

Queensland Building Services Authority Amendment Bill 2013

Report No. 27

**Transport, Housing and Local Government
Committee**

July 2013

Transport, Housing and Local Government Committee

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Acknowledgements

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*Ms Jackie Trad replaced Mrs Desley Scott at the public briefing held on 18 June 2013 and Mr Curtis Pitt replaced Mrs Desley Scott at a private committee meeting held on 28 June 2013

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Abbreviations

ABCC	Australian Building and Construction Commission
Act	<i>Queensland Building Services Authority Act 1991</i>
AIB	Australian Institute of Building
Bill	Queensland Building Services Authority Amendment Bill 2013
the Board	Queensland Building and Construction Board
the Commission	Queensland Building and Construction Commission
the Commissioner	Commissioner of the Queensland Building and Construction Commission
the Committee	Transport, Housing and Local Government Committee
the Department	The Department of Housing and Public Works
the governing board	Queensland Building and Construction Board
HIA	Housing Industry Association
Legislative Assembly	Queensland Legislative Assembly
Master Builders	Master Builders Queensland
Minister	Minister for Housing and Public Works
QBCC	Queensland Building and Construction Commission
QBSA	Queensland Building Service Authority
QBSA Act	<i>Queensland Building Services Authority Act 1991</i>
QCAT	Queensland Civil and Administrative Tribunal
Tru-Temp	Tru-Temp Air Conditioning Pty Ltd

Chair's foreword

This report presents a summary of the Committee's examination of the Queensland Building Services Authority Amendment Bill 2013.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear view from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

On behalf of the Committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the Committee's deliberations: the Committee's secretariat, officials from the Department of Housing and Public Works, and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Mr Howard Hobbs MP
Chair

July 2013

Recommendations

Recommendation 1 1

The Committee recommends that the Queensland Building Services Authority Amendment Bill 2013 be passed.

Recommendation 2 5

The Committee recommends that section 20(J) of the Bill, which details the responsibilities of the Commissioner, be amended to include a provision that makes the Commissioner responsible for preventing conflicts of interest between business divisions of the new Commission and for advising the Board of any conflicts of interest that do arise.

Recommendation 3 10

The Committee recommends that subsection 11(f) of the Bill, which sets out the functions of the Board, be amended to read “advising the Minister about unfair or unconscionable trading practices affecting the security of payments to subcontractors **and contractors**”.

Recommendation 4 16

The Committee recommends that for the purpose of consistency, Schedule 1 of the Bill include an amendment to section 14(1)(d)(i) of the *Pest Management Act 2001* to replace the provision’s reference to the *Queensland Building Services Authority Act 1991* with the *Queensland Building and Construction Commission Act 1991*.

1 Introduction

1.1 Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) was established by resolution of the Queensland Legislative Assembly (the Legislative Assembly) on 18 May 2012. The Committee comprises both government and non-government members and its primary areas of responsibility include transport, main roads, housing, public works, local government and community recovery and resilience.¹

Portfolio committees are responsible for considering:

- the policy to be given effect by the Bill and
- the application of the fundamental legislative principles to the Bill.²

The Legislative Assembly referred the Queensland Building Services Authority Amendment Bill 2013 to the Committee on 5 June 2013 and the Committee was asked to report by 1 August 2013.

The Committee was briefed by the Department of Housing and Public Works (the Department) at a public briefing held on Tuesday 18 June 2013. See Appendix A for a list of witnesses.

Submissions were invited on 11 June 2013 by emailing 582 subscribers on the Committee's email subscriber list and by directly contacting a further 109 identified stakeholders. The Committee received five submissions. See Appendix B for a list of submissions.

The transcript of the public briefing and the submissions received are available at:

<http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC>.

1.2 Policy objectives of the Queensland Building Services Authority Amendment Bill 2013

The objectives of the Queensland Building Services Authority Amendment Bill 2013 are to amend the *Queensland Building Services Authority Act 1991* (the Act or QBSA Act) to:

1. establish the Queensland Building and Construction Commission in place of the Queensland Building Services Authority
2. provide for the appointment of a governing board, which will report to the Minister for Housing and Public Works to replace the existing board and
3. provide for the appointment of a commissioner, effectively the chief executive, to replace the existing general manager, appointed by the governing board.

Recommendation 1

The Committee recommends that the Queensland Building Services Authority Amendment Bill 2013 be passed.

¹ Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended 14 February 2013.

² Section 93 of the *Parliament of Queensland Act 2001*

2 Examination of the Queensland Building Services Authority Amendment Bill 2013

2.1 Background

On 2 August 2012, the Legislative Assembly asked the Transport, Housing and Local Government Committee (the Committee) to inquire into and report on the operation and performance of the Queensland Building Services Authority (QBSA). Following extensive consultation with stakeholders, the Committee tabled its report in Parliament on 30 November 2012 – Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority. The Committee recommended extensive changes be made to the QBSA.³

On 29 May 2013, the Queensland Government formally responded to the 41 recommendations made by the Committee in its Report and agreed to implement the majority of reforms recommended.⁴ This Bill implements the first stage of the Government's response to the Committee's report by establishing the Queensland Building and Construction Commission (QBCC or the Commission).

