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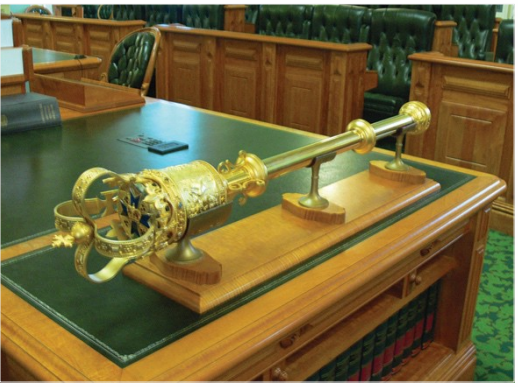
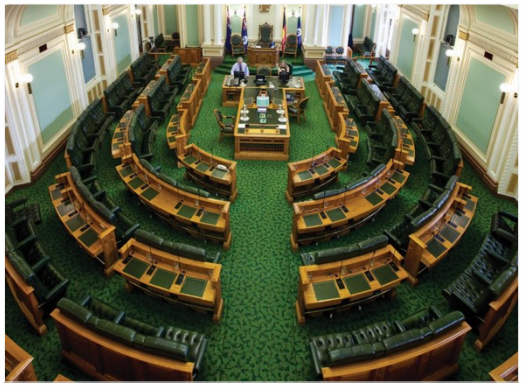
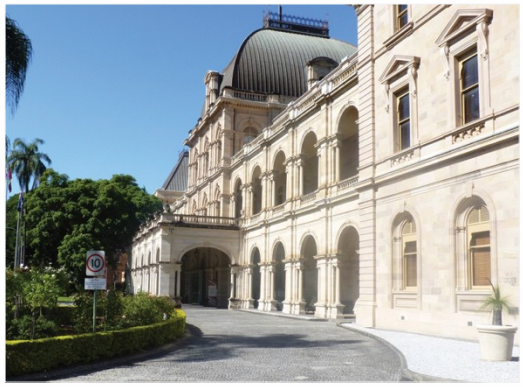

Building and Other Legislation Amendment Bill 2022

Report No. 18, 57th Parliament
Transport and Resources Committee
May 2022

Transport and Resources Committee

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Acknowledgements

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All web address references are current at the time of publishing. Please note that all in-text references have been removed. Refer to original source for more information.

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Abbreviations

committee	Transport and Resources Committee
BIF Act	*Building Industry Fairness (Security of Payment) Act 2017*
BIFOLA	*Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*
department	Department of Energy and Public Works
FLPs	Fundamental legislative principles
HRA	*Human Rights Act 2019*
HVAC	Heating, ventilation and air conditioning
IPA	*Information Privacy Act 2009*
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
MEA	Master Electricians Australia
MPAQ	Master Plumbers' Association Queensland
NECA	National Electrical and Communications Association
NFIA	National Fire Industry Association Australia
PDA	*Plumbing and Drainage Act 2018*
PDR	Plumbing and Drainage Regulation 2019
Planning Act	*Planning Act 2016*
PPTEU	Plumbing and Pipe Trades Employees Union Queensland
Property Council	Property Council of Queensland
QBCC	Queensland Building and Construction Commission
QBCC Act	*Queensland Building and Construction Commission Act 1991*

QLS	Queensland Law Society
SCA	Strata Community Association (Queensland)
UDIA	Urban Development Institute of Australia (UDIA)

Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Building and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions and participated in the public hearing on the Bill. I also thank our Parliamentary Service staff and the Department of Energy and Public Works.

I commend this report to the House.

Shane King MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Transport and Resources Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Transport and Main Roads
- Energy, Renewables, Hydrogen, Public Works and Procurement
- Resources.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019*
- for subordinate legislation – its lawfulness.[2]

The Building and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly and referred to the committee on 29 March 2022. The committee is to report to the Legislative Assembly by 13 May 2022.

1.2 Inquiry process

On 1 April 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill. 12 submissions were received. Appendix A contains a list of submissions.

The committee received a public briefing about the Bill from the Department of Energy and Public Works (department) on 8 April 2022. A transcript is published on the committee's web page. A list of officials who represented the department is contained in Appendix B.

The committee received written advice from the department in response to matters raised in submissions and in response to additional questions raised by the committee.

The committee held a public hearing on 26 April 2022. A list of witnesses is contained in Appendix C.

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The purpose of the Bill, as outlined in the explanatory notes, are to:

- support contemporary consumer expectations about 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

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

- 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
- improve the operation of building-related legislation through minor technical amendments[3]

The Bill amends the:

- *Architects Act 2002*
- *Building Act 1975* (Building Act)
- *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act)
- *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA)
- *Planning Act 2016* (Planning Act)
- *Plumbing and Drainage Act 2018* (PDA)
- *Professional Engineers Act 2002*
- *Queensland Building and Construction Commission Act 1991* (QBCC Act)

The Bill also amends (listed in Schedule 1):

- Building Industry Fairness (Security of Payment) Regulation 2018.

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.[4]

1.4 Government Consultation on the Bill

The explanatory notes detail that consultation in regard to the two following different aspects of the Bill were undertaken with each of the stakeholders as follows:

> **Contemporary consumer expectations about efficiency of buildings**
>
> Brisbane City Council, Local Government Association of Queensland, the Institute of Plumbing Inspectors Queensland and Master Plumbers' Association Queensland 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.[5]

[3] Explanatory noes, p 1.

[4] Public briefing transcript, Brisbane, 8 April 2022, p 1.

[5] Explanatory notes, p 21.

Efficacy and transparency of the regulatory framework

Industry consultation occurred in relation to the head contractor exemption and the consequential amendment to the BIF Act flowed from the amendment to the QBCC Act in the Bill. Consultation confirmed both the extent of existing business models and transactions that rely on the exemption and valid concerns in relation to 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 Australian Institute of Building Surveyors, Royal Institute of Chartered Surveyors and QBCC were consulted about repealing the not yet commenced provisions relating to an alternative recognition pathway for licensing of building certifiers. Consultation with the QBCC and respective Boards were also undertaken during drafting of amendments relating to respective Acts. As other amendments are generally minor and technical in nature, broader consultation was considered unnecessary.[6]

The department confirmed:

… stakeholders involved in consultation on amendments in the bill did not raise any particular concerns. This consultation included: the Ministerial Construction Council, which comprises key building and construction industry representatives; and trade unions and regulators who raised no concerns about, for example, the intention to provide clarity regarding the 'ban the banners' provisions. Likewise, no concerns were raised by industry or local governments regarding the use of treated greywater in cooling towers for air-conditioning or the use of holding tanks for sewage and greywater. Auditing professional bodies consulted regarding the trust accounting requirements supported the clarification of the auditing and reporting provisions in the BIF Act.[7]

The department 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 ensuring security of payment protections.[8]

The Queensland Building and Construction Commission (QBCC) 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, including those relating to head contractor licensing, decision-making and sharing information on investigation outcomes. Minor technical amendments within the bill will also improve the operation of other building related legislation. These are sensible reforms that will improve the way that the QBCC performs its regulatory and other functions and increase the transparency of our operations to the benefit of all of our stakeholders.[9]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

6 Explanatory notes, pp 20-21.

7 Public briefing transcript, Brisbane, 8 April 2022, p 3.

8 Public briefing transcript, Brisbane, 8 April 2022, p 3.

9 Public briefing transcript, Brisbane, 8 April 2022, p 4.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the department, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Building and Other Legislation Amendment Bill 2022 be passed.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 'Ban the banners' solar hot water systems and solar panels

It is proposed that the 'ban the banners' provisions will be amended to clarify the original policy intent for the provisions, so a homeowner may install a solar hot water system or solar panels on the roof, or other external surface, of their home or garage, without regard to aesthetics. The explanatory notes detail that the original policy intent of the 'ban the banners' policy was to ensure developer covenants and body corporate by-laws could not inhibit the installation of solar hot water systems or solar panels, including by restricting where the panels or hot water systems could be located, on the roof of a home or garage, solely on the basis of aesthetics. A court decision has affected the efficacy of the provisions, making it necessary to amend the provisions to clarify the original policy intent.[10]

The department advised:

> … the bill fixes the uncertainty around the application of the 'ban the banners' provisions which are there to protect home owners from developer covenants that seek to restrict where solar panels can be placed on the roof of a home. While Queensland is leading the way with approximately one in three homes having rooftop solar compared to one in four homes nationally, these amendments can support more Queenslanders to install solar energy systems and do so, importantly, with certainty.[11]

The department explained the jargon around the term 'ban the banners' and who the 'banners' were:

> 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. They were the banners; not banners as in something that you might carry. The provisions became known as 'ban the banners' because they sought to ban the behaviour of people who were seeking to ban behaviour. That is just the explanation for it. In relation to the second part of the question, for those people who have been involved in this issue 'ban the banners' is a well understood term and so people understand what you are talking about.[12]

The department advised that the government's intent was and is to achieve an optimal placement of solar panels for the purpose of electricity generation.[13]

2.1.1 Proposed amendments

Clause 17 amends section 246O of the Building Act. The explanatory notes state that 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 homeowner from installing a solar hot water system or solar panels, to purposes that do not relate to the enhancement or preservation of the external appearance of the property.[14]

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:

- the roof or other surface is common property; and
- the prohibition:
  - is necessary to preserve the structural integrity of the building;

[10] Explanatory notes, pp 1-2

[11] Public briefing transcript, Brisbane, 8 April 2022, p 2.

[12] Public briefing transcript, Brisbane, 8 April 2022, p 5.

[13] Public briefing transcript, Brisbane, 8 April 2022, p 4.

[14] Explanatory notes, p 25.

- 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.[15]

Clause 18 proposes to amend section 246Q to clarify that the original policy intent for section 246Q was to invalidate provisions in a relevant instrument restricting the location on the roof, or other external surface, of a home or garage where a solar hot water system or solar panels may be installed, if the only purpose of the restriction was to preserve or enhance the external appearance of the home or garage.[16]

The explanatory notes state:

> It was intended that a homeowner would not be inhibited from installing solar infrastructure in their preferred location on the roof or other surface, on the basis of aesthetics. It was expected that the homeowner's preferred location would usually be the optimal location for solar energy generation.[17]

Clause 22 proposes to insert new sections 356 and 357 to:

> … provide relief for any homeowner who has been inhibited from installing solar infrastructure on the roof of their home or garage, solely on the basis of aesthetics, since 1 January 2010. Under the new sections, the homeowner may install solar infrastructure in their preferred location on the roof of their home or garage, without regard to aesthetics.[18]

2.1.2 Background

The committee sought additional information from the department regarding the court decision which has resulted in the need for the proposed amendment. The department advised:

> The case was Bettson Properties Pty Ltd & Anor v Tyler [2019] QCA 176. The issue at hand was around whether the solar panels that Ms Tyler had placed on the roof of her house, on the northerly aspect, were in contravention of a building covenant. The understanding of the legislation as it was and the ban the banners provisions in the Building Act were that a developer covenant could not for reasons of, for example, aesthetics—street look—prohibit where solar panels could be placed. In the end, the Queensland Court of Appeal found that the panels needed to be removed and that was not the policy intent for those changes that were introduced in 2010. Following that decision of the Court of Appeal, the government made a decision that it wished to ensure the policy intent of the legislation was achieved.[19]

Clinton Mohr Lawyers provided further detail regarding the court decision as follows:

> The evidence before the Court in Bettson Properties Pty Ltd & Anor v Tyler was that:
>
> a. Pauline Tyler, the respondent, purchased land in a residential estate known as Griffin Crest developed by Oxmar Properties, the appellants;
> b. Pursuant to the terms of the contract for the purchase of the subject land by the respondent agreed to be bound by the Building Covenants that related to the Griffin Crest estate;
> c. Those Building Covenants required the respondent to obtain consent from Oxmar Properties to the installation of solar panels on the roof of the respondent's dwelling;

15 Explanatory notes, pp 25-26.

16 Explanatory notes, p 26.

17 Explanatory notes, 26.

18 Explanatory notes, p 26.

19 Public briefing transcript, Brisbane, 8 April 2022, p 4.

d. The respondent, having installed solar panels on the respondents dwelling without first obtaining consent from Oxmar Properties, subsequently sought consent to the installation of the solar panels;

e. Oxmar Properties withheld consent to the installation of the solar panels as originally located but offered to approve the installation of the solar panels in an alternate location on the roof of the respondents dwelling; and

f. The solar panels would be 80% to $85% as efficient in the proposed alternate location and the cost of relocating the solar panels would be $1,567.50.

The Court of Appeal held, amongst other things, that:

The determinative question is instead whether the expression used in sections 246Q and 246S "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 (s 246Q) or the withholding of consent (s 246S) 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 cl 1.26 in this case and neither section could apply if that result does not amount to prevention.

and

My conclusion is that the word "prevents" in sections 246Q and 246S bears its common primary meaning of "stops from happening", which comprehends cases where the result of the relevant restriction or withholding of consent is that it is impossible, impracticable, or impractical to install a solar hot water system or photovoltaic cells. In my respectful opinion there is no ambiguity in those provisions such as would allow for a construction under which "prevents" comprehends a less significant adverse result such as "less advantageous for the person to install". The sections are therefore not open to a construction under which they operate on the facts of this case.

and ordered, among other things that:

the respondent by herself, and/or her servants, agents or otherwise remove or, at the option of the respondent, relocate the installed solar panels on the roof at 1 Leapai Parade, to the south-eastern side of the roof facing 26 Bettson Boulevard, Griffin in the State of Queensland, more particularly described as Lot 149 on SP 284808.[20]

2.1.3 Stakeholder views

The Property Council of Queensland (Property Council) supported the measures aimed at removing obstacles to owners who wish to install solar panels on their residential property.[21]

The National Electrical and Communications Association (NECA) also supported the proposed amendments to ensure that developers and body corporate by-laws do not inhibit the installation of solar panels and hot water systems based on aesthetics.[22]

NECA advised:

> Electricians undertake a 4-year apprenticeship in order to learn their trade and many also undertake post-trade training to further enhance their skills and knowledge. This often involves comprehensive training in the design and installation of solar panels and solar hot water systems.

[20] Submission 8, pp 4-5.

[21] Submission 3, p 2.

[22] Submission 5, p 1.

> It is these electricians and electrical contracting businesses that are best trained to identify where solar panels will provide the most optimum result. It would highly compromise the in-depth knowledge of these electricians and contracting businesses, to be restricted in placing solar panels where they produce the best results, particularly where aesthetics is the denying influence.[23]

In relation to the achieving optimal results from solar infrastructure, Master Electricians Australia (MEA), whilst noting that electricians will provide advice on the most optimal place to install solar panels, advised that electricians will install the panels where the customer wants them. MEA identified a common problem with building covenants in bodies corporate observed by their members has been:

> People who owned a strata title place may have wanted to install solar panels or have an air conditioner with a compressor unit outside. They would have a screen built around it which reduced its efficacy and in some cases voided the warranty but they were not able to get solar panels or have the installation compliant with the manufacturer's warranty because of the building covenants.[24]

The joint submission from the Plumbing and Pipe Trades Employees Union Queensland (PPTEU), the Master Plumbers' Association Queensland (MPAQ) and the National Fire Industry Association Australia (NFIA) supported the proposed amendment advising:

> As an industry we support the use of solar power, particularly in relation to hot water systems. We understand the real economic disadvantage of a system that is not optimally located. This is a logical amendment to support the interpretation of a policy that has been in place for some time, in Queensland, and has been received well by the community.[25]

The Strata Community Association (Queensland) (SCA) considered that the policy intent of encouraging the installation of solar energy infrastructure without negatively impacting on others in a strata scheme to be fundamentally sound. SCA advised:

> The proposed amendments to sections 246O, 246Q and 246S will provide greater clarity on the limited circumstances in which the installation of solar energy devices may be prohibited.[26]

The Local Government Association of Queensland (LGAQ) supported the proposed amendments, however, sought clarification that the power of councils under local government planning schemes to regulate building, including heritage matters, is maintained. The department confirmed:

> The amendment does not change the definition of relevant document which applies in these amendments. The definition does not refer to a local government planning scheme so there will be no change to those requirements for local governments.[27]

The Urban Development Institute of Australia (UDIA), in acknowledging the need for enhanced environmentally sustainable outcomes, advised that it:

> … accepts the proposed extension and clarification of the 'ban the banners' controls. For context, the covenants and restrictions have developed over a long period in response to homebuyers wish to protect and guide their new communities to an attractive urban outcome. Estate developers responded and sympathised with this community wish, noting the substantial financial investment that homebuyers make to achieve home ownership.

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23 Submission 5, p 2.

