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## **PLUMBING AND DRAINAGE AND OTHER LEGISLATION AMENDMENT BILL 2015**

### **Explanatory Notes**

for

**Amendments to be moved during consideration in detail by the Honourable  
Mick de Brenni MP, Minister for Housing and Public Works**

### **Title of the Bill**

Plumbing and Drainage and Other Legislation Amendment Bill 2015

### **Objectives of the Amendments**

#### **Amendment of the *Queensland Building and Construction and Other Legislation Amendment Act 2014 (QBCCOLA Act)***

The QBCCOLA Act contains provisions which, when operational, will amend the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to make changes to the Queensland Home Warranty Scheme (Scheme). This Bill will amend certain provisions of the QBCCOLA Act to avoid an unintended consequence.

At present, the Scheme applies where a contract for residential construction work has been made with a person fraudulently claiming to hold a licence under which the person may enter into contracts with consumers to carry out such work. This provision was inadvertently not replicated in the Scheme-related amendments to the QBCC Act made by the QBCCOLA Act.

The amendment made by the Bill will preserve the level of coverage that currently applies for Queensland consumers in cases where a person fraudulently claims to hold a licence to carry out work under the Scheme.

#### **Amendment of the *Residential Tenancies and Rooming Accommodation Act 2008***

In its Report No.13 which was tabled on 1 March 2016, the Transportation and Utilities Committee provided its recommendations on the Plumbing and Drainage and Other Legislation Amendment Bill 2015. The Committee noted the objectives of the amendments were to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to bring Queensland in line with all other States (except the Northern Territory) and meet the national uniform law for residential tenancy databases adopted by the Ministerial Council on Consumer

Affairs in December 2010, with some additions to ensure the provisions operate effectively in Queensland.

The Committee made the following recommendations:

1. That the Plumbing and Drainage and Other Legislation Amendment Bill 2015 be passed.
2. That the Minister for Housing and Public Works investigate legislative mechanisms to ensure that a person cannot be listed on a tenancy database if the amount owing is an unreasonably small amount, for example \$20.
3. That the Minister for Housing and Public Works amend proposed subsection 564(2) in the Bill to provide for a transition period of 6 months from commencement.
4. That the Minister for Housing and Public Works amend the Bill to prohibit personal information of victims of domestic violence and family violence being listed on a tenancy database.
5. That the drafting error be corrected in relation to references contained in Clause 35.

### **Achievement of policy objectives**

#### ***Amendment of the Queensland Building and Construction Commission and Other Legislation Amendment Act 2014 (QBCCOLA Act)***

To achieve the policy objectives the Bill will amend section 36 of the QBCCOLA Act to alter the new section 68H to reinstate the present level of coverage for situations involving fraud. This approach is reasonable and appropriate as it only amends the QBCCOLA Act so far as necessary and ensures that consumers will receive the same level of protection against fraud under the proposed Scheme as they do at present.

### **Alternative ways of achieving policy objectives**

As the Scheme is contained in legislation, and will continue to be contained in legislation after the commencement of the remaining provisions of the QBCCOLA Act, the only feasible way to correct the abovementioned unintended consequence of the QBCCOLA Act is by legislation.

### **Estimated cost for government implementation**

The amendment made by the Bill will preserve the level of cover for consumers in cases involving fraud that is presently available under the Scheme and accordingly, there will be no additional costs for government in implementing this amendment.

### **Consistency with fundamental legislative principles**

The amendment to the QBCCOLA Act made by the Bill is consistent with fundamental legislative principles.

### **Consultation**

As the Bill is curative in nature, consultation was not necessary.

### **Consistency with legislation of other jurisdictions**

The Bill, which will amend an aspect of the Scheme, is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or other states.

### **Notes on provisions**

#### **Part 4A – Amendment of Queensland Building and Construction Commission and Other Legislation Amendment Act 2014**

*Amendment 1* introduces a new clause 23B. This clause will amend section 36 by inserting a new subsection (c) into section 68H(1). The new subsection will maintain coverage where a contractor fraudulently claims to hold a licence permitting the contractor to carry out the work to be performed under the subject contract.