The Minister for Housing and Public Works, the Hon. Timothy Mander MP, (the Minister) introduced the Queensland Building Services Authority Amendment Bill 2013 (the Bill) on 5 June 2013:

The government response, which was tabled on 29 May 2013, includes a 10 point action plan to overhaul building regulation in this state. This Bill today sets in motion points 1 and 2 of the action plan which will see us establish the Queensland Building and Construction Commission in place of the Queensland Building Services Authority. The new Commission will have a professional governing board and a commissioner, who will be appointed by, and report to, the governing board. The board of the QBCC will set the strategic direction and the operational, financial and administrative policies of the Commission. It will report to me directly on matters of performance and on issues affecting the building industry and consumers.

....

As I mentioned earlier, this Bill is only the start. Points 3 to 10 of the action plan contain a raft of other measures, including:

- *early intervention in the disputes process*
- *improved accountability of the certification of building work*
- *possible changes to the scope of the Home Warranty Insurance Scheme*
- *improved consumer awareness and industry training*
- *a review of the professional development, licensing and compliance of contractors*
- *expanded licensing role of the Commission.*

These changes will be implemented progressively by the new Commission in consultation with industry and stakeholders. Ultimately we want to see fewer disputes, fewer cases going to QCAT (Queensland Civil and Administrative Tribunal) and faster resolution of those disputes that do arise.

The building and construction industry is one of the pillars of our economy, and it is important that we make sure there is a level playing field for all participants, whether

³ Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2012/5412T1818.pdf>

⁴ Queensland Government Response to Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2705.pdf>

*consumers or contractors. The reforms set in motion by this Bill are an important step towards making sure that the building industry can continue to drive growth in our State.*⁵

2.2 Policy Issues

The Bill proposes to amend the *Queensland Building Services Authority Act 1991*. The name of the act will change because the QBSA will be replaced by the Queensland Building and Construction Commission (QBCC or Commission). The amended act will be called the *Queensland Building and Construction Commission Act 1991*.

The Queensland Building and Construction Commission

The QBCC will consist of the Queensland Building and Construction Board (a professional governing board) and the Commissioner, as well as the organisational unit under the control of the Commissioner.

The functions of the Commission will be similar to the current QBSA and the provisions in the Bill allow for these functions to transfer from the QBSA to the Commission. However, the Explanatory Notes explain that there is a significant change in the governance arrangements which will be more reflective of the governance structure of a public company and other government authorities such as the Residential Tenancies Authority.⁶

Transitional provisions will transfer the assets and liabilities of the QBSA to the Commission. A transitional provision will also re-establish the employing office under which the QBSA will continue to be employed.⁷

Section 38 of the Bill provides that upon its commencement, the position of general manager of the QBSA is abolished and the appointment and employment of the general manager ends. However, section 39 of the Bill provides that the compensation, if any, to be paid to an outgoing general manager will be in accordance with the provisions that would have applied if the employment had been terminated other than by the general manager, prior to the completion date of the appointment.⁸

General Managers will be responsible for each of the three business units, (licensing, dispute resolution and the Home Warranty Scheme), with these units being firewalled from each other to prevent any potential conflict of interest.⁹

At the Committee's Public Briefing on the Bill the Department of Housing and Public Works (the Department) elaborated:

*That (firewalling) is something the Board and the Commission will actually put in place. What is envisaged is that that will be managed through operating procedures established by the Board and the Commissioner and that the relationship across the independent groups would only be at a general manager level. So from an operational point of view, procedures will be put in place to give that firewalling effect.*¹⁰

⁵ Minister for Housing and Public Works, *Hansard*, 5 June 2013:1942-1943

⁶ *Explanatory Notes*, Queensland Building Services Authority Amendment Bill 2013:1

⁷ *Explanatory Notes*, Queensland Building Services Authority Amendment Bill 2013:2

⁸ See the Fundamental Legislative Principles section of this Report for further discussion about any compensation payable on the termination of the general manager.

⁹ Minister for Housing and Public Works, *Hansard*, 5 June 2013:1942

¹⁰ *THLGC Public Briefing Transcript* 18 Jun 2013:3

The Housing Industry Association (HIA) questioned the need for a Commission but acknowledged “that the Government has decided to go down this path.”¹¹ HIA has raised a number of concerns about the Bill.

Firstly HIA considers that the structure for the Commission outlined in the Bill does not go far enough to ensure the operational separation of the three key functions of the Commission, namely licensing, insurance and dispute resolution. HIA strongly supported the Committee’s earlier recommendation from its Inquiry into the Operation and the Queensland Building Services Authority, that these three functions needed to be structurally separated.

Although HIA understands that the Government intends that the Commission has a separate General Manager for each of these three functions, HIA is concerned that this is essentially a duplication of the current structure of the QBSA, albeit with a Board with operational oversight rather than purely advisory responsibilities. The potential for conflict of interest among these three functional areas remains strong.