24 Public hearing transcript, Brisbane, 26 April 2022, p 12.

25 Submission 12, p 1.

26 Submission 11, p1.

27 Department of Energy and Public Works, correspondence, 27 April 2022, p 19.

> The covenants bring beneficial aesthetic outcomes however can also feel restrictive to some. The restrictions remain important and are used in many but not all estates without concern. At their best they judiciously curate desirable architectural outcomes, principally at critical locations such as road junctions and obvious corners without significantly restricting homebuyer wishes.[28]

Clinton Mohr Lawyers, who represent property developer Oxmar Properties Estates, did not support the proposed amendments. The submission states:

> Each owner in each Oxmar Properties Estate agrees to be bound by the Building Covenants for that estate and each owner has an expectation that other owners in that estate will also comply with the development standards set in the Building Covenants.
>
> The Building Covenants that relate to each Oxmar Properties Estate are enforceable by both the developer and each owner in each relevant estate as a common law building scheme.
>
> The Amending Bill, if passed through Parliament, will have an adverse effect on the rights of Oxmar Properties and owners of land in Oxmar Properties Estates and developers and owners of land in other residential estates in Queensland where common law building schemes are in force.[29]

Clinton Mohr Lawyers advised that the original amending act attempted to strike a balance between the interests of all affected parties. However, in their view, the proposed amendments do not strike such a balance despite asserting that intent. Clinton Mohr Lawyers consider that the proposed amendments go beyond the original policy intent.[30]

The submission states:

> The Amending Bill offends the stated purpose of Part 2 of Chapter 8A to regulate the effect of particular instruments on stated activities or measures likely to support the sustainability of houses, units and attached enclosed garages associated with houses.
>
> Instead of regulating the effect of Building Covenants, the Amending Bill erodes the right of developers and owners alike, to enforce their respective interests in common law building schemes,12 inter se, in circumstances where equity has given effect to a common intention between developers and owners agreeing to be bound by and benefit from a mutually enforceable system of Building Covenants.[31]

The submission also highlights concerns regarding the retrospective nature of the amendments:

> The Amending Bill is crafted to be retrospective and in a manner that intentionally interferes with a decision of the Court of Appeal of the Supreme Court of Queensland.
>
> The Amending Bill is not declaratory, validating, procedural or curative and accordingly there is no justification for it to be retrospective.
>
> Further, the Amending Bill does not have sufficient regard to, and will adversely, affect rights and liberties of developers and individual owners of land in residential estates where Building Covenants are in force and where those parties currently have the benefit of a building scheme.[32]

Clinton Mohr Lawyers elaborated on their concerns advising the committee:

> The issue is that, in a circumstance where a solar panel might create a nuisance in the estate, the developer wants to maintain a right—and individual owners who are part of a building scheme want to maintain a right—to ensure that nuisance does not happen. As the draft legislation is currently put, those rights are being removed.

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28 Submission 9, p 4.

29 Submission 8, p 2.

30 Submission 8, p 2.

31 Submission 8, pp 5-6.

32 Submission 8, pp 6-7.

> Developers do not have a problem with solar panels. Everyone supports the concept of solar panels. It is just the reality that in a development a lot of developers—not just Oxmar Properties—have building covenants. Where they try to develop to a standard and they do not want to have situations where nuisances are caused, they often build into their building covenants the ability to deal with what would be a nuisance. A solar panel can cause a nuisance just like any other part of a building. I suppose that is the fundamental issue. That right has been removed. It is not just a right that is vested in the developer, because at equity every one of those owners who bought into that development and agreed to comply with the covenants that relate to the development has a right to enforce those covenants to protect themselves against nuisance, and those rights are removed by the bill.[33]

Clinton Mohr Lawyers also suggested that a more nuanced treatment would be preferable. Clinton Mohr Lawyers advised:

> … you do not have to use a sledgehammer to crack the walnut and obliterate it altogether. You have what I would call quite a nuanced treatment of the situation in 246R where you can, for example, withhold consent if it unreasonably prevents or interferes with a person's use and enjoyment of the building or another building. The law uses those sorts of tests all the time. You cannot give a definitive answer in all situations when we are not even looking at what that reflective panel might be. That sort of test is reflective of nuisance law, if I can use the term, which has been around for hundreds of years: the unreasonable interference with someone's use and enjoyment of land. The importation of that type of test in 246R indicates to me that, as you would expect with legislation, you cannot go down the rabbit hole and deal with every little thing, but what you can do is set general standards which, if ultimately people cannot agree, are enforced by the courts.[34]

In response to the issues raised by Clinton Mohr Lawyers, the department advised;

> There are now 697,000 residential solar systems in Queensland and many more on business premises. One in three Queensland homes have rooftop solar, compared to one in four homes nationally. Rooftop solar energy saves Queenslanders money on their power bill and, importantly, reduces household emissions.
>
> The Queensland government's 'ban the banners' legislation has always sought to promote the uptake of rooftop solar. It aims to prevent developers and bodies corporate by-laws from unreasonably restricting the installation of solar panels on homeowners' roofs, including their location on the roof.
>
> A recent court decision affected the efficacy of these provisions, by taking an interpretation that would enable developers to determine where the solar panels could be installed regardless the location not providing optimal access to the solar rays.
>
> This Bill clarifies the 'ban the banners' provisions apply to both the installation of solar panels on a roof as well as locating the solar panels at the homeowner's preferred location on their roof. The amended provisions protect homeowners and enables them to realise the full benefits of using renewable energy, which will also assist to reduce emissions.[35]

[33] Public hearing transcript, Brisbane, 26 April 2022, p 20.

[34] Public hearing transcript, Brisbane, 26 April 2022, p 21.

[35] Department of Energy and Public Works, correspondence, 27 April 2022, pp 10-11.

2.1.4 Stakeholder suggested amendments

2.1.4.1 Clinton Mohr Lawyers

Clinton Mohr Lawyers sought to have the proposed amendments withdrawn. However, suggested that if the amendments were not withdrawn they:

> … should be amended so that it is not retrospective and so that it achieves the policy intent of the Original Amended Act without denying the rights of developers and owners of lots in residential estates from protecting the development standards contained in Building Covenants relevant to those residential estates. This could easily be achieved through the identification of a maximum acceptable reduction in efficiency resulting from the operation of a relevant instrument in a definition of the word "prevent".[36]

In response, the department did not support the suggested amendment for the following reasons:

1. Limited available space

In many cases the installation of panels will be constrained by the size of a roof. For example, a 6kW system comprising 20 panels may not fit onto a developer's preferred location on a roof. The proposed amendment makes no allowance for the size of the proposed system and could result in a homeowner having to install undersized systems that underperform due to not being installed on the most advantageous part of the roof for solar generation.

2. Difficult to administer

The proposed amendments would require 'expert' evidence to be obtained for each installation. This would be a costly exercise that would act as a disincentive to installing solar panels.

3. Arbitrary outcomes

The proposed amendment would result in arbitrary outcomes based on where a line was drawn. This would result in homeowners with nearly identical circumstances being treated differently. For example, if a maximum acceptable reduction in efficiency of 25% were adopted homeowners who could demonstrate a 26% loss in efficiency would be able to install panels in the most advantageous location. While homeowners who could only establish a 24% loss of efficiency would not. Basing outcomes on such fine margins is generally not a sound basis for good public policy.

4. Not consistent with community expectations

The submission's justification for allowing a relevant instrument to restrict the installation of solar panels on a detached dwelling concerns the potential adverse impacts on the aesthetic values of a housing estate. However, given that one in three houses in Queensland currently has solar panels installed, it is clear that there has been a shift in community expectations. Given this shift the law should protect homeowners who wish to make a contribution to reducing energy related emissions.

5. Impact on uptake rates

There is some evidence that covenants have a significant impact on solar panel installation rates. Anecdotal evidence suggests that installation rates for panels in estates with panel restricting covenants is significantly lower than in similar estates without panel restricting covenants.[37]

[36] Submission 8, p 7.

[37] Department of Energy and Public Works, correspondence, 27 April 2022, pp 16-17.

2.1.4.2 Strata Community Association (Queensland)

SCA suggested a number amendments/clarifications which are discussed below.

SCA sought an amendment to clarify that:

> … an instrument has force or effect only to the extend that it applies to the roof other external surface that is common property and:
>
> > *if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building*— (the instrument) *prohibits an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface*
>
> This may detract from the policy objectives of encouraging sustainability measures in strata schemes, particularly multi-level high rise Class 2 buildings with many lots within them. The larger the building, the greater number of lots likely to be within it. It may be rare for a many of these buildings to have sufficient space on the roof or external surfaces to accommodate solar panels for every lot in the building.
>
> This wording implicitly permits a scheme's by-laws to prohibit the installation of solar energy devices because not every lot could be accommodated.[38]
>
> …
>
> Without that clarity, there may be disputes in strata schemes over the validity of such by-laws as energy-conscious lot owners may seek to install solar energy devices only to be refused permission to do so because there will be other lots who could not be accommodated in the same way. The energy-conscious lot owner/s will wonder why their proposal should be refused if other lot owners do not wish to take up the same opportunity.[39]

SCA suggested that if this is the policy intent then additional information would need to be released to better inform the public of the proposed changes.

In response, the department advised;

> Under the proposed provisions, where there is insufficient space for each owner in body corporate to install their own solar panels, the body corporate will be able to adopt rules that will restrict individual owners from installing their own panels. It is expected that if the body corporate takes this action, they will be able to determine based on existing voting arrangements how to use the limited space available. This could involve agreeing to install a shared system or reserving the space for another use.
>
> It is considered that the explanatory notes already address this issue where they provide,
>
> > *To the extent that a prohibition applies to prevent the owner of a unit in the building from installing solar infrastructure on the surface, the owners of all units may install a shared hot water system, or shared solar panels, on the surface for the benefit of all owners, provided the infrastructure will not adversely affect the structural integrity of the building or cause issues relating to noise of the type mentioned in clause 17.*[40]

SCA also noted that it concern regarding the resources available to the Office of the Commissioner for Body Corporate and Community Management. SCA advised:

> Disputes between bodies corporate and owners of lots in their scheme are dealt with under a dispute resolution process administered by the Office of the Commissioner for Body Corporate and Community Management. The Commissioner's Office is a world-leading resource and is critical to the ongoing support to, and growth of, the strata sector. However, SCA (Qld) is concerned by the prospect of the Commissioner's Office having to deal with disputes of this kind given its current capacity and resourcing problems.

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38 Submission, 11, p 1

39 Submission 11, p 2.

40 Department of Energy and Public Works, correspondence, 27 April 2022, p 24.

> Despite approximately 100,0002 new lots being created and an almost 50% increase in disputes being handed to them in this time period, the Commissioner's Office has received no new resources since 2015. The Commissioner's Office needs to have its resourcing kept in line with the growth of lots at an absolute bare minimum. This would mean an initial injection of roughly 8 full time staff.[41]

In response, the department advised that it did not consider that the potential for disputes would be significant. The department advised:

> This is because it is not necessary for by-laws to include a provision inhibiting the installation of solar infrastructure on an external surface of a building that is common property because there is insufficient space on the surface for the owner of each individual lot to install their own solar infrastructure.
>
> Under the proposed amendments, if bylaws include such an inhibition, the inhibition will be valid.
>
> It is considered that if there is insufficient space, the body corporate will have the option to:
>
> - remove the inhibition to allow some energy-conscious owners to use the space available; or
>
> - install shared solar infrastructure that benefits all lot owners.
>
> If bodies corporate adopt the options mentioned above, the number of disputes between bodies corporate and owners of lots should be limited and not cause resourcing issues for the Office of the Commissioner for Body Corporate and Community Management.[42]

2.2 Expanded use of greywater and holding tanks for sewage and greywater

2.2.1 Proposed amendments

Clauses 42 to 47 facilitate the proposed amendments to the PDA, including expanding the use of greywater in certain circumstances and to enable discharge of sewage into a temporary holding tank.

In relation to expanded use of greywater, the department advised:

> … the amendments in the bill facilitate the use of treated greywater in cooling towers for air-conditioning that serve large building developments. The amendment will also allow treated water to be used for other purposes, including for flushing toilets, while ensuring that public health outcomes are maintained through appropriate regulatory oversight. Factors such as population growth, which increases demand on existing water supplies, climate change, the recognition of the need for more sustainable buildings and increased demand for green-star commercial developments require more responsible and innovative ways to use resources such as water. These amendments demonstrate proactive consideration of these issues.[43]

The department advised:

> The overall framework will limit the types of industrial use which are permitted. It is intended that the industrial use of treated grey water can be used for cooling towers, for air conditioning purposes, in large building developments. It does also prescribe for other industrial uses for treated grey water, including water for flushing toilets on an industrial scale, so essentially large-scale developments. Really importantly, the bill includes safeguards such as requiring the grey water to be treated by a treatment plant that has an appropriate capacity for the use, and it will specify the quality of the water the plant must produce for its use. That is the coverage which is outlined in the bill.

41 Submission 11, p 2.

42 Department of Energy and Public Works, correspondence, 27 April 2022, pp 24-25.

43 Public briefing transcript, Brisbane, 8 April 2022, p 2.

In relation to holding tanks for sewage and greywater, the department advised:

> … the bill will enable, under a permit which is issued by a local government, an owner of a premises to discharge untreated wastewater and water from a toilet or soil fixture, such as sewage or greywater or both types of waste, directly into a sealed holding tank for collection and disposal offsite. For holding tanks installed in sewer areas, it is proposed that such a permit would state the period for which the holding tank could be used for the discharge and disposal of untreated matter. The option to discharge under a permit issued by the local government untreated matter directly into a holding tank would deliver safe, practical and cost-effective solutions for temporary premises such as toilets on construction sites.[44]

The committee sought further information regarding why the proposed amendments are required. The department advised:

> The proposed amendments did come up as a result of ongoing discussions that we have with local governments and the industry. The current requirements in the Plumbing and Drainage Act require sewage to be discharged to a sewer where the premises are located within a reticulated sewer area or use an onsite sewage treatment facility. These requirements have been found to be problematic where there is insufficient space to accommodate an onsite sewage treatment facility, or the sewerage connection has a time limited purpose, such as a construction site. The amendment will allow owners of premises to discharge sewage, or grey water, or both, directly into a sealed holding tank for collection and disposal offsite by a truck under a permit issued by a local government. They will also allow a property owner without access to suit all sewage discharge points to lawfully install a holding tank that temporarily stores sewage that is later collected and disposed of appropriately. Our view is that this provides for a safe, practical and cost-effective solution in circumstances where accessing a suitable sewage discharge point is not possible. It was raised with the department, and the government chose to address the matter in this particular way.[45]

2.2.2 Stakeholder views

LGAQ advised:

> Whilst the LGAQ supports these proposed changes to provide a safe, practical and cost effective solution, it should be clear that local government has the discretion as to when to enact these provisions as councils are best placed to assess potential public health implications.[46]

LGAQ made the following recommendations in relation to the proposed new provisions:

- the State Government provides clarification that local government will have discretion regarding the approval and operation of temporary or permanent holding tanks to discharge greywater, kitchen water or untreated sewage, taking into consideration public health implications and economic viability.
- the State Government and the QBCC provide enhanced education and training regarding the issuing and implementation of permits for temporary or permanent holding tanks for greywater, kitchen water or untreated sewage to ensure that council officers are prepared to support the policy intent of these amendments.
- the State Government consults with local government and provides clarification regarding potential changes to the monitoring and maintenance regimes for holding tanks and expanded use of greywater, as well as potential registration requirements for permanent holding tanks. [47]

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44 Public briefing transcript, Brisbane, 8 April 2022, p 2.

45 Public briefing transcript, Brisbane, 8 April 2022, p 7.

46 Submission 10, p 10.

47 Submission 10, p 11.

The department provided the following response to LGAQ's recommendations:

> Local governments will continue to have discretion when deciding an application for a permit. This discretion will extend to whether a permit should be issued for the use of a holding tank for a temporary period.
>
> Local governments will be able to issue permits with conditions that could impose requirements for periodic servicing of a holding tank or specifying when a holding tank must be removed. As such, it is not envisaged that there will be any changes to the existing processes local governments undertake in the assessment and issuing of plumbing permits including for applications seeking to use a holding tank. Permit applications associated with greywater treatment plants and holding tanks will require supporting documentation as is currently required under the Plumbing and Drainage Regulation. Such documentation is required to assist local governments to decide permit applications.
>
> The department will continue to engage with LGAQ and local governments to ensure they are appropriately trained and aware of their obligations.
>
> The Plumbing and Drainage Regulation 2019 (PDR) will be amended to facilitate amendments proposed under the Plumbing and Drainage Act 2018 (PDA) relating to grey water treatment plants. As a key stakeholder LGAQ will be consulted in relation to proposed PDR amendments.
>
> Under the PDR, section 104 a local government has a responsibility to monitor greywater use facilities installed in a sewered area.
>
> It is likely that the greywater systems facilitated by proposed amendments to the PDA will be installed in sewered areas. These systems will be captured under the current requirement (refer section 104 of the PDA).
>
> Likewise, section 105 of the PDA sets out the type of on-site sewage facilities that a local government must monitor. Currently this provision is limited to on-site sewage facilities which have a testing approval.
>
> It is not proposed to introduce new monitoring requirements for holding tanks.[48]

The Property Council supported the proposed amendments relating to the use of greywater. However the Property Council emphasised:

> … the need to ensure it does not affect the health and safety of occupants. It is pleasing to see that a regulatory framework has been proposed in this Bill to ensure deposing of greywater and other wastewater is done in a safe and sanitary way.[49]

MPAQ advised that they support the re-use of treated greywater and the storage of blackwater as proposed in the Bill. MPAQ advised:

> Treated greywater is quite safe as long as it is treated to the correct quality and used for the correct purpose such as air conditioning. As long as the cooling towers and whatnot are all maintained and things like that, there should not be any issues with that at all. Stored blackwater fixes a niche problem. It is only a small problem in certain areas or in certain circumstances. As long as it is policed correctly as proposed and local governments enforce that, there should not be any issue with that either.[50]

In relation to the expansion of greywater in heating, ventilation, and air conditioning (HVAC), PPTEU, MPAQ and NFIA advised:

> Innovation and technology are advancing at a rapid pace. Due to this it is necessary for our regulatory framework to keep pace with this change. We consider the amendments proposed to be sensible and responsive to proven technological changes. We further consider that there is scope for additional reform in this area, for example in relation to gas.[51]

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48 Department of Energy and Public Works, correspondence, 27 April 2022, pp 22-23.

