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The Research Director
Transport, Housing and Local Government Committee
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MASTER BUILDERS RESPONSE TO THE QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION AND OTHER LEGISLATION AMENDMENT BILL 2014

Thank you for the opportunity to comment on the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 (Bill).

Master Builders is the peak body for housing and construction in Queensland and represents the interest of over 8,500 building-related businesses across the State. The Bill is of significant interest to Master Builders' members and the industry broadly.

While we strongly support the Government's reform agenda for the building and construction industry we have a number of concerns with provisions of the Bill (detailed below). In addition we believe there are a number of relevant issues that are not canvassed in the Bill. We have raised the majority of these concerns direct with the Queensland Building and Construction Commission (QBCC) and discussion is ongoing. We would hope that the outcomes from these very constructive discussions can be considered by the Committee during the course of its deliberations, before the Report is finalized for tabling on 8 October.

Implementing amendments to update and improve the licensing system

We support the changes to the financial requirements for licensing. For example, the doubling of the self-certification categories for trade contractors and entry level builders and the proposal to allow a contractor license to be in effect for 3 years are measures that will reduce red tape and the cost of doing business.

(We have a number of concerns about the proposed qualifications required for difference license classes that we are exploring with the QBCC.)

Introducing an improved demerit point system that includes heavier sanctions for recalcitrant contractors and better protection for consumers

Master Builders supports the Bill's measures to make contracting between parties to a building contract fairer for all involved. Master Builders is however opposed as a matter of principle to heavy handed regulation as a way of ensuring compliance for example, the substantial increase in both demerit and penalty points.

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For example, increasing the number of demerit points for a single audit or investigation have been raised from 6 to 20 demerit points (s.67AZB). The increase is harsh given once a building contractor receives 30 demerit points their license can be cancelled. These increases do not take account of the size of the builders business; it is a one size fits all whether they build two houses a year or 600.

We understand that the QBCC intends to develop a guideline about how the penalties will be applied. This may resolve our concerns.

Nevertheless we believe there are other ways to achieve compliance with regulation and thereby offer protection for consumers namely, the introduction of Continuing Professional Development (CPD). While CPD can lift technical and contractual standards across the industry it also has the potential to bring building contractors together, be a source of support and enable sharing of experiences. All contractors, especially new entrants in the industry would benefit from a CPD scheme.

Expanding the Queensland Home Warranty Scheme to extend coverage, including to new swimming pool construction and manufactured homes, as well as introducing optional additional cover and clarifying the provisions of the scheme to reduce uncertainty and assist with the management of claims

Master Builders supports swimming pools and manufactured homes being included under the Home Warranty Insurance Scheme. However, it is not clear under what circumstances manufactured/prefabricated/modular homes will be covered by Home Warranty Insurance.

In our view sections 67WA and 67WB (1) (d) are not clear. Currently 67WB indicates a modular home is not covered under the statutory insurance scheme.

The supply and installation of a manufactured/prefabricated/modular home should be covered, similar to any other type of home, for the full insurable value.

Master Builders recommends the legislation be amended making it clear that a manufactured/prefabricated/modular home is residential construction work covered under the statutory insurance scheme.

Introducing an early dispute intervention process to allow the QBCC to conciliate/mediate disputes between consumers and contractors at no cost

Master Builders strongly supports this new initiative. We have long advocated that more needs to be done in assisting contractors and owners to better manage disputes particularly those involving payments. If not resolved payment issues can have a catastrophic effect on a building contractor's ability to keep operating their business and impact financially and emotionally on owners.

To date 112 cases have been dealt with under the pilot project which commenced 1 July. Feedback from our members who have been involved in the process has been positive. The

process seems to be working well. Importantly for our members and industry broadly the new process is addressing payment issues.

Repealing the Domestic Building Contracts Act 2000 and introducing a new part into the Queensland Building and Construction Commission Act 1991 (QBCC Act) which details the minimum requirements to be included in domestic building contracts and includes the introduction of Level 1 contracts and Level 2 contracts.

