

Submission No 013

11.1.3

25 June 2015



BUILDING QUEENSLAND BILL 2015

**SUBMISSION BY AUSTRALIAN CONSTRUCTORS ASSOCIATION
AND QUEENSLAND MAJOR CONTRACTORS ASSOCIATION**

JUNE 2015

**SUBMISSION BY AUSTRALIAN CONSTRUCTORS ASSOCIATION AND QUEENSLAND
MAJOR CONTRACTORS ASSOCIATION ON BUILDING QUEENSLAND BILL 2015
JUNE 2015**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Australian Constructors Association (ACA) and the Queensland Major Contractors Association (QMCA) support the establishment of an entity such as Building Queensland (BQ) to provide independent specialist advice and input into the development of a long term, sustainable process for the development and delivery of projects in Queensland, and to facilitate arrangements with other Australian governments.

The ACA and the QMCA submit that the establishment and operation of BQ is an opportunity for the new Queensland government to break the nexus between good project planning and development, and the constraints of the electoral cycle. In short, the government has the opportunity to put in place a regime that will result in it achieving public and business confidence in the government's capacity to develop and deliver a long term infrastructure model that will maximise economic benefits and produce infrastructure outcomes that are both efficient and cost effective.

The ACA and QMCA have assessed the provisions contained in the Building Queensland Bill 2015 in light of legislative and administrative structures established in the United Kingdom and in other Australian jurisdictions. We have also considered the findings and recommendations of the Australian Productivity Commission in the Report of its Inquiry into Public Infrastructure (2014).

We note that the Productivity Commission has said that building a credible and efficient governance and institutional framework for project selection is a critical and urgent task for governments. Further, processes aimed at improving the transparency and efficacy of decisions only work when ministers and other elected officers fully support these institutional arrangements, especially when there are politically expedient alternatives.

The ACA and the QMCA have concluded from our assessment of the Building Queensland Bill that there is room for improvement in a number of areas and that there should, as far as possible, be consistency of approach between governments in terms of the operations of the respective infrastructure assessment entities. We make the following recommendations:

- 1. The Bill should replicate the functions of Infrastructure NSW as contained in sections 11 to 27 of the Infrastructure NSW Act 2011.**
- 2. BQ should have the same role as Infrastructure NSW in the assessment of unsolicited (private sector) proposals.**
- 3. BQ should be subject to ministerial direction only on matters of a general nature.**

4. Part-time members of the Board of BQ must collectively have experience in areas covered by the functions of BQ including infrastructure planning, funding and delivery.

5. BQ must be adequately funded to enable it to meet its statutory responsibilities.

AUSTRALIAN CONSTRUCTORS ASSOCIATION (ACA)

The Australian Constructors Association (ACA) represents leading construction and infrastructure contracting companies and is dedicated to promoting a sustainable construction industry for Australia.

The ACA member companies have a combined annual turnover exceeding \$50bn and employ over 100,000 workers with many more being employed through subcontractors providing services to ACA members.

ACA member companies operate in a number of market sectors including:

- **Engineering construction incorporating public and private sector infrastructure**
- **Commercial and residential building**
- **Contract mining**
- **Oil and gas operations**
- **Process engineering**
- **Telecommunications services**
- **Environmental services**
- **Maintenance and related services**

QUEENSLAND MAJOR CONTRACTORS ASSOCIATION

The Queensland Major Contractors Association (QMCA) is the construction industry's peak body representing Queensland's leading construction contracting companies. The QMCA is dedicated to making the construction industry safer, more efficient, more competitive and better able to contribute to the development of Queensland and Australia.

A TIME FOR REFORM IN QUEENSLAND - MAJOR PROJECTS REPORT 2015

General

The need for reform of the way Queensland governments approach the development of infrastructure on behalf of the people of Queensland has reached a critical point as evidenced in the March 2015 Major Projects Report prepared by BIS Shrapnel for the QMCA and Construction Skills Queensland.

The new Queensland government now has before it the opportunity, and responsibility, to embrace its leadership responsibilities by developing a sustainable, long term, infrastructure plan for the state.

