

# **Building Queensland Bill 2015**

## **Explanatory Notes**

### **FOR**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Jackie Trad MP**

### **Title of the Bill**

Building Queensland Bill 2015

### **Objectives of the Amendments**

On 19 May 2015 the Building Queensland Bill 2015 (the Bill) was introduced into Parliament. The Bill was referred to the Infrastructure, Planning and Natural Resources Committee (the Committee) on 19 May 2015.

On 1 September 2015 the Committee tabled its report (No. 4) in relation to the Bill which included two recommended amendments to the Bill. The objective of the amendments is to implement the recommendations and include further provisions to improve transparency, openness and clarity about Building Queensland's roles and functions.

### **Achievement of the Objectives**

Amendments to the Bill are required to achieve the objectives.

### **Alternative Ways of Achieving Policy Objectives**

There are no alternative ways to achieve the policy objectives.

### **Estimated Cost for Government Implementation**

There will be no cost to Government to implement the objectives of the amendments.

## Consistency with Fundamental Legislative Principles

Amendment 6 to the Bill inserts new clause 53A to require an appointed Building Queensland Board member convicted of an indictable offence during the term of appointment to immediately give notice of the conviction to the Minister. A breach of the provision carries a maximum penalty of 100 penalty units. In relation to whether the rights and liberties of the person are protected, it is considered the amendment is reasonably justified because the provision allows for the person to have a reasonable excuse for non-compliance. In relation to whether the consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation, it is considered the amendment is reasonably justified because the penalty reinforces the expectation that board members are to observe ethical and legal behaviour in carrying out their functions.

Amendment 7 to the Bill inserts new clause 59A to enable the Minister to ask the commissioner of the police service for a written report about the criminal history and a brief description of the circumstances of a conviction to decide if a person is disqualified from becoming, or continuing as, an appointed member of the Building Queensland Board. In relation to whether the amendment may adversely affect the rights and liberties of a person, it is considered the amendment is justified because the Minister may make the request only if the person has first given the Minister written consent for the request. Amendment 7 to the Bill also includes safeguards about the use of a person's criminal history and requires the Minister to ensure the report is destroyed as soon as practicable after it is no longer needed.

## Consultation

Two amendments arise from the recommendations of the Committee. The remaining amendments were informed by consultation on the Bill.

## NOTES ON PROVISIONS

### **Amendment 1      Amendment of clause 9 (Functions generally)**

Amendment 1 is a minor amendment to clause 9 to clarify that the functions of Building Queensland set out in part 2 division 2 are subject to the Ministerial directions mentioned (not given) in clause 18(3). Clause 18(3) is not the head of power for Ministerial directions.

### **Amendment 2      Insertion of new clause 11A (Assistance in preliminary preparation of infrastructure proposals)**

Amendment 2 inserts new clause 11A to clarify Building Queensland's role in the preliminary preparation of infrastructure proposals, before the development of a business case. The amendment clarifies that Building Queensland may assist government agencies in the preliminary preparation of proposals that are likely to fall within the relevant thresholds to which clause 13(1)(a) or (b) will apply.

New clause 11A(2) provides that Building Queensland is to assist a government agency in the preliminary preparation of an infrastructure proposal if directed by the Minister and to the extent directed by the Minister.

New clause 11A(3) requires that within 28 days after the end of each 6 month period after the commencement, Building Queensland is to give the Minister a summary of each infrastructure proposal Building Queensland has assisted with during that period. Amendment 4 to clause 16 requires the summary to be published on Building Queensland's website as soon as practicable after the summary is given to the Minister.

New clause 11A(4) defines preliminary preparation of an infrastructure proposal to mean the consideration or development of the proposal before the preparation of a business case for the proposal.

**Amendment 3            Amendment of clause 12 (Evaluation of proposals about infrastructure)**

Amendment 3 deletes clause 12(2)(b) as the requirement to publish the summary of proposals evaluated by Building Queensland on Building Queensland's website is relocated to amended clause 16(1)(b).

**Amendment 4            Amendment of clause 16 (Publishing information and promoting public awareness)**

*Publication of summaries*

Amendment 4 inserts new clause 16(1)(b) to require the summary of each infrastructure proposal that Building Queensland assisted in the preliminary preparation of under clause 11A, to be published on Building Queensland's website as soon as practicable after the summary is given to the Minister. New clause 11A(3) requires that within 28 days after the end of each 6 month period after the commencement of clause 11A, Building Queensland is to give the Minister a summary of each infrastructure proposal Building Queensland assisted with during that period.

