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Ms Kate McGuckin
Research Director
Transport, Housing & Local Government Committee
Parliament House
George St.
BRISBANE QLD 4000

Email: thlgc@parliament.qld.gov.au

Dear Ms McGuckin

Subject: Parliamentary Inquiry into the operation and performance of the Queensland Building Services Authority

Thank you for the opportunity to make a submission to the Inquiry into the operation and performance of the Building Services Authority (BSA).

Master Builders is the peak body for housing and construction in Queensland and represents the interests of around 9,000 building-related businesses across the State. The Committee's inquiry is of significant interest to Master Builders' members and the industry broadly.

Master Builders believes that the BSA's functions and services should be focused on:

- administering a licensing system for building contractors and owner-builders;
- providing dispute resolution services for consumers and contractors;
- administering a statutory residential construction insurance scheme that provides a warranty against non-completion, defective work and subsidence; and
- providing information and advice to improve consumers' and contractors' awareness and understanding of their rights and responsibilities.

**Master Builders
Head Office**

417 Wickham Terrace
Brisbane Queensland 4000
Telephone (07) 3225 6444
Facsimile (07) 3225 6545
ask@masterbuilders.asn.au
www.masterbuilders.asn.au

By and large the BSA has performed these functions well over time; however, we believe there are a number of issues that need to be addressed to improve these services.

In relation to the Inquiry's terms of reference we would make the following comments:

1. Whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers.

Currently the BSA only deals with defective and incomplete building works. (There were about 5,500 disputes in 2011/2012 arising from the about 73,256 building contracts for insurable residential projects - new houses, renovations and extensions.) The BSA does not become involved in contractual disputes, which are primarily payment issues involving the owner and the building contractor. The scope of the BSA's involvement in resolving disputes needs to be expanded to include contractual disputes. The BSA needs to be a one-stop-shop for builders, consumers and subcontractors in resolving all building-related disputes.

We believe that the current system is weighted in favour of consumers, over the interests of contractors.

Consumers' interests are effectively protected by:

- remedies for defective building works (for 6 year 3 months);
- a comprehensive home warranty insurance scheme (for 6 years and 6 months);
- standardised contract terms that are fair to all parties; and
- ready access to specialist advice.

Whereas there are two glaring omissions from the contractors' perspective:

- an effective means of resolving payment issues for contractors working with resident owners; and
- a mechanism to ensure that subcontractors are held accountable for their building work.

Currently, in the residential sector, subcontractors can access rapid adjudication through the Building and Construction Industry Payments Act (BCIPA) to resolve payment disputes with builders. However, this payment remedy is not available where the client is a resident owner.

We are recommending that BCIPA be expanded in the housing sector to include resident owners. This will enable all building contractors to access a quick, informal and effective process for resolving payment disputes with owners.

This has been a major issue for several years. In June 2011 we surveyed members on this issue and found that non-payment by owners was having a serious impact on many building businesses (turnover and profitability) which is particularly concerning in an already struggling marketplace.

Highlights from the report include:

- One in two builders had one or more customers withhold payments that they were contractually obliged to make.
- Over one third of those builders had between one and five jobs that were not paid in full, as required by the terms of the contract.
- Amounts withheld were substantial, with 31% of builders surveyed indicating that the average amount withheld for each job during 2010 was over \$10,000.
- One third of businesses indicated that non-payment by consumers had a substantial impact on their business and for 12% the impact was very substantial, threatening the viability of their business.

In addition, the current operation of BCIPA in the commercial sector has a number of deficiencies that has been raised by Master Builders and others but have not been adequately addressed. The BSA conducted an in-house review and completely failed to deliver on any of the key outcomes that concerned the industry. The issues that remain outstanding include:

- Special consideration of timeframe for large (>\$1M) or complex cases
- Extending the 5 day response period for an adjudication application
- Adjudicated claims should not be able to be re-submitted
- All claims (excluding claims for retentions and security) must be made within 3 months of Practical Completion of the project
- Disincentives for frivolous or vexatious claims - e.g. Costs orders against claims that fail to achieve 70% awarded
- Greater accountability and transparency on appointment of adjudicators by BSA registrar
- Greater accountability and transparency for performance of adjudicators

Any satisfactory review of the BSA must include an analysis of how they administer this important piece of legislation and how it can be amended for the good of the entire industry.

The second issue is ensuring that all contractors are held accountable for their work. BSA does not (except in extreme circumstances) investigate builder generated complaints about a subcontractor's defective building works, notwithstanding that the BSA Act provides for a subcontractor to be directed to rectify defective works.

However, in nearly all cases involving a technical dispute between a builder and an owner, BSA requires the builder to rectify, despite the fact that in many cases the defective works have been performed by subcontractors. This occurs in both the residential and commercial

sectors.

Master Builders accepts that one of the primary responsibilities for a builder is to ensure that the works are adequately supervised. We are not proposing to abrogate the builders' responsibility for on-site management and overall control of the contract; however, we believe there is a need for the BSA to take action in those cases where a subcontractor's work is defective and the subcontractor has failed to rectify (subject to a number of checks and balances). The remedies should include directions to rectify, sanctions and penalties.

2. Whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home.

The housing industry is highly regulated which is quite appropriate given the significant consumer and safety risks involved in the industry. However, there are several areas where the regulatory regime could be adjusted, which would reduce the cost burden on building contractors and, in turn, lower the cost of building.

The first deals with the financial requirements of licensed contractors. Currently contractors with an annual turnover exceeding \$300,000 need to engage an accountant to certify that they meet the BSA's financial requirements (to ensure the business is viable). Increasing the turnover threshold for these review reports from \$300,000 to \$1 million would mean that contractors would not need to incur the cost of the independent assessment without any material increase in the risk of business failure.