The infrastructure plan must be based on an independent, non-political, assessment of the needs of the state, must be funded and financed through new and innovative options now available in these times of restricted government financial resources, and to be successful must transcend the electoral cycle.

To assist the government to release the underlying strength in the Queensland economy and its businesses and workers, the government needs to ensure that, Building Queensland, the government's proposed independent statutory advisor on infrastructure and related projects, has the real independence and resources available to it to assist the government to make the hard, but necessary, decisions in identifying and prioritising the projects that will unlock the state's potential and set it on a path to recovery.

Queensland Major Projects Report

The underlying issues facing Queensland in relation to infrastructure development and delivery were brought home in the Major Projects Report referred to above.

The Report makes the following key findings:

- Queensland major project work fell 22% in 2013/14.
- A further 55% fall in major project work is expected over 2014/15 and 2015/16.
- Next upswing in the economy is now subject to significant risks.
- There is an increasing role for government as private investment falls.
- There are major implications for industry contractors and suppliers.

The Report identifies the challenges ahead, including the following:

- Attracting new investment and finding ways to sustainably fund infrastructure requires long term planning incorporating market-based funding mechanisms/private sector provision.
- There is an opportunity to adopt efficient procurement strategies and implement "best practice" planning, funding and procuring for infrastructure investment.
- Choosing projects with the greatest net economic benefit.
- Public sector borrowing and fundamental taxation reform.
- Capital recycling / Asset sales.

APPROACH TO THE BUILDING QUEENSLAND BILL 2015

The ACA and QMCA commend the Queensland government for its initiative in introducing legislation to establish Building Queensland (BQ).

The ACA and QMCA believe that BQ has the potential to become a central hub in the development of a long term, sustainable, building and construction industry in Queensland

that will support industry participants and have significant flow on benefits for the community through the delivery of better planned infrastructure, economic development and employment.

To achieve the intended aim and outcomes from BQ, it is necessary for the organisation to be, and be seen to be, the provider of high quality, independent, advice to government in all of its activities. In this respect, the ACA and QMCA endorse the recent media release by The Hon Jacqui Trad, Deputy Premier, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade who said, when calling for nominations for the Board of BQ:

“Building Queensland will provide independent, expert advice to the government on productivity-lifting infrastructure priorities based on rigorous business cases, including cost-benefit analyses and community benefits,” Ms Trad said.

“It has been established within the Department of Infrastructure, Local Government and Planning.”

“Legislation for Building Queensland is to be introduced and considered by the Queensland Parliament and following the enactment of legislation, I expect Building Queensland to be operating as an independent statutory body by the end of this year.”

“The Board will provide strategic direction to Building Queensland during the remainder of this year, and will begin its formal functions once the Building Queensland legislation is in place.

“We are seeking experts in the infrastructure and major projects, finance and public private partnerships, urban planning and design, engineering and construction, economics, and transport and logistics arena.”

“Establishing Building Queensland to create a pipeline of projects for consideration is a key priority for this government, and shows that we’re serious about delivering projects and jobs that will grow the economy.

“Industry, investors and communities deserve to know how and when the state’s infrastructure needs will be determined and delivered,” Ms Trad said.

With the above in mind, the ACA and QMCA have assessed the Bill before Parliament and have provided below some commentary on various clauses of the Bill with particular reference to whether the Bill will enable BQ to achieve the stated aims and objectives attributed to the Government’s policy platform.

For further background to our comments, assessment and conclusions we have also included some material on the development of similar approaches, both legislative and administrative, in the United Kingdom and in Australia as the approaches taken elsewhere are important guides for the Queensland government in terms of identifying the best practice model for the establishment and operation of BQ.

UNITED KINGDOM

2010 UK National Infrastructure Plan

In October 2010, the UK government released its first National Infrastructure Plan. In launching the Plan, Lord Sassoon, Commercial Secretary to the Treasury, said:

“Today’s plan represents a broad vision of the infrastructure investment we need to underpin the UK’s growth and retain our competitiveness.

For the economy to flourish, people, goods and information must move freely. Reliable infrastructure: energy, water, transport, digital communications and waste disposal networks and facilities, are essential to achieve this. Ensuring these networks are integrated and resilient is vital.”

