and endorsed by both the BSA and Industry bodies.*²³³

Mr Robert Davies from Bonafide Building Approvals states that:

*There does not seem to be a way of up skilling tradespeople, it is only voluntary. The rules change every week. The designers, trades, & architects & engineers are not keeping up with the legislation. How about cutting down on all the misconceptions, mistakes & general apathy towards the changing rules & make it a condition upon having a valid licence to keep up with the rules? Is too much to ask? We already have great responsibility to get it right, but it is continually falling on us to educate the rest, when any mistake is going to be costly & time consuming.*²³⁴

Timber Queensland Inc. states that:

TQ strongly supports the need for CPD across the whole building sector and believe greater industry participation would greatly assist in reducing disputes and delivering better outcomes for both contractors and consumer. We would encourage the Government to initiate means to achieve greater uptake of CPD either by making it compulsory as a license

²³⁰ Submissions 2, 3, 5, 24, 59, 93, 101.

²³¹ Other submissions that support CPD include submissions 78, 80, 90, 98 and 102.

²³² Mr Mick Rendell, *Submission No. 11*, p.2.

²³³ The Australian Master Tilers Association, *Submission No.90*, p.3.

²³⁴ Bonafide Building Approvals, *Submission No. 28*, p.4.

*condition or alternatively, by offering inducements or offsets to licensees where they voluntarily undertake CPD.*²³⁵

Many stakeholders, including Timber Queensland have also suggested that there is a role for industry groups to play in continuous professional development:

*Both formal and informal CPD should be accepted and approved by QBSA under appropriate guidelines and delivery of CPD should be open to all industry groups, and associations etc. that can demonstrate their bona fides. We would also encourage QBSA to continue to deliver CPD in their own right as they will be able to address specific needs that others may not have an interest in or knowledge to deliver.*²³⁶

The Master Builders state that:

*There is an important role for industry groups such as Master Builders to improve the skills, knowledge and judgement of members. To that end Master Builders is developing a voluntary Continuing Professional Development scheme with the aim of improving the quality of building, enabling members to be more productive and increasing consumer confidence in the sector. We would be grateful for any support the BSA could provide in developing a voluntary CPD system.*²³⁷

BDAQ state that:

*Mandatory Continuing Professional Development for building designers should be introduced or a CPD schimne[sic] managed by an industry association should be mandated. BDAQ has developed the framework for a Code of Practice for design and documentation of building projects which is used in our own CPD training sessions for members. Based on the research carried out and reported in 2005 in "Getting it Right the First Time" savings of 10 – 15% on the cost of building can be achieved by improving the quality of documentation across all sectors. There are additional non-monetary savings to be achieved by reduced disputes, reduced delays and re-work.*²³⁸

Mr John Andrew recommends a points system, stating that:

*A point system would mean compulsory attendance to training programs and Webb sites etc. that allow easier access to Australian Standards etc. Membership with HIA and Master Builders and improve awareness and skills of the tradesmen.*²³⁹

Committee comment

The Committee believes that the continuing professional development (CPD) of licensees is critical to the overall improvement of compliance with standards and therefore, a reduction in the number and severity of incidences of defective work. The Committee also notes broad support from the building industry and associated trades for the introduction of mandatory CPD.

Recommendation 39

The Committee recommends that the Minister for Housing and Public Works investigate:

- the benefits of mandatory Continuing Professional Development (CPD) for all licensees and
- the potential to link mandated CPD to licence eligibility requirements.

²³⁵ Timber Queensland, *Submission No.18*, p.3.

²³⁶ Timber Queensland, *Submission No.18* p.3.

²³⁷ Master Builders, *Submission No. 61*, P.6.

²³⁸ BDAQ, *Submission No. 27*, p.5.

²³⁹ Mr John Andrew, *Submission No. 49*, pp.2-3.