Having one chief executive for the three functional area will inevitable involve the kind of cross-functional interaction that was at the heart of HIA’s and the Committee’s concerns over the conflict of interest.

To minimise this potential conflict to emerge in practice HIA argues that the Commission would be better served with three commissioners, all would be appointed by, and report to, the Board of the Commission.

HIA suggests that this option should be made available to the Government by changing all the references to “Commissioner” in the Bill to “Commissioner/s”.

Should the Government be committed to proceeding with just one Commissioner then the Commission under section 20(J)(1) should have an explicit obligation as part of their role to prevent conflicts of interest between operational areas, namely licensing, dispute resolution and insurance.¹²

The Department responded:

HIA’s proposal would in effect create three organisational units. The Government response was to maintain one organisational unit under the control of the Commissioner.

With respect to licensing, dispute resolution and home warranty scheme management divisions, the operations of these business divisions will be firewalled below the general manager level to mitigate against perceived conflicts of interest. The general managers will report to the Commissioner and will also be available to report to the Board with respect to operations of their divisions.¹³

Committee Comment

In its 2012 Report on the Operation and Performance of the Queensland Building Services Authority the Committee recommended that the “Minister for Housing and Public Works restructure the building services currently provided by the QBSA so that there is a clear and transparent divide between the roles of licensing; management decisions to rectify and complete work; and management of the limited home warranty scheme”.¹⁴

¹¹ HIA, Submission No.2:1

¹² HIA, Submission No.2:1

¹³ Written Departmental Brief dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):5

¹⁴ THLGC, Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012:19

The Committee further recommended that the Minister consider restructuring the Queensland Building Services Authority so that each of these functions be legislatively “firewalled” from each other and managed by a general manager who would be directly accountable to, and reports through, a decision making board to the responsible Minister.¹⁵

The Government response to the Committee’s report stated that the new organisational structure would have general managers for each of the business divisions reporting to the Commissioner and that the operation of these business divisions would be firewalled below the general managers.¹⁶

The Committee is satisfied that the proposed new structure, provided for in the Bill, partially satisfies its recommendation that the functions of the business divisions be firewalled. However, the Committee supports the recommendation made by the Housing Industry Association that section 20J(1), which details the responsibilities of the Commissioner, should have an explicit obligation as part of the Commissioner’s role to prevent conflicts of interest between operational areas, namely licensing, dispute resolution and insurance. Further, the Committee is of the view that the Commissioner should be responsible for reporting any conflict of interest that does occur to the Board.

This amendment would ensure that the Commissioner is explicitly responsible for preventing conflicts of interest between business divisions of the new Commission and for advising the Board of any conflicts of interest that do arise.

Recommendation 2

The Committee recommends that section 20(J) of the Bill, which details the responsibilities of the Commissioner, be amended to include a provision that makes the Commissioner responsible for preventing conflicts of interest between business divisions of the new Commission and for advising the Board of any conflicts of interest that do arise.

HIA has also raised a concern about the name of the new Commission:

HIA is also concerned that the Queensland Building and Construction Commission name has the potential to confuse the industry and its clients if there is a Coalition government after this year’s Federal Election. The Coalition has promised to return the Australian Building and Construction Commission [ABCC] it is elected and the ABCC would have a fundamentally different role from the QBCC even though their names, and acronyms, would be very close. HIA would recommend that an alternative name be chosen that is more readily distinguishable from the ABCC.¹⁷

The Department responded:

It is noted that the federal Coalition’s proposal to re-establish the ABCC is aimed at targeting unlawful industrial practices in the industry.

It is considered that the potential for confusion with a federal body is likely to be minimal and of a temporary nature.

¹⁵ THLGC, *Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012:19*

¹⁶ *Queensland Government Response to Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012:11*

¹⁷ HIA, *Submission No.2:2*

*No amendment to the Bill is proposed.*¹⁸

Committee Comment

The Committee is of the view that it is inevitable that a number of government and non-government bodies will contain in their name the term “building and construction” and that many of these organisations will have fundamentally different roles. For example, the Queensland Attorney-General and Minister for Justice recently announced a new Building and Construction Compliance Branch in his department which will enforce the new guidelines to encourage better management of workplace relations on construction sites.¹⁹

On this basis, the Committee is satisfied that any confusion relating to the name of the Queensland Building and Construction Commission and other organisations with the term “building and construction” in their name (including the Australian Building and Construction Commission) should be temporary in nature.

HIA also raised a concern that the Bill:

Maintains the power for the Commission to provide “courses of instruction” for licences. HIA considers that it is an appropriate role for the Commission to identify potential deficiencies in the training provided to the industry through the well-established industry skills councils. However, the provision of training to the industry is very well catered for by the extensive network of public and private training providers. The QBSA’s provision of training has been a source of confusion and concern in the industry as it has attempted to coerce licensees into the QBSA’s training programs rather than alternative providers through overt threats to a licensee’s capacity to perform certain types of building work. It has also duplicated training from other providers.

