

# QBCC Governance Review 2022



Attachment C  
List of Reports and Reviews

# List of Reports and Reviews

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1	Deloitte Consulting Pty Ltd, <i>QBCC Capability and Functional Alignment Review</i> , March 2017.
2	Nous Group, <i>Review of QBCC's complaints and decision-making processes</i> , 27 October 2021.
3	Nous Group, <i>Possible alternative model for dispute resolution in the Queensland building sector</i> , n.d.
4	Peter Shergold and Bronwyn Weir (2018), <i>Building confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia</i> , Australian Government.
5	Queensland Audit Office, <i>Licensing builders and building trades</i> (Report 16: 2019–20).
6	QBCC, <i>Future Blueprint – Foundational Program and Case for Investment</i> , October 2021
7	QBCC, <i>Minimum Financial Requirements</i> (Annual Reporting) Regulatory Guide, December 2019.
8	QBCC <i>Regulatory Strategy 2020-2024</i>
9	QBCC/Deloitte Consulting Pty Ltd, <i>The Next Normal Strategy</i> , April 2021.
10	Transport, Housing and Local Government Committee, Report No. 14, <i>Inquiry into the Operation and Performance of the Queensland Building Services Authority</i> , November 2012.



**Please note:** This report was not written for the purpose of the QBCC Governance Review, nor was it written focusing on the same objectives.



# QBCC Capability and Functional Alignment Review

Mr Brett Bassett  
Commissioner  
Queensland Building and Construction Commission  
299 Montague Street  
West End Qld 4101

XX March 2017

Dear Brett

Please find enclosed our draft report for the capability mapping and functional alignment against the proposed future structure.

Our review was undertaken in accordance with the agreed scope in our proposal to you in February 2017 and reconfirmed in our kick off meeting with Bruce McGregor.

On behalf of the Deloitte team, I would like to take this opportunity to thank you and the dedicated staff of the QBCC for their participation and contribution to the review.

We greatly appreciate the time and effort that your team have provided to assist our work and we look forward to your feedback on this draft.






Best regards,

Giselle Hodgson

**Partner**

Deloitte Consulting Pty Ltd

# Table of contents

Area	Page	
	Background and project scope	6
	Recommended capabilities to deliver value	9
	Design principles and recommendations for future state functional design	12
	Future organisation structures	18
	High level implementation roadmap	22

# Executive summary

It is timely for the QBCC to position itself to meet the needs of its stakeholders and to realise its strategic goal of being a regulator that builds trust and confidence

## Overview

### Background

In 2011, KPMG performed a review of the organisation outlining key recommendations in relation to the organisation structure centred around improving the depth of organisational capability, improved working relationships and realignment of key functions.

Though these recommendations have been implemented, QBCC has undergone significant renewal at the Board and Executive level over the past 12 months. In January 2017, the QBCC leadership team commissioned a number of initiatives to deliver their overarching strategy to be an efficient and effective regulator that builds trust and confidence.

This report addresses the capability framework, and provides options for the organisation to position itself for a perpetually evolving building industry.

### Proposed capabilities

The review identified 19 primary or overarching capabilities needed to meet its strategic objectives. Underpinning these are approximately 100 secondary or sub-capabilities. Capabilities are categorised as strategic, core and enabling, each with the intention of complementing each other.

### Proposed organisational structure

Understanding the required capabilities and mapping them to future needs resulted in a realignment of the Senior Leadership structure. The proposed (indicative) structure is intended to align capabilities into logical groupings and provide greater clarity for accountability and performance. It should also provide opportunities for employees to expand their current competencies and career options.

## Next steps

### Roadmap

A high level roadmap was developed to guide the transition to the future structure, as well as focus on the broader operating model requirements to support the QBCC achieve its strategic objective of "being an efficient and effective regulator that builds trust and confidence".

### Priority focus areas

The roadmap prioritises activities over the short (1-3 months) and medium (6+ months) term. The focus of the short term (1-3 months) activities is setting the QBCC up for success by:

- Establishing 'change central' – a dedicated team of resources with the appropriate skills, capability and sponsorship to carefully plan and manage the transition to the new structure in a way that enhances the culture and minimises impact on productivity
- Detailing the organisation structure – this requires prioritising the required capabilities and mapping roles to positions to ensure the right positions are in the right place, roles are clarified and reporting lines are clear and efficient.
- Engaging stakeholders – early 'buy-in' will be critical to achieving the desired outcome and minimising change resistance. QBCC should establish a small working group to include staff in the planning and execution of the implementation. It is hoped that these members could effectively become 'change champions' and enhance communication.

# Executive summary

Staying the course and being disciplined to focus on the outcomes will be critical to achieving the desired state structure

## Implementation effort

Based on our experience implementing change programs, we recommend QBCC establish a dedicated implementation team that is quarantined from business as usual activities.

This will ensure that day-to-day business is not disrupted and also increases the likelihood of a timely and successful implementation.

The structure below is indicative and is based on our understanding of the effort required to achieve a 6-9 month implementation:

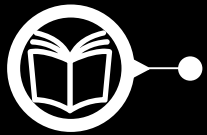
1. Project Leader (1 FTE) – to manage the implementation program as well as drive and track risks and benefits. This resource will need to have strong change and project management skills and work with the QBCC OCM.
2. Change Support (2-3 FTE) – to support the Program Manager with day-to-day implementation. Activities would include change administration, communications, culture change activities, IR/HR related activities and working closely with the nominated SMEs and business units.
2. Business SMEs – establish a small working party to assist with the communication of the changes and to act as 'Change Champions' for their respective teams.

*Note: This does not include resources currently delivering other strategic initiatives, which are likely to require a combination of internal and external capabilities.*

## Critical success factors of implementation

Our experience in carrying out organisational change has identified the following critical success factors for implementation:

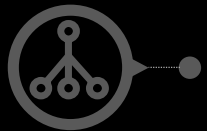
1. *Effective stakeholder management* – stakeholder management will make or break the project. Stakeholders are a critical component to any change so identify them early and engage them appropriately to increase buy-in, remove roadblocks and increase ownership of the change.
2. *A distancing from previous unsuccessful initiatives* – this will set a precedent for those who oppose the change that they can just 'wait it out'.
3. *Getting tangible results* – getting a good solution implemented is more important than only half succeeding with an optimal solution.
4. *Willingness to take hard decisions and drive execution* – implementing a new organisational structure is not easy, you will need to be able to stand up and make decisions which will not be popular with all employees and not waiver when executing.
5. *Leadership and drive from the top* – employees will need to see commitment and action from the leadership team if they are going to support the changes.
6. *Quick wins* – essential to managing stakeholders will be identifying and implementing some of the quick and easy improvements to show progress.
7. *A plan of attack to capture the benefits in the most logical way* – to successfully implement a new structure, you will need to have a well thought out plan which sequences the different activities.



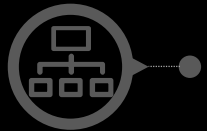
**Background and project scope**



**Recommended capabilities to deliver value**



**Design principles and recommendations for future state functional design**



**Future organisation structures**



**High level implementation roadmap**



# Background and scope of work

Our project objective is to understand the capability requirement for the QBCC to be an effective and efficient regulator

## Background and context

In September 2016 QBCC developed its Strategic Plan 2017-2021. This included a set of strategic initiatives to position the QBCC to meet the policy direction of the Government.

The strategy development was followed up with the development of a performance framework, which included a suite of Executive level KPIs and balanced scorecards. This also included the creation of an Enterprise Value Map (EVM) to understand how the QBCC adds value to the community.

In February 2017 the Commissioner released a draft Strategic Leadership (SLT) structure as a result of two significant departures from the organisation. This was released as an interim (transitional) structure until such time as the performance framework is complete.

To ensure that the organisation is 'set up for success', is aligned to stakeholder and community needs and can measure performance it needs to ensure it has a 'fit for purpose' operating model. The functional alignment is the first step in achieving this.

## Key questions

The key question this body of work seeks to address is:

***How can the QBCC best align its functions to be an efficient and effective regulator that adds trust and confidence?***

To do so, we have looked to answer the following two questions:

1. How can our functions be aligned to...
  - Provide the greatest value to our customers and stakeholders?
  - Provide efficient and effective services, whilst also providing career progression opportunities for staff?
  - Enable the organisation to measure its performance against the agreed performance framework?
2. What activities need to occur to gain early momentum to move to the desired state?

## Deliverables

To support the organisation in finalising the KPI and balanced scorecard implementation the following deliverables were agreed and subsequently developed:

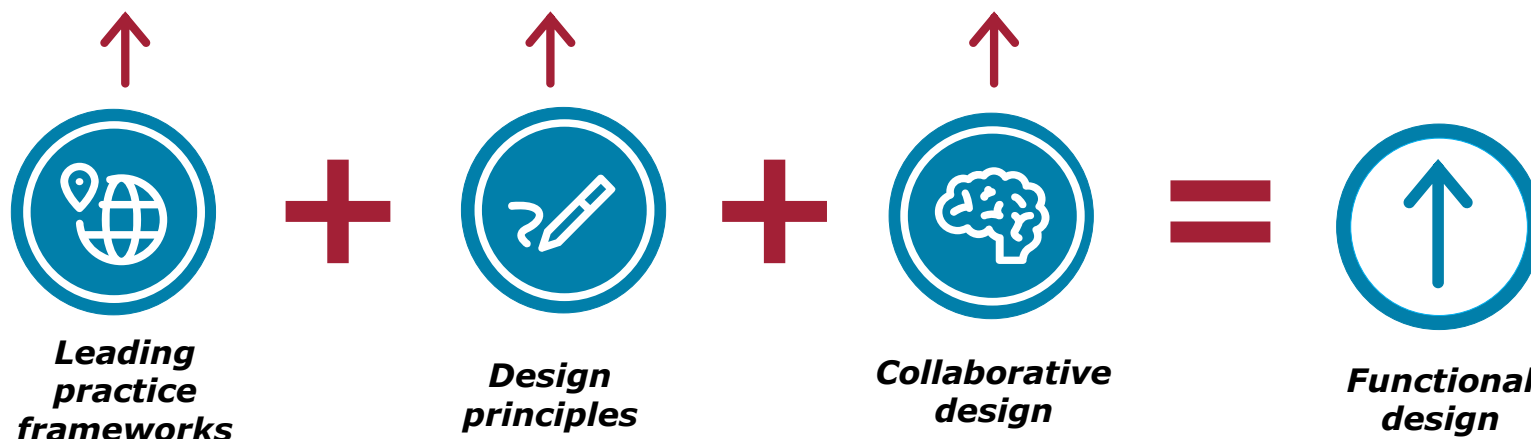
- Design principles for the future QBCC functional structure
- High level capability map for QBCC
- Functional assessment of the proposed structure against the design principles, EVM and capability map
- Recommended functional structure to align with the design principles, EVM and Deloitte Capability Map
- High level road map to implementation, including any transitional structural arrangements

# Our process

The following methodology was undertaken to create the capability map and design the high level functional structure

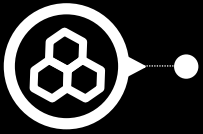
1. *Create a capability map against leading practices and design principles*
2. *Understand and prioritise capabilities to meet QBCC's strategic objectives and EVM*
3. *Test the current structure against the capability map and design principles*
4. *Develop future state functional structure against the capability map and design principles*
5. *Test and validate the future state functional map with SLT*
6. *Develop a plan for implementation*

*A 'fit for purpose' functional design that positions the QBCC to be an efficient and effective regulator that builds trust and confidence is all that it does.*

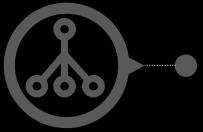




**Background and project scope**



**Recommended capabilities to deliver value**



**Design principles and recommendations for future state functional design**



**Future organisation structures**



**High level implementation roadmap**

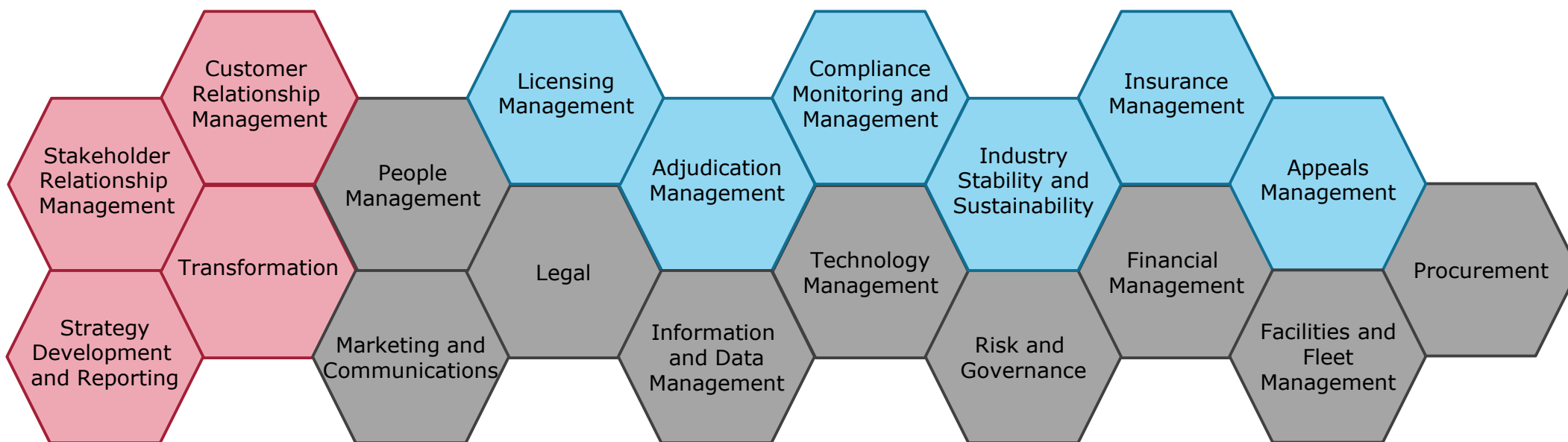
# Recommended primary capabilities

Defining the overarching capabilities for QBCC enables the organisation and leadership to understand and prioritise focus on areas that add the greatest value to the business

The capability framework for QBCC provides a snapshot of organisational capabilities required to implement strategy and enable the delivery of value to the Queensland community. These include the capabilities required for day-to-day operations, as well as those required to grow, adapt and excel as an organisation.

Understanding organisational capabilities enables QBCC to assess current strengths and gaps across the organisation, and identify the people, processes and systems required to contribute to the overall organisational capability. For QBCC, there are three high level capability categories, including:

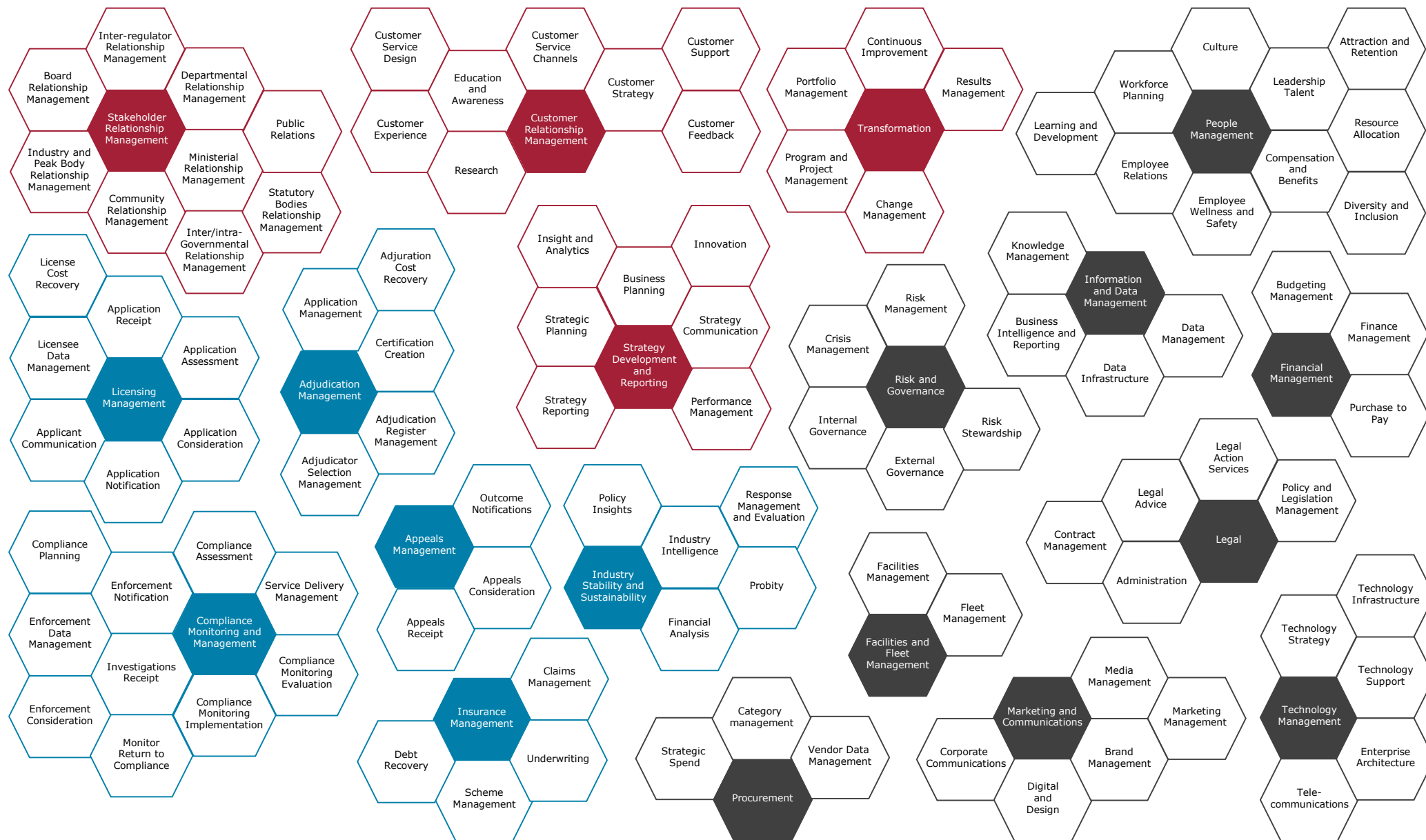
- 1. Strategic capabilities:** Activities that enable performance and delivery of value along dimensions that matter to key stakeholders and the community
- 2. Core capabilities:** Activities that contribute to performing your role as regulator by administering the *Queensland Building and Construction Commission Act* as well assisting in the delivery of legislated activities such as *Building and Construction Industry Payments Act* and the *Queensland Home Warranty Scheme*.
- 3. Enabling capabilities:** Processes and activities that support QBCC and its people to operate in an effective way.



■ Strategic     
 ■ Core     
 ■ Enabling

# Recommended Secondary Capabilities

Breaking primary capabilities into secondary capabilities helps to identify gaps and understand implications on future capabilities

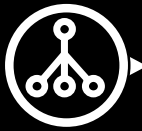




● **Background and project scope**



● **Recommended capabilities to deliver value**



● **Design principles and recommendations for future state functional design**



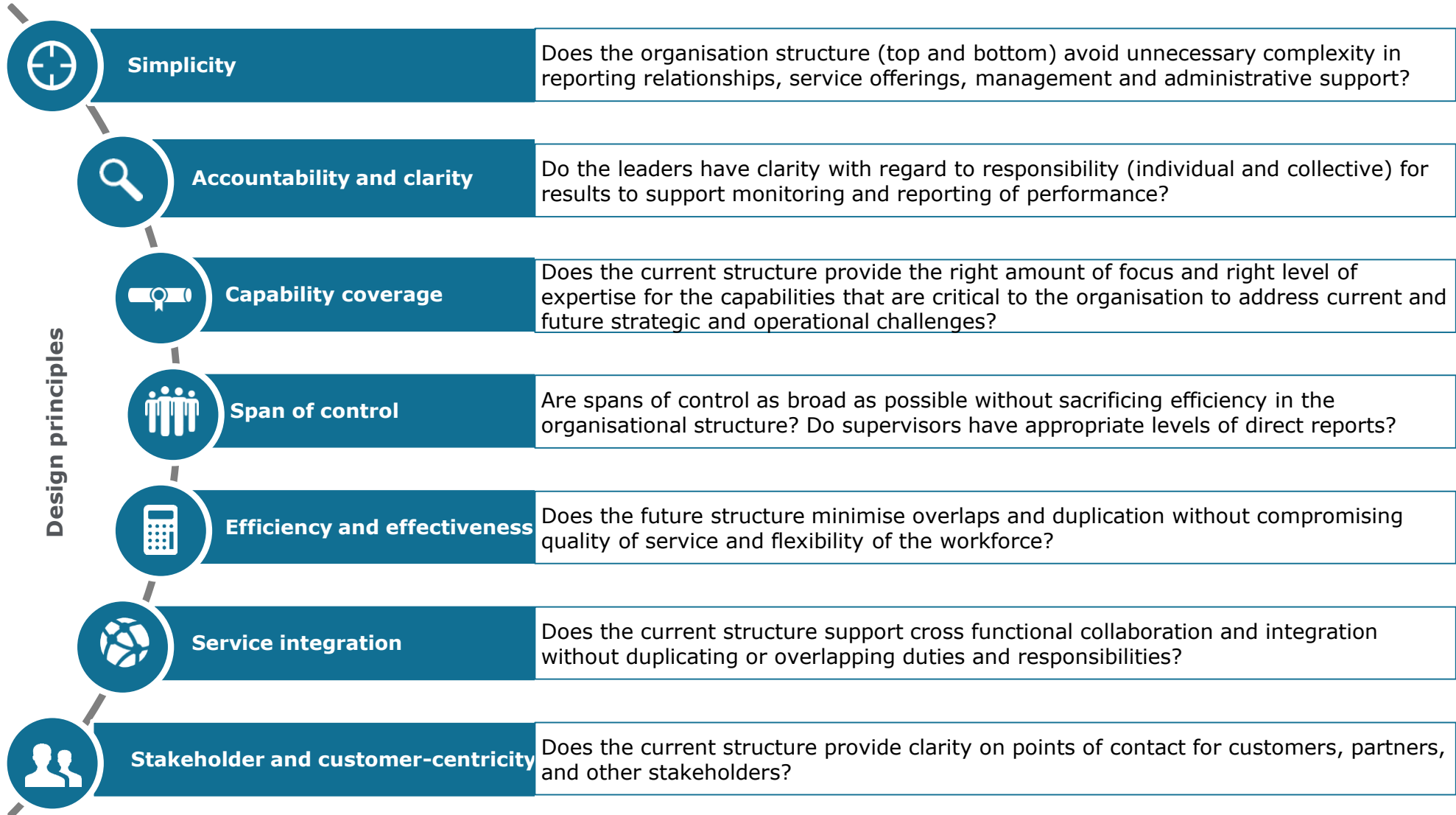
● **Future organisation structures**



● **High level implementation roadmap**

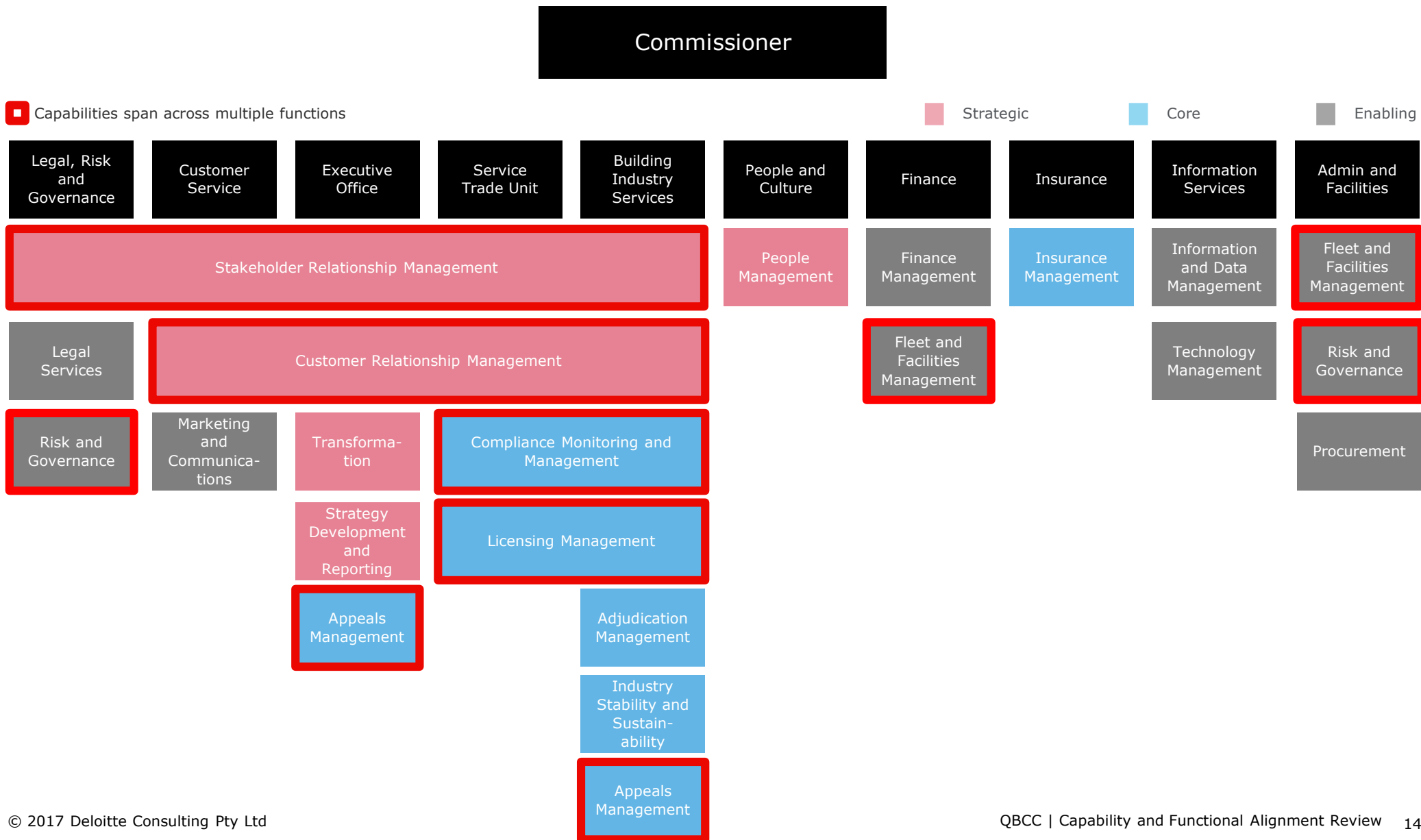
# Guiding design principles

A set of design principles were developed as criteria for testing the benefits of the current, proposed and recommended structure



# QBCC Current state functions – 2016

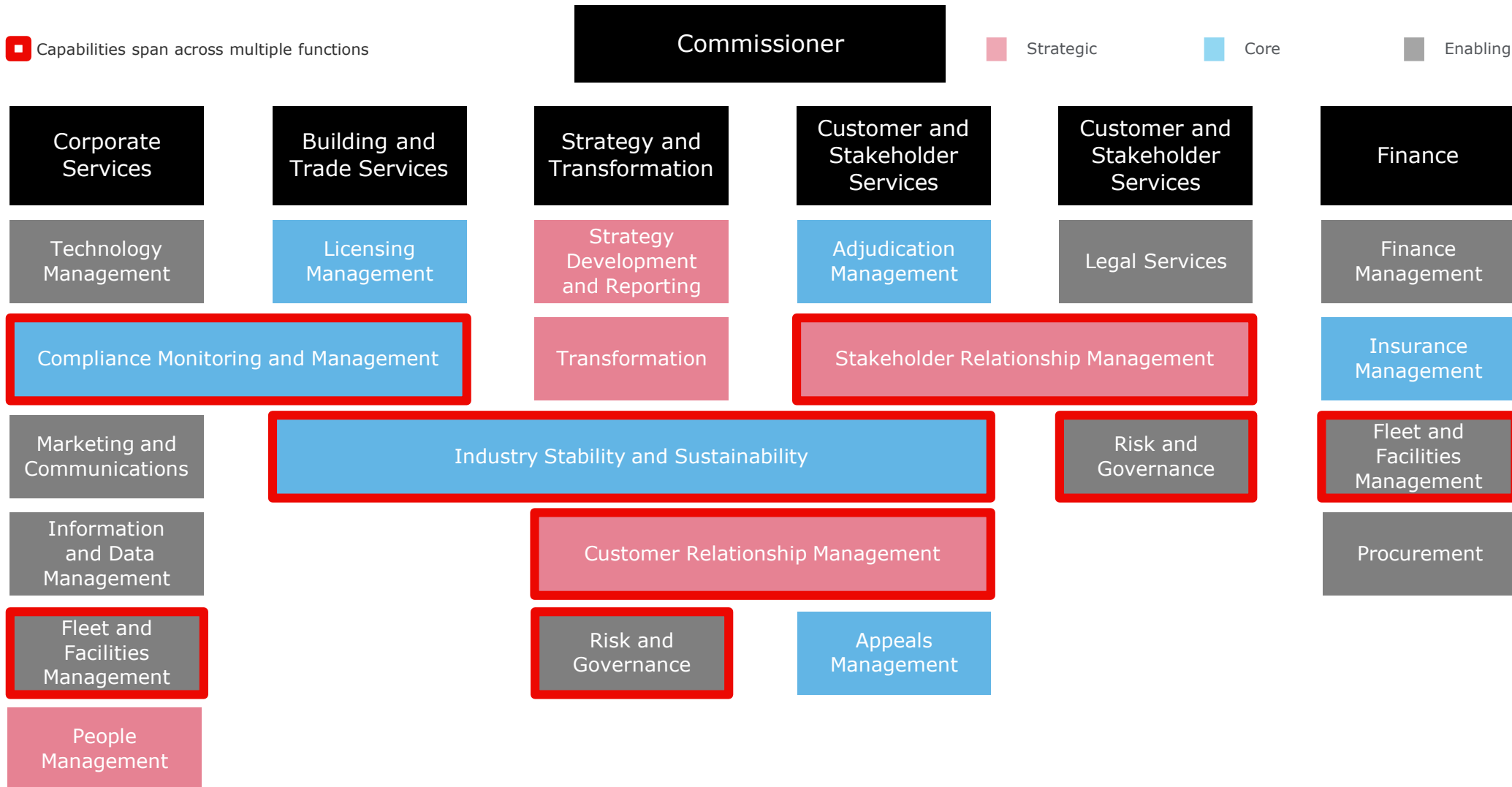
Based on the 2016 organisation structure the following functional alignment has been mapped based on the primary capabilities





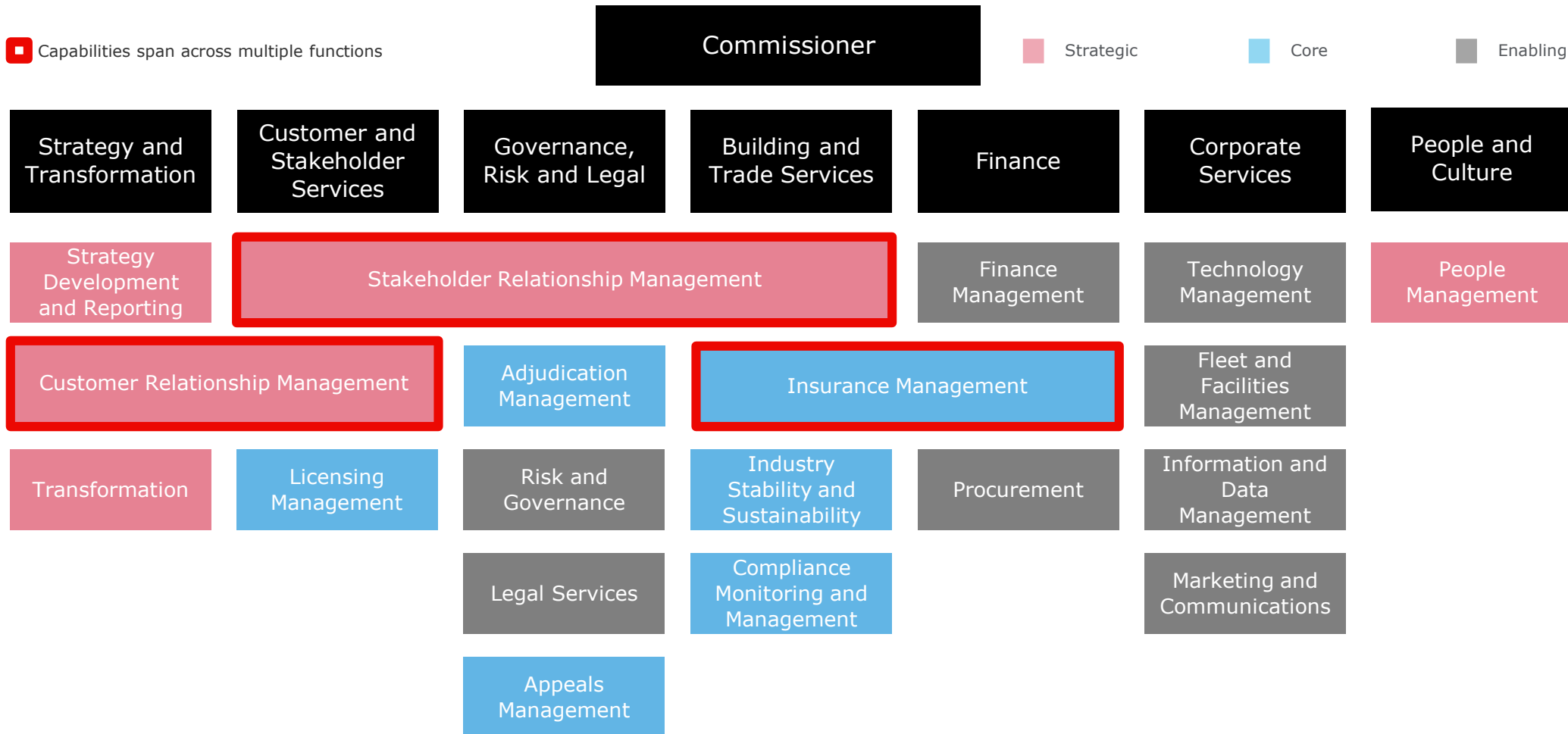
# QBCC Future state – Option 1 (current draft structure)

Mapping the functional alignment based on the current draft organisation structure highlights a large number of capabilities spread across multiple functions































# QBCC Future state functions structure – Option 2 (recommended)

Based on the capability mapping exercise and the workshop with the QBCC SLT the recommended structure reduces the number of capabilities spread across functions to ensure simplicity, clarity and accountability in the structure



# Assessment of future state functional alignment

The proposed alignments were assessed against the design principles developed to ensure QBCC is able to adapt to existing and future challenges

		Current State	Option 1	Option 2	Commentary
<b>Design principles</b>	 <b>Simplicity</b>				Simplicity is achieved by decreasing the complexity and spread of capabilities in the structure. The recommended structure provides the greatest reduction in complexity by minimising the number of shared capabilities to only the essential requirements.
	 <b>Accountability and clarity</b>				Currently QBCC has numerous siloed functions with capabilities spanning across numerous functions leading to inconsistent performance. Aligning capabilities into logical groups in Option 2 will provide the greatest level of accountability for performance.
	 <b>Capability coverage</b>				Capability coverage is generally strong but is disparate, leading to the likelihood of not maximising return on investment. Under the recommended option the logical groupings addresses this.
	 <b>Span of control and accountability</b>				Spans of control (in terms of direct reports) is largely consistent between the current state a future state options. However, spans of accountability are imbalanced. Option 2 for the future state will seek to rectify this anomaly.
	 <b>Efficiency and effectiveness</b>				The current structure had many different divisions reporting directly to the Commissioner. The proposed functions will increase efficiency and effectiveness by providing more focused effort and activities reducing chance of duplication.
	 <b>Service integration</b>				The recommended option increases the integration of services by clustering functions to enable collaboration, while reducing the risk of duplication of duties and responsibilities through clear accountability of functions.
	 <b>Stakeholder and customer-centricity</b>				The current structure provides large customer and stakeholder coverage. However, customer satisfaction has continued to decline, which could be as a result of a number of factors. Both recommended options provide greater alignment of customer and stakeholder centricity by rationalising functions.

