



# ***TRANSPORT AND RESOURCES COMMITTEE***

**Members present:**

Mr SR King MP—Chair  
Mr CE Boyce MP  
Mr JR Howard MP  
Mr JR Martin MP  
Mr LL Millar MP  
Mr TJ Watts MP

**Staff present:**

Ms D Jeffrey—Committee Secretary  
Mr Z Dadic—Assistant Committee Secretary

## **PUBLIC BRIEFING—SUBORDINATE LEGISLATION NO. 126 OF 2021—BUILDING REGULATION 2021 (DEPARTMENT OF ENERGY AND PUBLIC WORKS)**

**TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 11 OCTOBER 2021**

**Brisbane**

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### **The committee met at 10.30 am.**

**CHAIR:** I declare open this public briefing from the Department of Energy and Public Works. 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 people whose lands, winds and waters we all share.

My name is Shane King, member for Kurwongbah and chair of the committee. With me here today are Lachlan Millar MP, member for Gregory and deputy chair; Colin Boyce MP, member for Callide; James Martin MP, member for Stretton; Trevor Watts MP, member for Toowoomba North; and Jennifer Howard MP, member for Ipswich, who is replacing the member for Mundingburra for today's proceedings. Thank you for doing that. The purpose of today's briefing is for the committee to receive a briefing from the Department of Energy and Public Works about subordinate legislation No. 126 of 2021—Building Regulation 2021.

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 this 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 for witnesses so we will take those as being 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 during the proceedings by the media and images may also appear on the parliament's website or social media pages.

In line with the COVID-safe guidelines issued by the Chief Health Officer I remind everyone to maintain social distancing while in the committee room. There have been some changes to the face mask rules which we are all adhering to. I ask everyone present to turn mobile 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 Monday, 18 October 2021.

### **BARRON, Ms Ainslie, Acting Assistant Director-General, Building Policy, Department of Energy and Public Works**

### **NEUENDORF, Ms Anne, Acting Executive Director, Building Policy, Department of Energy and Public Works**

**CHAIR:** I now welcome representatives from the Department of Energy and Public Works. Would you like to make an opening statement after which we will probably have some questions for you?

**Ms Barron:** Thank you, Chair. I also would like to begin by acknowledging the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. My name is Ainslie Barron. I am the acting assistant director-general, building policy within the Department of Energy and Public Works and I am joined by Ms Anne Neuendorf, acting executive director, building policy of the department.

To give you some context, the Building Act 1975 enables a regulation to be made to support the act's objectives. Effectively, the regulation operationalises the act. The chair and members may recall that last year the first phase of certification reforms were introduced through the Building Industry Fairness (Security of Payment) Act 2020. These reforms strengthen the certification and inspection process, seek to assist in improving professional standards and compliance within the certification sector and address some issues identified Australia wide through the national Building Confidence Report.

The sunset review of the Building Regulation implements the second phase of the Queensland Building Plan certification reforms. Under the Statutory Instruments Act 1992, and as you would all know, a regulation automatically expires after 10 years unless it is otherwise exempt or repealed. The Building Regulation commenced in 2006 and had been exempt from inquiry between 2016 and 2020. These exemptions were granted while the Building Act was being reviewed as part of the reforms outlined in the Queensland Building Plan.

The sunset review commenced in 2019 with a line by line review of the regulation. Industry consultation regarding the review started with a ministerial construction council subgroup workshop in early 2020. Then, of course, in 2020 the department reprioritised its efforts to better support industry and the government's response to the COVID-19 pandemic which resulted in the consultation process being disrupted and then delayed. The Building Regulation 2006 expired on 31 August 2021 and has been remade through the Building Regulation 2021 which commenced on 1 September.

In terms of the Building Regulation itself—the 'what'—the Building Regulation 2021 generally preserves the matters prescribed through the Building Regulation 2006 and does not implement any new policy reforms. The most notable changes in the 2021 regulation are reordering and renumbering of sections and parts in order to improve usability, modernising drafting and administrative updates, clarifications of provisions and processes, removal of redundant transitional provisions, new necessary transitional arrangements, increased penalties for giving false or misleading documents to a building certifier—that is up from 20 to 100 penalty units—to strengthen the certification inspection framework, and recognising two distinct record keeping requirements by splitting one offence provision for record keeping into two separate and distinct offence provisions.

