




Speech By  
**Peter Russo**  
**MEMBER FOR TOOHEY**

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Record of Proceedings, 25 May 2022

### **BUILDING AND OTHER LEGISLATION AMENDMENT BILL**

 **Mr RUSSO** (Toohey—ALP) (12.51 pm): Before I start my contribution to the debate today, I would like to welcome to the gallery, on behalf of the member for Stafford, Jimmy Sullivan, the principal and school leaders from Wavell State High School. Welcome, Liz. I would also like to extend a warm welcome to the ambassadors from Latin America.

I rise in support of the Building and Other Legislation Amendment Bill 2022. The purpose of the bill is to support contemporary consumer expectations about the efficiency of buildings through amendments to legislative provisions regarding: 'ban the banners', solar hot-water systems and solar panels, expanded use of greywater, holding tanks for sewage and greywater, enhance the efficacy and transparency of the regulatory framework through amendments to legislative provisions regarding head contractor licensing, sharing information on investigation outcomes, decision making, and improve the operation of building related legislation through minor technical amendments.

The department advised that the bill proposes to amend several building related acts and aims to continue building on the reforms already implemented under the Queensland Building Plan 2017 and its update in 2021 to create a safer, fairer and more sustainable building and construction industry. The amendments in the bill are essentially grouped into three themes. These relate to building efficiency, an efficient and transparent regulatory framework and minor technical amendments.

The explanatory notes detail that consultation regarding the two different aspects of the bill was undertaken with each of the stakeholders as follows: the Brisbane City Council, Local Government Association of Queensland, the Institute of Plumbing Inspectors Queensland and Master Plumbers' Association Queensland who were consulted on the amendments for using greywater in cooling towers for air conditioning. No objections to the proposed amendments were made. The amendments relating to holding tanks for sewage and greywater have been proposed in response to consultation with the Local Government Association of Queensland. The Institute of Plumbing Inspectors Queensland and Master Plumbers' Association Queensland have also been consulted on the proposed amendments.

Industry consultation occurred about the head contractor exemption and the consequential amendments to the BIF Act flowed from the amendment to the QBCC Act in the bill. The consultation confirmed both the extent of existing business models and transactions that rely on the exemption and valid concerns about the licensing exemption. The approach in the bill seeks to balance the benefits of the licensing exemption with safeguarding the licensing framework and security-of-payment protections. Further consultation is proposed in developing regulation amendments. Consultation occurred with the auditing professional bodies concerning the trust accounting requirements in the BIF act.

The department confirmed that stakeholders involved in consultation on the amendments in the bill did not raise any concerns. They also confirmed that industry consultation on the head contractor licensing exemption issues resulted in support for the approach proposed in the bill which seeks to balance the benefits of the head contractor licensing exemption with the need for some contractors to be licensed as well as ensure the security-of-payment protections.

The Queensland Building and Construction Commission advised that the amendments are intended to be minor and clarifying in nature and do not introduce any new powers or responsibilities for the QBCC. The QBCC welcomes and supports the bill and its various amendments to legislative provisions.

It is proposed that the 'ban the banners' provisions will be amended to clarify the original policy intent for the provisions, so a home owner may install a solar hot-water system or solar panels on the roof, or another external surface, of their home or garage without regard to the way it looks. A court decision has affected the efficacy of the provisions, making it necessary to amend the provisions to clarify the original policy intent.

The department advised that the bill will remove the uncertainty around the application of the 'ban the banners' provisions which are in place to protect home owners from developer covenants that seek to restrict where solar panels can be placed on the roof of a home. The banners in this context were people who were seeking to ban. In this instance, it was the developers who were seeking to ban where solar panels could be placed on a house.

The provisions became known as 'ban the banners' because they sought to ban the behaviour of people who were seeking to ban that behaviour. The department advised that the government's intent was and is to achieve optimal placement of solar panels for electricity generation. The proposed amendment limits the purposes for which a developer or body corporate may, through a relevant instrument, such as a building covenant, prohibit a home owner from installing a solar hot-water system or solar panels for purposes that do not relate to the enhancement or preservation of the external appearance of the property.

Under the proposed amendments it will be permissible to prevent the installation of solar infrastructure on the roof or external surface of an apartment building only to the extent that the roof or other surface is common property and—the prohibition—is necessary to preserve the structural integrity of the building; prohibits the owner of a unit in the building from installing solar infrastructure on the surface if there is insufficient space for the owner of each other unit in the building to also install solar infrastructure on the surface; or is necessary to prevent noise from piping for a solar hot-water system causing unreasonable interference with a person's use or enjoyment of the building.

The committee sought additional information from the department regarding the court decision, resulting in the need for the proposed amendment.

The Court of Appeal held, amongst other things, that the determinative question is instead whether the expression 'prevents a person from installing a solar hot-water system or photovoltaic cells on the roof or other external surface of the building' comprehends a case in which the result of the restriction or the withholding of consent is that the photovoltaic cells may be installed only at a location where they will remain viable but will operate at about 80 per cent of the efficiency that would be achieved if they were instead installed at the proscribed location.

The critical word is 'prevents'. As the primary judge considered, and as is common ground between the parties, 'prevents' must bear the same meaning in both sections. At least one of those sections must apply if 'prevents' comprehends the result of the application of clause 1.26 in this case and neither section could apply if that result does not amount to prevention. The conclusion was that the word 'prevents' in the sections bears its common primary meaning of 'stops from happening'.

The Master Electricians Australia, while noting that electricians will provide advice on the most optimal place to install solar panels, will install the panels where the customer wants them placed. There was resistance to some of these submissions from certain property developers.

I commend the bill to the House.