49 Submission 3, p 2.

50 Public hearing transcript, Brisbane, 26 April 2022, p 7.

51 Submission 12, p 1.

PPTEU, MPAQ and NFIA also supported the proposed amendments relating to holding tanks for sewage and greywater. However the submitters consider this work should be undertaken by a licensed person and 'educational information to this effect should be provided to a person upon approval of their permit'.[52]

2.3 Head contractor licensing

2.3.1 Retention of head contractor licensing exemption

2.3.1.1 Proposed amendments

Clause 36 proposes to omit uncommenced section 125A of the BIFOLA, which sought to repeal a licensing exemption for head contractors. The effect of this clause is that the exemption will continue.[53]

The department advised:

> … a QBCC licence is generally required to carry out building work; however, the QBCC Act provides some exemptions to this general requirement, including for unlicensed head contractors to subcontract work to appropriately licensed subcontractors provided the work is not residential construction work or domestic building work. Earlier amendments were introduced in 2020 to repeal this head contractor licensing exemption in response to industry concerns. These concerns have also been explored further in subsequent consultation. As a result, the bill seeks to replace this not-yet-commenced provision and retain the licensing exemption as well as introduce a regulation-making power to require certain head contractors to obtain a licence in specific circumstances.[54]

2.3.1.2 Stakeholder views

The Property Council supported the provisions to retain the current head contractor licensing exemption for non-residential work. The Property Council advised that:

> This exemption is relied on extensively by members of the property industry in commercial contracting, including development agreements and lease agreements, or by businesses undertaking projects that involve a relatively minor element of building work. Its repeal would have resulted in a range of businesses incurring increased costs to secure a licence to undertake work they have no intention to themselves undertake or purport to be qualified to undertake. This would be on top of the already escalating material and labour costs.[55]

However, Wood L&M Solutions advised:

> In my opinion, the inclusion of this exemption to the requirement to hold a contractor's licence is entirely inconsistent with the intent of the licensing regime provided by the QBCC Act and the responsibility for building work provided by the QBCC Act. Whilst I appreciate that some commercial businesses rely entirely on this exemption for their business model, that ought never be a reason to remove the protections that legislation is trying to bring to consumers. If it was, legislation would never be introduced that would deny commercial entities the right to structure their business in whatever format suits the business even where such a structure removes protections for consumers and lower tier contractors.[56]

[52] Submission 12, p 1.

[53] Explanatory notes, p 35.

[54] Public briefing transcript, Brisbane, 8 April 2022, p 2.

[55] Submission 3, p 1.

[56] Submission 7, p 3.

In response, the department advised:

> During consideration on the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020 (BIFOLA Act), the then-Transport and Public Works Parliamentary Committee received several industry submissions about the alleged misuse of the licensing exemption and concerns it undermined the licensing framework, including security of payment provisions. Specifically, the inclusion of unlicensed head contractors in the contractual chain can mean the bulk of subcontractors are not protected by a project trust account.
>
> To implement the Committee's recommendation, section 125A of the BIFOLA Act sought to repeal the licensing exemption. This provision commences on proclamation and has not yet commenced.
>
> In the interim, additional stakeholders have raised concerns about the potential impacts of the repeal. A postponement regulation made on 8 July 2021 ensured the provision would not automatically commence under the Acts Interpretation Act 1954 until July 2022. This enabled further stakeholder consultation to occur.
>
> This consultation showed reliance on the exemption in commercial contracting, including development agreements, agreement for lease, and numerous projects and contracts that involve a minor element of building work. If the repeal were to proceed, such businesses would likely face increased administrative and cost burdens to undertake work which is ancillary to their business. However, concerns also remained that the licensing exemption may allow entities to circumvent Queensland's licensing, safety and security of payment frameworks.
>
> To address these concerns, the Bill proposes to retain the head contractor licensing exemption, but allow a regulation to prescribe certain circumstances where it is considered critical that a head contractor be licensed. This approach retains the benefits of the head contractor licensing exemption (e.g. to facilitate commercial contracting) while also providing Government with flexibility to respond to emerging security of payment and safety issues as they arise.[57]

2.3.2 Exemptions from requirement to hold contractor's licence

2.3.2.1 Proposed amendments

The explanatory notes state that the Bill (Clause 67) amends schedule 1A of the QBCC Act 'to clarify that a head contractor licensing exemption clarify that the head contractor licensing exemption prescribed in schedule 1A, section 8(1) and (2) does not apply in circumstances prescribed in regulation'.[58]

The explanatory notes that a regulation may be made for individuals undertaking high risk work such as fire protection and mechanical services.[59]

The department advised:

> The bill also ensures … that subcontractors are protected by a project or retention trust account when the exemption is used. The amendments will allow a regulation to be made that will specify additional contracts and subcontracts that require a retention trust account. Broad industry consultation is planned when developing this regulation.[60]

2.3.2.2 Stakeholder views

The Queensland Law Society (QLS) noted that a review of developers is currently being undertaken and supported the retention of the exemption until the review has been completed and its findings considered.[61]

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57 Department of Energy and Public Works, correspondence, 27 April 2022, p 2.

58 Explanatory notes, p 43.

59 Explanatory notes, p 10.

60 Public briefing transcript, Brisbane, 8 April 2022, p 2.

61 Submission 6, pp 1-2.

However, QLS advised that as the review of developers it yet to be complete it is of the view that:

> … it is premature to proceed with enacting subsection 8(4) in Schedule 1A of the QBCC Act, which grants power to prescribe, by regulation, when the exemptions under subsections 8(1) and 8(2) do not apply.[62]

QLS advised:

> In our view, subsection 8(4) does not have proper regard to the institution of Parliament. Providing for circumstances where a legislative exemption does not otherwise apply does not provide the same level of parliamentary scrutiny as in the primary legislation. Further, these provisions could commence before Parliament had the opportunity to disallow them, meaning that persons affected by the regulation will be prevented from conducting their business until the issue is addressed by Parliament.
>
> If such a regulation was disallowed after commencement, this could create difficulties for persons who relied on the exemption before they were disallowed.[63]

Wood L&M Solutions agreed with QLS on this issue advising:

> Whilst parliament is proposing to include a head of power to prescribe certain contractual arrangements to which this exemption will not apply, that power is more appropriately exercised by parliament through the 'normal' legislative process. It is not appropriate to do this by regulation, particularly when it will impact on existing contracts on foot at the time of any proposed regulation change and will cause disruption and confusion across the industry regardless of what contractual arrangements such a change will impact on at any given time.[64]

UDIA, while supporting the retention of the head contractor licensing exemption extension, considered:

> … it is premature to be creating a new regulatory mechanism while the developer licensing review is not complete given the commonality of subject matter and industry participants.[65]

UDIA highlighted their concern that:

> … the proposed reinstatement of the exemption with a delegated power to create future regulation which is broadly framed, is effectively the same as repealing the exemption. Regulation referred to in the bill's explanatory notes raises significant uncertainty for the industry. Removal of the exemption in any uncertain way can significantly and detrimentally impact the commercial and retail (including hospitality) development sectors.

UDIA, highlighted a number of reasons for this concern, including that the regulation making power may add additional layers of regulation, additional compliance activities and uncertainty, and advised that 'many issues will arise from permitting the exemption to be dissipated in regulation'.[66]

The Property Council highlighted their concern about the inclusion of provisions allowing exclusions from the head contractor licensing exemption to be prescribed in a regulation. The Property Council advised:

> This would create an unacceptable level of uncertainty for industry by leaving the door open for exemptions to be restricted or removed quickly and at any time, without parliamentary scrutiny or public consultation.

62 Submission 6, p 2.

63 Submission 6, p 3.

64 Submission 7, p 3.

65 Submission 9, p 2.

66 Submission 9, p 4.

> Any decision to regulate an exclusion from the head contractor licensing exemption would require a detailed consideration of what the exclusion seeks to achieve against the existing provisions of the Act. Previous consultation in relation to removal of the exemption provisions did not contemplate removal of the exemption for only certain classes of head contractors.
>
> Any regulation made under this proposed amendment to the Act would therefore represent a new policy or direction which has not been subject to the usual scrutiny. There is no good reason or public benefit in setting up what is essentially a 'fast-track' regime to permit the introduction of what are currently unidentified and undeveloped regulations, without a guarantee of consultation.[67]

The Property Council stated:

> In our view the ordinary and appropriate way to ensure adequate consultation and scrutiny is to address proposed amendments to the head contractor exemption provisions as amendments to the Act itself, if and when a need arises.[68]

MEA also commented on this issue advising:

> In particular MEA is concerned that the Act in these circumstances has not been able to again clearly articulate what the "concerns remain that the licensing exemption may allow entities to circumvent Queensland's licensing system, e.g. minimum financial requirements and security of payment protections."
>
> These arguments were raised in 2020 and 2021 by some parties without articulating exactly what circumstances existed. Legislation should be fit for purpose and address the evidence that is presented however MEA is concerned, yet again, in this context that concerns raised by parties cannot be articulated, nor examples given, that show a need to change the legislation is not foreseeable or necessary.[69]

MEA also raised their concern that:

> The Bill does not identify what high risk areas of work are included or excluded. If concerns are raised then those concerns should be able to identify the types of contactors that need to be closely monitored by regulation and that the legitimate Contractors such as electrical contractors are left to continue as they have been on these very small building projects.
>
> The bill also makes a broad statement of applying to "High risk work". MEA is unable to identify in the Bill or the relevant Act a definition of what High Risk Work is. This will have a significant impact on what the regulator can put into the regulation without referral back to Parliament, we say that is unacceptable broad and will likely lead to legislative creep through poor interpretation unless the legislature is clear in its intent on what it is trying to achieve.[70]

MEA elaborated on this concern advising:

> There is this general feel in the air that something could go wrong and we need to protect things about developers and things like that.

67 Submission 3, pp 1-2.

68 Submission 3, p 2.

69 Submission 4, p 2.

70 Submission 4, p 3.

> I suppose what I am looking for and what I would expect to come from a legislator is to say that if there are problems they are identified and clearly articulated. That is what I am looking for in terms of this. If there is a problem about developers—and it depends what you mean by a developer. Developer seems to point towards some sort of residential building et cetera. The projects we are talking about here for electrical contractors are electrically based. They are pump stations or they can be as simple as putting a barbecue in a park for a council. Most of that work is electrical work and it has a shade over it and things like that. They are non-contentious issues. What we are concerned about with the drafting as it is at the moment, with the department being able to make regulation, is that it bypasses the parliamentary process. We are concerned, again from an electrical point of view, that rules are going to be made outside of the electrical industry that affect its ability to do a contracting job.
>
> The security-of-payment laws apply to electrical contractors if they are the head contractor. It is quite clear in the legislation that that is the case. What I am saying is that we are subject to the statutory trust regime if we are the head contractor. I do not think it is particularly relevant that we are then possibly subject to a regulation made later that may be changed by the department without understanding that we already have that responsibility. It is not consistent through the legislation. We are concerned that it is going to affect contractors in terms of the way they provide services in that respect.[71]

MEA suggested:

> The way to solve it would be to put some examples in about occupations or contractors that are deemed to do this sort of work—whether it is electrical, plumbing or other licensed trades. They could put in examples that clearly state that they have an exemption under this section. That would be much better because at least then you have that in the legislation. When the regulation comes in you can say, 'No, you should not be in putting in a regulation about electrical contractors because it is quite specific in the legislation that electrical contractors are exempt in those non-residential and non-building areas.'[72]

QLS also identified this issue stating:

> … Explanatory Notes do not provide any indication as to when the power may or might be used. While the Explanatory Notes refer to requiring "those who engage in high-risk work" to be licensed, there is insufficient detail as to what might be considered to constitute "high-risk work".
>
> QLS submits that the legislation must include sufficient detail and clarity about the scope of any potential regulation to be made under this head of power.
>
> It is critical that regulations are not used as a mechanism for circumventing the legislative process for passing Acts of parliament or for addressing matters which are appropriately dealt with in primary legislation.
>
> Regulations made under such a wide provision could impose significant restrictions on a person's rights to conduct their business. Provisions having such a significant effect should not be in regulations but in primary legislation.[73]

QLS also advised:

> The Explanatory Notes also refer to broad concerns regarding misuse of the exemption, but do not provide any specific examples of when the exemption has been misused. This suggests that further inquiries, including completing the review of developers, are required to establish the particular circumstances of misuse that are intended to be addressed by subsection 8(4).
>
> While we recognise the desire for flexibility to respond quickly to issues as they arise, this flexibility must be balanced with certainty.[74]

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71 Public hearing transcript, Brisbane, 26 April 2022, p 13.

72 Public hearing transcript, Brisbane, 26 April 2022, p 14.

73 Submission 6, p 2.

74 Submission 6, p 3.

QLS elaborated on this issue advising the committee:

> Proposed section 8(4) is very wide. If you had a look at the drafting, it simply provides that a regulation can be made prescribing circumstances in which the exemption does not apply. There are no qualifiers or principles put out in that section that would explain in what circumstances such a regulation could be made. The explanatory notes for this provision suggest it is intended to provide some flexibility to respond to high-risk work so that, if issues do arise, a regulation could be made to respond to that. The way I read that is: it means that you can respond quickly without the need to go back to parliament and subject such a provision to the scrutiny of parliament in the usual way.
>
> When we look to whether legislation is good law, we always test it against the fundamental legislative principles in the Legislative Standards Act. We would be concerned that this really broad power does potentially fall foul of a couple of those fundamental legislative principles in the Legislative Standards Act. We think it is unduly wide and vague, which is an inappropriate delegation of power to subordinate legislation, and that is inconsistent with section 4(3)(k) of the Legislative Standards Act which provides that legislation should be 'unambiguous and drafted in a sufficiently clear and precise way'.[75]

QLS strongly recommended that, if the decision is made to enact the provision, that:

> … the scope of the power to make a regulation under subsection 8(4) be limited to specific circumstances, described in the authorising legislation, so as to provide appropriate limits on the exercise of the power. As a minimum, the authorising legislation should prescribe the circumstances contemplated in the Explanatory Notes about "high risk work" and include a definition of this concept.[76]

In relation to the regulation-making power, QLS noted:

> Subsection 8(4), as currently drafted, is not limited to the circumstances when the exemption could potentially be misused. Instead, subsection 8(4) is unlimited in scope. This creates a power much broader than is necessary to address the issues raised in the Explanatory Notes. Such a broad power creates uncertainty as to when the regulation-making power will be utilised, which could adversely impact entities that legitimately rely on the licensing exemption.

QLS recommended that the enactment of proposed section 8(4) be postponed until the review of developers has been completed and greater clarity around these issues is provided, including whether any further legislative response is required.[77]

In response to the concerns raised in relation to the provision of exemptions by way of regulation, the department advised:

> Specifically, the clause enables the QBCC Act to be expressly or impliedly amended by subordinate legislation. However, this is considered justified to address ongoing concerns with the licensing exemption by providing Government with flexibility to displace its application in certain circumstances. It was also noted that consultation will occur during the development of any regulation.
>
> This approach was canvassed through the Ministerial Construction Council and further targeted stakeholder consultation, including those who expressed concerns about the impacts of the repeal. The proposed approach sought to address the major concerns of all stakeholders by introducing the amended exemption, subject to further consultation during the development of any regulation amendments.
>
> The department will conduct comprehensive industry consultation before prescribing any circumstances by regulation and these would also be subject to regulatory impact assessment requirements. This will allow all relevant and interested stakeholders to contribute, consider and address any issues or unintended consequences during the policy development process and ensure the prescribed circumstances are fit for purpose.

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75 Public hearing transcript, Brisbane, 26 April 2022, p 19.

76 Submission 6, p 3.

77 Submission 6, p 3.

> Given the dynamic and complex nature of the building and construction industry, particularly at the head-contractor level, it is considered that a flexible approach is necessary to address the broad range of contracting structures that exist. This approach has been successfully employed in other circumstances, such as the definition of building work and the application of project trust accounts.[78]

The department also noted that:

> … authority to draft subordinate legislation ordinarily comes from a decision of government (for significant subordinate legislation), or the relevant Minister or (in some cases) chief executive, rather than a decision of a regulator. Regulation amendments are also subject to consideration and approval by Governor-in-Council and oversight through the Legislative Assembly.[79]

2.3.2.3 Committee comment

The committee noted and understands the concerns raised by stakeholders in relation to head contractor licensing. The committee agrees that the type of work be prescribed under the regulation should be defined. The committee also acknowledges stakeholders' comments regarding the current review of developer licensing. The committee is of the view that the outcomes from this review could potentially provide additional matters for consideration and therefore the timing of commencement should reflect this.

Recommendation 2

The committee recommends, in developing the regulation relating to the head contractor licensing exemptions, the Minister should clearly define the type of work prescribed under the regulation and consider the timing of commencement as suggested by stakeholders.

