MASTER BUILDERS QUEENSLAND
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Submission to the Queensland Government on the role of the Queensland Building and Construction Commission

Overview

Master Builders welcomes, and for the most part supports, the findings of the report by Mr Jim Varghese AM "QBCC Governance Review 2022", 12 May 2022 (Varghese Report).

Prior to any decision on the final '**statement of expectations**' or funding model for the QBCC, Master Builders urges the Queensland Government to determine the key outcomes the QBCC should focus on and be held accountable for delivering. If additional funding is required, Government is urged to consider reallocation of funding collected from existing levies.

Master Builders believes the **key outcomes of the industry's regulator** should be to prevent or mitigate:

- Defective or incomplete building work
- Failure to pay money due and owing to building industry participants.

If this is accepted, the **core activities** of the regulator should be limited to:

- Issuing licences to builders, key trade contractors and specified occupational workers
- Investigating and taking compliance action in relation to licence breaches including non-payment of undisputed debts and unlicensed work
- Investigating and taking compliance action in relation to non-payment of builders by principals/developers
- Investigating defective and incomplete building work and issuing directions to rectify to licensees (including licensed subcontractors found to have carried out defective work) or other compliance action.

These core activities should be performed at a high level of competence and in a timely manner.

The **expansion of functions** of the QBCC over the past few years has resulted in a failed regulator, unable to carry out any of its functions well, and unable to be financially sustainable.

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The functions that should be carried out by another agency and not the QBCC include:

- Non-conforming building products (see below)
- Regulation of pool safety inspectors.

While not an expanded function, Master Builders agrees with the Varghese Report recommendation that the Queensland Home Warranty Scheme should be administered by an agency separate from the QBCC.

The **functions that should cease** to be carried out include:

- Annual financial reporting, MFR report requirements and forensic accounting investigations (and instead revert to declarations and simpler financial statements already prepared by tax accountants and/or provided to ASIC)
- Project trust accounts (there is no proven benefit of this overly complex burden on head contractors)
- Duplication of investigation of safety incidents.

Background

It should go without saying that the core activities of the regulator must be carried out in a timely manner. Unfortunately, we are currently seeing:

- delays of up to 7 months in South-East Queensland for inspections of alleged defective building works
- delays for licence applications and licence upgrade applications (including where all requisite paperwork is provided) – some requests are taking 3 months to process
- failure by the QBCC to provide advice to industry as to whether a licence is in fact required for particular work, or where advice is given, it is inconsistently provided
- where compliance investigations are opened they are often followed by silence - commonly a licensee will never hear anything further, and whether the matter is closed or continuing is unknown.

Our industry deserves better.

Numerous initiatives have also been commenced in the past 5 years without being completed including an 'insights driven' program, online licensing, compulsory continuing professional development and transitioning all systems to Salesforce. Much time and effort appears to have been spent on ‘transformation’ including the ‘next normal’ without any tangible results. These failings are not seen as the result of incompetent staff, but rather an historic failure to identify an appropriate strategic direction and maintain a course.

Nonetheless the QBCC should ensure its senior executives have the necessary skillsets to undertake the designated function. In this regard, Australian and New Zealand School of Government (ANZSOG) in its research report, Queensland Building and Construction Commission: An analysis of governance, regulatory approach and capability (prepared to inform the Varghese Report), has developed a directly relevant ‘Leadership capabilities matrix’ which could be adopted.

Non-core functions

Master Builders proposes that the ‘core activities’ of the regulator do not include administering a complex system of annual financial reporting, regulating pool inspectors, home warranty insurance, project trust accounts or non-conforming building products.

These functions are either unnecessary burdens on industry (annual financial reporting and project trust accounts) or activities more suitable for another department or agency to administer.

Non-conforming building products

In relation to non-conforming building products, the statement in the Shergold & Weir ‘Building Confidence’ Report (BCR) under Recommendation 6 (broad powers to monitor buildings and building work so regulators can take strong compliance and enforcement action) is pertinent: “if building regulators are to be given powers to regulate the supply chain, this work should not detract from their primary role’.

The BCR resulted in a series of national best practice models, concluding the National Building Product Assurance Framework. Master Builders endorses this national approach to product compliance as the only effective response in the context of complex global supply chains. Product information should be required, in a nationally-consistent way, specifying the purpose for which a product may be used in compliance with codes and standards. Additionally, it is not considered appropriate that the builder or trade contractor have statutory liability for a non-conforming product where a product is used with the reasonable understanding it is a compliant product. Therefore, it is not appropriate that the building regulator have responsibility for non-conforming products. There must be a national body tasked to improve oversight, coordination and enforcement of the building product assurance system.

Workplace health and safety matters

Similarly for work health safety matters, it is absurd that both the QBCC and the Office of Industrial Relations (OIR, including Workplace Health Safety Queensland) investigate the same matter. If the holder of a QBCC licence is successfully prosecuted by OIR, the QBCC has options to take licensing action including disciplinary proceedings. If the primary safety regulator in Queensland determines a prosecution is unnecessary, or a prosecution is unsuccessful, the QBCC should be informed by the actions of the safety regulator in taking any licensing action on safety grounds. If the QBC Board or Minister considers OIR's powers are inadequate, that should be raised with the relevant Minister to consider, rather than a duplication of regulatory powers. It is concerning that, according to an opinion piece published in the Courier-Mail, documents released under a 'right to information' process identify QBC Board minutes recorded 'Management were directed to actively look for a test case' in relation to regulation of safety matters (P. Gleeson 'QBCC: Minutes reveal board 'overreach', Courier-Mail, 25 July 2022).

Project trust accounts

The QBCC has substantial funding allocated for the administration of an overly-complex project trust account scheme that has no proven benefit to industry. Currently, no system or software can comply with the onerous requirements imposed by the QBCC.

