

QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT BILL 2013

Explanatory Notes

Short Title

The short title of the Bill is the Queensland Building Services Authority Amendment Bill 2013.

Policy Objectives and the reasons for them

On 2 August 2012, the Legislative Assembly agreed to a motion that the Transport, Housing and Local Government Committee of the Queensland Parliament inquire and report on the operation and performance of the Queensland Building Services Authority (QBSA) in its regulation of the industry, including the maintenance of proper standards in the industry. Following extensive consultation with stakeholders, the Parliamentary Committee tabled its report in Parliament on 30 November 2012. On 29 May 2013 the Minister for Housing and Public Works tabled in the Legislative Assembly the Queensland Government response to the recommendations of the Parliamentary Committee. The Bill represents the first stage of the Government's response to the Parliamentary Committee's report.

The objectives of the Queensland Building Services Authority Amendment Bill 2013 are to amend the *Queensland Building Services Authority Act 1991* (Act or QBSA Act) to:

1. establish the Queensland Building and Construction Commission (QBCC or Commission) in place of the QBSA,
2. provide for the appointment of a governing board, which will report to the Minister for Housing and Public Works, to replace the existing board, and
3. provide for the appointment of a commissioner, effectively the chief executive, to replace the existing general manager, appointed by the governing board.

Achievement of policy objectives

The functions of the Commission upon its establishment will be similar to the current QBSA and the provisions in the Bill allow for the functions to transfer from the QBSA to the Commission. However, the significant change is in the governance arrangements, which will be more reflective of the governance structure of a public company and other government authorities such as the Residential Tenancies Authority.

The role of the Minister will remain essentially unchanged. The Minister will retain the power to give formal directions to the Commission, with directions to be tabled in Parliament. As is currently the case, any formal policies of the board governing the administration of the Act will need to be endorsed by the Minister as part of the approval process by the Governor in Council, as these policies are required to be approved by a regulation.

The board will set the strategic direction and the operational, financial and administrative policies of the Commission. These responsibilities were previously exercised in conjunction with the general manager. The board will advise the Minister on the performance of the Commission and on issues affecting the building industry and consumers.

The Queensland Building and Construction Commission

The QBCC will consist of the Queensland Building and Construction Board (Board) and the commissioner and the organisational unit under the control of the commissioner.

Transitional provisions will transfer the assets and liabilities of the QBSA to the Commission.

A transitional provision will re-establish the employing office under which the QBSA staff will continue to be employed.

Queensland Building and Construction Board (the Board)

The Board will be established as the governing body of the commission. There will be seven members of the Board, including a chair and a deputy chair, appointed by the Governor in Council for a term of not more than three years. The commissioner will not be a member of the Board.

The selection of Board members will be on the basis of their ability to contribute to the effective and efficient performance of the Commission.

Board members will be required to declare any conflicts of interest and step aside from decision making where a conflict of interest arises.

The Board's functions will include:

- deciding the strategies and the operational, administrative and financial policies to be followed by the Commission;
- ensuring the Commission performs its functions and exercises its powers in a proper, effective and efficient way;
- making and reviewing policies governing the administration of the Act;
- providing guidance and leadership to the commissioner;
- advising the Minister for Housing and Public Works on issues affecting the building industry and consumers;
- advising the Minister about unfair or unconscionable trading practices affecting security of payments to subcontractors; and
- consulting the building industry and its consumers and advancing their interests, consistently with the objects of the Act.

The Commissioner

The commissioner (in effect the chief executive) will be appointed by the Board, subject to the approval of the Minister for Housing and Public Works, for a term of not more than three years.

The commissioner will be responsible for implementing the strategic direction set by the board and for the operation of the Commission. Otherwise, the commissioner's responsibilities will be similar to those of the general manager of the QBSA.

The commissioner will be required to declare any conflicts of interest and step aside from decision making where a conflict of interest arises.

Alternative ways of achieving policy objectives

As the current structure of the QBSA is set out in legislation, the only way of achieving the policy objective is to amend the QBSA Act.

Estimated cost for government implementation

The costs of transitioning from the QBSA to the QBCC, such as establishing the new Board and commissioner, new signage, uniforms and stationery, are not expected to be significant and can be met by the Commission within its existing resources or phased in over time.

Consistency with fundamental legislative principles

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles arise in relation to the following provisions.

The Bill provides that the current protection from civil liability for the State, QBSA, general manager and persons performing work for the authority will continue to apply and will refer to the Commission and Commissioner in place of the QBSA and general manager (section 114 QBSA Act). While the continuation of this provision could be argued to infringe fundamental legislative principles, it is considered to be necessary to enable the Commission to carry out its functions without undue threat of legal liability.

