



**Civil Contractors Federation  
Queensland Branch**

# **SUBMISSION TO THE INQUIRY INTO THE OPERATION AND PERFORMANCE OF THE QUEENSLAND BUILDING SERVICES AUTHORITY**

**September 2012**

## Introduction

The Civil Contractors Federation's Queensland Branch (CCF QLD) is the industry body representing civil engineering contractors through Queensland. CCF QLD is a state branch operating within a federation that includes branches in every state and territory, as well as a National branch.

Nationally, CCF represents nearly 2, 000 members, who in turn work in an industry of some 350, 000 people. CCF QLD currently represents around 200 civil contractors in Queensland and has an additional 80 associate members.

CCF members are involved in a variety of projects and activities including the development and maintenance of civil infrastructure such as roads, bridges, dams, wharves and commercial and housing land development.

CCF QLD welcomes the opportunity to provide feedback on the Queensland Building Services Authority (QBSA) and applauds the Government's decision to conduct an inquiry at this time as the scope of the previous organisational review, conducted during 2010, was ineffective in addressing the concerns of our members.

## Background

CCF QLD wishes to highlight its concerns over a specific area of the operation of the QBSA, namely the requirement for civil contractors to hold a QBSA licence when performing incidental building work. We held a workshop with some of our members during August 2012 and the QBSA licensing requirements was identified as the most important policy issue affecting members and they have requested that we represent their views on this matter.

The issue arises due to the cross-over of work that can occur between civil construction and building work. These cross-overs create grey areas where it is, difficult to determine whether a QBSA licence is required. Under the current regulations, it is also difficult to successfully apply for the relevant license and impossible to sub-contract the work to a licensed contractor, thereby making the system unworkable. This has created serious unintended consequences for civil contractors.

The requirements are also unnecessary since civil works in Queensland are designed and certified by a RPEQ engineer. RPEQ certification provides a higher standard of oversight than exists within the building industry and should be adequate to ensure quality of civil works.

In response to previous member concerns on the requirements, CCF QLD made a submission in 2010 to the organisation review into the Queensland

Building Services Authority, conducted by KPMG<sup>1</sup>. In their report<sup>2</sup>, KPMG noted CCF's concerns but made no specific recommendations in response. Consequently, no changes have been made, either then or since, to the building licence requirements to address CCF's concerns.

CCF QLD's policy positions and proposed recommendations remain broadly in line with its submission to the KPMG Organisation Review. However, we wish to clarify the issues and reposition our recommendations to reflect our members' experiences over the last two years.

## **Current Issues**

### **Civil Construction Projects Become Building Projects**

Queensland has one of the most onerous licensing regimes in Australia when it comes to building work. In Queensland a licence is required when an individual or company wants to carry out, undertake to carry out or supervise building work valued over \$3,300. In New South Wales no licence is required for commercial building work performed and in Western Australia, a licence is only required for building work valued at over \$20,000.

The requirement for a QBSA licence for all building work over the value of \$3,300 means that many civil construction projects with minor elements of building work effectively become building projects. Civil construction project values are typically in the hundreds of thousands or millions of dollars, so even minor building work within a larger project will easily exceed the \$3,300 threshold and will therefore require a QBSA licence.

Another issue is that current licensing requirements may exempt civil work that is generally performed on public land but include work performed on private land. This appears to be an inconsistent approach. Many civil construction projects involve work that connects public land to private land. This can lead to confusion as it not always clear where public land becomes private land and subjective interpretations need to be made. This then creates a situation whereby a civil contractor could find themselves liable for performing unlicensed building work without being aware of doing so.

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<sup>1</sup> CCF QLD (2010). *CCF Response to KPMG Review of the QBSA*, submitted in September 2010.

<sup>2</sup> KPMG (2011). *Queensland Building Services Authority Organisation Review Project*, released in June 2011.

Below are some examples of civil construction work that requires a QBSA licence either because the building work is over \$3,300 or it involves private land:

- Constructing sewer pipes across public land to a private subdivision ;
- Major road construction that includes bus shelters ;
- Constructing a car park on private land which includes kerbing ; and
- Constructing the water mains to a shopping complex.

In each of these examples, the civil contractor must have a QBSA licence and cannot subcontract the minor building works to a QBSA accredited builder because of the requirement for the Principal Contractor to hold a QBSA licence. In each of the examples listed the QBSA have suggested that a Builder Low Rise licence is the appropriate licence.

### **Builder low rise licences are difficult to access**

A builder low rise licence has been recommended by the QBSA as being the most appropriate licence for civil contractors as it allows the contractor to coordinate all trades.

