

REVIEW OF THE QUEENSLAND  
BUILDING AND CONSTRUCTION  
COMMISSION ACT 1991 (QLD)

**SUBMISSION**

AUGUST 2014



**CIVIL CONTRACTORS  
FEDERATION**

## ABOUT THE CIVIL CONTRACTORS FEDERATION

The Civil Contractors Federation (CCF) is the peak industry body representing Australia's civil construction industry. It has branches in all states and territories and around 1600 contractor and associate members nationally.

CCF members are responsible for the construction and maintenance of Australia's infrastructure, including roads, bridges, pipelines, drainage, ports and utilities. Its members also play a vital role in the residential and commercial building construction industry by providing earthmoving and land development services including the provision of power, water, communications and gas.

CCF is an organisation registered under the *Fair Work (Registered Organisations) Act 2009*. It is governed by a National Board comprised of member-elected representatives from each state and territory.

A commitment to furthering its members' interests and helping them manage their businesses more effectively is at the core of CCF's operations. To that end, it offers effective business tools and management systems, as well as practical advice in areas such as taxation, industrial relations, workplace health and safety, human resources and environmental compliance.

CCF's mission is to be the voice of the industry and to provide a high level of benefit to its members. In particular, CCF is focused on ensuring the industry:

- **is professionally represented** - by representing and advocating for the views of the industry to all levels of government in a timely and effective manner.
- **is informed** - by delivering to members, effective and timely information about key issues.
- **has access to tools and resources that help businesses succeed** - by identifying, developing and delivering tools and resources that assist members in their day-to-day operations.
- **has access to high quality training** - by delivering best practice, training by the industry, for the industry.
- **has access to opportunities to network, learn and celebrate their achievements** - by delivering a range of events designed to provide members with opportunities to build relationships, be informed and have access to people of influence.
- **has access to supporting partners that extend the benefits of membership** - by developing networks and relationships with organisations that can provide additional services to members beyond those provided directly by CCF; delivering real cost savings to members.

## I. BACKGROUND

In 2013 the Civil Contractors Federation Queensland Branch made representations to the Queensland Government which resulted in the amendments, which came into force on 1 December 2013, to section 42 of the *Queensland Building & Construction Commission Act 1991* (Qld) (QBCC Act),

CCF's submissions focused predominantly on:

- (a) what structures comprised "building work" under the QBCC Act;
- (b) the extent to which a building licence under the QBCC Act was required by civil contractors in Queensland, where a portion of the contracted works were building works (as defined in that Act);
- (c) ensuring civil contractors were not prevented from utilising the *Building and Construction Industry's Payment Act 2004* (Qld) (BCIPA) because of technical arguments associated with whether certain works were, or were not building works.

The impact of the above issues had become clearly evident following the Supreme Court decision of *Ooralea Developments Pty Ltd –v- Civil Contractors Australia Pty Ltd* where building works were found to include certain roadworks and plumbing and drainage works in a proposed residential estate. Such works historically have not been considered building work and this interpretation resulted in the contractor being found to be unlicensed, exposed to being penalised under the QBCC Act and also unable to claim under BCIPA.

Many civil contractors do not hold a building licence under the QBCC legislation.

## 2. AMENDMENTS MADE ON 1 DECEMBER 2013

The amendments on 1 December 2013 went some way to overcoming the issues faced by civil contractors, particularly in respect to the construction of structures which usually form part of civil works. In particular, the following is now excluded from 'building work':

- (a) By section 14 of Schedule 1A to the *Queensland Building & Construction Commission Regulation 2003 (Qld)* (QBCC Regulation), the construction maintenance or repair of a road or tunnel for a road;
- (b) work on bikeways or footpaths, or a tunnel for a bikeway or footpath is not (section 15 of QBCC Regulation, Schedule 1A);
- (c) work in respect to the construction repair or replacement of water reticulation system, sewerage system or stormwater drain other than those works connecting a particular building to a main or drain (section 12 of QBCC Regulation, Schedule 1A).

Further, regarding unlicensed contracting, specific amendments were made to section 42 of the QBCC Act to insert a new subsection 42(2) which states:

'(2) However, subsection (1) does not apply to a person to the extent that the person is exempt under Schedule 1A.'