*HIA suggests to the Committee that it recommend the deletion of Clause 20J(k) from the Bill*²⁰.

The Department responded:

*While the provision of training for licensees and others by industry training organisation is supported, there may be instances where the Commission will want to provide training. This may include where there is an urgent need to provide training to improve the skills of licensees where safety issues have been identified. Accordingly it is proposed to maintain this provision on the Bill.*²¹

Committee Comment

The Committee has been advised by the Department that there may be instances where the Commission needs to provide training to improve the skills of licensees and other industry participants and is satisfied that section 20J(k) which makes the Commissioner responsible for providing courses of instruction should remain in the Bill.

¹⁸ *Written Departmental Brief* dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):2

¹⁹ Attorney-General and Minister for Justice, Press release, *New construction code to save taxpayers dollars* dated 30 June 2013:1.

²⁰ HIA, *Submission No.2*:2

²¹ *Written Departmental Brief* dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):6

Tru-Temp Air Conditioning Pty Ltd (Tru-Temp) expressed the view that the Government's response to recommendations 1,2 and 3 of the 2012 Committee Report on the Operation and Performance of the QBSA "would only provide for a bigger bureaucracy and so even more degrade a QBCC."²²

The Department responded:

The proposed amendments will not provide for a bigger bureaucracy.

It is proposed that the role of the Minister will remain essentially unchanged. The Minister will retain the power to give formal directions to the Commission, which are to be tabled in Parliament.

The proposed new Board will consist of seven members. This is a reduction of one member from the existing board which has 8 members.

The role of the General Manager is being replaced by the role of the Commissioner.²³

Committee Comment

The Committee has noted that the overall functions of the Commission will be similar to the current QBSA and that transitional provisions in the Bill will re-establish the employing office under which the QBSA staff will continue to be employed.

The Committee is satisfied that there is no intention to employ additional staff and has noted that the proposed QBCC Board will have one less member than the current Board. The Committee is therefore satisfied that the proposed amendments will not provide for a bigger bureaucracy

Mr Don Jender submitted:

It seems to me that the proposed Qld Building Services and Construction Commission (BSCC) is basically a warmed over, renamed BSA, with some worthwhile improvements in specific areas... As far as I can see, the Bill does not change the Objects of the existing BSA Act. That situation will further promote a "business and usual, nothing much has changed" attitude. I would have preferred the Object of the BSA Act to be amended to give it a stronger mandate to regulate builders, and to assist consumers. In my view, many consumer problems and complaints are due to builders failing to build to standards (whether through ignorance or desire to cut costs). Stronger regulation of builders would reduce consumer complaints and raise the general standard of building work, and improve confidence in the building industry.

The current BSA will move in its entirety to being the BSCC. That in itself means current staff and processes will continue, and the consequent organisational inertia will probably produce much the same results for consumers as before. Perhaps the new Commissioner will have an impact on that, but that person will be inheriting all that went before. The new Commissioner will have a daunting job ahead to change the BSCC culture and processes (if indeed that is the objective).

A more effective Board would be a useful improvement, but that improvement may be more image than reality. It seems to me that the Board will not control the Commissioner – it is to provide "guidance and leadership" – section 11(d), not direction. In the most important areas of QBCC operation for consumers (rectification and the insurance scheme), the Commissioner can ignore the Board (as now) – see section 19(2) and section 20K(2).²⁴

²² Tru-Temp, Submission No.3:1

²³ Written Departmental Brief dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):2

²⁴ Mr Don Jender, Submission 5:1

The Department responded:

Proposed new section 20K(1) provides that in carrying out the Commissioner's responsibilities, other than performing an additional function, the Commissioner must give effect to any policy or direction of the Board relevant to the responsibility.

It is considered appropriate that the Commissioner should give effect to the policies and directions of the Board, but that decision making in relation to individual licence, rectification, completion or insurance matters should be made independently by the Commissioner.

It is therefore considered that no amendment to the Bill is required.²⁵

Committee Comment

The Committee is satisfied that the Commissioner must give effect to any policy or direction of the Board relevant to the Commissioner's responsibilities, other than when performing an additional function.

The Committee supports proposed section 20K(2) of the Bill which provides that decision making in relation to individual licence, rectification, completion or insurance matters should be made independently by the Commissioner.

The Queensland Building and Construction Board

The Bill provides for the appointment of the Queensland Building and Construction Board (the Board) and a commissioner who will be appointed by, and report to, the governing board. The Board will set the strategic direction and the operational, financial and administrative policies of the Commission. It will report directly to the Minister for Housing and Public Works on matters of performance and on issues affecting the building industry and consumers. Introducing the Bill to the Assembly, the Minister stated:

This is a significant departure from the system used by the Building Services Authority, where the board served in a purely advisory capacity with no real authority. The board will also ensure that the Commission performs its functions and exercises its powers in a proper, effective and efficient way, making and reviewing policies governing the administration of the act, providing guidance and leadership to the Commissioner, and advising me about unfair trading practices affecting the security of payments to subcontractors.