There are a several of significant improvements proposed, in particular introducing 2 levels of contracts which will mean that projects with a value of less than \$20,000 will not be as heavily regulated. However, there are a number amendments in the Bill that we have major concerns with:

- The contract price, or method for calculating it, and any allowances included in the price, must be stated in a prominent position on the first page of the contract schedule. While Master Builders support the intention of giving the owner appropriate notice within the contract on these important matters in practice we question the need and the practicability for having to produce contracts which contain this amount of detailed information on the front page of the contract. We are of the opinion that the current requirements for advising owners of these sort of things is sufficiently catered for under the current provisions and as such these provisions should be retained.

Master Builders recommends the current provisions for notifying and or warning owners on matters such as price increase method and alike should be retained.

- For Level 1 regulated contracts practical completion will require the subject work to be completed without minor defects or omissions (schedule 1B). This dictates the building must be perfect. While all building contractors strive for perfection the reality is given the nature and complexity of some designs, materials and the varying skill level of trades and the best endeavours of these building contractors it is a reality that some minor defects and omissions will occur.

Of course, in these smaller jobs most owners in spite of these defects still enjoy the advantage of having the works completed to practical completion. For these smaller contractors cash flow is critical and small delays of payment can have a huge impact on their business operations.

Master Builders recommends that practical completion definition incorporate the words “minor defects and omissions” as recommended for this definition in Level 2 regulated contracts.

- For Level 2 regulated contracts the definition of practical completion requires that there be no minor defects or omissions unless it was “not practicable” to fix them (schedule 1B). This wording if left unchanged will result in costly and in our opinion unnecessary disputes between the parties arguing about what is “not practicable”.

The inclusion of “not practicable” gives no certainty to either party in deciding if or when practical completion has been reached. The definition in its current form does not assist owners to make an informed decision as to whether or not the building contractor has fulfilled their contractual obligations in reaching practical completion and should now be paid their final progress payment.

Master Builders recommends the words “not practicable” be deleted.

- Both Level 1 and 2 contracts will only have ‘effect’ if they comply with the requirements for a contract as detailed in sections 13 and 14 respectively. This means for both levels of contract if any one requirement is missed the contract in total is treated as never existing. This is too harsh, the consequence being disputes between the parties over payment entitlements.

Master Builders argues that any breach of these contract requirements should not collapse the contract in whole but the breach should be treated on its merit by addressing the effect it has on the disadvantaged party. The effect should be putting them back to where they would have been had the breach not occurred.

Master Builders recommends that ss.13(5) and 14(5) be deleted from the requirements for contracts.

- The warranty period for non-structural defects is increased from 7 months to 2 years and 6 months (s.29 (1)&(2) schedule B). This provision extends the builders’ liability significantly to cover what primarily amounts to owner maintenance issues. There is no data or evidence demonstrating that building standards for non-structural items have been a major concern for consumers.

Master Builders does not support increasing the warranty period for non-structural defects to two years and 6 months.

- The limit of 5% deposit in relation to a Level 2 contract needs to be raised to 7.5% of the contract price (s.33). In the 14 years since the *Domestic Building Contracts Act* was introduced there has been a substantial increase in both the cost and variety of activities performed at the preconstruction stage. For example, building contractors are now required to have their house designs assessed for energy efficiency; there are additional regulatory requirements for health and safety (site safety plans); and a training levy.

In addition to these activities there are other costs such as building approvals, local government searches, preparation of contract documents, insurance, insurances, wages, commissions and overhead costs. And yet the same 5% is still expected to cover all these additional activities and associated costs in 2014. Maintaining their cash flow levels is paramount.

Master Builders recommends that the initial deposit in regards to a Level 2 contract be raised to 7.5% of the contract price.

- The proposed amendments tie a building contractor's progress payment entitlements to providing the owner with certificates of inspection relevant for a stage (schedule 1B). In broad terms, Master Builders supports the basic proportion that progress claims should be proportionate to the progress of the works and accompanied with relevant certificates where appropriate.

However, we believe that no matter what stages are nominated in a contract there will most likely be a disconnect between the Building Act and the stages nominated in a contract. The responsibility for giving the owner any certificates should be limited in the first instance to the building contractors' scope of work as detailed under the contract.

We are also concerned that the amendments do not require the building certifier to have to issue a copy of their inspection certificate within a nominated timeframe.