This amendment also acknowledges the importance of not just keeping records for seven years but ensuring that they contain sufficient information to make certifiers more accountable for the decision to appoint a competent person. There were also consequential, as you would anticipate, amendments to other legislation to reflect the remade Building Regulation, for example, things like replacing references to the 2006 regulation with the 2021 reference.

The new Building Regulation mirrors the delegated powers in the expired regulation that enable a local government to manage fire and flood risks in their areas and building work in remote areas. Amendments clarify certain elements related to retaining walls, repairs to smoke alarms and smoke detectors and when a pool owner undertakes works on their own regulated pool barrier. These changes overall enhance the certification and inspection framework, adopt current industry practice and clarify the obligations of building certifiers and appointed competent persons. As you would also expect, the forms that are attached to the regulation have been revised to align with the remade Building Regulation, including four new forms and two re-numbered forms due to a duplication in the numbering of forms.

An important part of our work is how we go about consulting when we are undertaking work like this. We undertook extensive consultation throughout the review and the development of the new regulation which commenced, as I said, in December 2019. Consultation continued with a ministerial construction council subgroup, local governments and private building certifiers until April 2020 when the pandemic delayed the progress of the review. Work recommenced and throughout 2021 extensive consultation occurred with a wide variety of industry groups and other relevant stakeholders on a consultation draft to the regulation.

Members of the ministerial construction council were critical to the consultation process, providing feedback and advice during the review and development of the regulation. The practical application and drafting of provisions impacting the linked certifiers was informed not only by peak bodies such as the Australian Institute of Building Surveyors and the Royal Institution of Chartered Surveyors but also a private building certifier working group.

The next part of it, of course, is implementation and how the regulation is operationalised by the building industry. Overall the department has received positive feedback about the Building Regulation 2021 and is now working with the Queensland Building and Construction Commission and industry to implement the new regulation. The department has continued to meet with peak bodies such as the Housing Industry Association, Master Builders Queensland, AIBS and RICS—the certifying bodies—to identify how we can continue to support peak bodies and industry through the transitional period. We are doing things like providing responses to frequently asked questions and a train-the-trainer information session for peak bodies. We are looking at, for example, a webinar and we are progressively publishing news flashes about the legislation and transitional arrangements. We will continue this consultation as we work through the implementation of what is effectively a remade Building Regulation.

We are looking to update some of the guidelines which are made under the regulation and we are anticipating that those will be published in November 2021. We will continue to support the building and construction industry on any questions that they have. This concludes the opening remarks I wish to make regarding the regulation and either Anne or I are happy to take any questions that the committee may have.

**CHAIR:** Thank you. I would like to ask straight up, with the significant increase in penalty units, for some examples of breaches. I know you said in your opening statement for misleading or false documentation, but if there are any examples could you delve into that a little bit further?

**Ms Barron:** An offence provision has changed. It is really in relation to the single provision which is around record keeping. We have split a record keeping offence provision into two separate offences. We are requiring records to be kept for at least seven years, with a maximum of 20 penalty units attached to that, and then we are also prescribing the information that must be retained in a record, with a maximum of 20 penalty units attached to that.

The regulation has also introduced a threshold of reasonability to the offence provisions relating to completion of documents by an appointed competent person or a QBCC licensee. Previous drafting had required the QBCC to prove that the competent person knew they had completed a form with false or misleading information which was problematic with difficulties involving proving a state of mind. The new drafting requires the QBCC to prove that the competent person giving the inspection documentation to the certifier ought to have reasonably known that a document contained false or misleading information given all of the circumstances and a maximum of 100 penalty units now applies instead of 20.

**Ms Neuendorf:** If I may add some context to that, an appointed competent person, a certifier receives document from them and relies on that to actually certify that the work is compliant. What we had heard from industry was that a practice was creeping in where it was a matter of shuffling the paper, the person that was completing it didn't check it sometimes as much as they should have so the 20 to 100 penalty units actually reflects how serious that is if they just give something across without checking it and it is false or misleading and leads to a building being approved and occupied that is not safe for occupation.

**CHAIR:** I remember when we went through this in the previous committee the certifiers were quite apprehensive about they are the ones who sign off on it if they get an engineering document that they trust is accurate. I thought that is where you were going with it. Thank you for that.