7.3 The coverage of trades by the QBSA and the role of industry groups

7.3.1 Background²⁴⁰

Trades licensed by the QBSA

The QBSA Act establishes a licensing system for contractors and supervisors carrying out building work and for workers performing fire protection work. The QBSA does not license or regulate the following building related professions:

- professional engineers registered under the *Professional Engineers Act 2002*
- architects registered under the *Architects Act 2002*
- electrical contractors and electrical mechanics licensed under the *Electrical Safety Act 2002*
- plumbers and drainers (other than contractors) licensed under the *Plumbing and Drainage Act 2002*
- gasfitters (other than contractors) licensed under the *Petroleum and Gas (Production and Safety) Act 2004* and
- surveyors registered under the *Surveyors Act 2003*.

Mr Michael Nash expresses concern that all participants involved in building projects (ie. architects and engineers) are not required to be licensed by the QBSA.

*Integral to the house are the plans and specifications, these are often produced and overseen by architects and engineers. Neither architects nor engineers are required to be licensed under the BSA act as it stands now...Quite simply if you are going to have any watertight process to determine fault of any house building matter **ALL** participants need to be answerable to the umpire (BSA in this case). Today that is not the case and certain professions have sought to be outside the system and this can/does lead to unfair delivery of adjudication in many matters...Having integral parts of the process outside the system is akin to the warranty for my car becoming invalid because the producer of the wheels is not accountable to the manufacturer.²⁴¹*

Brookfield Multiplex agrees stating that:

The Queensland licensing system is a broad based system spread over a number of entities representing various professional bodies. We have witnessed a more streamlined approach in other states that have moved to a single licensing regulator overseen by a board of industry participants. In our opinion, this single licensing regulator model has merit.²⁴²

However, the Major Subcontractors Group remains strongly supportive of the maintaining the separate licensing arrangements for electricians, stating that:

Electrical sub-contractors in the MSG remain strongly supportive of the existing arrangements for electrical licensing to be contained within the separate Electrical Safety Act 2002 (Qld). The responsibility for this Act resides with the Attorney General and Minister for Justice holding responsibility for this legislation. Electrical contractors are not required to be licensed by the QBSA, unless they engage in building works.²⁴³

The role of industry groups within the QBSA

Stakeholder groups take a role within the QBSA through representation on the Board and the following committees (appointed under Section 14 of the QBSA Act):

- Insurance Committee
- Financial and Audit Review Committee

²⁴⁰ All information taken from the QBSA Submission No. 65 unless otherwise stated.

²⁴¹ Mr Michael Nash, Submission No. 15, p.5.

²⁴² Brookfield Multiplex, Submission No. 69, p.3.

²⁴³ Major Subcontractors Group, Submission No.35, p.9.

- Policy Committee
- Licensing Committee
- Fire Occupational Licensing Committee.

While some stakeholders have expressed concerns about the involvement of Industry Groups in licensing, others are broadly supportive.

G and M Walker state that:

*We do not believe that industry groups should take a role in terms of licensing standards or procedures for their members. This would create a serious conflict of interest. The viability of "Industry Groups" is dependent on membership fees just as trade unions are dependent on membership fees. This conflict of interest would only serve to increase the risk of standards declining, it may also place financial impost on quality contractors feeling forced to join these associations.*²⁴⁴

Mr Jonathan MacDonald states that:

*The QBSA needs to be in control of all licensing of Building trades as the Authority, without any involvement from industry groups as industry groups are self interested and cannot be allowed to control standards.*²⁴⁵

Mr Mick Rendell concurs stating that:

*It is difficult to understand how equity would be maintained with involvement by contractor organisations apart from the current Board appointments. i-HA (sic) and MBA perform a role to educate their members; it is worth commenting that only around 15% of building contractors are in these organisations.*²⁴⁶

A number of stakeholders are cautiously supportive. For example, while the Major Subcontractors Group is supportive of industry groups (peak and smaller industry groups) playing a greater role in licensing standards, it also states that:

*Whilst industry groups should play a role in licensing procedures, caution is required to ensure that the licensing system overall is as efficient and cost effective as possible. Dilution of centrally administered procedures and/or widespread procedural modifications based on individual sectors could risk introducing greater inefficiency.*²⁴⁷