The application requirements for a builder low rise licence may be reasonable for a contractor that solely performs building work. However, this is not the case for a civil contractor that performs incidental building work on civil construction projects. The requirements for civil contractors are onerous and in many cases those that require licenses find they are ineligible to apply for them.

This licence has the following requirements<sup>3</sup>:

1. Have two to four years of experience in the scope of work for the class of licence
2. Hold the relevant technical qualification
3. Obtain three written references to confirm supervisory experience
4. Demonstrate financial capacity by meeting the financial requirements for licensing
5. Provide additional documentary evidence
6. Payment of an initial licence fee in addition to yearly renewal fees

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<sup>3</sup> See <http://www.bsa.qld.gov.au/BuildersContractors/Applying%20for%20a%20BSA%20licence/Pages/Builders.aspx> for full application requirements.

The experience requirements provide the greatest hurdle for civil contractors attempting to obtain a licence. According to the QBSA website<sup>4</sup>:

*“The experience requirements are the following –*

*a. For a person who has a technical qualification mentioned in one of the licence classes:*

- Bricklaying and Blocklaying*
- Carpentry*

*– 2 years experience in-*

*(i) The scope of work for the class; or*

*(ii) Other work the authority is at least equivalent to experience in the scope of work for the class;*

*b. Otherwise – 4 years experience in-*

*(i) The scope of work for the class; or*

*(ii) Other work the authority is satisfied is at least equivalent to experience in the scope for the class.”*

These requirements can create some absurd realities within the civil construction industry. For example:

- a project manager is unable to represent the principal contractor if the project includes incidental building work without having 4 years experience in the building industry;
- a civil engineer is unable to represent the principal contractor if only a minor part of the project includes building work;
- civil contractors are unable to gain a building licence due to a lack of experience but unable to get more experience by performing building work because they do not have a building licence; and
- the principal contractor is unable to subcontract the building component of the work to a QBSA licensed operator.

The obligations on civil contractors are therefore impossible to meet and ultimately force civil contractors to perform unlicensed building work.

Furthermore, the administrative and financial burden for civil contractors to obtain a building licence, particularly for smaller companies, is not commensurate with the level of building work being performed in such situations.

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<sup>4</sup> See <http://www.bsa.qld.gov.au/builderscontractors/licence%20classes/pages/builderlowrise.aspx>



## Civil contractors are unable to subcontract building work to QBSA licensed contractors

Under the guidelines of the QBSA, it is the responsibility of the principal contractor to hold a building licence. Regardless of the size of the overall project or the size of the building component, the principal contractor must have a QBSA licence.

The QBSA “Fact Sheet – Companies and Licensing”<sup>5</sup> states:

*“In summary, the QBSA Act states that a person (including a company) must not carry out, or undertake to carry out, building work unless they hold a licence of the appropriate class. Under this section a person (including a company) is deemed to have carried out, or undertaken to carry out, building work where they:*

- *Directly or indirectly cause building work to be carried out; or*
- *Provide advisory, administrative, management or supervisory services in relation to building work; or*
- *Enter into a contract or submit a tender for building work, or offer to carry out building work.*

*For example, a company may be taken to have carried out building work if it receives payment, or arranges materials and labour, or prepares plans and specifications, or obtains engineers’ or soil reports, etc. A company which is the principal contractor will be deemed to have carried out building work even where the work is carried out under a subcontract with another licensee.”*

This means that a principal contractor is unable to subcontract work to a QBSA licensed contractor. In a situation where a major road tender includes a small component of building work within it, such as bus shelters, the whole project becomes a building project. We believe this scenario is unreasonable and it will prevent some companies from bidding for projects due to the company lacking a building licence, despite the project being classified mostly as a civil construction project.

## The work of civil contractors is certified by RPEQ engineers

Queensland is currently the only State in Australia with a mandatory registration system for the engineering profession. All engineering work is performed or supervised by a Registered Professional Engineer in Queensland (RPEQ). The *Professional Engineers Act 2002 (Qld)* prohibits persons who are not registered from offering or providing professional engineering services in

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<sup>5</sup> See

<http://www.bsa.qld.gov.au/FormsPublicationsProducts/Factsheets/Contractor/Pages/FactSheets.aspx>

Queensland unless they are supervised by a RPEQ engineer registered in the same area of engineering<sup>6</sup>.

A RPEQ engineer is required to sign off on both the design of civil works and the completed works to ensure that construction was in accordance with the plans and the relevant standards. We understand that the purpose of the QBSA is to ensure proper standards of building work in Queensland. However, we believe that an alternative and adequate system already exists for civil construction work. In fact, it is already deemed sufficient on areas that are regarded as public land and so this endorsement should also apply to minor works on private land.