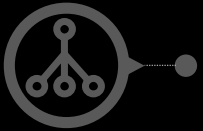
 Stronger  Weaker



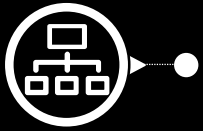
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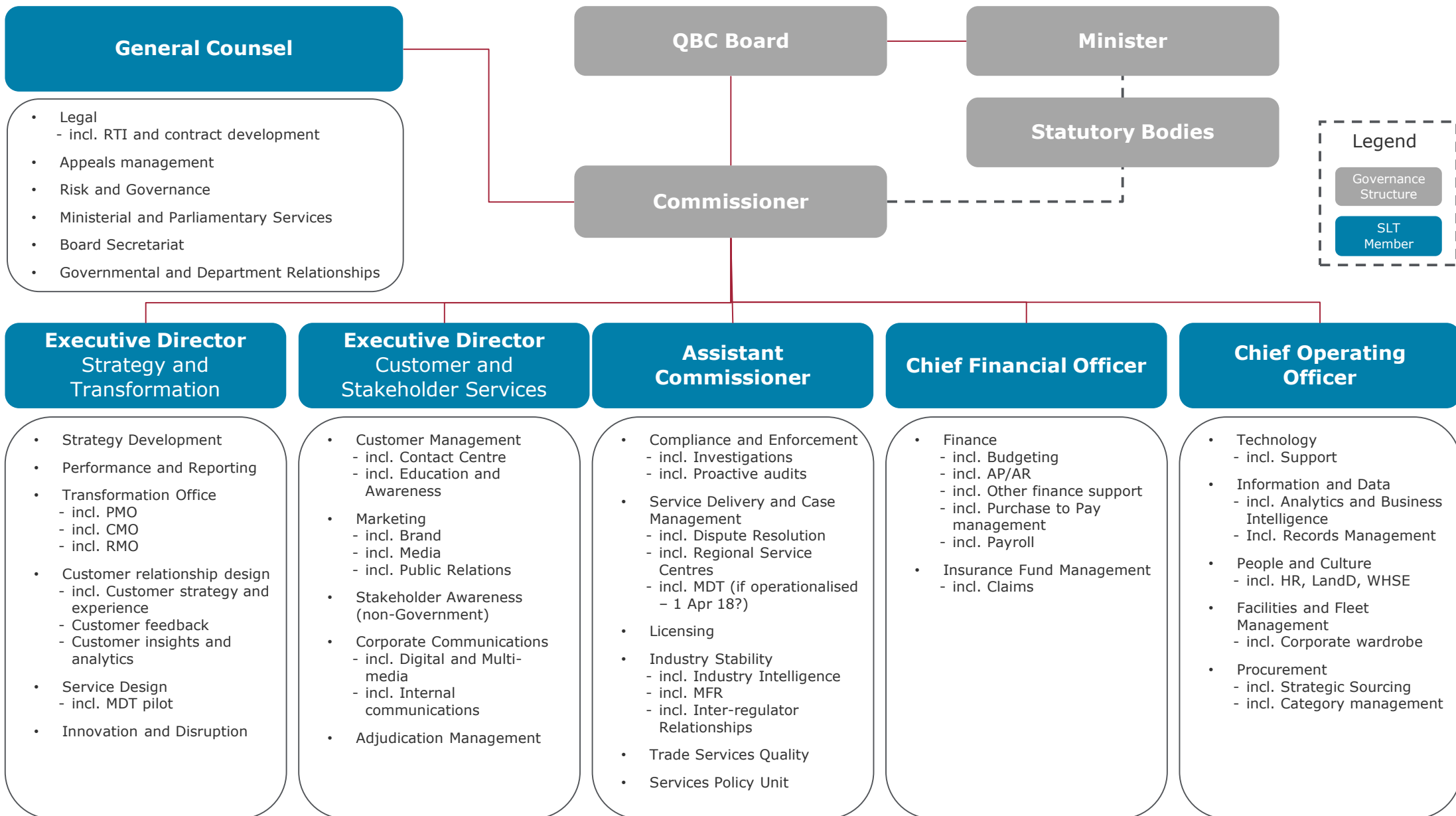
## Key differences in organisation structure options

Two options are provided for the future state high level structure. Both address the challenges the organisation currently faces, however, there are some discreet differences between options

Role	Key points of recommended option
<b>General Counsel</b>	<ul style="list-style-type: none"> <li>• Accountable for Governance, Risk and Legal function</li> <li>• Moves Appeals Management (i.e. any disputed QBCC decision) into portfolio to align with organisation’s legal services from the ED Customer and Stakeholder Services</li> <li>• Accountable for Government and Board Stakeholder Relationships</li> <li>• Accountable for all External Governance activities, including Estimates</li> </ul>
<b>Executive Director: Strategy and Transformation</b>	<ul style="list-style-type: none"> <li>• Accountable for Strategy and Transformation function</li> <li>• Consolidates strategic secondary capabilities for Customer Relationship Management into single portfolio</li> <li>• Removes External Governance activities (Estimates) and Industry Intelligence</li> </ul>
<b>Executive Director: Customer and Stakeholder Services</b>	<ul style="list-style-type: none"> <li>• Accountable for Customer and Stakeholder Services function</li> <li>• Removes Appeals Management and Industry Intelligence</li> <li>• Accountable for delivery related capabilities of Customer Relationship Management</li> <li>• Responsible for Adjudication Management given the transactional nature of this work (i.e.. facilitate process rather than reach decision for parties involved)</li> <li>• Accountable for non-Government stakeholder relationships</li> </ul>
<b>Assistant Commissioner</b>	<ul style="list-style-type: none"> <li>• Accountable for Building and Trade Services including the delivery and management of regulatory services (regional service centres and MDT, if operationalised in April 2018)</li> <li>• Consolidates Industry intelligence capability into single accountability rather than being spread across ED Strategy and Transformation and COO</li> </ul>
<b>Chief Financial Officer</b>	<ul style="list-style-type: none"> <li>• Accountable for Finance, Insurance Management and Procurement</li> <li>• Removes Fleet and Facilities Management</li> </ul>
<b>Chief Operating Officer</b>	<ul style="list-style-type: none"> <li>• Accountable for Corporate Services function</li> <li>• Accountable for Technology, Data and Information and Fleet / Facilities Management and Marketing and Communications</li> <li>• Removes Service Delivery Management (i.e. Triage) secondary capability</li> </ul>
<b>Executive Director: People and Culture</b>	<ul style="list-style-type: none"> <li>• New position in SLT from option 1 to ensure accountability of People Management</li> </ul>

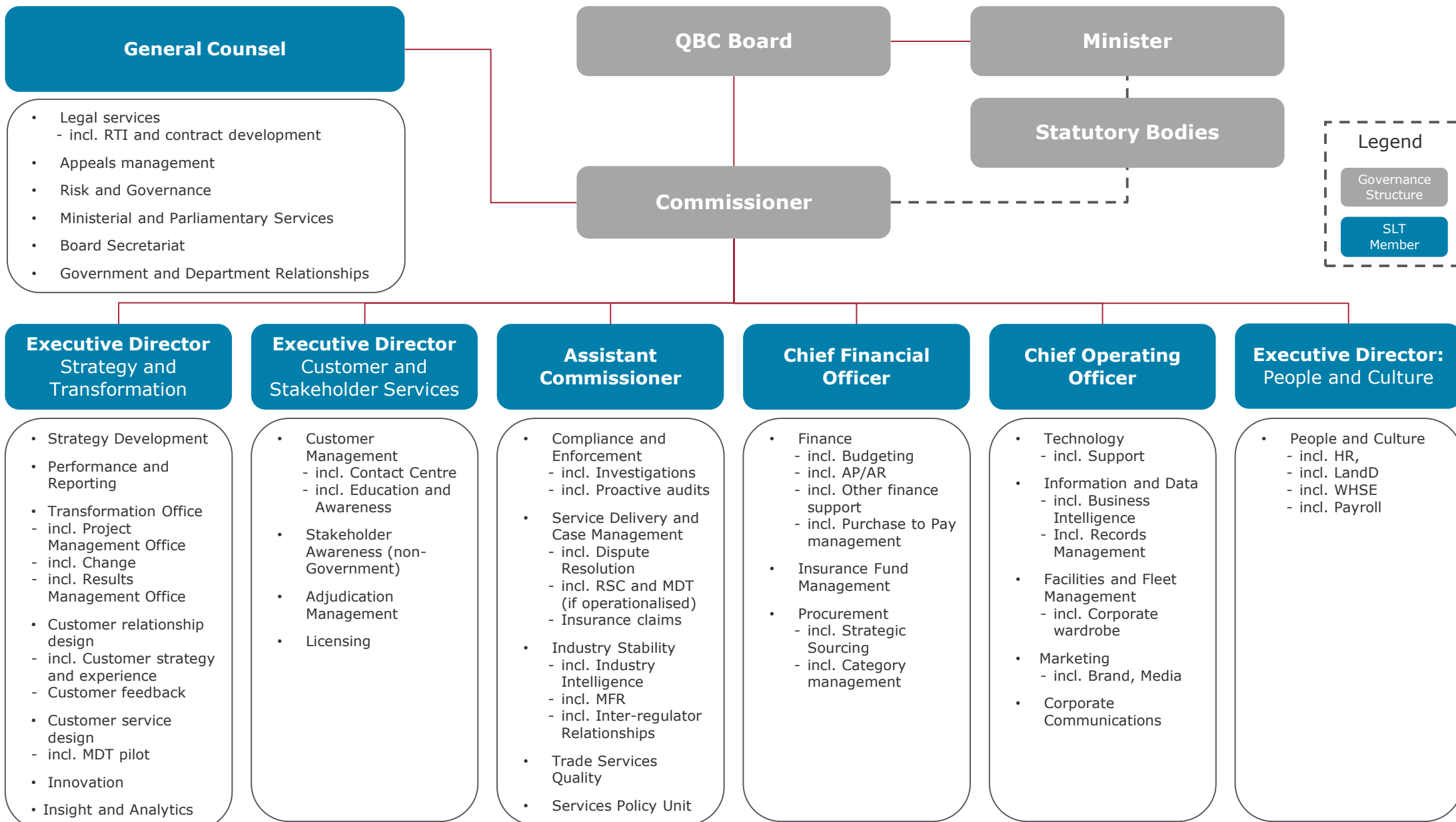
# Executive level organisation structure – Option 1

The proposed structure below is indicative only and is based on the logical allocation of functions in the recommended functional alignment



# Executive level organisation structure – Recommended (option 2)

The proposed structure is indicative only and based on the logical allocation of functions in the recommended alignment and through consultation with the SLT



**General Counsel**

- Legal services  
- incl. RTI and contract development
- Appeals management
- Risk and Governance
- Ministerial and Parliamentary Services
- Board Secretariat
- Government and Department Relationships

**Legend**

- Governance Structure
- SLT Member

**Executive Director Strategy and Transformation**

- Strategy Development
- Performance and Reporting
- Transformation Office  
- incl. Project Management Office  
- incl. Change  
- incl. Results Management Office
- Customer relationship design  
- incl. Customer strategy and experience  
- Customer feedback
- Customer service design  
- incl. MDT pilot
- Innovation
- Insight and Analytics

**Executive Director Customer and Stakeholder Services**

- Customer Management  
- incl. Contact Centre  
- incl. Education and Awareness
- Stakeholder Awareness (non-Government)
- Adjudication Management
- Licensing

**Assistant Commissioner**

- Compliance and Enforcement  
- incl. Investigations  
- incl. Proactive audits
- Service Delivery and Case Management  
- incl. Dispute Resolution  
- incl. RSC and MDT (if operationalised)  
- Insurance claims
- Industry Stability  
- incl. Industry Intelligence  
- incl. MFR  
- incl. Inter-regulator Relationships
- Trade Services Quality
- Services Policy Unit

**Chief Financial Officer**

- Finance  
- incl. Budgeting  
- incl. AP/AR  
- incl. Other finance support  
- incl. Purchase to Pay management
- Insurance Fund Management
- Procurement  
- incl. Strategic Sourcing  
- incl. Category management

**Chief Operating Officer**

- Technology  
- incl. Support
- Information and Data  
- incl. Business Intelligence  
- Incl. Records Management
- Facilities and Fleet Management  
- incl. Corporate wardrobe
- Marketing  
- incl. Brand, Media
- Corporate Communications

**Executive Director: People and Culture**

- People and Culture  
- incl. HR,  
- incl. LandD  
- incl. WHSE  
- incl. Payroll



● **Background and project scope**



● **Recommended capabilities to deliver value**



● **Design principles and recommendations for future state functional design**



● **Future organisation structure**

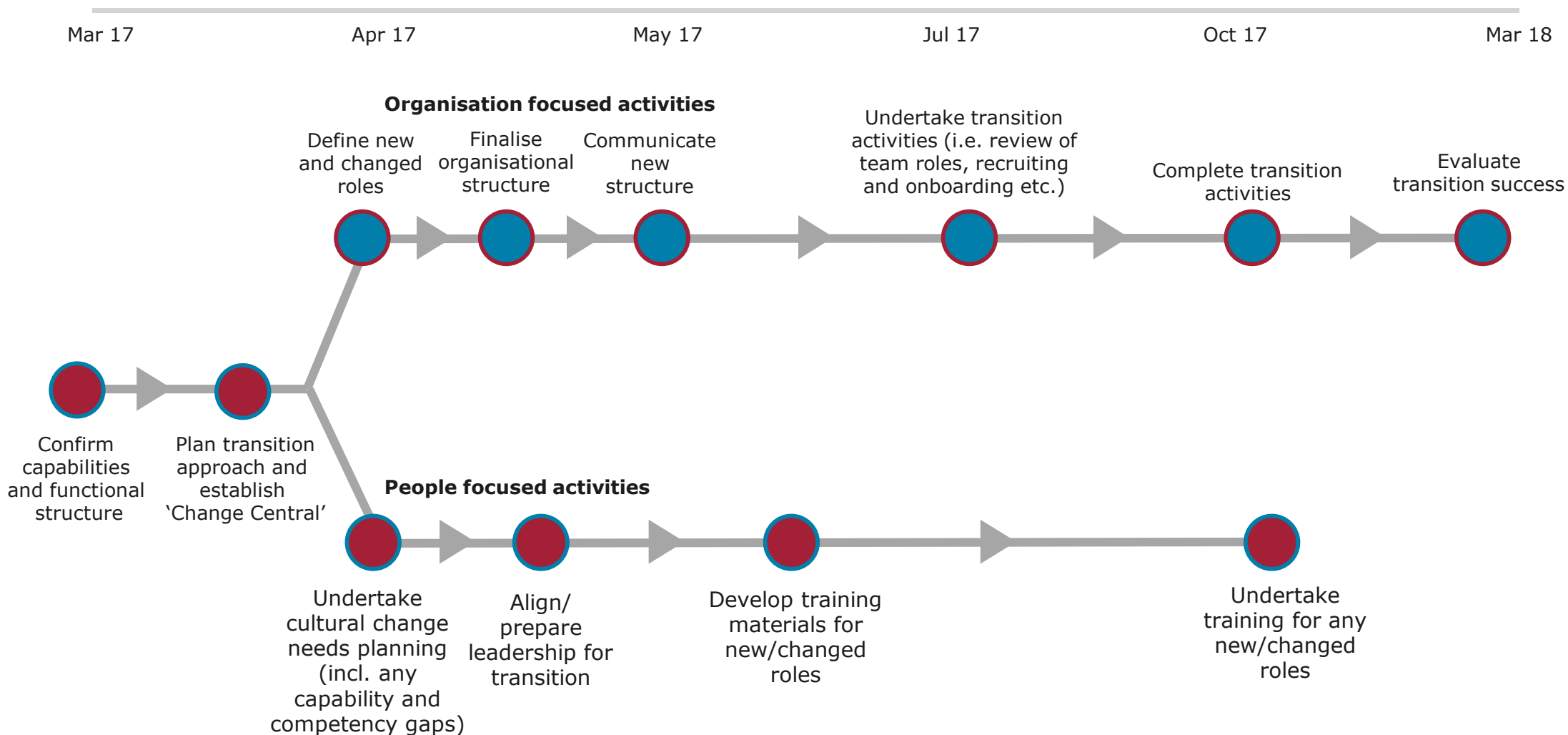


● **High level implementation roadmap**



# High level approach to implementation

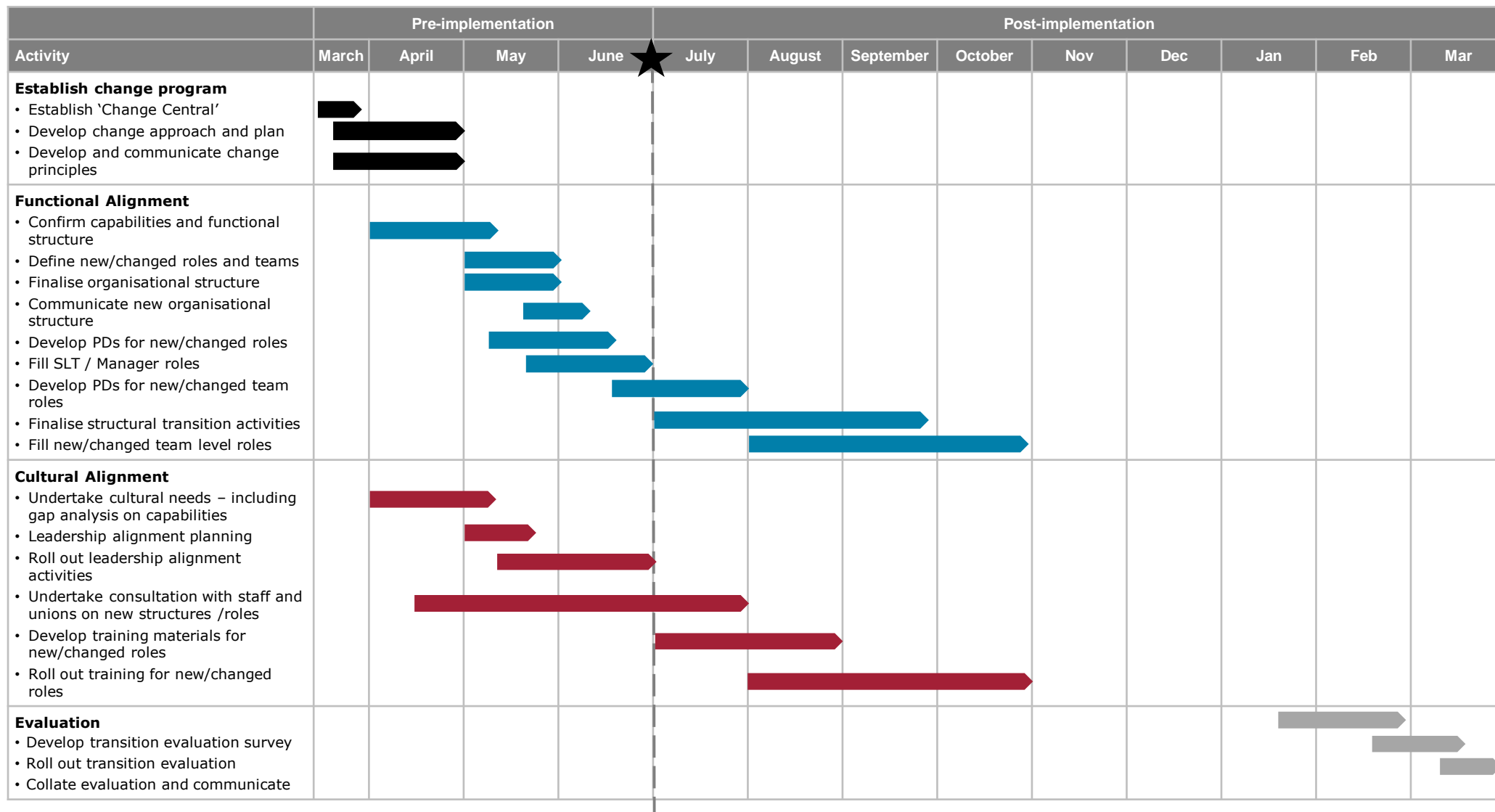
The new structure of QBCC requires a careful and considered workforce transition process that focusses on both the structural and cultural changes



# Detailed roadmap

The roadmap outlines key activities required to transition to the new structure and deliver on QBCC strategy. Note this is an ambitious timeframe and will depend on culture of QBCC

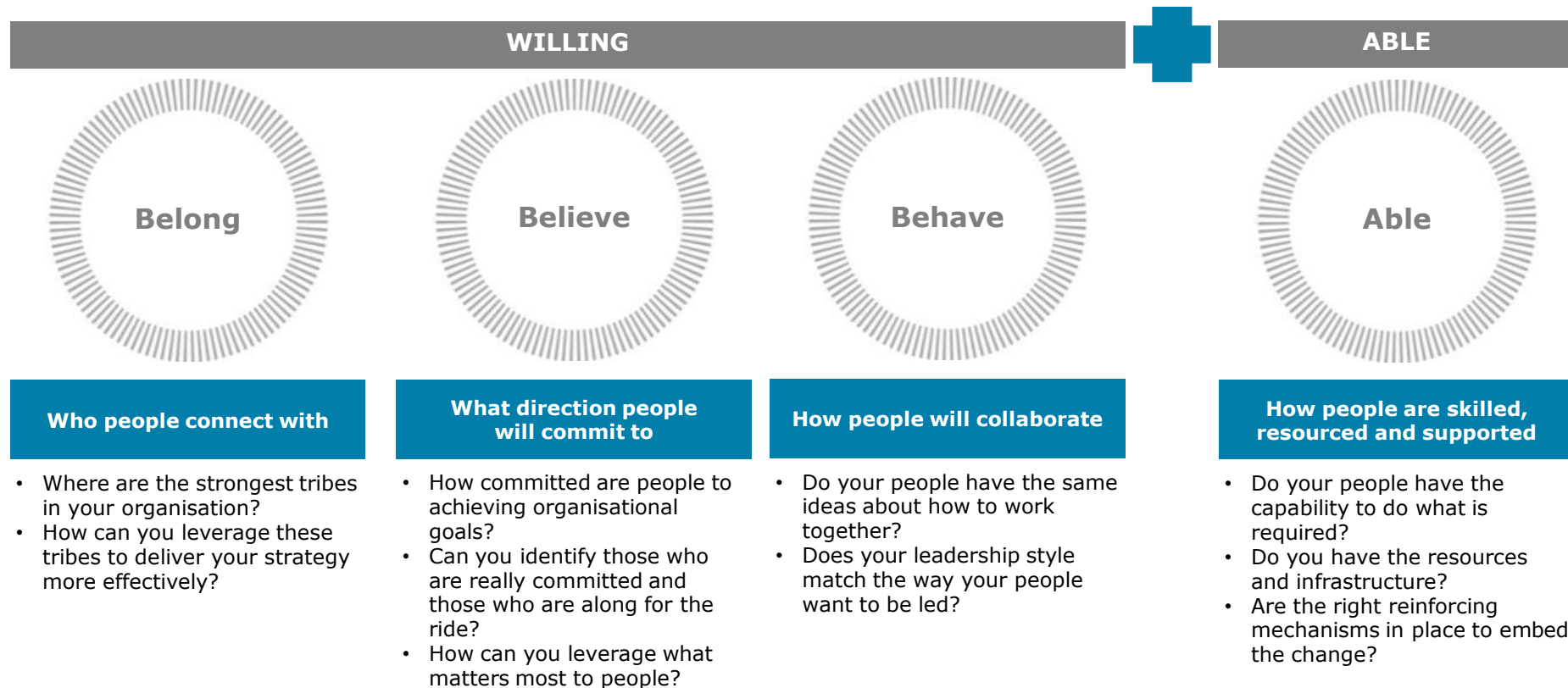
Legend: ★ Go live milestone



# Importance of culture in change

Culture will be an essential enabler to a successful implementation

Creating greater functional alignment is not the 'silver bullet' to QBCC realising its goal to be an efficient and effective regulator that builds trust and confidence. There are elements of QBCC's current culture that are still largely based on the legacies of the former QBSA. Neglecting the cultural nuances will impede the implementation of the business model and a high performance culture. There are four elements required for a group to work effectively together and towards a common goal. Understanding these will lay the foundations to build a 'long lasting' and implementable QBCC business model.



# Culture is an essential enabler

Staying the course and being disciplined to focus on the outcomes will be critical to achieving the desired state structure

## Implementation effort

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This will ensure that day-to-day business is not disrupted and also increases the likelihood of a timely and successful implementation.

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## Appendix A: Capability taxonomy

# Capability taxonomy – Strategic capabilities

Primary capability	Secondary capability	Activities / processes
<b>Stakeholder Relationship Management</b>	Board Relationship Management	<ul style="list-style-type: none"> <li>• Board Secretariat</li> <li>• Board Satisfaction</li> <li>• Board Evaluation</li> </ul>
	Departmental Relationship Management	<ul style="list-style-type: none"> <li>• Department Liaison</li> <li>• SDS and budget liaison</li> </ul>
	Ministerial Relationship Management	<ul style="list-style-type: none"> <li>• Parliamentary Support</li> <li>• Minster Liaison</li> <li>• Cabinet Liaison</li> <li>• Ministerial Correspondence and Briefing</li> </ul>
	Inter-regulator Relationship Management	<ul style="list-style-type: none"> <li>• Liaison with other Regulators</li> <li>• Identifying relationship opportunities</li> </ul>
	Inter/intra-Governmental Relationship Management	<ul style="list-style-type: none"> <li>• Liaison with other government departments</li> <li>• Liaison with government agencies</li> </ul>
	Community Relationship Management	<ul style="list-style-type: none"> <li>• Liaison with community stakeholders</li> <li>• Community campaigns</li> </ul>
	Industry and Peak Body Relationship Management	<ul style="list-style-type: none"> <li>• Liaison with industry players (i.e. Master Builders Association etc.)</li> <li>• Liaison with peak bodies</li> </ul>
	Statutory Bodies Relationship Management	<ul style="list-style-type: none"> <li>• Services Trade Council management</li> <li>• Complex Licensing Panel management</li> </ul>
	Public Relations	<ul style="list-style-type: none"> <li>• PR activities</li> <li>• Speech writing</li> </ul>

# Capability taxonomy – Strategic capabilities

Primary capability	Secondary capability	Activities / processes
<b>Customer Relationship Management</b>	Research	<ul style="list-style-type: none"> <li>Investigate activities to design new offerings or enhance existing offerings</li> </ul>
	Customer Support	<ul style="list-style-type: none"> <li>Online, telephone, written and face to face</li> <li>Guidance materials and information</li> </ul>
	Customer Feedback	<ul style="list-style-type: none"> <li>Online, face to face, written and verbal feedback collection</li> <li>Drawing insights and identifying continuous improvement initiatives for relevant functions</li> </ul>
	Customer Experience	<ul style="list-style-type: none"> <li>Management of end to end series of customer interactions</li> <li>Management of perceptions of the offerings</li> </ul>
	Customer Service Design	<ul style="list-style-type: none"> <li>Design of service delivery via numerous channels (online, face to face, telephone etc.)</li> <li>Customer Insights</li> <li>Analysis characteristics, habits and locations of customer needs</li> </ul>
	Customer Strategy	<ul style="list-style-type: none"> <li>Strategy, planning and measures for servicing and supporting customers</li> </ul>
	Customer Service Channels	<ul style="list-style-type: none"> <li>Front counter desk</li> <li>Contact centre</li> <li>Online customer self-service</li> </ul>
	Education and Awareness	<ul style="list-style-type: none"> <li>External stakeholder Education and Awareness strategy</li> <li>Activities evaluation</li> </ul>

# Capability taxonomy – Strategic capabilities

Primary capability	Secondary capability	Activities / processes
<b>Strategy Development</b>	Strategic Planning	<ul style="list-style-type: none"> <li>• Goal and vision setting</li> <li>• Objective setting</li> </ul>
	Business Planning	<ul style="list-style-type: none"> <li>• Operational planning at BU level</li> <li>• Regional planning</li> <li>• Initiative planning</li> </ul>
	Strategy Communication	<ul style="list-style-type: none"> <li>• Internal communication to staff and stakeholders</li> <li>• External communication to industry, Government and community</li> </ul>
	Performance Management	<ul style="list-style-type: none"> <li>• Organisation performance framework</li> <li>• Implementation and management of KPIs and balanced scorecards</li> </ul>
	Innovation	<ul style="list-style-type: none"> <li>• Ideas and adoption of innovation from Industry, Community and Customer lens</li> </ul>
	Strategy Reporting	<ul style="list-style-type: none"> <li>• Annual report development</li> <li>• Internal reporting of strategic performance to staff and stakeholders</li> <li>• External reporting of strategic performance to industry, Government and community</li> </ul>
	Insights and Analytics	<ul style="list-style-type: none"> <li>• Behavioural economics</li> <li>• Analysing and drawing insights from historical data</li> </ul>
<b>Transformation</b>	Continuous Improvement	<ul style="list-style-type: none"> <li>• Internal process improvements</li> <li>• System improvements</li> </ul>
	Portfolio Management	<ul style="list-style-type: none"> <li>• Collective management / optimisation of current and proposed projects</li> </ul>
	Program and Project Management	<ul style="list-style-type: none"> <li>• Management of individual programs / projects</li> </ul>
	Change Management	<ul style="list-style-type: none"> <li>• Organisational change</li> <li>• Project change</li> </ul>
	Results Management	<ul style="list-style-type: none"> <li>• Forecast and plan</li> <li>• Review and evaluate</li> </ul>



# Capability taxonomy – Core capabilities

Primary capability	Secondary capability	Activities / processes
<b>Licensing Management</b>	Application Receipt	<ul style="list-style-type: none"> <li>• Application submission process</li> <li>• Submission systems</li> </ul>
	Licensee Data Management	<ul style="list-style-type: none"> <li>• Management of data such as expiry dates, types of licenses, licensees information</li> <li>• Management of publicly accessible licensee list</li> </ul>
	Application Communication	<ul style="list-style-type: none"> <li>• Applicant communication processes/ touchpoints in licensing processes</li> <li>• Preparation of guidance and communication material around application process, license types etc.</li> </ul>
	Application Assessment	<ul style="list-style-type: none"> <li>• Assessment against eligibility criteria</li> <li>• Eligibility criteria maintenance</li> </ul>
	Application Consideration	<ul style="list-style-type: none"> <li>• Decision making around licensing approval or rejection</li> <li>• Documentation of special consideration, restrictions, time periods etc.</li> </ul>
	Applicant Notification	<ul style="list-style-type: none"> <li>• Notification of outcome in writing with statement of reasons, conditions (if applicable) and review options (if applicable)</li> </ul>
	License Cost Recovery	<ul style="list-style-type: none"> <li>• Implement and review cost recovery arrangements</li> <li>• Fee / levy recovery process</li> </ul>

# Capability taxonomy – Core capabilities

Primary capability	Secondary capability	Activities / processes
<b>Compliance Monitoring and Management</b>	Enforcement Data Management	<ul style="list-style-type: none"> <li>• Management of data around enforcement notifications and decisions</li> <li>• Publication of decisions</li> </ul>
	Investigations Receipt	<ul style="list-style-type: none"> <li>• Understand investigations requirements                             <ul style="list-style-type: none"> <li>- Plan activities and associated stakeholders Awareness accordingly</li> </ul> </li> </ul>
	Compliance Assessment	<ul style="list-style-type: none"> <li>• - Evidence gathering</li> <li>- Undertake investigations, inspections and interviews</li> <li>- Determine breaches from evidence gathering</li> </ul>
	Enforcement Consideration	<ul style="list-style-type: none"> <li>• - Determine enforcement actions and outcomes proportionate to risks posed by non-compliance</li> <li>- Seek peer review</li> <li>- Seek legal advice (if applicable)</li> </ul>
	Enforcement Notification	<ul style="list-style-type: none"> <li>• - Document decision with statement of reasons, enforcement notice and appeal options</li> <li>- Notify relevant parties of the investigation outcome, statement of reasons and enforcement action decided including review options</li> </ul>
	Monitor Return to Compliance	<ul style="list-style-type: none"> <li>• - Monitor licensee to ensure enforcement action has been rectified</li> <li>- Perform follow up inspection</li> <li>- Follow up with licensee and complainant to follow up</li> </ul>
	Compliance Planning	<ul style="list-style-type: none"> <li>• - Compliance monitoring frameworks</li> <li>- Development of proactive compliance monitoring programs</li> </ul>
	Compliance Monitoring Implementation	
	Compliance Monitoring Evaluation	
	Service Delivery Management	<ul style="list-style-type: none"> <li>- Case management and triage</li> <li>- Dispute management</li> <li>- Regional Service Centres</li> <li>- MDT (if operationalised)</li> </ul>

# Capability taxonomy – Core capabilities

Primary capability	Secondary capability	Activities / processes
<b>Industry Stability and Sustainability</b>	Industry Intelligence	<ul style="list-style-type: none"> <li>- Industry trends and insights</li> <li>- Industry failure event identification</li> </ul>
	Financial Analysis	<ul style="list-style-type: none"> <li>- MFR</li> <li>- Financial Investigations</li> </ul>
	Response Management and Evaluation	<ul style="list-style-type: none"> <li>- Response framework</li> <li>- Response procedure and communication</li> <li>- Lessons learned</li> <li>- Improvement actions</li> </ul>
	Policy Insights	<ul style="list-style-type: none"> <li>- Services Policy Unit</li> <li>- Effectiveness of policy implementation in the industry</li> <li>- Industry trends</li> </ul>
	Probity	<ul style="list-style-type: none"> <li>- Licensing Entitlement</li> </ul>
<b>Appeals Management</b>	Appeals Receipt	<ul style="list-style-type: none"> <li>- Appeals process and systems</li> </ul>
	Appeals Consideration	<ul style="list-style-type: none"> <li>- Review decision and evidence gathered</li> <li>- Seek legal advice</li> </ul>
	Outcome Notification	<ul style="list-style-type: none"> <li>- Review decision and evidence gathered</li> <li>- Seek legal advice where required</li> </ul>

# Capability taxonomy – Core capabilities

Primary capability	Secondary capability	Activities / processes
<b>Insurance Management</b>	Scheme Management	<ul style="list-style-type: none"> <li>• Management of the Insurance fund</li> </ul>
	Underwriting	<ul style="list-style-type: none"> <li>• Premium determination</li> <li>• Issuing premiums</li> </ul>
	Claims Management	<ul style="list-style-type: none"> <li>• Claims assessment</li> <li>• Claims processing</li> </ul>
	Debt Recovery	<ul style="list-style-type: none"> <li>• Recovering moneys from licensees</li> <li>• Transferring to legal if all internal avenues exhausted</li> </ul>
<b>Adjudication Management</b>	Application Management	<ul style="list-style-type: none"> <li>• Receiving and processing adjudication applications</li> </ul>
	Certification Creation	<ul style="list-style-type: none"> <li>• Managing certification requests</li> <li>• Creation of certifications</li> </ul>
	Adjudicator Selecting Management	<ul style="list-style-type: none"> <li>• Managing adjudicator applications</li> <li>• Adjudicator registry maintenance</li> </ul>
	Adjudication Register Management	<ul style="list-style-type: none"> <li>• Managing public log of outcomes of adjudication applications</li> </ul>
	Adjudication Cost Recovery	<ul style="list-style-type: none"> <li>• Recovering cost of application processing</li> </ul>

# Capability taxonomy – Enabling capabilities

Primary capability	Secondary capability	Activities / processes
<b>People Management</b>	Learning and Development	<ul style="list-style-type: none"> <li>• Learning strategy</li> <li>• Delivery of learning and development programs</li> <li>• Evaluation of programs and strategy</li> </ul>
	Diversity and Inclusion	<ul style="list-style-type: none"> <li>• Initiative planning and management</li> <li>• Internal and external reporting</li> </ul>
	Workforce Planning	<ul style="list-style-type: none"> <li>• Forecasting workforce demand</li> <li>• Competency planning</li> <li>• Succession planning</li> </ul>
	Employee Wellness and Safety	<ul style="list-style-type: none"> <li>• Workplace health and safety</li> <li>• Workforce wellness</li> </ul>
	Culture	<ul style="list-style-type: none"> <li>• Employee Awareness Surveys</li> <li>• Awareness initiatives</li> <li>• Employee value proposition</li> </ul>
	Leadership Talent	<ul style="list-style-type: none"> <li>• Development programs</li> <li>• Coaching / mentoring</li> </ul>
	Resource Allocation	<ul style="list-style-type: none"> <li>• Employee scheduling</li> <li>• Forecasting demand across locations</li> </ul>
	Attraction and Retention	<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Retention / talent management</li> <li>• Separations</li> </ul>
	Employee Relations	<ul style="list-style-type: none"> <li>• ER Strategy and framework</li> <li>• Employee case, dispute and investigations management</li> <li>• Litigation management</li> <li>• Union liaison and negotiation</li> </ul>
	Compensation and Benefits	<ul style="list-style-type: none"> <li>• Benefits</li> <li>• Remuneration</li> <li>• Superannuation</li> <li>• Payroll</li> </ul>

