

Building and Other Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 255

made under the

Building Act 1975

Plumbing and Drainage Act 2002

State Penalties Enforcement Act 1999

General outline

Short title

Building and Other Legislation Amendment Regulation (No. 1) 2014

Authorising law

Section 261 of the *Building Act 1975*

Section 145 of the *Plumbing and Drainage Act 2002*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

In May 2013, the Queensland Government's response to the recommendations of the Transport, Housing and Local Government Committee Report No. 14, *Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012* was tabled in Parliament. The response included a *Ten Point Action Plan* to implement agreed recommendations. The Department of Housing and Public Works (the department) established an Implementation Committee tasked with consulting with key stakeholders and making recommendations to the Minister for Housing and Public Works on the implementation of the Government's response.

The first implementation stage, involving the establishment of the Queensland Building and Construction Commission (QBCC) as a replacement for the former Queensland Building Services Authority (QBSA) and the appointment of a Commissioner of the QBCC (QBCC commissioner), has been completed.

The *Professional Engineers and Other Legislation Amendment Act 2014* (the PEOLA) forms part of the second implementation stage of the Government's response to the inquiry. The PEOLA amends the *Queensland Building and Construction Commission Act 1991* (QBCC Act), the *Building Act 1975* (BA) and the *Plumbing and Drainage Act 2002* (PDA).

The amendments of the BA included in the PEOLA will transfer to the QBCC operational functions for pool safety (including functions for licensing, compliance and disciplinary action relating to pool safety inspectors) that the Pool Safety Council (PSC) currently performs under the BA. They will also transfer to the QBCC operational functions relating to pool safety that the Chief Executive and other officers of the department currently perform under the BA.

The amendments of the PDA included in the PEOLA will transfer to the QBCC operational functions for plumbing and drainage (including functions for licensing, compliance and disciplinary action relating to plumbers and drainers) that the Plumbing Industry Council (PIC or the council) currently performs under the PDA. They will also transfer to the QBCC functions of an operational nature relating to plumbing and drainage that the Chief Executive and other officers of the department currently perform under the PDA.

Amendments included in the PEOLA will insert new provisions into the QBCC Act allowing for the internal review of decisions of the QBCC. The PEOLA omits current provisions in the BA and PDA that allow for particular decisions under those Acts to be reviewed by the Queensland Civil and Administrative Tribunal (QCAT) and makes those decisions reviewable decisions under the new QBCC review provisions.

Provisions included in a number of regulations will complement the amendments in the PEOLA. Those provisions are included in the subject of these explanatory notes, namely the *Building and Other Legislation Amendment Regulation (No.1) 2014* (the BOLAR), the *Building (Transitional) Regulation 2014*, the *Plumbing and Drainage (Transitional) Regulation 2014* and the *Queensland Building and Construction Commission (Transfer) Regulation 2014*.

The BOLAR includes amendments of the *Building Regulation 2006* (BR), the *Plumbing and Drainage Regulation 2003* (PDR), the *Standard Plumbing and Drainage Regulation 2003* (SPDR) and the *State Penalties Enforcement Regulation 2014* (SPER).

The reforms included in the PEOLA and the regulations mentioned above are intended to produce a range of benefits, including a reduction in red tape and the costs of administering the functions transferred to the QBCC.

Achievement of policy objectives

The BOLAR will help to facilitate the transfer of operational functions relating to pool safety and plumbing and drainage to the QBCC. It will do so in a range of ways, including by:

- replacing references in provisions in the BR to the PSC, the Chief Executive and the Department with appropriate references to the QBCC commissioner and the QBCC. This will facilitate the transfer of functions mentioned in those provisions to the QBCC, including functions related to the allocation of demerit points to a pool safety inspector for a demerit contravention.
- removing provisions in the BR that allow applicants to apply to QCAT for the review

of a decision by the PSC to allocate demerit points to a pool safety inspector. A decision to allocate demerit points made after the commencement will be made by the QBCC commissioner and such a decision will be subject to the new review provisions inserted into the QBCC Act by the PEOLA.

- replacing references in provisions in the PDR and the SPDR to the PIC, the Chief Executive and the Department with appropriate references to the QBCC commissioner and the QBCC.
- exempting particular pool safety inspectors from a requirement to hold professional indemnity insurance. The exemption will apply to a pool safety inspector performing a pool safety inspection function in the course of the inspector's employment by the Queensland Building and Construction Employing Office. Such an inspector will not need to hold the insurance because section 114 of the QBCC Act will provide the inspector with protection against civil liability in the circumstances described in the section.
- inserting into the BR transitional provisions relating to the allocation of demerit points to a pool safety inspector.
- amending the SPER to:
 - allow the QBCC and its investigators and inspectors to issue and administer infringement notices for offences relating to pool safety and plumbing and drainage; and
 - ensure the QBCC receives revenue raised from enforcing Queensland's pool safety and plumbing laws.

Consistency with policy objectives of authorising law

The BOLAR is consistent with the objectives of the BA. When amended by the PEOLA, the BA will regulate the QBCC's role in administering and enforcing Queensland's pool safety laws.

The BOLAR is also consistent with the objectives of the PDA. When amended by the PEOLA, the PDA will regulate the QBCC's role in administering and enforcing Queensland's plumbing and drainage laws.

In addition, the BOLAR is consistent with the objectives of the *State Penalties Enforcement Act 1999*, which include maintaining the integrity of fines as a viable sentencing or punitive option for offenders.

Consistency with policy objectives of other legislation

The BOLAR is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The BOLAR forms part of a stage of related reforms to the building and construction industry. As a result of the reforms, construction industry practitioners, including pool safety inspectors and plumbers, will have a 'one-stop-shop' for their licensing needs in the QBCC. Licensees will be able to apply to a single regulator for both their occupational and contractor licences. The community will also benefit from having a consistent and experienced arbiter of issues relating to the conduct of construction, pool safety and plumbing licensees.

The new provisions will also help to reduce the Government's administration costs. By co-locating and combining the licensing and compliance functions of the PSC, the PIC and the Chief Executive with similar functions of the QBCC, the QBCC will be able to identify and implement efficiencies in its administrative processes. It is anticipated that this will result in quicker and more convenient processing of applications and complaints.

Any costs incurred by the QBCC in implementing the transfer of functions to the QBCC will be met by the QBCC.

Consistency with fundamental legislative principles

The BOLAR has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. It is consistent with the fundamental legislative principles.

Consultation

When inquiring into the operation and performance of the former QBSA, the Transport, Housing and Local Government Committee consulted with key industry groups including home builders and building contractors, industry participants and relevant experts. The Committee widely advertised its inquiry and received and considered 109 submissions. It received a public briefing from eight witnesses representing industry and government organisations. It also held a public hearing at which it heard from 34 witnesses, including home owners and their representatives, builders, tradespeople and their representatives, academics, lawyers and officers from the former QBSA.

To assist in informing the Minister's response to Parliament, KPMG was engaged to undertake consultation with industry, licensees/builders, consumer groups and individual consumers in Brisbane, Gold Coast, Townsville and Rockhampton.

Consultation on the PEOLA was undertaken with the QBCC, the Department of the Premier and Cabinet, Queensland Treasury and Trade and the Department of Justice and Attorney-General. These agencies indicated their support for the proposed amendments included in the PEOLA and consequential amendments of regulations such as the ones included in the BOLAR.