## Consequences of Non-Compliance

The consequences of inadvertently performing building work without a licence can be extreme, as demonstrated in past court cases. If building work is performed without a licence, either intentionally or inadvertently, civil contractors risk not getting paid by the client for work performed due to a breach of contract<sup>7</sup>. Because the contract is void under the QBSA the contractor is excluded from making a claim under the *Building and Construction Industry Payments Act 2004* and can also be fined \$10,000 by the QBSA for operating without a licence.

In the case of *Cook's Construction PIL v. SFS [2009]*, the impacts of inadvertently carrying out unlicensed building work were more severe, with the unlicensed contractor becoming insolvent as a result of the court preventing any claims for costs incurred for work performed. This was despite section 42(4) of the *Queensland Building Services Authority Act 1991* allowing for reasonable remuneration for carrying out unlicensed building work<sup>8</sup>.

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<sup>6</sup> National Engineering Registration Board, 2011, The Economic Basis for the Case for National Registration of Engineers in Australia (Final Report), available from [http://www.finance.gov.au/publications/coag-future-regulatory-paper/docs/National\\_Registration\\_of\\_Engineers\\_Australia\\_final.pdf](http://www.finance.gov.au/publications/coag-future-regulatory-paper/docs/National_Registration_of_Engineers_Australia_final.pdf)

<sup>7</sup> Refer to the case of *Cant Contracting Pty Ltd v Cassella [2006]*, which determined that payment claims made under the *Building and Construction Industry Payments Act* would be forbidden if any unlicensed building work is performed.

<sup>8</sup> Appeal Justice Keane noted the apparent unjust outcome in this case, stating “concern to avoid an unjust outcome in a particular case should not distort the operation of a statute intended to encourage the licensing of builders by disadvantaging unlicensed builders and advantaging consumers of building services at their expense”.

## Recommendations

CCF QLD is of the view that expanding the exemptions for QBSA licence requirements will address the issues raised and lead to a workable licensing regime for the civil construction industry. We therefore make the following specific recommendations:

### **RECOMMENDATION 1**

That a principal contractor that subcontracts building work to a QBSA licensed subcontractor themselves be exempt from the requirement to hold a building licence.

Many civil construction projects encompass building work activities and so civil contractors are either unable to tender for such projects or can only perform the components of work that are civil construction specific in order to achieve compliance. However it may not be practical for a civil contractor to tender for only part of a project given the added complexity involved in sourcing another party to conduct the building specific components.

In most cases a civil contractor completing a project with a minor component of building work could subcontract that component to a licensed builder, but is prevented in doing so by the current building licence requirements. Given that the work is actually carried out by the subcontractor and the principal contractor will not have expertise in the work being performed, it should be sufficient that the subcontractor is the only licensed party.

Requiring only the party that actually performs the building work to have a licence will ensure there is a demarcation between building work and civil work, which will assist in removing any areas of overlap.

### **RECOMMENDATION 2**

That building work performed as part of a civil contract is made exempt from the requirement to hold a building licence, where the work is designed and certified by a RPEQ engineer.

While there are other exemptions based on type of work performed and the party who performed them, no exemptions exist for work covered by a RPEQ engineer. A rigorous registration process already exists to become a RPEQ engineer. Registered engineers are required to undergo regular continuous professional development and are the subject of a formalised complaints process in the event of complaints about their work. RPEQ engineer sign off on



both the plans and completed work for a civil construction project (inclusive of building work) should be sufficient to guarantee the quality of the work.

### **RECOMMENDATION 3**

That the definition of building work is clarified to clearly exclude civil engineering structures.

Building work is distinct from civil engineering work. Civil engineering structures include bridges, plinths, pylons, revetment walls, retaining walls, kerbs, pump stations, detention tanks and trunk sewers, and water reticulation into private property all of which are designed and certified by an RPEQ engineer. In contrast, building work can be defined as structures that people live, work and play within.

The *Queensland Building Services Authority Act 1991* was designed to protect home owners from “shonky” builders. However, its reach currently goes far beyond this. By providing a clearer definition of what constitutes building work, many of the current grey areas could be eliminated.

## **Conclusion**

CCF QLD has a number of concerns about the impact of QBSA licensing requirements on the civil construction industry. The current licensing arrangements are unworkable for civil contractors who find it hard to determine when a license is required, have difficulty meeting the eligibility requirements of the recommended license type and cannot subcontract the work to a licensed party. This situation exposes members to the serious risk of liability and financial hardship.

This will result in some civil contractors being unwilling to tender for some types of work. For those that do tender, the increased risk (or the actions required to mitigate their risk) results in increased cost which is ultimately built into tender prices. The implementation of the recommendations outlined would reduce the unnecessary regulatory burden on the civil construction industry and would align with the State Government’s commitment to reducing red tape and improving value for money in all tendered work.