The transitional provisions in the Bill provide that the Commission is substituted for the QBSA in all agreements to which the QBSA is a party and that no compensation is payable to a person because of this provision. The Bill further provides that a party to a contractual arrangement covered by the provision is not entitled to terminate the arrangement merely because of the provision. It could be argued that these provisions may raise a fundamental legislative principle as they potentially override contractual rights. If this provision is not inserted in the Bill, there is a potential for parties to contracts entered into by the QBSA to terminate or be relieved of their obligations under these contracts. As the powers and functions of the new Commission will be similar to those of the QBSA this is considered appropriate in the circumstances.

The Bill provides that on its commencement, the position of general manager of the QBSA is abolished and the appointment and employment of the general manager ends. However, the Bill provides that the compensation, if any, to be paid to an outgoing general manager will be in accordance with the provisions that would have applied if the employment had been terminated other than by the general manager, prior to the completion date of the appointment.

Consultation

The Parliamentary Committee conducted extensive consultation prior to tabling its report in Parliament on 30 November 2012.

KPMG was engaged by the Department of Housing and Public Works to undertake consultation with industry, licensees/builders, consumer groups and individual consumers in Brisbane, Gold Coast, Townsville and Rockhampton.

The views of industry and consumer stakeholders were taken into account by the Government when considering an appropriate structure for the reformed building authority and board.

Consultation on the content of the Bill was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.

Consistency with legislation of other jurisdictions

The building industry is regulated in all States and Territories in Australia. The provisions regulating building work vary from State to State. The form of the regulator varies depending on the jurisdiction. In some States the regulator is a department of Government, while in others there is a statutory authority and/or commission.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Queensland Building Services Authority Amendment Act 2013*.

Clause 2 provides that the Bill is intended to commence on a day to be fixed by proclamation.

Part 2 Amendment of Queensland Building Services Authority Act 1991

Clause 3 provides that Part 2 amends the *Queensland Building Services Authority Act 1991*.

Clause 4 makes a consequential amendment to section 1 as result of the Commission being established in place of the QBSA.

Clause 5 omits divisions 1 to 4 of Part 2 and replaces them with new divisions 1 to 3 which establish and set out the functions and powers of the Commission and the Queensland Building and Construction Board (Board) and provide for the appointment of a commissioner.

A new Division 1, Establishment, functions and powers, is inserted.

A new section 5 provides for the establishment of the Commission as a body corporate, which may sue or be sued in its corporate name.

A new section 6 provides that the Commission consists of the Board and the commissioner and the organisational unit under the control of the commissioner.

A new section 7 sets out the functions of the Commission.

A new section 8 sets out the powers of the Commission.

A new section 9 provides that the Minister may give the Commission a written direction in relation to the Commission and its functions.

A new Division 2, Queensland Building and Construction Board, is inserted.

A new section 10 establishes the Board as the Commission's governing body.

A new section 11 sets out the functions of the Board.

A new section 12 provides for the appointment of a 7 member Board, appointed by the Governor in Council, with appointments having regard to a person's ability to make a contribution to the effective and efficient performance of the Commission's functions.

A new section 13 provides for the grounds on which a person is disqualified from becoming or continuing as a Board member.

A new section 14 provides that a member of the Board is to be paid the remuneration and allowances decided by the Governor in Council.

A new section 15 provides that a member of the Board is appointed for a term, of not more than three years, stated in the member's instrument of appointment.

A new section 16 provides for the appointment of a chairperson of the Board by the Governor in Council.

A new section 17 provides for the appointment of a deputy chairperson of the Board by the Governor in Council, who will act as chairperson during a vacancy in the office or unavailability of the chairperson.

A new section 18 provides for the resignation of members from the Board.

A new clause 19 states that the Board may make a policy governing the administration of the Act.

A new section 20 provides for the conduct of the business of the Board.

A new section 20A provides for the convening of meetings of the Board, what constitutes a quorum for a meeting, provisions for voting and the keeping of Board minutes.

A new section 20B states that the Board, or the Minister, may appoint committees to advise the Board on particular subjects.

A new section 20C provides for the disclosure by Board members of any interest they may have in an issue being considered or about to be considered by the Board and the procedures to be followed when a member's interest conflicts or may conflict with the proper performance of the member's duties about consideration of the issue.

A new Division 3, Commissioner, is inserted.

A new section 20D states that the Commission is to have a commissioner, who is appointed by the Board with the Minister's prior written approval. The commissioner is employed under the Act and not under the *Public Service Act 2008*.

A new section 20E provides for the grounds on which a person is disqualified from becoming or continuing as the commissioner.

A new section 20F relates to the conditions of appointment of the commissioner.

A new section 20G states that the commissioner holds the office for the term, not more than three years, stated in his or her contract of employment. However the Board may, at any time, end the appointment of the commissioner for any reason or for no reason. Any such ending of the appointment does not affect any rights to

compensation to which the commissioner is entitled under their contract of employment.

