

QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The Bill provides for the amendment of the *Queensland Building Services Authority Act, 1991* (the Act).

The provisions give effect to the restructuring of the Queensland Building Services Authority (the Authority), including the constitution of the Queensland Building Services Board, and the fine tuning of the Act.

Reason for the Bill

- Restructuring of Authority and clarification/extension of powers

The *Queensland Building Services Authority Act* was assented to on 17 December 1991. It introduced the majority of recommendations made in the Home Building Review Report including the replacement of the Builders' Registration Board of Queensland by the Authority and the establishment of the Queensland Building Tribunal (the Tribunal). The restructuring of the Authority will improve its operation and effectiveness. The fine tuning of other provisions will clarify the original intent of the legislation, address anomalies and loopholes and in some areas extend the powers of the Authority and the Tribunal.

- Minor Consequential Amendments

The proposed Amendment Bill contains minor and consequential amendments. These amendments correct errors, support substantive amendments or give effect to drafting conventions.

A minor and consequential amendment contained in *clause 15* of the schedule warrants particular comment and is included in the schedule to the "Notes of Provisions".

Estimated Cost for Government Implementation

The Authority is totally self funded and meets the costs of the Tribunal. There is the potential for modest savings through extending powers to the Tribunal to deal with matters which are currently dealt with in the Courts.

Consultation

Extensive consultation with relevant industry organisations has taken place during the review of the Authority's structure and the formulation of amendments to other provisions. The provisions relating to the operation and powers of the Tribunal were included in a Discussion Paper issued by the Tribunal Chairperson in April 1993.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the Act on a day to be fixed by proclamation.

**PART 2—AMENDMENT OF QUEENSLAND
BUILDING SERVICES AUTHORITY ACT 1991**

Clause 3 provides for the amendment of the *Queensland Building Services Authority Act, 1991*.

Clause 4 provides for the interpretation of certain words and phrases used in the Act and amendment.

Clause 5 provides an accurate description of the Authority's structure in context of the Amendment Act, including the omission of the Home Building Advisory Service as a separate entity within the Authority.

Clause 6 amends the role of the Board to clarify the relationship between the Board and the General Manager; to reinforce the Board's role in the strategic management of the Authority; to better reflect the objects of the Act in relation to consumers; and to reflect the change in the organisational status of the Home Building Advisory Service.

The clause further describes the function and nature of policies of the Board.

Clause 7 provides for a reduction in the size of the Board by reducing the number of representatives of the building industry from three to two and omitting the representative of licensed building designers and the two non-voting members in the General Manager and the Director of the Home Building Advisory Service. The amendment also provides a role for the Building Industry Sub-Contractors' Organisation of Queensland in the nomination of persons to represent licensed trade contractors.

This amendment provides the procedures for the nomination of persons to the Board.

Clause 8 provides for a reduced quorum for Board meetings and the exclusion of non-voting members from the Board.

Clause 9 provides for changed organisational arrangements for the Home Building Advisory Service and clarifies the management responsibilities of the General Manager.

Clause 10 provides that the General Manager is not totally independent of the Board's control.

Clause 11 provides for the omission of the Home Building Advisory Service as a separate entity within the Authority.

Clause 12 provides for the omission of the requirement of separate reports within the Annual Report to reflect the changed organisational structure of the Authority and to reinforce that the Authority should operate as a single entity.

Clause 13 provides that the Authority may specify licence classes for which licence cards will not require raised print.

Clause 14 provides clarification regarding policies published by the Queensland Building Services Board in relation to supervision of building work.

Clause 15 provides the Authority with increased power to direct the rectification of defective work performed by a contractor for an owner-builder by omitting the section presently limiting the power.

Clause 16 provides for the suspension or cancellation of a licence if the licensee is guilty of misrepresentation in obtaining the licence. The clause further provides for suspension or cancellation if the licensee fails to repay a debt, comply with a licence condition or remain a fit and proper person.

In addition, the clause brings references in the Act to company liquidations into line with the existing Corporations Law terminology.

Clause 17 provides the Authority with the power to suspend or cancel a licence immediately in circumstances where serious harm to consumers is anticipated if the licence is not cancelled immediately.

Clause 18 clarifies that the contractual requirements in relation to domestic building contracts do not apply to commercial projects or to the preparation of plans and specifications.

Clause 19 provides the basic requirements for building contracts and the consequences of failing to comply with the requirements.

The clause further provides any person whose imprint appears on a contract is considered to be a party to that contract.

Clause 20 provides that neither a consumer nor contractor can rely on an unwritten variation to a contract.

Clause 21 provides Local Authorities with the power to approve work performed by owner-builders.

Clause 22 provides that a policy of insurance under the Statutory Insurance Scheme will also come into force when a contract is imprinted with the contractor's licence card.

Clause 23 clarifies that debt recovery action may be instigated against any person whose contribution to a construction contract resulted in an insurance claim for defective or incomplete work.

Clause 24 provides that the Authority may direct a person who carried out work to rectify defective or incomplete work and that a person who provides supervision or management services may also be required to rectify defective or incomplete work.

Clause 25 provides for licensed contractors to have legal representation as a right, if the Authority commences proceedings in the Tribunal to recover a debt owing, or claimed to be owing.

Clause 26 provides that the Tribunal may reconsider a decision where there is an alleged clerical mistake in the findings and clarifies that a reconsideration may be carried out without a further hearing and by any member of the Tribunal.

Clause 27 provides for a tribunal mediator to report to the Tribunal on issues in dispute if the mediation is unsuccessful and prevents the Tribunal from restricting the hearing to the issues contained in the report, where appropriate.

Clause 28 provides the Tribunal with the power to join a person to an application for review of a decision of the Authority, if the person will be affected by the review.

Clause 29 provides for the Tribunal to refer applications for review of Authority decisions to mediation where appropriate.

Clause 30 replaces a heading to reflect the amendment allowing the Tribunal to hear applications for the immediate suspension of a licence.

Clause 31 provides the Tribunal with the power to order the immediate suspension of a licence where circumstances so warrant.

Clause 32 provides for the omission of the existing provision allowing policy disputes between the Queensland Building Services Board and the General Manager to be referred to the Tribunal for resolution.

The clause further provides the Tribunal with the power to determine actions commenced by the Authority against a person for the recovery of a debt. The clause sets out the powers which may be exercised by the Tribunal.

Clause 33 provides that a person is not exempt from disciplinary action under this Act if the Builders' Registration Board has taken action against the person under the repealed *Builders' Registration and Home-Owners' Protection Act*.

SCHEDULE

Minor and Consequential Amendments

*Clause 15(7) provides that the Authority may commence disciplinary proceedings with the Tribunal against a person for a breach of the repealed *Builders' Registration and Home-Owners' Protection Act*.*