




Speech By
Hon. Tim Mander

MEMBER FOR EVERTON

Record of Proceedings, 15 October 2014

**QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION AND OTHER
LEGISLATION AMENDMENT BILL**

Second Reading

 **Hon. TL MANDER** (Everton—LNP) (Minister for Housing and Public Works) (7.35 pm): I move—

That the bill be now read a second time.

In opening, I thank the Transport, Housing and Local Government Committee for its consideration of the Queensland Building and Construction Commission and Other Legislation Amendment Bill and for its deliberation of, and report on, the bill which was tabled on 8 October 2014. I am now pleased to table the government's response to the committee's report No. 54.

Tabled paper: Transport, Housing and Local Government Committee: Report No. 54—Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014, government response [\[6264\]](#).

To develop this bill, stakeholders for the building, construction and housing industry as well as the general community have been extensively consulted. This bill is a reflection of the ideas and suggestions of many Queenslanders who care about the future of our building, construction and housing industries. We are committed to growing the construction industry as one of the four pillars of the Queensland economy. The bill being debated today is another step towards meeting this commitment.

The industry injects around \$60 billion into our economy and employs approximately 250,000 Queenslanders. The amendments are intended to reduce red tape and create fair regulation so that the industry has the best possible platform for this growth. The bill we are debating today will build on previous reforms and implement the third stage of the government's 10-point action plan to reform the building industry. It also addresses some miscellaneous amendments to enable the Queensland Building and Construction Commission, the QBCC, to be more effective.

The proposed amendments in this bill are as follows: firstly, the amendments will update the Queensland Home Warranty Scheme so that there is greater protection for consumers. Consumers will have the choice of purchasing greater coverage as well as the ability to purchase insurance for pools and manufactured homes. The amendments will also provide better clarity for consumers when purchasing insurance so that Queenslanders are more aware of what insurance they are purchasing.

Secondly, the bill includes various reforms to improve Queensland's domestic building dispute process. Examples include the proposed introduction of a free mandatory mediation process with QBCC. This will enable disputes to be resolved more quickly, potentially saving consumers and licensees time and money. Previously all disputes had to go to QCAT, which could be lengthy and most costly. An early dispute resolution process has been successfully piloted at the QBCC. From 1 July 2014 to 10 October of the same year the pilot has successfully resolved 198 disputes well within the 28-day time frame. If this mediation is not successful and the matter is referred to QCAT, then the

QBCC can rectify the defective work as an insurance claim. Previously consumers would need to wait for the dispute to be resolved by QCAT before the insurance could be accessed.

Thirdly, the proposed changes also introduce a schedule in the Queensland Building and Construction Commission Act 1991, the QBCC Act, to simplify building contracts and provide greater flexibility for consumers and contractors. An example includes the introduction of a level 1 contract for domestic building projects which are proposed to be valued from \$3,300 to \$20,000 and a level 2 contract for domestic building work valued at over \$20,000.

Fourthly, a new free, faster and more consistent process will be introduced under which the QBCC will deal with all building disciplinary proceedings. This process is similar to those currently used for plumbers, electricians, drainers and pool safety inspectors. Building disciplinary matters are currently dealt with by QCAT, which again can be lengthy and costly for licensees. Licensees will be able to apply for an internal review of any disciplinary findings or have them reviewed by QCAT.

This bill will also enable us to get tougher on builders doing the wrong thing and will enable heavy penalties to be applied. To improve compliance the current demerit point system will be strengthened. Demerit points will be increased to encourage licensees to do the right thing. It will also enable the QBCC to remove recalcitrant licensees from the industry.

The commission often receives complaints from subcontractors in relation to head contractors not paying in accordance with the contract or using commercial leverage to force subcontractors to accept lower amounts than originally agreed to. We need to protect subcontractors so that they are paid for the work that they do. The bill extends the grounds for disciplinary action to include the failure of a contractor to pay a subcontractor in accordance with the contract. It should be noted that these amendments also provide for such disciplinary proceedings to be reviewable in QCAT.

The amendments will also provide greater protection for homeowners impacted by works being done on an adjacent property. Contractors will be liable to remedy damage to a neighbouring property, not just any damage incurred on the site they are working on.