A new section 20H states that the commissioner may resign by signed notice given to the chairperson of the Board.

A new Section 20I provides for the appointment of an acting commissioner.

A new section 20J set out the role, function and powers of the commissioner.

A new section 20K sets out the relationship between the commissioner and Board, including that the commissioner must give effect to any policy or direction of the board relevant to the commissioner's responsibilities. However, the commissioner must act independently of the board when making decisions about action to be taken about a licensee's licence, about rectification or completion of building work or relating to the statutory insurance scheme.

A new section 20L states that the commissioner must not, without the Board's prior written approval, engage in paid employment outside the duties of office of commissioner or actively take part in the activities of a business, or in the management of a corporation carrying on business.

A new section 20M provides for the disclosure by the commissioner of any interest they may have that conflicts or may conflict with the discharge of their responsibilities and the procedures to be followed when a conflict of interest arises.

Clause 6 replaces section 27 to provide that the Commission is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 7 inserts new section 71AB which provides that the commissioner must not have regard to the implications for the statutory insurance scheme in deciding the action to be taken in relation to a licensee's licence.

Clause 8 amends section 114 (Protection) to remove references to the general manager and the QBSA and replace it with references to the commissioner and the Commission.

Clause 9 inserts a new section 115A which provides that the Board or commissioner may delegate their functions or powers under an Act to an appropriately qualified relevant officer of the Commission. "Relevant officer" is defined in the Act.

Clause 10 inserts a new Part 9, Transitional provisions for Queensland Building Services Authority Amendment Act 2013, into Schedule 1.

A new section 37 sets out definitions for Part 9.

A new section 38 provides for the dissolution of the QBSA.

A new section 39 provides that no amount is payable by the State or the Commission to any person in connection with the dissolution of the QBSA under section 38. However, compensation, if any, to be paid to an outgoing general manager will be in accordance with the provisions that would have applied under the general manager's appointment if their employment had been terminated other than by the general manager prior to the completion date of the appointment.

A new section 40 vests the former QBSA's assets, liabilities and rights in the Commission and substitutes the Commission for the QBSA in all agreements to which the QBSA was a party.

A new section 41 provides that on the transfer day the Commission stands in place of the QBSA for any unresolved applications made under the QBSA Act to the former QBSA or by the QBSA to the Queensland Civil and Administrative Tribunal (QCAT).

A new section 42 provides for the substitution of the Commission for the former QBSA in all legal proceedings (including those involving QCAT).

A new section 43 provides that any direction from the Minister to the QBSA under section 7 of the QBSA Act applies, if the context permits, to the Commission as it would have applied to the QBSA.

A new section 44 provides that on the transfer day a record of the QBSA becomes a record of the Commission.

A new section 45 provides for the continuation in office of the insurance manager and their remuneration and conditions of appointment. It also provides for the continuation of appointment of relevant officers and inspectors, the continuation of identity cards issued to inspectors and continuing authority for the bringing of prosecutions.

A new section 46 makes provision for the annual report of the Commission.

A new section 47 provides that on the transfer day, the Commission stands in the place of the QBSA for a range of administrative matters, including any direction, notice, demand, certificate, licence, approval, decision, policy or action of the QBSA.

A new section 48 provides that, in an Act or document, a reference to the QBSA, the Queensland Building Services Board or the general manager of the QBSA, if the context permits, may be taken to be a reference to the Commission, the Board or the commissioner respectively.

A new section 49 provides that, in an Act or document, a reference to the QBSA Act may, if the context permits, be taken as a reference to the *Queensland Building and Construction Commission Act 1991* as in force after the commencement.

A new section 50 provides that a change in name of the employing office under the amending Act does not affect the status of that office.

A new section 51 provides for the effect of the amendments on legal relationships, including that nothing done under the Act amendments makes a relevant entity in breach of any instrument or is taken to fulfil a condition under an instrument or obligation or allow a person to avoid or enforce an obligation or liability in an instrument. A relevant entity is the State and its employees and agents and the Commission (including commissioner), a Board member and relevant officers of the Commission.

Clause 11 amends the dictionary in Schedule 2 as a result of the Commission being established in place of the QBSA.

Part 3 Amendment of Building Act 1975

Clause 12 provides that Part 3 amends the *Building Act 1975*.

Clause 13 inserts a new Chapter 11, Part 17 in the *Building Act 1975* which contains transitional provisions resulting from the amending Act.

Part 4 Minor and Consequential Amendments

Clause 14 states that Schedule 1 amends the legislation it mentions.

Schedule 1 Minor and consequential amendments

Schedule 1 makes a number of minor and consequential amendments to make references in Acts consistent with the wording of the amended Act.