## 3. INDUSTRY'S POTENTIAL MISUNDERSTANDING OF NEW SECTION 8, SCHEDULE 1A AND ITS POSSIBLE UNINTENDED CONSEQUENCES

The specific clause in Schedule 1A which is relevant to civil contractors in the conduct of their business is section 8, headed "*Head Contracts to carry out Building Works*".

The QBCC has formed a view as to the effect of section 8 (discussed below) which on a strict interpretation of that section, is arguably correct.

However, that interpretation does not in our view achieve the outcomes discussed in 2013 and may result in:

- (a) increased red tape;
- (b) increased and unnecessary costs associated with licensing (despite the usual small component of building work involved); and
- (c) most civil contractors being prevented from utilising BCIPA.

## 4. WHAT DOES SECTION 8, SCHEDULE 1A ACHIEVE?

It was broadly believed pre-amendment of the QBCC Act (and widely published to the industry post amendment) that Section 8 relieved civil contractors from being required to have a QBCC licence, if a civil contractor subcontracted the whole of the building works to one or more licensed subcontractors.

The better view is that Section 8 does not achieve this outcome.

In essence, what the amendment achieves is as follows:

- (a) a head contractor or development manager, which on behalf of a client or an associated entity, contracts the whole of the construction works (including any building work) to a licenced contractor, is not guilty of unlicensed contracting despite having agreed to carry out building work
- (b) the head contractor or development manager cannot separately engage different contractors to perform parts of the work as in those circumstances, it is completing building work services (within the meaning of that term in the QBCC Act) and therefore carrying out building works in breach of section 42(1) QBCC Act; and
- (c) an unlicensed contractor, who subcontracts part of the works which require a licence to a subcontractor, continues to perform unlicensed building work and breaches section 42(1) of the QBCC Act, as it continues to perform building works services in managing the subcontractor to which the works are subcontracted.

## 5. PRACTICALITIES OF AMENDMENTS FOR CIVIL CONTRACTORS

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5.1 The practical implications for the civil contracting industry are as follows:

- (a) To the extent that any component of the civil contract relates to building works, whether that component is completed by the civil contractor or by a licenced subcontractor, the civil contractor will be required to hold a licence;
- (b) The civil contractor will be obliged to comply with the technical and financial requirements of licensing. In this regard it ought be noted that:
  - (i) When determining the annual allowable turnover for that licence, regard will be had to all the works completed by the civil contractor, irrespective of how much of those works comprise building work – this assessment has a significant "flow on" impact to the other financial requirements; and
  - (ii) Additional costs are usually associated with engaging a licensed contractor as the company's nominee/supervisor.

5.2 The scenario envisaged by Section 8, where a civil contractor wholly subcontracts all the works under a civil contract (not just the building work) to a licenced third party, never in practice arises.

5.3 Even if that scenario did arise, the civil contractor adds no value to the process unless it performs building work services (contract administration and supervision etc) and consequently will ultimately be found to have been contracting while unlicensed in any case.

## 6. PROPOSAL

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It is rare that any civil contracting works does not result in the construction of some structure, example plant rooms and retaining walls, which are clearly building work for the purposes of the QBCC Act.

The above amendments go some way to giving broader industry protection for developers and development managers but do not in a practical sense, give any relief to civil contractors.

We propose the following alternatives for addressing the above issues:

- (a) Create a definition of 'civil contractor' and define specifically the activities which that type of contractor might complete without the need to have a building licence;

- (b) Schedule 1A of the QBCC Act be amended to confirm that where a contract is predominantly for works exempted from the term "building work" under the Regulation Schedule 1AA, the contractor does not breach section 42(1) if it subcontracts building work to a licensed subcontractor;
- (c) Schedule 1A of the QBCC Act be amended to clarify that carrying out "*building work services*" for such subcontracted work does not contravene section 42(1);
- (d) As an extension or alternative to (c), amendment be made so that "*building work services*" can be carried out provided the fee payable does not exceed a prescribed amount;
- (e) The above only apply in the commercial setting and the distinction contained in the current section 8 of Schedule 1A (regarding residential construction work and domestic building work), be maintained.
- (f) Define 'car park' under Schedule 1AA of the Regulation and exclude from building work.

Civil contractors will then be responsible for ensuring strict compliance with the licencing requirements and to the extent they fail to ensure that all building work is properly subcontracted to a licenced contractor, will bear the appropriate consequences under the legislation.

We value the opportunity to discuss this proposal with you further.



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