Timber Queensland Ltd agrees stating that:

*There is potential for industry groups to have a greater role within QBSA in standards and procedures appropriate to licensing of their members however not all licensees are members of a representative organisation and compulsory membership would be a very contentious issue. 'Conflict of interest' issues may also arise where representative industry groups had charge of auditing their own members versus their non-members.*²⁴⁸

The Australian Timber Flooring Association (ATFA) concurs, stating that:

*The QBSA have little effect in the timber flooring industry, it would make sense to create a working partnership with ATFA.*²⁴⁹

Landscape Queensland states that:

Landscape Queensland with the assistance of Horticulture Australia Ltd, has developed Industry Accreditation and Certification schemes... As the softscape or non-structural areas of

²⁴⁴ G and M Walker, *Submission No. 75*, p.3.

²⁴⁵ Mr. Jonathan MacDonald, *Submission 48*, p.3.

²⁴⁶ Mr Mick Rendell, *Submission No. 11*, p.2.

²⁴⁷ Major Subcontractors Group, *Submission No. 35*, p.9.

²⁴⁸ Timber Queensland Inc., *Submission No. 18*, p.4.

²⁴⁹ ATFA, *Submission No. 33*, p.3.

*landscaping are largely unregulated, industry has designed these schemes in an attempt to self-regulate. The requirements for industry accreditation also include the holding of appropriate licenses and qualifications including those issued by the QBSA and other regulatory and training bodies. It is noted that licensed electricians and plumbers are required to maintain an industry association membership through their respective industry peak bodies to meet licensing requirements. This requirement could be an additional requirement for landscapers wishing to be QBSA licensed.*²⁵⁰

The Solid Plasterers Alliance Queensland also state that:

*There is a great opportunity however to involve Industry Associations in the issuing of Licenses and the required level of pre-checks of applications. License Applications should be checked and verified by Qualified Tradespeople with current Industry knowledge. This would provide applicants with an opportunity to discuss their application with Trade Qualified, experienced assessors, who could examine the application with better judgement and flexibility, as opposed to the "pigeon hole" type system that currently exists. Associations may also be able to suggest suitable relevant solutions for applications that are falling short of the mark.*²⁵¹

Some stakeholders believe that industry groups should take sole responsibility for governance of the industry with LK and HM Young stating that:

*Industry groups as an example HIA, QMBA should be the sole consultancy organisation providing education, training, professional advice and independent governing body to ensure sound professional interpretations of disputes and or assistance as required, developing a more equitable resolution between ail (sic) stakeholders within the construction industry.*²⁵²

Committee comment

The Committee believes that there is some scope for industry associations to be more involved in the licensing of trades however it is wary of inadvertently creating new conflicts of interest and/or cumbersome or duplicative licensing regimes.

The Committee is not supportive of industry associations taking sole responsibility for licensing of trades.

Recommendation 40

The Committee recommends that the Minister for Housing and Public Works use the evidence provided to the inquiry to examine ways in which the industry groups can take a greater role within the newly formed building authority in terms of licensing standards and procedures for their members.

²⁵⁰ Landscape Queensland, *Submission No. 36*, pp.3-5.

²⁵¹ The Solid Plasters Alliance Queensland, *Submission No. 73*, p.3.

²⁵² LK and HM Young, *Submission No. 10*, p.5.

7.4 National licensing²⁵³

In February 2006, the Council of Australian Governments (COAG) agreed to new measures to enable people with trade qualifications to work in any State or Territory in Australia without the need to undergo additional testing and registration processes. An important aim of a national licensing system is to remove overlapping and inconsistent regulation among the jurisdictions resulting in red tape reduction and improved labour mobility and productivity. The scheme will allow licensees to perform regulated work anywhere in Australia whilst holding a single national license.