# Capability taxonomy – Enabling capabilities

Primary capability	Secondary capability	Activities / processes
<b>Risk and Governance</b>	Risk Management	<ul style="list-style-type: none"> <li>• Risk identification and management</li> </ul>
	Crisis Management	<ul style="list-style-type: none"> <li>• Scenario planning</li> <li>• Crisis plan</li> <li>• Business continuity plan management</li> </ul>
	Internal Governance	<ul style="list-style-type: none"> <li>• Delegations</li> <li>• Quality assurance</li> <li>• Internal organisation audits</li> </ul>
	External Governance	<ul style="list-style-type: none"> <li>• External audits</li> <li>• Estimates</li> <li>• External stakeholder (parliamentary, government etc.) reporting</li> <li>• Legislative compliance</li> </ul>
	Risk Stewardship	<ul style="list-style-type: none"> <li>• Risk strategy and appetite setting</li> <li>• Development of risk frameworks</li> </ul>
<b>Legal</b>	Legal Advice	<ul style="list-style-type: none"> <li>• Legal advice to the QBCC organisation</li> </ul>
	Legal Action Services	<ul style="list-style-type: none"> <li>• Legal advice around regulatory decisions and appeals</li> </ul>
	Policy and Legislation Management	<ul style="list-style-type: none"> <li>• Interpretation and implementation of policy and legislation updates</li> </ul>
	Contract Management	<ul style="list-style-type: none"> <li>• Contract development and enforcement</li> <li>• Relationship management</li> </ul>

# Capability taxonomy – Enabling capabilities

Primary capability	Secondary capability	Activities / processes
<b>Information and Data Management</b>	Knowledge Management	<ul style="list-style-type: none"> <li>• Systems and processes to facilitate collation and storage of knowledge across the organisation</li> <li>• Precedent / decision logs</li> </ul>
	Business Intelligence and Reporting	<ul style="list-style-type: none"> <li>• Data analytics</li> <li>• Reporting systems and processes</li> </ul>
	Data Infrastructure	<ul style="list-style-type: none"> <li>• Management of data centres and facilities</li> <li>• Systems and processes to facilitate data consumption and sharing across the organisation</li> <li>• Records management system</li> </ul>
	Data Management	<ul style="list-style-type: none"> <li>• Records Management framework implementation</li> <li>• Data warehouse maintenance</li> </ul>
<b>Technology Management</b>	Technology Strategy	<ul style="list-style-type: none"> <li>• Technology roadmap</li> <li>• Technology strategy development and execution</li> </ul>
	Technology Support	<ul style="list-style-type: none"> <li>• IT help desk and support services</li> </ul>
	Enterprise Architecture	<ul style="list-style-type: none"> <li>• Development of EA framework and IT design</li> </ul>
	Telecommunications	<ul style="list-style-type: none"> <li>• Management of telecommunication technology across the organisation</li> </ul>
	Technology Infrastructure	<ul style="list-style-type: none"> <li>• Management of hardware, software, systems, applications and networks</li> <li>• Software development, testing and release management</li> </ul>

# Capability taxonomy – Enabling capabilities

Primary capability	Secondary capability	Activities / processes
<b>Financial Management</b>	Finance Management	<ul style="list-style-type: none"> <li>• General fund management</li> <li>• Financial planning and analysis</li> <li>• Payables and Receivables management</li> <li>• Expenses</li> </ul>
	Budget Management	<ul style="list-style-type: none"> <li>• Budget planning and forecasting</li> <li>• Budget tracking and management</li> <li>• Treasury</li> </ul>
	Purchase to Pay Management	<ul style="list-style-type: none"> <li>• Financial transactions related to procurement activities</li> </ul>
<b>Asset Management</b>	Fleet Management	<ul style="list-style-type: none"> <li>• Maintenance plan</li> <li>• Capital spend forecast</li> </ul>
	Facilities Management	<ul style="list-style-type: none"> <li>• Maintenance plan</li> <li>• Capital spend forecast</li> <li>• Corporate wardrobe</li> </ul>
<b>Procurement</b>	Strategic Spend	<ul style="list-style-type: none"> <li>• Sourcing process from assessment, identification and negotiation with suppliers and implementation of new supplier contract</li> </ul>
	Category Management	<ul style="list-style-type: none"> <li>• Categorising sourcing capabilities and resources</li> </ul>
	Vendor Data Management	<ul style="list-style-type: none"> <li>• Systems to assist in data management</li> <li>• Maintenance of list and data</li> </ul>



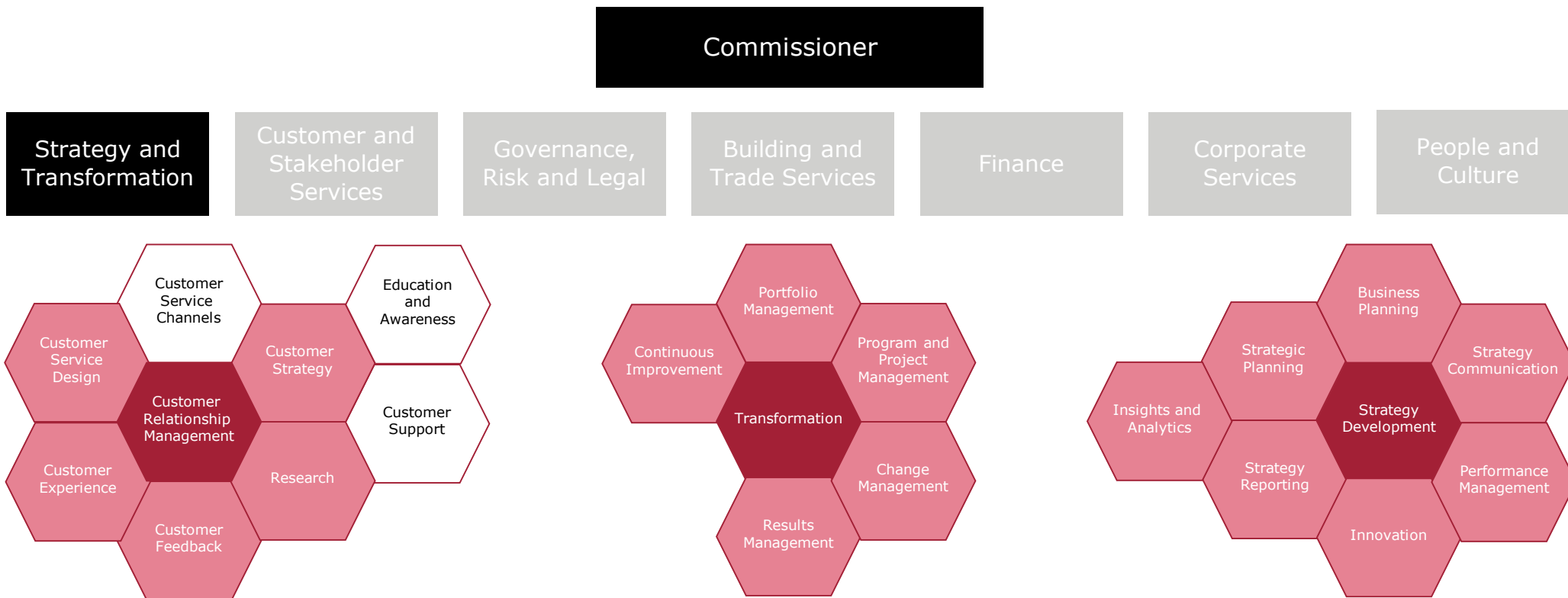
# Capability taxonomy – Enabling capabilities

Primary capability	Secondary capability	Activities / processes
<b>Marketing and Communications</b>	Media Management	<ul style="list-style-type: none"> <li>• Media plan</li> <li>• Media releases and enquiries</li> </ul>
	Marketing Management	<ul style="list-style-type: none"> <li>• Social media</li> <li>• Events management</li> <li>• Content development</li> <li>• Marketing channels management</li> <li>• Internal marketing support</li> <li>• Campaign support and logistics</li> </ul>
	Design and Digital	<ul style="list-style-type: none"> <li>• Graphic design</li> <li>• Digital design and management</li> <li>• Multimedia management</li> </ul>
	Brand Management	<ul style="list-style-type: none"> <li>• Internal brand management</li> <li>• External brand management</li> <li>• Value proposition</li> </ul>
	Corporate Communications	<ul style="list-style-type: none"> <li>• Communication to internal stakeholders (staff, board, SLT etc.)</li> <li>• Communication to external stakeholders (community, government, etc.)</li> <li>• Strategic communication plan and activities</li> </ul>

## Appendix B: Recommended (Option 2) functional breakdown by capabilities

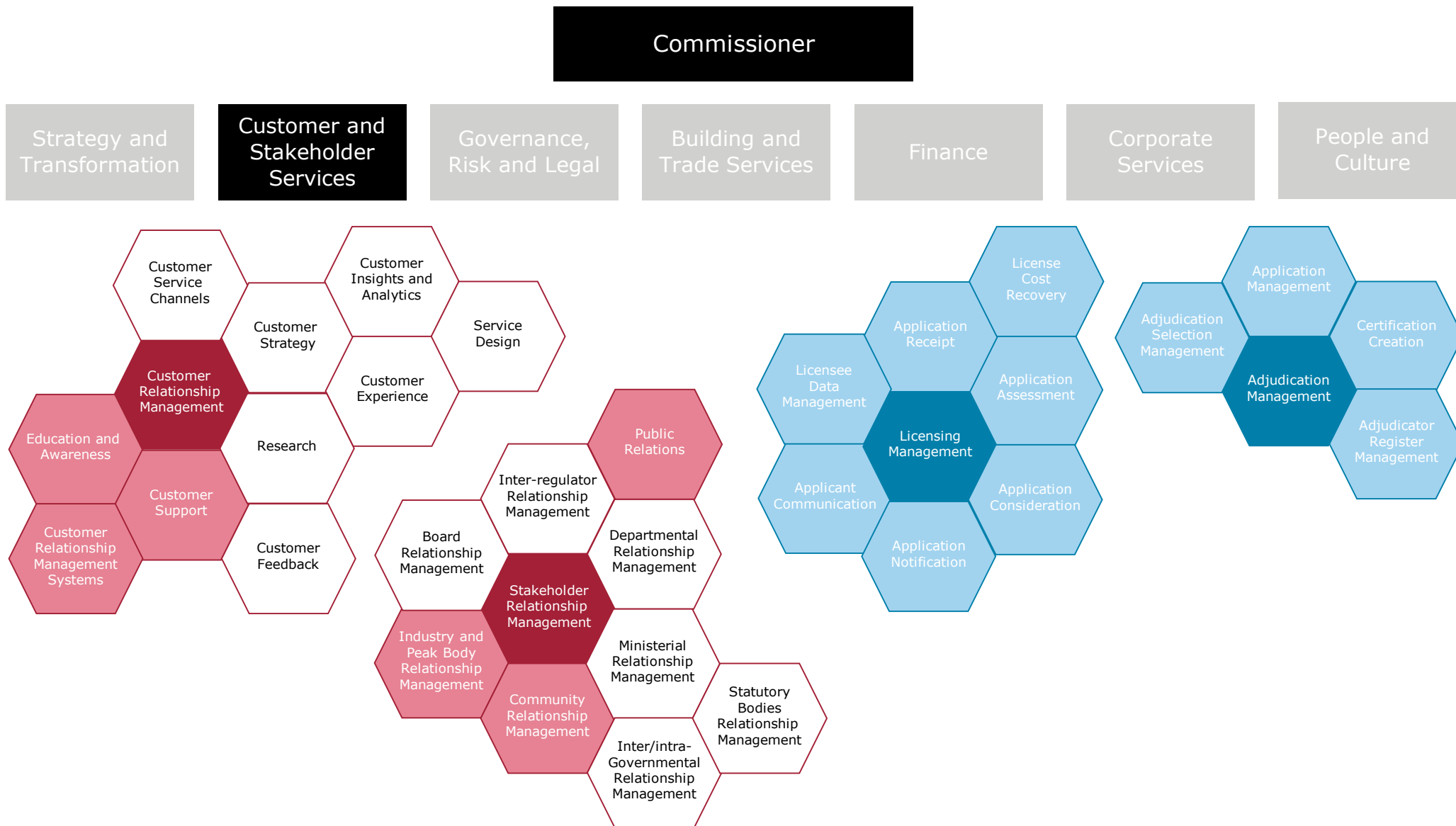
# Recommended functional breakdown by capabilities

The shaded capabilities below make up the Strategy and Transformation function



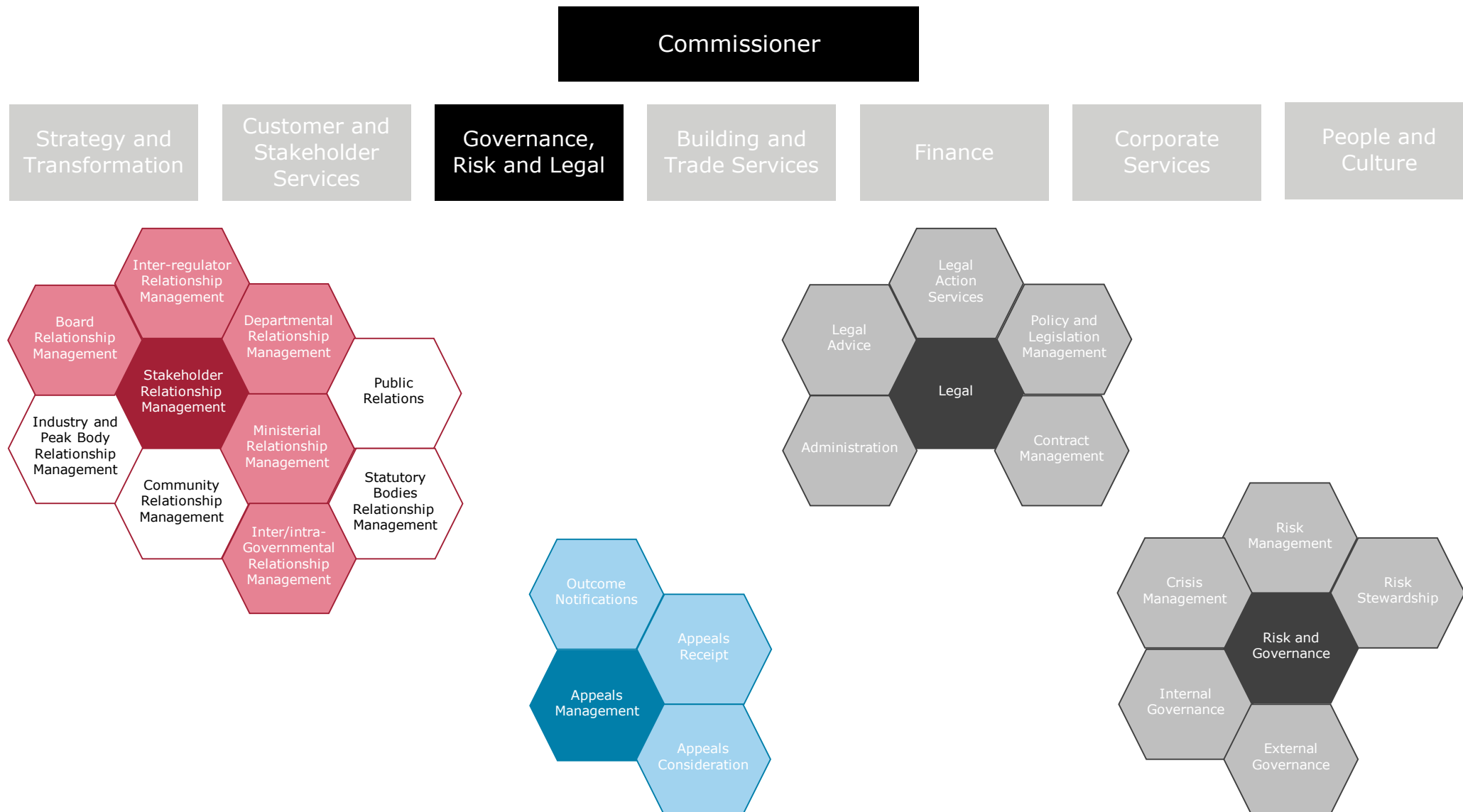
# Recommended functional breakdown by capabilities

The shaded capabilities below make up the Customer and Stakeholder Services function



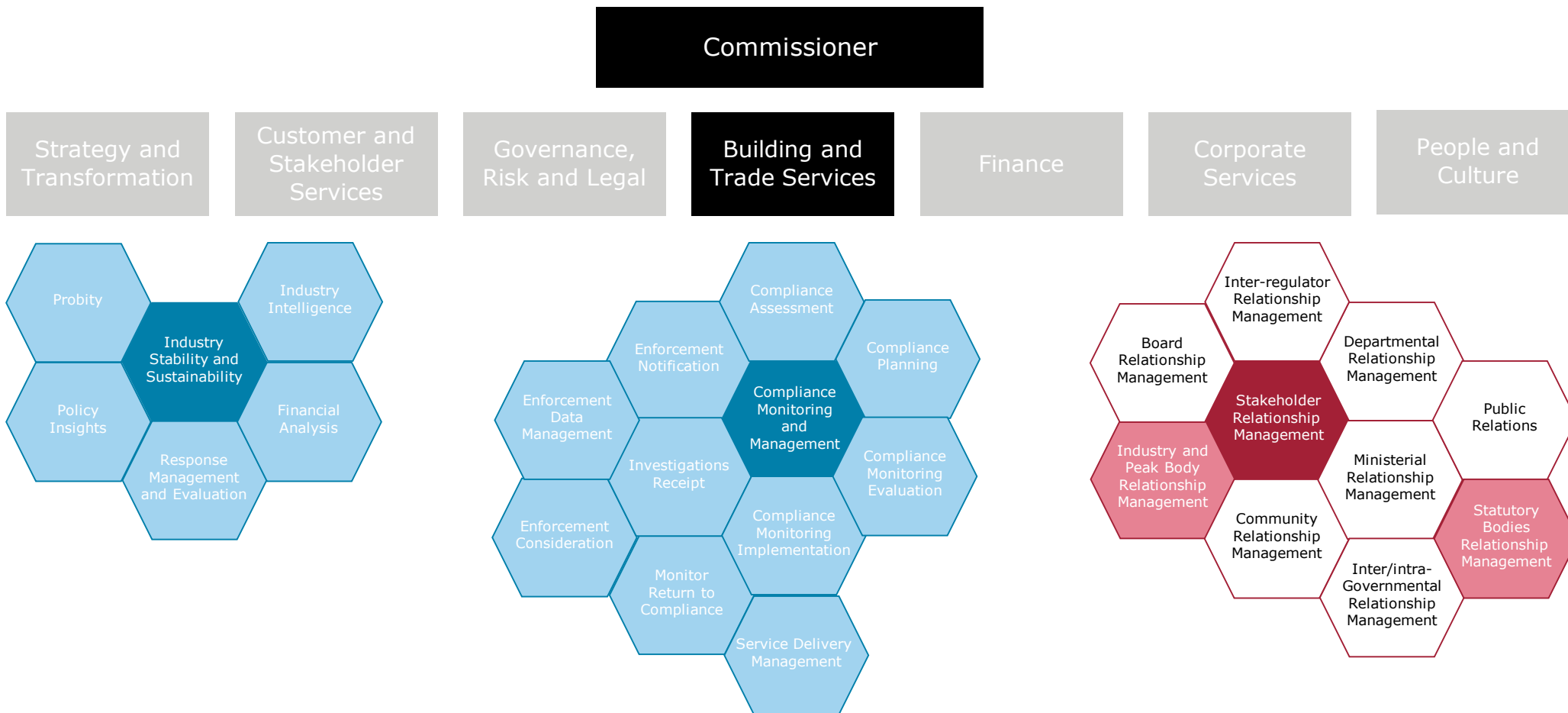
# Recommended functional breakdown by capabilities

The shaded capabilities below make up the Governance, Risk and Legal function



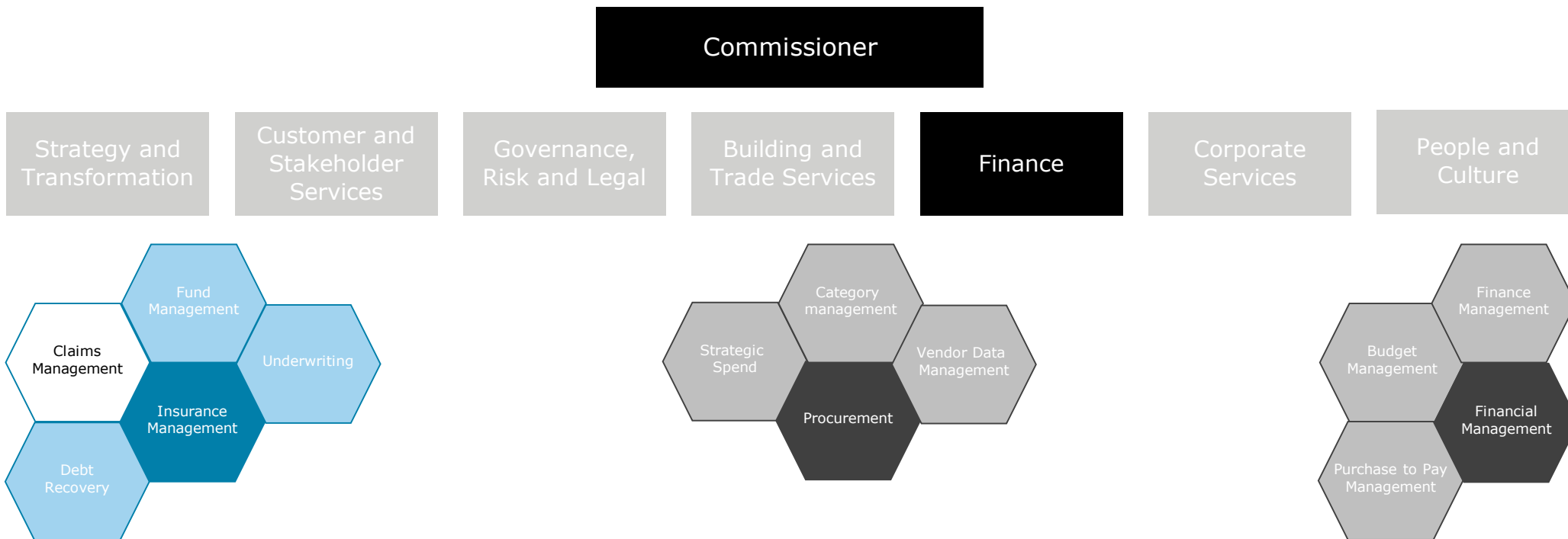
# Recommended functional breakdown by capabilities

The shaded capabilities below make up the Building and Trade Services function



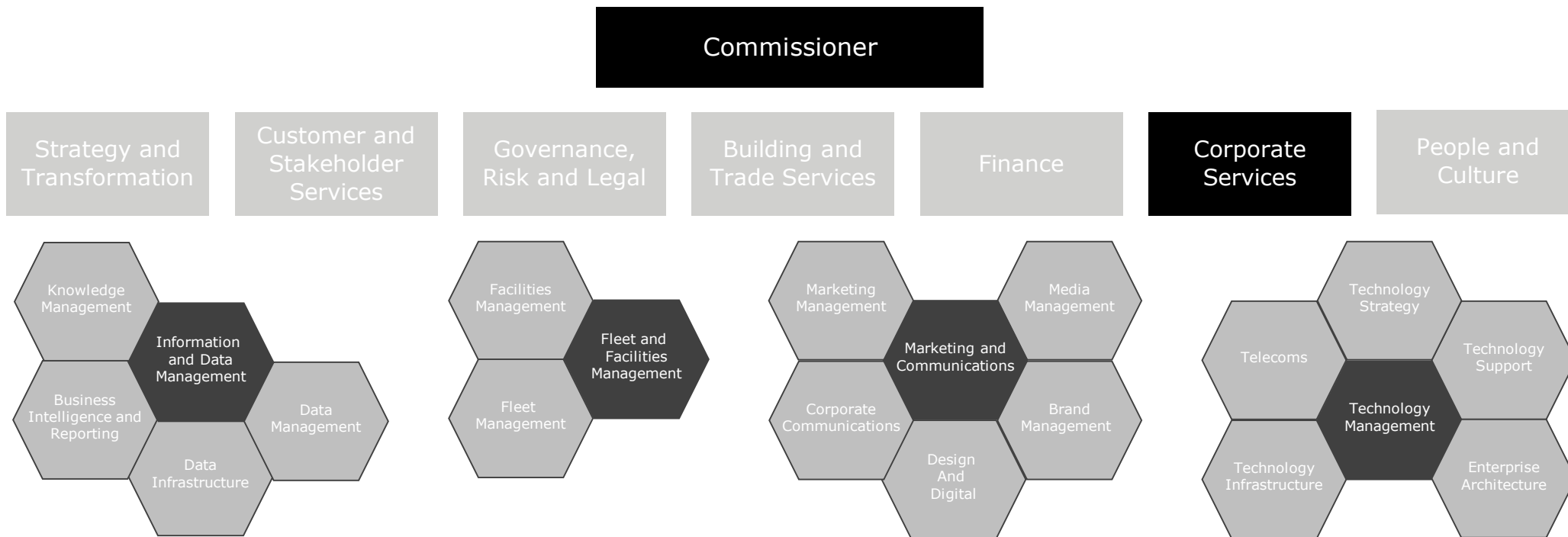
# Recommended functional breakdown by capabilities

The shaded capabilities below make up the Finance function



# Recommended functional breakdown by capabilities

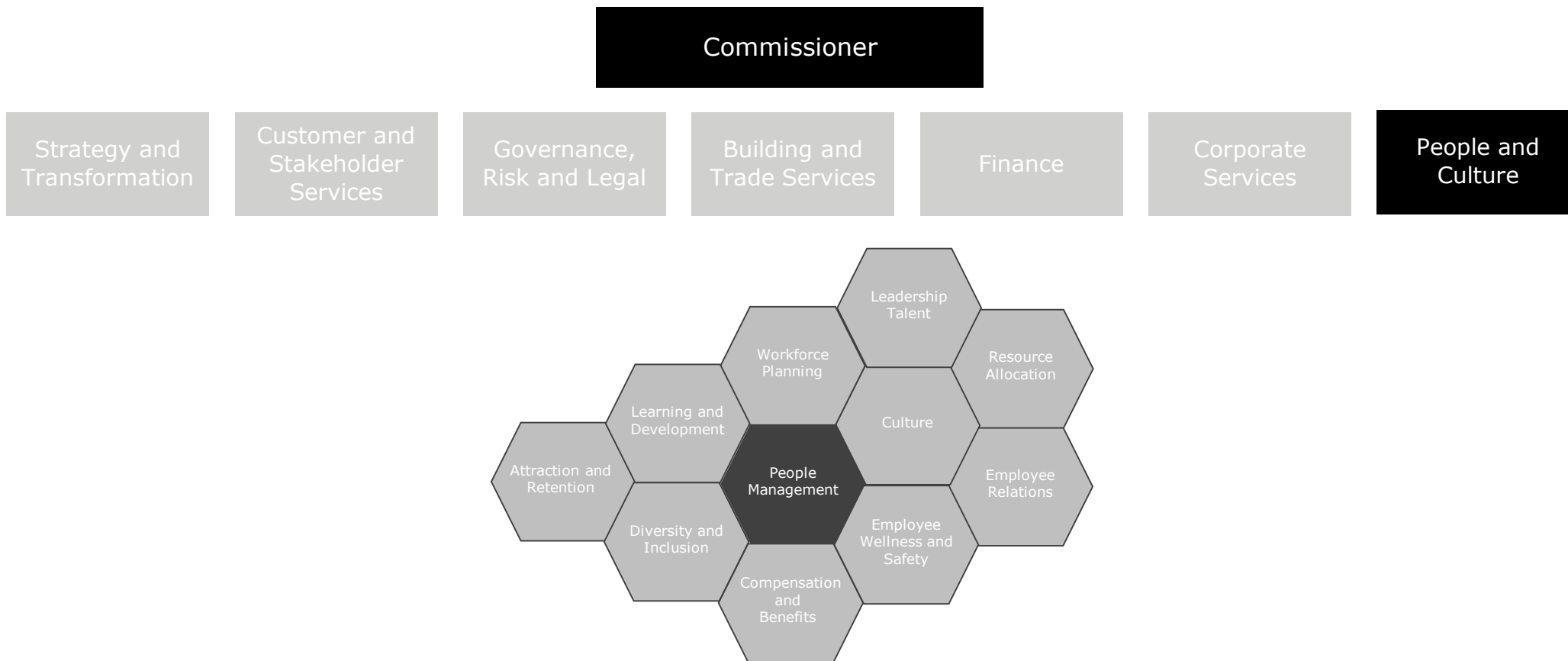
The shaded capabilities below make up the Corporate Services function





# Recommended functional breakdown by capabilities

The shaded capabilities below make up the People Management function

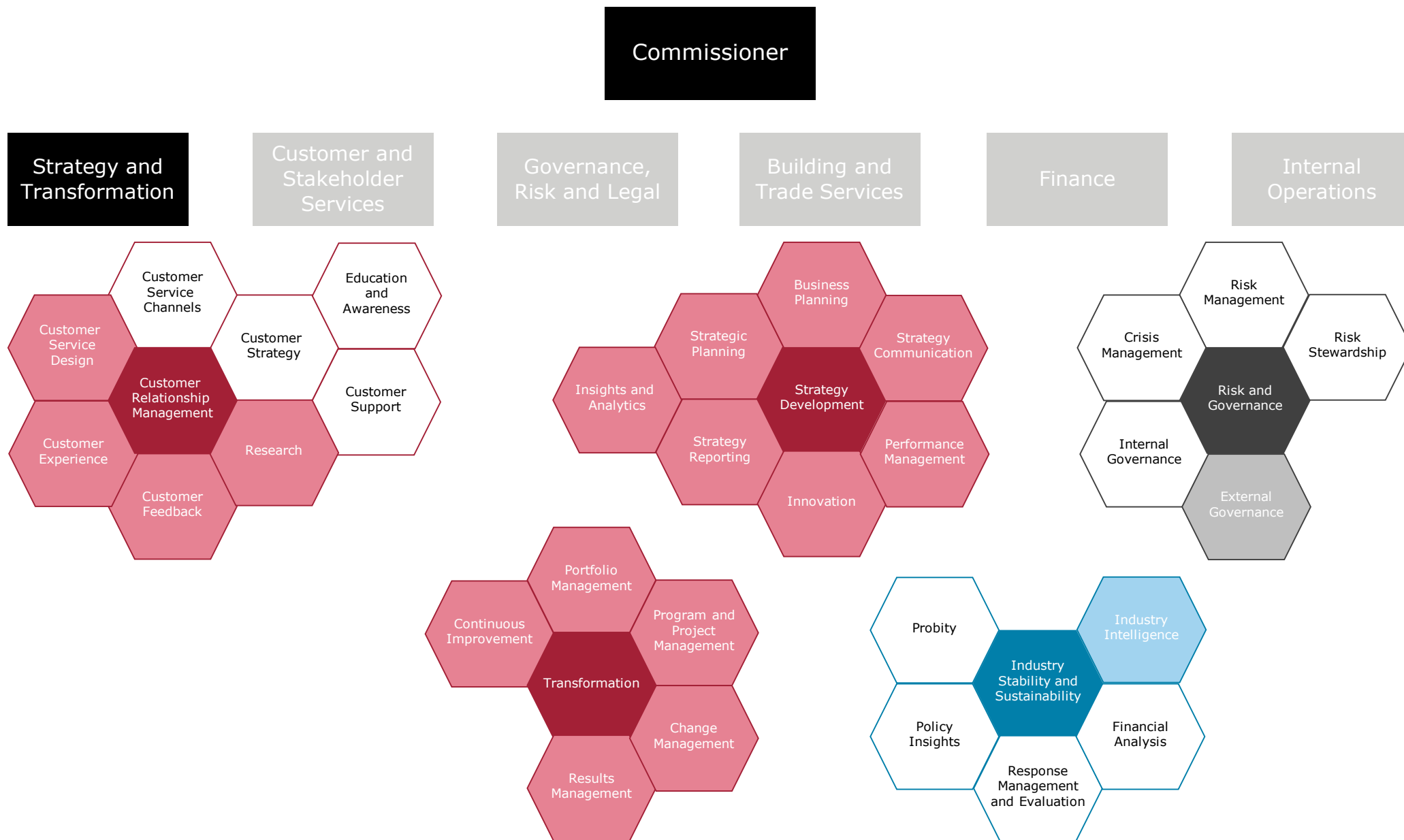




## Appendix C: Functional breakdown by capabilities of current draft structure (option 1)

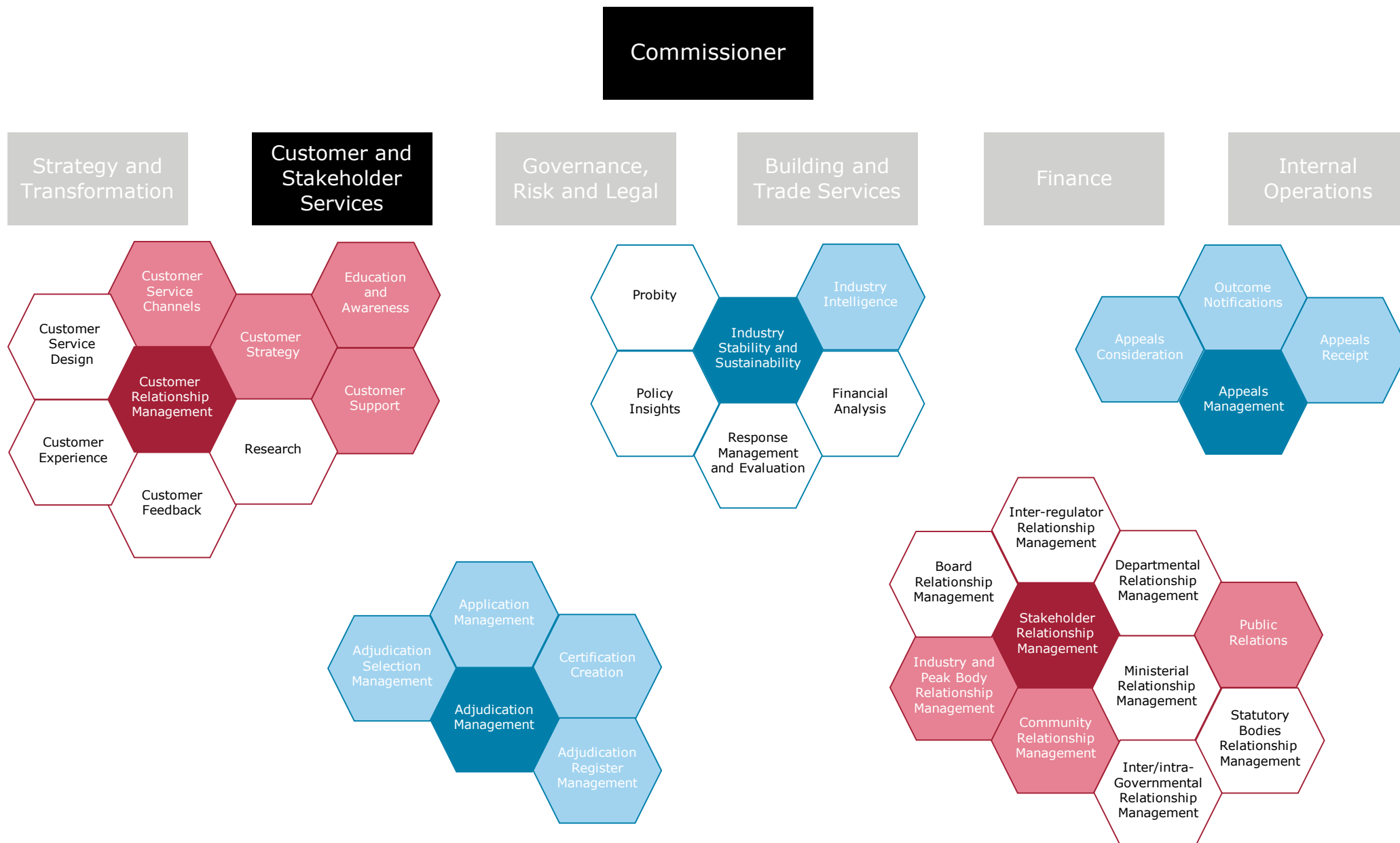
# Functional breakdown by capabilities – Option 1