2.3.3 When retention trust required

2.3.3.1 Proposed amendments

Clause 25 amends section 32 of BIF Act to allow a regulation to specify additional contracts and subcontracts as being withholding contracts to ensure subcontractors normally within scope are protected by project and retention trusts in the event a head contractor licensing exemption is used.[80]

The explanatory notes state:

> The usual trust account scenario, contemplated by the BIF Act, is a three-tier scenario with the principal (1st tier) engaging a builder/head contractor (2nd tier) who further engages subcontractors (3rd tier). The presence of unlicensed head contractors in the contractual chain can mean subcontractors normally protected are not covered by a project or retention trust under the BIF Act. This is because the use of the head contractor licensing exemption under the QBCC Act can introduce an additional party in the contractual chain and push the subcontractors down to a lower contractual tier which is generally not protected by the trust arrangements. To accommodate additional contractual scenarios and arrangements, section 14E of the BIF Act provides that a subcontract is eligible for a project trust if it is of a type prescribed by regulation. A similar head of power does not currently exist for withholding contracts for retention trusts.[81]

78 Department of Energy and Public Works, correspondence, 27 April 2022, p 3.

79 Department of Energy and Public Works, correspondence, 27 April 2022, p 5.

80 Explanatory notes, pp 32-33.

81 Explanatory notes, p 32.

In relation to incidents where the subcontractors have not been protected due to others coming into the contractual chain, QBCC explained:

> Queensland has been on a journey of introducing enhanced security of payment protections into the industry. As you would appreciate, the contracting chain as it relates to the building and construction industry can be complex, with large numbers of subcontractors and suppliers supporting a major residential or commercial development. The intention of the amendments are to enable, through prescription by regulation, that a certain party in that chain is required to either have a project trust account or a retention trust account. It creates a safety mechanism to avoid parties that may not be captured within the core security of payment framework to be brought in. Historically, an example may be a developer or a special purpose vehicle at the top of a contractual chain.[82]

2.3.3.2 Stakeholder views

Wood L&M Solutions supported the inclusion of the proposed amendment to section 32 of the BIF Act to provide for Parliament to prescribe a subcontract below a head contract that relies on the head contractor exemption to have a retention trust account. However, Wood L&M Solutions stated:

> I would not support a project trust at a lower level as that will result in needless additional cost to a project and is unlikely to ever be a benefit to subcontractors in having a project trust due to the nature of project trusts. There is a possibility that a retention trust could provide some benefit to subcontractors of a retention trust so I support the inclusion of this amendment that would permit a retention trust at a lower level.[83]

In response to this issue, the department advised that:

> The Bill does not include a provision for prescribing a project trust for a subcontract. The BIF Act already includes provisions (sections 14D and 14E) that allow a regulation to prescribe additional contracts and subcontracts that require a project trust.
>
> The department is of the view that prescribing additional contracts and/or subcontracts that require a project trust may be necessary. This is because the presence of unlicensed head contractors in the contractual chain can mean the bulk of subcontractors are not covered by a project trust. Use of the section 8 head contractor licensing exemption can introduce an additional party in the contractual chain and push the bulk of subcontractors down to a tier which is not generally protected by the trust arrangements. Consequently, the department is proposing to prescribe certain first tier subcontractors as requiring a project trust when the section 8 head contractor licensing exemption is used. Targeted consultation is proposed as the regulation is developed.[84]

In supporting the amendments NECA advised:

> As a finishing trade, electrical contractors are involved in the latter stages of the building and construction cycle. Further, the electrical equipment and labour involved in modern buildings is often highly sophisticated and expensive. In the event a builder falls into receivership, electrical contractors can be at a disadvantage in terms of being recompensed when compared to all other trades who contribute to the project and have been fully recompensed at an earlier stage in the project.
>
> The current system of payment security penalises sub-contractors by effectively rendering them de-facto underwriters to unscrupulous or inefficient head/principal contractors. Of all sub-contractors, electrical contractors provide the highest value inputs by way of fixtures, fittings and labour towards the latter stages of the construction cycle. In other words, electrical contractors are more disproportionately disadvantaged than any other sub-contractor.

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82 Public briefing transcript, Brisbane, 8 April 2022, pp 5-6.

83 Submission 7, p 2.

84 Department of Energy and Public Works, correspondence, 27 April 2022, pp 9-10.

> The current Security of Payment legislation in Queensland, does not adequately protect contractors and subcontractors against insolvency and NECA is concerned that loopholes exist in the current legislation that allows head contractors to dodge their contractual chain responsibilities.[85]

The Property Council noted that:

> Concerns have been raised that the exemption increases sub-contractor payment insecurity by allowing head contractors to avoid the project trust account framework. This concern appears to have been dealt with by the BOLA Bill's inclusion of measures ensuring that exempt head contractors' sub-contractors are covered by the retention trust account framework. It should be noted however that the BOLA Bill does not provide sufficient certainty around when trust accounts are or may be required for subcontractors, something that the Property Council believes requires further clarification.[86]

In response to this issue, the department advised:

> This will be clarified by regulation. The Bill inserts a regulation-making power to prescribe additional contracts and subcontracts that require a retention trust account. The BIF Act already includes provision for prescribing contracts and subcontracts that require a project trust account by regulation.
>
> Together, these heads of power will allow a regulation to be made to prescribe certain contracts and subcontracts for project and retention trust account requirements. This will ensure subcontractors are protected by project and retention trusts when a section 8 head contractor licensing exemption is used.
>
> It is intended to engage in targeted consultation with industry as the regulation is developed.[87]

NECA also expressed the view that the current transitionary provisions relating to retention trusts is 'too slow to adequately afford protection for private sector contracts' and that they would like to see the pace of implementation increased.[88]

In response to this issue the department advised that it:

> … undertook a 'health check' of the readiness of industry prior to the introduction of the trust account framework to eligible private sector contracts on 1 January 2022. The health check findings indicated that industry was broadly ready for the roll out on 1 January 2022 but is facing a number of broad challenges created by the COVID-19 pandemic (material and workforce shortages and price rises), and other challenges that relate specifically to the implementation of the framework.
>
> As a result of the health check findings and other factors such as the recent natural disaster events, government decided to extend the commencement dates for the remaining two phases by 9 months respectively. The extension acknowledges the health check findings and will allow more time for industry stakeholders to prepare and for the government to support industry with the transition.[89]

85 Submission 5, p 2.

86 Submission 3, p 2.

87 Department of Energy and Public Works, correspondence, 27 April 2022, p 4.

88 Submission 5, p 2.

89 Department of Energy and Public Works, correspondence, 27 April 2022, p 6.

2.4 Sharing information on investigation outcomes

2.4.1 Clause 60 – Exchange of information between commission and relevant agencies

2.4.1.1 Proposed amendments

Existing section 28B (Exchange of Information between commission and relevant agencies) of the QBCC Act is as follows:

> (1) The commission may enter into an arrangement (an ***information-sharing arrangement***) with a relevant agency for the purpose of sharing or exchanging information—
> (a) held by the commission or the relevant agency; or
> (b) to which the commission or the relevant agency has access.
> (2) An information-sharing arrangement may relate only to information—
> (a) that helps—
> (i) the commission perform the commission's functions; or
> *Note—*
> For the commission's functions, see section 7.
> (ii) the relevant agency perform its functions; or
> (b) the disclosure of which is reasonably necessary for protecting the health or safety of a person or property.
> (3) Under an information-sharing arrangement, the commission and the relevant agency are, despite another Act or law, authorised to—
> (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
> (b) disclose information to the other party.
> (4) In this section—
> ***relevant agency*** means—
> (a) the chief executive of a department; or
> (b) a health and safety regulator within the meaning of section 28A; or
> (c) a local government; or
> (d) an agency of the Commonwealth, or another State, prescribed by regulation.

Clause 60 proposes to amend section 28B(4) to include:

> (e) an entity established under an Act.[90]

The explanatory notes state:

> Clause 60 amends section 28B (Exchange of information between commission and relevant agencies) to include 'an entity established under an Act' within the definition of 'relevant agency'.[91]

The department advised:

> There are several minor operational amendments to the QBCC Act proposed in the bill to improve government and regulator processes and to improve existing provisions; for example, extending the ability for the QBCC to share relevant information with Queensland statutory bodies such as those involved in regulating other elements of the building industry such as QLeave.[92]

2.4.1.2 Stakeholder views

PPTEU, MPAQ and NFIA supported the information sharing provisions advising:

> … the information sharing provisions are welcomed and we encourage further information sharing between Government entities to enhance efficiency and lessen any administrative burden experienced by industry.[93]

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90 Building and Other Legislation Amendment Bill 2022, clause 60.

91 Explanatory notes, p 42.

92 Public briefing transcript, Brisbane, 8 April 2022, p 3.

93 Submission 12, p 2.

LGAQ did not oppose the proposed arrangements. However LGAQ noted:

> Councils have identified challenges in obtaining the data shared by the QBCC and seek dedicated resources to ensure open communication channels.[94]

LGAQ recommended:

> … local governments across Queensland have direct access to QBCC staff dedicated to deal with council inquiries on building, plumbing and drainage and other relevant matters as required to ensure efficient information sharing.[95]

The department provided the following response:

> It is acknowledged that information sharing between the QBCC and local governments is critical to support performance of their respective statutory functions.
>
> As this matter can be resolved operationally by the QBCC, it is not proposed to make any amendments to the Bill currently under consideration.[96]

Refer also section 4.1.1 in relation to fundamental legislative principles issues.

2.4.2 Clause 65 – Information to complainant on completion of investigation or internal review

The department advised the Bill:

> … clarifies that the QBCC commissioner may share the outcomes of an investigation undertaken by the QBCC with the complainant, similar to other government agencies including local governments. Currently, a complainant must lodge a right to information application to receive further information about their complaint. This amendment will ensure that the QBCC is able to appropriately respond to complainants regarding the outcome of their complaint.[97]

The explanatory notes state:

> This is intended to primarily address circumstances where complainants are directly affected by the subject matter, and not necessarily other third-party complainants, such as those who may have merely observed or suspected non-compliance but who have not been directly or personally affected.[98]

In supporting the proposed amendment, PPTEU, MPAQ and NFIA stated:

> It is a source of frustration to Professionals doing the right thing and informing the Regulator of unlicensed or non-compliant work that they are not able to find out the result of their action. This discourages professionals from undertaking positive action in the future to support our best practice licensing and regulations.[99]

2.5 Decision making

2.5.1 Combustible cladding checklist process

2.5.1.1 Proposed amendments

Clause 21 proposes to amend section 256(2) of the Building Act to include an additional provision for QBCC Commissioner to make a complaint for an offence against the relevant section of the expired Building Regulation 2006. Part 4A of the expired Building Regulation 2006 continues in force. Under the Building Act, where local governments can also commence court proceedings, QBCC requires express permission from the relevant local government to commence a proceeding.

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94 Submission 10, p 12.

95 Submission 10, p 12.

96 Department of Energy and Public Works, correspondence, 27 April 2022, p 23.

97 Public briefing transcript, Brisbane, 8 April 2022, p 2.

98 Explanatory notes, p 43.

99 Submission 12, p 1.

The explanatory notes state:

> … as the administrator of the cladding checklist and industry regulator, QBCC is considered better placed to take enforcement action for breaches relating to the combustible cladding checklist. As a result, QBCC will be able to commence prosecution for those who have committed an offence in relation to the combustible cladding checklist process. This amendment does not change local government powers and is consistent with messaging and community expectations that QBCC is the industry regulator and oversees the combustible cladding checklist program.[100]

The department advised that this is a minor operational amendment which enable the QBCC to commence court proceedings for the combustible cladding checklist process.[101]

2.5.1.2 Stakeholder views

LGAQ welcomed the amendment as it supports local government's preference to align powers for the issuing of infringement notices and jurisdiction to prosecute.[102]

SCA supported the proposed changes as they consider that they will help 'reduce bureaucracy and improve the ability to take punitive steps against recalcitrant buildings' and the proposed change is:

> … a sensible change given feedback indicates local government are not appropriately resourced to conduct this enforcement. QBCC is the best placed organisation to take action as they are the administrator of the check list.

However, SCA advised that it considers that safety is their core concern and the only solution for the ongoing problem is for rectification to be achieved as quickly as possible.[103]

In response, the department advised that it continues to engage with stakeholders on this issue. The department stated:

> This engagement commenced with the former Non-Conforming Building Products Audit Taskforce and has been continued by its successor, the Safer Buildings Taskforce.
>
> As required by its Terms of Reference, the Safer Buildings Taskforce is in the process of developing advice to the Queensland Government on the next steps in relation to combustible cladding. This process is being supported through consultation with relevant stakeholders.
>
> The Safer Buildings Taskforce will continue to engage with the SCA and seek its views on possible approaches to rectification of combustible cladding.[104]

The committee sought additional information regarding how many breaches relating to combustible cladding has the QBCC taken enforcement action against under the existing provisions. The department advised that the first of those was lodged with the courts on 7 April 2022.[105]

SCA advised the committee that there is limited published data about affected buildings. SCA advised:

> The QBCC is the administrator of what is called the checklist. Buildings that have been identified have had various stages of compliance. The QBCC keeps that data. The view is that, because of the risk to human life and particularly the potential for arson, it is best that these buildings are not identified on a public register. All buildings are required to display an affected building notice in the foyer so a person walking into that building knows if the fire alarm does go off to get out quick smart. There is no list of buildings publicly available.[106]

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100 Explanatory notes, p 29.

101 Public briefing transcript, Brisbane, 8 April 2022, p 2.

102 Submission 10, p 9.

103 Submission 12, p 2.

104 Department of Energy and Public Works, correspondence, 27 April 2022, p 26.

105 Public briefing transcript, Brisbane, 8 April 2022, p 5.

106 Public hearing transcript, Brisbane, 26 April 2022, p 3.

In relation to removal of combustible cladding, SCA noted that it is very difficult for body corporates to borrow money as the legislation require a resolution without dissent. SCA advised that this is difficult to achieve. SCA advised that they:

> … would be looking for as much government funding and as much involvement from the government as possible, working with the government on the program. I am of the understanding that the passage of this bill will be the next step and that the next program to come out will be looking at consultation for methods of rectification, whether that is a scheme like the ACT or Victoria—any scheme that ensures we get this stuff off as soon as possible. I would not necessarily urge policymakers to cut and paste from one of the jurisdictions I have mentioned without consulting with Queensland industry, but it is important that we work to get everyone living in these buildings 100 per cent safe as quickly as possible.[107]

2.5.2 Immediate suspension of a QBCC licence

Currently, QBCC can only immediately suspend a QBCC licence under section 49A of the QBCC Act if it reasonably believes there is a real likelihood that serious financial loss or other serious harm will happen to any of the following: other licensees, employees of other licensees, consumers, and suppliers of building materials or services.[108]

The proposed amendment in clause 61 will provide the QBCC with the power to immediately suspend a licence in response to risks of serious financial loss or other serious harm to a person. The clause will omit references to 'other licensees', 'the employees of other licensees', 'consumers' and 'suppliers of building materials or services' listed in section 49A(1)(a)-(d), as these classes of persons will be captured within the broad remit of 'a person'.[109]

The explanatory notes state that:

> Amendments are needed to promote public safety and consumer protection by expanding the power of QBCC to immediately suspend a licence, so that it can effectively respond to risks of serious harm or financial loss to all persons, not just those currently listed under section 49A. Circumstances that may enliven the QBCC's power to immediately suspend a QBCC licence, may include risks posed to an employee of a licensee when undertaking building work, risk of a brick wall falling onto passing pedestrians, or significant damage sustained to a neighbouring property as a result of building work being undertaken.[110]

The department advised:

> The amendment will enable the QBCC to immediately respond to risks of serious financial loss or other serious harm to any person to ensure that it has the appropriate regulatory mechanisms to also protect members of the public.[111]

In relation to the ability for the QBCC to immediately suspend a licence if there is a serious risk of harm or financial loss to any person, QBCC advised:

> By amending this protection to include literally any person, the QBCC will have a greater ability to act against risks of harm and safety, financial and otherwise. Again, this is a sensible change that will increase protection for the building and construction industry as well as the general public and improve the QBCC's ability to do its job.[112]

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107 Public hearing transcript, Brisbane, 26 April 2022, p 4.

108 Explanatory notes, p 10.

109 Explanatory notes, p 42.

110 Explanatory notes, p 10.

111 Public briefing transcript, Brisbane, 8 April 2022, p 2.

112 Public briefing transcript, Brisbane, 8 April 2022, p 4.

PPTEU, MPAQ and NFIA advised of their support advising:

> … we further support the ability of the Regulator to take quick action against individuals to remove their licenses in certain circumstances, which is also sensible.[113]

2.6 Other amendments

The department advised:

> The bill also includes minor amendments to the BIF Act to clarify and refine the ambit of the account review report requirements and expectations on the auditing profession under the BIF Act, including reporting of non-compliance to the QBCC. Minor amendments of the Building Act complemented by amendments of the QBCC Act addressed inconsistencies that exist in both the Building Act and the QBCC Act in relation to review rights for decisions made by QBCC in terms of pool safety matters. The amendments will allow a person who is dissatisfied with the decision made by the QBCC about a pool safety management plan under the Building Act to apply for an internal or external review of the decision under the QBCC Act. Review rights for decisions by QBCC about other pool safety matters are already available under the QBCC Act[114].

The department elaborated on the proposed changes to appeal against a decision of pool safety management plans:

> It is really important to be aware that within this context we are talking about a very particular type of pool. These are pools associated with class 3 buildings, so we are effectively talking about pools in resorts. There are, I believe, about eight of those plans in place currently in the state. They are reviewed annually. In terms of the amendment itself, it was really about ensuring that appeal rights were in place. This was tidying just to make sure that everything was in line, if anyone had a concern.
>
> …
>
> They already had an appeal right to the Development Tribunal. This gives them an internal review right. When the pool safety laws were transferred to the QBCC, the appeal rights were transferred to the QBCC in line with the QBCC Act which has an internal review right and an external review right. There was oversight at the time where there was only an external review right. This is tidying up to keep them both in line with all other matters.[115]

2.6.1 Planning Act

Clauses 37 to 41 enable the proposed amendments to the Planning Act

The department advised:

> The bill will amend the Planning Act to clarify and expand provisions in that act to deal with appeals against decisions to give enforcement notices under the Plumbing and Drainage Act. The proposed amendments will ensure the Planning Act adequately provides for appeals against decisions to give enforcement notices under the Plumbing and Drainage Act as well as decisions to give enforcement notices under the Planning Act. The bill will also amend the Planning Act to ensure a person who is dissatisfied with the failure of any decision-maker, other than the QBCC, to make a decision within the period required under the Building Act to be able to appeal against that failure to make a decision.[116]

[113] Submission 12, p 2.

[114] Public briefing transcript, Brisbane, 8 April 2022, p 3.

[115] Public briefing transcript, Brisbane, 8 April 2022, pp 6-7.

[116] Public briefing transcript, Brisbane, 8 April 2022, p 3.