Project trust accounts do not address the causes of insolvency or poor payment practices by developers. It is submitted that the QBCC should refocus its efforts to take action where debts to industry participants are unpaid (or delayed). The QBCC has had the ability to take such action for many years.

Minimum financial requirements

Minimum financial requirements should be simplified drastically to remove annual financial reporting requirements and MFR Reports. Declarations of financial status for smaller contractors and use of existing accountant, and/or ASIC reports for larger contractors, should be sufficient to satisfy licence application requirements. Where the QBCC has reasonable suspicion of financial failure, it should retain the ability to investigate and require evidence of meeting financial licensing requirements.

Master Builders obtained a report from Ernst & Young in April 2022 'Assessing the effectiveness of Queensland's minimum financial requirements for building practitioners'. That report found Queensland's minimum financial requirements system (MFR) are no more effective than other (simpler) regimes across Australia yet MFRs impose large costs to business and government and flow-on costs to consumers. This is particularly so in light of Accounting Standard changes from 1 July 2022 whereby special purpose financial statements are no longer able to be used for MFR reports, adding significant cost and unnecessary burden to many licensees.

Pool safety inspectors and certifiers

Pool Safety Inspectors should be regulated by another body better placed to focus on the safety aspect of the role, such as OIR. It is also worth exploring whether building certifiers could be better regulated by a professional body, akin to professional engineers and architects.

Compulsory continuing professional development

While there is a role for the QBCC in implementing compulsory continuing professional development (CCPD), it does not need to be a resource-intensive exercise. CCPD, which is supported by Master Builders, can be introduced (subject to a regulatory impact statement) in a regulation (where there is already a legislative head of power) with appropriate published guidance. Offerings of compliant courses should be left to the market (e.g. RTOs and other providers) to develop. A similar process to that applied to the legal, architectural, engineering and other professions. A statement of compliance and an audit program can be run as part of the licensing renewal process in a simplified and streamlined way.

We submit the QBCC's role would be to mandate specific courses/learning modules be undertaken in response to defective works where the licence is retained. This supports the position that licensed trade subcontractors should be issued with directions to rectify where their work is found to be defective by the QBCC, which is presently not happening (for the most part only the head contractor is issued with a direction even if a licensed trade contractor carried out the defective work).

Adjudication Registry

The legislated framework for the adjudication registry has become overly complicated. It is unclear why a senior executive position is required to oversee the allocation of less than 300 adjudication applications per year (based on the 2020-21 Annual Report). If the framework was simplified, resources could be reallocated to functions such as licensing or compliance activity for non-payment of debts, or resolution services.

Implementing change

The proposed changes to the focus areas of the QBCC can be summarised by breaking them down into 'regulatory outcome changes' (which could be swiftly implemented) and 'legislative changes'.

Regulatory Outcome Changes

QBCC should focus its efforts on:

- Providing advice to industry on licensing requirements for particular scopes of work
- Issuing directions to rectify to the responsible licensed contractor/s including trade subcontractors and requiring education / upskilling where the licence is retained
- Compliance activity, including disciplinary action, against any licensee who fails to pay a debt owing to a subcontractor

- Proactively investigating financial concerns with licensed contractors at risk of not paying subcontractors and taking appropriate action

- Taking compliance action against licensees (and unlicensed persons) committing offences that may cause significant harm to consumers or other industry participants.

<u>Legislative changes</u>

Ultimately legislative change is necessary to re-allocate regulatory functions to another agency or remove or simplify certain functions, as outlined above. Legislative (and regulation) change is also required to minimise the burden of financial reporting including requirements to obtain a licence or upgrade a licence category.

Accountability

The QBCC should be publicly accountable for achieving outcomes expected of it and a scorecard should be tabled in Parliament at least annually setting out progress and achievements in relation to the Statement of Expectations.

Outcomes of the QBCC should also be effectively measured by an independent body to ensure return on investment of fees paid by industry.

For example, rather than considering how many directions to rectify were issued, the QBCC should report on the correlated complaints of defective work following targeted regulatory activities (acknowledging the lag factor) – i.e. are buildings becoming less 'defective' as a result of QBCC regulatory activity.

Funding model

Master Builders is of the view that the desired outcomes and core activities of the QBCC should first be determined, in consultation with industry, prior to any decisions being made on funding models for the QBCC.

There are functions the QBCC is undertaking that are not providing a benefit to industry or consumers. There has also been significant expenditure by the QBCC for activities that are not beneficial to industry or consumers. For example, advertising campaigns; consultants fees and senior resources wasted on a 'next normal' and 'future blueprint' activities. Senior executive positions appear to be growing.

Until the key outcomes for the QBCC are narrowed and determined, and expenditure agreed to only relate to those key outcomes, Master Builders submits no additional fees or levy should be considered, let alone applied.

A ‘user pays’ system could also be considered, including requiring those successfully prosecuted to reimburse the Commission its expenses in prosecuting.

It is worth noting that according to the April 2022 ANZSOG report (Queensland Building and Construction Commission: An analysis of governance, regulatory approach and capability) Queensland already has one of the highest levies as a project cost per $1,000 (including portable long service leave levy, work health and safety levy and Construction Skills Queensland levy).

It is also submitted that the portion of levy provided to Construction Skills Queensland be reviewed and perhaps a portion reapplied to the QBCC (or other agencies receiving new functions) if needed, without increasing current levies collected.

While it may be considered that any levy will be passed on to building owners and industry should not be concerned, there is a direct impact on industry. Building owners have budget limitations, and the more their budget is allocated to levies, the more pressure is placed on builders and subcontractors to reduce profit margins to keep a project within budget. This is an unfair burden on industry. This does not result in a sustainable industry and fuels disputes.

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