The shaded capabilities below make up the Strategy and Transformation function



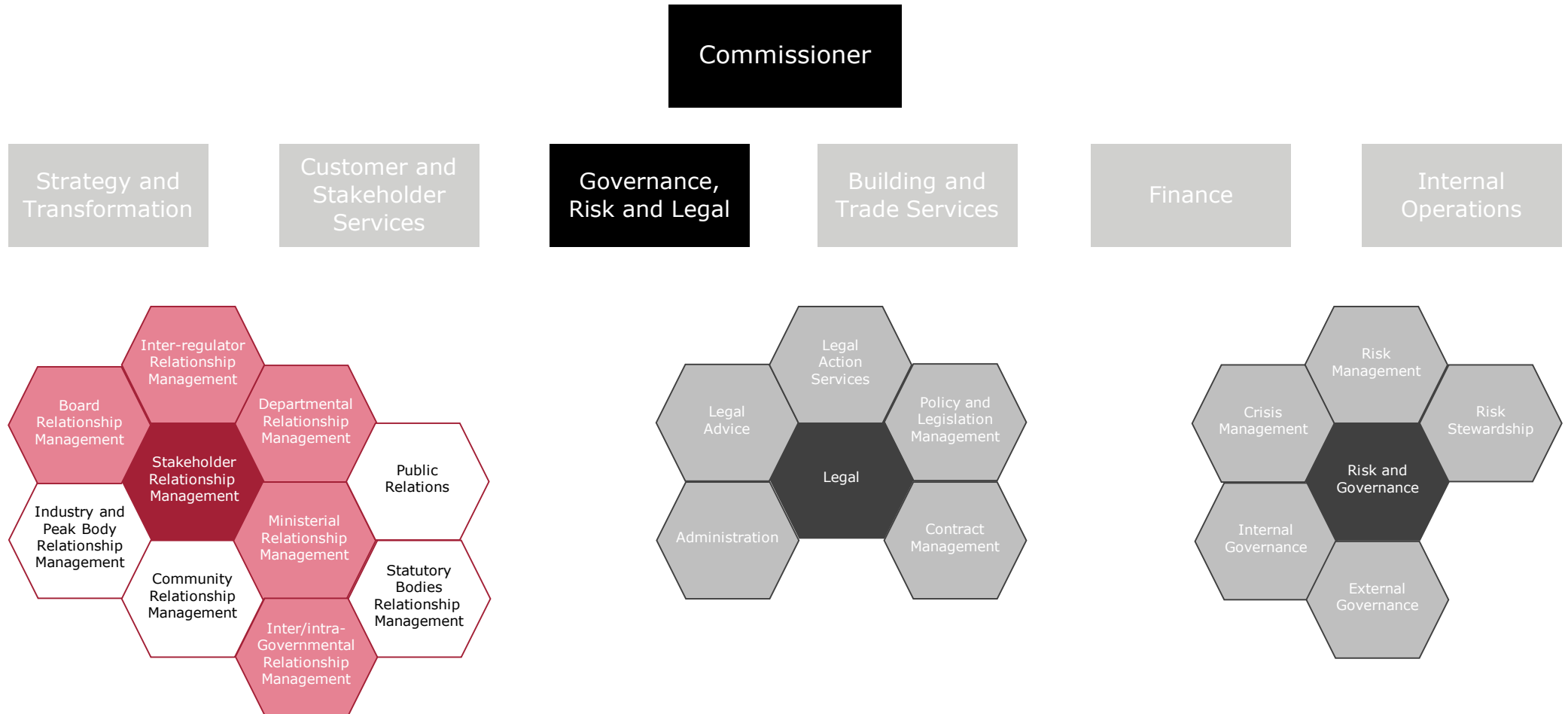
# Functional breakdown by capabilities – Option 1

The shaded capabilities below make up the Customer and Stakeholder Relations function



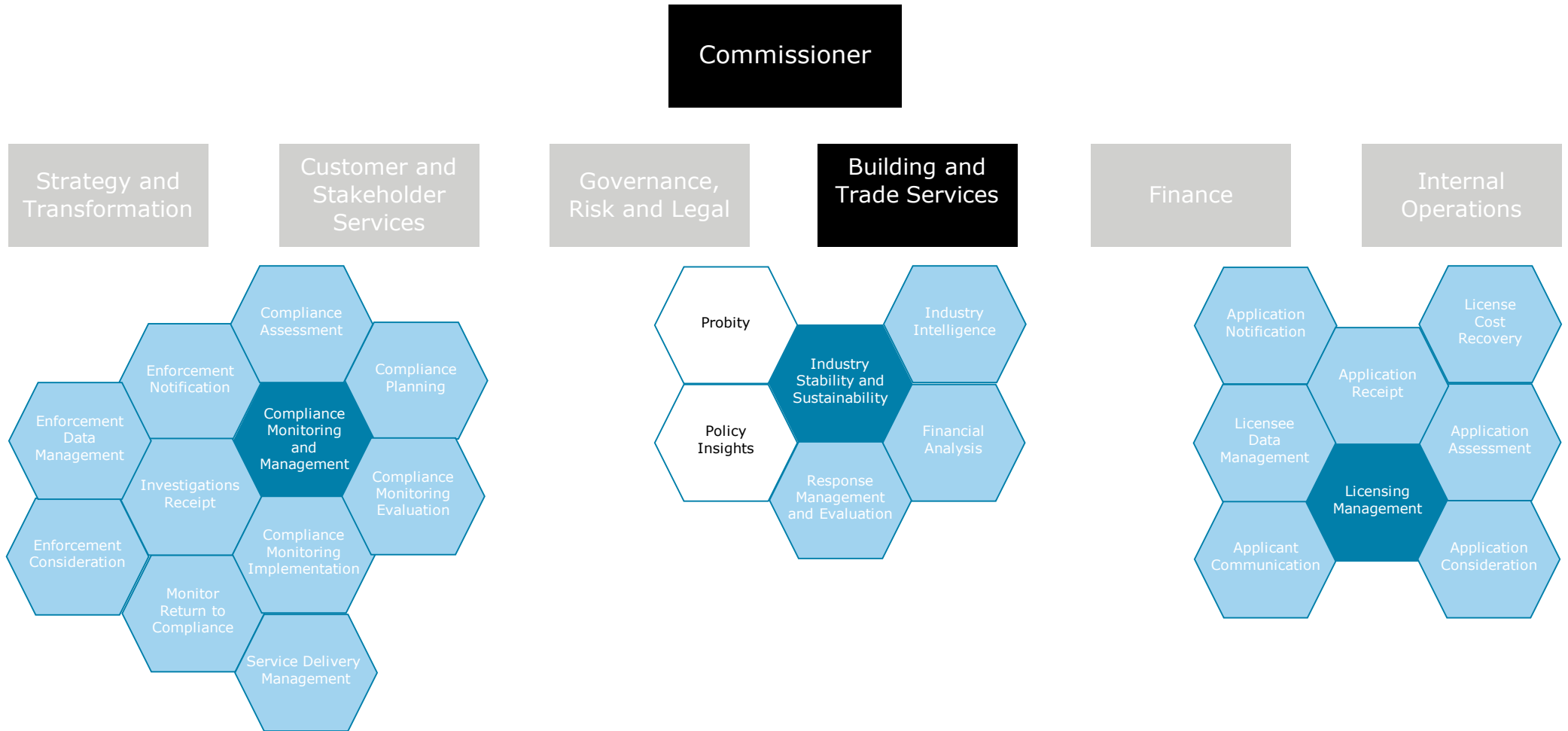
# Functional breakdown by capabilities – Option 1

The shaded capabilities below make up the Legal, Risk and Governance function



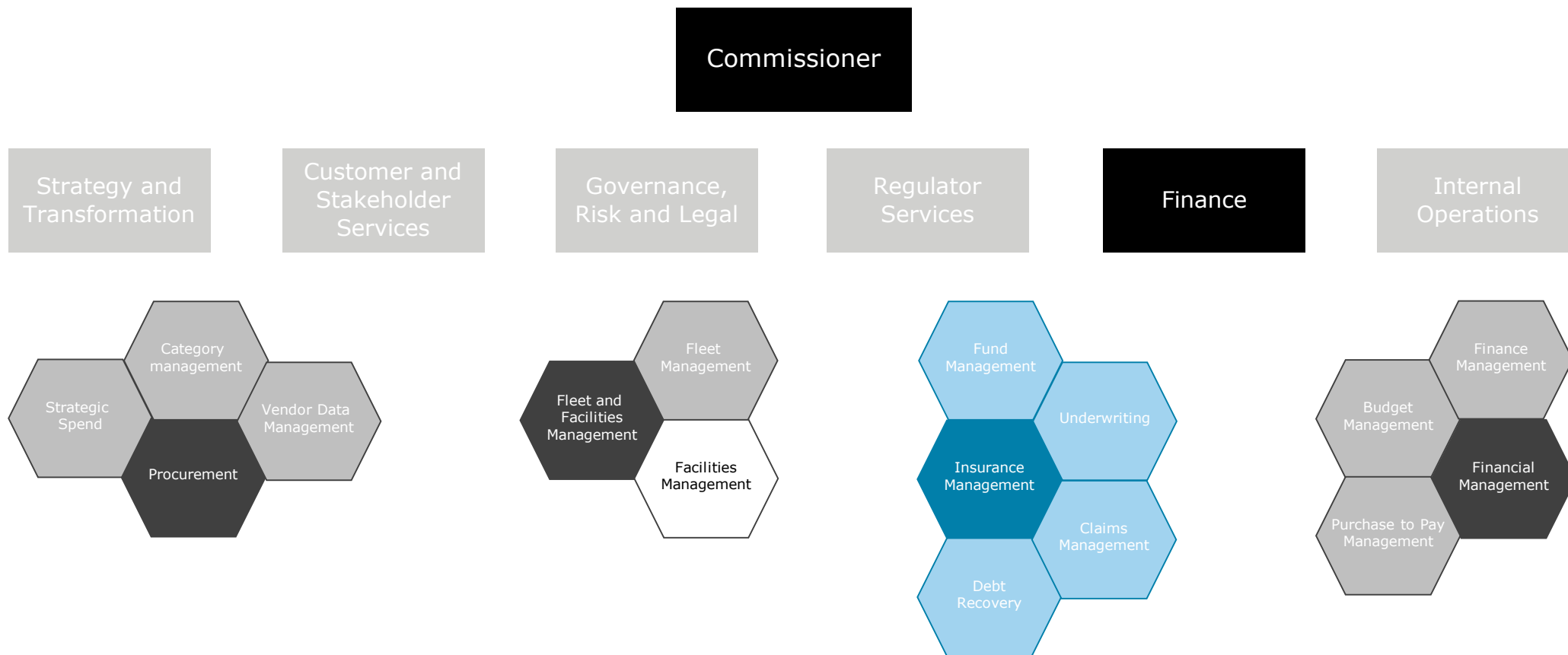
# Functional breakdown by capabilities – Option 1

The shaded capabilities below make up the Regulator Services function



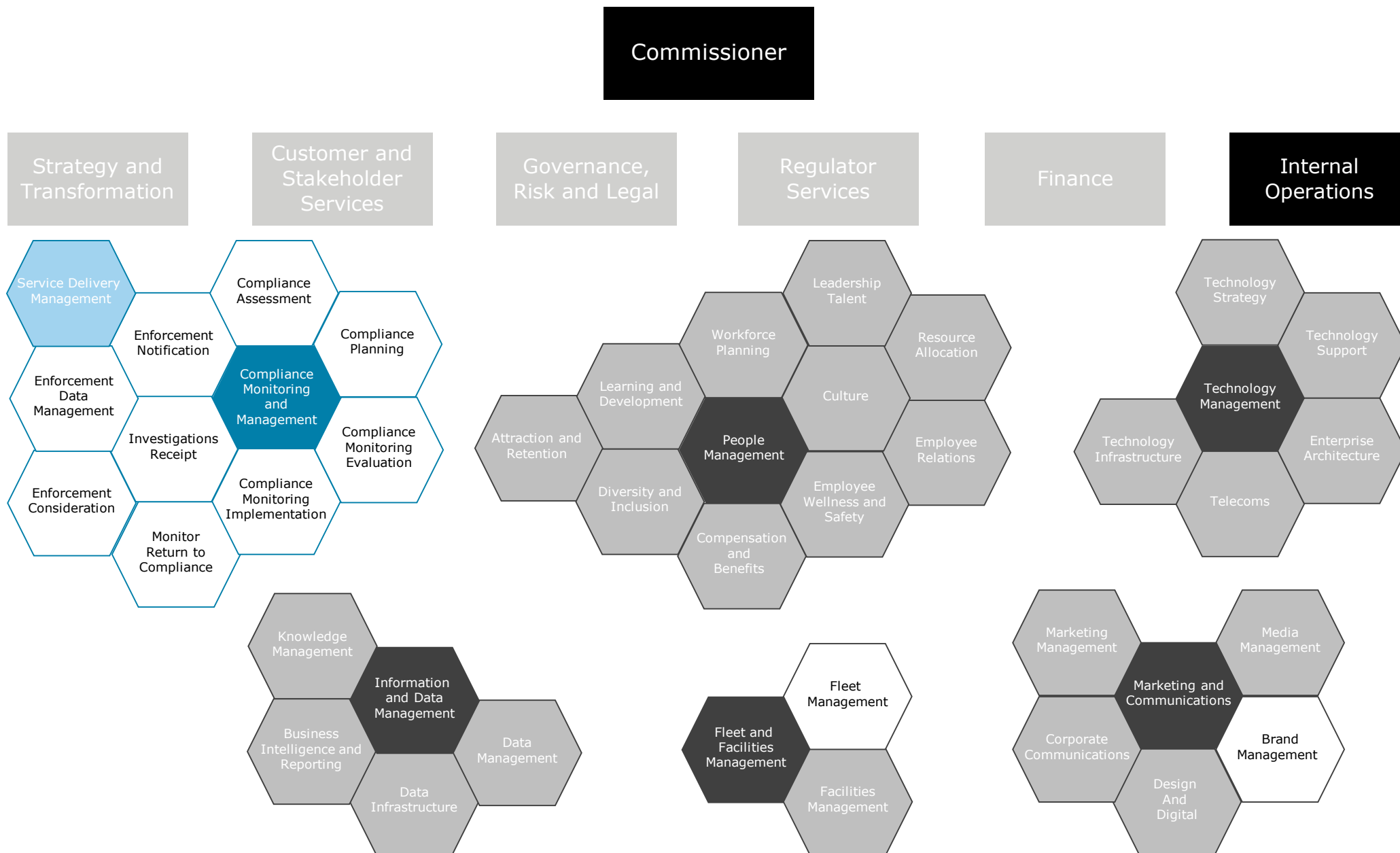
# Functional breakdown by capabilities – Option 1

The shaded capabilities below make up the Finance function



# Functional breakdown by capabilities – Option 1

The shaded capabilities below make up the Internal Options function







# Review of QBCC's complaints and decision-making processes

Queensland Building and Construction Commission

27 October 2021

**Disclaimer:**

*Nous Group (**Nous**) has prepared this report for the benefit of The Queensland Building and Construction Commission (the **Client**).*

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*Nous has prepared the report with care and diligence. The conclusions and recommendations given by Nous in the report are given in good faith and in the reasonable belief that they are correct and not misleading. The report has been prepared by Nous based on information provided by the Client and by other persons. Nous has relied on that information and has not independently verified or audited that information.*

# Contents

1	List of acronyms used .....	2
2	Executive summary.....	5
3	Introduction .....	9
3.1	Background to the project.....	9
3.2	Purpose and scope .....	9
3.3	Limitations .....	11
4	Providing 'remedies for defective building work' is a critical component of QBCC's statutory remit... 12	
4.1	The QBCC has statutory powers to provide remedies for defective building work.....	13
4.2	QBCC also provides an Early Dispute Resolution (EDR) service .....	15
5	Complaints-handling is a core function for QBCC.....	17
5.1	Around 4,500 complaints are made to QBCC every year .....	17
5.2	For homeowners and contractors engaging in a complaints process, the process itself is as important as the outcome .....	18
5.3	Teams across Queensland play a role in the complaints and decision-making processes .....	19
5.4	The end-to-end process for handling complaints and making decisions can be depicted in service maps .....	20
6	Nous has made findings against the assessment framework .....	23
6.1	Accessible (complaints process).....	23
6.1.1	Key strengths related to the "accessible" dimension .....	24
6.1.2	Areas for improvement related to the "accessible" dimension.....	26
6.2	Efficient (complaints process).....	29
6.2.1	Key strengths related to the "efficient" dimension.....	30
6.2.2	Areas of improvement related to the 'efficient' dimension.....	32
6.3	Accountable (complaints process) .....	38
6.3.1	Key strengths related to the "accountable" dimension .....	39
6.3.2	Areas of improvement related to the "accountable" dimension .....	40
6.4	Fair and independent (decision-making process).....	43
6.4.1	Key strengths related to the "fair and independent" dimension.....	44
6.4.2	Areas of improvement relating to the "fair and independent" dimension.....	48
6.5	Prepared (both complaints and decision-making processes).....	49
6.5.1	Key strengths related to the "prepared" dimension .....	50
6.5.2	Areas for improvement related to the "prepared" dimension.....	50
7	There are practical steps that QBCC can take to strengthen its complaints and decision-making processes .....	53
7.1	Category 1 Recommendations   Streamline processes and decision-making .....	55

7.1.1	Recommendation 1   Create a process that is as efficient as possible.....	55
7.1.2	Recommendation 2   Ensure the capability and capacity is in place to operationalise the service model well .....	56
7.1.3	Recommendation 3   Allow original decisions to be recorded following internal review to maximise confidence in QBCC’s decision-making .....	57
7.2	Category 2 Recommendations   Set expectations through clear information and guidance.....	58
7.2.1	Recommendation 4   For homeowners and contractors, clarify when and how QBCC can assist and the processes and timelines involved.....	58
7.2.2	Recommendation 5   Further clarify oversight arrangements .....	59
7.2.3	Recommendation 6   Streamline operational manuals and guidance to support a more consistent approach to complaints-handling .....	60
7.3	Category 3 Recommendations   Drive continuous improvement.....	60
7.3.1	Recommendation 7   Invest in key drivers of organisational improvement .....	61
7.3.2	Recommendation 8   Introduce new mechanisms to detect trends and assure the quality of QBCC’s service.....	62
7.3.3	Recommendation 9   Enhance QBCC’s approach to defining and monitoring performance...	63
Appendix A	Documents reviewed .....	64
Appendix B	Consultations held .....	66
Appendix C	Case files reviewed.....	67

# Intent of key terms

**Complaints and decision making processes** are collective terms that refer to the processes through which complaints and disputes are handled at the Queensland Building and Construction Commission (QBCC).

A **complaint** is the means through which homeowners and principal contractors can request QBCC to issue a **Direction to Rectify** to a contractor, which legally obliges the contractor to address defective building work.

Additionally, when it is not important to distinguish between complaints and disputes, '**complaint**' is used as a generic term.

A **dispute** refers to an issue between a homeowner and a contractor (or a principal contractor and a sub-contractor), that cannot immediately be resolved. **Dispute resolution** is a term that refers to attempted negotiations to agree an outcome that is acceptable to both parties. This can occur in different contexts.

Complaints can be focused on: **Defective work** complaints and **Subsidence** related to defective work.

During early phases of the complaints process, where resolution is attempted prior to consideration of issuing a Direction to Rectify.

During **Early Dispute Resolution (EDR)**. This is for matters where there is a building contract on foot and there is an explicit goal to try and reach agreement to allow the contract to proceed.

A complaint or a request for EDR can be raised by a **complainant**, and the subject of that matter is the **respondent**. Parties involved can include:

A **homeowner**, which encompasses property owners, authorised agents and body corporates. A homeowner is generally the complainant. The QBCC Act uses the term "consumers" to refer to homeowners (as opposed to those who undertake building work).

A **principal contractor**, who may be the respondent to a complaint or request for EDR. A principal contractor can also apply for EDR, where the respondent is a sub-contractor.

# 1 List of acronyms used

Acronym	Definition
AO	Assessment Officer
ASIC	Australian Securities and Investments Commission
BI	Building Inspector
CMS	Unclear based on documentation provided, but Nous assumes Customer Management System.
CSO	Customer Service Officer
CSIU	Customer Service Improvement Unit
DBC Act	Domestic Building Contracts Act 1995 (Vic)
DBDRV	Domestic Building Dispute Resolution Victoria
DTR	Direction to Rectify
ECM	Unclear based on documentation provided, but Nous understands it is used as a content management system. This is the system QBCC uses to store dispute related correspondence.
EDR	Early Dispute Resolution
EWOV	Energy and Water Ombudsman Victoria
FTE	Full-Time Equivalent
FTR	Failure to Rectify
ICT	Information and Communications Technology
IDR	Insights Driven Regulator
IRU	Internal Review Unit
OTL	Operation Team Leader
PIN	Penalty Infringement Notice
QBCC	Queensland Building and Construction Commission, also referred to as 'the commission' in the Act
QBCC Act	Queensland Building and Construction Commission Act 1991

Acronym	Definition
QCAT	Queensland Civil and Administrative Tribunal
SDS	Service Delivery Statement
SDW	Statewide Distribution of Work
SLT	Senior Leadership Team

# REVIEW INSIGHTS ON A PAGE

The Queensland Building and Construction Commission (QBCC) has the foundations of strong complaints and decision-making processes.

To provide remedies for defective building work and facilitate productive dispute resolution between homeowners and contractors...

...through a model that is....	COMPLAINTS PROCESS			DECISION-MAKING PROCESS	COMBINED
	ACCESSIBLE	EFFICIENT	ACCOUNTABLE	FAIR AND INDEPENDENT	PREPARED
It should leverage its strengths...	A free and accessible complaints service that provides remedies for defective building work	Responsive to requests for Early Dispute Resolution (EDR); and employs a resourcing model that makes good use of available capacity	Comprehensive record keeping and clear roles and responsibilities for most phases of the process	Policy-based, independent decision-making about defective building work	A genuine commitment to continuous improvement and growing collaboration between Resolution Services and Regional Services
To address areas for improvement...	Improve accessibility of information for both homeowners and contractors	Address process inefficiencies which can create delays in finalising matters	Provide greater clarity around roles and responsibilities to drive and oversee the complaints process	Systematise quality assurance processes to ensure consistency in decision-making	Improve collaboration across the organisation through cultural change; as well as a more robust approach to performance monitoring

By implementing nine key recommendations...	<b>STREAMLINE COMPLAINTS AND DECISION-MAKING PROCESSES</b>			<b>SET EXPECTATIONS THROUGH CLEAR INFORMATION AND GUIDANCE</b>		<b>DRIVE CONTINUOUS IMPROVEMENT</b>	
	<ol style="list-style-type: none"> <li>1. Create a process that is as efficient as possible</li> <li>2. Ensure the capability and capacity is in place to operationalise the service model well</li> <li>3. Allow original decisions to be recorded following review</li> </ol>	<ol style="list-style-type: none"> <li>4. For homeowners and contractors, clarify when and how QBCC can assist and the processes and timelines involved</li> <li>5. Clarify oversight arrangements</li> <li>6. Streamline operational manuals and guidance to support a more consistent approach to complaints-handling</li> </ol>	<ol style="list-style-type: none"> <li>7. Invest in key drivers of organisational improvement</li> <li>8. Introduce new mechanisms to detect trends and assure the quality of QBCC's service</li> <li>9. Enhance QBCC's approach to defining and monitoring performance</li> </ol>				



## 2 Executive summary

Home ownership remains the foundation of the Australian dream and represents one of the biggest financial and emotional investments people ever make. To accommodate our growing population, approximately 40,000 new dwellings are constructed in Queensland every year<sup>1</sup>, as well as annual residential renovations to the value of approximately \$2.6 billion<sup>2</sup>. The combined value of all residential construction in FY 2020 in Queensland amounted to approximately \$12 billion<sup>3</sup>.

The Queensland Building and Construction Commission (QBCC) was established under the *Queensland Building and Construction Commission Act 1991* (the Act) to regulate the building industry. Within its remit, QBCC is responsible for: regulating domestic building contracts; ensuring the maintenance of proper industry standards; providing support, education and advice for consumers and those who undertake building work; regulating building products, licensing of building contractors; operating the Home Warranty Insurance Scheme for homeowners and providing remedies for defective building work.

Queensland has a robust regulatory scheme in place to ensure that domestic buildings are constructed to quality and safety standards and consumers are protected. Most homeowners have no issues with their homes. Similarly, most contractors are able to carry out their work and receive payment in line with domestic building contracts.

There is, however, a minority of times where things go awry, and homeowners and contractors are unable to reach a decision about how to resolve an issue. The QBCC is available to assist in such situations, and it has specific powers under the Act to 'provide remedies for defective building work', including by directing contractors to rectify defective building work. QBCC also provides an Early Dispute Resolution (EDR) service where it provides mediation for disputes where there is an open contract.

Nous was commissioned by the QBCC to review its complaints and decision-making processes as they relate to defective building work and requests for EDR (the Review).

This Review specifically recognises QBCC as a neutral body with a statutory obligation to "regulate the building industry... to achieve a reasonable balance between the interests of building contractors and consumers" (s3 of the Act). The Review seeks to unpack how well the process and decision-making are currently operationalised, and to make recommendations that will position QBCC to be a more transparent, efficient and effective regulator.

To this end, this Review has been guided by two key lines of enquiry:

- What are the strengths of QBCC's complaints and decision-making processes?
- How can QBCC improve the complaints and decision-making processes?

Importantly, the Review did not seek to make findings about the appropriateness of decisions themselves.

Nous developed a bespoke assessment framework (Figure 1) and used this as a basis to surface insights for the Review. Nous' findings were informed by a comprehensive assessment of legislation, policies and operational guidelines; consultations with some QBCC staff; and a review of 30 case files relating to defective building work complaints and EDR.

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<sup>1</sup> ABS Number of Dwelling Unit Completions by Sector, States and Territories, released July 2021. Figure calculated using the average number of dwellings completed in FY 2017-18, 2018-19, 2019-20.

<sup>2</sup> ABS Value of Building Approved, By Sector, Original, Queensland, released July 2021. Figure calculated using the sum of the value of total residential alterations and additions not creating dwellings for each month of FY 2019-2020.

<sup>3</sup> ABS Value of Building Work Done by Sector, Queensland, released July 2021. Figure calculated using the sum of the total value of residential work done in Queensland for all sectors in each quarter of FY 2019-2020.

Figure 1 | Overview of Nous' assessment framework



The complaints process and decision-making processes are distinct concepts; however, these elements are strongly interrelated and at times, mutually reinforcing. To this end, the Review explores the strengths and limitations of the complaints process and associated decision-making separately, before presenting a set of recommendations that will uplift QBCC's whole performance.

### Key findings

Nous found that QBCC has the foundations for robust complaints and decision-making processes and there are a number of strengths to the current approach. Most significantly, the processes are fair and independent, and provide a genuine pathway for 'remedies for defective building work' while balancing the interests of homeowners and contractors.

There are, however, opportunities to improve the processes and enhance the experience of complainants and respondents who interact with QBCC through more expeditious finalisation of matters, better communication and greater clarity around when and how QBCC can assist.

Nous found that many of the limitations of the complaints and decision-making processes can be traced back to confusion around QBCC's role in dispute resolution. This is caused by ambiguities in the legislation relating to QBCC's functions and objectives, and manifests through service models that are not as efficient or as effective as they could be. In addition, processes, information flows and collaborative practices across the organisation could be optimised.

Section 6 of the report provides a comprehensive summary of the strengths and limitations of QBCC's complaints and decision-making processes, structured against the five dimensions of Nous' assessment framework.

### Recommendations for improvement

Nous has made nine recommendations under three key categories. Implementing these recommendations will create a more efficient and effective complaints service model with a clear remit to handle disputes as well as provide remedies for defective building work. Such a model will emphasise making information available in meaningful ways to support consumers and contractors throughout the journey; improve safeguards to support quality and accountability of decisions; and better integrate the complaints process with other regulatory functions at QBCC to uplift performance across the organisation.

The recommendations are summarised in Table 1.

Table 1 | Overview of recommendations

Recommendation category and intent	Description
<p><b>Category 1 Recommendations   Streamline complaints and decision-making processes</b></p> <p><i>Recommendations 1-3 focus on establishing a single, efficient process through which QBCC can deliver effective dispute resolution and provide remedies for defective building work. It will ensure that the people with the right capability and capacity are involved at the right time to carry out activities well. It will also close off a key legislative loophole which can be used to undermine appropriate decisions to issue a Direction to Rectify (DTR) and will make this information available to consumers.</i></p> <p><i>This new approach represents a significant departure from how QBCC currently operates and requires legislative changes; process redesign and documentation; and capacity and capability building. While recommendations may take some effort to implement, they could have substantial positive impacts.</i></p>	<p><b>Recommendation 1   Create a process that is as efficient as possible</b></p> <ul style="list-style-type: none"> <li>a) Reimagine the service model to adopt a greater emphasis on dispute resolution.</li> <li>b) Embed a triage model early in the process to review complaints, identify complex cases and put complaints on the right pathway for efficient finalisation, in line with QBCC's new Complex Cases Framework.</li> </ul> <p><b>Recommendation 2   Ensure the capability and capacity is in place to operationalise the service model well</b></p> <ul style="list-style-type: none"> <li>a) Identify the core skills and capabilities required to execute key tasks well; map these against the current workforce and identify and address any gaps.</li> <li>b) Undertake a review of the Statewide Distribution of Work (SDW) model and ensure the resourcing algorithm is optimised to support unplanned leave, as well as to balance organisational priorities where teams are involved in other regulatory functions in addition to complaints-handling.</li> </ul> <p><b>Recommendation 3   Allow original decisions to be recorded following internal review in certain circumstances to maximise confidence in QBCC's decision-making</b></p> <ul style="list-style-type: none"> <li>a) Preserve the current appeals-like function of internal review but allow appropriate original decisions to issue DTRs to be recorded in certain circumstances.</li> </ul>
<p><b>Category 2 Recommendations   Set expectations through clear information and guidance</b></p> <p><i>Recommendations 4-6 focus on improving clarity about when and how QBCC can assist with issues relating to defective building work. This includes providing clear, timely, and relevant information to complainants and respondents across the complaint life cycle to help set reasonable expectations up front and keep parties engaged in the process as it unfolds. It also involves crystalising roles and responsibilities for staff at different stages of the process and ensuring guidance materials are fit-for-purpose.</i></p> <p><i>Some recommendation components are straight forward and can be implemented with relative ease. Others require a more sustained effort both to create capacity to move the work forward, as well as to ensure appropriate alignment with other improvement activities across QBCC.</i></p>	<p><b>Recommendation 4   For homeowners and contractors, clarify when and how QBCC can assist the processes and what the process entails</b></p> <ul style="list-style-type: none"> <li>a) Continue to revamp the website to improve availability and accessibility of information about the complaints process.</li> <li>b) Create greater visibility around processing timelines to manage expectations about how long complaints may take to finalise.</li> </ul> <p><b>Recommendation 5   Further clarify oversight arrangements</b></p> <ul style="list-style-type: none"> <li>a) Create new accountabilities and reporting for nominated persons to assume oversight of complaints from "end-to-end".</li> </ul> <p><b>Recommendation 6   Streamline operational manuals and guidance to support a more consistent approach to dispute resolution and complaints-handling</b></p> <ul style="list-style-type: none"> <li>a) Leverage the Disputes Procedures Manual to clearly articulate roles and responsibilities for every stage of the complaint process, including how decisions should be communicated and documented.</li> </ul>

Recommendation category and intent	Description
<p><b>Category 3 Recommendations   Drive continuous improvement</b></p> <p><i>Recommendations 7-9 focus on better integrating different parts of QBCC to improve the flow of information; make better use of data to drive insights-led regulatory activities and dispute resolution; and using a more robust approach to measure, communicate and celebrate “good” performance.</i></p> <p><i>Implementation requires process changes, technology investments, development of a performance framework and culture-building activities. Staged implementation may be required, but over time these will position QBCC to be a more robust regulator – and a better place for staff to work.</i></p>	<p><b>Recommendation 7   Invest in key drivers of organisational improvement</b></p> <ul style="list-style-type: none"> <li>a) Invest in technology solutions to better integrate disparate digital systems to support information flow across the organisation.</li> <li>b) Build on recent efforts to strengthen the collaborative nature of working at QBCC, including by having an explicit culture-building plan in place.</li> </ul> <p><b>Recommendation 8   Introduce new mechanisms to detect trends and assure the quality of QBCC’s service</b></p> <ul style="list-style-type: none"> <li>a) Establish an assurance program to regularly test the quality and consistency of decision making.</li> <li>b) Reignite and extend efforts to combine complaints data with other data coming out of QBCC’s regulatory activities and interactions with homeowners and contractors.</li> </ul> <p><b>Recommendation 9   Enhance QBCC’s approach to defining and monitoring performance</b></p> <ul style="list-style-type: none"> <li>a) Develop a clear performance and monitoring framework to establish a shared vision of “good” performance and enable this to be easily tracked and to inform decision-making.</li> <li>b) Establish a baseline of current performance and provide a point of comparison to understand the impact of continuous improvement initiatives.</li> </ul>

## 3 Introduction

This section presents an overview of the project background, scope and methodology.

### 3.1 Background to the project

The QBCC supports the Queensland community by providing information, advice and regulation to “ensure the maintenance of proper building standards” and to provide “remedies for defective building work” (s3 of the Act). The provision of these remedies is one of QBCC’s core functions and since its inception, QBCC has operated a complaints function which provides a mechanism for homeowners to request QBCC direct contractors to rectify defective building work.

Over recent years, the complaints and decision-making service has undergone several changes in terms of scope and process:

- the introduction of an Early Dispute Resolution (EDR) service in 2014 to facilitate outcomes for homeowners and contractors where there is an open contract on foot
- the introduction of the Statewide Distribution of Work (SDW) model to leverage resources more evenly across Queensland to handle complaints
- more recently, the establishment of the Customer Service Improvement Unit (CSIU) project to develop a Complex Case Management framework to more effectively respond to complex complaints (and insurance claims).

Concurrently, QBCC is in the process of finalising a new organisation-wide strategy document, the QBCC “New Normal” Blueprint (the Blueprint) to guide its strategic efforts over the coming years.

In this environment of change and continuous improvement, this Review provides key insights into the complaints and decision-making processes. It highlights where there are strengths to preserve and leverage; and where improvements can be made that will uplift the capability and performance of the whole organisation, while making good use of existing investment.

### 3.2 Purpose and scope

The QBCC engaged Nous Group (Nous) to undertake an independent review of its complaints and decision-making processes for defective building work (the Review). The Review was finalised in October 2021.

The purpose of the Review was to consider:

- What are the strengths of QBCC’s complaints and decision-making processes?
- How can QBCC improve the complaints and decision-making processes?

Three types of matters were considered:

- Requests for EDR (specific to defective construction)
- Complaints about defective building work

- Complaints about subsidence (as it relates to defective building work under the Building Code of Australia).

QBCC handles complaints and enquiries beyond defective work, however only defective work was in scope for this Review.<sup>4</sup>

Importantly, the Review sought to understand the *processes* QBCC uses to make and document decisions. It did not seek to make findings about the appropriateness of technical, policy and legislative decisions made in response to complaints.

Nous developed and used an assessment framework to guide the Review. As summarised in Figure 2, it explicitly delineates the complaints and decision-making processes.

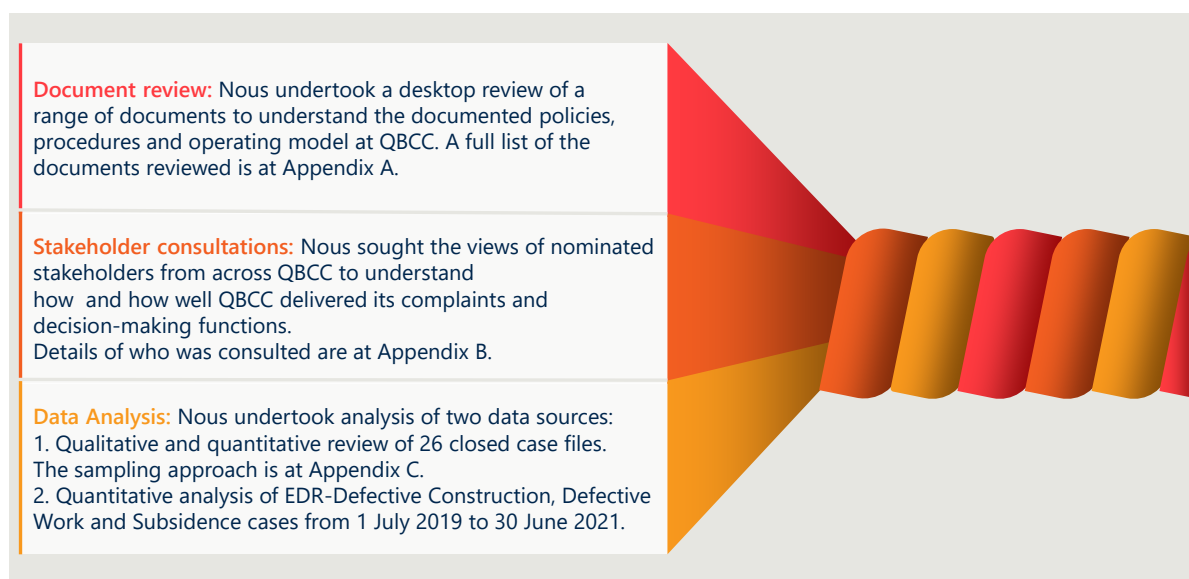
**Figure 2 | Five dimensions of Nous' assessment framework**



Nous used a mixed methods approach with data from several sources, as summarised in Figure 3.

<sup>4</sup> Other types of complaints and enquiries handled by QBCC but not in scope of the Review include processes and decision-making relating to the Home Warranty Insurance Scheme, licensing for people working in the building industry in Queensland, offences relating to licensees, payment disputes, non-conforming building products and compliance issues.

Figure 3 | Nous' mixed methods approach to this Review



### 3.3 Limitations

There are certain limitations to the methodology used in this Review.

