

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION AND OTHER LEGISLATION AMENDMENT BILL 2014

Explanatory Notes

for

**Amendments to be moved during consideration in detail
by the Honourable Tim Mander MP, Minister for Housing
and Public Works**

Title of Bill

Queensland Building and Construction Commission and Other Legislation Amendment Bill
2014

Objectives of the amendments

The objective of the amendments is to address recommendations by the Transport, Housing and Local Government Committee (the Committee) in its Report No.54 - Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 (Committee Report) tabled in the Legislative Assembly on 8 October 2014.

The amendments also address some of the issues raised in submissions made to the Committee during the Committee's consideration of the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 (the Bill) and includes minor technical corrections.

Achievement of the objectives

The Government proposes to adopt a number of the Committee's recommendations contained in the Committee Report either in full or in part. This includes the following:

- It is proposed to amend clause 60, proposed new section 31 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act), to enable a regulated contract to be entered into where the builder is not able to obtain foundations data before the contract is signed but guarantees in the contract that there will be no price increase when the foundations data is subsequently obtained.
- It is proposed to amend clause 60 so that proposed new section 42(1), QBCC Act, places an obligation on the building contractor for a regulated contract to notify the building owner within 10 business days of becoming aware of the cause and extent of the delay when claiming for an extension of time and to enable the approval of a time extension claim by the owner to be 'in writing', rather than 'by signing'.
- It is proposed to amend the proposed new definition in the QBCC Act of practical completion for domestic building contracts in the Schedule 1B dictionary to have one consistent definition for both level 1 and level 2 contracts, which provides that

practical completion includes when the subject work is completed without any defects or omissions, other than minor defects and minor omissions, but removes the words 'for which the rectification or completion is not practicable at the time of completion'.

- It is proposed to amend the Bill to reduce the statutory warranty period in the QBCC Act for non-structural defects relating to regulated contracts from two years to one year, to align with the Queensland Building and Construction Board's Rectification of Building Work policy, on the basis that this will provide adequate consumer protection.
- It is proposed to amend proposed new section 29, QBCC Act, so that in proceedings for a breach of warranty for a regulated contract, it is a defence for the defendant to prove that the defendant was not reasonably given access to rectify an alleged deficiency.
- It is proposed to amend the Bill so that variations to contracts in new section 40 of Schedule 1B, QBCC Act, are permitted to be via electronic communications.
- It is proposed to amend proposed new sub-sections 13(5) and 14(11), QBCC Act, to provide that the contract has effect only if it complies with sections 13(2) and 14(2) from Schedule 1B, and to provide that contracts are not deemed invalid for failure to comply with all requirements of sections 13 and 14.
- It is proposed to amend proposed new section 70, QBCC Act, to provide that an additional insurance premium must be paid in circumstances where a variation results in an increase to the value of residential construction work of \$5,000 or more.

Further minor amendments are also proposed to the Bill to address some of the issues raised in submissions made to the Committee during the Committee's consideration of the Bill and to make minor technical corrections to the Bill, as well as minor amendments to the amendments to the *Housing Act 2003* in the Bill to clarify circumstances in which approved providers may disclose confidential information.

Alternative ways of achieving policy objectives

There is no alternative way to achieve these objectives other than by amending the Bill.

Estimated cost for government implementation

There are no additional anticipated financial costs for Government arising from the amendments to be moved during consideration in detail.

Consistency with fundamental legislative principles

The amendments to be moved during consideration in detail are consistent with fundamental legislative principles.

Consultation

Many of the amendments result from recommendations by the Committee which conducted public consultation on the Bill.

Notes on provisions

Amendment 1 amends clause 36 of the Bill so that new section 70 of the QBCC Act requires a licensed contractor carrying out residential construction work under a contract with a

consumer to pay an additional insurance premium if the value of the residential construction work will increase by \$5,000 or more because of a variation.

Amendment 2 amends clause 36 of the Bill so that new section 70A requires a licensed contractor carrying out speculative residential construction work to pay an additional insurance premium if the value of the residential construction work will increase by \$5,000 or more because of a variation.

Amendment 3 amends clause 36 of the Bill so that new section 70B requires a consumer who obtained optional additional cover for residential construction work to pay an additional insurance premium if the value of the residential construction work will increase by \$5,000 or more because of a variation.

Amendment 4 amends clause 37 of the Bill to replace proposed new section 71J which provides for requests for rectification of building work or remediation of consequential damage.

Amendment 5 makes a minor drafting correction to new section 74G in clause 38 of the Bill, replacing references to section 74F(4) with references to section 74F(5).

