# *TRANSPORT AND RESOURCES COMMITTEE*

**Members present:**
Mr SR King MP—Chair
Mr JR Martin MP
Mr LL Millar MP
Mr LA Walker MP
Mr TJ Watts MP (virtual)
Mr PT Weir MP

**Staff present:**
Ms D Jeffrey—Committee Secretary
Mr Z Dadic—Assistant Committee Secretary

## PUBLIC HEARING—INQUIRY INTO THE BUILDING AND OTHER LEGISLATION AMENDMENT BILL 2022

### TRANSCRIPT OF PROCEEDINGS

**TUESDAY, 26 APRIL 2022**

**Brisbane**

# TUESDAY, 26 APRIL 2022

**The committee met at 9.29 am.**

**CHAIR:** Good morning. I now declare open this public hearing for the committee's inquiry into the Building and Other Legislation Amendment Bill 2022. Thank you for your interest and attendance here today. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

My name is Shane King. I am the member for Kurwongbah and chair of the committee. With me here today are: Lachlan Miller MP, the member for Gregory and deputy chair; James Martin MP, the member for Stretton; Les Walker MP, the member for Mundingburra; Trevor Watts MP, the member for Toowoomba North, who is joining us via videoconference; and Pat Weir MP, the member for Condamine.

On Tuesday, 29 March 2022, the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement introduced the Building and Other Legislation Amendment Bill 2022. The purpose of today's hearing is to assist the committee with its consideration of the bill. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee. The committee will not require evidence to be given under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses so we will take those as read.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed by media during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode. I also ask that responses to questions taken on notice today are provided to the committee by 4 pm on Tuesday, 3 May 2022.

The program of witnesses for today is as follows: from 9.30 am to 10.15 am we will hear from the Strata Community Association (Qld); from 10.20 am to 10.50 am we will hear from the Master Plumbers' Association of Queensland; from 10.55 am to 11.25 am we will hear from Master Electricians Australia and the National Electrical and Communication Association; and from 11.30 am to 12.15 pm we will hear from the Queensland Law Society, Wood L&M Solutions and Clinton Mohr Lawyers.

## MARLOW, Mr Kristian, Policy Officer, Strata Community Association (Qld)

**CHAIR:** I now welcome the representative from the Strata Community Association. Thanks for your submission and for your attendance here today. Would you like to make a short opening statement?

**Mr Marlow:** Yes, thank you. Strata Community Association (Qld) is the peak body for Queensland's body corporate and strata title sector—a large and growing industry affecting the 1.2 million Queenslanders who live, work and play in strata title properties. Queensland's strata sector is comprised of over 50,000 schemes and over 500,000 individual lots including duplexes, townhouses, villas, high-rises, suburb sixpacks, short-term holiday letting, hotels and commercial complexes. SCA (Qld) represents strata managers, community title schemes with committee members acting as nominees, lot owners as individuals and service providers to the strata industry including specialist insurers, painting suppliers, energy suppliers, solicitors, accountants, water and plumbing providers, banks, elevator maintenance professionals, cleaning providers, surveyors, valuers, glaziers, IT providers and pool servicing and maintenance providers. This is the full breadth of the strata industry. The strata sector significantly underpins the tourism and property development industries. Increasingly, high-density housing as part of a body corporate is going to be the norm for property owners, investors and tenants in Queensland.

Our interest in this bill is twofold. Obviously, combustible cladding is a serious safety issue for our sector. Coupled with that is the reaffirming of the policy intent of the so-called 'ban the banners' provision. The proposed amendments to sections 246O, 246Q and 246S will provide greater clarity around the limited circumstances in which the installation of solar energy devices may be prohibited. This is welcome.

Strata Community Association (Qld) has also worked in close collaboration with the Department of Energy and Public Works over a period of several years to help identify and warn residents of buildings with combustible cladding. We have sought to keep industry abreast of the issues and make compliance easier for schemes. We hope this proposed shift also helps achieve these goals.

The proposed change around cladding helps reduce bureaucracy and will ensure that any recalcitrant buildings that are failing to comply with the provisions as they stand are punished appropriately with greater ease. Defaulting enforcement to the Queensland Building and Construction Commission is a sensible change, particularly given feedback indicates that councils are not appropriately resourced on the whole to conduct this enforcement. Thank you, and I welcome any questions.

**CHAIR:** Thank you very much for your opening statement. Does the Strata Community Association have any details on how many disputes have occurred between owners wishing to install solar panels and body corporate by-laws that have prevented the desired placement of them?

**Mr Marlow:** I do not have data on that discrete issue. I can tell you that body corporate disputes have increased quite substantially over the past seven years or so without any increased resourcing to the office of the body corporate commissioner. We believe that this may cause a few issues in a few discrete schemes.

One of the considerations that I would put to the committee is that the way the provisions are worded is that if there is insufficient space on the roof or external surface for a solar hot-water system or photovoltaic cells to be installed by the owners of the lot in each building then any given owner can be prohibited from installing solar. In a high-rise building, or a class 2 building to be more specific, this could be quite problematic given that there is unlikely to be sufficient external space in a building like that for every single owner to be able to install solar. If that is the intent, we would urge the committee to encourage the government, following the passage of the legislation, to put out community education materials around this so we do not see a rise in disputes.

**CHAIR:** I imagine that if you are in high-rise building the external wall of your unit may not be conducive to solar panels. I understand what you are saying there. Is there no data on the number of disputes around this from your perspective?

**Mr Marlow:** There is no data about the specific class of dispute. Every quarter the office of the body corporate commissioner releases what the disputes are over, but they are in fairly broad categories. I cannot see it being a huge issue. Obviously, we believe our sector has significant advantages in terms of the implementation of sustainability measures because of the ability to scale. We wanted to make sure that the committee was broadly aware of the potential issue and that if there were community education around that then disputes may not arise.

**Mr MILLAR:** The submission of the Strata Community Association (Qld) comments on cladding issues. It refers to recalcitrant buildings. Are you able to expand on this and advise the committee of what problems your organisation is aware of with affected buildings?

**Mr Marlow:** The issues with affected buildings are quite extensive. Most buildings have done their best to comply. There were issues early on in the program with agencies for body corporate managers. We worked quite cohesively with the government to ensure that some deadlines for compliance were extended. Overall, we would just like to see the cladding off buildings. We think the biggest issue is to simply get it off. This enforcement provision is good. It reduces a bit of bureaucracy.

The QBCC is the cop on the beat, so to speak, in the Queensland construction industry. We think it is most appropriate that it has the power to enforce this. The data around the cladding provisions has been quite murky. The fears around arson and safety have meant that identified buildings have not necessarily been made public. It is very hard to get specific data or to talk about specific buildings. It is all anecdotal feedback. We understand the reasons for that.

**Mr MILLAR:** Do you have any idea of how many are in this category?

**Mr Marlow:** That have combustible cladding on them?

**Mr MILLAR:** Yes.

**Mr Marlow:** No, I do not have a number. That is quite deliberate because of the fear of arson or insurance issues. I am led to believe from our meetings with the department that it is quite a substantial number.

**Mr WATTS:** If someone in a building has exclusive rights to the roof, would this mean that others could stop them putting solar panels on the roof?

**Mr Marlow:** When you say 'exclusive rights', I presume you mean something like a penthouse owner who has access to the roof?

**Mr WATTS:** Yes.

**Mr Marlow:** I would imagine that it probably does in this context. If the body corporate passes a by-law for whatever reason—in that context I do not see why they would bother passing a by-law, but people can be funny and strata can bring out all sorts of characters. Theoretically, you could pass a by-law to ban the installation of solar on the basis that everyone cannot install solar. It is those specific class 2 buildings that we are talking about—high-rises.

**Mr WATTS:** Do you think that should be dealt with better in the framework?

**Mr Marlow:** If this is the intent of the bill then we think education needs to accompany it. High-rises can do other things to become more sustainable. They can integrate networks and things like that. There is scope for them to do other things to reduce their energy bills. I would say that there needs to be a specific education campaign to ensure this does not potentially become a source of acrimony.

**Mr WATTS:** If the body corporate has a shared electricity supply for lifts and things like that, if the body corporate wanted to put on solar panels to help mitigate those joint costs, would it mean that one person could then say, 'I do not agree to that,' and everybody else would have to follow?

**Mr Marlow:** In that instance the body corporate would have to resolve to spend. Given that that would be a common property asset, my view would be that that issue would not arise, but it is very hard to say. The way the provisions are drafted, I believe that could potentially be an issue.

**Mr WATTS:** For me it is about trying to remove as many potential issues as possible as we go through this process. That brings me to my second issue around cladding. You said, for various reasons, that the information is not out there due to the threat, insurance and things like that. If your organisation is not keeping the data, who is keeping the data and who is making sure that we are moving forward at an acceptable pace with fixing this issue?

**Mr Marlow:** The QBCC is the administrator of what is called the checklist. Buildings that have been identified have had various stages of compliance. The QBCC keeps that data. The view is that, because of the risk to human life and particularly the potential for arson, it is best that these buildings are not identified on a public register. All buildings are required to display an affected building notice in the foyer so a person walking into that building knows if the fire alarm does go off to get out quick smart. There is no list of buildings publicly available. The QBCC has it. In terms of the pace, the sooner the cladding is off these buildings the better. I think safety first is something we can all understand, and that is our view on this matter.