In first instance, stakeholder consultation was targeted:

- Nous did not consult with stakeholders external to QBCC, including homeowners, contractors, or other users of the complaints and/or decision-making process. Any findings relating to customer experience are limited to information provided to Nous in customer feedback surveys, a scan of social media or based on information provided by staff.
- Nous only consulted with nominated senior staff at QBCC.

There are also key data limitations:

- Relating to qualitative and quantitative review of 26 closed case files:
  - Nous did not have full access to Salesforce or other digital systems used by QBCC and therefore, could not review details about individual complaint items.
- Relating to quantitative analysis of all in-scope cases<sup>5</sup>:
  - Cases included in the analysis only included cases opened after 30 June 2019 and closed before 1 July 2021. This provided a snapshot of cases but did not reflect all cases handled by QBCC over this period (e.g. cases that were opened before 30 June 2019 or still open after 1 July 2021). The data may have a bias for less complex cases, although cases open for longer than two years were considered outliers, and not necessarily representative of the typical complaint processed by QBCC.
  - Cases included in the analysis only related to three sub-types of complaints: "EDR - Defective Construction", "Defective Work", "Subsidence". There were five other sub-types of complaints in QBCC provided data which were not considered in this Review.
  - Data about individual complaint items was not considered in this Review.

<sup>5</sup> Based on data extracts provided by QBCC as at 14/07/2021.

## 4 Providing 'remedies for defective building work' is a critical component of QBCC's statutory remit

This section describes the regulatory framework for QBCC and its complaints and decision-making processes.

The QBCC is established under the *Queensland Building and Construction Commission Act 1991* (the Act) to be the industry regulator. It has a broad statutory remit including providing education and advice, regulating domestic building contracts and building products, issuing licences and administering the statutory insurance scheme. Part of QBCC's remit is to "provide remedies for defective building work" (s3); Figure 4 provides an overview of QBCC's statutory remit.

Figure 4 | Overview of the breadth of QBCC's statutory remit



### The Objects of the Act (s3) are:

- (a) to regulate the building industry —
  - (i) to ensure the maintenance of proper standards in the industry; and
  - (ii) to achieve a reasonable balance between the interests of building contractors and consumers; and
- (b) to provide remedies for defective building work; and
- (c) to provide support, education and advice for those who undertake building work and consumers; and
- (d) to regulate domestic building contracts to achieve a reasonable balance between the interests of



- building contractors and building owners; and
- (e) to regulate building products to ensure —
  - (i) the safety of consumers and the public generally; and
  - (ii) persons involved in the production, supply or installation of building products are held responsible for the safety of the products and their use; and
- (f) to provide for the proper, efficient and effective management of the commission in the performance of its functions.

## 4.1 The QBCC has statutory powers to provide remedies for defective building work

QBCC’s remit to provide remedies for defective building work is set out primarily in the Act but complemented with further detail in the Queensland Building and Construction Commission Regulation 2018 (the Regulation) and Rectification of Building Work Board Policy 2014 (established under powers provided to the Commissioner in the Act. These are summarised in Figure 5.

Figure 5 | Documents that make up the regulatory framework for requests to issue DTR for defective work

THE QBCC ACT 1991	THE QBCC REGULATION 2018	
<p><i>The Act includes foundational details on how QBCC can provide remedies for defective work, including by setting out QBCC’s</i></p> <ul style="list-style-type: none"> <li>• <i>Objects</i></li> <li>• <i>Functions</i></li> <li>• <i>Powers</i></li> <li>• <i>Processes to receive and respond to requests to direct rectification of defective work.</i></li> </ul> <p><i>The Act defines the term “building work”.</i></p> <p><i>It provides powers for the Commissioner to approve binding Board Policies.</i></p> <p><i>Key details from the Act are explained further in the body of the Review.</i></p>	<p><i>The Regulation includes information on what is not building work.</i></p> <tr> <th data-bbox="687 1178 1369 1240">THE RECTIFICATION OF BUILDING WORK BOARD POLICY 2014</th> </tr> <p><i>The Rectification of Building Work Policy provides more detail on the eligibility and process to request a DTR. It specifies that “if a consumer is seeking the assistance of the Queensland Building and Construction Commission (QBCC) to issue a direction to a building contract to rectify defective building work, the consumer must lodge a formal <b>complaint</b> with the QBCC”.</i></p> <p><i>This policy provides the premise for Nous’ definition of a “complaint” as a means to request the QBCC to issue a DTR.</i></p> <p><i>The Policy provides a definition of “defective work” for the context of requesting the QBCC to issue a DTR, and prescribes eligibility requirements to lodge complaints.</i></p>	THE RECTIFICATION OF BUILDING WORK BOARD POLICY 2014
THE RECTIFICATION OF BUILDING WORK BOARD POLICY 2014		

The Act does not describe a role for QBCC specific to complaints-handling, however the linkage between providing remedies for defective work and complaints is established in the Rectification of Building Work Board Policy (the Policy), as noted in Figure 5.

Table 2 summarises what QBCC does and does not do in response to complaints, reflecting the parameters of the Act.

**Table 2 | What QBCC does and does not do to provide remedies for defective work**

QBCC does do...	QBCC does not do...
<ul style="list-style-type: none"> <li>• Receive requests to give a DTR building work that the consumer considers is defective or incomplete (s71J; where building work is defined in Schedule 2 of the Act)</li> <li>• Require rectification of building work (s72)</li> <li>• Issue offences for failing to comply with a DTR (s73)</li> <li>• Note that requests to give a DTR can also relate to following (<i>out of scope for this Review</i>):               <ul style="list-style-type: none"> <li>○ Non-completion complaints</li> <li>○ Complaints about pre-purchase or termite inspections</li> <li>○ Complaints against certifiers</li> <li>○ Complaints about non-conforming building products</li> <li>○ Compliance monitoring and enforcement activities</li> <li>○ Licensing activities</li> <li>○ Administration of the Home Warranty Insurance Scheme</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Complaints relating to work that is not building work</li> <li>• Decision-making about issues related to contractual matters. <i>This is handled by the Queensland Civil and Administrative Tribunal (QCAT)</i></li> <li>• External review of reviewable decisions. <i>This is handled by QCAT</i></li> <li>• Complaints about the conduct of the QBCC. <i>This is handled by the Queensland Ombudsman</i></li> <li>• Complaints concerning matters that affect the interests of consumers negotiating or considering the acquisition of goods or services. <i>This is done by the Office of Fair Trading</i></li> <li>• Local council related complaints, which include:               <ul style="list-style-type: none"> <li>○ Water run-off, design and siting concerns</li> <li>○ Non-issue of building certificates</li> <li>○ Noise complaints</li> </ul> </li> </ul>

Unlike bodies in other jurisdictions (such as NSW Fair Trading and Domestic Building Dispute Resolution Victoria, DBDRV) which can make “orders” for contractors to rectify defective building work but must refer to civil and administrative tribunals if those orders are not followed, QBCC has statutory powers to compel contractors to comply with a DTR, including through the application of disciplinary measures and financial sanctions. A high-level summary of QBCC’s statutory powers is at Table 3.<sup>6</sup>

**Table 3 | Statutory powers for the complaints function**

QBCC’s powers to respond to complaints about defective building work	Types of complaints QBCC can consider
<ul style="list-style-type: none"> <li>• Consider requests to give DTR building works that the consumer considers is defective or incomplete (s71J)</li> <li>• Issue a DTR or remedy if QBCC is of the opinion that it is defective or incomplete (s72)</li> <li>• Consider a failure to comply with a DTR as an offence with penalties (s73)</li> </ul>	<ul style="list-style-type: none"> <li>• Work that is building work as defined by Schedule 2 of the Act</li> <li>• Defective or incomplete work for properties within 12 months after a person becomes aware of the defective or incomplete work<sup>7</sup> (but not more than six years and six months after work was completed)<sup>8</sup></li> </ul>

<sup>6</sup> The powers outlined in the Act refer to powers to require rectification of building work and remediation of consequential damage. Because the scope of this Review was focused on defective building work the terminology of ‘consequential damage’ has not been included.

<sup>7</sup> When assessing complaints, this timeframe must be considered but QBCC still has the power to proceed with the complaint and issue a direction if it is reasonable to do so (Disputes Procedures Manual).

<sup>8</sup> The Rectification of Building Work Policy (2014) states that QBCC will consider the issuing of direction to rectify to a building contract for structural defective building work within 6 years and 3 months of the building work being completed or for non-structural defective building work, within 12 months of the building work completed.

QBCC's powers to respond to complaints about defective building work	Types of complaints QBCC can consider
<ul style="list-style-type: none"> <li>• Undertake an internal review of decisions to rectify or remedy or not give the direction, as though the reviewable decision had not been made (s86C)</li> <li>• Take disciplinary action against contractors (licensed and unlicensed) if they fail to comply (s74B(j) and s74C(e)).</li> </ul>	<ul style="list-style-type: none"> <li>• Work must be valued at more than \$3,300 (some exceptions)</li> <li>• <i>Defective building work is building work that is faulty or unsatisfactory and includes work that does not comply with the Building Act 1975, Building Code of Australia or an applicable Australian standard, involves the use of a manufactured product that has been used, constructed or installed in a way that does not comply with the product manufacturer's instructions.</i><sup>9</sup></li> </ul>

## 4.2 QBCC also provides an Early Dispute Resolution (EDR) service

While the Act makes no explicit reference to QBCC having a dispute resolution role, it does make reference to a process as a means to resolve matters prior to QBCC considering a DTR, or as a pre-requisite for matters to be considered by QCAT:

- s72(6) provides that the commission may, before it considers whether building work is defective or incomplete, require the consumer for the building work comply with a process established by the commission to attempt to resolve the matter with the person who carried out the work.
- s77(1-2) provides that a person involved in a building dispute may apply, as provided under the QCAT Act, to the tribunal to have the tribunal decide the dispute. However, the person may not apply to the tribunal unless the person has complied with a process established by the commission to attempt to resolve the dispute.

To this end, QBCC has introduced an EDR process which QBCC has determined is available to disputes where there is an open domestic building contract (see Table 4). This process has an explicit focus on achieving a mutually acceptable outcome for both parties without resorting to consideration of a DTR.

**Table 4 | Matters that can be considered as part of EDR and their relationship with this Review**

Matters that can be considered in EDR and are in scope for the Review	Matters that can be considered in EDR and are out of scope for the Review
<ul style="list-style-type: none"> <li>• Disputes about defective work</li> <li>• Disputes between an owner and principal contractor</li> <li>• Disputes between a principal contractor and their subcontractor/s</li> </ul>	<ul style="list-style-type: none"> <li>• Disputes about incomplete work and contractual matters</li> </ul>

All EDR matters must:

- Have a building contract that is not completed
- Relate to domestic building work (as defined in Schedule 1B of the Act)

<sup>9</sup> Rectification of Building Work Board Policy 2014; note that 'defective work' is defined differently in the Act, the Regulation and the Board Policy. The Act defines defective work with relation to licensing matters and the Regulation define defective work in relation to primarily insurable work for which a person wishes to claim against the statutory insurance scheme. The Board Policy definition was determined by Nous to be the most relevant definition for this context.

**Matters that can be considered in EDR and are in scope for the Review**

**Matters that can be considered in EDR and are out of scope for the Review**

- Be for building contracts with value in excess of \$3,300

Where EDR does not result in a mutually acceptable outcome, there are two possible pathways forward:

- Where defective building work is alleged, QBCC will progress the case for a site inspection and process the matter in line with the broader complaints process.
- Where defective building work is not alleged, the EDR case is closed. Complainants can be issued with a Case Closure letter that confirms they have participated in EDR, which will then allow them to apply to QCAT, should they choose.

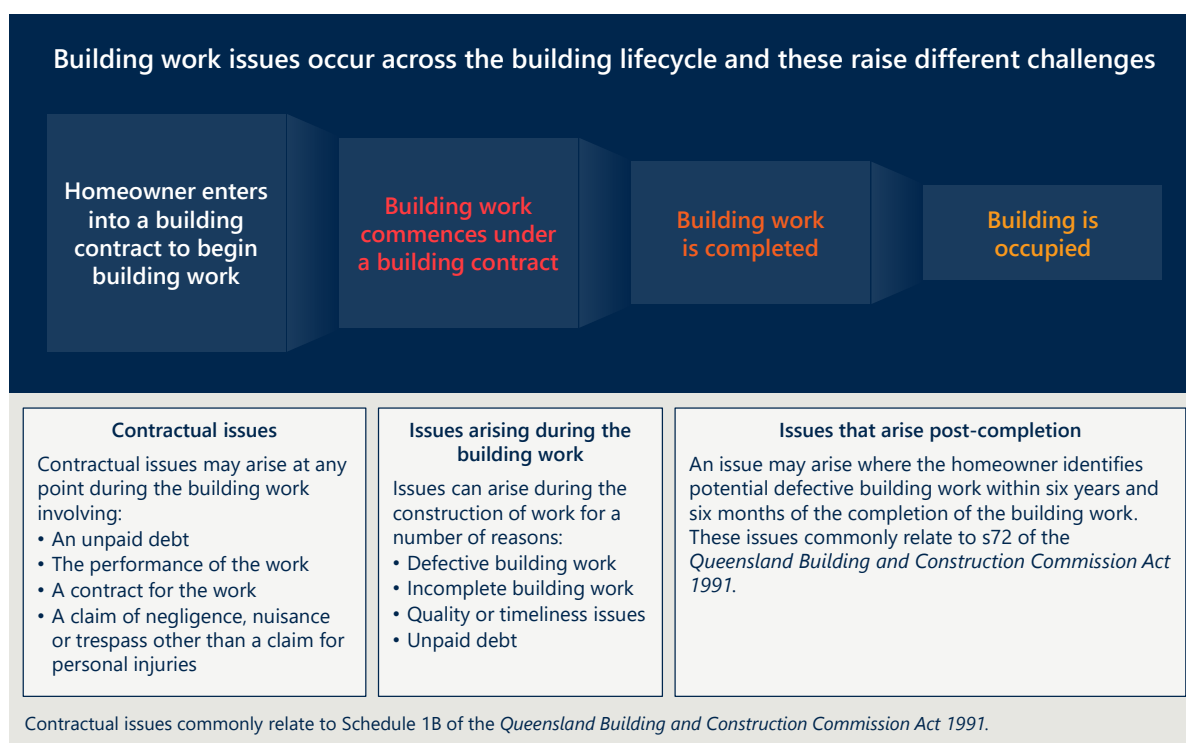
**For simplicity, unless specified otherwise, the terms “complaints”, “complaints processes” and “complainants” are used in this Review to describe both complaints (i.e., requests for QBCC to give a Direction to Rectify building work (DTR)) and disputes. This is in line with the “Intent of key terms”, described on page 3.**

## 5 Complaints-handling is a core function for QBCC

This section presents an overview of QBCC’s complaints and decision-making process including the scale, structure and process of the service.

The Queensland building and construction industry is large and robust, and the vast majority of homeowners and contractors trade in this industry with no issues. However, when things do not go as planned, there is a myriad of challenges to navigate – physical health and safety; economic security; and deep emotional investment in outcomes. These issues can also occur at different stages of the building process (Figure 6).

Figure 6 | Different stages of the building process

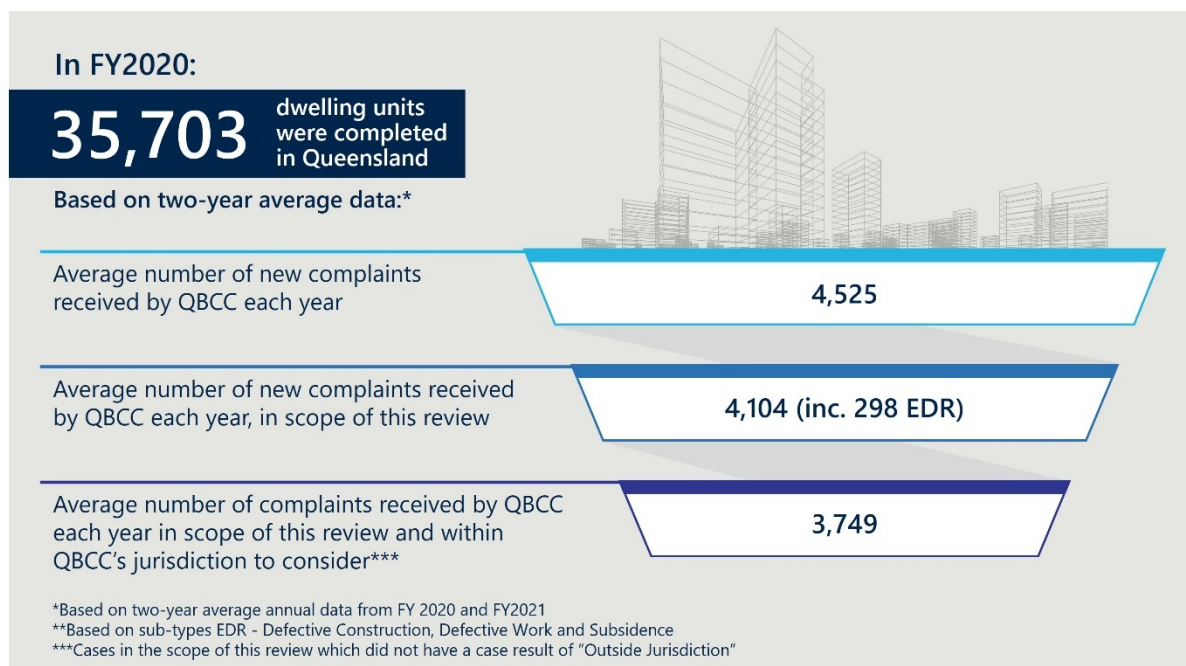


### 5.1 Around 4,500 complaints are made to QBCC every year

While QBCC’s complaints service is required by only a minority of homeowners and contractors constructing or renovating properties, QBCC still receives and handles thousands of new complaints and requests for EDR arising from building work each year (and may also be considering complaints from previous years). Complaints relating to EDR – Defective Construction, Defective Work and Subsidence comprise around 91 per cent of total complaints received each year.

Figure 7 presents an overview of the average number of new complaints received by QBCC each year.

Figure 7 | Number of new complaints received by QBCC each year<sup>10 11</sup>



## 5.2 For homeowners and contractors engaging in a complaints process, the process itself is as important as the outcome

Complainants (whether homeowners or contractors) seek assistance from QBCC because they ultimately want their issue resolved or defective work fixed. People want to feel like they have been treated fairly and with respect; they want confidence that their matter is a priority, they know what is going on and that their matter will be dealt with in an efficient way.

The commitments set out in QBCC's Service Charter reflect these needs<sup>12</sup>. For example:

- We will treat you fairly, with respect and courtesy
- We will listen to your concerns to better understand and service your needs
- We will take the time to explain our processes and your responsibilities to you, ensuring you understand and focus on fulfilling them
- We will provide timely and reliable services that meet our service delivery standards
- We will provide an accurate and easy to find website, education materials and publications across a number of channels to help you access the correct information at the right time.

As QBCC must balance the interests of homeowners and contractors in decisions about complaints, situations in which both parties walk away satisfied with an outcome are rare. Yet regardless of the extent to which people are pleased with an outcome, the way they are engaged and treated throughout the process can have a significant and lasting impression about how good or bad the overall experience has

<sup>10</sup> ABS Number of Dwelling Unit Completions by Sector, States and Territories, released July 2021. Note complaints can be lodged up to 6.5 years after the building work was complete, there is no significant relationship between number of completed builds and number of complaints and this figure is presented as an indication of the potential scale of demand only.

<sup>11</sup> Based on two-year averages of QBCC provided data of cases opened after 30 June 2019 and closed before 1 July 2021. Note these average yearly figures were rounded to the nearest whole number.

<sup>12</sup> <https://www.qbcc.qld.gov.au/about-us/our-service-charter>

been<sup>13</sup>. The assessment framework used in the Review recognises the importance of the experience of the process.

### 5.3 Teams across Queensland play a role in the complaints and decision-making processes

The complaints and decision-making service represents a significant proportion of staff at QBCC. The service is delivered across two teams – Resolution Services in Brisbane and Regional Services in the regional offices. Across both Resolution and Regional Services, there are 126.2 Full-Time Equivalent (FTE) positions (and 11 FTE in the Internal Review Unit, IRU<sup>14</sup>). As of 20 June 2021, there was a total of 523.29 FTE across QBCC<sup>15</sup>, thus Resolution and Regional Services make up nearly 25 per cent of the total workforce<sup>16</sup>, illustrating the importance of the function to QBCC.

The complaints process is delivered across Queensland. Resolution Services, for example, is Brisbane-based and drives the majority of work relating to design, development and delivery of the processes, as well as handing complaints. Assessment Officers (AOs) and Building Inspectors (BIs)<sup>17</sup> also work in QBCC's eight regional offices (Regional Services) to handle complaints. Notably, complaints and decision-making processes are delivered differently in each regional office; some offices rotate so AOs may switch between different functions (e.g. licensing and compliance) while others have staff primarily working in a dedicated program area. In Cairns, Townsville, Mackay, Rockhampton, Maryborough and Toowoomba AOs also work across the front counter (in the Gold Coast and Sunshine Coast offices administrative staff work at the front counter).

#### QBCC uses a distributed work model to allocate cases across Queensland

QBCC uses a resourcing approach called the Statewide Distribution of Work (SDW) model. This model seeks to make optimal use of the organisation's capacity by taking a de-localised approach to processing complaints. Complaints can be allocated to any office across Queensland for review by an AO based on an algorithm of available capacity across each office (noting that some complaints are directed to a certain office or assessment officer based on factors such as pre-existing relationships). However, if an AO assesses that a decision to DTR is required, allocation to BIs is generally undertaken according to where the building site is located. This model emphasises responsibility for driving certain stages of the complaints process and in some cases, staff across multiple offices may be involved.

#### Staff report to two different executive leaders

Resolution Services and Regional Services report up to two different Assistant Commissioners, which in turn report to a single Commissioner. Formal governance arrangements including team, complaints function and senior leadership groups, combined with informal networks across the organisation (e.g. across AOs and BIs), bring teams together to deliver the complaints and decision-making processes.

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<sup>13</sup> As noted in Section 3.2 on page 5, a limitation of this Review is that Nous did not talk directly to stakeholders outside of QBCC. Reflections about the experiences of homeowners and contractors have been gleaned through a combination of social media content, interviews with QBCC staff who interact with homeowners and contractors; and references to issues or concerns documented in case files.

<sup>14</sup> An IRU supports the complaints and decision-making process by undertaking internal review of reviewable decisions (decisions to issue/not issue DTRs and decisions to issue/not issue FTRs). The IRU also reviews decisions made by other functions across QBCC.

<sup>15</sup> QBCC Annual Report 2020-2021

<sup>16</sup> Regional Services staff also undertake non-complaint related activities.

<sup>17</sup> AOs are responsible for administrative processes and decision-making while BIs are responsible for providing expert technical advice, mediation resolutions, undertaking building inspections and making decisions about DTRs. Other roles provide support to these activities such as Customer Service Officers, who provide administrative support and to whom administrative tasks can be delegated, and Operational Team Leaders, Senior Leads and Senior Building Inspectors who provide oversight and escalation pathways. AOs and BIs work in both regional and Brisbane offices.

## 5.4 The end-to-end process for handling complaints and making decisions can be depicted in service maps

The service map at Figure 8 depicts how QBCC currently operates its complaints and decision-making process. The service map for the EDR service is depicted in Figure 9.

Each stage (column) of the service map was developed using documents provided to Nous (primarily the Disputes Procedures Manual) by QBCC and interviews and consultations with QBCC staff.

Each of the rows enables consideration of a different element of the process to provide a comprehensive understanding of how QBCC currently delivers the complaints and decision-making process:

- The desired outcome enables an understanding of what each stage seeks to achieve
- The key activities present a snapshot of how each stage is currently delivered
- The skills, systems and processes required indicates what enablers are required to achieve the desired outcomes at each stage
- An overview of responsibility and oversight demonstrates who is currently responsible (for the operational delivery of an activity) and who has oversight (to ensure the activity is done and to the right standard) at each stage.













Beyond the scope of the Review is how the complaints and decision-making process about defective building work feeds into decisions about eligibility for insurance under the Home Warranty Insurance Scheme. Findings of defective work that have not been satisfactorily rectified following the issue of a DTR are one grounds for claiming against the Home Warranty Insurance Scheme. Assessment of eligibility for an insurance claim can be completed after a Failure to Rectify (FTR) is issued.

Figure 8 shows the model through which requests for QBCC to issues DTRs are currently progressed.

Figure 9 shows the model through which requests for EDR are progressed.



Figure 8 | Service model for processing complaints (requests for QBCC to issue a contractor a DTR)







												
	1. The complaint is lodged	2. The complaint is briefly assessed and allocated to a region	3. The complaint is assigned to an AO*	4. Eligibility to request a DTR is determined and case reviewed	5. Further information is requested and reviewed	6. A determination is made about if an outcome could be facilitated and, if so, attempted an agreeable outcome between parties**	7. A decision is made whether it is appropriate under s72 to issue a DTR	8. An opinion is formed about whether the direction has been satisfied	9. A decision is made to issue a FTR	10. A decision is made to issue a Penalty Infringement Notice (PIN) and associated penalties	Internal review of a decision is undertaken	External review of a decision is undertaken
What are the desired outcomes of this step?	Complaints are lodged with correct information	Inappropriate and incomplete complaints are quickly identified and the remainder are allocated efficiently through the SDW model for further action	Complaints are assigned to an AO with appropriate capability and sufficient capacity	Complaints that are out of QBCC's scope are closed and appropriately referred elsewhere	All relevant information pertaining to a complaint is collated to inform next steps	Complainants and respondents are able to agree a mutually acceptable way forward for all or most items without a complaint	An appropriate decision about whether to issue a DTR is reached	QBCC, complainants and respondents have a shared understanding about whether or not defective work has been satisfactorily rectified	An appropriate decision about whether to issue an FTR is reached	An appropriate decision to issue a PIN is reached and actioned	An appropriate decision about a reviewable decision is reached, based on all available information	QCAT has all relevant information at hand to reach an appropriate decision
What are the key activities?	Complainant becomes aware of ability to lodge complaint Complainant lodges complaint via myQBCC or Residential and Commercial Construction Work Complaint Form Case is created in Salesforce	Allocate complaint to a region based on SDW model	Senior lead briefly assess each complaint Assign to AOs based on complexity and history	Assess eligibility against legislation and policies (i.e., alleges defective building work; building work completed within 6.5 years; defect known for < 1 year) Check licence status of respondent and ASIC if respondent is a company. Refer any matters involving breaches of the QBCC Act to the Compliance Triage Team.	Review materials to assess complaint details Contact the complainant to request further information Complete Complaint Assessment File Note (CAFN) Refer a matter to the BI allocation queue if BI review required SBI/OTL allocates case to BI if required	Contact both parties and determine whether an outcome can be facilitated (based on: contractor agrees, owner agrees, history with contractor, both parties are reasonable) Develop resolution options Consider alternatives Reach mutual consent on an outcome agreeable to all concerned	Conduct inspection to determine if work is defective or not Review relevant legislation and policies (and check current status of licence and status on ASIC) Use legislative parameters and discretionary decision-making provided for in the Act to decide whether it is appropriate to issue a DTR Communicate decision in writing to complainant and respondent	Determine whether parties agree on rectification status In circumstances where the parties disagree on whether the rectification work occurred, undertake physical reinspection Consider all materials and form an opinion about the defective status of the work	Make decision about whether it is appropriate to issue FTR Communicate decision to complainant and respondent, assuring they have been treated fairly and their case has been progressed in a timely way	Complete PIN checklist Check status of licence and ASIC Issue PIN (if PIN checklist all "YES") Determine how many demerit points to issue Update public register	Full review of case as if original reviewable decision was not made Communicate new decision to all parties	Provide materials for review at QCAT Appear as witnesses in QCAT cases
What are the key skills, systems and processes required to be successful?	<b>System and process needs:</b> Accessible and easily understood information on website, complaint form and myQBCC; front office support available for complaints lodgement (regions only) <b>Skills and experience needs:</b> General administrative skills; familiarity with Salesforce	<b>Skills and experience needs:</b> Administrative decision-making skills; communication skills <b>System and process needs:</b> Clear guidance to identify incomplete complaints; clear guidance for SDW model	<b>Skills and experience needs:</b> General administrative skills <b>System and process needs:</b> Efficient and effective business processes; availability of capable staff	<b>Skills and experience needs:</b> Administrative decision-making skills; staff with capacity and confidence in their skills to review eligibility of cases <b>System and process needs:</b> Clear guidance on assessing eligibility; ECM for document storage and Salesforce for case management; public register to check licence status, ASIC to check company status	<b>Skills and experience needs:</b> Administrative decision-making skills <b>System and process needs:</b> Efficient and effective processes to facilitate further fact finding; ECM for document storage and Salesforce for case management	<b>Skills and experience needs:</b> Communication skills; conciliation skills; staff with capability and capacity to facilitate agreeable outcomes <b>System and process needs:</b> Efficient and effective business processes and tools to determine if outcome can be facilitated; guidance and training to facilitate agreeable outcomes	<b>Skills and experience needs:</b> Communication skills; administrative decision-making skills; technical skills <b>System and process needs:</b> A robust process to support fair and independent decision making; ECM for document storage and Salesforce for case management; public register to check licence status, ASIC to check company status	<b>Skills and experience needs:</b> Communication skills; technical decision-making skills <b>System and process needs:</b> Access to appropriate Australian Standards and other technical decision-making guidance	<b>Skills and experience needs:</b> Technical expertise; administrative decision-making skills; relationship management skills <b>System and process needs:</b> A robust process to support fair and independent decision-making; ECM for document storage and Salesforce for case management	<b>Skills and experience needs:</b> Administrative decision-making skills <b>System and process needs:</b> A robust process to support fair and independent decision-making; CMS to issue PIN; Salesforce to record action to issue PIN; ECM to store PIN checklist	<b>Skills and experience needs:</b> Technical and administrative decision-making skills; appropriate capacity <b>System and process needs:</b> Fair and independent processes and decision-making; ECM for document storage and Salesforce for case management	<b>Skills and experience needs:</b> Technical expertise; legal knowledge; administrative decision-making skills; ability to support QCAT matters
Who is responsible for the activities?	Complainant/ Resolution Services	Senior Lead (Resolution Services)	Senior Lead/Operational Team Leader (OTL – Regional Services)	AO	AO	AO	BI	BI	BI	***Delegated staff	Review Officer	Legal Services; Resolution Services
Who has oversight?	Complainant/ Resolution Services	Senior Lead	Senior Lead/OTL of AO's office	Senior Lead/OTL of AO's office	Senior Lead/OTL of AO's office	Senior Lead/OTL of AO's office	Senior Lead/OTL of BI's office	Senior Lead/OTL of BI's office	Senior Lead/OTL of BI's office	Unclear	IRU Manager	Legal Services; Resolution Services

\*Some (typically more complex) cases are handled by more senior staff (e.g., Manager). This staff member may then complete steps 4-6.

\*\*This step appears to be applied inconsistently

\*\*\*Only staff who have complied with the specialised training requirements and have their delegation approved by the appropriate Manager are able to issue Infringement Notices (Per Section 2 of the Infringement Notices Manual).

Figure 9 | Service model through which requests for EDR are progressed

						
	1. Complainant makes a request for EDR	2. The request is allocated to the region within which the building site is located	3. The request is assigned to a BI* <small>*In some regions EDR cases are sometimes assigned to AO</small>	4. Eligibility for the EDR service is reviewed	5. An attempt is made to facilitate an agreeable outcome between parties	6. The dispute is closed or referred on for consideration as a complaint about defective work
What are the desired outcomes of this step?	Requests are lodged with correct information	EDR requests are allocated to the appropriate region as quickly as possible	EDR requests are assigned to person with appropriate capability and sufficient capacity	Requests that are out of QBCC's power to resolve through EDR are closed and appropriately referred elsewhere	Complainants and respondents are able to agree a mutually acceptable way forward for all or most items without a progression to technical review, DTR or QCAT	An appropriate decision about whether to close the case or to refer on for consideration of defective work is reached
What are the key activities?	Complainant becomes aware of ability to lodge a request for EDR Complainant lodges request via myQBCC or Residential and Commercial Construction Work Complaint Form Case is created in Salesforce	Request is automatically allocated in Salesforce to a region based on site postcode	Briefly assess each case Assign to BI (occasionally AO) based on complexity and history	Assess EDR request against legislation and policy eligibility (e.g., residential work only) Check whether the contractor is currently licensed Check the details of the contract (including confirmation of parties involved) Refer any matters involving breaches of the QBCC Act to the Compliance Triage Team Complete Complaint Assessment File Note (CAFN)	Contact both parties within 5 working days and attempt to facilitate an agreement Ask parties if they are willing to reach an agreement Determine if agreement has been reached	Determine if matter is eligible for QBCC's complaints process If eligible for QBCC complaints process, proceed to technical review. If no agreement reached, issue case closure letter and refer to QCAT or independent legal advice If resolution is reached about all matters, close case
What are the key skills, systems and processes required to be successful?	<b>Skills and experience needs:</b> General administrative skills; familiarity with Salesforce <b>System and process needs:</b> Accessible and easily understood information on website, complaint form and myQBCC; front office support available for complaints lodgement (regions only)	<b>System and process needs:</b> Efficient and effective business processes	<b>Skills and experience needs:</b> Administrative decision-making skills; communication skills <b>System and process needs:</b> Availability of capable staff	<b>Skills and experience needs:</b> Administrative decision-making skills; ability to identify eligible requests <b>System and process needs:</b> Efficient and effective business processes and tools to identify eligible requests	<b>Skills and experience needs:</b> Mediation or conciliation skills; communication skills <b>System and process needs:</b> Guidance and training to undertake EDR	<b>Skills and experience needs:</b> Administrative decision-making skills <b>System and process needs:</b> A robust process to support fair and independent decision making
Who is responsible for the activities?	Complainant/Resolution Services	NA	Senior Lead/OTL	BI	BI	AO
Who has oversight?	Complainant/Resolution Services	Senior Lead	Senior Lead/OTL of BI's office	Senior Lead/OTL of BI's office	Senior Lead/OTL of BI's office	Senior Lead/OTL of BI's office

Case proceeds as per complaints process

## 6 Nous has made findings against the assessment framework

This section presents the Review findings against each of the dimensions of the assessment framework. Each heading highlights whether the dimension of the assessment framework applies to the complaints process, the decision-making process, or both.

### 6.1 Accessible (complaints process)

#### Key take-aways:

- QBCC provides a **free and accessible** complaints service, where information is available and complaints can be submitted via a number of channels. All complaints submitted are ultimately reviewed and progressed, with there being clear referral pathways to other bodies who can assist where a matter falls outside of QBCC's jurisdiction.
- There is an opportunity to better clarify when and how QBCC can assist homeowners and contractors, including by facilitating dispute resolution. Further enhancements to the website could address this by **improving access to information** and providing more transparency around what the process, associated timelines and likely outcomes involve.

The complaints process is a critical element of QBCC's statutory responsibility, and it should be easy for potential complainants to access. Complaints are an important trigger for QBCC to regulate building work and therefore it is important that consumers and contractors both know when and how QBCC can assist them and the experience of lodging a complaint is as simple and straightforward as possible.

This dimension was assessed against the indicators outlined below.

Figure 10 | Accessibility indicators

COMPLAINTS PROCESS	<b>Accessible</b> <ul style="list-style-type: none"> <li>• The role and scope of QBCC is well understood</li> <li>• Information about the complaints process is readily accessible</li> <li>• Complaints are easy to make</li> </ul>	<b>Efficient</b> <ul style="list-style-type: none"> <li>• Decision-making about complaints is timely</li> <li>• Progress updates are provided regularly</li> <li>• The organisation has capacity and capability to meet demand</li> </ul>	<b>Accountable</b> <ul style="list-style-type: none"> <li>• Record-keeping is comprehensive and consistent</li> <li>• Accountability and oversight is clear</li> </ul>	COMBINED
	<b>Fair and independent</b> <ul style="list-style-type: none"> <li>• Decision-making is based on evidence and policies</li> <li>• The decision-making process is impartial</li> <li>• Decision-making is consistent</li> </ul>	<b>Prepared</b> <ul style="list-style-type: none"> <li>• The organisational structure and culture support QBCC's strategy and objectives</li> <li>• There are mechanisms in place to measure different dimensions of organisational performance</li> <li>• Continuous improvement is embedded into the organisation's ways of working</li> </ul>		
DECISION-MAKING PROCESS				

Figure 11 | Steps in which 'accessibility' of the complaints process is relevant

	1. The complaint is lodged	2. The complaint is assigned to an AO*	3. The request is assigned to a BR	4. Eligibility for the EDR service is reviewed	5. Further information is requested and reviewed	6. A determination is made about if an outcome could be facilitated and, if so, attempted an agreeable outcome between parties	7. A decision is made whether it is appropriate under Section 72 to issue a DTR	8. An opinion is formed about whether the direction has been satisfied	9. A decision is made to issue a FIR	10. A decision is made to issue a PIN and associated penalties	Internal review of a decision is undertaken	External review of a decision is undertaken
Complaints												
Requests for EDR	1. Complainant makes a request for EDR		In some regions EDR cases are sometimes assigned to AO		NA	5. An attempt is made to facilitate an agreeable outcome between parties	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE

### 6.1.1 Key strengths related to the “accessible” dimension

QBCC provides a complaints service that is known by, and accessible to homeowners and contractors

QBCC has a diversified approach to publicising the complaints service. It does this primarily through its website, but also through other channels including social media, and by making hard copy materials available through its regional offices.