We recognise the scale of the challenge and the need to encourage new sources of private sector capital. We are targeting Government’s own investment at a series of bold and critical projects that go to the heart of this vision and support a private sector led recovery.”

Infrastructure UK

The Infrastructure Plan had been prepared by Infrastructure UK which was established some months earlier as part of the UK Treasury. Infrastructure UK’s Board consists of a mix of public and private sector representatives with experience in, or responsibility for, infrastructure development.

When releasing the 2010 Infrastructure Plan, Lord Sassoon said:

“The role of the Government is clear. It is to specify what infrastructure we need, identify the key barriers to achieving that investment and to mobilise the resources, both public and private, to make it happen.”

Paul Skinner, Chairman of Infrastructure UK, said at the time of the release of the 2010 Infrastructure Plan:

“Infrastructure UK will play an active role in driving forward this agenda across Government. This initial phase of Infrastructure UK’s work has validated the proposition that infrastructure development can be an important driver of the UK’s future growth and competitiveness and that there is real value in taking an integrated, cross-sector approach.”

2014 UK National Infrastructure Plan

Moving forward 4 years, and with the benefit of operational experience, in December 2014 the UK government released the National Infrastructure Plan 2014.

The 2014 plan indicates that the UK Government has set out an ambitious infrastructure vision for the next parliament and beyond, reinforcing the government's commitment to investing in infrastructure and improving its quality and performance. It is underpinned by a pipeline of over £460 billion of planned public and private investment.

In the Executive Summary of the 2014 Infrastructure Plan the UK government states that it is prioritising the public funding of infrastructure and putting in place the right policy framework to give investors the confidence to commit to long-term projects, and ensure the supply chain has the certainty and tools it needs to deliver effectively.

At p7 of the Plan the government states that the Plan ***“recognises the importance of getting the fundamentals right – delivering our key projects and programmes on time and on budget – while also addressing longer-term challenges: integration, resilience, skills, and sustainability.”***

The 2014 Plan also says that the government has refreshed its Top 40 priority investments to reflect changes in project status and ensure that they continue to reflect the government's priorities in each infrastructure sector. It says (at p9) ***“This is essential if it is to remain an effective tool for monitoring and supporting progress in infrastructure delivery.”***

The Executive Summary to the Plan also says (at p10):

“In addition to setting out detailed plans to the end of the decade, NIP 14 sets the direction and ambition for the government's longer-term approach to infrastructure in each of the sectors that it covers. While these plans are less detailed, the government is taking action now to ensure that it is well placed to meet the infrastructure challenges facing the UK in the 2020s and beyond.”

UK Infrastructure Cost Review Annual Report 2012-2013

In June 2013, the UK government produced its most recent annual report of its Infrastructure Cost Review. The Infrastructure Cost Review process effectively parallels the implementation of the Infrastructure Plan referred to above and seeks to identify the efficiency savings achieved through the implementation of the Infrastructure Plan.

The Cost Review process demonstrates the value of government collaborating with industry to achieve benchmarking of project completions and other performance measurement and in achieving behavioural change on projects.

The report identifies a number of cost review themes that are measured including:

- Pipeline visibility and certainty
- Effective governance and control of costs
- Specifications and technical standards
- Competition and procurement
- Industry and supply chain

The report also discusses issues aimed at improving the application of best practice governance and organisational development in complex projects and charts progress against previous Cost Review Implementation Planning.

The ACA and QMCA submit that the structure of infrastructure planning, financing and funding, and measurement and review of outcomes in the UK, is now beginning to show some demonstrable efficiency improvements. Further, the commitment to make public the Infrastructure Plans and Cost Review reports is de-politicising the issues surrounding the pipeline of major projects in a way that is benefitting the whole supply chain and the UK community in general.

AUSTRALIAN GOVERNMENT ACTIVITIES

In Australia, the Australian and New South Wales governments have established infrastructure agencies along similar lines to Infrastructure UK in terms of public and private sector Board representation, with the additional step of enacting special Acts of Parliament to support the role and function of each body.