As the responsible Minister, I will have the power to give formal directions to the Commission. These are to be tabled in parliament. Any formal policies of the Board governing the administration of the Act will need to be endorsed by me as part of the approval process by the Governor in Council, as these policies are required to be approved by a regulation.²⁶

There will be seven members of the Board, including the Chair and Deputy Chair, appointed by the Governor in Council for a term of not more than three years. The Commissioner will not be a member of the Board. Board positions will be advertised following the passage of the Bill, with members to be selected on the basis of their ability to contribute to the effective and efficient performance of the Commission.

²⁵ *Written Departmental Brief* dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):3

²⁶ Minister for Housing and Public Works, *Hansard*, 5 June 2013:1942

The Board's functions will include:

- deciding the strategies and the operational, administrative and financial policies to be followed by the Commission
- ensuring the Commission performs its functions and exercises its powers in a proper, effective and efficient way
- making and reviewing policies governing administration of the act
- providing guidance and leadership to the Commissioner
- advising the Minister for Housing and Public works on issues affecting the building industry and consumers
- advising the Minister about unfair or unconscionable trading practices affecting the security of payments to subcontractors and
- consulting the building industry and its consumers and advancing their interests with the objects of the Act.

Master Builders Queensland (Master Builders) supports the proposed establishment of the new QBCC and is generally supportive of the building industry reform package. However, it has raised a concern about Clause 5 of the Bill which amends Divisions 1 to 4 of Part 2 of the *Queensland Building Services Authority Act 1991*. This clause will insert a new section (section 11) into the Act which specifies the functions of the Board. Under subsection (f) of the new section 11, the Board will be responsible for "*advising the Minister about unfair or unconscionable trading practices affecting the security of payments to subcontractors*".

Master Builders considers that the wording in the new subsection 11(f) is too narrow given that unfair or unconscionable trading practices generally flow from the head contract. The use of the term 'contractor' rather than 'subcontractor' in this subsection would, in Mater Builders' view, help to ensure that the proposed function is sufficiently wide enough to capture the entire contractual chain.²⁷

The Department of Housing and Public works responded:

*In acknowledgement that security of payment issues affects contractors and subcontractors, consideration will be given to amending proposed new section 11(f) to include contractors and subcontractors in lieu of reference only to subcontractors.*²⁸

Committee Comment

The Committee supports the intent of the recommendation made by Master Builders that the new subsection 11(f) is too narrow and should be amended to capture the entire contractual chain. However, the Committee is of the view that both contractors and subcontractors should be included in the wording rather than simply replacing the word 'subcontractors' with 'contractors' as recommended by Master Builders.

This amendment would ensure that the Board is responsible for advising the Minister about unfair or unconscionable trading practices affecting the security of payments to both contractors and subcontractors.

²⁷ Master Builders, *Submission No.1:1*

²⁸ *Written Departmental Brief* dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):3-4

Recommendation 3

The Committee recommends that subsection 11(f) of the Bill, which sets out the functions of the Board, be amended to read “advising the Minister about unfair or unconscionable trading practices affecting the security of payments to subcontractors **and contractors**”.

HIA submitted that the Bill:

Provides no mechanism for resolving deadlocks between the Board and the Minister over the appointment of the Commissioner. While section 20D says there must be a Commissioner, and the Board is the only body with power of appointment, that power is subject to prior written ministerial approval. Should the Board and the Minister be unable to agree on a candidate, how can the matter be resolved without an amending Act of Parliament? Neither the Minister nor the Governor may sack the Board, nor can any other body appoint a Commissioner (or even an Acting Commissioner – section 20I). HIA suggests that either the Minister or the Board be given unfettered power to appoint an acting Commissioner for a short period of time, say up to three months.²⁹

The Department responded:

Members of the proposed QBCC are subject to removal under section 25 of the Acts Interpretation Act 1954. An acting Commissioner may be appointed under section 24B or section 25 of the Acts Interpretation Act 1954. Proposed section 20I provides that the appointment of an acting Commissioner must be with the Minister’s written approval.

It is considered that the existing and proposed provisions will adequately deal with the appointment and removal of members of the Board and the appointment of the Commissioner and any acting Commissioner.³⁰

Committee Comment

The Committee is satisfied that proposed sections 20I and 20D of the amended Act, along with the relevant sections of the *Acts Interpretation Act 1954*, will adequately deal with the appointment and removal of members of the Board and the appointment of the Commissioner or any acting Commissioner.

Tru-Temp expressed the view that “a Board will only provide a buffer for the Minister and a hindrance to the QBCC.”

Committee Comment

The Committee is satisfied that the Bill improves accountability by establishing a new professional governing board. The Board will set the strategic direction and the operational, financial and administrative policies of the Commission and will report directly to the Minister on matters of performance and on issues affecting the building industry and consumers.

The Board will also ensure the Commission performs its functions and exercises its powers in a proper, effective and efficient manner, making and reviewing policies governing the administration of the Act, providing guidance and leadership to the Commissioner, and advising the Minister about unfair trading practices affecting the security of payments to subcontractor’s.