**Mr MILLAR:** It is not about having the list out there and having it public, but is the QBCC moving quickly enough to be able to resolve this issue?

**Mr Marlow:** The sooner the cladding gets off the buildings the better. We believe they are committed to getting it off as soon as possible. Other states have moved to get it off. Victoria has put $600 million on the table. The ACT has just announced a program. I cannot speak to how those processes are going to run. I do not have that information, but the sooner the better. This is a risk to human life. I hate to repeat myself, but safety first is something we can all understand.

**Mr MILLAR:** Does the Strata Community Association believe there is enough funding at QBCC to be able to deal with this problem? Do we need more funding? Do we need to follow Victoria?

**CHAIR:** The member is seeking an opinion and what you believe. If you have some facts around that, that is fine.

**Mr Marlow:** I will speak to what Victoria is doing. They have a 10-step process on the table—$600 million. The ACT has a kind of combined program where you can get finance and there is a rebate. I would just like to see it off the buildings. I do not have necessarily an opinion on how much funding. Like I said, Victoria has put $600 million on the table.

**Mr WATTS:** The issue for me is that QBCC has a list. I am not suggesting that list should be public, but it would be interesting to know what percentage have been fixed from the original number and at what speed we are going. Would you agree that that would be a good idea?

**Mr Marlow:** I would certainly like to see rectification. Because of the way the legislation works in Queensland, it is very difficult for bodies corporate to borrow. Most schemes are regulated under what is called the standard module. To borrow above a very minimal threshold—as of today it is $500 but it will revert to, I believe, $250 on 30 April, when the COVID provisions expire—you require a resolution without dissent. That means no votes against. That is very hard to do, particularly given that rectification work can be quite expensive. You would be looking at quite substantial sums. In a given body corporate, I am sure there is someone who is willing to penny-pinch, even over an issue like combustible cladding.

**Mr WALKER:** The member for Toowoomba North was talking about the common areas of these body corporate apartments and units. There is an expectation from the community that we are getting into the green energy space and reduced costs, especially those who live in body corporate scenarios. Some of those are tenants. The common areas should be used for solar where it brings down the energy costs for property owners. What is your association's position on making sure these common areas are used?

**Mr Marlow:** We believe in devolving as much power as possible to bodies corporate. We are in the midst of a reform process. The Attorney-General has set up a working group. Broadly speaking, we think bodies corporate should be able to function as, theoretically, almost a fourth tier of governance, like council. We would encourage allowing flexibilities to ensure that can happen. I do not think that necessarily is dealt with in this bill.

**Mr WEIR:** With regard to cladding, earlier you mentioned insurance. How does that affect those that still have cladding? It must have a significant impact on their insurance.

**Mr Marlow:** Yes, absolutely. It is a huge risk and insurers price for risk, so it will increase their premium. Rectification will save those residents, tenants and lot owners money in the medium and long term—absolutely. As I keep saying, we just need to get this stuff off.

**CHAIR:** You talked about the education campaign in terms of solar. In what format would your organisation like to see that?

**Mr Marlow:** The Office of the Commissioner for Body Corporate and Community Management is a world-leading resource. There is only one body corporate tsar in the world and it is right here in Queensland. It needs sufficient resourcing to be able to get out there and be proactive. In bodies corporate, prevention is better than cure. A lot of disputes arise because people are not educated appropriately on their rights and obligations. We would like to see a growth in the resourcing of that office so it can engage in proactive education and ensure that people understand their obligations with community living, because this is going to be become an increasingly common means of existing.

**CHAIR:** An education program back through the body corporate network?

**Mr Marlow:** Yes, absolutely.

**Mr MILLAR:** Does the Strata Community Association (Qld) have a policy on how we can go forward on removing cladding from buildings? Do you have a straight-down-the-line policy of how to improve it? What would the association be looking for?

**Mr Marlow:** We would be looking for as much government funding and as much involvement from the government as possible, working with the government on the program. I am of the understanding that the passage of this bill will be the next step and that the next program to come out will be looking at consultation for methods of rectification, whether that is a scheme like the ACT or Victoria—any scheme that ensures we get this stuff off as soon as possible. I would not necessarily urge policymakers to cut and paste from one of the jurisdictions I have mentioned without consulting with Queensland industry, but it is important that we work to get everyone living in these buildings 100 per cent safe as quickly as possible.

**Mr MILLAR:** Is there a blueprint from the Strata Community Association on this issue? Do you have a strong policy on this issue of how to move it forward?

**Mr Marlow:** We take our feedback from the department. We work with the department. We do not presume to have all the answers. This is a technical issue; this is a complex issue. We just want to work with the best experts to get best practice. There are a few ways to do it. We could look at financing and ensuring bodies corporate can perhaps borrow specifically for this program. It would be great if the government could stump up the cash to ensure it got everything off as soon as possible. I would not presume to have a silver bullet, so to speak. We are committed to working with the government, and industry will need to be involved as well.

**CHAIR:** Is there any federal oversight of this? You mentioned the ACT and Melbourne. Is there any federal movement to bring it all together? I understand that each jurisdiction has its own individual problems.

**Mr Marlow:** A couple of years ago the building ministers forum passed a resolution, or it was in a communique, that the states and territories would retain jurisdiction over building defects. I think combustible cladding is a fairly significant building defect in the eyes of everyone. The answer is no.

**Mr WEIR:** On the installation of solar, how does that usually work? Is that for the use of the building, for generation into the grid or for the recharging of electric vehicles? How does that all play out?

**Mr Marlow:** I suppose there are a variety of ways. It would depend on the type of scheme. If you are looking at a townhouse scheme, it would be not dissimilar from installing solar on a detached house: you would get a technician out and put it on your roof. The issue, of course, was that people were able to say, basically, 'Let's pass a by-law and ban that because we think solar looks ugly on people's roofs.' In terms of the sustainability measures you are talking about generally, we think strata has significant advantages over detached housing—the ability to scale up, the ability to integrate. We still think the government should be working to promote strata as an option, given its advantages in this space. Urban sprawl cannot go on forever. I know it is a quite deliberate policy of government in at least South-East Queensland to have most development in existing urban areas, but we think sustainability, broadly speaking, is really helped by strata.

**CHAIR:** Thank you very much for your participation in today's hearing. You will be provided with a copy of the transcript of the proceedings when it is available.

**Proceedings suspended from 9.53 am to 10.20 am.**

**K**RETSCHMER, Mr Ernie, Deputy Executive Director, Master Plumbers' Association of Queensland

**CHAIR:** Thank you for your submission and your attendance here today. Would you like to make a short opening statement?

**Mr Kretschmer:** Thank you very much. Plumbers are highly skilled, extensively trained and highly regulated professionals and one of the key contributors to the health and wellbeing of the community. There is an old adage that the difference between bad electrical work and bad plumbing work is that bad electrical work will kill you quickly and bad plumbing work will kill you slowly.

Today I am addressing you and proposing slight changes to the legislation that will bolster licensing requirements for the plumbing industry. Currently, builders are able to employ plumbers directly and then contract for plumbing and drainage work under their builder's contracting licence, whereas a plumber who does not hold the equivalent occupational licence to an employee can be fined for directing or supervising them and not being appropriately or equivalently licensed. Obviously, we see this as a major contradiction in the legislation that we seek to have changed.

Additionally, the QBCC Act and regulation deem fire protection and mechanical services work as somewhat of a higher risk than other classes of work and are therefore protected in this space by requiring those licensees to actually contract and perform that work. As all water based fire and a lot of mechanical work also falls under the scope of work for plumbing, we seek to have this changed and plumbing and drainage protected in a similar manner. We do not see the changes we propose as being difficult or onerous and they do not impose any hardship on any of the other trades.

Separate to this, there are several other matters that do not fall under this bill that I would be more than happy to discuss with any interested members at any time after today.

**Mr MILLAR:** I would be interested to know what changes you want. What are some of the concerns you have with the bill before the committee?

**Mr Kretschmer:** Currently a builder is not required to hold a plumbing and drainage contractor's licence to contract for plumbing and drainage. They can employ the plumber to do the work. The flip side to that is: if I as a plumber do not hold the same licence as my employee, I can be fined for directing them or supervising them because I do not hold an equivalent licence. In that case, obviously the builder does not hold the equivalent licence. We suggest that should not be the case.

**Mr MILLAR:** This is in the legislation before us, is it?

**Mr Kretschmer:** Correct.

**Mr MILLAR:** What does it stipulate in the legislation?

**Mr Kretschmer:** I have given you an example in our submission. We have pulled it out of the Queensland Building and Construction Commission Regulation 2018, 'Builder—medium rise'. Where a builder is able to perform non-structural work they are not licensed to perform, they can have an alternative trade perform that. Under that same clause, I have given you examples where fire protection and mechanical work are excluded from that.

**Mr MILLAR:** What impact does this have on the members of your association?

**Mr Kretschmer:** There are plumbers out there who are running their own businesses contracting and competing with builders who do not have a contractor's licence to perform plumbing and drainage work.