The national occupational licensing system is based on cooperative national legislation being introduced by all jurisdictions. On 5 November 2010, Queensland passed the *Occupational Licensing National Law (Queensland) Act 2010* giving effect to the Intergovernmental Agreement signed in April 2009. Since the passing of the national law, the policy development process has continued and has resulted in changes to a number of assumptions that were made at the time the national law was initially drafted. These changes are substantive and require an Amendment Bill to be passed in Victoria prior to adoption in the other participating jurisdictions.

The national regulation will be implemented in two stages with both stages now being implemented in 2013 (rather than 2012 as originally planned). Stage I will include property-related (excluding conveyancers and valuers), electrical, plumbing and gasfitting, refrigeration and air-conditioning.²⁵⁴ Stage II will include all remaining occupations, including building and related occupations.

Extensive consultation has been undertaken over the last half of 2012 by the COAG National Licensing Taskforce including:

- the release of Regulation Impact Statements
- the release of consultation drafts of legislation
- information/ consultation sessions in all capital cities and
- public submissions were invited (closing date in October 2012).

Several stakeholders have raised concerns about the national licensing regime including Timber Queensland Inc. which states that:

*We (also) have considerable concerns regarding the proposals to introduce/adopt a National Occupational Licensing Scheme for Queensland as agreed by the previous Government at COAG. Industry and Government in Queensland have invested millions of dollars in education and training over the past few decades to raise the standards of construction to address Queensland's specific climatic challenges, and to deliver strong, durable housing that meets or exceeds the actions generated by our climate, cyclones and storms. There is already some evidence that where southern contractors have come into our markets to undertake work post disasters that repairs and reconstruction have been found wanting in subsequent events.*²⁵⁵

Stakeholders seem particularly concerned about the reduction in the number of licence classes as proposed in the reform. The Australian Institute of Building states that:

*AIB questions whether moving from 60 licence classes as currently exist in Queensland to 20 classes under the national model will adequately protect consumers.*²⁵⁶

²⁵³ Information taken from Mr Wayne Jarred, Queensland Parliamentary Library and Research Service, *The establishment of a national licensing system for specified occupations*, unless otherwise stated.

²⁵⁴ <http://nola.gov.au/resources/faqs/#Question5> accessed 22 November 2012

²⁵⁵ Timber Queensland, *Submission No.18*, p.4.

²⁵⁶ Australian Institute of Building, *Submission No.84*, p.3.

The Master Builders state that:

*We have grave concerns about the push to national licensing. In our view the cost of the likely outcome far outweighs the benefits. Cutting the 60 licence classes for builders and trade contractors back to less than 20 (under the national licensing reform) would be a very bad outcome for consumers, who want peace of mind that they're engaging a professional building contractor.*²⁵⁷

Committee comment

The Committee notes the concerns raised in submissions about the proposed national licensing system. However, as the national licensing system is being considered through a separate process, the Committee does not wish to make any specific recommendations in this regard.

The Committee is however concerned that the recommendations contained within this report are considered separately to the national licensing scheme process.

Recommendation 41

The Committee recommends that the Minister for Housing and Public Works take the recommendations contained in this report into consideration before agreeing to any timeframes for the introduction of the draft Regulations stemming from the National Occupational Licensing System.

²⁵⁷ Master Builders, *Submission No. 61*, p.6.

8 Reducing regulation to lower the cost of building a home

8.1 Introduction

The Committee's terms of reference for this inquiry asked it to consider whether the QBSA could make further changes in order to reduce regulation to lower the cost of building a home.