QBCC provides consumers with multiple channels to register a complaint including on the website, via post, via email and in-person. A breakdown of the channel used to lodge complaints across different types of channels is at Table 5.

Table 5 | Channels of access by sub type of complaint<sup>18</sup>

Case origin	“Defective Work” or “Subsidence”	EDR - Defective Construction	Per cent share of total
Web	2,439	206	64.5%
Post	869	40	22.2%
Email	419	33	11.0%
In-Person	68	3	1.7%
Phone <sup>19</sup>	8	18	0.6%
<b>Total</b>	<b>3,803</b>	<b>300</b>	

<sup>18</sup> Based on two-year averages of QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: "EDR - Defective Construction", "Defective Work", "Subsidence". Note there were an additional nine cases with a case origin of "Clone". This field was designed for QBCC staff to replicate the details of an existing case. Although still represented in the other analysis, these nine cases were excluded from the case origin analysis for simplicity. Note these average yearly figures were rounded to the nearest whole number.

<sup>19</sup> As of 11 July 2019, QBCC reported it no longer accept complaints lodged by phone; Reviewers were advised that complaints with a case origin of "phone" were likely recorded in error.

The number of new complaints received each year by QBCC is indicative that the service is reasonably well known by the public. Nous found that information about the complaints service is advertised primarily through its website, however QBCC also maintains a social media presence, and has manned front desks in some locations. Other services such as Fair Trading Queensland and QCAT also direct potential complainants to QBCC.

While the variety of information channels are a strength, a small number of QBCC staff reflected that the number of complaints received each year was lower than they would expect considering the size of the building industry and questioned whether the service was known by the majority of homeowners and contractors.

Some regional staff reported that the ability to lodge complaints in-person via the front desk service was highly valued by many homeowners, citing that it aligned strongly to expectations in regional communities about a more familiar service.

QBCC's decision not to charge a fee makes the service highly accessible to all potential complainants.<sup>20</sup> While the upside of this arrangement is that it reinforces the accessibility of the service, the downside is that there is no financial barrier to people making vexatious claims; staff reported that some homeowners had submitted dozens of complaints for minor issues over a period of time. A few QBCC staff that were consulted highlighted that while a small financial barrier to making a complaint may deter numerous or unsubstantiated complaints from being lodged, this may not align with public expectations, particularly where complaints may result in an insurance claim for which a premium has already been paid by homeowners.

All complaints submitted to QBCC are ultimately reviewed and progressed as required. There is evidence of clear referral pathways to other bodies who can assist where a matter falls outside of QBCC's jurisdiction or powers. For example, there is clear reference to QCAT referrals in the relevant closure letters sent by QBCC (where applicable).

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When the regulator and facilitator functions get mixed up without explanation or guidance, people's expectations may differ greatly from reality. For example, builders who are coming to genuinely settle a matter with a homeowner might feel a bit betrayed if QBCC suddenly puts on its "regulator hat" to issue the builder with a DTR, if they are not aware that this is a possibility.

QBCC staff member

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<sup>20</sup> Interestingly, s71J (c) of the Act provides for a fee to be charged to make a complaint, but no corresponding charge is described in Regulations. While some QBCC staff consulted speculated that charging fees would be misaligned with community expectations, no staff consulted were able to provide a definitive history on how the policy position to not recover costs had been reached.

## 6.1.2 Areas for improvement related to the “accessible” dimension

### There remains some confusion about QBCC’s role and the types of complaints it can handle

Nous found that the role and remit of the complaints-handling process and its decision-making was not always well understood by homeowners. The types of complaints lodged to the QBCC demonstrate ongoing confusion by homeowners about the issues with which QBCC can assist; across FY20 and FY21 8.6 per cent of cases<sup>21</sup> were closed due to factors associated with being “outside jurisdiction” of QBCC’s statutory remit. Across these two financial years, an average annual number of 1,025 (25 per cent) cases resulted in a decision not to DTR based on determinations by BIs that it is not reasonable to issue a direction to rectify for reasons such as the owner denying site access to the contractor or that the rectification work is not justifiable for the defect (based on Case Result categorisations of “Board Policy Section 72”).<sup>22</sup> This indicates there is potential to better communicate QBCC’s powers and role, and what is required of people who lodge a complaint.

Further, QBCC’s regulatory functions and dispute resolution role are sometimes poorly distinguished, and homeowners, contractors, and sometimes even QBCC staff are reported to be confused about what the possible (or target) outcomes could be when interacting with the complaints process.

### The design of the website presents barriers to homeowners and contractors accessing the information they need

Confusion about QBCC’s role and remit is in part attributable to how this information is presented on the website.

The website contains a plethora of information and examples of QBCC’s powers and remit, including factsheets and forms about when QBCC can and cannot help, what constitutes defective building work, and other guidance about the broader building process and experience. Yet, this information can sometimes be difficult to locate and is not always immediately relevant to different audiences. For example:

- While QBCC must balance the interests of homeowners and contractors in any dispute, the website visuals exclusively feature contractors and other trade professionals which may unintentionally undermine QBCC’s efforts to present itself as a neutral body that balances the interests of contractors and homeowners.
- The location of key information is not always intuitive or easily accessible. For example, the definition of “defective building work” which is critical to determining whether a homeowner or contractor is eligible to lodge a complaint requires three click-throughs (and some scrolling) once the reader has already navigated to the “building complaint” section. Details on “When we can and can’t help” is in a different section to “timeframes that could affect your complaint”, whereas many readers would want to consider this information together to inform a decision about whether to pursue a complaint. Information is often presented in text heavy formats which require a high degree of reading comprehension, for example, when a user clicks on “What is defective work” they are presented with a link to a 60-page document about Standards and Tolerances. There are no audio or video alternatives available to readers to understand information easily.

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<sup>21</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: “EDR - Defective Construction”, “Defective Work”, “Subsidence”. Cases with Case Result “Outside Jurisdiction”.

<sup>22</sup> This represents 95.2 per cent of cases with this case result. Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: “EDR - Defective Construction”, “Defective Work”, “Subsidence”. Note the report for case closure role was completed after the original data report, and there were an additional six cases in this original report. These cases may have been reopened or may have changed Sub Type during this time.

Most complaints are submitted via the online complaints form and complainants must register an account with myQBCC to be able to submit this. While this process is relatively straight forward, there are currently some missed opportunities to:

- Ask the complainant about what outcome they are seeking by lodging a complaint or a request for EDR (to position QBCC optimally to assist, while also managing expectations up front by linking these outcomes back to what QBCC can and cannot do within its statutory remit.
- Define (within the complaints form) key terms such as matters that constitute *defective building work* (as distinct from other *contractual matters*) or providing hyperlinks back to the information on the website to assist with managing expectations about when and how QBCC might help.

Nous is aware that upgrades to the website are already underway which should simplify access to information and facilitate submission of complaints. Key changes planned for the complaints pages include:

- Simplifying the design of the website and providing clearer signposts about where users can access the information they need
- Redesigning the location of commonly accessed information to make it more immediately accessible
- [Longer term] Embedding the complaints form into the website rather than linking it to Salesforce through myQBCC, to remove the barrier of requiring complainants to create an account to submit a complaint.<sup>23</sup>

To Nous' knowledge, these changes don't extend as far as simplifying the language of the information provided (e.g., "what is defective work", updating the content to include more information about how to avoid or de-escalate disputes, reviewing myQBCC, or considering how to present QBCC as a regulator for industry *and* homeowners).

## There are legislative barriers to QBCC sharing information about cases to better manage expectations

Nous heard from QBCC staff that it can be challenging to clarify QBCC's role and remit in the public domain, particularly as it applies to individual cases, because of the limitations imposed by s110 of the Act (summarised below). For example, staff recounted cases that were receiving some media coverage at the moment, where it was publicly reported that QBCC was taking no action to remedy defective work, without reporting that the homeowner was refusing the contractor access to the site to undertake such remedial work.

While assuring appropriate confidentiality of homeowner, contractor and other stakeholders' information should remain a priority for QBCC, Nous highlights that the wording of the current provisions may in fact be inhibiting QBCC from acting as an effective and transparent regulator by preventing more visibility over how cases are handled and how well outcomes align with community expectations.

### 110 Confidentiality of information

- (1) This section applies if a person obtains information or gains access to a document in exercising a power or performing a function under this Act.
- (2) The person must not do any of the following—
  - (a) disclose to anyone else—
    - (i) the information; or
    - (ii) the contents of or information contained in the document;

<sup>23</sup> After discussing with the website redesign team, Nous was advised that they would consider how the visuals on the website reflect homeowners and contractors as key audiences and reinforce QBCC's position as a neutral body.

- (b) give access to the document to anyone else;
- (c) use the information or document for any purpose.

*Maximum penalty—100 penalty units.*

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
  - (a) about a person, with the person’s consent; or
  - (b) that is necessary for the exercise of a power or performance of a function under this Act; or
  - (c) that is made or given by the commission or a person authorised by the commission if the commission reasonably believes the disclosure, access or use—
    - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act or the *Building Act 1975*; or
    - (ii) is necessary for the administration or enforcement of another Act prescribed by regulation; or
    - (iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public safety; or
  - (d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
  - (e) that is required or authorised under a law, including, for example, section 28A or 28B; or
  - (f) to a Minister.

### **There is little certainty around timeframes involved in finalising complaints**

Based on a review of social media, Nous found that the lack of transparency around timelines to finalise complaint is a significant frustration to many homeowners and contractors.

While some, limited information is published which relates to timeframes (see Section 6.3.2 on page 40), QBCC does not consistently and proactively communicate average or expected timeframes to complainants or respondents. Providing this information can:

- Inform complainant decisions about whether to lodge a complaint in the first instance
- Set and manage expectations about how long the process will take.

Regulators in other sectors manage timeframe expectations through guidance documents based on complexity type. For example, the Australian Financial Complaints Authority provides the information outlined at Figure 12 to potential complainants.



Figure 12 | Australian Financial Complaints Authority public complaints processing timeframes<sup>24</sup>

Fast Track	Standard & Complex	Financial Difficulty
<p>Initial contact within <b>3 days</b> of allocation.</p> <p>Early input by an adjudicator to confirm our approach and likely outcome.</p> <p>We also identify any extra information we need. We ask for this <b>information</b> to be provided within <b>7 days</b>.</p> <p>Fast Track complaints are mostly resolved by negotiation. Fast Track complaints are not conciliated.</p> <p>Once we have enough information, and if the matter has not been resolved by negotiation, we will provide a preliminary assessment over the phone or in writing.</p> <p>🕒 <b>4 weeks</b></p> <p>If either party rejects our preliminary assessment, the matter is referred to an adjudicator for decision.</p>	<p>Initial contact within <b>7 days</b> of allocation.</p> <p>Depending on the complexity of the complaint, we ask for <b>information</b> to be provided within <b>7-21 days</b>.</p> <p>We decide if the complaint could be resolved by negotiation or telephone conciliation.</p> <p>Once we have enough information, and if the matter has not been resolved, we will provide a preliminary assessment over the phone or in writing.</p> <p>🕒 <b>4-8 weeks</b></p> <p>If either party rejects our preliminary assessment, the matter is referred to a panel or an ombudsman for decision.</p>	<p>Initial contact within <b>3 days</b> of allocation.</p> <p>This is a tailored process, and we will work with the complainant and the financial firm to reach an agreement.</p> <p>We ask for <b>information</b> to be provided within <b>7-14 days</b>.</p> <p>Telephone conciliation is the most common resolution method for financial difficulty complaints.</p> <p>If the complaint cannot be resolved by conciliation or negotiation, we will provide a preliminary assessment over the phone.</p> <p>🕒 <b>3-6 weeks</b></p> <p>If either party rejects our preliminary assessment, the matter is referred to an ombudsman for decision.</p> <p>If the financial firm accepts our preliminary assessment but the complainant does not respond, we will also refer the complaint for decision.</p>

## 6.2 Efficient (complaints process)

### Key take-aways:

- QBCC is **responsive to requests for EDR**, with applications being processed and telephone mediation being instigated within target timeframes. On the other hand, some complaints can take some time to finalise.
- The absence of a sophisticated triaging model and the under-utilisation of dispute resolution to reach outcomes earlier are contributing to **process inefficiencies and delays**. Aligned to this, while there are many highly skilled people working at the QBCC, skillsets required to deliver effective dispute resolution and relationship management are not consistently recognised and reflected in the workforce involved in those stages.
- Capacity constraints put pressure on QBCC staff, but these could be improved by adapting the resourcing model to better accommodate unplanned leave; and to take into account how regional offices use staff flexibly to work across different regulatory functions.
- Correspondence with complainants and respondents is mixed. Improving the quality and consistency of communication could better manage expectations and improve the experience of homeowners and contractors interacting with QBCC.

Efficient complaints and decision-making processes are important to make best use of QBCC's limited resources and to help homeowners and contractors reach outcomes about their matters as quickly as possible. An efficient complaints process reduces customer frustration and increases QBCC's capacity to address higher-risk issues and dedicate more time to proactive regulation activities.

This dimension was assessed against the indicators outlined below.

<sup>24</sup> Australian Financial Complaints Authority, Factsheet: How we resolve complaints and our Rules. Accessed at: <https://www.afca.org.au/what-to-expect/the-process-we-follow>

Figure 13 | Efficiency indicators

COMPLAINTS PROCESS	<p><b>Accessible</b></p> <ul style="list-style-type: none"> <li>The role and scope of QBCC is well understood</li> <li>Information about the complaints process is readily accessible</li> <li>Complaints are easy to make</li> </ul>	<p><b>Efficient</b></p> <ul style="list-style-type: none"> <li>Decision-making about complaints is timely</li> <li>Progress updates are provided regularly</li> <li>The organisation has capacity and capability to meet demand</li> </ul>	<p><b>Accountable</b></p> <ul style="list-style-type: none"> <li>Record-keeping is comprehensive and consistent</li> <li>Accountability and oversight is clear</li> </ul>
	DECISION-MAKING PROCESS	<p><b>Fair and independent</b></p> <ul style="list-style-type: none"> <li>Decision-making is based on evidence and policies</li> <li>The decision-making process is impartial</li> <li>Decision-making is consistent</li> </ul>	<p><b>Prepared</b></p> <ul style="list-style-type: none"> <li>The organisational structure and culture support QBCC's strategy and objectives</li> <li>There are mechanisms in place to measure different dimensions of organisational performance</li> <li>Continuous improvement is embedded into the organisation's ways of working</li> </ul>

Figure 14 | Stages in the complaints and EDR processes in which 'efficiency' is relevant

Complaints	1. The complaint is lodged	2. The complaint is briefly assessed and allocated to a region	3. The complaint is assigned to an AO*	4. A DTR is issued	5. Further information requests reviewed	6. A determination is made about if an outcome could be facilitated and, if so, attempted an agreeable outcome between parties	7. A decision is made whether it is appropriate under s72 to issue a DTR	8. An opinion is formed about whether the direction has been satisfied	9. A decision is made to issue a FTR	10. A decision is made to issue a PIN and associated penalties	Internal review of a decision is undertaken	External review of a decision is undertaken
	Requests for EDR	1. Complainant makes a request for EDR	2. The request is allocated to the region within which the building site is located	3. The request is assigned to a BI* <small>*In some regions EDR cases are sometimes assigned to AO</small>	NA	5. An attempt is made to facilitate an agreeable outcome between parties	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE

### 6.2.1 Key strengths related to the “efficient” dimension

Requests for EDR are dealt with efficiency, and QBCC is meeting its timeliness targets, where specified

QBCC generally performs well against efficiency indicators for its complaints and decision-making processes - where targets exist. These relate primarily to EDR and internal review processes. The legislation, policies, and standards that relate to efficiency targets, and QBCC’s performance against them are at Table 6.

**Table 6 | Efficiency targets and performance for the complaints and decision-making processes**

Description	Target <sup>25</sup>	Actual
<b>Legislation</b>		
Consideration of requests for extensions of time on DTRs within ten business days (s72B(C))	100%	It was not possible for the reviewers to determine performance against this indicator using data available to Nous.
Internal reviews within 28 days of internal review application (s86C(2))	100%	It was not possible for the reviewers to determine performance against this indicator using data available to Nous.
<b>Disputes Procedures Manual</b>		
[EDR] Make contact with both parties within five business (working) days	100%	Median of seven calendar days <sup>26</sup>
<b>Service Delivery Statement (SDS) Service Standards<sup>27</sup></b>		
[EDR] Percentage of early dispute resolution cases finalised within 28 days	80%	<b>83%</b>
[EDR] Average processing time for an early dispute resolution case	28 business days	<b>18 business days</b>
[Internal review] Percentage of internal review applicants contacted within two business days <sup>28</sup>	95%	<b>95.9%</b>

Specific to the SDS Service Standards, QBCC achieved both EDR targets from each month between July 2020 to May 2021).<sup>29</sup> QBCC also improved on its internal review target of 95 per cent for FY21, with 97 per cent of internal review applicants contacted within two business days, surpassing its performance of 95.9 per cent in FY20.<sup>30</sup>

### **QBCC has a resourcing model that makes good use of its organisation-wide capacity**

QBCC has introduced initiatives which have contributed to greater capacity, including the SDW model.

<sup>25</sup> Only SDS service standards have 'targets' against which QBCC is held accountable; other targets shown in this table reflect compliance with statutory timeframes or requirements set out in the Dispute Procedures Manual.

<sup>26</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Type: EDR - Defective Construction. Note this is considered representative of all EDR cases (i.e., Sub Types: EDR- Contract Dispute, EDR - Non-Completion).

<sup>27</sup> QBCC Annual Report 2019-2020. These figures are derived from matters which are not limited to: EDR - Defective Construction, Defective Work, Subsidence. Though the figures broadly represent expected timeliness of these complaints.

<sup>28</sup> This target relates to all decisions considered by IRU, not limited to complaints about defective building work.

<sup>29</sup> Resolution Services SDS Measures FYTD. These measures were reported from July 2020 to May 2021. Data for June 2021 was not provided in this document at the time of review.

<sup>30</sup> Unpublished data provided by Internal Review Unit for 2020-2021

Nous heard that the SDW approach, which distributes cases across Queensland, regardless of the location of the site, has smoothed the use of resources and reduced average wait times since it was introduced.<sup>31</sup> It was introduced in June 2019 and since then stakeholders report that it is has:

- made good use of QBCC’s whole of organisation capacity.
- provided a more consistent wait time for case assessments regardless of location or origin.

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Before SDW, some offices had people twiddling their thumbs with no work, so better resource efficiency - QBCC staff member

## 6.2.2 Areas of improvement related to the ‘efficient’ dimension

### QBCC is subject to few targets relating to timeliness of complaints-handling

QBCC does not have targets for timeliness of complaints-handling (i.e. separate to EDR-related targets). Although many QBCC staff reported that case complexity and variability limits QBCC’s ability to meaningfully track timeliness measures, these measures could present opportunities to realise efficiencies across the process.

QBCC is subject to SDS measures relating to EDR, as described in 6.2.1 on page 30 and it also reports some performance data relating to building complaints and disputes through its annual report:

- EDR processing times (average number of days and percentage below a threshold)
- Number of DTRs issued
- Internal review outcomes
- QCAT review outcomes

Furthermore, the website provides estimations of the number of complaints and location of offices, although it does not appear to be updated regularly “QBCC deals with approximately 5,500 disputes a year. Each resolution team in the Brisbane, Sunshine Coast and Gold Coast offices will handle around 600–700 of these disputes, with the other regional teams each resolving between 150 and 260 disputes.”<sup>32</sup>

Nous heard some other measures including average time to finalise complaints are tracked and reported to the Board on a quarterly schedule, but they aren’t “targets” and are not communicated outside of the organisation.

The lack of internal targets makes it more difficult for QBCC to define what efficiency looks like, and therefore it is unclear which steps of the process may be improved to achieve greater efficiency. In addition, some QBCC staff acknowledged that the lack of externally reported targets makes it more difficult for customers to understand intermediate case delays, and overall expectations about timelines in the process.

### Some complaints can take a long time to finalise

Nous heard from some QBCC staff that delays - particularly when timeframes are unknown - can create frustrations for complainants.

End-to-end, different types of complaints take varying lengths of time to finalise, as illustrated at Figure 15:

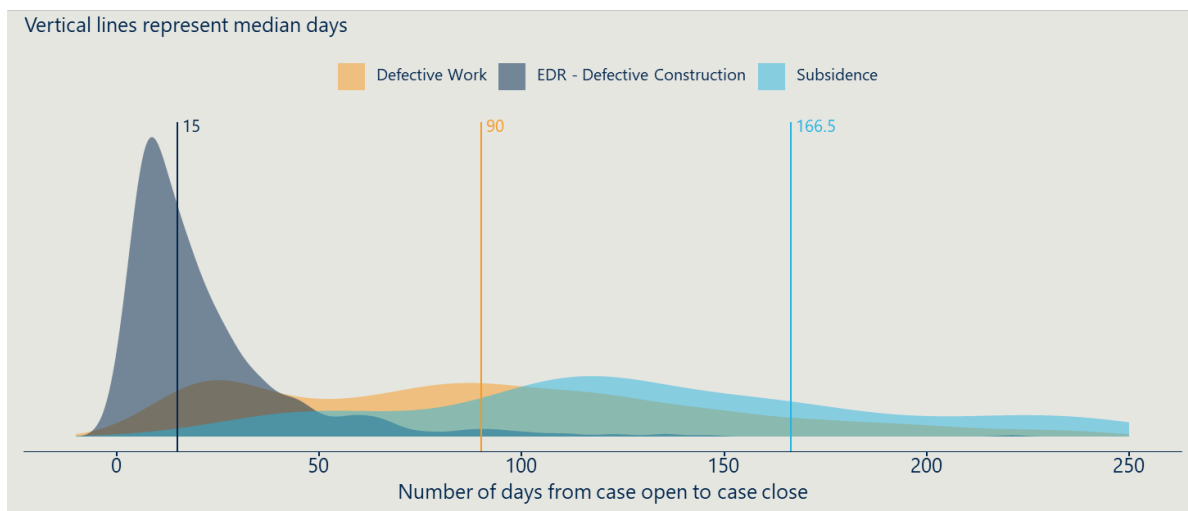
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<sup>31</sup> QBCC Statewide Distribution of Work – Report | Finding and Recommendations from Trial Model (November 2019)

<sup>32</sup> <https://www.qbcc.qld.gov.au/dispute-resolution-services>

- EDR cases are closed in a median of 15 days, which is significantly quicker than the other complaint types. This trend is likely due to two factors: First, EDR cases are prioritised for action by QBCC staff (as discussed in on page 34). Secondly, the EDR process requires fewer steps than other complaint types, which require less time to complete.
- Defective work complaints are closed in a median of 90 days, although as noted in Figure 15, the flat curve indicates there is a wide range with around half of cases closed significantly earlier and half significantly later.
- Subsidence complaints take the longest to close, with a median of 166.5 days, again with a wide variability across cases. Subsidence complaints are reported to be more complex and frequently require additional scrutiny and a more expert team, including technical inspections by other experts that can take time to arrange.

Figure 15 | Days from case open<sup>33</sup> to case close<sup>34,35</sup>



Within the complaints process, there are a few key times at which delays occur:

- The first is the time elapsed between a case being opened, to the date a complainant (called “claimant” in the data) is first contacted<sup>36</sup> (Figure 16). Some QBCC staff reported that if there is a significant delay in this initial contact, complainants are more likely to be frustrated as they feel their matter is being ignored. While time elapsed between these two points has a median of seven days for EDR cases, Defective Work and Subsidence complainants waited longer – a median of 22 and 25 days respectively.
- For complaints that require a physical inspection to be carried out, this can take some time to secure, and this can be perceived as stagnation by complainants. It took a median of 68 days from initial contact for an inspection to be carried out in the 26 casefiles that were examined as part of this Review.<sup>37</sup> Nous heard through QBCC staff interviews that there are sometimes delays in arranging a

<sup>33</sup> The date the case is opened in Salesforce.

<sup>34</sup> The date the case is closed in Salesforce.

<sup>35</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: "EDR - Defective Construction", "Defective Work", "Subsidence". Note this is measured in calendar days and the axis has been truncated to exclude extreme values.

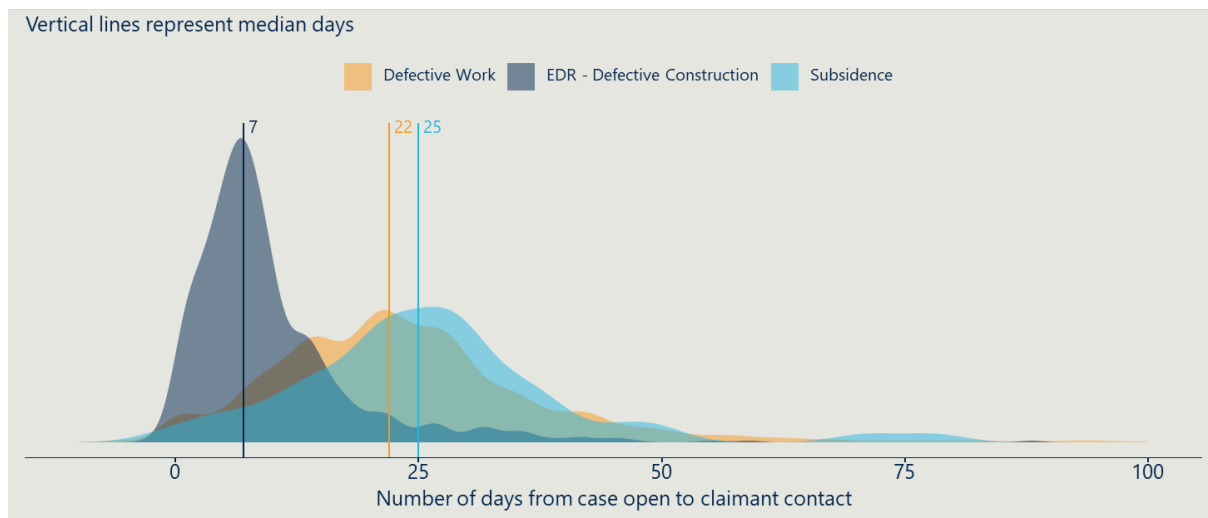
<sup>36</sup> The date the claimant was contacted by an AO via phone, as logged in Salesforce. Nous noted there is an automated email sent to complainants upon application, or, if lodged in-person, the case may be acknowledged upon application.

<sup>37</sup> Estimation of time elapsed for all complaints was not possible with available data. Due to the small sample size involved, time elapsed was not modelled for time elapsed between initial contact – physical inspection; or decision that it is fair and reasonable to DTR and the issue of the DTR notice.

physical site inspection, in part because of challenges in securing BIs to undertake this step. (Note, the way data is captured in Salesforce precludes measurement of the time taken between when it is determined an inspection is required and the inspection occurring).

- Where it was determined to be fair and reasonable to issue a contractor a DTR, a median timeframe of 22 days elapsed between the physical inspection and the issuing of the DTR in the cases reviewed.<sup>38</sup> This can be further frustrating for complainants if it is unclear why a finding of defective building work has not provoked immediate action. Based on casefile review, it is not consistently clear why there was a delay from the date of inspection to the date a DTR was issued; QBCC staff reported at least some delays may be expected as BIs are not always able to review materials and write the report on the day of inspection; or tasks to issue DTRs are not created by BIs and allocated to AOs or CSOs in a timely way.

**Figure 16 | Days from case open to claimant contact<sup>3940</sup>**



## There are process inefficiencies that may be contributing to these timeframes

### A comprehensive triage process is not yet in place

QBCC currently prioritises complaints:

- If there is a safety issue at play (noting that QBCC does not offer a “make safe” service)
- Where there is an open contract on foot (i.e., EDR), QBCC prioritises these and expedites them BI allocation with the view that timeliness as the key factor to get a contract back on track.

All other complaints are processed on a “first come, first served” basis.

Nous found the current approach can lead to missed opportunities to triage complaints with explicit regard to complexity and eligibility:

- **Complex cases:** Many QBCC staff reported that inefficiencies arise when complex cases are not immediately identified and triaged. In current processes, complex cases can be allocated to any available AO or BI who may or may not be confident or experienced dealing with people, procedural,

<sup>38</sup> Note that not all cases involved inspections and DTRs.

<sup>39</sup> The date the claimant is first contacted in Salesforce.

<sup>40</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: “EDR - Defective Construction”, “Defective Work”, “Subsidence”. Note this is measured in calendar days and the axis has been truncated to exclude extreme values.

legal, or technical complexity. Nous heard that this can add to delays and/or contribute to frustrated complainants and respondents.

- **Eligibility:** Some QBCC staff reported that there were missed opportunities to better triage out complaints that are not defective building work before allocating to a BI. This was attributed to low confidence and “rigid decision-making” amongst AOs to determine eligibility of cases based on definitions of “defective” and “building work”.<sup>41</sup> QBCC staff reported instances where complainants went to significant effort to locate required documentation and waited lengthy periods for a BI to be allocated, only to be informed immediately after BI allocation that the matter does not relate to building work as defined under the legislation.<sup>42 43</sup>

Nous notes that QBCC is currently introducing a function to triage complex cases: the CSIU is focused on developing a Complex Cases Framework to identify complex cases early, or as complexity arises and is piloting two Complex Case Management teams comprising experienced AOs and BIs to whom complex cases are referred. This is intended to be integrated with the current process when the case is assigned to regions. There is also an intention to provide support through other steps in the complaints process as required.

This initiative follows previous efforts around 18 months prior to use a triage team to undertake early assessments. QBCC staff reported this was challenging to implement due to the lack of tools to detect complexity; the capability and confidence of staff undertaking triaging activities; and the backlog this upfront triaging step created. The new Complex Case Framework will go some way to addressing these limitations, but the model does not propose to re-establish an earlier comprehensive triage step.

There may also be an opportunity to leverage elements of the CSIU initiative by exploring whether some elements of identifying complex cases could be better captured by refreshing elements of the Complaints Form. Ideally, capturing such information in a consistent manner may make it amenable to initial automated triaging (e.g., number of items on a complaint; history of complaints relating to either the complainant or respondent), which would act as a protective factor against creating a backlog of complaints to review early in the process.

### **Effective dispute resolution mechanisms are not employed to expedite finalisation of matters**

Effective dispute resolution provides an opportunity to reduce the number of matters that require consideration of a DTR or to be escalated to QCAT. However, this does not appear to be well understood or advocated by QBCC staff.

In practice, dispute resolution - in the context of EDR or in routine handling of complaints – is not achieving optimal outcomes and diverting cases away from the statutory DTR pathway. For example, 72 per cent of EDR cases were closed immediately after an attempt at telephone facilitated agreement (where only 22 per cent reached telephone-facilitated agreement; and 50 per cent did not reach agreement. The remaining 28 per cent of EDR cases had other case results, e.g., Outside Jurisdiction, Board Policy Section 72 (described in section 6.1.2), and other case results.<sup>44</sup>

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<sup>41</sup> Some stakeholders also raised challenges for AOs in the regions who are often required to be across complaints, licensing, compliance and insurance processes and decision-making.

<sup>42</sup> Nous understands that closing out of scope cases is typically the role of an AO. Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: “EDR - Defective Construction”, “Defective Work”, “Subsidence”, 84 per cent of cases with the case result of “Outside Jurisdiction”, “Time Limit Expired” or “Insufficient Information Received” were closed by AOs, with the remaining 16% closed by BIs.

<sup>43</sup> Nous recognises that not all cases are easily identifiable as building work or relating to defects and some may require allocation to a BI.

<sup>44</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to the Sub Type: “EDR - Defective Construction”.

Nous found that many QBCC staff reported EDR as a low-value activity, and also reported that many homeowners and contractors saw EDR as an unproductive, “tick-the-box” exercise that simply added delays to a process before an application could be made to QCAT. In reality, the low number of cases that result in an agreement being reached means that many EDR cases are then re-directed through the complaints process and take up QBCC time and resources to resolve (contributing to the frustrations felt by complainants and homeowners). Cases that are out of QBCC’s jurisdiction are also joining the queue for QCAT, which is reported to sometimes exceed 12 months and represents an enormous impost on complainants and respondents, who simply want their matters finalised.

There appears to be multiple reasons why dispute resolution is not used as efficiently or effectively as it could be at QBCC:

- As discussed in Section 4.2 on page 15, QBCC does not have a clear legislative remit to undertake mediation or conciliation. This is in contrast to some bodies in other jurisdictions. For example, Domestic Building Dispute Resolution Victoria whose underpinning legislation, the *Domestic Building Contracts Act 1995* includes an explicit object “to enable disputes involving domestic building work to be resolved as quickly, as efficiently and as cheaply as is possible having regard to the needs of fairness”.<sup>45</sup> By contrast, QBCC staff reported that any potential value they could deliver through the EDR process was nullified by the lack of statutory powers specific to the function.
- Dispute resolution is only genuinely applied in the context of EDR, which is only available to disputes where there is a contract on foot. While the expectation that *all* complaints go through some process to facilitate agreement is set up in public facing guidance (for example, the “what happens after you apply” fact sheet on the website, and loosely in internal documents such as the Dispute Resolution Manual (Chapter 2.4 – “Facilitation” and “When does QBCC attempt to facilitate an outcome”), the case file review found no evidence that this occurs in practice beyond an initial question to complainants to ask if they have independently attempted to reach an agreement with a respondent.
- EDR is currently led by BIs. While some BIs are reported to have highly developed conciliation and relationship management skills, this is reported by QBCC staff to be inconsistent. BIs are primarily hired on the basis of their technical skills, not dispute resolution skills and do not receive training in dispute resolution or conciliation (although Nous understands that mediation training has been provided to BIs in the past). However, some staff reported that BIs bring certain gravitas to dispute resolution, given their ability to make technical assessments about the matters at hand.
- There is very limited guidance available to staff about how to carry out dispute resolution. Across an expansive document, there are only two short paragraphs in the Dispute Processes Manual that relate to when and how to go about dispute resolution and facilitating an outcome (Figure 17 and Figure 18). Nous generally heard that relationship management skills were critical for all staff interacting with complainants and respondents (relationship management skills were frequently cited by QBCC staff as a significant contributor to frustrated homeowners), but that these skills were inconsistently present for AOs and BIs.

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<sup>45</sup> Domestic Building Contracts Act 1995



Figure 17 | Guidance in Disputes Procedures Manual about WHEN to seek to facilitate an outcome

### When does QBCC Attempt to Facilitate an Outcome

On making the first phone call it may be evident there is an opportunity for the matter to be resolved between the parties without an inspection:

- if the contractor agrees to rectify all defects within a reasonable timeframe
- if the owner agrees to the proposal
- if in the past you have had experience of the contractor rectifying defects
- if both parties are reasonable in their approach towards the problem.

Figure 18 | Guidance in Disputes Procedures Manual about HOW to facilitate an outcome

### Facilitation

Part of the Resolution Services process is to provide an equitable and efficient alternative dispute resolution service for building disputes arising between both licensed contractors and consumers concerning building defects.

Prior to a matter being scheduled for a site inspection, the Assessment Officer will contact both parties and determine whether an outcome can be facilitated regarding the dispute. This is achieved by making contact with both the claimant and respondent by telephone and where required in writing, working toward isolating the issues in dispute then going forward to develop options, consider alternatives and reach by mutual consent an outcome agreeable to all concerned.

While QBCC already provides information on its website to homeowners on how to avoid disputes, these resources could be completed with information on how to de-escalate complaints such as through tips and guidance about how to facilitate a discussion about contractual issues or defective work.

### Capacity is reported to be an ongoing challenge for teams that are involved in the complaints process

While the SDW model presents clear benefits around its use of organisation-wide capacity, some staff reported frustrations that it is not consistently delivering its target benefits around flexible resourcing.

However, capacity constraints were consistently cited as a barrier to managing workload with limited allowance for flexibility. SDW allocates cases based on approximate caseload capacity in offices and the number of items on a complaint, but staff reported that this allocation does not sufficiently accommodate assumptions about annual, sick leave and staff turnover. Staff reported that if a person is on leave or resigns that this can create a significant backlog (as this is not always sufficiently considered when the Senior Lead is assigning cases to each region), and currently there are no sufficiently trained resources that can step in to provide cover when needed.

It also only applied to complaints; so it does not appropriately consider the capacity regional offices direct into licensing and compliance, which utilise the same staff.