**Mr MILLAR:** Is that a lot of your members?

**Mr Kretschmer:** It would be a proportion of them, yes. I could not give you an actual figure off the top of my head.

**Mr MILLAR:** What do we need to do to fix it?

**Mr Kretschmer:** Fix it so that plumbers and drainers perform plumbing and drainage work or contract for such.

**Mr MILLAR:** I am asking these questions so I have it on the record.

**CHAIR:** I have an anecdote about that but I will not go into it. You are directed to do something that you know is unsafe by someone who does not have your trade and they threaten your job if you do not do it, but if you do it you lose your job anyway. Being a licensed electrician, I understand your concerns.

**Mr MARTIN:** In relation to loopholes, can you expand on what you were saying before? Do you think it is the situation that builders who do not have a licence are using that as an advantage over others who do? Is there a loophole there?

**Mr Kretschmer:** I am not sure if it is a loophole or if it was preconceived that the open builder or the builder sits up here whereas the subtrades sit down here, which is normally the case anyway. We do not have any problem with a plumber or electrician or someone subcontracting to a builder—that is fine. We are talking about builders technically supervising plumbing work, whereas I, with a contractor's licence, cannot supervise someone with a different licence to myself even in the same trade. We do not disagree with that. It is mainly clearing that up. You are having non-experienced or non-qualified people supervising or directing someone to perform work.

**Mr MARTIN:** It is not a way of avoiding cost; it is more of a proper responsibility licensing situation?

**Mr Kretschmer:** Not from my point of view. From the builder's point of view it may be a way of reducing costs.

**CHAIR:** It comes down to safety. That is why there are licensed trades—not that I am giving my opinion. I have a quick question on another topic and I am sure we will come back to this. The bill proposes several amendments to the Plumbing and Drainage Act, specifically about the use of holding tanks for sewage or greywater. Are you able to comment any further on those individual amendments and expand on the advantages and disadvantages?

**Mr Kretschmer:** The re-use of treated greywater and the storage of blackwater?

**CHAIR:** Yes.

**Mr Kretschmer:** The re-use of treated greywater is fine for what was described. There are issues with greywater but not in relation to the bill. Treated greywater is quite safe as long as it is treated to the correct quality and used for the correct purpose such as air conditioning. As long as the cooling towers and whatnot are all maintained and things like that, there should not be any issues with that at all. Stored blackwater fixes a niche problem. It is only a small problem in certain areas or in certain circumstances. As long as it is policed correctly as proposed and local governments enforce that, there should not be any issue with that either. We do not have any negative response to the proposal at all.

**Mr WATTS:** I am just trying to get my head around exactly what is going on with the licences. From what I understand you are saying, you have a builder. Let's say they are building an extension, and in that extension there is both gas and water to be fitted. You are saying that the builder can direct a plumber to do that in a certain way that is not following the plumber's normal methodology? Is that what we are saying?

**Mr Kretschmer:** No. The builder can directly employ a plumber and the plumber will perform the work as per the standards and everything—that is all fine—but there is no plumbing contracting entity. The plumber is an employee of the builder.

**Mr WATTS:** Can you explain to me why that is an issue? If the plumber is qualified and the plumber is capable of doing the work and they are paid by the builder, why can't they do the plumbing work? What is the issue there?

**Mr Kretschmer:** The plumber without a contracting licence operating under an occupational licence is being directed by an unlicensed person to perform regulated work. To put it another way, if I as a licensed plumber hire Peter the plumber to work for me and I ask him to do general plumbing work that falls under his licence and my licence, there is no issue whatsoever. But if I ask him to do something that does not fall under my licence, whether he is licensed for it or not, I am breaking the law because I must be licensed in what I am directing him to do. The builder is not licensed in directing him on what he is asking him to do.

**Mr WATTS:** I am trying to work out what sort of entity this would be a problem for. As entities get bigger, they might employ lots of different people. What you are saying is that the head supervisor needs to have a plumber's licence to be able to direct a plumber to do work. Is that what we are saying? I am trying to understand. If the plumber is qualified, why do you need the supervisor to be qualified?

**Mr Kretschmer:** I will give you another example. If Mrs Smith, who has no plumbing experience whatsoever, decides to start a plumbing business, she can do that and she can call it Mrs Smith's Plumbing, but because she is not a plumber she needs a nominee supervisor for that business. She could hire me as a licensed plumber to become that nominee supervisor, and then it is my responsibility to direct and supervise work. Does that make sense?

**Mr WATTS:** Yes. In the other case then, if the builder just nominates the plumber who is in their employ to be the person to supervise the work, why does that not work?

**Mr Kretschmer:** That is not currently the requirement. That would be the solution: builder X as the nominee supervisor for plumbing and drainage. That is fine; that fixes the problem. That is not the requirement currently.

**Mr WATTS:** Okay. So when you say 'not currently', is that currently under this proposal?

**Mr Kretschmer:** Under the current legislation it is not the requirement.

**CHAIR:** In the legislation before?

**Mr Kretschmer:** Under the current standing legislation, yes.

**CHAIR:** So they are seeking to have that corrected with this legislation. Member for Toowoomba North, are you satisfied with that?

**Mr WATTS:** Just to flip that around, what implications do you see for builders who currently employ plumbers but do not have the supervisory capacity if this change did come forward?

**Mr Kretschmer:** I do not know if it is a massive problem. I do not think it is a major part of the industry, but it is obviously an identified issue. From a Plumbing and Drainage Act point of view, I cannot supervise or direct someone to do something that I am not licensed to do because I might not understand how it is done. Therefore, the same problem would equate here.

**Mr WATTS:** From a builder's point of view, the simplest and easiest thing is, rather than employ a plumber, to employ a plumbing supervisor as their role within the organisation, and from then on their qualifications and trade would allow them to do the work?

**Mr Kretschmer:** The easy answer is: either they have a nominee supervisor for plumbing and drainage or they utilise a subcontractor.

**Mr WATTS:** Thank you.

**Mr WALKER:** I want to get some clarity around that. Would there be an issue with a builder employing a plumber who cannot guarantee or give a warranty? For example, a builder gets a major construction of 40 units and he employs a plumber to take care of the plumbing but he is not really a supervisor; he is just taking direction from the builder to do all of the plumbing. Where is the warranty? Who is going to be responsible for the sign-off on all of this work? As each individual unit is strata titled and sold off, where does it fall?

**Mr Kretschmer:** The sign-off on the plumbing work?

**Mr WALKER:** Yes.

**Mr Kretschmer:** That falls under local government.

**Mr WALKER:** Yes, but the builder is the actual builder. I am trying to get some clarity around what you are saying. He just employs a plumber. At the moment he can get away with it, but where is the warranty and the guarantee? Who is going to take responsibility for that plumbing work and the quality and the assurance that it is all above board?

**Mr Kretschmer:** From a warranty period aspect, it will be the builder. From a legal standpoint—so if the plumbing was done illegally—it is the occupationally licensed person who is responsible.

**Mr WALKER:** I am just following on from the member for Toowoomba North and how this pans out with what we are trying to achieve in getting some clarity around demarcation on who is responsible for what. It is about getting some clarity around the plumbing industry doing the work to a very high standard and not killing people slowly but doing it in a very professional way. You have identified a gap.

**Mr Kretschmer:** I do not think that would change anything. Currently, if you get a house built or your strata units or whatnot, the builder is still the principal contractor. He is still the head contractor and the subcontractors would sit under him or her. If there is a plumbing issue down the track, the builder will be notified first: 'You've got an issue here.' If it is a plumbing issue, the QBCC will contact the plumber directly or the builder will jump on the plumber pretty quickly usually and say, 'We've got a problem here.' Then the plumber will come out and rectify it. If the plumber does not come out and rectify it, then QBCC will chase them.

**Mr WALKER:** Say there is a block of units and some sewerage work is done by a plumber employed by the builder but the plumber takes off when it is coming to the finals. Who is going to sign off on that drainage work as a licensed plumber? The council turns up and says, 'We're going to do a final on this. Where's your plumber?'

**Mr Kretschmer:** It does happen. That is not quite the problem we have but that does happen. There are different ways you could do it. Another plumber could take responsibility for the work—

**Mr WALKER:** If they want to sign off on someone else's work.

**Mr Kretschmer:** If they were satisfied after inspecting it—

**Mr WALKER:** After it is backfilled and covered up and it is all done.

**Mr Kretschmer:** That makes it harder. Local government do have provisions in place where they can inspect it via cameras and the like. If someone is willing to take responsibility for it, that will make the job a whole lot easier. Otherwise, it becomes a local government—

**Mr WALKER:** You know and I know that sometimes—

**CHAIR:** You are talking about an opinion.

**Mr WALKER:** No, this is reality.

**CHAIR:** It might be but you cannot ask for an opinion.

**Mr WALKER:** Have there been major problems in the past where plumbers have not wanted to sign off on someone else's work after major jobs like that? Who wants to take the warranty work? There has to be a warranty that follows on these major jobs. I am just getting back to this builder scenario.

