



21st August 2014

The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
Brisbane Qld 4000
Via email: thlgc@parliament.qld.gov.au

Re: Submission in regard to the ***Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 ('Bill')***

Introduction

The following submission is being made on behalf of Heureka Investments Pty Ltd trading as Altec The Spacemakers ('Altec').

Thank you for the opportunity to provide our submission to the Committee. The following views are being made on behalf of Altec, however, we believe that our views are shared amongst our competitors and other similar sized businesses within the construction industry.

We believe that the Bill, if enacted in its current form, will have a detrimental impact on the ongoing commercial viability of Altec. Altec has been operating for over 40 years and over that time has developed a reputation in the market of being a builder that provides a high quality product (& service) to all South-East Queensland householders.

Where possible, we have provided suggested recommendations and have also tried to include facts and evidence to support our views.

In order for the Committee to have some context to our submission we have provided some specific corporate information about Altec in Schedule A. It is our preference that this information remains confidential so we respectfully request that if this submission be presented in the public domain that Schedule A is not published.



Issue No 1: Meaning of Level 1 & 2 Contracts – Ref: S6 & S7 (Page 108)

We cannot find anywhere in the Bill that defines what a “regulated amount” or a “level 2 amount” is. We assume that this definition will be provided in the “Regulations”. We make the point that it is very difficult to provide valued submissions to the Committee if:

- a) Definitions of these key terms are not provided; and
- b) The “Regulations” document is not provided

HIA have advised Altec that their understanding is that indicatively the values are likely to be:

- Regulated amount \$3,300
- Level 2 amount \$12,000

Therefore, any commentary in this submission is based upon the above values.

Recommendation: That the “Regulated amount” be defined as \$12,500 and the “Level 2 amount” be defined as \$20,000

Recommendation: That the proposed “Regulations” are published so submissions can be made along with ensuring that the “Regulations” include definitions of the “Regulated amount” and the “Level 2 amount”.

Issue No 2: Requirements for contract – Ref: S13 & S14 (Page 111 onwards)

We understand that for some businesses these provisions will provide some administration relief from having to provide less information in a “Level 1 Regulated Contract”.

For Altec, we don’t see any advantages as 46% of our contracts exceed a value of \$12,000 (please refer to Schedule A). One obvious option is to have two (2) types of contracts, however, we see this as an administrative burden and could lead to issues of non-compliance. So the very likely outcome will be simply to have one (1) type of contract, ie. a contract that covers all requirements of both Level 1 and Level 2 regulated contracts.

Recommendation: That the “Regulated amount” be defined as \$12,500 and the “Level 2 amount” be defined as \$20,000

Issue No 3: Requirements for contract - Ref: S14(5) (Page 113)

This clause states: *The contract must also contain a provision that states the contractor may not claim payment for the completion of any stated stage of the subject work unless the contractor has given the owner all certificates of inspection relevant for the stage.*

We find this an extremely onerous clause. In Altec's case, we don't have defined stages of work per se, however, on practical completion of the work we obviously seek at that stage Form 21 certification. In our experience certification takes between two to four weeks. Clause 14(5) means that Altec would have to wait in some cases up four weeks before making a final claim – a significant burden on our cash flow.

For other housing builders who carry out contracts that do have defined stages of work we can only imagine that this clause has the potential to have a major impact on their cash flow and also lead to potential delays for the client.

Recommendation: That clause S14(5) and any other relevant clause in the Bill should be removed.

Issue No 4: Deposits – Ref: S33 (Page 126)

We welcome the introduction of clause S33 (1) (c). We assume that since the majority of Altec's work is conducted offsite that this allows us the possibility of seeking a 20% deposit from the client. However, our understanding would be subject to the government regulator's interpretation of this section and how it should be applied.

If the government regulator does not agree with our assumption then S33 (1) (a) and (b) is of concern to Altec.

Currently, we are able to obtain 10% deposit on contracts with a value of less than \$20,000 and 5% deposit on contracts with a value of over \$20,000.

If Altec is not able to rely on S33 (1) (c) and the Bill is enacted then 34% of our contracts would go from requiring a deposit of 10% to only 5% - another burden on our cash flow.

Recommendation: That the "Regulated amount" be defined as \$12,500 and the "Level 2 amount" be defined as \$20,000

Issue No 5: Progress Payments for regulated contracts – Ref: S34 (Page 127)

Relevant excerpts: *(1) The building contractor under a regulated contract must not claim an amount under the contract, other than a deposit, unless the amount—*

(a) is directly related to the progress of carrying out the subject work at the building site; and

(b) is proportionate to the value of the subject work that relates to the claim, or less than that value.

Example for paragraph (b)—The claimed amount is for half of the contract price for a regulated contract, less a 5% deposit, and is demanded after the completion of half of the subject work. .