For the purposes of assisting an analysis of the Building Queensland Bill 2015, it is useful to detail some aspects of the Australian and NSW infrastructure legislation.

Infrastructure Australia

Infrastructure Australia (IA) was established as a statutory body by the then federal Labor government in 2008 as part of the Department of Infrastructure and Transport. The organisation was tasked to develop a strategic blueprint for addressing the nation's infrastructure needs, particularly in the areas of transport, water, energy and communication. The legislation established the IA Council as a statutory independent body with 12 experienced members to be drawn from industry and government.

At the time of its establishment the government stated that IA would undertake a National Infrastructure Audit of nationally significant infrastructure, including in the areas of water, energy, transport and communications and compile an Infrastructure Priority List for presentation to the March 2009 meeting of COAG.

Infrastructure Australia would also provide advice on regulatory reforms to help improve the use of existing infrastructure, streamline planning approvals and unlock moneys for new investment.

However, while the legislation establishing IA provided for IA's primary function of providing advice to the Minister, Commonwealth, State, Territory and local governments, investors in infrastructure and owners of infrastructure on matters relating to infrastructure, IA was subject to potentially significant ministerial direction and control in the exercise of its functions.

In 2011 the then federal government moved to make further enhancements to IA's operations including announcing the following:

- IA's funding was to be increased by nearly 40 per cent to \$36 million over four years to allow IA to expand its work to include providing independent policy advice on national infrastructure reform such as the National Port and Freight Strategies, while working with governments and the private sector to develop a deeper 'pipeline' of priority infrastructure projects in the Australian market.
- Reforms are intended to give IA greater independence and financial autonomy.
- IA was to produce an enhanced list of priority projects, focusing on those projects worth over \$100 million or those of national significance and value.
- Information about IA's assessments of projects was to be published including cost-benefit analyses.
- A National Infrastructure Construction Schedule was to be established to provide information on major infrastructure construction across all levels of government and help build the national pipeline.
- The federal government was to work with States and Territories to improve approaches to managing forecasting and patronage risk for infrastructure projects such as toll roads.

In 2014, the federal parliament passed amendments to the Infrastructure Australia Act following significant discussion as to IA's ability to operate independently of government. Restrictions on IA's ability to exercise its functions have been significantly reduced by confining the ability of the government of the day to issue directions to matters only of a general nature.

IA is now able to lead reform on key issues including the means of financing, delivering and operating infrastructure and how to better plan and utilise infrastructure networks.

IA now has responsibility to strategically audit Australia's nationally significant infrastructure, and develop 15 year rolling Infrastructure Plans that specify national and state level priorities. Large infrastructure projects are to be subject to a cost-benefit analysis and with transparency about the objectives they are designed to achieve.

IA now assesses all projects with over \$100 million of Australian government funding and publishes its conclusions.

IA also determines which nationally significant projects should be on the Infrastructure Priority List. This prioritisation process ensures that there is a highly credible pipeline of nationally significant infrastructure projects.

Infrastructure NSW

Infrastructure NSW (INSW) was established by the NSW Government in July 2011, as an independent decision-making authority under the Infrastructure NSW Act 2011.

The Act tasks Infrastructure NSW with 14 functions including:

- Preparation and submission to the Premier of a 20 year State Infrastructure Strategy.
- Preparation and submission to the Premier of five year infrastructure plans and other plans as requested by the Premier.
- Preparation of sectoral State infrastructure strategy statements.
- Review and evaluation of proposed major infrastructure projects by Government agencies **or the private sector** (emphasis added).
- Advice on infrastructure planning and delivery assessment, economic or regulatory impediments and funding models.
- Coordination of infrastructure submissions by NSW to the Commonwealth Government.
- Responsibility for the delivery of a specific major infrastructure project.

It is noted that in preparing the 20 year infrastructure strategy, 5 year infrastructure plans and sectoral infrastructure strategy statements the Premier is to make public those documents when adopted.

Also, while the Board is subject to the direction and control of the Premier, if the Premier makes any amendment to the strategies, plans and statements submitted by INSW the Board may advise the Premier that it does not agree with the amendment and may make that advice available to the public. In this way, the Board of INSW is able to ensure that issues of significant community or state interest are able to be identified and appropriately brought into the public arena.