**Mr MILLAR:** I have a question on the penalty units. I just want to get some clarification here. Basically it says increase in penalty, sections 23, 40, 45 and 70, from 20 penalty units to 100 penalty units. Have we increased from 20 penalty units to 100 penalty units?

**Ms Barron:** Yes.

**Mr MILLAR:** What is the dollar cost of that, from 20 penalty units to 100 penalty units? What is the dollar cost?

**Ms Neuendorf:** I would have to check what the penalty unit value is at the moment. It is usually about 120-something per penalty unit. I am not sure of the exact amount. I would have to have a look.

**Mr MILLAR:** The penalty unit is 120.

**Ms Barron:** Yes, so it is 100 times 120.

**Mr WATTS:** I am interested in looking at the dollar quantum jump there, but I am also interested in similar offences in interstate jurisdictions and what the penalty cost might be in those jurisdictions just to see where Queensland sits on that table. Do you have any information in relation to what a similar offence in another jurisdiction would cost in terms of dollars?

**Ms Neuendorf:** We compared it to other offences across other regulations in Queensland. It is consistent with other practitioners in the Queensland trade. I do not know about other jurisdictions. We did not look into that. It was about making this consistent, whether it be a plumber, a QBCC licensee or somebody under the Building Act.

**Mr WATTS:** That is good clarification. Could you further expand on a couple of other areas where similar fines might apply under Queensland law and then if the question could be taken on notice could you bring back some information about how that compares to other jurisdictions?

**Ms Barron:** We are obviously very happy to take that on notice. The other point around the comparison with other jurisdictions is that while overall the frameworks seek to achieve the same end, which is a building that complies with the National Construction Code and therefore is safe to be used, different jurisdictions go about that in different ways. You might not necessarily have an exact match for either how we approach aspects of work, and certification and compliance with those with stages

of work, how a certifier goes about their role—and we have differences within the state as to how a certifier will approach certifying a detached dwelling as opposed to a multistorey dwelling. There are nuances within the approaches in the state and then also within that kind of interjurisdictional context. Obviously we are certainly happy to—

**CHAIR:**—to accept that disclaimer with the information of knowing that. It is not apples and oranges.

**Mr WATTS:** I fully accept that. What I am trying to get a picture of is overall when someone is going through a process of construction, how do the costs compare in Queensland with other jurisdictions? Are we expensive? Are we in the middle of the road? Are we on the bottom end of the scale? A fivefold penalty jump is a big jump, so I am interested in what has driven that decision and how that compares to our colleagues in the Federation.

**Ms Barron:** In terms of the overall national picture, the committee may recall that the national *Building Confidence Report*, which was authored by Peter Shergold, former head of Prime Minister and cabinet, and construction industry lawyer Bronwyn Weir, identified compliance and enforcement concerns across the building and construction industry. Each jurisdiction nationally has been reviewing their regulatory frameworks in order to ensure that people are complying with the law as it stands and also in order to ensure that there is a comprehensive and effective regulatory regime which supports enforcement of the law. Each jurisdiction has, in fact, been going through and reviewing their legislative and regulatory frameworks. You may have seen some quite substantial changes in New South Wales. The Victorian government is also undertaking a review of their Building Act.

There is a lot of activity nationally in terms of a stronger focus on compliance and enforcement and that will change the cost structures within industry as well. If you are focusing more on people doing—I am not suggesting by any stretch of the imagination that the majority of people are not complying with their obligations, but when you do have a stronger focus on compliance, it potentially does have an increase in costs. Otherwise the cost is being borne by the building owner and then it has an impact on enforcement activity as well.

**CHAIR:** In the end there is the enhancement to safety and quality of buildings—

**Ms Barron:**—the built environment; that is right.

**Mr WATTS:** I am sure we all want our houses to stand.

**Ms Barron:** Absolutely.

**Ms HOWARD:** How often are these charges in section 23 and 24 brought? How often are those charges brought on people? Is it a common offence?

**Ms Barron:** The QBCC takes a range of regulatory action which is available to them. That can range from education and awareness raising through to when you are actually taking action against someone under an offence. As to how often, I think we might need to seek some advice from the QBCC unless Anne has anything.

