

Justice and Other Legislation Amendment Bill 2023

Submission No: 1
Submitted by: Queensland Building and Construction Commission
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See attached:

21 June 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Delivered by email to: lasc@parliament.qld.gov.au

Dear Committee Secretary

RE: QBCC Submission on the Justice and Other Legislation Amendment Bill 2023

The Queensland Building and Construction Commission (QBCC) welcomes the opportunity to make a submission to the Legal Affairs and Safety Committee (the Committee) regarding the Justice and Other Legislation Amendment Bill 2023 (the Bill), which was introduced to Parliament on 25 May 2023.

Our role

The QBCC is Queensland's building and construction industry regulator. It is an independent statutory body established under the *Queensland Building and Construction Commission Act 1991* (QBCC Act). The QBCC's key responsibilities include:

- regulating the building industry to ensure the maintenance of proper standards, and to achieve a reasonable balance between the interests of building contractors and consumers;
- providing remedies for defective building work;
- providing support, education and advice for those undertaking building work and consumers;
- regulating domestic building contracts; and
- regulating building products to ensure the safety of consumers and the public generally, as well as ensuring persons involved in the production, supply or installation of building products are held responsible for their safety and use.

The QBCC has functions and powers under the QBCC Act, the *Building Industry Fairness (Security of Payment) Act 2017*, *Building Act 1975*, the *Plumbing and Drainage Act 2018* and subordinate legislation.

Submission

QBCC has reviewed the contents of the Bill as relevant to QBCC and supports the proposed amendments. In particular, QBCC has reviewed the proposed amendments to the *Acts Interpretation Act 1954* (AIA) and notes that the definition of “document” is proposed to be amended to include electronic documents. QBCC finds this to be a helpful and modernising amendment.

QBCC also notes that the provision regarding service of documents under section 39 of the AIA is not proposed to be amended to include electronic service / service by email. QBCC seeks the Committee’s consideration to include the amendment of this provision to include electronic service.

Section 39 of the AIA provides for service of a document “by post, telex, facsimile, or similar facility” to the residential or business address of a person. However, what is considered a “similar facility” has been judicially considered yet remains in doubt. Further an email is sent to an electronic server address not always located at a residential or business address and requires positive action by the receiver to retrieve the email. Accordingly, the requirements of section 39 of the AIA to ‘deliver’, ‘give’, ‘notify’, ‘send’ or ‘serve’ do not necessarily support the interpretation of section 39 to include email / electronic service without consent.

It is noted that another State law may authorise service of a document in another way. Currently the legislation relevant to the QBCC’s exercise of regulatory power do not provide for electronic service. QBCC has also explored whether the *Electronic Transactions (Queensland) Act 2001* (Electronic Transactions Act) provides authority to serve documents by electronic communication and, although it does, it is limited to circumstances where consent is obtained from each recipient. Reliance on electronic service under the Electronic Transactions Act has been deemed impractical due to the volume of QBCC decisions which would require consent to such service.

Another obvious solution is for QBCC to seek to have the various Acts it regulates amended to allow for electronic service. However, it is suggested that the inability to utilise electronic means for proper service is an issue faced by other regulators beyond the QBCC. The dependence on postal service (given that facsimile and telex is no longer commonly in use) is antiquated, administratively burdensome, costly, environmentally unfriendly and is open to greater challenge by those who allege not receiving the correspondence. Rather than each regulator ensuring the legislation it operates under allows for electronic service, the QBCC seeks consideration for the amendment of section 39 to align with the definition of “document” and enable regulators such as QBCC to effectively serve documents through modern electronic means.

QBCC understands that the Committee may disclose or publish, in full or part, this submission and the name of the submitter.

Thank you for the opportunity to make a submission about the Bill.

Yours sincerely,



Anissa Levy
CEO and COMMISSIONER
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

Email: 