**CHAIR:** By all means you can answer it, but we are a bit off track here.

**Mr Kretschmer:** I would not personally feel comfortable signing off on someone else's work unless I could see it all.

**Mr WALKER:** Thank you.

**Mr WEIR:** On the same subject, is plumbing different in that respect to an electrician or a tiler?

**Mr Kretschmer:** In respect of?

**Mr WEIR:** If a builder takes on the contract and he is going to build the residence, he has his plumber, his electrician and his tiler. What is the difference in any of them?

**Mr Kretschmer:** It is not the norm to do it the way we are talking about. The norm would be just to hire subbies and the subbies hold their own contractor's licence so there is no problem there whatsoever. Do they do it with sparkies? I am not sure if the electricians fall under this. They do not fall under the QBCC legislation so I do not know if the gap is there for them. Tilers do not require an occupational licence so it is slightly different. We are talking about the regulated trades primarily—so plumbing and drainage. I am not sure if electrical is affected.

**CHAIR:** I am not here to answer, but I have been itching to say this. As a licensed electrician, for me to do commercial work or anything I would need to have a contractor's licence—a second tier of licence to do that work. When working in the mine, for example, we had a nominee who held that licence so we could all go out and do that work under the nominee's licence and he would be responsible. As licensed electricians, there is also the safety aspect. If someone dies from your work you are responsible for that, but the overall quality of that is the nominee. That is the way it works. In the building game it is roughly what you are proposing, from my understanding. The Master Electricians are here next, so we will ask them the questions.

**Mr Kretschmer:** Generally that is the same. It is this anomaly here.

**CHAIR:** Yes, it is the second tier of licence—having someone who holds that who takes that responsibility. I did not mean to butt in then. The Master Electricians can flesh out how that works when we ask them some questions.

**Mr MILLAR:** I have a simple question. Is this a red tape issue or a bureaucratic mistake? What is it?

**Mr Kretschmer:** It is just an identified anomaly.

**Mr MILLAR:** Has your association taken this up with the department or the minister?

**Mr Kretschmer:** Not this one yet. It has just come about, so while we have the chance we might as well bring it up.

**CHAIR:** When the department sees this, I am sure they will be onto it.

**Mr MILLAR:** I strongly encourage you to take it up.

**CHAIR:** As there are no further questions, I thank you very much. We really appreciate your time and your attendance here today. A copy of the transcript will be provided to you in due course. We will now take a short break.

**Proceedings suspended from 10.40 am to 10.55 am.**

**BEGANOVIC, Mrs Irma, Government Relations Manager, National Electrical and Communication Association**

**LAMONT, Mr Peter, Senior Policy Adviser, National Electrical and Communication Association**

**LEHMANN, Mr Chris, Policy Adviser, Master Electricians Australia**

**O'DWYER, Mr Jason, Manager Advocacy and Policy, Master Electricians Australia**

**CHAIR:** Welcome. Thank you for your submissions and your attendance here today. To assist Hansard and anyone watching on the broadcast can I ask you to state your name and your organisation the first time you speak. Would each group like to make a short opening statement, please?

**Mr Lamont:** Good morning and thank you, Chair and committee members. My name is Peter Lamont and I am senior policy adviser with the National Electrical and Communication Association. I also have Irma Beganovic here. Irma recently joined NECA as our government relations manager. She has only been with us for three weeks. We would like to begin by acknowledging the traditional owners of the land on which we meet and pay our respects to elders past, present and emerging.

NECA would like to thank the committee for this opportunity to give evidence in your examination of the Building and Other Legislation Amendment Bill 2022. The National Electrical and Communication Association, NECA, is the peak body for Australia's electrical and communications sector, which employs around 170,000 workers nationally and has a turnover of around $23 billion. NECA has a proud history. In fact, one in three electricians in Australia has completed their apprenticeship through one of our NECA training colleges. We represent over 6,000 businesses performing work in the design, installation and maintenance of electrical and electronic equipment and data and telecommunications cabling in the building, construction, mining, air conditioning, refrigeration, manufacturing, communications and renewables sectors.

As mentioned in our written submission to the committee, there are two primary areas within the Building and Other Legislation Amendment Bill concerning NECA and its members. Firstly, in regard to the amendments to section 246S in the Building and Other Legislation Amendment Bill, at clause 20, pages 11 and 12 of the bill, NECA is pleased to support the proposed changes to ensure that developers and body corporate by-laws do not inhibit the installation of solar panels and solar hot-water systems by restricting where they are located on the basis of aesthetics. Electricians undertake a four-year apprenticeship in order to learn their trade. Many also undertake post-trade training to further enhance their skills and knowledge, often involving comprehensive training in design and installation of solar panels and solar hot-water systems. These electricians and electrical contracting businesses are best trained to identify where solar panels will provide the optimum result and it would highly compromise the in-depth knowledge of these electricians and contracting businesses to be restricted in where they could place solar panels, particularly if aesthetics were the denying influence.

Similarly, NECA supports the transitionary provisions at clause 2, page 15, of the bill that will allow someone who has not received consent to install the solar panels or solar hot-water system during the affected period, which commences 1 January 2010 to now, to be able to seek a reconsideration of that consent. NECA considers these changes to be both sensible and pragmatic.

Secondly, NECA would like to comment on the proposed amendment to section 32 of the Building Industry Fairness (Security of Payment) Act 2017 as contained at clause 25, page 16, of the Building and Other Legislation Amendment Bill. This change proposes to insert a head of power into the legislation to allow regulations to specify additional categories of contracts or subcontracts as meeting the requirements of the retention trust arrangements within the intent of the legislation. NECA supports this proposal as it will fix a current loophole that allows a business to win a building contract while not holding a QBCC building licence and therefore, in turn, avoiding the need to meet the retention trust arrangements. In this regard NECA would like to point out that, as a finishing trade, electrical contractors are involved in the latter stages of the building and construction cycle and, of all subcontractors, electrical contractors provide the highest value by way of inputs with fixtures, fittings and labour. Where a builder falls into receivership, electrical contractors can therefore be at a significant disadvantage in that they will not be recompensed until the latter stages of a construction cycle. In other words, electrical contractors are more disproportionately disadvantaged than other subcontractor trades.

Finally, but not directly related to what is in the proposed bill, NECA would like to highlight its view of the trust account framework under the Building Industry Fairness (Security of Payment) Act. NECA appreciates that adequate stakeholder consultation, industry preparedness and adaptation are critical to a successful implementation of the framework but would like to emphasise that protection of our members caught up in the contractual chain, particularly in the private sector, simply cannot come soon enough.

On behalf of NECA's members we look forward to working with the building and construction sector and the Queensland government in exploring every opportunity for a more accelerated implementation of the framework. This is of national significance. Strong economic recovery and growth of local economies hinges on critical sectors like building and construction. Recent collapses of large building companies across the country have placed the industry at risk of financial stress, insolvency, job losses and reputational damage. As the committee will appreciate, such measures often go beyond the material impacts and affect the wellbeing of business owners, their employees and families.

NECA's members have worked through the COVID pandemic despite challenges of sector-wide material shortages and price increases and they deserve their hard-earned entitlements. It is only fair when subcontractors do a job that they receive pay for that job. To regain business confidence and trust in this sector to create new jobs and attract skilled workforces, it is vital to continue strengthening payment protections for all industry participants. On behalf of NECA we would like to thank the committee for this opportunity.

**CHAIR:** Thank you. We will now move on to Master Electricians.

**Mr O'Dwyer:** I would also like to recognise the First Nations peoples and their leaders past, present and emerging. I reiterate and support most of the comments that Peter has made. I would like to support what Peter said in relation to what is colloquially called 'ban the banners' and those situations and also closing the loopholes in relation to contractors not being able to do statutory trusts and retention trusts in those areas.

One of the things we are concerned about in the legislation is at section 125A of the Building Industry Fairness (Security of Payment) Act. This is a longstanding issue and it is about the exemption that is there for contractors who are not builders who undertake non-residential building work to continue being head contractors where the predominant work is not building. The electrical industry particularly utilises this in many instances where the building work is actually supplemental—it is really secondary—to the main works that go on.

We have had this discussion with the department previously. The consultation paper from the department points out the long history of this. What Master Electricians is particularly concerned about at the moment is that in the current draft of the legislation we have a situation where the departmental officers have not clearly defined what the issue is. They have left themselves an ability to write regulation broadly. From our perspective, and certainly from my perspective, high-risk work has not been defined and does not clearly identify what those exemptions are that they may put in regulation. We also have concerns about, if the regulations are made, what is the retrospectivity, how does that affect contracts that have either been tendered for or are actually in place and what is the process of consulting with the industry which, in this case in our particular section, is controlled by legislation other than the QBCC Act? We have our own Electrical Safety Act, we have our own licensing area, we have our own inspectorate and we are certainly concerned that this legislation, if it is left the way it is at the moment, will cause concerns and troubles for our sector of the industry, particularly moving forward, and we would like it clarified in the legislation.

I note the comments of our friends at the Queensland Law Society. They have raised the same issue that we have. We think it is a significant drafting issue that needs to be addressed before it goes to parliament.