## Complainants are not always regularly updated on the progress of complaints and decisions

“If we can get to people on time it’s easier for them to accept bad news” – QBCC staff member

QBCC staff suggested that contractors and homeowners benefit from regular and clear communication from QBCC about the progress of their cases. While some QBCC staff reported this was generally done well, there was evidence in a few case reviews of customers requesting case status updates, where it would be reasonable to expect QBCC had provided this information. This may suggest QBCC does not always meet these expectations, though Nous notes the limitation of not being able to discuss these or other cases with customers.

There were also some case files which involved delays without evidence of an explanation for the delay or communication with homeowners and contractors. For example, in one instance the case file review noted the BI was on sick leave and the issuing of an FTR was delayed for two weeks, but no advice was provided to the homeowner or contractor.

## 6.3 Accountable (complaints process)

### Key take-aways:

- **Record-keeping relating to complaints is comprehensive** and positions QBCC to be accountable for its administrative decisions. That said, locating and retrieving information about a case can be a time-consuming exercise as it is stored in multiple locations and some information is not amenable to automatically generated reporting.
- Accountability arrangements are known to staff at QBCC, but written advice on **roles and responsibilities** is dispersed across different guidance documents and sometimes varies to reflect local resourcing models. There is no single source that provides a high-level summary of accountability arrangements.
- Under the SDW model, accountability for complaints is segmented by stage or task; there is no end-to-end oversight arrangements which can act as a safeguard to matters “falling between the cracks”.

QBCC must establish clear accountabilities within its complaints process to ensure information is collected and overseen by the right staff. This information allows QBCC to easily refer to cases while active and upon closure. This serves as both a quality assurance measure, and as a mechanism to drive improved future performance.

This dimension was assessed against the indicators outlined below.

Figure 19 | Accountability indicators

COMPLAINTS PROCESS	<b>Accessible</b> <ul style="list-style-type: none"> <li>The role and scope of QBCC is well understood</li> <li>Information about the complaints process is readily accessible</li> <li>Complaints are easy to make</li> </ul>	<b>Efficient</b> <ul style="list-style-type: none"> <li>Decision-making about complaints is timely</li> <li>Progress updates are provided regularly</li> <li>The organisation has capacity and capability to meet demand</li> </ul>	<b>Accountable</b> <ul style="list-style-type: none"> <li>Record-keeping is comprehensive and consistent</li> <li>Accountability and oversight is clear</li> </ul>
	<b>Fair and independent</b> <ul style="list-style-type: none"> <li>Decision-making is based on evidence and policies</li> <li>The decision-making process is impartial</li> <li>Decision-making is consistent</li> </ul>	<b>Prepared</b> <ul style="list-style-type: none"> <li>The organisational structure and culture support QBCC's strategy and objectives</li> <li>There are mechanisms in place to measure different dimensions of organisational performance</li> <li>Continuous improvement is embedded into the organisation's ways of working</li> </ul>	COMBINED
DECISION-MAKING PROCESS			

Figure 20 | Stages of the complaints and EDR processes in which 'accountability' is relevant

Complaints	1. The complaint is lodged	2. The complaint is briefly assessed and allocated to a region	3. The complaint is assigned to an AO*	4. Eligibility to request a DTR is determined and case reviewed	5. Further information is requested and reviewed	6. A determination is made about if an outcome could be facilitated and, if so, attempted an agreeable outcome between parties	7. A decision is made whether it is appropriate under s72 to issue a DTR	8. An opinion is formed about whether the direction has been satisfied	9. A decision is made to issue a FTR	10. A decision is made to issue a PIN and associated penalties	Internal review of a decision is undertaken
	Requests for EDR	1. Complainant makes a request for EDR	2. The request is allocated to the region within which the building site is located	3. The request is assigned to a BI* *In some regions EDR cases are sometimes assigned to AO	4. Eligibility for the EDR service is reviewed	N/A	5. An attempt is made to facilitate an agreeable outcome between parties	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE

### 6.3.1 Key strengths related to the “accountable” dimension

#### Record keeping relating to complaints is comprehensive and positions QBCC to be accountable for its administrative decisions

The comprehensive level of detail kept in case files enables QBCC to track cases while they are open, and appropriately assess or review them when closed. All interactions with complainants and respondents are logged, and information is stored about what steps QBCC staff have taken and the considerations that have played into decision-making.

QBCC provides guidance on record-keeping; based on the case review this is generally followed. Key materials to document the evidence base for decisions including emails, formal letter correspondence, photos, and technical reports are saved consistently to the ECM system. Nous only found some minor inconsistencies, primarily about whether voice recordings were made and documented consistently.

## 6.3.2 Areas of improvement related to the “accountable” dimension

**While comprehensive records are kept, interrogating information about factors considered in administrative decision-making can be a time consuming and manual exercise**

Records relating to the complaints process and decision-making are stored across three digital systems:

- **Salesforce:** Used as a case management system and stores information about the homeowner and contractor; details of the complaint; and records all interactions and decisions made.
- **ECM:** Provides files storage and is the system where emails, formal letter correspondence and building inspection reports are kept.
- **CMS:** Another case management system and stores details of activities relating to the issuing of infringement notices (and other compliance activities).

While extensive records are kept in relation to a case, interrogating information is a manual process.

### **There is no single, end-to-end view of a complaint**

The use of three digital systems makes it challenging to gain an end-to-end view of a case. This introduces additional vulnerability to a process where different steps may already be carried out by different staff members in different offices. Specifically, it is only through generating reports in the different systems and manually reconciling them can it be ascertained whether certain activities have been completed. For example, staff use Salesforce to record details of an FTR decision and record details against a PIN checklist which determines whether it is appropriate to issue a PIN. Records about whether the PIN was subsequently issued is stored in CMS. Both Salesforce and CMS records would need to be generated and matched to confirm that all steps have been appropriately executed.

### **There are minor variations in how information is recorded**

There are minor variations in how information about a case is recorded, specifically inconsistent use of “tasks” and “comments” in Salesforce. For example, there is no specific guidance about whether some tasks must be recorded as a task, or in any other format. This is relevant as Salesforce has the functionality to generate reports that show all the tasks that have been generated and actioned by staff, but the equivalent functionality does not exist for comments. This means that a report of tasks performed across a case (to achieve end-to-end visibility of a case, as described in the paragraph above) may be incomplete because a task has been recorded as a comment (or not at all).

### **Considerations that have informed decision-making are sometimes hard to identify**

Decision-making rationale is only recorded in inspection reports and letters advising of outcomes of the decision-making process; key factors considered in decision-making are not recorded as data and reports are not easily run to monitor potential trends in decision-making. Currently, there is a broad, single category used to record all discretionary decisions not to DTR called ‘**Board Policy Section 72**’<sup>46</sup>. These could include reasons such as the homeowner has refused to grant the contractor access to the property; or there is a large amount of money outstanding on a contract; among other possible reasons. These represent around 25 per cent of all case results – the largest case result grouping.<sup>47</sup> QBCC staff reported there is a high degree of variability in how it is used in practice, and any review of trends (such as why

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<sup>46</sup> QBCC also categorises some decisions as “Outside Jurisdiction” or decides not to DTR on the basis of contractors being bankrupt – these less discretionary categorisations are captured separately.

<sup>47</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: “EDR - Defective Construction”, “Defective Work”, “Subsidence”.

decisions not to issue DTRs despite defective building work being present were made) must be done manually.

Should such information be available at a more granular level, this could improve the consistency of QBCC decisions and inform continuous improvement activities. For example, should it be revealed that BIs use significantly different criteria in their assessment of when it is fair and reasonable to give a direction, greater guidance around how to apply discretion could lead to more consistent outcomes across different decision-makers. Similarly, understanding if other factors are common (such as homeowners refusing the contractor access to the property) could lead to more targeted work to set and manage expectations upfront about when and how QBCC can assist with complaints.

### **Information about responsibility for actions is not consistently clear or accessible.**

The Disputes Procedures Manual is the primary document that outlines processes, activities and responsibilities associated with the complaints and decision-making processes. It is a 158-page manual that is designed to support operational staff through the complaints and decision-making process. It is completed by a suite of additional manuals and policy documents including:

- Disputes Salesforce Processing Guide
- Disputes CMS Processing Guide
- Claims Procedures Manual
- Claims Salesforce Processing Guide
- Prioritisation Procedure
- Procedure Fairness Procedure
- Internal Review Procedure

Nous found that QBCC regularly updates its complaints procedure manuals and provides extensive information and guidance to decision-makers. However, these resources appear to have evolved in an ad hoc way<sup>48</sup> and have become lengthy documents that are not easy to navigate.

- The Disputes Procedures Manual mixes operational guidance with procedural guidance and the key purpose and audience for the document is unclear. For example, it outlines procedural steps for how to refer suspected breaches to the Compliance Triage Team and includes a lengthy section on how to check the status of a contractor's licence on ASIC and how to interpret this, but does not provide an overview of the core roles and responsibilities of an AO or BI.
- Guidance about who is responsible for certain activities is hard to follow and one must read multiple documents to build a complete understanding. The documents do not provide a clear and unambiguous allocation of responsibility (e.g., responsibilities for ensuring key activities are undertaken, such as issuing a PIN).
- Some stakeholders reported that the Disputes Procedures Manual was challenging to use and required a high degree of familiarity about the document's structure to find answers to specific questions.
- Nous found that the two key documents, Disputes Procedures Manual and Disputes Salesforce Processing Guide had some overlapping but not always aligned processes. For example, the Disputes Salesforce Processing Guide refers to "Disputes Process Steps", but these steps are not reflected nor clearly aligned to the "Complaints Process" outlined in the Disputes Procedures Manual.

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<sup>48</sup> Based on the version control tables at the front of each document.

## Oversight arrangements emphasise responsibility for stages of the complaints process, rather than “end-to-end” accountability for each case

While there are robust oversight arrangements through Senior Leads and Operational Team Leaders (OTLs), there is no defined end-to-end case management accountability in place, which makes it difficult to prevent or detect delays or errors in a timely way when stages of a complaint are managed by staff in different offices. Key vulnerabilities in oversight, as flagged by QBCC staff, are at points where responsibilities to deliver activities may change from one office to another:

- Unclear accountability for a case after a complaint is lodged but before it is allocated to an office
- Accountability after a complaint is lodged in the ‘Awaiting BI allocation queue’ but before it is assigned to a BI
- Accountability once a case is ‘closed’, but before the final steps to complete the PIN checklist and issue the PIN are undertaken is unclear. Nous was unable to locate any references in the Disputes Procedures Manual that specified this accountability.

Oversight challenges are compounded by other challenges:

- Lack of inter-operability across multiple systems (Salesforce and CMS) – for example to monitor the issuing of PINs in CMS once the PIN checklist has been completed in Salesforce.
- Nous found no clear guidance about what Senior Leads or OTLs are responsible for overseeing.

Generally, processes to monitor cases for which Senior Leads and OTLs determine themselves to be accountable appear to have evolved over time with some inconsistencies. For example, Nous understands that QBCC OTLs (Regional Services) have recently taken steps to address issues arising from the use of multiple systems by using weekly reports where staff manually check across systems to confirm actions have taken place, but the Resolution Services staff consulted about this were not aware that Regional Services staff had introduced this process. Some suggested that staff in Resolution Services had been manually monitoring reports between systems for a much longer duration of time.

## 6.4 Fair and independent (decision-making process)

### Key take-aways:

- The complaints process is **fair and independent**. Both parties are provided the opportunity to participate and provide input.
- A review of casefiles suggests that AOs and BIs make decisions based on **policies and evidence**. The reasons for decisions were consistently communicated to complainants, and they are advised of their options should they disagree with the outcome.
- Internal reviews are undertaken by different, more senior staff members. There is a culture of impartiality in how those reviews are undertaken, with the new decision-maker seeking to make a decision “as though the reviewable decision had not been made”, in line with legislative requirements.
- While ad hoc assurance measures are in place, a more **systemic quality assurance approach** would further safeguard the consistency of decisions made by QBCC staff.

QBCC has a statutory remit to provide remedies for defective building work, to balance the interests of building contractors and homeowners and to administer the home warranty scheme. Decision-making about complaints should therefore reflect QBCC’s role as a fair and independent regulator. This is critical to maintaining a thriving building and construction industry in Queensland.

This dimension was assessed against the indicators outlined below in Figure 21.

Figure 21 | Fair and independent indicators

COMPLAINTS PROCESS	<p><b>Accessible</b></p> <ul style="list-style-type: none"> <li>• The role and scope of QBCC is well understood</li> <li>• Information about the complaints process is readily accessible</li> <li>• Complaints are easy to make</li> </ul>	<p><b>Efficient</b></p> <ul style="list-style-type: none"> <li>• Decision-making about complaints is timely</li> <li>• Progress updates are provided regularly</li> <li>• The organisation has capacity and capability to meet demand</li> </ul>	<p><b>Accountable</b></p> <ul style="list-style-type: none"> <li>• Record-keeping is comprehensive and consistent</li> <li>• Accountability and oversight is clear</li> </ul>
	<p><b>Fair and independent</b></p> <ul style="list-style-type: none"> <li>• Decision-making is based on evidence and policies</li> <li>• The decision-making process is impartial</li> <li>• Decision-making is consistent</li> </ul>		<p><b>Prepared</b></p> <ul style="list-style-type: none"> <li>• The organisational structure and culture support QBCC’s strategy and objectives</li> <li>• There are mechanisms in place to measure different dimensions of organisational performance</li> <li>• Continuous improvement is embedded into the organisation’s ways of working</li> </ul>
	DECISION-MAKING PROCESS	COMBINED	

Figure 22 | Stages of the decision-making processes in which 'fair and independent' is relevant

Complaints	1. The complaint is lodged	2. The complaint is briefly assessed and allocated to a region	3. The complaint is assigned to an AO	4. Eligibility to request a DTR is determined and case reviewed	5. Further information is requested and reviewed	6. A determination made about outcome can be facilitated and, if so, attempted an agreeable outcome between parties	7. A decision is made whether it is appropriate under s72 to issue a DTR	8. An opinion is formed about whether the direction has been satisfied	9. A decision is made to issue a FTR	10. A decision is made to issue a PIN and associated penalties	Internal review of a decision is undertaken	external review of a decision is undertaken
	Requests for EDR	1. Complainant makes a request for EDR	2. The request is allocated to the region within which the building site is located	3. The request is assigned to a BR <i>*In some regions EDR cases are sometimes assigned to AO</i>	4. Eligibility for the EDR service is reviewed	NA	5. An attempt made to find an agreeable outcome between parties	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE

### 6.4.1 Key strengths related to the “fair and independent” dimension

#### The process is fair to both complainants and respondents

Nous found that QBCC provides homeowners and contractors with sufficient opportunities and instructions to provide input to cases. QBCC refers to this information and other elements in its decision-making.

Complainants have three broad opportunities to submit all relevant evidence:

- On application (complainants are prompted to lodge all relevant evidence through the online myQBCC portal)<sup>49</sup>
- On document review (complainants and respondents may be invited to submit additional evidence by the AO reviewing their complaint)
- Prior and post decision-making (the Disputes Procedures Manual specifies that “once a decision has been reached based on evidence to hand, should further documentation/information be provided by either party this must be reviewed and determined if it alters or supports the original decisions” page 40).<sup>50</sup>

The case file review found evidence of QBCC requesting additional relevant documents/evidence from complainants and respondents and providing them with reasonable timeframes to reply.

#### Decision-making is evidence-based and aligned to policies and legislation

Nous found evidence that QBCC decision-making is evidence-based and aligned to policies and legislation. In particular it found that:

- All documents and evidence used to inform decisions are logged in the relevant digital system.
- Evidence-based rationale for decision-making is provided to complainants and respondents through a detailed inspection report that refers to technical standards and relevant policies and legislation at a

<sup>49</sup> Complainants must also notify a respondent of their intention to submit a complaint in writing 14 days in advance of lodging a complaint.

<sup>50</sup> It is unclear from the Disputes Procedures Manual how this guidance can impact internal review processes, or at which point after a case is closed additional information should be considered by the original decision-maker.



case and individual complaint item level. Additionally, for each complaint item on a case, Salesforce tracks whether QBCC found the item to be building work and/or defective.<sup>51</sup>

- Decision outcome letters provide a shorter summary of the rationale for decision-making.
- Case closure letters provide the rationale and reasons for closing a case.

Nous did find some cases reviewed by the IRU which recommended that the inspection reports could be written in more accessible or “plain English” language and supports this recommendation.

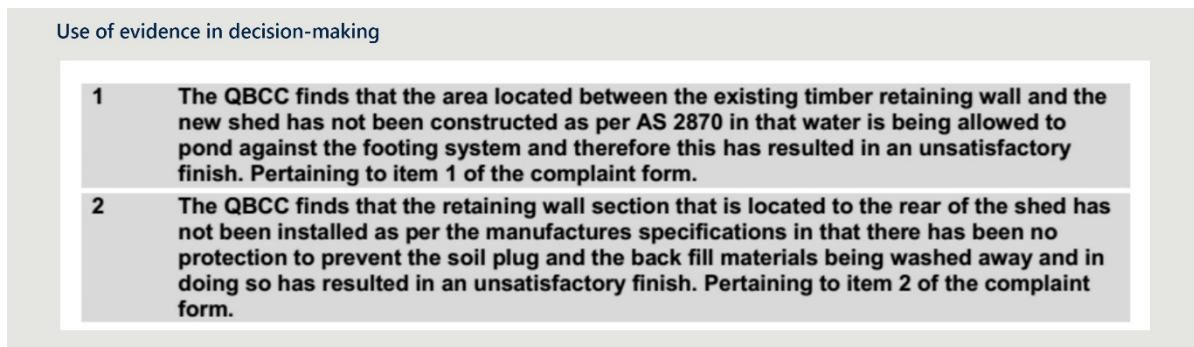
### **While perceptions of bias in decision-making persist, there is no evidence that this translates into actual bias**

A scan of local media and social media suggests that some people who interact with QBCC feel that decisions about complaints can be biased (generally against homeowners rather than contractors). Staff interviewed also commented that there was a perception by some members of the community that decision-making was biased.

However, Nous found no evidence of actual bias in the decision-making process. Rather there is evidence that decisions are made based on evidence, and with reference to policies and legislation.

The case file review found that **technical evidence** was collected by QBCC and subsequently considered by decision-makers (see Figure 23). For example, photos and diagrams of an alleged building defect were included in building inspection reports and interpreted with reference to technical standards and the Building Code of Australia. Other information such as manufacturer specifications were referenced in a small number of case files, where appropriate.

**Figure 23 | Example of technical evidence used in decision-making**



QBCC also consistently considers **policies and legislation** in decision-making. Decision notices routinely document QBCC’s powers to make decisions under s72 of the Act (at a general level) and refer to considerations about whether work constitutes building work or defective work in the inspection report (for example, see Figure 24).

<sup>51</sup> Salesforce also tracks the item location, defect category and defect code.

Figure 24 | Consideration against policies and legislation<sup>52</sup>

Evidence of consideration against policies and legislation in an inspection report

Complaint No.	Is the Work Building Work	Defective Work Identified	Defect Category	Responsibility to Attend to Item
2	Yes	No	No Defect	N/A

Evidence of consideration against policies and legislation in a Scott Schedule accompanying an inspection report

Item Number	Complaint Item Description as per	Location of Complaint Item	Date Item Noticed	QBCC's Comment - Inspection	Direction Or Exclusion Item Wording	QBCC's Decision
1	Only one coat of paint used on all architraves and skirting boards.	All internal	1/11/2019	The QBCC see this item to be of a contractual nature and is not able to adjudicate contractual issues	The item has been investigated and identified as contractual issues. The Queensland Building and Construction Commission Act 1991 Section 72 empowers the Commission to act in regard to defective and or incomplete building work. The QBCC is not able to adjudicate contractual issues. QBCC intends to take no further action with this matter.	Contractual- QBCC No Action

Despite finding that there is no actual bias in the way that QBCC makes decisions in response to a complaint, Nous recognises a number of factors that may raise concerns:

- Some homeowners are not satisfied that the process is fair because BIs and contractors speak a technical language during the inspection and in the inspection report they are not able to understand. Nous found in the case file review that inspection reports can at times be challenging to read and use jargon rather than plain English to communicate evidence for decision-making.
- Nous heard from many QBCC staff that some BIs have the capability and confidence to assert their role as independent inspectors who are examining the building work on the basis of their technical expert opinion. However, it was also reported that demonstrating that independence is more difficult in regional areas where there may be a small community of contractors, which may include the BI.
- There is an ongoing misunderstanding about what constitutes “defective” building work as distinct from matters that are “contractual” issues. This was raised by many QBCC staff as a source of frustration by complainants who do not understand why the issue they have raised does not justify a DTR. They can feel like the BI has “taken sides”.

## There are structures in place to protect impartial decision-making

### QBCC has a clear conflict of interest handling process in place

BIs are members of the construction industry and in small regional towns it is likely that staff will know the contractors and homeowners. QBCC’s Integrity and Complaints Branch manages a simple conflict of interest register to enable staff to record if they know the parties and have a relationship.

Nous was advised the register is accessible and takes around two minutes to lodge a conflict. The register is used extensively by staff to record where there are existing relationships or associations which may create perceived or actual bias in decision-making.

In all cases where a conflict or relationship is registered, that person must develop a conflict management plan appropriate to the conflict or relationship, that is then signed off by a member of the Senior Leadership Team, or the Commissioner if that person is a member of the Senior Leadership Team. Outcomes of such a plan may include decisions for cases to be reallocated, where an actual or perceived

<sup>52</sup> A Scott Schedule is a document that can be generated from Salesforce and provided to both parties. It lists all of the complaint items and additional columns are added to allow for the Claimant and Respondent to make comment on each item.

conflict exists, confirmation (and agreement from SLT) that the staff member is able to work impartially on a case.<sup>53</sup>

### **A separate team undertakes internal reviews of decisions and there is a culture of impartiality in place.**

QBCC has established an Internal Review Unit (IRU) in the Integrity and Complaints Branch. The IRU is staffed by its own team of AOs and BIs independent from Resolution Services and Regional Services (although Nous notes that staff have often worked in Resolution Services and Regional Services in previous roles). All decisions to close a case are considered either a decision to issue a DTR or a decision not to issue a DTR and are therefore reviewable; both complainants and respondents are advised of their review rights through the case closure letter.

The internal review process considers a case as though the original decision had not been made and reviews all evidence and documentation available. The IRU may request or collect additional information through requests to parties or additional site inspections/technical reports.

There is limited interaction between the IRU and the people involved in the original decision, and the IRU processes require (and Nous found evidence in the case file reviews) that the IRU decision must be made by a person that is more senior than the original decision-maker.

Staff from the IRU have advised that while an original decision-maker may be approached to provide contextual information about a case, it is in the context of an AO considering all available information to reach a new decision. IRU staff were explicit in their advice that their role (or legislative remit) is not to confirm, amend or vary an original decision, but rather to make an entirely new one. Staff across the relevant branches of QBCC reported that the internal review is genuinely an independent activity, and the culture of the organisation does separate IRU from business as usual (BAU) activities to reinforce this impartiality.

### **Internal and external review decisions generally replicate the original decision**

Of the complaints that were opened and closed across FY20 and FY21, only eight per cent proceeded to an internal review<sup>54</sup>. Approximately 56 per cent of all internal reviews over this same period replicated the original decision<sup>55</sup>. Across FY20 and FY21, there were a reported 432 total QBCC matters which went to QCAT<sup>56</sup>. Only 29 (6.7 per cent) of these QBCC decisions were overturned by QCAT (including 14 related to a direction to rectify for defective building work.)<sup>57</sup>

<sup>53</sup> This Review did not review the conflict of interest register. This assessment is based on stakeholder interviews with QBCC staff only.

<sup>54</sup> Based on QBCC provided data of all cases opened after 30 June 2019 and closed before 1 July 2021, relating to Sub Types: "EDR - Defective Construction", "Defective Work", "Subsidence".

<sup>55</sup> Unpublished data provided by Internal Review Unit for 2020-2021; QBCC Annual Report 2019-2020. It must be noted that this figure refers to all internal QBCC reviews and does not isolate original decisions about cases in the scope of this review.

<sup>56</sup> This includes matters to which QBCC has no jurisdiction to resolve outside of EDR, such as contract-related disputes

<sup>57</sup> QBCC provided data for 2020-2021; QBCC Annual Report 2019-2020. It must be noted that this figure refers to all QCAT reviews of QBCC matters and does not isolate decisions about cases in the scope of this review.

## 6.4.2 Areas of improvement relating to the “fair and independent” dimension

### Consistency of decisions would be strengthened by an assurance process

Nous found that while decisions are infrequently overturned through internal reviews and decision-making processes are generally sound, well-documented and defensible, decision-making could be strengthened by an assurance process.

Staff at QBCC currently work with a high degree of autonomy and can independently make decisions to DTR or to not DTR without requiring a second opinion (unless support is requested by the decision-maker for more complex decisions). QBCC staff document the evidence, the rationale and their decisions in an inspection report (or simply in a case closure letter for cases that don't result in a technical inspection), but Nous heard that there is currently no assurance arrangement in place to periodically and randomly review building inspection reports to confirm the appropriate application of technical standards in making a determination about defective building work. The accuracy of inspection reports is not only important to resolve complaints, but it is also used to guide approvals to scopes of work under the Home Warranty Insurance Scheme.

Routine checks are important to ensure consistent decision-making, and present an important opportunity to monitor, learn from, and lift the readability of the inspection reports to ensure clear communication about the rationale for decision-making to the community. Regular consistency checks also provide QBCC the opportunity to recalibrate, if necessary, through training or updated procedure manuals.

### The legislation obliges QBCC to make an internal review decision “as though the reviewable decision the subject of the application had not been made” (s86C(1)).

Internal reviews are generally a way for a regulator to confirm the appropriateness of their decisions, by confirming, overturning or amending a decision, based on a review of the same information.

The legislation requires QBCC to make a decision “as if the reviewable decision the subject of the application had not been made” (s86C(1)), which means the internal review step is currently operated more as an appeals function. While this is an effective way of ensuring all relevant (and potentially new) information is considered and avoids matters being unnecessarily escalated to QCAT for resolution, the inability of QBCC to review the original decision limits the way QBCC can use this step to confirm and communicate the appropriateness of its original decision.

Nous also heard that this creates outcomes where contractors are advised by industry bodies to seek to have a DTR record rescinded by applying for an internal review after rectifying defective work. In these instances, the poor conduct by the contractor is not recorded for the future protection of homeowners.

## 6.5 Prepared (both complaints and decision-making processes)

### Key take-aways:

- QBCC has a history of embarking on **continuous improvement** activities and staff have shown an openness to new ways of working.
- While there are pockets of excellence in how Resolution Services and Regional Services collaborate in relation to complaints, the service is not as connected as possible to QBCC’s broader activities, which undermines how efficient and effective it could be across its entire regulatory remit.
- **Collaboration** could be supported through organisational change including through culture change. There is no complaints-specific or whole of organisation **performance monitoring framework** in place which prevents QBCC from making informed decisions about how it is investing its efforts and resources to optimise its performance.
- Further collation and analysis of data from across the organisation will also be an important enabler for QBCC to embed an intelligence-led, risk-based approach to regulation and make strategic decisions about how to best achieve its core objectives.

The performance of QBCC as an efficient and effective regulator is enabled by appropriate organisational structures, systems and culture.

This dimension was assessed against the indicators outlined in Figure 25 below.

Figure 25 | Preparedness indicators

COMPLAINTS PROCESS	<p><b>Accessible</b></p> <ul style="list-style-type: none"> <li>• The role and scope of QBCC is well understood</li> <li>• Information about the complaints process is readily accessible</li> <li>• Complaints are easy to make</li> </ul>	<p><b>Efficient</b></p> <ul style="list-style-type: none"> <li>• Decision-making about complaints is timely</li> <li>• Progress updates are provided regularly</li> <li>• The organisation has capacity and capability meet demand</li> </ul>	<p><b>Accountable</b></p> <ul style="list-style-type: none"> <li>• Record-keeping is comprehensive and consistent</li> <li>• Accountability and oversight is clear</li> </ul>
DECISION-MAKING PROCESS	<p><b>Fair and independent</b></p> <ul style="list-style-type: none"> <li>• Decision-making is based on evidence and policies</li> <li>• The decision-making process is impartial</li> <li>• Decision-making is consistent</li> </ul>		<p><b>Prepared</b></p> <ul style="list-style-type: none"> <li>• The organisational structure and culture support QBCC’s strategy and objectives</li> <li>• There are mechanisms in place to measure different dimensions of organisational performance</li> <li>• Continuous improvement is embedded into the organisation’s ways of working</li> </ul>
<b>COMBINED</b>			

Figure 26 | Stages of the complaints and EDR processes in which “preparedness” is relevant

Complaints	1. The complaint is lodged	2. The complaint is briefly assessed and allocated to a region	3. The complaint is assigned to an AO*	4. Eligibility to request a DTR is determined and case reviewed	5. Further information is requested and reviewed	6. A determination is made about if an outcome could be facilitated and, if so, attempted an agreeable outcome between parties	7. A decision is made whether it is appropriate under s72 to issue a DTR	8. An opinion is formed about whether the direction has been satisfied	9. A decision is made to issue a FTR	10. A decision is made to issue a PIN and associated penalties	Internal review of a decision is undertaken
	Requests for EDR	1. Complainant makes a request for EDR	2. The request is allocated to the region within which the building site is located	3. The request is assigned to a BI* *In some regions EDR cases are sometimes assigned to AO	4. Eligibility for the EDR service is reviewed	N/A	5. An attempt is made to facilitate an agreeable outcome between parties	AS ABOVE	AS ABOVE	AS ABOVE	AS ABOVE

### 6.5.1 Key strengths related to the “prepared” dimension

#### QBCC increasingly has resources focused on continuous improvement

QBCC has demonstrated a commitment to continuous improvement by creating dedicated projects and other changes to improve the complaints and decision-making:

- The CSIU Complex Cases initiative discussed at section 6.2.2 to strengthen QBCC’s approach to complex cases.
- The development of QBCC’s *New Normal Blueprint* to develop an organisation-wide vision and roadmap to deliver on this vision<sup>58</sup>.

Outside of formal projects and continuous improvement initiatives, many stakeholders reported that QBCC staff are enthusiastic and eager to improve their performance. Nous noted the development of new processes to manually reconcile Salesforce and CMS records to ensure that all activities had been appropriately completed.

### 6.5.2 Areas for improvement related to the “prepared” dimension

#### QBCC does not have a clear performance monitoring framework in place to help focus continuous improvement efforts and recognise good work

While QBCC has some limited targets in place related to timeliness to respond to EDR cases and also tracks some other process-related indicators (discussed earlier at Section 6.2.1 on page 30), there is currently no formal approach in place to describe what ‘good’ outcomes look like relating to timeliness of complaints-handling, quality of decision-making; the experience for homeowners and contractors interacting with QBCC’s complaints and decision-making processes; or the experience for staff working at QBCC.

The absence of a clear performance framework with a clear definition of good performance for the complaints and decision-making process means QBCC has limited means to identify, monitor and improve poor performance; nor recognise, celebrate and learn from good work.

<sup>58</sup> The *New Normal Blueprint* was not reviewed by Nous as was still in drafting phase at the time of writing.

The latter point is particularly important as some staff interviewed indicated that the work could be very stressful; even when the people involved did a good job and made good decisions, negative media or other feedback could be overwhelming and there was a sense that there was not always enough understanding, or recognition, of good efforts by people in the organisation to offset this experience.

A robust performance framework for the complaints and decision-making processes should also be aligned to an organisation-wide performance framework that recognises the interconnectedness of QBCC’s functions to deliver on its organisational strategy and legislative remit across all elements of the building lifecycle. An organisation-wide performance framework, aligned to QBCC’s strategic goals could inform decisions about how best to resource and structure the organisation to achieve its goals.

### Feedback from QBCC staff also suggests that complaints data is not being used to its full potential to inform QBCC’s broader regulatory activities

QBCC has made some early progress in organising itself to leverage data across the organisation for internal use, though there may be more opportunities to use internal tracking and public reporting more effectively.

Of note for this Review, QBCC has begun developing internal reporting systems on disputes and complaints case progress as part of its Insights Driven Regulator (IDR) program. This involved QBCC building a data mart that consolidates data across a range of QBCC systems (e.g., Salesforce and CMS); this provides it with the functionality to generate internal dashboards about complaints and disputes cases. For example, QBCC has developed a “Defects Dashboard”, shown in Figure 27.

Figure 27 | QBCC Defects Dashboard



Stakeholders reported that work to fully stand up the IDR program was put on hold for a period. QBCC has since undertaken significant work to define its future *New Normal Blueprint* and Nous heard that this work will be re-instigated in the coming months. Though some stakeholders also reported that IDR program funding limitations made it more difficult for this program to achieve its intended outcomes, others reported the iterative approach to the program has been effective so far.

There may also be additional opportunities for QBCC to use complaints data, particularly to inform the prevention of complaints. For example, the Energy and Water Ombudsman (Victoria) visualises its complaints data through an interactive data hub to show trends in the number and type of complaints received. This is used to develop insights that are shared with the public (see Figure 28).

**Figure 28 | Snapshot of insights generated from Energy and Water Ombudsman (Victoria) complaints data<sup>59</sup>**

**Based on the data below, some points of interest include:**

- Early in the new financial year, billing issues feature heavily in our cases, as expected. High billing and billing error complaints are the two most common sub-issues, continuing the trend from the previous financial year.
- Credit cases related to payment difficulties and debt collection feature in the top 10 sub-issues for the current financial year so far, indicating that there are significant affordability issues in the community.

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<sup>59</sup> Energy and Water Ombudsman, 2021, Case Snapshot: EWOV financial year case data. Accessed at: <https://www.ewov.com.au/data-and-reports/data-hub/case-snapshot>



## 7 There are practical steps that QBCC can take to strengthen its complaints and decision-making processes

While QBCC has the foundations of good complaints and decision-making processes in place, there are opportunities to enhance these.

Nous has made nine recommendations, which fall under three key categories. Implementing these recommendations will create a more efficient and effective complaints service model with a clear remit to handle disputes as well as provide remedies for defective building work. Such a model will emphasise making information available in meaningful ways to support consumers and contractors throughout the journey; improve safeguards to support quality and accountability of decisions; and better integrate the complaints process with other regulatory functions at QBCC to uplift performance across the organisation.

The recommendations are summarised in Figure 29.

Figure 29 | Review recommendations

CATEGORY 1	CATEGORY 2	CATEGORY 3
Streamline processes and decision-making	Streamline processes and decision-making	Streamline processes and decision-making
<p><b>Recommendation 1:</b> Create a process that is as efficient as possible</p> <p><b>Recommendation 2:</b> Ensure the capability and capacity is in place to operationalise the service model well</p> <p><b>Recommendation 3:</b> Allow original decisions to be recorded following internal review</p>	<p><b>Recommendation 4:</b> For homeowners and contractors, clarify when and how QBCC can assist and the processes and timelines involved</p> <p><b>Recommendation 5:</b> Further clarify oversight arrangements</p> <p><b>Recommendation 6:</b> Streamline operational manuals and guidance to ensure that roles and responsibilities are clearly articulated</p>	<p><b>Recommendation 7:</b> Invest in key drivers of organisational improvement</p> <p><b>Recommendation 8:</b> Introduce new mechanisms to detect trends and assure the quality of QBCC's service</p> <p><b>Recommendation 9:</b> Enhance QBCC's approach to defining and monitoring performance</p>

Recommendations will collectively give rise to the service map overleaf at Figure 30.