Amendment 4 relocates from clause 12(2)(b) to clause 16(1)(b) the requirement under clause 12(2) for Building Queensland to publish on its website a summary of each proposal evaluated under clause 12. Building Queensland is to publish the summary on its website as soon as practicable after giving the summary to the Minister.

Building Queensland is required to publish summaries of the following:

- Each infrastructure proposal Building Queensland assisted with in the preliminary preparation under clause 11A, as soon as practicable after giving the summary to the Minister (clause 16(1)(b) as amended);
- Each proposal for investment in new infrastructure or enhancements to existing infrastructure evaluated by Building Queensland under clause 12, as soon as practicable after giving the summary to the Minister (clause 16(1)(b) as amended)
- Each cost-benefit analysis (as required under clause 13(2)(c)) that Building Queensland carried out while leading the preparation of a business case under clause 13(1)(b) or clause 13(c)(ii).

*Publication of pipeline document*

The Committee recommended that the Bill be amended to require Building Queensland to publish the infrastructure pipeline document after providing 6 monthly updates to the Minister.

The need for transparency and public accountability is recognised in the Bill. The Bill provides that Building Queensland may publish any information relevant to its functions with the safeguard that any confidential information is not to be published.

While it is anticipated that a significant amount of information will be made available to the public, the Government supports the Committee's view that development of the infrastructure pipeline document will be an important function of Building Queensland. Accordingly, amendment 4 inserts clause 16(1)(c) to require Building Queensland to publish the infrastructure pipeline document, and each update to the document within 28 days after giving the document or update to the Minister.

*Publication of Ministerial directions*

The Committee also recommended the Bill be amended to provide for timely public reporting of Ministerial directions to Building Queensland.

Clause 50(1)(c)(i) of the Bill requires Building Queensland to publish details of any Ministerial direction in the annual report. In addition, clause 50(1)(c)(ii) requires Building Queensland to include details of action taken because of the Ministerial direction.

The Bill provides that Building Queensland may publish any information relevant to its functions with the safeguard that any confidential information is not to be published. It is anticipated that a significant amount of information will be made available to the public under these clauses.

However, the Government supports the Committee's view that timely reporting of Ministerial directions will enhance the transparency already provided for in the Bill.

Accordingly, amendment 4 inserts clause 16(1)(d) to require Ministerial directions given under part 2 division 2 to be published on Building Queensland's website within 28 days after Building Queensland receives the direction.

Under part 2 division 2, Building Queensland is required to publish a Ministerial direction about the following:

- to provide assistance to a government agency in the preliminary preparation of an infrastructure proposal (new clause 11A(2));
- to assist in, or lead the preparation of a business case for an infrastructure project outside of the thresholds for Building Queensland's assistance (more than \$50 million but less than \$100 million) or lead (\$100 million or more) (clause 13(1)(c));
- to lead the procurement or delivery of an infrastructure project (clause 15(1));
- about the performance of its functions (clause 18(1)).

**Amendment 5          Amendment of clause 50 (Annual report)**

Amendment 5 redrafts clause 50(1)(c)(i) to provide greater detail about the Ministerial directions to be included in Building Queensland's annual report. The amendment requires

Building Queensland to include in its annual report details of each direction given under part 2, division 2.

**Amendment 6            Insertion of a new clause 53A (New convictions must be disclosed)**

The Bill at clause 25 provides that a person cannot be appointed, or continue as a member, of the board of Building Queensland if the person has a conviction for an indictable offence, that is not a spent conviction.

Amendment 6 inserts new clause 53A to support clause 25 by requiring an appointed Building Queensland board member convicted of an indictable offence during the term of his or her appointment to immediately give notice of the conviction to the Minister. A breach of the provision carries a maximum penalty of 100 penalty units. The notice must include the existence of the conviction, when the offence was committed, sufficient details to identify the offence relevant to the conviction, and the sentence imposed on the person.

**Amendment 7            Insertion of new clause 59A (Criminal history report)**

Amendment 7 inserts new clause 59A to enable the Minister to ask the commissioner of the police service for a written report about the criminal history and a brief description of the circumstances of a conviction to decide if a person is disqualified from becoming, or continuing as, an appointed member of the Building Queensland Board. New clause 59A requires the Minister to ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested. Criminal history means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions. The *Criminal Law (Rehabilitation of Offenders) Act 1986* defines criminal history in relation to any person to mean the convictions recorded against that person in respect of offences.

**Amendment 8            Amendment of schedule 1 (Dictionary)**

Amendment 8 is a consequential amendment to the proposed amendments and redrafting of the Ministerial direction provisions.