The committee sought further information in relation to the reasons that have led to the proposed amendments. The department advised:

> In relation to amendments in the Planning Act, these are relating to enforcement notices and providing for a failure to make a decision under the Building Act. We were going through the various pieces of legislation which relate to enforcement and making sure that all enforcement provisions across all the pieces of legislation were aligned. As you can appreciate, over time misalignments can occur, and we are looking to ensure that all appeal rights, for example, or failure to make a decision line up across the various pieces of legislation.[117]

LGAQ advised the committee:

> Clause 41 of the Bill will align provisions in the *Planning Act 2016* for the *Building Act 1975* that deal with a failure to make a decision on time with similar provisions in the *Planning Act 2016* that already exist for the *Plumbing and Drainage Act 2018.* This ensures a person who is dissatisfied with a failure of any decision maker, other than the QBCC, to make a decision within the period required under the *Building Act 1975* will be allowed to appeal against the failure. The LGAQ supports the efforts to align the relevant legislation.
>
> Council feedback has indicated decision-making processes would benefit from the ability of councils to stop the decision-making period to enable consultation and negotiation to resolve issues. This aligns with a motion at the 2020 LGAQ Annual Conference, where members sought an amendment to the Development Assessment Rules made under the *Planning Act 2016* to allow for local government assessment managers to 'stop the clock' during the development assessment process, reflecting the ability for applicants to stop a current period. This proposal would allow for more time to be given to the thorough assessment of development applications.

2.6.2 Building Certifiers

The Bill (Clause 35) proposes to omit sections 46, 47 and 48 of the BIFOLA, which will repeal provisions not yet commenced that would otherwise have established an alternative recognition pathway for building certifiers.[118]

The department advised that the:

> … provisions introduced in 2020 were intended to encourage former certifiers who could not meet the licensing accreditation requirements back into the certification profession. These provisions were introduced when concerns existed about an ageing and shrinking certification workforce as well as the affordability and accessibility of professional indemnity insurance. Since the passage of these provisions, the number of certifiers in Queensland has stabilised, and other measures have been implemented such as accreditation of professional standard schemes which limits liability which all seek to address uncertainty about PI insurance. Given this and that the provisions have not yet commenced, they are no longer considered necessary.[119]

[117] Public briefing transcript, Brisbane, 8 April 2022, p 7.

[118] Explanatory notes p 35.

[119] Public briefing transcript, Brisbane, 8 April 2022, p 3.

The department explained the background to the proposed amendment:

> When this particular provision, the alternative licensing pathway, was contemplated, we had been seeing a reduction in the number of certifiers. This was seemingly on the back of some quite substantial increases in professional indemnity insurance premiums that were seen in 2019. There were concerns nationally about what was happening there and I believe we have previously briefed the committee on that. However, in the intervening years the number of certifiers has stabilised. The situation regarding professional indemnity insurance has also stabilised. There are now other pathways to support certifiers in meeting their professional obligations and in coming into the profession, including through a national professional standards scheme. For that reason it was considered that the issues that were faced in relation to the reason for this particular amendment had moved and we would continue to use the other avenues that were available.[120]

LGQA supported the repeal of the alternative pathway for building certifiers as this addresses the concerns that it held.[121]

[120] Public briefing transcript, Brisbane, 8 April 2022, p 5.

[121] Submission 10, p 8.

3 Issues outside the scope of the Bill

Stakeholders raised a number of issues which were outside the scope of the Bill. These issues are discussed below.

3.1 Plumbing and Drainage work

MPAQ sought a clarification of 'plumbing and drainage' work under the QBCC Act. MPAQ advised:

> Currently under the Queensland Building and Construction Commission Regulation 2018, various licensees are able to perform plumbing and drainage work without holding a plumbing and drainage contractor's license (i.e. plumber employed by builder).
>
> As an example, Part 5 Builder Medium rise license S2 (3) allows for the builder to perform "non-structural" work except for exclusions noted under S5 (c)
>
> *(5) However, the scope of work does not include—*
>
> *(c) for building work mentioned in subsection (3)—directly or indirectly causing the work to be carried out or providing building work services for the work if—*
>
> *(i) a fire protection licence or mechanical services licence is required for the work; and*
>
> *(ii) the work is—*
>
> *(a) for Type A construction on classes 4 to 9 buildings; or*
>
> *(b) to more than 3 storeys*
>
> MPAQ believes plumbing and drainage work should be included under these exceptions.[122]

MPAQ advised:

> … the QBCC Act and regulation deem fire protection and mechanical services work as somewhat of a higher risk than other classes of work and are therefore protected in this space by requiring those licensees to actually contract and perform that work. As all water based fire and a lot of mechanical work also falls under the scope of work for plumbing, we seek to have this changed and plumbing and drainage protected in a similar manner. We do not see the changes we propose as being difficult or onerous and they do not impose any hardship on any of the other trades.[123]

MPAQ advised:

> In addition, these types of clauses appear to allow a licensed builder to directly employ an occupationally licensed plumber or drainer and continue to contract solely under the builder's contractor license. We believe this may contravene S57 of the Plumbing and Drainage Act 2018 and should be rectified immediately.[124]

MPAQ elaborated on this issue at the committee's hearing, advising:

> Currently, builders are able to employ plumbers directly and then contract for plumbing and drainage work under their builder's contracting licence, whereas a plumber who does not hold the equivalent occupational licence to an employee can be fined for directing or supervising them and not being appropriately or equivalently licensed. Obviously, we see this as a major contradiction in the legislation that we seek to have changed.

[122] Submission 1, p 1.

[123] Public hearing transcript, Brisbane, 26 April 2022, p 6.

[124] Submission 1, pp 1-2.

> Additionally, the QBCC Act and regulation deem fire protection and mechanical services work as somewhat of a higher risk than other classes of work and are therefore protected in this space by requiring those licensees to actually contract and perform that work. As all water based fire and a lot of mechanical work also falls under the scope of work for plumbing, we seek to have this changed and plumbing and drainage protected in a similar manner. We do not see the changes we propose as being difficult or onerous and they do not impose any hardship on any of the other trades.125

MPAQ clarified that the issue arises where a builder employs a plumber who does not also hold a contracting license to do plumbing work:

> The plumber without a contracting licence operating under an occupational licence is being directed by an unlicensed person to perform regulated work. To put it another way, if I as a licensed plumber hire Peter the plumber to work for me and I ask him to do general plumbing work that falls under his licence and my licence, there is no issue whatsoever. But if I ask him to do something that does not fall under my licence, whether he is licensed for it or not, I am breaking the law because I must be licensed in what I am directing him to do. The builder is not licensed in directing him on what he is asking him to do.[126]

MPAQ consider that under the legislation builders should be required to nominate a plumber who also holds a contracting license to supervise plumbers with appropriate occupational licences but who may not have the relevant contracting license.[127]

In response, the department advised that:

> Further policy consideration of the proposal is needed to investigate any potential industry impacts and avoid any unintended consequences.[128]

3.2 Definition of fire protection work

Submitter No 2 advised:

> … a section of the QBCC Act which has been forcing various industries such as big box hardware and retail stores, the facilities management industry, insurance industry and others to operate in a watered down manner or are forced to operate contrary (illegally) to the QBCC Act and Regulation. The offending section is the definition of fire protection work which effectively gags many industries or competent persons from holding the fire protection industry accountable by identifying and calling out non-compliant works. It also waters down the communications between many industries and their clients such as the insurance, safety and facilities/property management industries. It is causing many to operate illegally such as retailers, wholesalers as well as those industries already mentioned which are only the tip of the iceberg so to speak. These concerns have been caused as the initial wording was to catch regulated statements or records such as government forms however by not being specific enough it caught a very broad range of activities that possibly was never realised. Currently there is some pushback to address tis [sic] as it is protecting the fire protection industry from being held accountable of the large amount of non-compliant works being completed in Queensland.[129]

[125] Public hearing transcript, Brisbane, 26 April 2022, p 6.

[126] Public hearing transcript, Brisbane, 26 April 2022, p 7.

[127] Public hearing transcript, Brisbane, 26 April 2022, p 8.

[128] Department of Energy and Public works, correspondence, 27 April 2022, p 1.

[129] Submission 2, p 1.

Existing section 30CA (Meaning of *fire protection work*) is as follows:

(1) Work is ***fire protection work*** if it is any of the following work for a building or part of a building—
- (a) the installation, restoration, repair or maintenance of fire protection equipment;
- (b) the preparation of a certificate, statement or record relating to the installation, restoration, repair or maintenance of fire protection equipment;
- (c) the preparation of a certificate, statement or record stating whether fire protection equipment meets a standard, requirement or specification;
- (d) the design of fire protection equipment;
- (e) the inspection or investigation of, and the provision of advice or a report about, compliance with the *Building Act 1975* or the Building Code of Australia relating to fire safety.

(2) However, the following work is not ***fire protection work***—
- (a) the installation, repair or maintenance of a battery-operated smoke alarm in a building that is a class 1a or 2 building under the Building Code of Australia;
- (b) work of a type prescribed by regulation not to be fire protection work.

(3) A regulation under subsection (2)(b) may prescribe work that is the installation, restoration, repair, maintenance, certification or inspection, including testing, of fire protection equipment mentioned in schedule 2, definition *fire protection equipment*, paragraph (b), (c), (d) or (e) only if the work is any of the following—
- (a) work of a value of no more than $1,100 performed personally by the owner of the land on which the work is performed;
- (b) work on a class 1a building of a value of no more than $11,000 performed personally by the owner of the land on which the work is performed, if the work is authorised under a fire protection occupational licence held by the owner;
- (c) certification work performed by a building certifier under the *Building Act 1975* in the certifier's professional practice;
- (d) work performed by a registered professional engineer under the *Professional Engineers Act 2002* in performing a professional engineering service under that Act;
- (e) electrical work under the *Electrical Safety Act 2002* relating to a fire or smoke detection system, heat or smoke alarm or another alarm system or emergency warning and communication system;
- (f) work performed by a local government or the State.

The submitter advised:

> The key issue is the wording which causes concern are within paragraphs c & d [sic] which is "the preparation of a certificate, statement or record". Again, my understanding is that this phrase used in both paragraphs was to capture the preparation of government and standard required certificates, statements, or records but due to the vague wording it has captured even the most minor statement or record which may be a email between a safety consultant and their client. Although many industries are unaware of or ignoring the definition, the fact remains that these phrases are, due to their vague wording, forcing industries to operate illegally. It should be noted that this is the only industry with such a stringent definition, even plumbing or electrical do not restrict others to this degree and it could be argued that the electrical industry has the potential for the most injury and deaths. Like the plumbing and electrical trades, providing any advice or making a statement is not illegal and it is always buyer beware which should be the same for fire protection. Remembering we are dealing with astute business owners in this context. I state this as the standard QBCC statement that the fire protection definition is so tight is that it's a safety issue however my argument is that safety is being compromised by the significant amount of non-compliant fire protection work being undertaken out there that virtually no one is able to question or raise as non-compliant work.[130]

The submitter suggested that the definition of fire protection work needs to be reviewed and reworded to require a 'legislation required or Australian Standard required written certificate, statement or record'.[131]

[130] Submission 2, p 1.

[131] Submission 2, p 2.

In response, the department advised that:

> The definition of 'fire protection work' was recently revised as part of the reforms arising from the recommendations of the Ministerial Construction Council's Subcommittee on fire protection licensing and compliance. In order to provide certainty and consistency to industry, it is not proposed to undertake further changes to the definition of 'fire protection work' at this time.[132]

3.3 District Court of Queensland decision – section 8 of schedule 1 of Queensland Building and Construction Commission

Wood L&M Solutions advised:

> Notwithstanding that parliament wishes to continue with the status quo in relation to the head contractor exemption in section 8 of Schedule 1A of the QBCC Act until it has time to properly consider what specific restrictions it wants to place on this exemption, there is a recent decision of the District Court of Queensland that must be rectified to avoid even more mischief.
>
> In December 2021, Porter QC DCJ handed down the decision in *Panel Concepts Pty Ltd v Tomkins Commercial & Industrial Builders Pty Ltd* [2021] QDC 322. In that case, the court held that a subcontractor can rely on the exemption provided by section 8 of Schedule 1A of the QBCC Act notwithstanding that the heading to section 8 makes it clear that it was intended to only apply to the head contract between a consumer/principal and the first tier contractor. Headings cannot be used to address an ambiguity in a legislative provision and, in this case, the court held that there was nothing in section 8 itself that limited the application to the first tier contract with the consumer/principal. The court considered the Explanatory Memorandum to come to that decision notwithstanding that there does not appear to be any ambiguity or inconsistency within section 8 itself that should require recourse to the Explanatory Memorandum.
>
> In any event, this decision turned on the fact that the unlicensed subcontractor to the licensed head contractor always **intended** to engage a licensed sub-subcontractor to carry out the building work that the subcontractor was not itself licensed to carry out and that the sub-subcontractor that carried out the building work was appropriately licensed. However, this decision creates serious issues for the industry and consumers generally and, in my opinion and with all due respect to the court, the decision is not consistent with the provisions of the QBCC Act and QBCC Regulation. This can be readily addressed, though, by adding a simple amendment to the current *Building and Other Legislation Amendment Bill 2022* that is currently before parliament. I have set out below the reasons why, in my view, the decision is not consistent with the QBCC Act.
>
> Pursuant to section 2 of Schedule 1A of the QBCC Act, a subcontractor to a licensed trade contractor does not need to hold a licence itself provided the building work that the subcontractor carries out is within the scope of the building work allowed by the class of licence held by the licensed trade contractor.
>
> This is the exemption that many in the industry mistakenly believe provides an exemption for sub-subcontractors from the requirement to hold a licence. However, that is not always correct. This exemption is clearly limited to subcontractors to a *licensed trade contractor*. A *licensed trade contractor* is defined in section 2 as follows:
>
> > *A **licensed trade contractor** means a licensed contractor other than the following:*
> >
> > (a) *a licensed builder;*
> >
> > (b) *a licensed contractor who holds a contractor's licence authorising the licensee to carry out completed building inspections.*

[132] Department of Energy and Public works, correspondence, 27 April 2022, p 1.

In turn, a *licensed builder* is defined in Schedule 2 of the QBCC Act and section 6 of the *Queensland Building and Construction Commission Regulation 2018* (**QBCC Regulation**) to mean a person who holds a *builder contractor's licence*. Section 8 of the QBCC Regulation defines a *building contractor's licence* to mean:

(a) *a licence of a class mentioned in schedule 2, any of parts 4 to 10; or*

(b) *a licence of any of the following classes mentioned in section 60 –*

(i) building restricted to alterations and additions;

(ii) building restricted to external finishes;

(iii) building restricted to building removal;

(iv) building restricted to renovations, repairs and maintenance;

(v) building restricted to repairs and maintenance;

(vi) building restricted to non-structural renovations.

Subparagraph (a) above refers to the following licence classes set out in Schedule 2 of the QBCC Regulation:

- Part 4 Builder – low rise licence;
- Part 5 Builder – medium rise licence;
- Part 6 Builder – open licence;
- Part 7 Builder restricted to kitchen, bathroom and laundry installation licence;
- Part 8 Builder restricted to shop fitting licence;
- Part 9 Builder restricted to special structures licence; and
- Part 10 Builder restricted to structural landscaping licence

Accordingly, it is clear that parliament intended for all subcontractors to a licensed builder to hold an appropriate contractor's licence in their own right regardless of where in the contractual chain the builder sat.

Further, section 51B of the QBCC Act provides that it is an offence for a licensed contractor to contract with a person for the person to carry out building work unless the person holds a contractor's licence of the appropriate class under the QBCC Act. This offence carries a range of penalties from 80 penalty units for a first offence, 120 penalty units for a second offence and 160 penalty units for a third or subsequent offence. The offence is also a demerit offence with 8 demerit points. Demerit offences with 8 demerit points are serious offences given that the majority of demerit offences only carry 2 or 4 demerit points (see Schedule 5 of the QBCC Regulation).

If the decision in *Panel Concepts* is correct, it would place the power in a subcontractor's hands to determine whether a licensed builder committed an offence against section 51B because whether or not the builder committed an offence would turn on whether the unlicensed subcontractor **intended** to engage a licensed sub-subcontractor at the time of entering into the subcontract and/or whether, as a matter of fact, a licensed sub-subcontractor **actually carried out** the building work. Neither of those matters are within the control or knowledge of the builder at the time of entering into the subcontract with the subcontractor. Given the seriousness of the offence provision in section 51B, that cannot be the way in which parliament intended section 8 of Schedule 1A to apply.

Further, had parliament intended the exemption in section 8 of Schedule 1A to apply to lower tier subcontractors, it would not have included a heading that clearly indicates that it is intended to only apply to *head contracts*. Whilst a *head contract* is not currently defined in the QBCC Regulation, it has always applied to a contract between a consumer and a builder or first tier contractor. There can be a number of head contracts e.g. with a builder, with a civil contractor, with a consultant etc, as there is no requirement for a consumer to only ever contract with one entity directly for a part of a project. The industry, including government, have often entered into more than one contract directly and that contract has typically been referred to as a *head contract* with the first tier subcontract below the head contract referred to as a *subcontract* and the next tier subcontract, as a *second tier subcontract* or *sub-subcontract* and so on. This is further supported by the definition of *subcontract* in chapter 1 of the BIF Act and the structure of chapter 2 of the BIF Act in that it clearly provides obligations on the contract with the head contractor and the contracting party for that contract *being the State, a state authority, a local government, an individual, a private entity or a hospital and health service*. A contract below that level is a *subcontract* (section 6 of the BIF Act).

Pursuant to section 42(1) of the QBCC Act, it is a serious offence for an unlicensed person to carry out building work as indicated by the maximum penalties that apply to that offence including imprisonment i.e.:

- first offence – 250 penalty units;
- second offence – 300 penalty units;
- third or later offence, or if the building work carried out is tier 1 defective work – 350 penalty units or 1 year's imprisonment.