The amendment will allow the QBCC to obtain the evidence and information it needs about unlicensed contracting and other serious offences. This includes gathering evidence regarding builders who breach their financial requirements or phoenix operators working behind other licensed building companies. The bill will also reduce red tape so that the licensing system becomes more efficient. For example, licences will be able to be reviewed every three years instead of every year, with savings passed on to licensees.

The second purpose of this bill is to propose amendments to the Housing Act 2003 and the Residential Tenancies and Rooming Accommodation Act 2008. All of the amendments that I will outline tonight, whether they relate to the QBCC or community housing, are about enabling others to do what they do best. While we outlined the reasons for needing to enable the QBCC to do its job, we also need to empower community housing organisations to do theirs. In turn, this will allow the government to focus on the regulatory needs of the sector rather than on managing public housing tenancies.

These amendments will facilitate the government to continue to implement the Housing 2020 Strategy and, as part of this strategy, transfer the management of 90 per cent of public housing to the community housing sector by 2020. The proposed amendments will also allow the department to transfer key tenancy information to housing providers so that they can effectively manage the tenancies.

The proposed changes will also provide rigour around decision-making delegations and client obligations. For example, some amendments to the Housing Act include giving housing providers access to key tenancy information as tenancy managers. This includes information on the state housing register and the department's property and tenancy management databases. It will give the chief executive the ability to delegate functions to the community housing provider and their staff and it will allow providers to update and maintain housing register records. In terms of the Residential Tenancies and Rooming Accommodation Act, the proposed amendments change the mechanism by which providers become the lessor of existing public housing tenancies. Tenants will not need to re-sign a new tenancy agreement.

I now turn to the committee's recommendations in relation to this bill. In total, the committee has made 16 recommendations and sought clarification on two points. Recommendation 1 states that the bill be passed. I thank the committee for its endorsement of the bill. Recommendation 2 seeks to retain existing provisions for stage certificates until the Building Act review of certification is completed. This recommendation has been accepted by the government. We expect the review to be completed by the end of this year.

Recommendation 3 is to move provisions related to staged progress payments from the act to the regulation. Currently the act states when contractors should be paid as part of stages contracts. The government does not support this recommendation. By removing the staged progress payments provisions from the act it will provide consumers and builders with greater flexibility as to when works will be paid for. Recommendation 4 is to review the deposit maximums proposed in the bill to ensure they are suitable, given that the current five per cent maximum has been in place since 2000. The government has agreed to the committee's recommendation, and a review will be undertaken by the QBCC as early as possible next year.

Recommendation 5 is to amend the bill to ensure that builders whose work is predominantly carried out off site, such as builders of sheds and prefabricated structures, are able to seek and receive progress payments beyond the 20 per cent deposit allowed for in the bill. The government does not support this amendment as it is considered that the bill currently represents a fair balance between the interests of contractors and consumers. It should be noted that any increase in the deposit amount could present an increased risk for consumers. The consumer may be paying for work they are unable to inspect or control or take possession of in the event of the insolvency of a contractor.

Recommendation 6 is to enable a domestic building contract to be entered into when the builder is not able to release foundations data but guarantees in the contract that there will be no price increases when the foundations data is subsequently obtained. Foundations data includes such things as ground conditions and other elements of the site which may not be known until site preparatory works commence. Given that consumers will be better protected as there will be no price increase when the foundations data becomes available, the government agrees to this recommendation. It is proposed that the bill be amended accordingly.

Recommendation 7 is that the bill be amended so that any request for an extension of time under a regulated contract must be in writing as opposed to by signing. This amendment comes after receiving feedback from the industry, including the Housing Industry Association and Master Builders. They raised concerns about the potential for delays. The bill is being amended to allow consumers to approve a time extension claimed by email rather than by signing. I am also proposing that the bill be amended so that the obligation on the builder to notify the consumer within 10 business days of becoming aware of a delay applies when the builder becomes aware of the cause and extent of a delay.

Recommendations 8 and 9 amend the definitions of 'practical completion' for both level 1 and level 2 domestic building contracts. We propose to simplify the definition of 'practical completion' so that there is a consistent definition of 'practical completion' for both level 1 and level 2 contracts.

