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Inquiry into the Building and Other Legislation Amendment Bill 2022

J ODwyer



Introduction

Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. Our website is www.masterelectricians.com.au

MEA appreciates the opportunity to provide feedback to the committee concerning the changes as outlined. MEA will restrict our comment regarding the bill to one particular area being

Efficacy and transparency of the regulatory framework

Head contractor licensing

Section 42 of the Queensland Building and Construction Commission Act 1991 (QBCC Act) provides that, unless exempt under schedule 1A, a person must not carry out, or undertake to carry out, building work unless they hold an appropriate licence. However, under section 8, schedule 1A, an unlicensed head contractor may enter into building contracts and arrange for building work to occur (i.e. procure building work), provided the work is not residential construction work or domestic building work and is carried out by an appropriately licensed contractor.

Section 125A of the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020 (BIFOLA Act) repeals this licensing exemption for head contractors. This section was included to implement a recommendation made by the then Transport and Public Works Parliamentary Committee during consideration of the BIFOLA Bill, following feedback about alleged misuse of the licensing exemption.

On 8 July 2021, following further stakeholder feedback, a postponement regulation was made to extend the automatic commencement of this provision from July 2021 to 24 July 2022 and enable consultation on the issue and ensure a smooth transition to the new requirements.

Subsequent consultation has showed reliance on the exemption in commercial contracting, including development agreements, agreement for lease, and numerous projects and contracts that involve a minor element of building work. If the repeal were to proceed, such businesses would likely face increased administrative and cost burdens to undertake work which is ancillary to their business.

However, concerns remain that the licensing exemption may allow entities to circumvent Queensland's licensing system, e.g. minimum financial requirements and security of payment protections. Concerns also exist that when unlicensed persons or entities assume the role of head contractor, they may not have sufficient skills and experience to administer and manage the procurement of building work, particularly in complex projects or high-risk work that impacts life safety, such as mechanical services or fire protection.

These concerns and potential impacts of the repeal are addressed through reinstating the section 8 exemption. However, where the exemption should not apply, due to the circumstances outlined above, the Bill provides that a regulation under the QBCC Act may require particular head contractors to obtain a licence, for example, those who engage in high-risk work. These amendments will provide Government with flexibility to respond to emerging issues, as they arise, while also facilitating commercial contracting by allowing most unlicensed head contractors to continue entering building contracts that offer to procure building work.

In particular MEA is concerned that the Act in this circumstance has not been able to again clearly articulate what the

“concerns remain that the licensing exemption may allow entities to circumvent Queensland’s licensing system, e.g. minimum financial requirements and security of payment protections.”

These arguments were raised in 2020 and 2021 by some parties and without articulating exactly what circumstances existed. Legislation should be fit for purpose and address the evidence that is presented however MEA is concerned, yet again, in this context that concerns raised by parties cannot be articulated, nor examples given, that show a need to change the legislation is not foreseeable nor necessary.

The explanatory bill clearly shows that there are legitimate reasons for the exemption to exist as demonstrated by the following

Subsequent consultation has showed reliance on the exemption in commercial contracting, including development agreements, agreement for lease, and numerous projects and contracts that involve a minor element of building work. If the repeal were to proceed, such businesses would likely face increased administrative and cost burdens to undertake work which is ancillary to their business.

The Bill refers to a process whereby regulation may be introduced to “*particular head contractors to obtain a licence*” who do high risk work. The Bill does not identify what high risk areas of work are included or excluded. If concerns are raised then those concerns should be able to identify the types of contractors that need to be closely monitored by regulation and that the legitimate Contractors such as electrical contractors are left to continue as they have been on these very small building projects.

The bill also makes a broad statement of applying to “High risk work”. MEA is unable to identify in the Bill or the relevant Act a definition of what High Risk Work is. This will have a significant impact on what the regulator can put into the regulation without referral back to Parliament, we say that is unacceptable broad and will likely lead to legislative creep through poor interpretation unless the legislature is clear in its intent on what it is trying to achieve.

We thank the committee for its time and consideration of our submission

Jason O'Dwyer

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