Further, an unlicensed person is not entitled pursuant to section 42(3) of the QBCC Act to any monetary or other consideration for doing so under the contract. To leave this decision open creates significant uncertainty for all parties including consumers as an offence by a licensed builder under section 51B of the QBCC Act will place the head contract at risk which, in turn, will place subcontracts and subcontractors at risk.

It is critical that parliament clarify this position as a matter of urgency and this can be done relatively easily by adding another subparagraph to the one proposed in section 67 of the *Building and Other Legislation Amendment Bill 2022*:

> "(5) Subsection (1) only applies to a head contract that is not also a subcontract of another contract where a *subcontract* has the same meaning as section 6 of the *Building Industry Fairness (Security of Payment) Act 2017*."[133]

Wood L&M Solutions advised that the major concern from the result of the case is:

The real issue with the exemption is that if you are not licensed and you are supposed to be licensed then you are not entitled to be paid for anything at all under your contract. You can go to court to get some compensation for the work you have done, but you have no right to make a claim for payment or receive any monetary consideration under your contract. You cannot use the adjudication process through chapter 3 of the BIF act. You cannot use the moneys owed process through the QBCC. You cannot take any action for suspension of work or termination of contract if you have not been paid. This issue around clarity or certainty as to who is allowed to enter into a contract to do building work without a licence is critical to the industry.[134]

In response to this issue, the department advised:

In relation to the suggested amendment to the head contractor licensing exemption to address the recent District Court decision, further investigation and consultation is required to identify the problem, including any evidence of wrongdoing or negative impacts.[135]

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133 Submission 7, pp 3-6

134 Public hearing transcript, Brisbane, 26 April 2022, p 22.

135 Department of Energy and Public works, correspondence, 27 April 2022, p 9.

3.4 Clarification chapter 2 of *Building Industry Fairness (Security of Payments) Act 2017*

Wood L&M Solutions advised:

Many in the industry believe that Statutory Trusts do not apply to contracts entered into prior to the commencement of a particular phase of the rollout. However, on close reading of the transitional provisions provided in sections 211A to 211E of the BIF Act), that does not appear to be correct and this uncertainty is causing problems in the industry, particularly the private sector. Given that parliament is currently proposing amendments to the BIF Act through the *Building and Other Legislation Amendment Act 2022*, it is appropriate for clarification to be included as part of these amendments to ensure that problems do not arise in the industry due to this uncertainty, particularly given that serious offences are committed if the contract is a contract to which a Project Trust applies and the contractor is unaware that it is. I have set out below the various provisions for ease of reference for the Committee.

Section 12 of the BIF Act provides that that section only applies to contracts entered into on or after the commencement of section 12 (which was 1 March 2021). Section 12(2) provides that a project trust is only required if:

(a) the contract is eligible for a project trust under subdivision 2; and

(b) the contract is not exempted under subdivision 3; and

(c) the contractor enters into a subcontract for all or part of the contracted work.

Section 14(1) provides that a contract is eligible for a project trust if it meets the requirements set out therein i.e.

(a) principal is the State, hospital and health service, other state authority, private entity, or local government (depending on the phase);

(b) more than 50% of the contract price is for project trust work; and

(c) contract price is above the threshold for the applicable phase.

Section 14A(1) provides that if an amendment is made to a contract and:

(a) before the amendment is made, the contract was not eligible for a project trust under section 14; and

(b) after the amendment is made, the contract is eligible for a project trust under section 14;

the contract is eligible for a project trust when the amendment takes effect.

Subsection 14A(3) provides, however, that if the amendment is only an increase in the contract price, a project trust is required for the contract only if the amendment, together with any earlier amendments of the contract, increases the original contract price by 30% of more.

The confusion arises because section 14A defines *amendment* to include any variation of the contract or change in the contract price, and section 8 defines *variation* to mean an addition to, or an omission from, the contracted work.

Accordingly, the BIF Act makes a distinction between a change in price only (e.g. a rise and fall clause with no associated change in scope of work) and a variation to the contract (e.g. change in the contract price because of a change to the scope of work, specification etc) which changes the contract price.

<u>Private sector contracts entered into prior to 1 March 2021</u>

Notwithstanding the phased rollout of Statutory Trusts, a project trust will not be required if the contract was entered into prior to 1 March 2021 because section 12 of the BIF Act did not apply prior to that date in its current form, and prior to 1 March 2021 under the former chapter 2 (Project Bank Account model), section 12 did not apply to the private sector. This is also confirmed by section 211B of the BIF Act which provides that all contracts entered into prior to the replacement of chapter 2 (which was 1 March 2021), do not require a project trust if the contract did not require a project trust under the PBA model in force at the time of entering into the contract. For private sector, this means that contracts entered into prior to 1 March 2021 will never require a project trust notwithstanding any amendment to the contract.

Private sector contracts entered into on or after 1 January 2022

On 1 January 2022, section 14 was amended to include principals that are private entities, local government or other state authorities, and to include contracts of $10M or more. All contracts entered into on or after 1 January 2022 that meet the requirements of section 12 of the BIF Act, require a project trust i.e. the contract must be eligible for a project trust, is not exempted, and a subcontractor is engaged.

Private sector contracts entered into on or after 1 March 2021 but prior to 1 January 2022

The confusion comes with contracts entered into on or after 1 March 2021 and prior to 1 January 2022.

Pursuant to section 211D(2) of the BIF Act, if a project trust was not required before 1 January 2022, it continues to not be required despite the replacement of chapter 2 of the BIF Act. However, section 14A still applies for any amendment to the contract after the commencement of the phase (refer section 211D(3)). As set out above, section 14A provides that if an amendment is made to a contract and:

(a) before the amendment is made, the contract was not eligible for a project trust under section 14; and

(b) after the amendment is made, the contract is eligible for a project trust under section 14;

the contract is eligible for a project trust when the amendment takes effect.

The time at which section 14 is to be considered for the purposes of an amendment after the commencement of a phase, is the time at which a project trust would otherwise be required (refer section 211D(3A)).

However, it is not clear whether section 14A of the BIF Act requires the amendment to be the reason that the contract is eligible for a project trust after the commencement of the phase (i.e. 1 January 2022 for the current phase) in order for section 14A to apply. It is also not clear whether a contract that was entered into on or after 1 March 2021 but prior to 1 January 2022, that meets the requirements for a project trust except that the principal is a private entity, can become eligible if there is an amendment to the contract even if the amendment to the contract is not the reason the contract becomes eligible for a project trust.

This confusion is making it very difficult for the industry to apply the legislation to contracts entered into on or after 1 March 2021 (being the commencement of section 12) and before the commencement of the next phase of the rollout, currently 1 January 2022.

Whilst I have referred to the phase commencing on 1 January 2022, the same confusion arises on commencement of the next phase on 1 April 2023 and the final phase on 1 October 2023.

It is critical that parliament address this confusion in this round of amendments of the BIF Act.

…

The confusion arises in this regard because the BIF Act clearly distinguishes between an *amendment* to the contract that is a *variation* to the contract and an *amendment* to the contract that is a *change in the contract price*. As a *variation* is defined in section 8 as "an addition to, or an omission from, the contracted work", it is clear that parliament intended the 30% threshold to only apply to a *change in the contract price* after the relevant date that, together with other variations, causes the threshold to be exceeded and not simply to a *variation* to the contract. If it had intended the 30% threshold to apply to a change in the contract price for any reason i.e. for a *change in the contract price* OR a *variation* to the contract, then parliament would not have defined an *amendment* as including both terms.

It is clear that this has a major impact on the industry because the definition of *amendment* is too broad AND section 14A(3) does not technically apply to variations that change the scope of work or specification or duration of the project because all of those variations change more than just the contract price.

> In terms of normal contracts, there is almost never (if ever) a contract that goes from commencement to completion that does not involve an amendment to the contract of some form as that term is defined in the BIF Act. Sometimes a contract is amended without a corresponding increase in the contract price and a contract almost never has a price increase only that is not associated with some other change to the contract so the 30% threshold for an *amendment* [that] *is only an increase in the contract price*, and not to any amendment that results in an increase to the contract price of 30% or more, as discussed in section 14A(3), will almost never apply.
>
> Whilst the QBCC may decide to take an educative and/or facilitative approach to the new regime, it is important to understand that a project trust and/or retention trust is created when it is required by section 12 of the BIF Act regardless of whether or not a project trust account and/or retention trust account are, in fact, opened by the head contractor (refer s58B of the BIF Act). This will create serious issues if a head contractor goes into liquidation or bankruptcy because it will create trust arguments and claims where there is no project trust account or retention trust account. This is further exacerbated by section 11(a)(ii) which provides that the trust is over money paid to a subcontractor (which may or may not have been paid from the project trust account) and by section 11B(2) which provides that a subcontractor has a beneficial interest in the amount it is *entitled to be paid* under the subcontract. This could create a situation where one subcontractor is paid an amount from the project trust account on a particular day that is more than it is entitled to under its subcontract which means that the difference is, in fact, trust money that other subcontractors may be able to make a claim against.
>
> The confusion surrounding contracts entered into on or after 1 March 2021 and prior to the commencement of each phase of the rollout can be addressed relatively easily by amendment to section 14A of the BIF Act to confirm that the amendment to which that section refers, must be an amendment that makes the contract eligible for a project trust as a result of the amendment, and also that that section only applies to amendments that cause the contract price to increase by 30% or more regardless of whether the increase is due to an increase in the contract price OR a variation to the contract and that it does not apply to any other types of amendment to the contract e.g. change to the date for practical completion, change to the specifications etc.
>
> It is also important to amend section 211D to make it clear whether a contract with a contract price of $10M or more entered into on or after 1 March 2021 but prior to 1 January 2022 will never require a project trust (the same applies to $3M prior to 1 April 2023 and $1M prior to 1 October 2023) or if any amendment to such a contract, will become eligible for a project trust.[136]

In response, the department advised:

> The request to urgently clarify specific chapter 2 provisions and the transitional provisions relevant to chapter 2 of the BIF Act is out of the scope of the BOLA Bill but the department will consider the matters further. This proposal requires further policy consideration to be undertaken to investigate potential industry impacts and to avoid any unintended consequences.[137]

3.5 Alignment between the *Building Act 1975* and the State Penalties and Enforcement Regulation 2014

LGAQ advised:

> Queensland councils also seek greater clarity and alignment between the *Building Act 1975* and the *State Penalties and Enforcement Regulation 2014* in relation to the powers for issuing an infringement notice for an offence and responsibilities for prosecuting an offence.

[136] Submission 7, pp 6-9.

[137] Department of Energy and Public works, correspondence, 27 April 2022, p 10.

The matter of who may prosecute offences under the *Building Act 1975* and its regulations for example, is contained in section 256 of the *Building Act 1975.* In accordance with section 256(2)(k) of the *Building Act 1975,* local governments have responsibility to prosecute offences in Chapters 4 and 5. Some of these offences, which relate to private building certifiers, are also identified as infringement notice offences in Schedule 1 of *State Penalties and Enforcement Regulation 2014.* The person authorised to serve an infringement notice for these offences under the SPER is either the commissioner or an investigator appointed under the *Queensland Building and Construction Commission Act 1991.*

This creates a situation where the QBCC can issue infringement notices for the offences, but not prosecute the offences. Conversely, local governments may prosecute the offences but not issue infringement notices for the offences. A review of these regulatory powers is needed to ensure greater clarity in roles and responsibilities between the QBCC and local governments and to align infringement notice powers with prosecutorial jurisdiction.

This matter was raised in a resolution passed by Queensland councils at the 2020 LGAQ Annual Conference and the LGAQ wrote to the Attorney-General in early April 2021 seeking a response, given the Attorney-General is responsible for overseeing amendments to the SPER.

A response from the Attorney-General was received in May 2021 advising that a copy of the LGAQ's correspondence had been referred to the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, for consideration given the relationship with the *Building Act 1975.*[138]

LGAQ recommended that:

… the State Government review the *State Penalties and Enforcement Regulation 2014* and align infringement notice powers and prosecutorial powers for offences under the *Building Act 1975* to provide greater clarity and alignment in the roles and responsibilities of the QBCC and local governments. Any such review should be undertaken in full consultation with Queensland councils and the LGAQ.[139]

In response, the department advised:

It is proposed to consult with the LGAQ and local governments on their ongoing role in enforcement and the issues raised in their submission.

…

A response provided by Minister de Brenni in July 2021 to the Annual Conference Resolution advised that the department would consider these matters as part of a review of operational improvements to the *Building Act 1975*.[140]

138 Submission 10, p 9.

139 Submission 10, pp 9-10

140 Department of Energy and Public works, correspondence, 27 April 2022, p 20.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) 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
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Clauses 11 and 58 – Rights and liberties of individuals – immunity from proceedings

Section 4(3)(h) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation the Bill confers immunity from proceeding or prosecution without adequate justification?

4.1.1.1 Summary of provisions

Clause 11 extends the current protection from civil liability in section 141 of the *Architects Act 2002* to employees of the Board of Architects of Queensland.

Clause 58 extends the current similar protection from civil liability in section 142 of the *Professional Engineers Act 2002* to employees of the Board of Professional Engineers of Queensland.

In each case:

- Immunity from civil liability is limited to acts done, or omissions made, honestly and without negligence under the relevant Act.[141]
- Where the immunity prevents liability attaching to a person, liability instead attaches to the board.[142]

4.1.1.2 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.[143]

A person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence … and if liability is removed it is usually shifted to the State.[144]

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141 Architects Act 2002, section 141(2); Professional Engineers Act 2002, section 142(2).

142 *Architects Act 2002*, section 141(4); *Professional Engineers Act* 2002, section 142(4).

143 *Legislative Standards Act 1992*, s 4(3)(h).

144 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

4.1.1.3 Analysis

One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding that, the conferral of immunity is appropriate in certain situations.[145]

The explanatory notes refer to this principle of equality before the law and state:

> Exposure to civil liability may make the tasks required by Board appointed staff difficult, or prohibitively costly, to perform. It is important that they are not deterred from exercising their skill and judgment due to fear of personal legal liability. The departure [from the principle of equality] is therefore justified, as the clauses create certainty among Board appointed staff when undertaking their functions and operations.[146]

Immunity clauses such as the above are quite common in legislation. They generally serve to allow public servants, officials, statutory officers and the like, to make decisions and exercise powers and functions without being unduly concerned that they may be held personally liable for acts done or omissions made in the course of carrying out their duties, providing that those actions or omissions are made honestly and without negligence or malice.

[Note that in reporting on similar clauses in other recent Bills (including the Veteran Council's Bill 2021, the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, and the Brisbane Olympic and Paralympic Games Arrangements Bill 2021), the various portfolio committees concluded that any breaches of fundamental legislative principle were justified.]

The shifting of liability to the board for actions or omissions of officials means aggrieved persons are able to make a claim against the board for loss or damage suffered as a result of actions of board employees.

4.1.1.4 Committee comment

Particularly noting any liability is shifted to the board, the committee is satisfied the breach of fundamental legislative principle is justified.

4.1.2 Clauses 17, 18, 20 and 22 – Rights and liberties of individuals – retrospectivity

Section 4(3)(g) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation adversely affects rights and liberties, or impose obligations, retrospectively.[147]

4.1.2.1 Summary of provisions

Clauses 17, 18 and 20 respectively amend sections 246O, 246Q and 246S of the *Building Act 1975*. Those sections were introduced on 1 January 2010 and were intended to limit the extent to which developers and body corporates could inhibit a homeowner's ability to install certain building features, including solar infrastructure.[148]

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145 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 64; Scrutiny of Legislation Committee, *Alert Digest 1 of 1998*, p 5, para 1.25.

146 Explanatory notes, p 14.

147 LSA, section 4(3)(g).

148 According to the explanatory notes (p 16), the amendments are necessary as a result of the Court of Appeal decision of *Bettson Properties Pty Ltd & Anor v Tyler* [2019] QCA 176, which does not support an interpretation of the existing legislative provisions which reflects the original policy intent.

The amendments to these sections restrict the purposes for which a developer or a body corporate may, through a relevant instrument,[149] inhibit the installation of solar infrastructure on the roof of a home or garage.

Clause 22 inserts transitional provisions (new sections 356 and 357 of the *Building Act 1975*) which are intended to provide relief for any homeowner who has been inhibited from installing solar infrastructure on the roof of their home or garage, or at the person's preferred location on the roof, on the basis of aesthetic concerns, since 1 January 2010.

These new sections provide that the amended sections 246O, 246Q and 246S apply to the relevant instrument as if the relevant instrument had been made after the affected period ended.[150] Further, any agreement, proceeding or other action enforcing the prohibition or restriction has effect only to the extent the prohibition or restriction has effect under amended sections 247O, 246Q and 246S.[151]

4.1.2.2 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation adversely affects rights and liberties, or impose obligations, retrospectively.

It is arguable that the new sections contemplated by clause 22 apply retrospectively by potentially adversely impacting the existing rights of developers.

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[152]

4.1.2.3 Analysis

The explanatory notes include a few paragraphs that focus on the fact the amendments will only operate prospectively from their commencement.[153]

This though is not very relevant as it misapprehends the substance of the fundamental legislative principle involved here. The test is not whether a provision has a retrospective operation but whether it has a retrospective effect on rights and liberties of individuals.

New sections 356 and 357 will affect existing rights, such as the rights of a developer to inhibit the installation of solar infrastructure. The new sections provide that the amended sections apply to a relevant instrument (for example, a lease, contract or by-laws), as if the relevant instrument had been made after the affected period ended. In the context of this fundamental legislative principle, there is a retrospective effect on rights and liberties.

