

PROFESSIONAL ENGINEERS AND OTHER LEGISLATION AMENDMENT BILL 2014

Explanatory Notes

for

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

Title of Bill

Professional Engineers and Other Legislation Amendment Bill 2014

Objectives of the amendments

Retention of monetary penalties by QBCC

Currently, monetary penalties collected by the Government for offences against the *Building Act 1975* (BA) and *Plumbing and Drainage Act 2002* (PDA) are paid to the Queensland Government's consolidated fund. By contrast, section 112 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act) allows the QBCC to retain monetary penalties recovered for an offence against the QBCC Act. The amendments to the Professional Engineers and Other Legislation Amendment Bill 2014 (the Bill) incorporate provisions to allow the Queensland Building and Construction Commission (QBCC) to retain the revenue it will raise from offences against the BA and PDA.

Review of decisions

The Bill introduces new provisions in the QBCC Act to provide for internal and external reviews of decisions made by the QBCC. It is intended that following the transfer of functions from the Plumbing Industry Council (PIC) and Pool Safety Council (PSC) to the QBCC, decisions made by the QBCC in relation to plumbing, drainage and pool safety will also be subject to these review provisions. As a result, the current review provisions in the PDA and BA, which refer reviews of PIC and PSC decisions to the Queensland Civil and Administrative Tribunal, will no longer be required. The Bill omits each of these provisions, with the exception of section 246CZ of the BA.

Section 86(2) of the QBCC Act lists the provisions that are defined as reviewable decisions (i.e. the provisions that trigger the review provisions provided for in the Bill). The current list of provisions in section 86(2), as amended by the Bill, does not include a reference to section 16G of the *Building Regulation 2006* (BR), which relates to a decision to allocate demerit points to a pool safety inspector. As a disciplinary function

that will be assumed by QBCC, this provision should be subject to the same review mechanism as other pool safety decisions.

Prosecution of pool safety offences

Under the Bill the functions and powers of the chief executive mentioned in the BA that relate to licensing and compliance matters for pool safety will be transferred to the QBCC. The Bill does not currently contain a provision to transfer the ability to prosecute pool safety offences from the chief executive to the QBCC commissioner.

Achievement of the objectives

Passage of the Bill including the amendments to be moved during consideration in detail will achieve the Government's policy objectives.

Alternative ways of achieving policy objectives

There are no alternatives to the passage of the Bill, including the amendments to be moved during consideration in detail, that would achieve the Government's policy objectives.

Estimated cost for government implementation

There are no additional anticipated financial costs for Government arising from the amendments to be moved during consideration in detail.

Consistency with fundamental legislative principles

The amendments to be moved during consideration in detail are consistent with fundamental legislative principles.

Consultation

The amendments to be moved during consideration in detail are supported by the QBCC and Queensland Treasury.

Notes on provisions

Amendment 1 inserts a new clause 33A, which omits section 246CZ of the BA. By removing this section from the Act, reviews of decisions relating to pool safety will no longer be referred to QCAT and will instead be subject to the review process of the QBCC.

Amendment 2 inserts a reference to new section 256(7) (refer amendment 4) of the BA into new section 246I. New section 246I outlines the amounts that must be paid into the Pool Safety Fund. Including a reference to new section 256(7) means that amounts paid to the QBCC commissioner under that section (i.e. for penalty infringement notices) must be paid into the fund.

Amendment 3 replaces the provision in the Bill that deals with the prosecution of pool safety offences to include references to the QBCC commissioner. This will empower the

commissioner to prosecute such offences and promote consistency with the Bill's intention of transferring licensing and compliance functions to the QBCC.

Amendment 4 inserts a new provision into clause 36 of the Bill. This amendment provides that penalties recovered as a result of penalty infringement notices issued by the QBCC are ultimately retained by the QBCC and, by virtue of amendment 2, paid into the pool safety fund.

Amendment 5 amends clause 47 of the Bill to ensure that a monetary penalty recovered by the QBCC for an offence against the PDA is treated in the same way as revenue raised from fees (i.e. applied toward the administration of the PDA).

Amendment 6 inserts a new provision into clause 52 of the Bill which provides that all penalties recovered as a result of proceedings for which the QBCC commissioner, or a person authorised by the QBCC commissioner, is the complainant, must be paid to the QBCC and, by virtue of amendment 5, applied towards the administration and enforcement of the PDA.

Amendment 7 inserts a reference to the accumulation of demerit points into new section 86(2) of the QBCC Act. New section 86(2) defines what is a *reviewable decision*. As such, a decision relating to the accumulation of demerit points will now be defined as a reviewable decision and will be subject to the review procedures set out in the QBCC Act.

Amendment 8 removes references to section 246CZ of the BA from Schedule 1 of the Bill. The Schedule replaces references to the PSC in the BA with references to the QBCC Commissioner. As amendment 1 omits section 246CZ from the BA, references to that section are no longer necessary.