Recommendation 10 is that the bill be amended to reduce the statutory warranty period for non-structural defects from two years to one year. Submitters raised concerns that the two-year warranty period would likely impact on housing affordability as it would potentially drive up house prices. The government has accepted this recommendation, which aligns with the Queensland Building and Construction Commission's Rectification of Building Work Policy, on the basis that it will provide adequate consumer protection. I propose that the bill be amended accordingly.

Recommendation 11 is that building owners must give builders access to work sites so they can rectify any alleged defects. The government acknowledges the importance of balancing the rights of contractors and consumers, and I propose to make this amendment to the bill. Recommendation 12, like recommendation 7, aims to improve domestic building contracts to explicitly incorporate electronic communication in the definition of 'in writing'. This relates to agreeing variations in writing. This has been agreed and I propose to amend the bill accordingly.

Recommendation 13 is to amend what constitutes an invalid contract. Currently, even a minor aspect of a contract that has been inadvertently omitted could make a contract null and void. The government agrees that the bill should be amended to provide that the contract has effect if it is written, dated and signed by both parties.

Recommendation 14 is that the bill should explicitly state which part of the manufactured or prefabricated homes process will be covered by the statutory insurance scheme and which parts will not. The government considers this to be unnecessary because a new section to be introduced by the bill adequately states which part of the process will not be covered by the statutory insurance scheme. I consider that the best approach is to monitor the situation. If, following consultation with consumers and contractors, it is decided that further clarification is required, this will be best addressed by an amendment to the Queensland Building and Construction Commission Regulation 2003.

Recommendation 15 seeks to amend the bill to include variation thresholds for insurance premiums. The government agrees with the recommendation and I propose that the bill be amended. This proposed amendment means that an additional insurance premium is required to be paid where a variation results in an increase to the value of construction work of \$5,000 or more. In recommendation 16 the committee recommends that licensing and other issues raised by the Civil Contractors Federation be considered as part of the planned review next year. This review related to licensing provisions in the QBCC Act and the QBCC Regulation. The government agrees with this recommendation. I also propose to introduce other amendments to the bill in addition to those which have stemmed from the committee's recommendations. These include introducing a definition of 'repair' and 'repair contract'. They also include improving the provisions relating to the inclusion of the contract price or method for calculating it in the contract as well as minor amendments to the housing related provisions to clarify circumstances in which providers can use confidential information.

In addition to the recommendations in this report, the committee also sought clarification on two matters included in the bill. The first of these relates to the circumstances in which an owner is able to dispute a matter after it has been resolved. Currently, it is possible for the QBCC to issue a direction to rectify in relation to work which has been the subject of a previous cash settlement between the builder and an owner, as the QBCC is not bound by such agreements. If a contractor has performed defective building work, the QBCC can require the rectification of that work in order to maintain standards in the industry, regardless of whether any cash settlement may have occurred. The QBCC considers that there would be no benefit to consumers or contractors if incompetent contractors could simply settle their way out of these matters. It is also sometimes the case that consumers may enter into unfair terms of settlement due to a lack of experience or because they do not have the funds to continue a legal dispute with the contractor. The removal of the power to issue a direction to rectify in such circumstances would leave consumers without assistance. It should be noted that the QBCC is not required to issue a direction to rectify where it is considered unfair to do so. It should also be noted that the contractor retains the right to have the decision reviewed if they are of the view that the direction to rectify is unreasonable.

The second point of clarification sought by the committee relates to the practical implications for the builders and the owner of any damaged adjacent site where the QBCC has given a direction to rectify consequential damage. As noted previously, issuing a direction to rectify is not done solely for the purpose of ensuring that a consumer has defective work rectified. Directions are also issued to maintain standards in the industry and to prevent future problems with a contractor. The government considers that if a contractor knows that they will be held responsible for consequential damage to an adjacent property they are more likely to take steps to ensure that that damage does not occur in the first place. This is considered to be preferable to having the work fixed under a contractor's insurance policy. The purpose of many of the changes proposed in this bill is to keep consumers out of conflict with contractors and out of the tribunals and courts and it is considered that placing them in conflict with a contractor's insurance company would simply replace one problem with another. It would be unfair to expect an owner of an adjoining property to fight an insurance company through the courts because a contractor engaged by their neighbours did defective building work. I commend the bill to the House.