The clause will also amend section 36 by inserting a new subsection (5) into section 68H. The new subsection will clarify how Part 5 of the QBCCOLA Act is to be treated. Specifically, where the fraudulent scenario stated under section 68H(1)(c) occurs, the references in Part 5 to 'consumer' are to be replaced with 'defrauded person' and the references to a 'licensed contractor' are to be replaced with 'fraudulent person'.

#### **Amendment of the Residential Tenancies and Rooming Accommodation Act 2008**

The objectives are achieved by way of amendments to the Bill as described below. Recommendation 2, in relation to introducing a legislative mechanism to ensure that a person cannot be listed on a tenancy database if the amount owing is an unreasonably small amount, will be progressed separately through amendments to the Residential Tenancies and Rooming Accommodation Regulation 2009.

### **Alternative ways of achieving policy objectives**

There is no alternative way to achieve the objectives.

### **Estimated cost for government implementation**

There are no costs associated with these amendments.

### **Consistency with fundamental legislative principles**

The amendments are consistent with fundamental legislative principles.

### **Consultation**

The proposed amendments to the Bill which stem from the recommendations of the Transportation and Utilities Committee are as a result of the Committee's consultation with stakeholders.

### **Notes on provisions**

*Amendment 2* introduces a new Clause 25A which amends section 245 (6) (Injury to domestic associate) of the Residential Tenancies and Rooming Accommodation Act 2008 to clarify that the personal information of victims of domestic violence or family violence cannot be listed on a tenancy database where a Tribunal has made an order prohibiting the listing under section 459 (Restriction on listing). The amendment provides an example of the type of orders the Tribunal can make when assessing an application by a "domestic associate" who has applied to the Tribunal for an order due to acts of domestic violence committed against the person. The Tribunal must have regard to domestic violence issues when making orders under this section, including giving the landlord an opportunity to be heard on the application. This amendment is linked to Amendment 2 and addresses Recommendation 4 of the Committee.

*Amendment 3* amends Clause 29 to amend section 459(1)(d) (Restriction on listing) by including a restriction on listing a person where the Tribunal has made an order under section 245(g) (Injury to domestic associate) prohibiting the listing of a victim of domestic and family violence. This amendment is necessary to support Amendment 1. It also changes a reference in section 459(1)(c) from "the other person" to "the information" for consistency.

*Amendment 4* amends Clause 32 (Amendment of section 461 (Application to tribunal about incorrect or unjust listing)) to change the reference in Example 1 of subsection (3)(b) from "spouse" to personal information about a "domestic associate", to be consistent with terminology used in other sections of the Residential Tenancies and Rooming Accommodation Act 2008.

*Amendment 5* amends Clause 34 of the Bill about transition arrangements for existing database listings, and relates to the new section 459D (Keeping personal

information listed) proposed in Clause 30. It reduces the proposed transition period from one year to six months, within which time tenancy database operators must remove old listings. “Old listings” are defined as those that were at least two years and 6 months at the time of commencement. This addresses Recommendation 3 of the Committee.

*Amendment 6* amends Clause 35 (Amendment of schedule 2 (Dictionary)) of the Bill to note that in Schedule 2 (Dictionary), the definition of “lessor” should include a reference to section 457A of the RTRA Act, rather than section 457. This is to correct a minor drafting error. This addresses Recommendation 5 of the Committee.

*Amendment 7* amends Clause 35 (Amendment of schedule 2 (Dictionary)) of the Bill to note that in Schedule 2 (Dictionary), the definition of “tenant” should include a reference to section 457A of the RTRA Act, rather than section 457. This is to correct a minor drafting error. This addresses Recommendation 5 of the Committee.

*Amendment 8* amends the long title of the Act to insert ‘the Queensland Building and Construction Commission and Other Legislation Amendment Act 2014’.