The Committee fully supports the proposed change in the functions and responsibilities of the Board.

²⁹ HIA, *Submission No.2:2*

³⁰ *Written Departmental Brief* dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):4-5

The Commissioner

The Commissioner will be appointed by the Board, subject to approval by the Minister for Housing and Public Works, for a term of not more than three years, with the role being akin to that of a chief executive. The Commissioner will be responsible for implementing the strategic direction set by the Board and for the operation of the Commission. Otherwise, the Commissioner's responsibilities will be similar to those of the general manager of the QBSA.

The Commissioner will be required to declare any conflicts of interest and step aside from the decision making where a conflict of interest arises.

Role of the Minister

The role of the Minister will remain essentially unchanged. The Minister will retain the power to give formal directions to the Commission, with directions to be tabled in Parliament. As is currently the case, any formal policies of the Board will need to be endorsed by the Minister as part of the approval process by the Governor in Council, as these policies are required to be approved by a regulation.³¹

HIA raised a concern which:

Centres on the history of political influence over the QBSA's operations as politicians from all parties and all levels of government advocated for their constituents concerns. While this is not an easy problem to fix legislatively HIA asks the Committee to consider recommending a new clause in the Bill – "section 9(5) Except to the extent it complies with directions made under this section, the Commission is to exercise its powers and functions independently and in accordance with the principles of equity and good conscience".³²

The Department responded:

It should be noted that under the proposed section 20J(1) the Commissioner has the responsibility for licensing, inspection, disciplinary action, insurance etc. and under section s.20K(2) must act independently of the Board in making those decisions. Also under proposed s19(2) the policies of the Board issued under section 19(1) cannot prevent the Commissioner from acting independently.

It is considered that these provisions, along with the common law principles of administrative decision making provide adequate protection for the independence of decision making about such matters as licensing, rectification and insurance.³³

Committee Comment

The Committee is satisfied that sections 19 and 20 of the Bill, along with the common law principles of administrative decision making, provide adequate protection for the independence of decision making by the Commissioner.

³¹ *Written Departmental Brief* dated 27 June 2013:2

³² HIA, *Submission No.2:2*

³³ *Written Departmental Brief* dated 27 June 2013, Attachment 1 (as amended on 12 July 2013):1

2.3 The Broader QBSA Reform Process

The Committee tabled its Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority in Parliament on 30 November 2012 in which it recommended extensive reform of the QBSA.

Following the Committee's report to Parliament, the Department engaged KPMG to undertake consultation with industry licensees and builders, consumer groups and individual consumers in Brisbane, Gold Coast, Townsville and Rockhampton. Key themes considered in the consultation process included dispute resolution, the Queensland Home Warranty Scheme, licensing, and the role, structure and governance of the QBSA. The Department has advised that the views of industry and consumer stakeholders were taken into account by the Government when considering an appropriate structure for the reformed building authority and board.³⁴

Consultation was also undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.³⁵

On 29 May 2013, the Queensland Government formally responded to the 41 recommendations made by the Committee and agreed to implement the majority of reforms recommended.³⁶ This Bill represents the first stage of the Government's response to the Committee's report.

Implementation

The Department has advised the Committee that an implementation committee will be established to provide advice to the Minister on implementation of the Government's reform process over the next 6 months.

We would expect that, in terms of the areas they will further review and provide advice on and recommendations to the Department and the Minister that would probably take until the end of this year. We are doing that work concurrently with the bill amendments and the appointment of the Board so that the Board and the Commissioner can actually take that work on.

....

The implementation committee will have appointments from different parts of industry. There are probably about five areas for further review and consideration and recommendations, and each of those areas will have working groups and the implementation committee would be seeking specialist advice and representation on those particular areas of review.³⁷

Issues with the reform agenda

The Australian Institute of Building (AIB) welcomed the reforms to the QBSA announced by the Government and noted that "retaining the 'one-stop shop' model with appropriate corporate governance structures is what we requested in our submission (to the 2012 Committee Inquiry), so we support that proposal."³⁸

³⁴ THLGC Public Briefing Transcript 18 Jun 2013:2

³⁵ THLGC Public Briefing Transcript 18 Jun 2013:2

³⁶ Queensland Government Response to Report No.14 Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2705.pdf>

³⁷ THLGC Public Briefing Transcript 18 Jun 2013:4

³⁸ AIB, Submission No.4:1

However, AIB is disappointed with some aspects, and in particular the lack of proposals for compulsory CPD (continuing professional development) and AIB membership being a means to obtain an open building licence....

The plan to implement a system for continuing professional development is a very positive development for the building industry in Queensland, but it is unfortunate that it will not be compulsory. If the CPD system is not compulsory then it will 'lack teeth' and will be largely ignored.

Further, given the high educational and experience benchmarks for corporate membership of the Australian Institute of Building, this should be one pathway to obtaining an open building licence in Queensland.

...

AIB welcomes the review of the current licensing system to ensure it is meeting its stated objectives, including clarification of what constitutes unlicensed building work.