Amendment 6 amends the definition of 'defects document' in clause 60 of the Bill so that it applies to all domestic building contracts, not just level 2 regulated contracts.

Amendment 7 replaces the definition of 'practical completion' in clause 60 of the Bill. The new definition is the same for level 1 and level 2 regulated contracts.

Amendment 8 amends the definition of 'written form' in clause 60 of the Bill so that a variation of a regulated contract does not need to be in handwritten or typewritten form.

Amendment 9 amends the meaning of 'contract price' in clause 60 of the Bill so that it does not include an amount a person, other than the building contractor, is entitled to receive directly from the building owner for any of the matters listed in the definition. This excludes payments by the building owner direct to third parties.

Amendment 10 amends new section 13(5) in clause 60 of the Bill so that a level 1 regulated contract will have effect if it complies with subsection (2), which requires that the contract be in written form, dated and signed by or on behalf of each of the parties to it.

Amendment 11 omits and replaces new sections 14(4) to (7) in clause 60 of the Bill. The new provisions set out the requirements for how the contract price, or the method for calculating it, is to be stated in a contract.

Amendments 12 and 13 renumber subsections in new section 14 in clause 60 of the Bill as a consequence of amendment 11.

Amendment 14 amends new section 14(11) (to be renumbered as section 14(10)) in clause 60 of the Bill so that a level 2 regulated contract will have effect if it complies with subsection (2), which requires that the contract be in written form, dated and signed by or on behalf of each of the parties to it.

Amendment 15 amends new section 29(3) in clause 60 of the Bill to reduce the warranty period for non-structural defects in a regulated contract from 2 years to 1 year.

Amendment 16 amends new section 29(6) in clause 60 of the Bill so that, in proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the defendant was not reasonably given access to rectify the deficiencies of which the plaintiff complains.

Amendment 17 amends new section 31 in clause 60 of the Bill so that, if a building contractor is not lawfully entitled to enter the land at the building site to obtain the foundations data before entering into the contract and the contract guarantees that there will be no increase in the contract price because of the foundations data, the building contractor does not need to obtain foundations data before entering into the contract as required by subsection 31(2).

Amendments 18 to 27 renumber subsections in new section 31 in clause 60 of the Bill as a consequence of amendment 17.

Amendment 28 inserts definitions of 'repair' and 'repair contract' into new section 39 in clause 60 of the Bill.

Amendment 29 amends new sections 40(2) and 40(4) in clause 60 of the Bill to remove the requirement for a building contractor to give the building owner a copy of a variation in written form. The new requirement is for a variation to be given to the building owner in writing. "Writing" has the meaning given in the *Acts Interpretation Act 1954* and includes electronic communications.

Amendment 30 amends new section 42(1)(c) in clause 60 of the Bill so that the obligation falls on the building contractor to notify the consumer within 10 business days of becoming aware of the "cause and extent" of the delay when claiming for an extension of time.

Amendment 31 amends new section 42(1)(d) in clause 60 of the Bill so that the building owner may approve a claim for an extension of time in writing rather than by signing the claim. "Writing" has the meaning given in the *Acts Interpretation Act 1954* and includes electronic communications.

Amendment 32 makes a minor drafting amendment as a consequence of amendment 33.

Amendment 33 amends clause 66 to insert a new subsection 94B(5)(g) to clarify that new sections 94C, 94D and 94E in the Bill are confidentiality provisions for the purposes of new section 94B.

Amendment 34 amends clause 66 to insert the words 'or has been confidential information' into section 94C(1) to clarify that information disclosed under section 94B is confidential information and is subject to the same duty of confidentiality as provided for under section 49A of the *Ambulance Services Act 1991*.

Amendment 35 amends clause 66 to remove the words 'other than for the purpose of providing a housing service' from section 94C(2) to clarify that confidential information can only be disclosed to persons specified under new section 94B.

Amendment 36 amends clause 66 to insert the words 'or has been confidential information' to section 94D(1) to clarify that information disclosed under section 94B is confidential information and is subject to the same duty of confidentiality as provided for under section 188(2) of the *Child Protection Act 1999*.

Amendment 37 amends clause 66 to remove the words 'other than for the purpose of providing a housing service' from section 94D(2) to clarify that confidential information can only be disclosed to persons specified under new section 94B.

Amendment 38 amends clause 66 to insert the words 'or has been confidential information' into section 94E(1) to clarify that information disclosed under section 94B is confidential information and is subject to the same duty of confidentiality as provided for under section 341(2) of the *Corrective Services Act 2006*.

Amendment 39 amends clause 66 to remove the words 'other than for the purpose of providing a housing service' from section 94E(2) to clarify that confidential information can only be disclosed to persons specified under new section 94B.