**CHAIR:** Thank you very much. There is obviously a lot of interest in the 'ban the banners' provisions. I am wondering if either organisation has any examples where your members are not able to place solar arrays in an optimal location due to the laws of aesthetics. It obviously does happen, because we would not be here if it did not.

**Mr Lamont:** I cannot give you a specific one directly, but it has been raised by members before. That being said, at the end of the day, if an electrician has been engaged in order to put solar panels on a roof—if you step aside slightly to just an ordinary domestic house—and the customer does not like where they have identified as the optimum position, an electrician will try to talk them out of it. If it is still in a non-optimum position then they get phone calls. It is exactly the same where you have a developer who might be building a large townhouse development saying, 'No, you can't put the solar panels all along the front because the aesthetics mean we will have trouble selling those houses

because it makes it look ugly.' At the end of the day, the electrician will put it where they have been contracted to put it, but they will provide advice to say that is not the optimal place to place those panels. We have had lots of hearsay from members saying that they did not really want to put panels at that location but that is where the customer wanted them. It is a job at the end of the day and they are not going to refuse the job and walk away.

**CHAIR:** Except it is very inefficient because of the location.

**Mr Lamont:** Yes. We are working currently with Energy Queensland through the Energex and Ergon networks. A brochure has been produced to put out to customers on how to get the best and most efficient use out of your solar panels. Placement is part of that—where you get the optimum sun arrangements. They are things we will be giving to customers going forward to try to influence how they make use of the power from those solar panels as well as where they place them up-front.

**CHAIR:** Also over time in a new development as the trees grow up and cover the panels, that education would be appreciated, I am sure.

**Mr Lehmann:** Until November last year I had been an electrical contractor for nearly 20 years and did a lot of work in the commercial maintenance space, and this was quite a common problem with building covenants in bodies corporate. People who owned a strata title place may have wanted to install solar panels or have an air conditioner with a compressor unit outside. They would have a screen built around it which reduced its efficacy and in some cases voided the warranty but they were not able to get solar panels or have the installation compliant with the manufacturer's warranty because of the building covenants. I think that is quite a major issue.

**Mr MILLAR:** With your submission in support of the proposed changes to the head contractor licensing rules in the Building Industry Fairness (Security of Payment) Act, are you able to provide examples of where your members were not protected or covered due to additional parties being added to the contractual chain? How long has this situation existed and is there evidence this situation has been deliberately exploited?

**Mr Lamont:** I cannot give you the name of individual businesses, but some very well documented companies have gone into administration in Queensland—large building companies—in recent times. I guess I can probably say that Condev and Probuild are two of those that have been in the public domain quite considerably. We have a number of members who have been part of the contractual chain to do with construction activities with those businesses who have completed their work but have not been paid for that work. They have come to us to seek advice. Basically, once they have gone into administration, all they can really do is go forward to the administrators and have themselves added as a creditor in that particular case. Yes, we have had a number of businesses in that arrangement.

**Mr MILLAR:** The second part to my question is: how long has this situation existed and is there evidence that the situation has been deliberately exploited?

**Mr Lamont:** I probably cannot answer the last part of it, but this has been going on for a considerable time. Under the security-of-payment legislation that currently exists, we are currently changing the rules through the transitionary provisions. At the moment, contracts from government and local government valued at $10 million or more are covered by the retention trust arrangements, but the transitionary provisions at this point in time do not include contracts from private sector businesses. At this point it is 1 October 2023 before private sector contracts at a value of $1 million or more will be part of the legislation coverage. At this point in time, a private sector contract is not covered by that legislation adequately at all. I guess one of our major concerns is that we would love to see the arrangements for the private sector brought forward as swiftly as possible, not delayed until 1 October 2023, because we have members who at this point in time are left with considerable debts.

As I mentioned in the statement, our trade is one which has a high value on the physical assets it is placing within its building and construction work. It has all the cables, all the lights and a whole lot of other fixtures and they are not even getting paid for the value of those, never mind the labour side of it.

**CHAIR:** Thank you. Master Electricians, did you have anything to add to that?

**Mr O'Dwyer:** I think Peter has covered it quite well. We struggle considerably across the country with not having protections in place. We have certainly been advocating strongly over the last three or four years to try to get a federal system in place so it is nationally consistent. We do support the statutory trusts that have been put in place in Queensland. It is our policy position across the country. It would certainly be nice to see that happen at the building ministers forum, if anybody has any influence there. It is a big issue for us and our members right across the country

**Mr MARTIN:** I have a question for Master Electricians. You mentioned issues in relation to drafting. I am just wondering whether Master Electricians recommends that the status quo remain or if there are rules that should be changed in a different manner. Could you enlighten the committee on that?

**Mr O'Dwyer:** I think from our position, the situation we have at the moment is that there seems to have been, over the last 18 months to two years, a lot of talk about some non-specific examples of where this might go wrong. I have read the consultation paper and I have been in some of the meetings. There is this general feel in the air that something could go wrong and we need to protect things about developers and things like that.

I suppose what I am looking for and what I would expect to come from a legislator is to say that if there are problems they are identified and clearly articulated. That is what I am looking for in terms of this. If there is a problem about developers—and it depends what you mean by a developer. Developer seems to point towards some sort of residential building et cetera. The projects we are talking about here for electrical contractors are electrically based. They are pump stations or they can be as simple as putting a barbecue in a park for a council. Most of that work is electrical work and it has a shade over it and things like that. They are non-contentious issues. What we are concerned about with the drafting as it is at the moment, with the department being able to make regulation, is that it bypasses the parliamentary process. We are concerned, again from an electrical point of view, that rules are going to be made outside of the electrical industry that affect its ability to do a contracting job.

The security-of-payment laws apply to electrical contractors if they are the head contractor. It is quite clear in the legislation that that is the case. What I am saying is that we are subject to the statutory trust regime if we are the head contractor. I do not think it is particularly relevant that we are then possibly subject to a regulation made later that may be changed by the department without understanding that we already have that responsibility. It is not consistent through the legislation. We are concerned that it is going to affect contractors in terms of the way they provide services in that respect.

From a drafting point of view, yes, we are subject to the statutory trusts if we are the head contractor. Yes, we are the head contractor under the exemption as stated in section 8, but then we have high-risk work which is not defined. It may be determined by the regulator, the QBCC, in an area where they do not have any understanding of what high-risk work is and the legislation we have behind it.

Our contractors are licensed. Going back to the issue around plumbers discussed in the previous session, we have a contractor's licence and we have an occupational licence, and this works very well. Public liability insurance is required. Registered training organisations deliver the course. There are accredited modules that have been put in place. They are being redone at the moment. There has been an update over the last two or three years so if contractors are changing entities they have to redo the contractor's licence training. Our industry particularly is quite adept at being a head contractor because we do it already, but this legislation is opening the door for confusion further down the track which is what legislation should not do.

**CHAIR:** I can give an example of where the electrical firm or company is the head contractor. In my world it was building substations.

**Mr O'Dwyer:** I will hand to Chris because he is an ex-contractor.

**Mr Lehmann:** This is something that our members are quite concerned about. It will add a layer of red tape if there is going to be another level put on top of what is currently being done quite successfully. Substations are a very good example—that is, where the purpose of the installation is primarily electrical and the work associated with it is peripheral; that work could still cost quite a bit of money because there are quite a lot of civil works that go with it. The whole reason we are doing it is for an electrical purpose. Substations are such an example. I did that a number of times. I did new pad mount transformers for businesses where the value of my work was probably less than what the civil work ended up being, but they needed my expertise to be able to get the works done. That was the purpose for doing it.

Other examples of what our members do quite often are things like data centres and communication rooms. Air conditioning, insulation ratings and floor and structure capacities might be needed if they are putting switch meter power supplies and data racks and uninterruptible power supplies with batteries. Its principal purpose is installing the electrical equipment, but the electrical contractor ends up being the head contractor on the job to make sure these other things are adhered to and they hire appropriately licensed and qualified people.

A member of ours I was speaking to this morning does a lot of installations of electric barbecues for local councils and lighting in parks and whatnot. A lot of that work is civil, but the whole reason they are doing it is to make sure the electric barbecues are installed safely and the lighting is installed safely. It would be a move away towards red tape if we were to interfere with those arrangements that currently go on where the main purpose is electrical work and electrical contracting business can be the head contractor and do it quite safely.

**Mr O'Dwyer:** It comes back a little to what the plumbers association was saying in the previous session. It is about having a person who understands the Australian Standards and the regulations here in Queensland—or wherever project is done. They have the carry on and the licence at risk to make sure the work is done and done safely.

What the department is perhaps trying to stamp out is someone who does not have any of that expertise trying to get around the regulations related to trusts and things like that. I have not been able to find a specific example that the department has been able to put in front of us. They just talk about general developers. It seems a bit opaque from my point of view.

The way to solve it would be to put some examples in about occupations or contractors that are deemed to do this sort of work—whether it is electrical, plumbing or other licensed trades. They could put in examples that clearly state that they have an exemption under this section. That would be much better because at least then you have that in the legislation. When the regulation comes in you can say, 'No, you should not be in putting in a regulation about electrical contractors because it is quite specific in the legislation that electrical contractors are exempt in those non-residential and non-building areas.' That is a suggestion.