AIB also praises the proposals to: develop and implement a framework for undertaking routine checks for compliance with building standards and codes; consider the development and implementation of a rapid domestic adjudication model to fast track domestic building disputes with mandated response timelines; and develop an improved suite of domestic building contracts.³⁹

Committee Comment

The Committee has noted the issue raised by the Australian Institute of Building about pathways to obtaining an open building license, including the benefit of compulsory professional development training.

The Committee considers that while this issue is relevant to the QBSA reform process it is not relevant to the objectives of this Bill.

³⁹ AIB, *Submission No.4:1*

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals and
- the institution of parliament.

The Committee considered the fundamental legislative principles issues stemming from the *Queensland Building Services Authority Amendment Bill 2013* and identified several potential departures from these principles which are explored below.

Issues of fundamental legislative principle sufficiently canvassed in the Bill’s Explanatory Notes have not been further raised in this Report.

3.1 Rights and liberties of individuals

Immunity from proceedings or prosecution without adequate justification

Section 4(3)(h) of the *Legislative Standards Act 1992* requires that legislation does not confer immunity from proceeding or prosecution without adequate justification.

Clause 8 of the Bill amends section 114 of the QBSA Act to reflect the change in terminology under the new scheme from ‘authority’ to ‘Commission’ and ‘general manager’ to ‘Commissioner’. The Bill preserves the existing immunity under section 114(1) to provide that “*neither the State, the Commissioner [previously ‘the general manager of the authority’] nor a relevant officer of the Commission [previously ‘a relevant officer of the authority’] incurs any civil liability for an honest act or omission, other than a publication act, in the performance or purported performance of functions under this Act or the Building Act 1975*”. A civil liability that would, apart from subsection (1) attach to an entity other than the Commission, attaches instead to the Commission (114(2)).

The existing subsection (3) states that neither the State, the authority nor the general manager of the authority incurs any liability for a publication act.⁴⁰ The change proposed for subsection (3) states that “*neither the State, the Commission nor a relevant officer of the Commission incurs any liability for a publication act*”, although the Commissioner or a relevant officer⁴¹ may still be liable to disciplinary action under the conditions of their employment (see section 114(4)).

The Committee considered the possibility that this amendment could expand the categories of persons granted immunity from liability for a publication act from the general manager of the authority (now ‘the Commissioner’) to any ‘relevant officer’ of the Commission which would include any officer or employee of the Commission.

The Committee received advice from the Department:

Clause 8 is not intended to change the extent of immunity of the Commission and its officers under the amended Queensland Building and Construction Commission Act 1991 (QBCC Act). Section 114(3) of the Queensland Building Services Authority Act 1991 (QBSA Act)

⁴⁰ A ‘publication act’ is defined in subsection (5) to mean a disclosure or publication made by, or for, the Commission, in giving a warning to the public under section 18(2)(f) about building work, the commercial/business reputation of any person associated with building work, the quality or standard of building work performed by any person, or a contravention/alleged contravention of the Act or the operation or enforcement of the Act.

⁴¹ Relevant officer means an employee of the employing office or of another government entity performing work for the authority under a work performance arrangement, or an officer or employee of the authority.

provides that none of the State, the authority or the general manager of the authority incurs any liability for a publication act (the issue of a warning to the public). The current definition of 'authority' includes the general manager and the organisational unit under the control of the general manager. Accordingly, it is considered that section 114(3) also protects employees of the employing office and employees of the authority.

The current definition of 'relevant officer' of the authority means an employee of the employing office or another government entity performing the work for the authority under a work performance arrangement, as well as an officer or employee of the authority.

The reference in Clause 8 of the Bill amending section 114(3) to include a 'relevant officer' is intended to confirm the immunity that extends to the authority and the Commissioner also extends to all employees of the employing office or employees of the authority.⁴²

Committee Comment

The Committee is satisfied that the Bill does not extend the current immunity provided under the QBSA Act but simply confirms that the immunity that extends to the authority and the Commissioner also extends to all employees of the employing office or employees of the new authority as is currently the case for employees of the QBSA.

Compulsory acquisition of property

Section 4(3)(i) of the *Legislative Standards Act 1992* requires that legislation provides for the compulsory acquisition of property only with fair compensation.

Clause 10 of the Bill inserts, inter alia, new section 38 into the QBSA Act to provide that, on the transfer day (when the amending Act commences and the QBCC is established), the following end or cease to exist – the former authority (the QBSA); the former board (Queensland Building Services Board); the appointment of the members of the former board; office of the general manager; and the general manager's employment.

Clause 10 also inserts new section 39(1) into the QBSA Act to provide that "no amount, whether by way of compensation, reimbursement or otherwise, is payable by the State or the Commission to any person for or in connection with the enactment of section 38." Subsection (2) does however provide that – "to avoid any doubt, subsection (1) does not limit or otherwise affect the general manager's right to a benefit or entitlement that, under the existing conditions of appointment, had accrued or was accruing immediately before the transfer day."