- The building contractor must not start to carry out any domestic building work the subject of a variation before the owner agrees to the variation in writing (s.40). A contravention of any of the variation requirements has a maximum penalty of 20 penalty units. The penalty for a company is 100 penalty units. In our opinion these penalty units seem excessive particular for what amounts to in most instances an administrative over-sight by the builder's staff or if the owner will not sign the variation documents.

For example, there are times when owners request a variation but for reasons best known to them they will not sign a variation agreement no matter how hard a building contractor tries to get them to comply with these legislative requirements. In these circumstances where a building contractor can demonstrate that they have made all reasonable effort to try to get an owner to sign a variation form but have not succeed then they ought not to be prosecuted.

Furthermore, the building contractor should not be prevented from claiming an extension of time in respect of the variation.

Master Builders recommends that a building contractor who commences a variation without the owner signing the form because of the owner's refusal to do so should not be penalised and if required should be able to lodge an extension of time claim for the variation.

- An owner has to agree in writing to a building contractors extensions of time claim before the building contractor is entitled to an extension of time (s.42(2)). Master Builders does not support this deeming provision which allows the owner to unilaterally decide whether the building contractor is entitled to an extension of time.

Furthermore we are concerned the amendments are silent on what happens should the owner refuse to sign the extension of time claim. In fact under this amendment the owner can completely ignore the claim without suffering any consequences. Any lack of proper communication to the other party should not be encouraged by legislation no matter who the party.

If the owner will not sign or reasonably believes the building contractor is not entitled to a claim then they should be required to advise the building contractor in writing of their decision. If the owner disputes or rejects the building contractor's claim the building contractor should still be entitled to a fair and reasonable extension of time of the date of practical completion until such time until decided otherwise.

Master Builders recommends that the owners deeming provision for refusal of an extension of time claim be removed and the building contractor's entitlement to a claim for an extension of time remain until decided otherwise.

- Construction Management (CM) is a non-standard method of contract delivery of a project for the domestic market which has its own complexities in the contractual relationship between the parties particularly in the administration of the multiple trade contracts (s.68(B)(C)). Both the QBCC and Master Builders have experienced difficulties in creating a compliant CM contract.

Not surprisingly there is also a severe lack of understanding by the industry of the concepts behind CM. Further work on the CM is needed to minimise confusion over interpretation and implementation of CM before the CM becomes a contract delivery method for domestic building contracts.

Master Builders recommends more industry consultation is needed so the complexities of the contractual relationships and issues associated with the statutory insurance premiums can be further assessed.

- If the value of the residential construction works increases during the course of the contract the building contractor must pay an additional insurance premium before the work commences [s.70(2)].

Master Builders argues that the requirement is unnecessary and adds another layer of administrative burden on the building contractor. It would be more appropriate to allow the building contractor to pay an additional premium based on the combined totals of all variations prior to them submitting their final invoice at practical completion. In addition in the interest of business efficiency a premium not be required to be paid until the total of all variations exceed \$5,000.

Residential owners have a reputation for making numerous changes to the specifications throughout the course of a contract. The amendments require the building contractor to halt the works to get both a signed variation and pay the insurance premium. We have no issue with getting the variation in writing subject to the owner agreeing to sign the variation form. However, the variation could simply be for an additional light switch to be installed at a cost of \$120 thus requiring an additional premium. This situation could occur numerous times throughout the course of the construction requiring the building contractor on each separate occasion to not proceed with the works until such time as the insurance premium is paid. This is not conducive to a building contractor trying to administer an efficient business.

Delays cost building contractors money. In these cases the building contractor never recovers the full costs.

Master Builders recommends that until the sum of all variations exceed \$5000 no additional insurance premium should be paid however if the amount exceeds \$5000 the premium should be paid by the building contractor prior to invoicing for the practical completion payment.

In addition to the above, there are other operational issues that we believe should be included in the legislative reform, which we are raising with the QBCC (including stays by QCAT on QBCC's decisions and caveat claims on residential owners.

Please feel free to contact Paul Bidwell on 3225 6420 to discuss any aspect of this submission. Master Builders looks forward to participating further in this process.

Yours sincerely



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