



ATFA Submission on the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014.

It is acknowledged that the intent of the Bill is to improve the efficiency and effectiveness of the QBCC and we agree that it will go some way to achieving this. However, it is also apparent that the Bill also passes some actions to the regulations, or transfers dispute resolution from the tribunal to the commission. Due to this there are a number of aspects ATFA wishes to raise, mainly in regard to these as well as some other areas which require your further consideration.

Clauses for consideration

Clause 28 amends section 67AW(2)(a) so the number of points allocated to a demerit offence is prescribed under the regulation. The amendment allows for the flexibility to increase the number of points over time to a point where the demerit offence system is highly effective in encouraging compliance with the QBCC Act and curtailing inappropriate behaviour on the part of licensees.

This appears open and as if shifting sand in that the demerit points will change with time to a point of where the commission considers them to be effective. Unless there are adequate controls on this it is considered that such a system could be open to abuse and considered unfairly proportioned. There is also no indication as to whether such increases would be retrospective or not.

Clause 29(1) removes redundant references and replaces references to the tribunal with a reference to the commission, transferring the responsibility for deciding that proper grounds exist for taking disciplinary action against a licensee from the tribunal to the commission.

Here the powers of the tribunal are being divulged to the commission however due processes by the commission in making their decisions is not known?

Clause 30(4) clarifies the intent of the provision. The amendments introduced by clause 30, together with other amendments included in the Bill, will make the demerit offence system more effective in encouraging compliance with the QBCC Act and curtailing inappropriate behaviour on the part of licensees. The new system will allow the commission to remove non-compliant licensees from the industry, providing better safeguards for consumers.

While we are in full agreement that non-complaint licensees should be removed we also have a concern with non-licensed operators undertaking work. Many jobs undertaken by our members are near the \$3300 threshold of requiring a license. Unlicensed operators will undercut at this level of work or undertake the work illegally. Additionally, with QBCC insurance requirements at this level it is severely disadvantaging licensed operators who must add the premium to their quotes and thereby become uncompetitive.

Clause 34 inserts new section 71AC in part 5 of the QBCC Act. New section 71AC is intended to replace sections 73 and 74 of the QBCC Act, which currently provide the relevant framework. The new section provides a new streamlined framework for the commission to seek and accept tenders to carry out rectification work. The section allows the commission to seek a tender for carrying out building work from only 1 licensed contractor if the commission is of the opinion that a person may be entitled to assistance under the statutory insurance scheme and the estimate to rectify the building work is less than \$20000, reducing red tape associated with rectifying such work.

While there is a need to cut red tape, to seek and accept the tender from just one licensed contractor needs to have controls in place and there is no indication as to what such controls may be.

New section 71A (Tenders for rectification work) provides that the Commission may seek tenders for carrying out building work if it is of the opinion that a person may be entitled to assistance under the statutory insurance scheme, and subsection (2) the Commission may accept whatever tender it considers appropriate even if it is not for the lowest cost.

Again with regard to this it is not clear as to what controls are in place when not accepting the lowest tender or on what grounds higher tenders may be accepted.

Clause 39 inserts section 77(1A) under section 77(1). This section states that a person may not apply to the tribunal unless the person has complied with a process 'established by the commission' to attempt to resolve the dispute.

We are aware that the opinions, views and procedures of the QBCC inspectors can vary significantly, and these inspectors will generally be involved with dispute resolution. This clause is enabling the commission to establish its own process, a process of significant importance and we are unaware of what this may entail. We would suggest that the dispute resolution process needs to be consistent not only in process but also between the individuals involved in dispute resolution.

Clause 40 inserts a new section 83 (Proceeding in tribunal does not affect action by commission) enabling the commission to take action in relation to a building dispute even though the dispute has started or is removed from a court to a tribunal. The commission may decide that it can allow or disallow a claim under the statutory insurance scheme.

This requires further clarification as it appears that remedial works can be undertaken, not sure by whom, prior to a tribunal outcome.

New section 25 (Carrying out work with reasonable diligence) provides that when carrying out the subject work, the building contract warrants the work will be carried out with due diligence.

The bill uses the words 'reasonable diligence' and the explanation appears to interpret this as 'due diligence'. These two phrases will mean quite different things to different people and unless there can be some clarification as to what 'reasonable diligence' means then it will be open to interpretation and encourage inconsistent and at times unfair outcomes.

Thank you for the opportunity to provide feedback. We look forward to be availed of the outcomes.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Randy Flierman', with a stylized flourish at the end.

Randy Flierman
CEO