PRODUCTIVITY COMMISSION REPORT ON INFRASTRUCTURE – MAY 2014

In May 2014, the Productivity Commission published an extensive report on public infrastructure.

In its Report (at p.3) the Commission stated that there are several drivers of an increased interest in public infrastructure. These are:

- Widely held views that deficiencies in certain aspects of Australia's infrastructure — such as in roads, rail, and ports — are holding back productivity growth and affecting the amenity of our cities and regional areas. This gives rise to concerns about an overall infrastructure deficit.
- Apprehension about the costs of delivering new public infrastructure and the potential for efficiency gains in the delivery and use of infrastructure, including those that might be induced by new opportunities for user charging.

- Concerns about debt and long-term budgetary pressures being faced by governments at all levels and how these might affect the provision of public infrastructure, for which there is often limits to funding through direct user charges.
- Macroeconomic objectives of offsetting decreasing investment and employment in other sectors and promoting economic growth more generally. This focus on public infrastructure and how community expectations about its provision can be met is also an international phenomenon, as evidenced by interest from the G–20, the OECD, the World Bank and the International Monetary Fund.

The Commission went on to say (at p.8)

“To sum up, governments are sometimes weak at determining what, where and when infrastructure projects should be scoped and constructed. This stems from deficiencies in using coherent decision-making frameworks to assess the portfolio of potential projects, especially:

- ***scoping and developing transparent cost–benefit analyses***
- ***appropriate long-term planning for corridors, rigorous demand forecasting, investigating project risks fully (including latent risks borne by governments)***
- ***providing opportunities for users rather than taxpayers to fund projects***
- ***efficiently allocating risks between public and private partners.”***

The Commission concluded that (at p.8) ***“There is substantial room for improvement, particularly in the decision-making processes of governments.”***

The Commission also said (at p.8) that building a credible and efficient governance and institutional framework for project selection is a critical and urgent task for governments. Further, processes aimed at improving the transparency and efficacy of decisions only work when ministers and other elected officers fully support these institutional arrangements, especially when there are politically expedient alternatives.

The Commission further said (at p.8) that selecting the right projects is the most important aspect of achieving good outcomes for the community, irrespective of the funding and financing mechanisms used. It is at the stage before contract signing that governments have the best opportunity to ensure infrastructure meets the needs of the community efficiently and cost effectively.

THE BUILDING QUEENSLAND BILL 2015 – SPECIFIC ISSUES

General Comment

The summaries of activities of governments in other jurisdictions, both in Australia and the United Kingdom, contained earlier in this submission together with the analysis and recommendations contained in the Australian Productivity Commission report into Infrastructure, provide some detail as to the progress of the development of effective operational models of infrastructure agencies established to advise governments on future infrastructure priorities.

It may be said that the development of legislative and administrative processes in this area has not been without some controversy from time to time as governments grapple with the accountability and transparency issues that surround the development of infrastructure plans and how they align with political processes.

Nevertheless, the ACA and QMCA submit that there is a need for governments to take a more pragmatic, non-political, approach to this area for the following reasons:

- The development of Australia and its attendant infrastructure needs is at a point where the community requires infrastructure development to be implemented sooner rather than later if the country is to achieve productivity and other advances to its economy.
- All governments are stretched in terms of their ability to fund or finance infrastructure projects, as well as efficiently manage the development and implementation of major projects. Clear, longer term, plans are required to provide certainty to industry, its supply chain and individual businesses to ensure their ongoing sustainability and accountability.
- There are potentially significant funding and financing opportunities available through the private sector, including superannuation funds, but those moneys will be allocated elsewhere unless governments move expeditiously to embrace new ways of developing reliable infrastructure pipelines.
- Politically based infrastructure programs will struggle to deliver the outcomes that communities require because of the need to ensure the delivery of integrated project planning that maximises the value add that is available.

Comment on Specific Clauses in the Bill

The ACA and the QMCA make the following comments on specific clauses in the Building Queensland Bill 2015:

Clauses 9 to 17 – Functions

There is a sound argument that state based infrastructure coordination agencies should have complementary legislative functions to ensure that there can be effective cross-sectoral cooperation between and within governments.