**Mr WATTS:** I, too, am always concerned when regulations are developed and not subject to the public scrutiny that legislative amendments are. I think you have articulated this pretty clearly, but I want to restate it to make sure I am getting it correct. Would you prefer that the ability for this regulation to be changed later is removed and if there is a necessary change it comes back through the parliament, or is there another way you think we can address some of what is trying to be achieved with the suggestions here?

**Mr O'Dwyer:** I will be a bit selfish and say that I could probably see either way working, but it depends on the department's view of what they are trying to guard against. As I said before, there could be specific examples of the types of occupations that are seen to be head contractors outside of the QBCC licence being electrical, plumbing, maybe even fire, air conditioning—I do not know. You would have to talk to the broader parts of the industry to name those areas. That could probably work. Again, if that is not going to be able to done then the regulation should come back through the parliamentary process. I am probably having a bet each way at this stage.

**Mr WATTS:** I agree with you. We do not want to create legislation to solve problems that do not actually exist. An example would be very helpful so that we can all gain clarity about the objective of bringing this forward. Would your contention be—and I do not want to put words in your mouth—to put some examples up so that we can all understand what they are trying to achieve and, if not, then leave it out of regulation and bring it back through the parliament? Would that be a fair summary?

**Mr O'Dwyer:** I think so, yes.

**Mr WEIR:** You talked about the location of solar panels that might not be in their optimum position. Do you provide something that exonerates you from any repercussions when people say, 'These solar panels were supposed to produce X, Y, Z and they are not?

**Mr Lehmann:** I did not do solar. I did the certificate IV in solar PV but I have never installed them for a living. When you are designing a solar system you have to have the calculations to state that it will produce a certain amount of kilowatt hours per day under normal operating conditions. I would imagine that, if someone is being told that they need to put the solar panels on the southern side of their house rather than the northern side and there are trees that are going to grow up because the contractors planted quandongs or something and in five years time they are going to be covered in shade, as long as the electrical contractor has provided a design at that time saying that it will produce this under these circumstances then they are covered. I take Peter's point that there are a lot of contractors who are being given these jobs and being told that they must put them there, it is as built at the time and as long as they have adhered to all of the solar accreditation rules then it does not come back on them, but that is no good for consumers. If their solar panels end up being shaded more than 25 per cent and none of them work because you have a string system then you have a very expensive white elephant on your roof. I hope that answers the question.

**Mr WEIR:** That is my concern, particularly when you have bodies corporate.

**Mr Lehmann:** If you are looking for a five-kilowatt system you may have to put 10 kilowatts of solar panels on the roof which is then going to look even worse, whereas if you put them in the most optimal position you could end up with half the number of solar panels. If you are being sold a house with a package that is being touted as a five-kilowatt system, you might never get more than 2.5 out of it because of where it has been situated.

**CHAIR:** Thank you very much for your submissions and attendance here today. You will be provided a copy of the transcript of proceedings when it is available.

**COHEN, Ms Samantha, Chair, Construction and Infrastructure Law Committee, Queensland Law Society (via teleconference)**

**DEVINE, Ms Wendy, Principal Policy Solicitor, Queensland Law Society**

**MOHR, Mr Clinton, Solicitor, Clinton Mohr Lawyers**

**MOSSOP, Mr Mark, Development Manager, Oxmar Properties, Clinton Mohr Lawyers**

**QUIRK, Mr Robert, Barrister-at-Law, Bay Street Chambers, Clinton Mohr Lawyers**

**THOMSON, Mrs Kara, President, Queensland Law Society**

**WOOD, Mrs Tracey, Principal, Wood L&M Solutions (via videoconference)**

**CHAIR:** Thank you for your submissions and your attendance here today. Would you each like to make a short opening statement?

**Mrs Thomson:** Thank you for inviting us to attend today and for giving us an opportunity to make an opening statement. In opening, I would like to respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place, Meanjin in Brisbane. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagera nations and pay deep respects to all elders past, present and future.

The Queensland Law Society is the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. We are an independent, apolitical representative body upon which government and parliament can rely to provide advice which promotes good evidence based law and policy.

At the outset, the society acknowledges the importance of regulation and licensing in the building industry to ensure that building work is carried out in accordance with relevant laws and legislation. We recognise the important role of licensing in providing consumers and subcontractors with safeguards and remedies. Notwithstanding this, the society welcomes the Queensland government's decision to reinstate the head contractor licensing exemption in section 8 of schedule 1A of the QBCC Act 1991. The society considers that the head contractor licensing exemption should be retained until its current review of developers under section 115D of the QBCC Act has been conducted and its findings considered. This review will be critical, in our view, in identifying the viability and practical implications of a licensing scheme for those developers who currently rely on the head contractor exemption. Therefore, the head contractor exemption and the role of developer should be considered holistically.

The society is also of the view that it is premature to enact subsection 8(4) of schedule 1A of the QBCC Act until the developer review has been completed. Proposed subsection 8(4) grants a broad power to prescribe by regulation when the exemptions under subsections 8(1) and 8(2) do not apply; however, without the review the government is not in a position to determine when the power may be used appropriately. This has resulted in subsection 8(4) conferring a power that is much broader than may be necessary to address any concerns arising from misuse of the exemption.

The society is concerned that conferring such a broad regulation-making power under subsection 8(4) does not have proper regard to the institution of parliament. Prescribing by regulation the circumstances where a legislative exemption will not apply does not provide the same level of parliamentary scrutiny as the primary legislation. In our view, it is critical that regulations are not used as a mechanism for circumventing the legislative process for passing acts of parliament or for addressing matters which are more appropriately dealt with in primary legislation. For these reasons, we recommend postponing the enactment of subsection 8(4) until the review of developers has been completed.

I am joined today by Samantha Cohen, chair of the Construction and Infrastructure Law Committee, and Wendy Devine, Principal Policy Solicitor at the society. Both have been integral in forming our submissions and are happy to take direct questions on any of those points.

**Mrs Wood:** I am also part of the Law Society's Construction and Infrastructure Law Committee, so I have been involved in the discussions about these changes and certainly have been heavily involved in the legislative changes since BIF was first placed on the table many years ago now.

In relation to the changes that are currently proposed in this amendment bill, I broadly support them. The issues we definitely have that I respectfully suggest should also be dealt with in this bill are some that are created by the recent Panel Concepts v Tomkins decision of the District Court in

December last year. That has actually created some issues already in relation to the section 8 head contractor licensing exemption. That particular decision related to an application of this head contractor exemption to subcontracts. That has now created a much bigger issue than the government was originally considering in its review of section 8 and could be quite easily dealt with with the addition of another subsection as part of this amendment bill.

In terms of the licensing exemption, in any event the issue that comes from this exemption is the fact that it does undermine a lot of the licensing restrictions that are in place in law for good reason. While there are a lot of entities that rely on the exemption, adding additional cost to those entities or restricting the services they can provide or the things they can do under it is actually one of the reasons we have a lot of the rules that are in place now. To not proceed with having a good consideration of whether they are still apply today as government intended, simply for commercial reasons, pretty much goes against why we have law in the first place.

The other issue that I think the committee should consider is in relation to the rollout of the trust accounts to the private sector. This is causing some angst in terms of some areas that need clarification within the legislation. That is definitely one of the issues that I think the committee needs to consider when considering tweaks around the edges to this legislation.

**Mr Mohr:** We represent a property development company, Oxmar Properties. Oxmar Properties has developed in excess of 5,000 residential lots in South-East Queensland across some 30 estates over the past 20 years and I suppose is representative of a developer with significant interest in developing high-standard, good quality estates in South-East Queensland. Robert Quirk of counsel will be making our opening statement.

**Mr Quirk:** Thank you for the invitation. At the outset, it is important to note that our client is very supportive of sustainability in development. As is evident from the parliamentary record, the original amending act was passed in 2010. We are now in 2022. Legislation in general is intended to cover the permutations that arise in the diverse situations that occur in modern life and that may come in the future. In our submission, the current amending act does not do that. With the general increase in solar systems, the AEMC has passed new rules that will allow for the potential for households to be charged for exporting electricity to the grid. This and other changes such as the expected reduction in the cost of battery storage will lead to changes in solar production, storage and installation. By that I mean where it is actually installed on a building. Currently, photovoltaic cells are generally installed in a manner that absolutely maximises the solar production, but that might not necessarily be the case in the future.

I would also note at this stage that a flat roof has potentially the same effect, if not more, on solar panel efficiency than the location change in the much referred to Bettson Properties case that receives quite a few mentions in the explanatory notes. The optimal tilt angle also varies with the season. Depending on what someone is attempting to get from their system, they might put it in a less advantageous position for summer and have a lower production for the overall year, for example, to maybe maximise production during winter. Due to the likely changes in the electricity market, there is likely to be incentive to produce electricity at other times. As I have said, this may lead to changes in how solar panels are installed. There is also the possibility of automated systems that may track or change, for example, the tilt with the season and, in quite complicated systems that are usually only seen, as I understand it, in the sorts of massive production systems we see for solar farms, might actually track the sun completely.