Subsection (3) of section 39 states that "on the transfer day, a benefit or entitlement mentioned in subsection (2) ceases to accrue and becomes payable as if the general manager's appointment had, according to its conditions, been terminated on the transfer day and the termination is other than by the general manager".

While it is not readily apparent in the absence of the employment contract, presumably subsection (3) is directed at ensuring the payment of an early termination payout (for example, a proportion of the salary that would have been payable for the remaining period of his/her contract) if such was an entitlement under the general manager's contract. It is also surmised that the fact that the clause uses the words "*termination is other than by the general manager*" may be meant to reflect the fact that termination of the contract is not on disciplinary or misconduct grounds (as might be the case where the general manager moved to terminate an employee's contract) which should therefore protect any entitlements of the general manager under the contract that might have otherwise been avoided/nullified where his/her termination was conduct or fault based

⁴² Letter from the Department of Housing and Public Works dated 26 June 2013:1

Former Scrutiny of Legislation Committees had concerns where the winding up or abolition of a statutory body or board meant that its members or executive were out of office and received no compensation for their loss of position.

The Committee sought confirmation from the Department about the intended operation of this provision.

The Department responded:

Clause 10 (proposed new section 39) is intended to ensure that any person going out of office as the general manager of the authority is entitled to compensation to which they would be entitled under the existing conditions of appointment determined by the Minister under section 17 of the QBSA Act.⁴³

Committee Comment

The Committee notes that Section 38 of the Bill provides that upon its commencement, the position of general manager of the QBSA is abolished and the appointment and employment of the general manager ends.

The Committee is satisfied that section 39 of the Bill ensures that the general manager is entitled to the same compensation they would be entitled to under the existing conditions of appointment determined by the Minister under section 17 of the QBSA Act.

Clear and unambiguous drafting

Section 4(3)(k) of the *Legislative Standards Act 1992* requires that legislation is unambiguous and drafted in a sufficiently clear and precise way.

Schedule 1 of the Bill amends, inter alia, section 14(1)(d)(iv) of the *Pest Management Act 2001* to replace that provision's reference to the *Queensland Building Services Authority Act 1991* with the *Queensland Building and Construction Commission Act 1991* to reflect the replacement of the former QBSA with the QBCC. Within section 14(1), paragraph (d)(i) also refers to the *Queensland Building Services Authority Act 1991* yet that reference has not been removed or amended.

The Committee sought further information from the Department as to whether this is intentional or a mere oversight.

The Department responded:

The Department thanks the Committee for drawing to its attention that an amendment could be made to section 14(1)(d)(iv)(sic) of the Pest Management Act 2001 to replace that provision's reference to the QBSA Act with the QBCC Act. While clause 10 of the Bill (proposed new section 49) provides that a reference in an Act may, if the context permits, be taken as a reference to the QBCC Act, consideration will be given to amending the Bill during consideration in detail to include an amendment to section 14(1)(d)(iv)(sic) of the Pest management Act 2001⁴⁴.

Recommendation 4

The Committee recommends that for the purpose of consistency, Schedule 1 of the Bill include an amendment to section 14(1)(d)(i) of the *Pest Management Act 2001* to replace the provision's reference to the *Queensland Building Services Authority Act 1991* with the *Queensland Building and Construction Commission Act 1991*.

⁴³ Letter from the Department of Housing and Public Works dated 26 June 2013:2

⁴⁴ Letter from the Department of Housing and Public Works dated 26 June 2013:2

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee Comment

The Committee is satisfied that the explanatory notes tabled with the Bill are fairly detailed, contain the information required by Part 4 of the *Legislative Standards Act 1992*, and provide a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendices

Appendix A – List of witnesses at the Departmental Public Briefing Tuesday 18 June 2013

Witnesses
Mr Boyd Backhouse Executive Director, Legal Services, Department of Housing and Public Works
Mr Don Rivers General Manager, Project Services, Department of Housing and Public Works

Appendix B – List of submissions

Sub No.	Submitter
1	Master Builders Queensland
2	Housing Industry Association
3	Tru-Temp Air Conditioning Pty Ltd
4	Australian Institute of Building
5	Mr Don Jender

Statement of Reservation

DESLEY SCOTT MP

SHADOW MINISTER FOR COMMUNITIES, CHILD SAFETY, DISABILITY SERVICES AND MENTAL HEALTH

MEMBER FOR WOODRIDGE

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31 July 2013

Mr Howard Hobbs MP
Chair
Transport, Housing and Local Government Committee
Parliament House
Cnr George and Alice Streets Brisbane Qld 4000

Dear Mr Hobbs

Queensland Building Services Authority Amendment Bill 2013 - Statement of Reservation

The Opposition wishes to notify the committee of its reservations about certain aspects of the Queensland Building Services Authority Amendment Bill 2013. We will detail the reasons for our dissent upon the resumption of the second reading debate.

Yours sincerely

A handwritten signature in black ink that reads 'Desley C. Scott'.

Desley Scott MP
Member for Woodridge