Streamlining the dispute resolution process would also make an appreciable difference in reducing the cost burden. Making the BSA a one-stop-shop for builders, consumers and trade contractors in resolving all building-related disputes, together with confining the role of the Queensland Civil and Administrative Tribunal to dealing with appeals (generally), would dramatically improve the dispute resolution process, as well stripping out considerable red tape.

3. The effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers.

Remedies for defective work - The current suite of remedies available to consumers is reasonable – the BSA is able to issue enforceable directions to building contractors to rectify defective work.

There is, however, a flaw in the current process where the defective work has been carried out by a subcontractor. In most cases the builder is held liable. As flagged earlier in this submission, builders should have access to a process to resolve disputes concerning subcontractors' defective works. We believe there is a need for the BSA to take action in residential and commercial cases where a subcontractor's work is defective and the

subcontractor has failed to rectify (subject to a number of checks and balances).

Providing advice & education - We have observed over time an expansion of the BSA's scope of operations. This creep beyond their core responsibilities is causing resourcing pressures. In some instances there are similar services and products already being provided. For example, the BSA has taken an active role in managing the state governments' building response to a number of natural disasters (including the floods in south-west Queensland, Cyclone Larry, The Gap storm). While the BSA has performed this role admirably, it distracts from the organisation's core responsibility and on that basis, is not an effective use of resources.

What is desperately needed is detailed information on the nature of building defects. Each month the BSA publishes the top 10 defects; however, there is insufficient detail to ascertain the cause of the problem. BSA should upgrade its systems to collect detailed information on the nature of building defects. This would provide groups such as Master Builders and the Housing Industry Association with a basis for targeted industry training.

Following on from this, the BSA should work with industry in setting standards and tolerances to comprehensively define what defective means for various elements of building work. This would provide certainty to all of the parties involved (consumers, contractors and BSA's inspectors).

4. Governance arrangements of and between the board and the general manager.

Master Builders has no comment to make on this point.

5. The effectiveness of the Queensland Home Warranty Scheme.

We strongly support the current exclusive, government-run arrangements for home warranty insurance (HWI) in Queensland. It works well and is the envy of the other states and territories.

Some criticise the scheme for being too expensive; however, Master Builders believes that at \$2,800 for a \$300,000 home for six years and six months of insurance coverage (about \$8 per week), Queensland offers value for money insurance, comparable to, if not cheaper than, other insurances.

It is absolutely critical that we retain the current arrangements that protect parties where the building subsides through no fault of the builder (i.e. the engineer's fault in the design of the foundations/footings). We understand that the scheme is under stress because of an increasing number of large payouts relating to subsidence. And that the problems (in most cases) are caused by faulty engineering design. In these cases, the engineers need to be called to account, rather than pursuing the builder involved.

One anomaly that needs to be addressed is aligning the 6 years 6 months period for HWI

with the builder's 6 years 3 months liability period for defective works. We recommend that these be revised to 6 years.

6. Whether the current licensing requirements are adequate and that there is sufficient auditing processes to maintain proper standards.

Licensing - Master Builders supports a comprehensive licensing system focussed on the protection of consumers - maintaining and improving building standards by ensuring that accredited training is a condition of licensing; and ensuring the financial viability of building contractors by requiring all contractors to meet regular and on-going financial tests as a condition of licensing.

On that basis, we broadly support the current licensing arrangements in Queensland.

We have grave concerns about the push to national licensing. In our view the cost of the likely outcome far outweighs the benefits. Cutting the 60 licence classes for builders and trade contractors back to less than 20 (under the national licensing reform) would be a very bad outcome for consumers, who want peace of mind that they're engaging a professional building contractor.

Auditing - We do not see the need for any additional auditing requirements.

7. The number of trades licensed by the QBSA and whether industry groups could take a greater role within QBSA in terms of licensing standards and procedures for their members.

Licensed trades - We support the need for licensing of all contractors carrying out building work who contract with the public; and licensing of the 'structural trades' where the contractors are working with other builders (for example carpentry, concreting, roofing and waterproofing).

Role of industry groups – We believe there is an important role for industry groups such as Master Builders to improve the skills, knowledge and judgement of members. To that end Master Builders is developing a voluntary Continuing Professional Development scheme with the aim of improving the quality of building, enabling members to be more productive and increasing consumer confidence in the sector. We would be grateful for any support the BSA could provide in developing a voluntary CPD system.

8. Opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.

In 2010 there was a comprehensive review of the performance of the BSA in protecting the interests of building contractors and consumers. A report prepared by KPMG (in 2011) included many sensible reforms which we commend to the Inquiry.

In particular Master Builders supported the emphasis on:

- improving dispute resolution processes;
- maintaining a robust licensing system;
- developing a model for sub-contractor accountability; and
- expanding BCIPA in residential construction.

As flagged previously in this submission, we believe the BSA needs to be tightly focused in its operations. The BSA should not be competing in the marketplace. For example, rather than providing information to builders on industry-related issues such as building practices and apprentices pay rates – which industry bodies such as Master Builders and the Housing Industry Association are well positioned to do – the BSA should upgrade its systems to collect detailed information on the nature of building defects. This would provide groups such as Master Builders and the Housing Industry Association with a basis for targeted industry training.

One of the BSA's strengths in this regard is its network of regional offices. We support maintaining a strong regional presence.

Master Builders has maintained a very constructive relationship with the BSA over many years. We sincerely hope that the Inquiry confirms the need for the BSA to retain strong links to the industry.

Should you wish to discuss the detail of our submission, please call Paul Bidwell, Director – Housing Policy on 07 3225 6420.

Yours sincerely



Graham Cuthbert
Executive Director