I turn to original section 246Q, which is the section that relates to restricting the location. It gives the example—

> The installation of a solar hot water system at a particular location on a roof may be restricted to maximise available space for the installation of other hot water systems or to prevent noise from piping associated with the system causing unreasonable interference with a person's use or enjoyment of the building.

It is important to look at what is said in subsection (2) above that example. It has two limbs to it. The first is that the restriction has no force if it applies merely to enhance or preserve the external appearance of the building and—the second limb—prevents a person from installing a solar hot-water system or photovoltaic cells on the roof or other external surface of the building. As a result of that, there seems to have been an assumption that the nuisance issues that can come as a result of photovoltaic cells, or what I will just call a solar system, are limited to the same building and to noise. When one thinks about it, that is clearly not the case. This is where the changes in the context I will state do not address the impacts from other solar systems.

There are other examples one might think of. One might be where the positioning of a solar system affects the enjoyment of another property by reflection. You might go quite high on your tilt and that might mean that light is reflected into the residence of another property. As the proposed

amendments are situated, that is not a ground for stopping it. In fact, the ability to refuse solar panels in an estate has been effectively completely removed. Effectively, it only relates now to common property. The original amending act makes it clear—I refer you to section 246M(k)—that the rights of land owners as those able to enforce building covenants were able to be taken into account.

It is also useful, then, to turn to proposed section 246R. This is the section that deals with 'consent for particular activities can not be withheld', and it deals with roof colours and windows. Subsection (2) deals with an entity not being able to withhold consent with a three-limb test, and it states—

… if use of the colour—

(a) achieves a solar absorptance value for the upper surface of the roof of not more than 0.55; and

(b) minimises potential adverse effects on the external appearance of the building; and

(c) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.

In terms of windows, there is a two-limb test that says—

… if the type of window to be used or the treatment—

(a) minimises potential adverse effects on the external appearance of the building; and

(b) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.

In this proposed new section, we have protections for those who are not only in the building but also in other buildings for nuisance type issues—protections which have been completely removed for solar cells and solar systems. It is difficult to see why those protections are any less worthy for someone who is suffering a nuisance if it comes from a solar system than if it comes from a window or a roof treatment.

I would also draw to the committee's attention that there are media reports of windows being developed that can operate as solar systems. If that is the case, that would mean that, again, owners would lose that protection from a nuisance, as this is likely to be construed as a solar system on an external surface. Rather than having the protection of a window, even as the legislation is currently drafted, it would fall within the photovoltaic cells sections and the protection from nuisances would be removed altogether. We would say that there are much less drastic ways to achieve what is now said to be the proposed legislative intent than completely gutting the rights of those who are impacted by the changes. The proverbial sledgehammer cracking the walnut comes to mind when one talks about the changes to the general provisions.

One example of how a more nuanced change to the legislative system could be achieved would include a definition of 'prevent', which was, as the committee would be aware, central to the Court of Appeal's determination in Bettson Properties, such that the prohibition/restriction or effect or requirement of consent had a maximum figure for the effect on the efficiency of the panels. You could still have the protections that exist but you include in the definition of 'prevent', rather than the common meaning that was attributed by the Court of Appeal, that 'prevent' is also affecting the efficiency by more than 20 per cent. In a sense, that is a figure that could change. The reason I suppose it is a good starting point is that the Court of Appeal said that 20 per cent was not prevention in that case. You might recall also that 20 per cent was a figure where, if you have a flat roof, that is going to be the impact on your efficiency. When you are talking about orders of magnitude in terms of impacts, 20 per cent seems to be an appropriate starting point.

Lastly, what I would say about percentages is that, when we talk about orientation, there are many reasons people might not put them in the optimum position, particularly as the electricity market changes. If we take north as 100 per cent in Brisbane, orientating towards the east still gives an efficiency of 88 per cent, towards the west 87 per cent but towards the south down to 74 per cent. The changes to the efficiency of the system are not as great as one might expect. In a way, the changes to the legislation are really taking away the rights of those who are in estates and have the benefit of restrictive covenants. That is the opening statement.

**Mr MILLAR:** I have two questions to the Queensland Law Society. In your submission, you were concerned about the breadth of the proposed regulation-making power in subsection 8(4). We have seen this in this bill and we have seen it in other bills where regulation is moved. You state—

In our view, subsection 8(4) does not have proper regard to the institution of Parliament.

Can you expand on that and why you feel that way?

**Ms Devine:** Our starting point is that, with the review of developers presently underway, enacting this provision permitting the making of a regulation would be premature. The review will help government and industry understand what the concerns are with the present arrangements. At that

point, once the review is concluded, an assessment can be made about whether the exemption in section 8 should continue. Whilst that review is underway, our view is that the exemption should continue as proposed in this bill and it should continue so that the status quo continues and everyone has certainty as to how they can conduct their businesses.

Proposed section 8(4) is very wide. If you had a look at the drafting, it simply provides that a regulation can be made prescribing circumstances in which the exemption does not apply. There are no qualifiers or principles put out in that section that would explain in what circumstances such a regulation could be made. The explanatory notes for this provision suggest it is intended to provide some flexibility to respond to high-risk work so that, if issues do arise, a regulation could be made to respond to that. The way I read that is: it means that you can respond quickly without the need to go back to parliament and subject such a provision to the scrutiny of parliament in the usual way.

When we look to whether legislation is good law, we always test it against the fundamental legislative principles in the Legislative Standards Act. We would be concerned that this really broad power does potentially fall foul of a couple of those fundamental legislative principles in the Legislative Standards Act. We think it is unduly wide and vague, which is an inappropriate delegation of power to subordinate legislation, and that is inconsistent with section 4(3)(k) of the Legislative Standards Act which provides that legislation should be 'unambiguous and drafted in a sufficiently clear and precise way'.

We would also be concerned that a regulation of this form is effectively characterised as a Henry VIII clause. The regulation, if it were to be made, would actually have the effect of amending the primary legislation by way of regulation and that is usually a concern by Office of Parliamentary Counsel and from organisations such as the QLS. We do tend to avoid and criticise Henry VIII clauses. These significant powers by way of regulation should sit within the primary legislation.

**Mr MILLAR:** There are some amendments proposed in the legislation which speak about combustible cladding. The Grenfell Tower fire occurred nearly five years ago. There are still nearly 30 state government owned sites with combustible cladding. What is the legal risk to the Queensland government?

**Ms Devine:** With your permission, I am not sure that is really a question we should comment on as the Law Society. That is probably a matter for legal advice for the government to obtain. It is not something that I would particularly feel comfortable commenting on.

**CHAIR:** Thanks for that. You stopped me from having to say that.

**Mr WATTS:** This issue has come up a couple of times today. It relates to a bill before us that has certain sections in it where the objective would be to give a regulator the ability to go around the parliament. I am looking for a general view. There has been some discussion as to whether this should be on hold or what we should be doing. Ultimately, my view would be that we should not be proceeding with these kinds of sections in acts. I am looking for some guidance from the various proponents here today as to whether this should be sent back to the minister for a tidy-up and for better drafting.

**CHAIR:** Who are you asking that question to?

**Mr WATTS:** We will start with the Queensland Law Society.

**Ms Devine:** Our position, as stated in our submission, is that we recommend that section 8(4) is not enacted at this time and that it be postponed until we know the outcome of the review. We feel the exemption should stand as it is and any departures from that exemption should be put through the usual legislative process. In terms of any guidance, as I said before, we would usually look to the fundamental legislative principles in the Legislative Standards Act and use that as our primary test for whether the legislation is something that we can support as good law. The other excellent publication that we usually refer to is *The Queensland Legislation Handbook* that OQPC refers to when preparing legislation. There is a wealth of information in there around the proper development of subordinate legislation.

**Mr WATTS:** Just to clarify, you said to look for the fundamental legislative principles. Would you say this has followed those or not?

**Ms Devine:** We would suggest that proposed section 8(4) is not consistent with fundamental legislative principles.

**Mr WATTS:** Thank you.

**CHAIR:** Do Wood L&M Solutions have anything to add to that?

**Mrs Wood:** Not specifically in relation to 8(4). I do understand and share the Law Society's concerns. We have seen this in the BIF act. Previously in the BIF regulation, there is an awful lot of provisions that are left open to be enacted by regulation which really ought to sit within the act. There

are a number of concerns with the head contractor licensing exemption—one aspect of which will be considered with the developer review—but there are a number of things that have been discussed at the various committee meetings which go beyond the developer review concerns.

I understand government's concern with this, but, on the other hand, putting it back in place or allowing it to continue open slather as you will is creating issues in the industry now. The trusts legislation, the chapter 2 part of BIF, is made that much worse by the situation we have with the head contractor exemption. In addition to that, the decision in December of the District Court has definitely raised even more concerns. If 8(4) is withheld at this point, I think there still needs to be an amendment to address that the head contractor exemption, section 8, is only to apply to a head contract between a principal and the first-tier head contractor and not to any lower tier contractors. The decision in December is definitely not one that is consistent with other aspects of the QBCC Act and it has now opened up the industry to so many more problems with serious consequences, not just in terms of trusts but penalties and entitlements to be paid and those sorts of things that we have addressed in our submission.