Consistency of functions also adds certainty to the general community and the business community and supports developing and maintaining public and business confidence in the ability of governments to plan and deliver sustainable infrastructure pipelines.

The functions of BQ as contained in clauses 9 to 17 of the Bill contain aspects of the functions of INSW and IA, but do not replicate all aspects of those functions. By way of example, BQ would not have the following functions of INSW:

- Preparation of 20 year State infrastructure strategy and review that strategy on a 5 yearly basis (ss. 16 to 18 INSW Act).
- Preparation of 5 year infrastructure plans identifying specific major infrastructure projects to be undertaken as a priority in the following 5 years (ss.19 to 21 INSW Act)..
- Preparation of additional infrastructure plans as directed (s.22 INSW Act).

- Preparation of sectoral State infrastructure strategy statements for identified sectors of the State (ss.23 to 25 INSW Act).
- Preparation of project implementation plans for major infrastructure projects (ss. 26 and 27 INSW Act).

Further, the current provisions of clause 18 of the Bill empower the Minister to direct BQ not to exercise a range of its functions which means that BQ's capacity to operate in a wide range of areas is potentially able to be curtailed. This could have the, perhaps unintended, consequence of reducing or eliminating transparency in relation to government activities and decisions to the detriment of the community and industry.

On balance, the ACA and QMCA consider that the functions of INSW substantially reflect the approach that ought to be adopted in Queensland and it makes sense for those functions to be inserted into the Building Queensland Bill to achieve consistency. That said, ACA and QMCA do support the retention of the specific proposal in clause 16 of the Bill to empower BQ to publish information and promote public awareness as this function will add significant value to stakeholder engagement principles.

The ACA and QMCA recommend that the Bill replicate the functions of Infrastructure NSW as contained in sections 11 to 27 of the Infrastructure NSW Act 2011.

The ACA and QMCA note that BQ does not have a specific function of assessing unsolicited (private sector) bids for identified projects. This issue is addressed in the INSW legislation whereby s.11(1)(e) of the Act empowers INSW to review and evaluate proposed major infrastructure projects by government agencies or the private sector, and other proposed infrastructure projects.

The ACA and QMCA recommend that BQ should have the same role as Infrastructure NSW in the assessment of unsolicited (private sector) proposals.

Clause 18 – Ministerial direction about performance of functions

The ACA and QMCA submit that the current clause 18 could have the effect of significantly, and unnecessarily, restricting the independence of BQ and does not sit well with the government's stated objectives of BQ being an independent expert adviser to government.

Consistent with the recent amendments to the Infrastructure Australia Act, BQ should only be subject to ministerial directions of a general nature and should not be able to be directed as to the content of specific matters.

The ACA and QMCA recommend that BQ be subject to ministerial direction only on matters of a general nature.

Clause 24 – Membership of board

Clause 24 provides for the appointment of members of the BQ Board. Clause 24(1) (b) provides that there will be 4 part-time members. The Bill does not identify whether part-time members must have experience in relevant vocations.

The ACA and QMCA consider that by not specifying that part-time members must have relevant skills the possibility exists that the BQ Board will struggle to achieve the stated aims of the government. The ACA and QMCA note that the part-time members of the INSW Board must have skills in infrastructure planning, funding and delivery while similar appointments to the IA Board must have experience in the areas covered by IA's functions.

The ACA and QMCA recommend that part-time members of the Board of BQ must collectively have experience in areas covered by the functions of BQ including infrastructure planning, funding and delivery.

Schedule 1 – Dictionary

Schedule 1 contains a dictionary with specific definitions. The ACA and QMCA note that **infrastructure project** and **infrastructure proposal** are defined to only include proposals and projects brought forward by government agencies i.e. not proposals brought forward by the private sector.

Consistent with our position on the role of BQ regarding non-government infrastructure proposals referred to in respect of clauses 9 to 17 of the Bill, it will be necessary for an amendment to be made to the dictionary in schedule 1 to ensure that private sector proposals are to be assessed by BQ.

ENDS