The QBSA advises in its submission that it undertakes a number of activities that mitigate the cost of building a home including:

- Under the DBC Act, all contracts must be in writing and comply with requirements stated in the Act. The QBSA publishes a domestic building contract and associated documents suitable for the construction of a home. The published contract complies with the DBC Act and is available free of charge on the QBSA's website.
- The QBSA provides a free dispute resolution service in relation to complaints about defective or incomplete building work. This service minimises the costs that would otherwise be incurred by consumers and contractor in resolving a dispute, including costs associated with potential legal action.
- The QBSA provides free education seminars for consumers and contractors throughout the State relevant to the construction of a home. These seminars include information as to how to avoid common causes of dispute and defective building work. (Sub 65 p.25)

8.2 Evidence received by the committee on reducing regulation

In general, homeowners who commented on this term of reference, were concerned that any reduction in regulation could result in an increase in substandard work, for example Mr Don Jender submits:

I imagine the building industry would like BSA reform with a view to having less BSA regulation of building activity, since it is often faster and cheaper to build substandard work, and hope to fend off complaints later. Obviously this type of reform is against the interests of consumers.²⁵⁸

Mr Glen Place cannot identify meaningful ways to reduce QBSA regulation:

I can't see any way that QBSA could make changes to reduce regulations to lower the cost of building a home.

The BSA insurance scheme is the best in Australia. It has the best protection for consumers.

License fees forms a small part of the cost of doing business in the building industry. The cost of compliance with financial requirements may be perceived to be greater but in reality the requirements simply form the minimum financial review that should be undertaken by any business. The cost to businesses and consumers of a business trading while insolvent is far greater than the impact of the cost of compliance.

For building designers, the requirement is for Professional Indemnity Insurance which is important as a consumer safety net.

Poor documentation is contributing to the increased costs of residential subdivisions and the construction of houses.²⁵⁹

²⁵⁸ Mr Don Jender, *Submission No.32*, p.6.

²⁵⁹ Mr Glen Place, *Submission No.80*, p.2.

The BDAQ concurs and suggests one way of reducing housing costs would be to introduce mandatory CPD for building designers:

BDAQ believes that regulation overseen by BSA has little impact on the cost of building a house. The licence fee forms an insignificant part of the cost of doing business in the building industry. The cost of compliance with financial requirements may be perceived to be greater but in reality the requirements simply form the minimum financial review that should be undertaken by any business. The cost to downstream businesses and consumers of a business trading while insolvent is far greater than the impact of the cost of compliance. For building designers, the requirement is for Professional Indemnity Insurance which is important as a consumer safety net and to protect the business and family of the building designer.

BSA could support industry to raise the quality of documentation and hence reduce housing costs by;

- *supporting industry up-skilling measures by mandating continuing professional development for building designers,*
- *enabling early intervention to allow better monitoring of the quality of documentation.*²⁶⁰

The AMTA agrees that the issue is not about QBSA regulation but rather the costs of development and building approvals:

The AMTA does not believe that reduction in BSA regulations could achieve significant cost savings in the construction of a new home. The license fees are reasonable and the potential negative impact on consumers of a reduction the financial requirements for Building Contractors far outweighs any potential cost savings.

In our opinion the costs associated with gaining Development and Building Approvals at a local government level constitute a significantly higher financial burden on the building industry. We believe that a speedier, more streamlined approval process is more likely to not only lower the cost of building a home, it would also aid in the economic recovery of the Building Industry.

*The approval process, from the time a developer purchases a block of land to the eventual Building approval to begin construction of homes can take years. Compared to the costs attached to this process, the financial burden imposed on Building Contractors due to BSA regulations is relatively insignificant.*²⁶¹

Timber Queensland agrees that it would be preferable to reduce regulation in other areas:

*Timber Queensland's experience is that the most significant cost burdens imposed on the building industry due to regulations are those that result from planning constraints, local authority head works charges, unnecessary or overly conservative building regulations, compliance with environmental legislation and also WH&S legislation. Other than total repeal of the QBSA Act, licensing and the warranty schemes, which we believe would not be acceptable to the public, we do not see where any significant savings could be achieved by a reduction in the regulations.*²⁶²

Mr Don Jender:

It is important to consider the cost of building a house in the context of total cost of ownership, plus the intangible costs. The purchase price paid to the builder is only the start of the total cost, and it may not be desirable to try to absolutely minimize that purchase price. For instance, in the absence of effective standards and regulation, a builder might build a

²⁶⁰ BDAQ, *Submission No.27*, pp.2-3.