**CHAIR:** Mr Mohr, do you have anything further on that?

**Mr Mohr:** No, not on that, thank you.

**Mr MARTIN:** My question is probably for Robert and perhaps Oxmar. Your submission speaks about efficiency, nuisance and individual rights, but is there not also here an element of cost? Do solar panels reduce the price that you get for a property you might purchase? If that is the case, how much is it? Can you help us understand?

**CHAIR:** Are you saying due to aesthetics?

**Mr MARTIN:** Yes, due to aesthetics or due to the fact that an individual can put a solar panel on a property they own.

**Mr Mohr:** Would you mind just asking the question again?

**Mr MARTIN:** Referring back to Robert's submission talking about the issue of nuisance, you mentioned that a window or a house roof could be a nuisance to someone else, but what is the nuisance of a solar panel? Why should someone not be able to have a solar panel on their own property? Is that a cost to a developer? I guess what I am getting at is: if the rules are changing for all developers, does that not leave all developers in the same situation?

**Mr Mohr:** There is no cost to a developer of an owner putting solar panels on their roof. Developers generally—and certainly Oxmar Properties—support the use of solar panels. That is not the issue. The issue is that, in a circumstance where a solar panel might create a nuisance in the estate, the developer wants to maintain a right—and individual owners who are part of a building scheme want to maintain a right—to ensure that nuisance does not happen. As the draft legislation is currently put, those rights are being removed.

Developers do not have a problem with solar panels. Everyone supports the concept of solar panels. It is just the reality that in a development a lot of developers—not just Oxmar Properties—have building covenants. Where they try to develop to a standard and they do not want to have situations where nuisances are caused, they often build into their building covenants the ability to deal with what would be a nuisance. A solar panel can cause a nuisance just like any other part of a building. I suppose that is the fundamental issue. That right has been removed. It is not just a right that is vested in the developer, because at equity every one of those owners who bought into that development and agreed to comply with the covenants that relate to the development has a right to enforce those covenants to protect themselves against nuisance, and those rights are removed by the bill.

**Mr MARTIN:** I will rephrase my question. Would it be easier to sell a property in a development that has a covenant than in one that does not?

**Mr Mohr:** If I can answer this way: I am not a salesperson; I am a solicitor for my clients. What I can say is that what I know from my experience in my business in what I do and acting for developers, people who buy into estates that have covenants buy in knowing there is the benefit of those covenants and expecting the developer to take steps to enforce them. There certainly is a benefit. I know of developments up the seaboard where people buy in because they want the benefit of the covenants because there might be some provisions that allow for a more open estate. Particularly in developments in this current day and age with the land sizes continuously being reduced, some covenants in estates—and this is not a solar panel issue but to give an example—might restrict the ability to put up big front fences, which makes the estate look more open. There are clear benefits to

owners in covenants. I do know of situations where people who buy into developments want the benefit of the covenants. They certainly, in situations where covenants are being breached, are agitating my developer clients to enforce the covenants.

**Mr WALKER:** This is a follow-on question to Clinton Mohr Lawyers. We are picturing a solar panel the way it looks today. What if it is discreet and it is on the roof? How does it change? This legislation may allow for solar panels—which it does—to be on a roof, but it could be discreet. We are picturing a certain type of solar panel, are we not?

**Mr Quirk:** That is exactly the point I made at the beginning: legislation should be able to deal with things that come up in the future. The sorts of things that maybe you are alluding to are, for example, Tesla has a roof tile and one would describe that as more discreet. I think when you look at 246R that exactly deals with that, because you are looking at a situation where it is not going to cause a nuisance, presumably. From what I have seen, they are not as reflective. They are made of different materials and they all slot in together and effectively the tile becomes the panel. I suppose it depends on the material; that is the ultimate answer to your question. If we are talking about roofs, why should you have protection from colour and windows and not be able to say, 'If this is reflecting into my house causing a nuisance, maybe there's some other solution that's available that's still going to protect everyone's amenity.'

**Mr WALKER:** My point is that even existing solar panels can do that, so they can be non-reflective.

**Mr Quirk:** Yes.

**Mr WALKER:** It is all in the eye of the beholder, what they see as ugly and not appropriate, so here we go with this argument about what one wants. I am putting to you that it is a building material issue because the existing panel could be non-reflective.

**CHAIR:** Is that a question or a statement?

**Mr WALKER:** No, that is a question, because reflection is one of the issues.

**Mr Quirk:** What I would say is that, again, it comes back to the fact that you do not have to use a sledgehammer to crack the walnut and obliterate it altogether. You have what I would call quite a nuanced treatment of the situation in 246R where you can, for example, withhold consent if it unreasonably prevents or interferes with a person's use and enjoyment of the building or another building. The law uses those sorts of tests all the time. You cannot give a definitive answer in all situations when we are not even looking at what that reflective panel might be. That sort of test is reflective of nuisance law, if I can use the term, which has been around for hundreds of years: the unreasonable interference with someone's use and enjoyment of land. The importation of that type of test in 246R indicates to me that, as you would expect with legislation, you cannot go down the rabbit hole and deal with every little thing, but what you can do is set general standards which, if ultimately people cannot agree, are enforced by the courts.

**Mr WEIR:** I do not know if I dare say this to the Law Society, but the Master Electricians' submission expresses some concern. The explanatory notes make reference to a process where regulation may be introduced to require particular head contractors who do high-risk work to obtain a licence, but there is no definition of 'high-risk'. What is your view of that? How broad is the definition of 'high-risk'? Do you think it should be defined?

**Ms Devine:** Yes, the concept of high-risk activities is referred to in the explanatory notes. I would not be willing to proffer a definition of what that is, based on what I have read in the explanatory notes. We understand that the reason for section 8(4) is likely to enable some flexibility in administering the act. If section 8(4) is to be enacted, then we would suggest that some definition or context be put into the section. That, in our view, would involve attempting to define high-risk activities so that the power is more specific and so that those who read the legislation can have an understanding of how it might be applied.

**CHAIR:** Do you have any further questions, member for Toowoomba North?

**Mr WATTS:** I might seek a brief clarification on a similar point. This question is to the Queensland Law Society. Basically, it would appear that 8(4) has been put in there to allow some flexibility. Do you think it should be legislative practice to allow flexibility for administrators, or should we write laws that administrators have to follow?

**CHAIR:** Is that opinion?

**Mr WATTS:** It is a question.

**CHAIR:** Answer as you see fit.

**Ms Devine:** In our view, legislation should be clear and unambiguous when it is drafted. The structure of primary legislation and subordinate legislation has been around for many years, and there is a lot of guidance out there about drawing a line between what goes into primary legislation and what goes into subordinate legislation. There is recognition in the Legislation Handbook that if subordinate regulation is required to administer exemptions, for example, then the act itself—the primary legislation—should state the purpose of the exemptions, and they should limit the exemption to circumstances in a specific way so that parliament can be confident that the exemption will be appropriate. It is a question of finding that line and then defining it appropriately in the primary legislation.

**Mr WATTS:** It would appear we have not quite found the line this time.

**Mrs Wood:** Could I possibly add to that answer just to put some context around the issue with section 8?

**CHAIR:** Certainly.

**Mrs Wood:** It provides a full exemption just to the requirement to be licensed for a contract, although the section itself does not say a head contract, which is the issue with the District Court decision in the December finding that it could apply to any contract down the contractual chain, notwithstanding that the heading of the section is 'head contractor exemption'. That is the clarification I think government needs to urgently put in place, because the discussions around the head contractor exemption and the developer review are obviously for it to be used at that top level, not for it to be down the chain—that anyone can enter into a contract to do building work without a licence—because it just creates confusion for the entire industry.

The real issue with the exemption is that if you are not licensed and you are supposed to be licensed then you are not entitled to be paid for anything at all under your contract. You can go to court to get some compensation for the work you have done, but you have no right to make a claim for payment or receive any monetary consideration under your contract. You cannot use the adjudication process through chapter 3 of the BIF act. You cannot use the moneys owed process through the QBCC. You cannot take any action for suspension of work or termination of contract if you have not been paid. This issue around clarity or certainty as to who is allowed to enter into a contract to do building work without a licence is critical to the industry.

The trust regime in chapter 2 is also a massive issue, because the obligation on a builder to make payments to a subcontractor out of a project trust account comes back to what they are entitled to be paid. If they are not licensed and they ought to be licensed then they have no entitlement to be paid. Builders can legitimately not pay them because they have no lawful obligation to pay them out of the trust account or any other bank account. Having certainty around what that exemption is going to apply to, in terms of both the flexibility that 8(4) is giving the government on an ad hoc basis and the need to include a provision that makes it abundantly clear that it does not apply to subcontracts, is so critical to ensuring that money continues to flow in the industry while government is continuing its review of that provision and looking at what high-risk activities or specific arrangements it wants to exclude from that requirement.

**CHAIR:** Thank you very much for that. We have run out of time. I would like to thank you all for your submissions and your attendance here today. A transcript of proceedings will be available in due course. I declare the hearing closed.

**The committee adjourned at 12.16 pm.**