

The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
Brisbane Qld 4000

19 Aug. 14

To Whom It May Concern:

**Queensland Building and Construction Commission and Other
Legislation Amendment Bill 2014**

I submit the following concerns regarding the Bill:

Disciplinary Action

The Bill grants additional powers for the QBCC to take disciplinary action against a licensee for non-payment of subcontractors. The Bill in its current form does not define 'non-payment', which makes this power broad and discretionary, with potential for unintended consequences.

Currently, the Building and Construction Industry Payments Act 2004 defines 'nonpayment' and governs related disputes and consequential disciplinary action including demerit points and potential loss of licence. I am of the view that additional disciplinary rights for the Commission are unnecessary: BCIPA is the best place to deal with non-payment issues.

Removal of ability to stop actions of the QBCC:

The Bill places additional constraints on the Queensland Civil and Administrative Tribunal (QCAT) from placing "stays", meaning a temporary stop, on actions by the QBCC. These constraints could lead to negative impacts on fairness and natural justice for both consumers and licensees. For example, if approved in its current form, the Bill would allow the QBCC to process rectification works through the QBCC Home Warranty Insurance Scheme even if the building contractor is trying to appeal the initial direction to rectify through QCAT.

Red Tape Provisions which may result in cash flow difficulties

• *Progress Payments and Certificates of Inspection*

The Bill seeks to make stage inspection certificates from a certifier mandatory and a precondition for progress stage payments. In practice certificates of inspection do not align with stages of progression throughout contractual works. This has the potential to create significant delays in obtaining payment.

• *Foundations data*

The Bill retains significant penalties for contractors who enter into domestic building contracts without obtaining "foundations data". With so much land currently being bought by consumers 'on disclosure' (where 'title' or ownership of the land may not be issued for many months), builders are unable to legally contract with their clients. This places building contractors at a significant commercial disadvantage when attempting to secure works.

• *Extensions of time*

The Bill requires extension of time claims to be signed by Owners in order for the document to be enforceable rather than the current arrangements whereby clients are deemed to have accepted the extension if they do not respond in a given time. This provision creates red tape and potential for unnecessary hold-ups in the construction schedule and can lead to disputes. For example, why would a client agree to an extension when they have caused the delay?



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Impractical requirements within the Bill:

- *Practical Completion*

The definition of practical completion contemplates that practical completion has only been reached when all certificates of inspection have been received. This is a fundamental flaw, as the definition fails to consider the delays in receipt of such certificates, as well as contracting scenarios whereby the homeowner may be responsible for completing a portion of the works which require certification.

- *Consumer Building Guide*

The Bill provides homeowners with the ability to withdraw from a contract at any time if they don't receive the consumer building guide. If the Guide is not given due to an administrative oversight, the consequence is excessively harsh.

- *Defects Liability period*

The defects liability period for minor defects has been extended to two years from the current six months. Considering the scope of issues which may be 'minor defects', a two year defects period is not only excessive but also makes it difficult to distinguish between true defects and homeowner maintenance issues.

I can be contacted on 3366 0088 if you would to discuss my concerns further.

Regards,



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