²⁶¹ The Australian Master Tilers Association, *Submission No.90*, p.2.

²⁶² Timber Queensland, *Submission No.18*, p.2.

lower priced house. However the buyer might pay considerably more over the years in trying to fix the defects in the house, not to mention the uncosted time and emotional cost involved.

My impression is that, on paper, the current systems of standards and regulation should produce houses of reasonable price and quality. However, in practice this often does not happen. There are many reasons for this, such as builders not knowing or not working to standards (to cut costs), and inadequate regulation of building work by the BSA.

My view is that what is needed is more effective enforcement of the regulations which currently exist.²⁶³

Committee comment

The Committee notes that submissions on this term of reference do not provide the Committee with sufficient evidence to make any recommendations about regulation within the charter of the QBSA that could be amended to reduce the cost of building a home in Queensland.

The Committee is of the view that the reforms recommended in this report will reduce the cost of building compliance by improving the efficiency of the dispute and rectification services provided by the QBSA.

²⁶³ Mr Don Jender, *Submission No.32*, p.32.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Mr James Laird
2	Rodney and Pieta Cedaro
3	Mr and Mrs Evans
4	RPK Publications
5	KJ Graham
6	Mr Jeff and Mrs Carol Tucker
7	Electrite Pty Ltd
8	Mr Ladislav and Mrs Catherine-Ann Morlok
9	Mr Malcolm Cronk
10	L.K and H.M Young
11	Mr Mick Rendell
12	Mr Jethro Andersen
13	Mr Sidney Marr
14	James Conomos Lawyers
15	Michael Nash Constructions
16	Consumers Federation of Australia
17	Ms Teresa Wareing
18	Timber Queensland Ltd
19	Mr Rebel Dobson
20	Mr Noel Matsen
21	Rainforest Gems
22	Private
23	Mr Nev Whittle
24	Confidential
25	Mark Beilby and Catherine McGrath
26	Builders Collective of Australia
27	Building Designers Association of Queensland Inc

28	Davies Bonafide Building Approvals
29	Ms Deborah Brown
30	Mel and Heidi Wyeth
31	Mr Alan English
32	Mr Don Jender
33	Australian Timber Flooring Association
34	Mr Thomas Ward
35	Major Sub-Contractors Group
36	Landscape Queensland Industries Association inc
37	InterRISK Queensland Pty Ltd
38	Housing Industry Association
39	Mr and Mrs Tucker
40	David and Jenny da Costa
41	Mr Lev Mizikovsky
42	Sandgate Brighton Child Care
43	Buderim Clinic
44	Brett and Elizabeth Grayson
45	Clayton Utz
46	Mrs F M Sanders
47	Mr Elizabeth Bourne
48	Mr Jonathan MacDonald
49	Mr John Andrew
50	Australian Institute of Building Surveyors
51	Confidential
52	Confidential
53	Confidential
54	Confidential
55	Mr Rob Thomson
56	Mr Paul Buchanan
57	Aqualine Apartments

58	TJ and LM Donohue
59	Ms Judith Turner
60	Private
61	Master Builders
62	Smart Sewage Solutions Pty Ltd
63	The Association of Hydraulic Services Consultants Australia
64	Confidential
65	Building Services Authority
66	Electrical Contractors Association
67	Private
68	Dr Wathib Jabouri
69	Brookfield Multiplex
70	Ms Jill Van Dorssen
71	Paul and Jocelyn Jamieson
72	Russell and Clare Bach
73	Solid Plasterers Alliance Queensland
74	Civil Contractors Federation Queensland Branch
75	G and M Walker
76	Local Government Association of Queensland
77	Scott
78	Building Approvals and Consultancy Pty Ltd
79	Open Plumbing
80	Mr Glen Place T/a Place Designs
81	Master Plumbers Association of Queensland
82	Mr Jonathan H Sive
83	Asset Outdoor Additions Pty Ltd
84	The Australian Institute of Building
85	Mr and Mrs Conway
86	Confidential
87	Confidential