After the statement quoted above, the explanatory notes continue:

> However, to the extent (if any) to which new sections 356 and 357 are considered to have any retrospective application, it is considered that this is justified as a requirement for achieving the original policy objective of allowing a homeowner to install solar infrastructure on the roof of their home or garage, without regard to aesthetics. Ultimately, this will encourage homeowners to use solar energy, benefitting the environment and delivering cost savings to homeowners. These outcomes are in the public interest.[154]

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149 'Relevant instrument' is defined in the *Building Act 1974* and includes a range of instruments, including certain leases, by-laws and contracts.

150 New sections 356(2) and 357(2).

151 New sections 356(3) and 357(3).

152 OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 55.

153 See the first four paragraphs at p 18 of the explanatory notes.

154 Explanatory notes, p 18.

One further aspect ought be noted. Any retrospective effect will be beneficial to homeowners, whereas the fundamental legislative principle is concerned with *adverse* retrospective effects. There might well be an adverse effect for body corporates and developers, but in the vast majority of cases these entities will not be individuals.

4.1.2.4 Committee comment

The committee is satisfied that:

- It is unlikely there will be any adverse retrospective effect on individuals.
- To the limited extent to which this might be the case, any such effect is justified, given the Bill will support the original policy intent of the legislative provisions, clarify matters impacted by the Court of Appeal decision, benefit homeowners and support the installation and use of solar infrastructure.

4.1.3 Clause 60 – Rights and liberties of individuals – right to privacy

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.3.1 Summary of provisions

Clause 60 amends section 28B of the QBCC Act which deals with the exchange of information between the e QBBC and other agencies. Section 28B allows information to be shared with a relevant agency. Currently, this includes:

- the chief executive of a department
- a health and safety regulator within the meaning of section 28 (including the regulator under the *Work Health and Safety Act 2011* and the regulator under the *Electrical Safety Act 2002*)
- a local government
- an agency of the Commonwealth, or another State, prescribed by regulation.

Clause 60 extends the scope of 'relevant agency' to include 'an entity established under an Act' – so, statutory bodies in Queensland.

4.1.3.2 Issue of fundamental legislative principle

Clause 60 raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.[155]

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

An information-sharing arrangement authorises the QBCC to ask for and receive information held by another agency, as well as disclose information to the other agency. An individual's privacy may be interfered with where information shared between agencies includes personal information.

[155] See *Legislative Standards Act 1992*, s 4(2)(a).

4.1.3.3 Analysis

The explanatory notes state the interference with privacy is justified:

> … as the amendments promote QBCC's ability to undertake its functions in relation to ensuring the maintenance of proper standards in the industry and integrity of industry participants. The facilitation of information-sharing with relevant agencies will ensure QBCC can effectively perform its role as a regulator and effectively identify and address offending behaviour.[156]

This justification is deficient in two respects. Firstly, it does not address in any meaningful way why there needs to be any extension of the scope of what is included in 'relevant agency'. Moreover, it does not explain why any such extension should be so broad as to encompass all statutory bodies in Queensland. There is already provision for additional entities to be prescribed by regulation.

Elsewhere, the explanatory notes describes this amendment as 'to improve the operation of the QBCC Act', and being to expand the bodies with which QBCC may enter into information-sharing arrangements to include Queensland statutory bodies, 'such as those involved in regulating other elements of the building industry'[157] 'like QLeave.'[158]

It can be noted that, under the QBCC Act, an information-sharing arrangement may relate only to information that assists QBCC or the other agency to perform its functions, or the disclosure of information reasonably necessary for to protect the health or safety of a person or property.

The explanatory notes suggest that these features:

> … adequately balance QBCC's ability to efficiently and effectively undertake their compliance and enforcement activities against the right to privacy in a way that is considered consistent with FLPs.[159]

In the absence of any fuller explanation it was difficult for the committee to determine whether the interference with privacy is justified. The committee therefore sought additional information from the department to address these concerns.

The department advised:

> As you are aware, section 28B of the *Queensland Building and Construction Commission Act 1991* (QBCC Act) allows the Queensland Building and Construction Commission (QBCC) to enter into an information sharing arrangement with a relevant agency.
>
> 'Relevant agency' is then defined as a chief executive of a department, a health and safety regulator, a local government, or an agency of the Commonwealth or another State prescribed by regulation. It is noted that 'department' is not specified further but is taken to include all Queensland Government departments. A 'health and safety' regulator is defined in section 28A and means a regulator under the *Work Health and Safety Act 2001* or *Electrical Safety Act* 2002, the chief executive of the department that administers the *Public Health Act* 2005 (or chief executive officer of a local government in relation to functions under this Act), or an entity that has functions similar to the QBCC or these bodies.
>
> This section was introduced in 2017 to enable the QBCC to enter into information sharing arrangements with other regulatory agencies, particularly in relation to work health and safety issues following the Queensland Coroner's findings into the tragic death of Jason Garrels. Mr Garrels died of electrocution because of an incident on a building site.

[156] Explanatory notes, p 14.

[157] Explanatory notes, p 12.

[158] Explanatory notes, p 8.

[159] Explanatory notes, p 15.

As currently drafted, the provision allows the QBCC to exchange information with Queensland Government departments and other Commonwealth or State agencies. However, it does not provide that the QBCC can exchange information with other Queensland statutory bodies, which are generally established to administer certain legislation on behalf of the State, such as other bodies involved in regulating elements of the building industry.

The regulation-making head of power in section 28B extends only to an agency of the Commonwealth, or a State other than Queensland. The other regulation-making head of power to prescribe additional entities for the purposes of a 'health and safety' regulator in section 28A is also narrowed to entities with functions similar to the functions of the QBCC or other entities already described above.

However, since the introduction of these amendments in 2017, the department has been advised there have been instances where an information-sharing arrangement with the QBCC and other statutory bodies would have been beneficial. For example, to support QBCC

investigations or refer allegations of misconduct to other statutory bodies responsible for regulating elements of the building industry, such as the Board of Architects of Queensland or the Board of Professional Engineers of Queensland. From time to time, the QBCC also conducts joint operations with other regulators to target specific risks.

Other statutory bodies that could be relevant for an information-sharing arrangement with the QBCC include:

- QLeave, for example to independently verify the details of a building certifier that may have been assigned to a specific project
- Legal Services Commission
- Valuers Registration Board of Queensland
- Resources Safety and Health Queensland

Proposing an additional regulation-making head of power was considered as a potential policy response to this issue, with relevant Queensland statutory bodies being prescribed in a regulation. However, it was considered that the process to prescribe statutory bodies in a regulation may not be timely, particularly when an investigation is on foot or there is an urgent safety issue and it may be necessary to refer the matter to another statutory body for further investigation.

As outlined in the Explanatory Notes to the Bill, expanding the QBCC's ability to enter into an information-sharing arrangement with Queensland statutory bodies is considered to engage the fundamental legislative principle in relation to the rights and liberties of individuals, specifically privacy and confidentiality rights. Amendments in the Bill may interfere with a person's right to privacy to the extent that personal information is shared between the QBCC and the relevant statutory body.

However, the QBCC Act provides existing safeguards to mitigate and restrict the impact of this limitation. Section 28B provides that an information-sharing arrangement may relate only to information that helps the QBCC or the relevant agency perform its functions, or the disclosure of which is reasonably necessary for protecting the health or safety of a person or property, which is a relatively high threshold. The QBCC's functions include regulating the building industry to ensure the maintenance of proper standards and to regulate building products to ensure the safety of consumers and the public.

Functions relating to other statutory bodies could also generally include regulating certain occupations or activities, usually for purposes including consumer protection or upholding safety standards. Statutory bodies must also comply with other legislative requirements, such as the *Right to Information Act 2009* and the *Information Privacy Act 2009.*

Therefore, it is considered that the potential departure from the fundamental legislative principle relating to privacy and confidentiality is justified to promote the QBCC's ability to effectively carry out its functions, including compliance and enforcement activities to support consumers and uphold public safety. It may also support other statutory bodies in their ability to carry out their functions, particularly if it involves potential misconduct or other licensing matters that could impact on public safety, for example receiving referrals from the QBCC with information relating to allegations of misconduct for further investigation.

> Additionally, the amendment also supports the recommendations of the 2018 national Building Confidence Report and Special Joint Taskforce Report to establish more collaborative and formal partnerships between agencies and other bodies with regulatory oversight and to enable more effective disclosure of information by the QBCC to relevant agencies respectively.[160]

4.1.3.4 Committee comment

While the committee remains concerned about the broad scope of the amendment, particularly noting the current provision allows for additional entities to be prescribed by regulation, it is comforted by the fact that the entities to which the information sharing will be available must be entities established under an Act.

The committee is satisfied that the amendment has sufficient regard for the rights and liberties of individuals.

4.1.4 Clause 61 – Rights and liberties of individuals – natural justice

Section 4(3)(b) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether legislation is consistent with principles of natural justice.

4.1.4.1 Summary of provisions

Clause 61 amends s 49A of the QBCC Act, dealing with the immediate suspension of licences.

New section 49A(1) provides:

> The commission may suspend a licensee's licence without allowing the licensee time to make written representations before the suspension takes effect if the commission reasonably believes there is a real likelihood that a person will suffer serious financial loss or other serious harm if the licence is not immediately suspended.

4.1.4.2 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.

The amendment in Clause 61 allowing QBCC to immediately suspend a licence without any show cause process departs from this principle.

These principles have been developed by the common law and include the following:

- Nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker (a right to be heard).
- The decision maker must be unbiased.
- Procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.

4.1.4.3 Analysis

The explanatory notes state:

> The usual requirements of natural justice may be reduced by circumstances of urgency or a risk to public safety.

[160] Department of Energy and Public Works, correspondence, 27 April 2022, pp 1-3.

> The purpose of these provisions is to promote the safety and welfare of all persons, as well as consumer protection, by allowing QBCC to immediately halt building work when there is a risk of serious harm or financial loss a person.[161]

The explanatory notes refer to the availability of other avenues of review, including:

> … the ability to seek redress through the Queensland Civil and Administrative Tribunal to contest the decision to suspend the licence and potentially pursue damages. In addition … the immediate suspension lapses if QBCC does not proceed within 10 days with a notice to cancel or suspend a licence under section 48 of the QBCC Act, which provides a show cause process.[162]

The explanatory notes conclude refer to safeguards in the Bill 'to ensure the powers of QBCC are not misused.' These include:

- QBCC's operational processes require an established evidence base and application of a high existing threshold of "a real likelihood that serious financial loss or other serious harm will happen" to a person when undertaking a decision to suspend a licence.
- The exercise of the power rests exclusively with the Chief Executive Officer/ QBCC Commissioner.[163]

The explanatory notes conclude:

> These provisions adequately balance the rights and protections of maintaining the safety and welfare of the public by protecting all persons, against the rights of the licensee to have procedural fairness in a way that is considered consistent with FLPs.[164]

It can be noted that as it stands section 49A(1) currently provides for immediate suspension of a licence without a licensee having an opportunity to make written representations. It is limited to instances where the commission reasonably believes there is a real likelihood that serious financial loss or other serious harm will happen to other licensees, their employees, consumers or suppliers of building materials or services.

The amendment does no more than extend the reach of the current provision to apply in instances of serious financial loss or other serious harm to *any person*, rather than only those falling into these last-mentioned four categories.

4.1.4.4 Committee comment

Having regard to the objectives of enhancing public safety and consumer protection, and to the current terms of section 41A(1), the committee is satisfied the provision has sufficient regard for the principles of natural justice, such that the breach of fundamental legislative principles is justified.

4.1.5 Clause 65 – Rights and liberties of individuals – right to privacy

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.5.1 Summary of provisions

Clause 65 inserts new section 106V in the QBCC Act to provide that the QBCC Commissioner may disclose the result of an investigation to a complainant, in a manner the commissioner considers appropriate.

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161 Explanatory notes, p 13.

162 Explanatory notes, p 13.

163 Explanatory notes, p 13.

164 Explanatory notes, p 13.

4.1.5.2 Issue of fundamental legislative principle

Clause 65 raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.[165]

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

4.1.5.3 Analysis

The explanatory notes state the interference with privacy is justified:

> … as complainants are generally already aware of the particulars of the complaint and, under the proposed amendment, QBCC may only disclose information necessary to convey the 'result' of the investigation.[166]

The explanatory notes observe:

- The Commissioner will delegate this function, but only to appropriately qualified persons, thus helping ensure that information is provided with appropriate sensitivity and in accordance with the Information Privacy Act 2009 (IPA).
- The IPA allows personal information to be disclosed if it is 'authorised or required under a law'.
- The amendment only allows disclosure of information necessary to convey the 'result' of the investigation.
- Complainants are presently required to lodge an application under the *Right to Information Act 2009* to obtain further detail about their complaint. The right to information process can be costly and is intended to be a method of last resort, with a preference for government to provide information administratively.
- While clause 65 applies to both licensed and unlicensed respondents, certain information about QBCC licensees is already required to be published on the licensee register on the QBCC website, meaning their right to privacy will not be significantly impacted. For example, subject to the conclusion of relevant appeal periods, any directions to rectify building work or remedy consequential damage, are published on the licensee register to support consumers undertaking due diligence before engaging a contractor.[167]

The explanatory notes also state:

> … the amendments are intended to primarily apply to complainants directly affected by the subject matter. It is not intended for the QBCC to necessarily disclose the outcome of a complaint to a third-party complainant, such as those who may have observed or merely suspects non-compliance by the accused but who has not been directly or personally affected.[168]

This statement notwithstanding, there appears to be nothing in the amendment that would prevent such disclosure.

4.1.5.4 Committee comment

The committee is satisfied that the amendment has sufficient regard for the rights and liberties of individuals.

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165 See *Legislative Standards Act 1992*, s 4(2)(a).

166 Explanatory notes, p 15.

167 Explanatory notes, p 15.

168 Explanatory notes, p 15.

4.1.6 Clause 66 – Rights and liberties of individuals – right to privacy

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.6.1 Summary of provisions

Clause 66 amends section 110 of the QBCC Act which is a confidentiality provision. The confidentiality obligation is contained in section 110(2).

4.1.6.2 Issue of fundamental legislative principle

Clause 66 raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.[169]

One aspect warrants some consideration. Clause 66(3) adds section 110(4) which reads:

> (4) Also, subsection (2) does not apply to—
>
> (a) the use of information or a document by a Minister; or
>
> (b) the disclosure of information, or the giving of access to a document, to a Minister.

4.1.6.3 Analysis

Confidentiality provisions such as section 110 are a safeguard of the privacy of individuals. The need for such provisions is self-evident. They are plainly appropriate and their existence is often relied upon as a part of a justification for a provision which impacts on the right to privacy of individuals.

The explanatory notes make no mention of clause 66 in the context of fundamental legislative principles. The aspect of clause 66 relating to a Minister is not specifically mentioned in the 'notes on provisions' section of the explanatory notes.[170]

Section 110 (3) contains exemptions from the confidentiality obligation in section 110(2). Arguably, section 110(3) as it currently stands leaves something to be desired in terms of drafting. So far as relevant for present purposes, it reads:

> (3)Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
>
> …
>
> (f) to a Minister.

It is clear that disclosure (or giving access) *to* a minister is exempt. But what of the use of information by a Minister? Does a fair reading of the provision exempt such use of information? Was this the intention?

On one reading, there is a grammatical disconnect between the presence of the word 'use' and the words 'to a Minister.' It might be thought that the section was intended to also exempt use by a Minister. Certainly this is the effect of the proposed amendment in clause 66 – which makes it clear that both the giving of information *to* a Minister and the use of information *by* a Minister will be permissible. In short, the Minister will not be bound by the confidentiality obligation.

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169 See *Legislative Standards Act 1992*, s 4(2)(a).

170 Contrast the explanatory notes at p 66.

However, what did the explanatory notes say in 2017? The current section 110 was inserted by section 28 of the *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017*. The explanatory notes for the Bill that became that Act stated:

> New section 110 introduces requirements for the confidentiality of information, with penalty provisions applying. The new section provides for certain circumstances that may warrant the giving of access or disclosure of information, such as immediate safety reasons relating to the use of a non-conforming building product necessitating a public statement or warning or a requirement by a court or tribunal to produce a document or answer questions. Information may also be disclosed to a Minister. New section 110 mirrors the confidentiality provisions of the administering Acts of other health and safety regulators and the exceptions, including the ability to disclose information to a Minister, are considered necessary to enable persons, such as departmental and QBCC officers or a Minister, to effectively administer the QBCC Act and further its policy objectives.[171]

[Underlining added.]

It can be seen that there is mention only of allowing information to be provided *to* a Minister. The notes make no mention of use of information by a Minister. (The introductory speech for the 2017 Bill made no specific reference to this provision.)

On this basis, it might be considered that the current amendment does more than correct a grammatical ambiguity and extends the Ministerial exemption beyond its intended scope of operation. It would have been preferable that the explanatory notes for the current Bill gave a clearer explanation of the reasoning for this amendment.

So far as relevant, the explanatory notes state:

> Clause 66 amends section 110 (Confidentiality of information) to … refine the drafting of certain subsections, without changing the policy intent of the original provision …

This statement that there is no change to the policy intent seems difficult to reconcile with the content of the explanatory notes for the original provision, as set out above. On this basis, it is at least doubtful the clause does not change the policy intent.

At its departmental briefing the committee sought information about whether there was any expansion to the minister's powers in relation to the use of confidential information. The department advised:

> This is not an expansion of the minister's powers. It is about modern drafting terminology, I have been advised.[172]

The department further advised:

> In terms of the sharing of that complaint information, the bill is seeking to achieve what the original policy intent was, which was allowing the QBCC to advise complainants of the outcome of their investigation. They also align with other requirements placed on government agencies and local governments to provide complainants with information about the outcomes of their complaint. In terms of safeguards, the bill proposes that the obligation to release complaint information will rest with the commissioner, and those whom the commissioner delegates. These provide the safeguards to ensure that information disclosure is only practised by officers deemed suitable by the commissioner. Of course, privacy requirements are also relevant here, so discretion will need to be exercised about what information is to be released.[173]

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171 Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017, explanatory notes, p 10.