**Ms Neuendorf:** From the department's point of view I guess it is up to the regulator, as Ainslie has said. From our discussions with the regulator, court action is more or less for the more serious or as a last resort; they prefer to start with the training. Infringement notices can also be issued, and the infringement notices are generally about 10 per cent of the maximum penalty. I do not have an exact number of the prevalence of prosecution, but that may not necessarily reflect the prevalence of it occurring because education may be the tool they are using.

**CHAIR:** I am not picking on engineers, but say someone in design or engineering has done a document that the certifier takes as correct and some figures were wrong or something like that rather than intentionally misleading, would that get caught up in those numbers as well?

**Ms Neuendorf:** Yes.

**CHAIR:** This is what we are separating out? Okay. Thanks.

**Ms Barron:** Just to clarify also, in addition to the regime which is regulated by the Queensland Building and Construction Commission, you also have the Board of Architects and the Board of Professional Engineers, who have their own compliance and enforcement processes.

**CHAIR:** I remember they all appeared before us and there was a lot more in it than we expected.

**Mr BOYCE:** I wish to go back to the penalty units discussion. Could you give some examples of how far down the building chain this would apply with respect to local government authority building inspectors in terms of how big the building is, multistorey complex versus putting in a septic system, for example, or if their paperwork was noncompliant et cetera?

**Ms Neuendorf:** This particular increase in penalty is under the Building Act, so it would be for the building certification process. It is for an appointed competent person, so it would not be a QBCC licensee. Usually certification is done by a private certifier. That means local government would not be captured either, because they would actually be using the people they deem to be competent. That is a part of the record keeping that we talked about earlier as well.

The appointed competent person can inspect a stage of work and each stage is made up of aspects of work. The certifier could ask them to do a small amount, the aspect, or they may ask them to do the stage. That will depend. It means that potentially unlicensed people, if it is a type of work that has not been licensed—it could be an engineer or an architect, although usually that is regulated through the boards. It will depend on the certifier and what they are actually using the person for. Local governments generally should not be captured in this.

**CHAIR:** In the past local government did certify building work; is that correct?

**Ms Neuendorf:** That is correct; they did.

**CHAIR:** This is probably off track. I asked one of our local councillors about who to recommend as a certifier and he ran a mile. He said, 'I'm not recommending anyone.' I assumed they did. This was a few years back and they certainly do not any more.

**Ms Neuendorf:** They can. They do have—

**Ms Barron:** Local governments are required to retain a certifying function, but the vast majority—these are reforms that are 25 years old. The vast majority of certifiers are private certifiers.

**CHAIR:** Yes, as I found, and council were not going to help me choose one, either.

**Mr WATTS:** There has been a fivefold increase in fines and bearing in mind the penalty unit increases all the time as well, there is potentially a double whammy. I am trying to understand that. Going forward, do you see it staying at 100 penalty points and just going with the normal penalty point increase? Based on feedback, breaches and/or needing to increase penalties, do you see this as something that needs to be reviewed again?

**Ms Barron:** We would take it as part of normal policy practice to continue to review the appropriateness of the level of the fines which are allowed for under the regulation. As Anne indicated earlier, this particular change was really about ensuring parity across our own building and plumbing related legislation in order to ensure that the types of offences which are considered to be particularly serious attract the same penalty associated with it. As part of our work we will continue to—

**Mr WATTS:** Can I trouble you to give us a couple of examples of how that parity might exist between different trades in different parts of the construction industry?

**Ms Neuendorf:** The Plumbing and Drainage Act and the regulation have a maximum of 100 penalty units for false and misleading documentation. Also I understand the QBCC Act has 100 penalty units. One of the things that we have to remember here is that the building regulation was released in 2006, which is quite some time ago and that penalty unit value, bar the annual increase, had not been reviewed. In comparison, the pool safety laws that came in during 2010 have a maximum penalty unit of 165 penalty units. The act actually allows the Building Regulation to have 165 penalty units, but the position was taken that we would be consistent with the plumbers under the Plumbing and Drainage Act and the Plumbing and Drainage Regulation and also with QBCC licensees under that act.

**CHAIR:** We just had the one question taken on notice about the other jurisdictions and understanding that there is not complete parity because everyone is doing it in their own way. If we could get a response to that by 4 pm Monday, 18 October we would really appreciate that. That concludes this briefing. Thank you very much for your assistance and your attendance here today. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed. Thanks again.

**The committee adjourned at 10.57 am.**