88	Matthews Hunt Legal
89	Mr Wayne Orenshaw
90	Australian Master Tilers Association
91	Jolyon Ellis and Doris Grosskurth
92	Sharon, Springfield Lakes
93	Private
94	Private
95	Mr Ian Lydiard
96	Brisbane Certification Group
97	RICS Oceania
98	Mr Carl Martin
99	Confidential
100	Mr Michael Gilbert
101	Mr Heath Rainbow
102	Building Advisory Group
103	Mr Philip Eason
104	Mr Adam Webb
105	Ms Catherine Cleary
106	Mr Neil Patmore
107	Mr Mario Menso
108	Mr Rick Waters
109	Mr Malcolm Varty

Appendix B – Witnesses at the public briefing

Monday, 27 August 2012 at the Queensland Parliament

Witnesses:
Mr Nick Newton, Chair – Building Advisory Group
Ms Christine Eason, Secretary – Building Advisory Group
Mr Warwick Temby, Executive Director – Housing Industry Association
Mr Graham Cuthbert, Executive Director, Master Builders Queensland
Mr John Gaskin, Chair – Queensland Building Services Board
Mr Ian Jennings, General Manager – QBSA
Mr Ian White, Deputy General Manager, Operations and Service Delivery - QBSA
Mr Jason Smith, Deputy General Manager, Policy, Strategy and Communications - QBSA

Appendix C – Witnesses at the public hearing

Monday 8 October 2012 at the Queensland Parliament

Witnesses
Mr Michael Coonan
Mr Philip Eason
Mr Don Jender
Mrs Clare Bach
Dr Russell Bach
Mr William Tucker
Mrs Heidi Wyeth
Mr Mel Wyeth
Ms Katherine Clarke
Ms Catherine Cleary, Buderim Clinic
Mr Bruce Moore, President – Homesure Consumer Association
Mrs Fay Sanders - Homesure Consumer Association
Ms Pauline Wilson
Mr John Andrew
Mr Jonathan MacDonald
Mr Michael Nash
Mr Adam Webb
Mr Warren Fletcher, Chair – Australian Timber Flooring Association
Mr Frank Moebus, Managing Director – Australian Master Tilers Association Ltd
Mr Malcolm Richards, CEO – Electrical Contractors Association
Mr Kelvin Slade, Councillor – Master plumbers Association
Mr Mark Sorby, CEO – Landscape Queensland
Mr William Watson, Trustee and Plumbing Contractor – Master Plumbers Association
Mr Russell Brandon, Executive Director – Building Designers Association of Queensland
Mr Colin Jennings, Government Liaison, RICS Oceania
Mr Stacy Kennedy, President – Australian Institute of Building Surveyors
Mr Damian Long, President – Civil Contractors Federation Queensland

Mr Robert Row, CEO - Civil Contractors Federation Queensland
Mr Ross Sadler, Major Subcontractors Group
Ms Tracy Haynes, Principal Adviser, Planning and Development - LGAQ
Mr Greg Hoffman, General Manager, Advocacy - LGAQ
Mr Ian Jennings, General Manager – QBSA
Mr Ian White, Deputy General Manager, Operations and Service Delivery - QBSA
Mr Jason Smith, Deputy General Manager, Policy, Strategy and Communications - QBSA

Statement of reservation

DESLEY SCOTT MP

SHADOW MINISTER FOR COMMUNITIES, CHILD SAFETY, DISABILITY SERVICES AND MENTAL HEALTH

MEMBER FOR WOODRIDGE



Ms Kate McGuckin
Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms McGuckin

Re: Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 - Statement of reservation

The Opposition wishes to notify the committee of its reservations about aspects of the Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 report. Due to the considerable size and detail of the report, we will detail the reasons for our concern during the parliamentary debate on the committee report.

Yours sincerely

A handwritten signature in cursive script that reads "Desley C. Scott".

Desley Scott
Member for Woodridge