172 Public briefing transcript, Brisbane, 8 April 2022, p 6.

173 Public briefing transcript, Brisbane, 8 April 2022, p 6.

The committee also sought a further written response on this issue. The department provided the following response:

> Section 110 of the QBCC Act provides that if a person obtains information, or gains access to a document, in exercising a power or performing a function under the Act, they must not use, provide or disclose these to any person, for any purpose. A number of exceptions are provided, such as if relevant consent is obtained or if the disclosure is necessary for the exercise of a power or function under the QBCC Act.
>
> The Bill amends section 110 to insert a reference to new section 106V to clarify the QBCC Commissioner may provide a complainant with the result of an investigation. The Bill also redrafts existing section 110(3), as it was identified during the drafting process that there would be benefit in clarifying the current scope of this provision. The Office of the Queensland Parliamentary Counsel considers that there is some doubt about the meaning of the current section but, having regard to the wording and purpose of section 110(3), it seems unlikely to have been intended that information and documents may be given to a Minister, but the Minister may not use them.
>
> As reflected in the Explanatory Notes, the redrafting of existing section 110(3) was intended to remove any doubt about the policy intent of the existing provision. The department is therefore of the view that it was not necessary to address any potential fundamental legislative principles as the policy intent is unchanged.

4.1.6.4 Committee comment

The committee is satisfied that the proposed amendment will ensure that the wording of existing section 110 of the QBCC Act, enacted in 2017, is clear. The committee is satisfied with the explanation provided by the department and has sufficient regard for the rights and liberties of individuals.

4.1.7 Clause 29 – Institution of Parliament – delegation of legislative power

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.[174]

4.1.7.1 Summary of provisions

Clause 29 amends section 57 of the BIF Act. Section 57 deals with the engagement of an auditor for a review of a trust account. The amendment in clause 29 requires the engagement to be a 'reasonable assurance engagement', which the clause defines by reference to an Australian Standard.[175]

4.1.7.2 Issue of fundamental legislative principle

Clause 29 includes a reference to an external document, the content of which can change from time to time and is set by an external entity, and over which the Queensland Parliament has no authority.

Where there is incorporated into the legislative framework of the State, an extrinsic document (that is not reproduced in full in legislation), and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

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174 LSA, section 4(4)(a).

175 The 'Standard on assurance engagements ASAE 3100 - compliance engagements' formulated by the Auditing and Assurance Standards Board under the Australian Securities and Investments Commission Act 2001 (Cwlth), section 227B(1)(b).

4.1.7.3 Analysis

In considering whether it is appropriate for matters to be dealt with by an external instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered factors including the importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in legislation.[176]

Here, the explanatory notes state the reference to the Standard:

> … is considered reasonable in the circumstances as the delegation is applying to another regulated authority, and one which specifically regulates the auditing profession based on powers assigned to it under Commonwealth legislation. It is believed this is the only possible approach that will ensure clarity and consistency for the profession in defining the type of engagement that must be performed.[177]

The explanatory notes state that feedback from the auditing professional bodies suggested that this is a necessary amendment that will bring clarity to auditors:

> It is beneficial to emphasise the reference to a "reasonable assurance engagement under ASAE 3100 Compliance Engagements" to make it very clear to the auditor that another type of assurance such as a limited assurance engagement is not acceptable. Therefore, to provide more clarity for the auditors, it is necessary to refer to the definition of the relevant engagement under the auditing profession standards.[178]

The explanatory notes state that the amendments are consistent with the original policy intention and appropriately refer to the relevant standard under which the review must be completed.[179]

4.1.7.4 Conclusion

Having regard to the need for clarity, the nature of the Standard and the body which formulates it, the committee is satisfied that the incorporation by reference to the Standard is justified, such that the provision has sufficient regard for the institution of Parliament.

4.1.8 Clauses 25, 26, 46 and 67 – Institution of Parliament – delegation of legislative power

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

4.1.8.1 Summary of provisions

The Bill provides for some matters to be dealt with by regulation, rather than including them in primary legislation. Specifically:

Clause 25 amends s 32 of the BIF Act dealing with when a retention trust is required. Clause 25 will allow for a regulation to prescribe 'another type of contract or subcontract' for section 32(1)(a).

Clause 26 amends section 41 of the same Act to provide that a regulation may:

- prescribe a fee for retention trust training
- provide for an extension of time for a trustee or nominee to complete retention trust training
- provide for an exemption of a trustee from complying with parts of section 41.

[176] See the OQPC, *Fundamental Legislative Principles: the OQPC Notebook,* pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04,* p.10, paras 1.65-1.67.

[177] Explanatory notes, p 18.

[178] Explanatory notes, p 19.

[179] Explanatory notes, p 19.

Clause 46 amends section 79 of the PDA, dealing with the discharge of greywater. The amendment provides for a use to be prescribed by regulation, for the capacity of a plant to be prescribed by regulation, for greywater to be treated to the standard prescribed by regulation, and for the relevant use, greywater, facility or plant to meet other requirements prescribed by regulation.

Clause 67 amends schedule 1a of the QBCC Act to provide that provisions in section 8 of that schedule do not apply in circumstances prescribed by regulation.

4.1.8.2 Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill, for example, allows the delegation of legislative power only in appropriate cases and to appropriate persons.[180] This question is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.[181]

4.1.8.3 Analysis

Addressing all these provisions globally, the explanatory notes state:

> Complex legislative schemes, such as ones relating to the regulation of Queensland's building industry, need to be facilitated by robust regulation-making powers. This ensures the legislative framework remains robust as well as flexible to adapt to circumstances such as business model and technological changes.[182]

In relation to clauses 25 and 26, the explanatory notes state:

> These regulation-making powers are proposed to address industry concerns regarding the operation of the head contractor licensing exemption. This includes concerns relating to its alleged misuse that circumvents Queensland's licensing system, as other licensing requirements do not apply to the exempt head contractors as they do to other QBCC licensees, such as minimum financial requirements. The exemption essentially allows anyone without a licence to procure building work, provided that the subject work is commercial and is undertaken by licensed contractors. Feedback also suggests the exemption is widely used through various complex business models and transactions in a range of industries where building work is procured, such as civil contracting.
>
> For the regulation-making power proposed in the BIF Act, the presence of an unlicensed head contractor in the contractual chain can mean that subcontractors are not covered by a project or retention trust. This is because it can introduce an additional party to the contractual chain and push subcontractors to a lower contractual tier which is generally not protected by the trust arrangements.[183]

Importantly:

> Providing a regulation-making power to ensure these subcontractors are covered by the project and retention trust framework will support the Government's aim to continue supporting strong security of payment protections for subcontractors, benefitting these licensees, their families, the broader industry and community.[184]

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180 LSA, s 4(4)(a).

181 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

182 Explanatory notes, p 19.

183 Explanatory notes, p 19.

184 Explanatory notes, p 20.

In relation to clause 46, the explanatory notes state the delegation of legislative power to the executive is justified:

> … to address ongoing concerns about potential misuse of the licensing exemption by providing the flexibility for Government to remove application of the exemption in certain high-risk circumstances through regulation.[185]

Further:

> The provision also seeks to provide government with flexibility to respond to emerging issues and require a licence in certain circumstances, e.g. in higher-risk scenarios where a QBCC licence is considered necessary such as fire protection. It also seeks to strike a balance between head contractors who require the exemption, where the exemption poses no risk to the community, and the head to licence head contractors engaged in high-risk work. The Bill also ensures that subcontractors are afforded protections through the retention trust account framework, regardless of whether the head contractor is licensed or unlicensed.[186]

According to the explanatory notes, there will be prior consultation on licence categories that are appropriate to be prescribed during development of any regulation.[187]

4.1.8.4 Committee comment

The committee is satisfied that the various delegations of legislative power are appropriate, such that the Bill has sufficient regard for the institution of Parliament.

4.2 Explanatory notes

Part 4 of the LSA 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.

Explanatory notes were tabled with the introduction of the Bill.

As noted earlier, the notes make no mention of the aspect of clause 66 that provides the Minister would no longer be bound by the confidentiality provision in the QBCC Act, neither in describing the effect of the clause nor in considering it in the context of fundamental legislative principles regarding the impact on privacy.[188]

This falls short of compliance with section 23(1)(h) of the LSA which requires 'a simple explanation of the purpose and intended operation of each clause of the Bill'. Refer section 4.1.6 above for further information, including the department's response to these issues.

While the explanatory notes do not contain any express statement regarding consistency with the fundamental legislative principles, they do proceed to traverse a number of such issues.

The notes otherwise contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

185 Explanatory notes, p 20.

186 Explanatory notes, p 20.

187 Explanatory notes, p 20.

188 Contrast the explanatory notes at p 66.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[189]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[190]

The HRA protects fundamental human rights drawn from international human rights law.[191] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

5.1 Human rights compatibility

Various human rights are relevant to the provisions of the Bill that:

(1) authorise the Building and Construction Commission ("the Commission") to issue immediate licence suspensions in respect of a broader class of potential threats than is currently permitted;

(2) authorise the Commission to share information with other agencies and with complainants;

(3) reverse the decision in *Bettson Properties Pty Ltd v Tyler [2019] QCA 176* and render unenforceable certain contractual provisions regarding the approval of modifications to premises in relation to the installation of solar energy related equipment; and

(4) expands immunities for staff appointed directly by the Board of Architects of Queensland and Board of Professional Engineers of Queensland (referred to collectively as "the Boards").

The specific provisions of the HRA relevant to the human rights raised by the Bill are:

- Section 15 "Recognition and equality before the law";
- Section 24 "Property rights";
- Section 25 "Privacy and reputation"; and
- Section 31 "Fair hearing".

189 HRA, s 39.

190 HRA, s 8.

191 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

5.1.1 Clause 61 – immediate suspension of licence

5.1.1.1 Nature of the human right

The expansion of the Commission's power to immediately suspend licences without first issuing a show cause notice raises the right to a fair hearing. Relevant resources in relation to this right include: Alistair Pound, and Kylie Evans, *Annotated Victorian Charter of Rights* (2nd ed, Thomson Reuters, 2018), 211-227 ("Pound and Evans"); *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 624, [122]-[124]; and *Roberts v Harkness* (2018) 57 VR 334, [47]-[50]. It is arguable that the power of immediate suspension does not, when considered in its context, restrict the right to a fair hearing set out in section 31. Even if it does limit this right, such limitation is justified under section 13 of the *Human Rights Act*.

5.1.1.2 Nature of the purpose of the limitation

The purpose of the limitation is to extend existing licence suspension powers currently available in respect of threats to certain classes of persons, to threats to the public more generally.

5.1.1.3 The relationship between the limitation and its purpose

The limitation is narrow (it expands existing powers beyond specified protected classes of persons to the public more generally). It is subject to various protections including the time-limited nature of such suspensions and review mechanisms before the Queensland Civil and Administrative Tribunal.

5.1.1.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

There do not appear to be less restrictive and reasonably available alternatives available to achieve this purpose.

5.1.1.5 The importance of the purpose of the limitation

The purpose of the limitation (extending the existing power of suspension to situations involving serious threats in order to protect the public more generally) is patently important.

5.1.1.6 The importance of preserving the human right

The right to a fair hearing is important but is adequately protected in the circumstances.

5.1.1.7 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance. The limitation is both necessary and proportionate.

5.1.2 Clauses 60 and 65 – The Commission sharing information with other agencies and with complainants

5.1.2.1 Nature of the human right

The powers of the Commission to share relevant information with other agencies and, where complaints have been made, with complainants regarding the outcomes of the Commission's investigations, raise the right to privacy. Relevant resources in relation to this right include: Pound and Evans, 113-129; and *PJB v Melbourne Health (Patrick's Case)* (2011) 39 VR 373, [74]-[86].

5.1.2.2 Nature of the purpose of the limitation

The purposes of the limitations are to permit more effective regulation of the building industry through the sharing of relevant information and to increase transparency by enhancing access to information (that is already currently accessible through right to information legislation).

5.1.2.3 The relationship between the limitation and its purpose

The limitations have a close relationship with their stated purposes.

5.1.2.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

There do not appear to be less restrictive and reasonably available alternatives available to achieve these purposes.

5.1.2.5 The importance of the purpose of the limitation

The purposes of the limitations are important. Sharing relevant information with other public entities in Queensland appears important. Enhancing access to information for complainants serves an important transparency purpose.

5.1.2.6 The importance of preserving the human right

The right to privacy is important but is adequately protected in the circumstances. Public entities in Queensland are independently subject to privacy obligations and complainants already have access to information regarding complaints under right to information legislation.

5.1.2.7 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance. The limitations are necessary and proportionate.

5.1.3 Clause 22 – The reversal of the decision in Bettson Properties Pty Ltd v Tyler [2019] QCA 176 and **rendering unenforceable contractual provisions regarding the approval of modifications to premises in relation to the installation of solar energy related equipment**

5.1.3.1 Nature of the human right

Natural persons possessing contractual rights regarding premises may derive potential protection of their property rights under section 24 of the *Human Rights Act*. Section 24(2) provides that "[a] person must not be arbitrarily deprived of the person's property". Relevant resources in relation to this right include: Pound and Evans, 182-187; and *PJB v Melbourne Health (Patrick's Case)* (2011) 39 VR 373, [87]-[95]. While rights under contracts may constitute property for the purposes of section 24, clause 22 does not appear to involve an arbitrary deprivation of property.

5.1.3.2 Nature of the purpose of the limitation

The purpose of the limitation on contractual rights is to ensure aesthetics are not used to frustrate efforts to increase the use of solar power.

5.1.3.3 The relationship between the limitation and its purpose

The limitation has a close relationship with its stated purpose.

5.1.3.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

There do not appear to be less restrictive and reasonably available alternatives available to achieve this purpose.

5.1.3.5 The importance of the purpose of the limitation

The purposes of the limitation are important. Reducing carbon emissions and energy costs are patently important.

5.1.3.6 The importance of preserving the human right

The right to property is important but is adequately protected in the circumstances. The limitation on contractual rights to be imposed by the Bill is restricted and contractual rights of developers and bodies corporate (which do not possess human rights) remain generally enforceable through the legal system.

5.1.3.7 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance. The limitation is not arbitrary and is necessary and proportionate.

5.1.4 Clauses 11 and 58 – Expansion of immunities for civil liability of staff appointed directly by the Boards

5.1.4.1 Nature of the human right

Immunity from civil liability for certain staff appointed by the Boards raises issues of equality before the law as provided for in section 15 of the *Human Rights Act*. A relevant resource in relation to this right is Pound and Evans, 79-86.

5.1.4.2 Nature of the purpose of the limitation

The purposes of the limitation on equality before the law is necessary to ensure that public officials are able to perform their public duties without fear of civil liability where they have acted honestly and without negligence.

5.1.4.3 The relationship between the limitation and its purpose

The limitation has a close relationship with its stated purposes.

5.1.4.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

There do not appear to be less restrictive and reasonably available alternatives available to achieve this purpose.

5.1.4.5 The importance of the purpose of the limitation

The purpose of the limitation is important. The performance of public functions could be seriously inhibited in the absence of limited immunity from civil liability.

5.1.4.6 The importance of preserving the human right

Equality before the law is important but is adequately protected in the circumstances. The immunity provided by the Bill is consistent with similar immunities applicable generally throughout Australia. The Boards are able to be sued directly and the immunity for staff does not apply in cases of dishonesty or negligence.

5.1.4.7 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill strikes an appropriate balance. The limitation is necessary and proportionate.

5.1.5 Committee comment

The committee is required to provide a conclusion of compatibility. The committee finds the Bill is compatible with human rights.

5.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Master Plumbers' Association of Queensland
002	Name withheld
003	Property Council of Australia
004	Master Electricians Australia
005	National Electrical and Communications Association
006	Queensland Law Society
007	Wood L&M Solutions
008	Clinton Mohr Lawyers
009	Urban Development Institute of Australia
010	Local Government Association of Queensland
011	Strata Community Association (Queensland)
012	Plumbing and Pipe Trades Employees Union Queensland, Master Plumbers' Association of Queensland and National Fire Industry Association Australia

Appendix B – Officials at public departmental briefing

Department of Energy and Public Works

- Ms Ainslie Barron, Acting Assistant Director-General, Building Policy
- Dr Michelle Hill, Acting Executive Director, Building Policy
- Ms Anne Neuendorf, Acting Executive Director, Building Policy

Queensland Building and Construction Commission

- Mr Richard Cassidy, Strategic Advisor

Appendix C – Witnesses at public hearing

Strata Community Association (Queensland)

- Mr Kristian Marlow, Policy Officer

Master Plumbers' Association of Queensland

- Mr Ernie Kretschmer, Deputy Executive Director

National Electrical and Communication Association

- Mrs Irma Beganovic, Government Relations Manager
- Mr Peter Lamont, Senior Policy Advisor

Master Electricians Australia

- Mr Chris Lehmann, Policy Advisor
- Mr Jason O'Dwyer, Manager Advocacy and Policy

Queensland Law Society

- Ms Samantha Cohen, Chair, Construction and Infrastructure Law Committee (via teleconference)
- Ms Wendy Devine, Principal Policy Solicitor
- Mrs Kara Thomson, President

Wood L&M Solutions

- Mrs Tracey Wood, Principal (via videoconference)

Clinton Mohr Lawyers

- Mr Clinton Mohr, Solicitor
- Mr Mark Mossop, Development Manager, Oxmar Properties
- Mr Robert Quirk, Barrister-at-Law, Bay Street Chambers