(2) A regulation may prescribe when an amount is proportionate to the value of subject work under a regulated contract.

*(4) In this section— **building site**, for a regulated contract, does not include a place where the subject work has been, is being, or is to be, carried out if the work is required to later be installed or constructed at another place under the contract.*

In our opinion, this section and its interpretation by the governing body, has the potential to have the biggest impact on the ongoing commercial viability of Altec and other similar sized businesses within the construction industry. We believe that the emphasis in this section is unfairly biased in favour of the client rather than the contractor. Altec fears that its fair and reasonable claims will be determined to be classed as advance payments.

The clause really only caters for construction projects that have a significant on-site labour component. In Altec's case, the on-site component is not at all significant. The nature of Altec's work means that 85% to 90% of the contract value has already been expended prior to the actual installation of the materials at the client's site. The installation cost itself represents only between 10% to 15% of the total value of the contract. Therefore, we would argue that between 85% to 90% of the "proportionate" value of the works should be able to be claimed at the stage when our materials are delivered to the clients site, ie. prior to their installation. Installation for a standard carport/patio would typically take 2 days.

We understand that there needs to be in place in the Act requirements that have a nexus to the potential outcomes arising from potential claims under the Home Warranty Scheme. We believe that mandatory cover should only be in place for construction work with a value in excess of \$20,000 – we understand that this level is similar to the level required in NSW.

We also note that the Bill does not contain a similar clause to S65(3) of the Domestic Building Contracts Act 2000. S65(3) states

Subsection (2) does not apply to a building contractor if—

- (a) the parties to the contract agree the subsection is not to apply; and*
- (b) the agreement is made in the way, and satisfies any requirements, prescribed under a regulation.*

We believe that a similar section should be introduced into the Bill to allow what the governing body deems to be advance payments. We stress that we do not agree with the governing body's current stance that in Altec's case its progress claims are considered to be advance payments.

Recommendation: That the governing body is provided with powers or the ability via appropriate changes to the Bill and/or Regulations to be more flexible in their dealing with contractors to allow them to make fair and reasonable progress claims.

Recommendation: Remove the word "not" from S34(4), ie.

*(4) In this section— **building site**, for a regulated contract, does ~~not~~ include a place where the subject work has been, is being, or is to be, carried out if the work is required to later be installed or constructed at another place under the contract.*

Recommendation: Introduce a new clause into the Bill along the same lines as S65(3) of the Domestic Buildings Contracts Act 2000.

Recommendation: Home Warranty Insurance should only be mandatory for "Level 2 regulated contracts" and Level 2 is defined as a contract with a contract value that exceeds \$20,000

Issue No 6: Cooling Off Period – Ref: S35 (Page 129)

In general we have no real issues with this section. However, in the case of a level 2 regulated contract, Altec would be required to provide the client with the “consumer building guide”. We assume that the “consumer building guide” replaces the current “Contract Information Statement” and point out that we have no visibility of the proposed detailed contents of the “consumer building guide”.

The section appears to allow a client to withdraw from a contract if the Consumer Building Guide has not been presented. We believe this to be harsh and unfair. It seems to imply that there is intent on the contractor’s behalf to deceive the client as opposed to a simple administrative or process oversight on the contractor’s behalf. Is the onus of proof with the client or the contractor?

In discussions with the HIA it is our understanding that the QBCC are insisting that their “consumer building guide” will not be able to be modified in any way (unlike the contract information statement). We do not support this stance by the QBCC as we believe there needs to be some flexibility shown by the governing bodies in their discussions and negotiations with key industry organisations such as the HIA.

Recommendation: That the proposed “Consumer Building Guide” is published or released by the QBCC as soon as possible in draft form so contractors have a good understanding of its likely final contents.

Recommendation: Provide more flexibility in the Code in regard to the client’s ability to withdraw from the contract as a result of the Consumer Building Guide not being presented. Perhaps include a clause along the lines of where the Guide has not been provided the contractor must do so within 5 days of receiving a request in writing from the client.

Recommendation: Allow the use of a version of the “Consumer Building Guide” that has been produced by an industry association (and approved by the governing body).

Recommendation: That the “Regulated amount” be defined as \$12,500 and the “Level 2 amount” be defined as \$20,000

Issue No 7: Altec contracts subject to third party finance

In approximately 25% of all contracts written by Altec our clients take out finance on the outstanding value of the contract after an appropriate deposit has been taken. The outstanding amount on the contract is subsequently paid by the finance company once practical completion has been reached and the client has formally advised the finance company that they are satisfied that the works has been completed as per the conditions of the contract.

Recommendation: That the Code or Regulations in some way recognise that regulated contracts may be subject to third party finance conditions and in that case certain sections of the Bill may not be applicable.



David Jenkins
Chief Financial Officer