Figure 30 | QBCC complaints and decision-making process service map (future state)

	0. Guidance is available on the website to support resolution of disputes without QBCC's intervention	1. The dispute is lodged and received by QBCC	2. The dispute is allocated to an appropriate staff member	3. Dispute resolution is attempted	4. Dispute is converted into a complaint and an opinion is formed about whether work is defective	5 A decision whether it is fair and reasonable to issue a DTR	6. An opinion is formed about whether the direction has been complied with	7. A decision is made to issue a FTR	8. A decision is made to issue a PIN and allocate penalties	Internal review of a decision is undertaken	External review of a decision is undertaken
What are the desired outcomes of this step?	The number of disputes lodged with QBCC are reduced as homeowners and contractors feel equipped to handle disputes on their own	Disputes are lodged with correct information	The dispute is allocated to a QBCC staff member with the appropriate skills and experience to respond	Complainants and respondents are able to agree a mutually acceptable way forward for all or most items listed within a dispute	QBCC knows whether work is defective building work or not	An appropriate decision about whether to issue a DTR is reached	QBCC, complainants and respondents have a shared understanding about whether or not defective work has been satisfactorily rectified	An appropriate decision about whether to issue a FTR is reached	An appropriate decision to issue a PIN is reached	An internal review is able to efficiently consider previous and new information and evidence and reach a decision	QBCC supports QCAT to efficiently consider previous and new information and evidence and reach a decision
What are the key activities?	Develop and make available new guidance for the website and hard-copy materials, building off existing materials on how to avoid disputes, and focus on how to stage productive conversations to resolve issues as they arise	Complainant becomes aware of ability to lodge a dispute Complainant lodges dispute via myQBCC or Complaints Form Case is created in Salesforce	Allocate dispute to a region based on SDW model Review for missing documentation/information Allocate dispute to an AO based on dispute complexity and AO experience	Undertake shuttle conciliation Close case if dispute is resolved Close case if resolution unsuccessful and not within QBCC's scope to progress further Refer to BI for inspection if eligible	Conduct inspection Consider standards and technical evidence Decide whether the building work is defective	Review relevant legislation and policies Check current status of licence and status on ASIC Decide whether it is appropriate to issue a DTR Communicate decision in writing	Conduct inspection Consider standards and technical evidence Decide whether the direction has been complied with	Review relevant legislation and policies Check current status of licence and status on ASIC Decide whether it is appropriate to issue an FTR Communicate decision in writing	Complete PIN checklist Check status of licence and ASIC Issue PIN (if appropriate) Determine how many demerit points to issue Update public register	Full review of case as if original reviewable decision was not made Communicate new decision to all parties	Provide materials for review at QCAT Appear as witnesses in QCAT cases
What systems and skill sets are brought to bear for this step?	<b>Skills and experience needs:</b> Communication skills to develop resources to prevent or de-escalate disputes <b>System and process needs:</b> Website with advice on how to avoid disputes and facilitate productive conversations to resolve disputes without needing further assistance from a third party	<b>Skills and experience needs:</b> General administrative skills; familiarity with Salesforce <b>System and process needs:</b> Accessible and easily understood information on website, complaint form and myQBCC; front office support available for complaints lodgement (regions only)	<b>System and process needs:</b> Effective triage processes to identify complexity and allocate accordingly; appropriate model (SDW) to allocate cases based on capacity; automated review processes to identify missing information; interconnected IT systems	<b>Skills and experience needs:</b> Conciliation skills; communication skills; administrative decision-making skills <b>System and process needs:</b> Effective triage processes to identify complexity and refer/seek advice as appropriate; interconnected IT systems	<b>Skills and experience needs:</b> Appropriate technical capabilities; communication skills <b>System and process needs:</b> Effective triage processes to identify complexity and refer/seek advice as appropriate; interconnected IT systems	<b>Skills and experience needs:</b> Communication skills; administrative decision-making skills <b>System and process needs:</b> Effective triage processes to identify complexity and refer/seek advice as appropriate; interconnected IT systems	<b>Skills and experience needs:</b> Appropriate technical capabilities; communication skills <b>System and process needs:</b> Access to appropriate Australian Standards and other technical decision-making guidance; interconnected IT systems	<b>Skills and experience needs:</b> Communication skills; administrative decision-making skills <b>System and process needs:</b> A robust process to support fair and independent decision-making; interconnected IT systems	<b>Skills and experience needs:</b> Administrative decision-making skills <b>System and process needs:</b> A robust process to support fair and independent decision-making; interconnected IT systems	<b>Skills and experience needs:</b> Technical and administrative decision-making skills; appropriate capacity <b>System and process needs:</b> Fair and independent processes and decision-making; interconnected IT systems	<b>Skills and experience needs:</b> Technical expertise; legal knowledge; administrative decision-making skills; ability to support QCAT matters
Who has oversight of activities and outcomes?	A nominated person has end-to-end responsibility for a case										
How is quality assured?					Routine peer review of building inspection reports	Random audits of administrative decisions	Routine peer review of building re-inspection reports	Random audits of administrative decisions	Random audits of administrative decisions	Systemic review of all internally reviewed cases	Systemic review of all externally reviewed cases
What are the key changes compared to status quo?	QBCC has an explicit role in providing guidance about effective dispute resolution that will help homeowners and contractors to resolve issues without the need for QBCC's intervention	N/A	Informed by the Complex Case Framework, disputes are comprehensively reviewed and triaged earlier in the process and directed to the most appropriate person for resolution	Complainants and respondents are engaged in purposeful and productive conciliation, led by appropriately trained and skilled personnel. There is a genuine focus on resolving disputes and minimising the number of items that need to proceed to a physical inspection by QBCC, or referred to QCAT	Physical inspections are secured faster, as BI capacity is freed up through process redesign	Decisions to issue or not issue a DTR will be communicated more sensitively and in plain English. There will also be greater transparency within QBCC about the factors which were considered when making decisions	N/A	N/A	Greater oversight of the progress of cases means additional safeguards are introduced to ensure that key activities, such as issuing PINs are carried out	Internal review decisions reflect whether new information has been used to arrive at a certain decision. Homeowners will have more confidence that where DTRs and FTRs have been appropriately issued, this information will be recorded and made available to the public	No change
How should the homeowner/contractor be feeling?	I feel confident that QBCC is the right body to assist me with my complaint. I understand and have provided all the information they require to handle my complaint and I am aware of how the process will run and when I will be updated on progress			I feel dispute resolution was a worthwhile endeavour with QBCC leading productive conversations to help achieve an acceptable outcome as quickly as possible	I understand why QBCC has made the decision and am confident that it is fair and appropriate, even if I don't like the outcome. I have been kept updated about progress and any delays to the process encountered to date	(Homeowner) I am confident that QBCC has held the contractor accountable to rectify the defective building work; (Contractor) I feel like I was given sufficient time and notice to rectify the defective building work	(Homeowner) I am satisfied that the contractor has been held publicly accountable and other homeowners are warned of the contractor's poor practices; (Contractor) I understand why QBCC has reached the decision it has and I understood the consequences of not rectifying the work	I trust that QBCC will undertake a fair and appropriate internal review and carefully consider the grounds for my review application	I trust that QCAT will consider the evidence fairly and that QBCC will support the process as an independent party to support decision-making		

## 7.1 Category 1 Recommendations | Streamline processes and decision-making

Recommendations 1-3 focus on establishing a single, efficient process through which QBCC can deliver effective dispute resolution and provide remedies for defective building work.

Positioning QBCC to deliver effective dispute resolution will simplify the complaints and decision-making processes by diverting more cases away from the more resource-intensive pathway of responding to a request for a DTR, or referring matters on to QCAT.

The process will be further streamlined through the introduction of a triaging model early in the process which will enable QBCC staff to make timely decisions about the nature of complaints and ensure they are directed to the most appropriate staff for resolution.

The success of this new service model will be contingent on having the right skills and capability present at the right times; by strategically auditing the capability required of staff working along the complaints life cycle (and filling any gaps through a combination of training, new workforce models or recruitment), QBCC can be sure that each step of the process is carried out efficiently and effectively. Part of this solution may also include optimising the SDW model – and potentially expanding its application to include other regulatory activities such as licensing and compliance – to make better use of available capacity across the organisation.

This new approach represents a significant departure from how QBCC currently operates and requires legislative changes; process redesign; and capacity and capability building. While recommendations may take some effort to implement, they could have substantial positive impacts.

Recommendations 1-3 are discussed in more detail below.

### 7.1.1 Recommendation 1 | Create a process that is as efficient as possible

#### Areas of improvement this change will address:

- ✓ Accessible – there remains some confusion about QBCC’s role and the types of complaints it can handle.
- ✓ Efficient – effective dispute resolution mechanisms are not employed to expedite finalisation of matters.
- ✓ Efficient – a comprehensive triage process is not yet in place.
- ✓ Efficient – some complaints can take a long time to finalise.

As part of Recommendation 1:

#### (a) Reimagine the service model to adopt a greater emphasis on dispute resolution.

This involves incorporating complaints and EDR into a single process where cases are progressed through genuine, solution-oriented shuttle conciliation activities prior to making any findings of defective work or considering issuing a DTR.

Legislative amendments will be required to recognise dispute resolution as an explicit object of the Act, and provision QBCC with key functions related to conciliation.

Providing in legislation for QBCC (BIs) to make determinations about whether work is defective – independent to making a decision to issue or not issue a DTR – would also support greater flexibility for

QBCC's resourcing model. Specifically, it would allow a BI to provide an expert technical opinion without taking on the broader responsibility to drive conciliation.

To be successful, the new service model will need to be approached with a new mindset by homeowners and contractors. To facilitate this cultural shift, there are opportunities to leverage continuous professional development for contractors, particularly to focus on how contractors can prevent disputes or productively resolve disputes with homeowners – with out without QBCC's assistance.

**(b) Embed a triage model early in the process to review complaints, identify complex cases and put complaints on the right pathway for efficient finalisation, in line with CSIU's Complex Cases Framework.** This step can be used to request any further information, close cases that do not meet the legislative eligibility requirements to be progressed, and allocate cases to the most appropriate person to manage.

Recognising that complexity may not be immediately evident from this initial review step, referrals should be enabled to the Complex Case Management teams, or AOs and BIs can seek specialised advice to manage complex cases from these teams (to ensure advice is sought from a person appropriately experienced with each type of complexity).

To avoid creating a backlog before cases are allocated to an appropriate person to progress, the triage step should be appropriately resourced with personnel with both the capability and capacity to apply the Complex Case Framework at pace.

## 7.1.2 Recommendation 2 | Ensure the capability and capacity is in place to operationalise the service model well

Areas of improvement this change will address:

- ✓ Efficient – a comprehensive triage process is not yet in place.
- ✓ Efficient – capacity is reported to be an ongoing challenge for teams that are involved in the complaints process.

As part of Recommendation 2:

**(a) Identify the core skills and capabilities required to execute key tasks well; map these against the current workforce and identify and address any gaps.** Using the service model at Figure 30 as a foundation, build out a comprehensive assessment of capability requirements across the complaints lifecycle. Map this to an assessment of current workforce capability and consider ways to fill any gaps, potentially leveraging the strategies set out in Figure 31.

This work should be couched with broader organisation-wide workforce planning and capability building work, which is slated to be developed under the QBCC Blueprint.

**(b) Undertake a review of the SDW model.** Undertake a comprehensive review to understand how well the model is currently working and how it can be further optimised to: balance workload (considering potentially expanding the remit of the SDW to allocate resources for other regulatory activities such as licensing and compliance); incorporate planned and unplanned leave; be used to allocate cases to the most appropriate personnel, in line with the triage model.

Figure 31 | Options to fill skill gaps

Explore different workforce models	Upskill staff where required	Consider strategic recruitment
<p>Optimise dispute resolution activities by:</p> <ul style="list-style-type: none"> <li>Allocating conciliation activities to staff with recognised conciliation skills, and involve other roles when required (e.g. Involving BIs to provide technical assessments, as required)</li> <li>Outsourcing the dispute resolution function to professional conciliators with sufficient technical and administrative decision-making expertise.</li> </ul>	<p>Ensure accessibility to quality, ongoing training for staff in all offices such as through:</p> <ul style="list-style-type: none"> <li>Modular delivery of training courses</li> <li>Self-paced learning</li> <li>On-the-job training through rotations in the Complex Cases team).</li> </ul>	<p>Consider strategic recruitment to fill skills gaps, particularly where the first two strategies are not appropriate, or additional capability and capacity is required to achieve organisational objectives.</p>

### 7.1.3 Recommendation 3 | Allow original decisions to be recorded following internal review to maximise confidence in QBCC’s decision-making

#### Areas of improvement this change will address:

- ✓ Fair and independent – the legislation obliges QBCC to make an internal review decision “as though the reviewable decision the subject of the application had not been made” (s86C(1)).

As part of Recommendation 3:

**(a) Preserve the current appeals-like function of internal review, but allow appropriate original decisions to be recorded in certain circumstances.**

Make legislative changes to enables the following outcomes to an internal review:

- For reviewable decisions not to issue a DTR or a FTR, continue to make decisions as though the reviewable decision had not been made. This will ensure that if a building defect has genuinely progressed and new information is available since the original decision has been made, this new information can be included.
- For reviewable decisions where a DTR has been issued, provide in legislation for an original decision to be upheld *if* the work is confirmed to have been defective - even if it has been subsequently rectified. This will enable the QBCC to recognise the appropriateness of the original decision at the time and ensure poor conduct by a contractor is recorded for the future protection of homeowners.

Separate to these legislative changes, internal review decisions should communicate clearly if new information was considered that was not available to the original decision-maker, which may have influenced the decision reached and reflect the basis for overturning a decision in reporting. Demonstrating how decisions were reached will provide further assurance to the community of the integrity and robustness of QBCC’s decision-making processes.

Figure 30 illustrates a new service map that reflects the recommendations.

## 7.2 Category 2 Recommendations | Set expectations through clear information and guidance

Recommendations 4-6 focus on improving clarity about when and how QBCC can assist with issues relating to defective building work. This includes providing clear, timely, and relevant information to complainants and respondents across the complaint life cycle to help set reasonable expectations up front and keep parties engaged in the process as it unfolds. It also involves crystallising roles and responsibilities for staff at different stages of the process and ensuring guidance materials are fit-for-purpose.

Some recommendation components are straight forward and can be implemented with relative ease. Others require a more sustained effort both to create capacity to move the work forward, as well as to ensure appropriate alignment with other improvement activities across QBCC.

Recommendations 4-6 are discussed in turn below.

### 7.2.1 Recommendation 4 | For homeowners and contractors, clarify when and how QBCC can assist and the processes and timelines involved

#### Areas of improvement this change will address:

- ✓ Accessible – there remains some confusion about QBCC’s role and the types of complaints it can handle.
- ✓ Accessible – the design of the website presents barriers to homeowners and contractors accessing the information they need.
- ✓ Accessible – there is little certainty around timeframes involved in finalising complaints.
- ✓ Efficiency – complainants are not always regularly updated on the progress of complaints and decisions.

As part of Recommendation 4:

**(a) Continue to revamp the website to improve availability and accessibility of information about the complaints process.** The current program of work to revamp the website will improve the accessibility and useability of the current website through simpler navigation. QBCC should build on this work with further specific changes to:

- Develop new content on how to stage productive conversations between homeowners and contractors when issues arise to avoid matters being escalated to QBCC.
- Provide greater transparency and explanation about QBCC’s different roles and how it exercises its functions as a dispute resolution body and a regulator providing remedies for defective building work.
- Create more plain English examples of what constitutes defective work and contractual issues and make these resources more readily available as people complete the relevant complaint forms.
- Link to the QBCC Licence Search to access relevant public records of decisions about DTRs, FTRs and PINs to make information more easily available to consumers at the time they are making decisions about engaging a contractor.

**(b) Create greater visibility around processing timelines.** This could be achieved through two parallel changes:

- Develop a dashboard that is updated in near real time and provides information about average processing timelines for different complaint types (for example, categorised roughly by overall

complexity, as in Figure 32). New elements may be built into QBCC's 'Defects Dashboard' or may be created in a separate dashboard.

In first instance this could be an internal resource for QBCC to create greater visibility over performance (working in complement to the performance monitoring framework discussed in Recommendation 9), but in the longer term, this could be made available online - such a resource could be used to inform complainants' decisions about whether QBCC presents the most appropriate pathway to meet their needs and then manage expectations about how long the process may take. A key risk to manage however, is an initial surge in complaints about the reported timeframes involved and whether this meets community standards.

- Enhance communication with complainants and respondents to improve the experience of interacting with QBCC. Communication could focus on providing relevant and timely information to parties that also makes them feel adequately engaged in the process. To implement this, further work is required to engage with homeowners and complainants to understand what is important to the for this step; key considerations may include the frequency of updates, but also the content of communication to ensure that such updates are both valuable and sensitive to the expectations and concerns of parties involved in the process.

Figure 32 | Indicative dashboard element- processing time based on case complexity



## 7.2.2 Recommendation 5 | Further clarify oversight arrangements

### Areas of improvement this change will address:

- ✓ Accountable – oversight arrangements emphasise responsibility for stages of the complaints process, rather than "end-to-end" accountability for each case.

As part of Recommendation 5:

(a) Create new oversight requirements for a single person to assume oversight of a complaint from "end-to-end". Make a single person ultimately accountable for a case, from the point of initial lodgement through to completion of the final activity, and ongoing accountability should it be necessary to re-open a case.

As part of this oversight accountability, the nominated person should regularly review the progress of the case and work collaboratively with relevant staff (such as OTLs or Senior Leads) to ensure that action is taken to progress cases and to identify and correct any missed steps.

Clearly defined processes to generate and reconcile reports on key activities within the complaints process will enable this oversight and ensure all activities have been completed.

This shift is compatible with the SDW model in that day-to-day responsibility to deliver actions would still be distributed across the state. However, it makes the nominated person ultimately accountable for

oversight of a Case. Accountability needs to be reinforced by using existing governance channels well, including ensuring that any risks are communicated proactively and escalated up the hierarchy to the two Assistant Commissioners and ultimately the Commissioner, as appropriate.

### 7.2.3 Recommendation 6 | Streamline operational manuals and guidance to support a more consistent approach to complaints-handling

Areas of improvement this change will address:

- ✓ Accountable – Information about responsibility for actions is not consistently clear or accessible.

As part of Recommendation 6:

**(a) Improve accessibility of information through better curation of resources.** This might adopt a phased approach:

- In the short term, develop a simple resource that provides a snapshot of: the key stages of the complaints process; a summary of key roles and responsibilities; the activities required to deliver those responsibilities; and guidance on what information to record in what format for key activities. The service map at Figure 30 may be a useful foundation for this work.
- Over the longer term, QBCC should explore options to streamline procedure and process manuals across the organisation to maximise consistency and access. This should include building on work currently underway to curate the library of instructional materials at QBCC and consolidate resources to focus on specific purposes (e.g. streamlining the Disputes Procedures Manual to focus exclusively on the steps of the complaints and decision-making process, providing separate guidance to support administrative decision-making, and separately, technical decision-making, and developing manuals that focus exclusively on how to use key information platforms). This initiative is best undertaken with a whole-of-organisation perspective to make best use of any investment to upgrade the platforms used to store policies and procedures, to ensure processes and approaches used across the organisational are harmonised.

## 7.3 Category 3 Recommendations | Drive continuous improvement

Recommendations 7-9 focus on better integrating different parts of QBCC to improve the flow of information; make better use of data to drive insights-led regulatory activities and dispute resolution; and using a more robust approach to measure, communicate and celebrate “good” performance.

Better sharing of information across QBCC - enabled by investments in technology solutions and reinforced through leadership and cultural change – will allow better end-to-end management of complaints, and support more proactive communication across the organisation. For example, a more integrated system that enables a single view of a contractors’ interactions with QBCC (for example, across complaints, insurance, licensing and compliance functions) would support information flows across QBCC, reduce the likelihood of errors or oversights when making decisions and act as an enabler of a connected and collaborative organisation. It would also support more nuanced customer service; for example, if a contractor has a history of being rude or aggressive in their interactions with licensing or compliance teams this may inform decisions about complexity regarding complaints.



Better information flows and data pooling would create new opportunities to generate insights that are of key interest to QBCC, contractors and homeowners. It also enables a more sophisticated approach to performance monitoring.

Implementation requires process changes, technology investments, development of a performance framework and culture-building activities. Staged implementation may be required, but over time these will position QBCC to be a more robust regulator – and a better place for staff to work.

Recommendation 7-9 are discussed in more detail below.

### 7.3.1 Recommendation 7 | Invest in key drivers of organisational improvement

#### Areas of improvement this change will address:

- ✓ Accountable – oversight arrangements emphasise responsibility for stages of the complaints process, rather than “end-to-end” accountability for each case.
- ✓ Prepared – QBCC does not have a clear performance monitoring framework in place to help focus continuous improvement efforts and recognise good work.

As part of Recommendation 7:

#### **(a) Invest in technology solutions to better integrate disparate digital systems to support information flow across the organisation.**

QBCC should explore mechanisms to establish a holistic case management system which can support:

- A single, organisation-wide view of how homeowners and contractors have interacted with different parts of QBCC
- Fluid workflow management functionality, including for example, to assign tasks, share links or prompt action from individuals across the organisation
- Comprehensive, end-to-end reporting of how cases have progressed from one stage of the complaints process to the next, to remove any need to manually reconcile reports generated in different systems (e.g. between Sales and CMS).

Where possible, changes should focus on better connecting existing digital systems, for example by integrating information and data through a Power BI dashboard. Where there are genuine incompatibilities due to old technologies in use, a technology investment program should be explored with a focus on optimising functionality and compatibility with other systems used at QBCC.

#### **(b) Build on recent efforts to strengthen the collaborative nature of working at QBCC, including by having an explicit culture-building plan in place.** Create a strategy to build a supportive and collaborative workplace culture at QBCC through:

- Leadership commitment to model good behaviour
- Clear values and behaviours to set out what is expected (including clear and simple procedures to document these expectations)
- Workforce capability to ensure staff have the skills to be collaborative
- A clear approach to recognition and consequences to reinforce target behaviours
- A look at practices and procedures, and what barriers need to be removed to support habitual collaboration

- Underpinning structures such as organisational hierarchy, physical location and Information and Communications Technology (ICT) that enable collaboration
- An approach to monitoring and evaluation to measure what is working and why and inform a cycle of continuous improvement.

This would work need to be implemented with a whole-of-organisation focus and be designed the reinforce the vision and priorities of the QBCC Blueprint.

### 7.3.2 Recommendation 8 | Introduce new mechanisms to detect trends and assure the quality of QBCC's service

#### Areas of improvement this change will address:

- ✓ Accountability – while comprehensive records are kept, interrogating information about factors considered in administrative decision-making can be a time consuming and manual exercise.
- ✓ Fair and independent – there is no assurance process in place to ensure the consistency of decisions or quality of inspection reports.

As part of Recommendation 8:

#### **(a) Establish an assurance program to regularly test the quality and consistency of decision making.**

While Nous found that decisions were appropriately documented and defensible, an assurance program (that routinely reviews a sample of decisions to ensure technical and administrative decisions are being made in accordance with policies and guidelines) would enable QBCC to confidently communicate to its stakeholders that decision-making is appropriate.

As shown in Figure 30 the assurance program could:

- Establish a process for regular review of administrative decision-making to ensure consistency (including decisions relating to the issue of DTRs, FTRs and PINs)
- Embed a process for technical decision-making to be peer reviewed on a random basis
- Use insights from these reviews and strengthened data collection to track trends around decision-making and inform continuous development activities for decision-makers and for the organisation more broadly.

**(b) Reignite and extend efforts to combine complaints data with other data coming out of QBCC's regulatory activities and interactions with homeowners and contractors.** Re-commence work on the Insights Driven Regulator (IDR) program to collate data from across a range of QBCC systems (e.g., Salesforce and CMS) into a data mart. Explore how the utility of such a resource can be leveraged, including:

- For QBCC: to develop predictive models for complaint-related factors. This may include modelling the most likely defects based on case location or other estimations which may support proactive education and compliance monitoring activities.
- For consumers: by developing public-facing resources such as interactive maps that allow them to see contractors that operate in their regions; licensing status and any records against their licenses; common types of defective work that occurs in that geography; and key information such as DTRs, FTRs and PIN information. Consumers can use this information when making decisions about engaging specific contractors.

- For the general public: improved visibility of QBCC’s performance through dynamic and interactive public reporting of measures of interest. This might include indicators of access, efficiency, quality and satisfaction that are developed consequent to the implementation of a performance monitoring framework (see Recommendation 9).

### 7.3.3 Recommendation 9 | Enhance QBCC’s approach to defining and monitoring performance

#### Areas of improvement this change will address:

- ✓ Prepared – QBCC does not have a clear performance monitoring framework in place to help focus continuous improvement efforts.
- ✓ Efficient – QBCC is subject to few targets relating to timeliness of complaints-handling.
- ✓ Prepared – feedback from QBCC staff also suggests that complaints data is not being used to its full potential to inform QBCC’s broader regulatory activities.

As part of Recommendation 9:

**(a) Develop a clear performance and monitoring framework to establish a shared vision of “good” performance and enable this to be easily tracked and inform decision-making.** The framework should include:

- Outcomes and performance indicators mapped to each of the stages of the complaints and decision-making process (this could include outcomes to reduce the number of disputes arising between homeowners and contractors).
- Guidance on the key reports and data required to be collected to enable effective and strategic use of data across the complaints and decision-making process.
- Operational and strategic indicators (i.e. it supports operational staff to track and monitor their own day-to-day performance with clear guidance about the indicators of good performance and also supports strategic staff to monitor overall performance trends and to inform and prioritise improvements).
- Lead and lag indicators that reflect common risks/vulnerabilities and can support staff to identify when things are going wrong, in time to do something about it.
- Supports smart, measurable, attainable, relevant and time-based (SMART) targets.

In the longer term, under the new Blueprint, QBCC could develop a whole-of-organisation performance framework. This would enable a comprehensive picture of the interconnectedness of QBCC’s different regulatory functions and how they complement one another to achieve the organisation’s strategic goals. Such a framework would be of key value to the QBCC executive teams and Board to inform strategic decisions about where to invest time and effort, and what pockets of excellence exist that should be scaled up.

**(b) Establish a baseline of current performance and provide a point of comparison to understand the impact of continuous improvement initiatives.** Develop a baseline of performance across key dimensions (e.g. timeliness, quality of decision-making) to inform realistic targets for inclusion in the performance and monitoring framework. This baseline can also be used to measure the impact over time of continuous improvement initiatives.

# Appendix A Documents reviewed

This appendix presents the full list of documents reviewed as part of this review.

Table 7 | List of documents reviewed

Document title	
<b>Legislation</b>	<b>Policies and related documents</b>
Queensland Building and Construction Commission Act 1991	Subsidence Policy Booklet
Queensland Building and Construction Commission Regulation 2018	Rectification of Building Work Policy
<b>Procedure manuals</b>	Rectification of Building Work Regulatory Guide
Resolution Services - Claims Procedures Manual	<b>Templates and samples</b>
Resolution Services - Disputes Procedures Manual	Complaint Form: Residential and Commercial Construction Work
Infringement Notices Manual	Complaint Form: Complaints by principal contractor – during construction – domestic building work
Resolution Services - Disputes Salesforce Processing Guide	FTR letter - owner (sample only)
Resolution Services - Claims Salesforce Processing Guide	FTR letter - builder (sample only)
Resolution Services - Disputes CMS Processing guide	Infringement Notice Checklist
Internal Review Procedure	BI Process Assessment Checklist
Prioritisation Procedure	<b>Performance and reporting</b>
Procedural Fairness Procedure	QBCC Annual Report 2019 - 2020
Internal Review Procedure	QBCC Strategic Plan 2020 - 2024
Accountability for Subcontractor Defects Procedure	QBCC Organisational Chart
Records Management Procedure	Resolution Services SDS Measures FYTD
<b>Fact sheets</b>	<b>Position descriptions</b>
How to Avoid Building Disputes	Regional Services Position Descriptions
How to Terminate a Building Contract	Resolution Services Position Descriptions

Document title	
QBCC's Dispute Resolution Process	IRU Position Descriptions
Your Guide to QBCC's Resolution Services Process	Legal Services Position Descriptions
<b>Surveys</b>	Managers and Operation Team Leader Duties/Responsibilities
Change4theBetter Org Wide Results March 2021	<b>CSIU – range of establishment documents</b>
Working For Queensland Survey Responses 2020	<b>SDW – range of establishment documents</b>

## Appendix B Consultations held

Nous interviewed QBCC staff stakeholders, as outlined in Table 8 below.

Table 8 | List of stakeholders consulted

Name	Title
Brett Bassett	Former Commissioner, QBCC
Richard Cassidy	Interim CEO and Commissioner, QBCC
Kate Raymond	Assistant Commissioner, QBCC
Glenn Lennon	Chief Legal Officer
Emily Plucknett	Assistant Director, Legal Services
Ravi Iyer	Director, Resolution Services
Geoff Airo-Farulla	Director, Customer Service Improvement Unit (CSIU)
Nancy Alexander	Manager, CSIU
Jenny Phillips	Director, Regions
David Garland	Assistant Director, Integrity and Complaints Branch
Holly Hooper	Director, Customer and Communications

Nous also held workshops with a range of staff nominated by QBCC from different business areas:

- Customer Service Improvement Unit
- Integrity and Complaints Branch
- Internal Review Unit
- Legal Services
- Regional Services
- Resolution Services

## Appendix C Case files reviewed

QBCC selected case closed case files based on the following sampling criteria developed by Nous:

- Around 50 per cent of cases from Brisbane and 50 per cent from regional service centres, with at least one case from each region involving a building inspection.
- Of these, Nous requested a mix of:
  - Early Dispute Resolution (EDR) cases, and non-EDR cases, defective work and subsidence complaints
  - Cases involving internal review or Queensland Civil and Administrative Tribunal (QCAT) review
  - At least ten cases resulting in a Direction to Rectify (DTR), including at least five cases resulting in a Failure to Rectify
  - At least five cases which had multiple overlapping cases
  - At least ten cases QBCC considered best practice.

Of the 30 cases provided, four were not reviewed, either due to still being open, on hold, or reopened during the course of the Review.

The case files reviewed as part of this Review are at Table 9.

**Table 9 | Case files reviewed as part of this Review**

Case files reviewed		
564784	533041	941199
968012	921224	614675
1076151	918714	753080
749047	812024	763630
532091	559223	505243
899372	725112	742478
743835	906917	446683
1025475	739124	732402
909567	802739	

# nous

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## ABOUT NOUS

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**Nous Group** is an international management consultancy operating across Australia and New Zealand, the UK, Ireland and Canada. For over 20 years we have been partnering with leaders to shape world-class businesses, effective governments and empowered communities.



bold  
performance & influence  
engaging

Australia | New Zealand | UK | Ireland | Canada

450

PEOPLE

50

PRINCIPALS

5

COUNTRIES

+82.5

**2020 NET PROMOTER SCORE**  
– global consulting average: +70.1





# Possible alternative model for dispute resolution in the Queensland building sector

# Nous' experience has highlighted six principles that could drive the design of an effective dispute resolution system.

1

The system is focused on preventing disputes and ensuring early resolution

2

The system can effectively tailor its approach to different types of disputes with different levels of complexity

3

The system is coordinated and uses resources and technical expertise to resolve the underlying cause of a dispute

4

The system provides for timely, efficient and equitable resolution of disputes and ensures procedural fairness

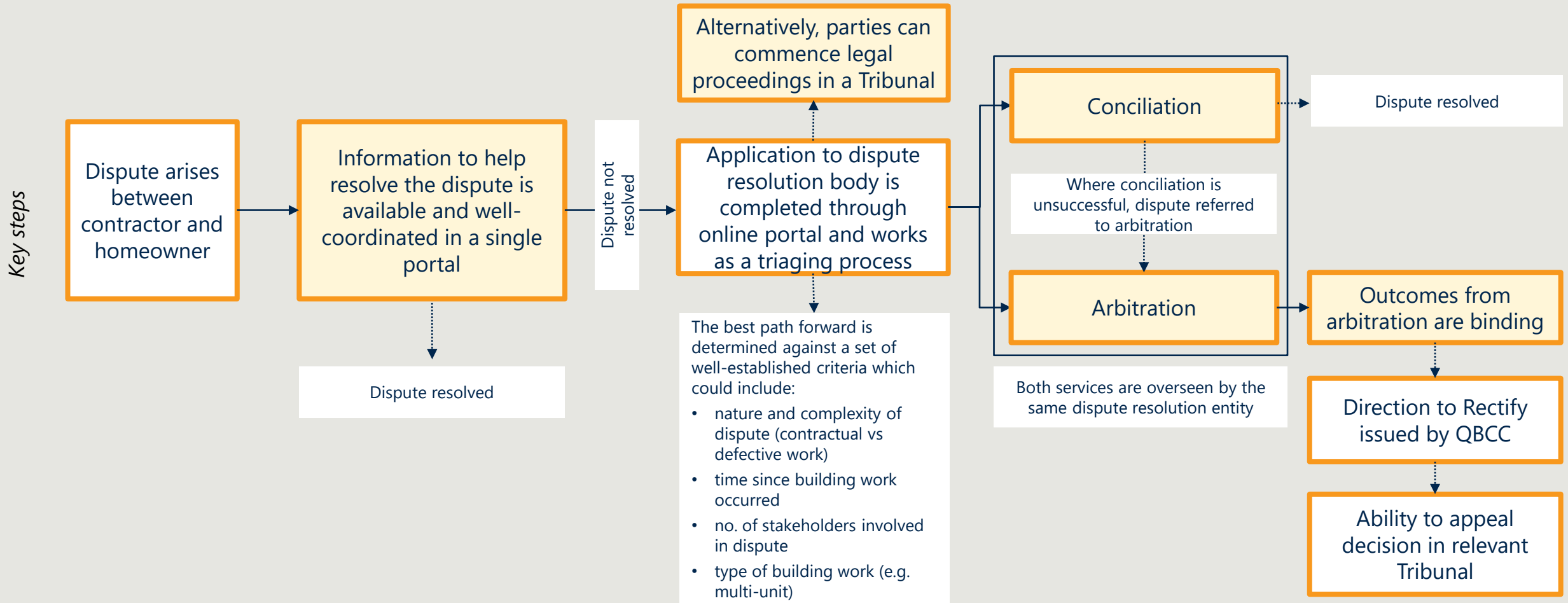
5

Consumers and practitioners understand how the system works; outcomes and trends are transparent and inform a systemic understanding of the building system

6

The system, where possible, promotes non-adversarial engagement from parties to disputes to support meaningful engagement and constructive outcomes

# A different institution could be introduced to resolve disputes relating to residential building and construction.



A coordinated online portal enables building owners and building practitioners to lodge and track their disputes (including key dates and outcomes) and store all relevant documents. Dispute services also regularly publicly report on outcomes, issues and trends to improve systemic understanding of disputes in the building system.

# There are four key features of the proposed conceptual design.

1

Arbitration relies on independent technical assessment, which can be outsourced

- Disputes that arise in the residential construction industry can involve certain levels of technical complexity.
- Technically qualified arbitrators can assess and make independent findings as to the existence of defective work to facilitated arbitrated resolutions.
- Different disputes will vary in the type of building expertise required (e.g. architectural, plumbing, electrical), therefore the arbitration body should have the power to contract varying technical experts to provide assessments.

2

Strong regulatory compliance and enforcement functions compliment the dispute resolution system

- QBCC will be responsible for responding to non-compliance under the relevant building laws.
- Once a dispute is conciliated/arbitrated the dispute resolution entity will refer any findings to QBCC for enforcement or disciplinary action.

3

Parties are bound by the decisions of the arbitrator

- Parties are bound by any agreement or outcome from arbitration. A breach of an arbitration agreement may be a cause for disciplinary action.
- For some building projects, where disputes or non-compliance are common, arbitration clauses could be made mandatory in the domestic building contract.
- This approach is commonly used in Malaysia where standard form building contracts include arbitration clauses.

4

Matters are appropriately triaged so that disputes are addressed through the most appropriate method

- Some disputes, particularly small matters, may be better suited to independent conciliation or conciliation.
- The conceptual design described on page 2 sets out a triaging process where the dispute resolution entity assesses the complexity of the dispute to determine the appropriate method of resolution
- The Australian Financial Complaints Authority triages all applications to the service into one of three levels of complexity (average time to triage a dispute is 21 days).



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## About Nous

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For over 20 years we have been partnering with leaders to shape world-class businesses, effective governments and empowered communities.

450

PEOPLE

50

PRINCIPALS

5

COUNTRIES



# Building Confidence

Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia

Peter Shergold and Bronwyn Weir

February 2018

## About the Authors

### *Professor Peter Shergold AC*

Professor Peter Shergold AC is Chancellor of Western Sydney University. A former Secretary of the Department of the Prime Minister and Cabinet, he now chairs a number of private, public and not-for-profit boards. He has undertaken a number of previous reviews for Commonwealth and state governments on matters as diverse as gambling, vocational education, community services, major project implementation and Medicare card security.

### *Ms Bronwyn Weir*

Bronwyn Weir is a legal practitioner specialising in government regulation. She has had over 20 years' experience advising on building regulation for governments, councils, licensing bodies, fire authorities and building surveyors. Bronwyn was a member of Victoria's Building Regulations Advisory Committee for 12 years. She has also provided advice on regulatory practice in sectors including vocational education, early childhood education, food safety, the racing industry, health care and primary industries. Bronwyn is a director of Weir Legal and Consulting Pty Ltd.

# Contents

<b>Foreword</b>	<b>1</b>
<b>Executive Summary</b>	<b>3</b>
<b>Summary of Recommendations</b>	<b>5</b>
<b>Background</b>	<b>6</b>
The Terms of Reference	6
Consultation	6
Review of previous reports and other material	6
Terminology used in this report	7
<b>Introduction</b>	<b>9</b>
A performance-based approach to building regulation	9
Modern construction practices for multi-storey residential buildings	10
The role of the private building surveyor	11
The responsibility of builders	13
The question of cladding	13
A better system of harmonisation	14
<b>Recommendations</b>	<b>15</b>
Recommendation 1—Registration of building practitioners	15
Recommendation 2—Consistent requirements for registration	17
Recommendation 3—Continuing Professional Development	18
Recommendation 4—Career paths for building surveyors	19
Recommendation 5—Improving collaboration between regulators	19
Recommendation 6—Effective regulatory powers	21
Recommendation 7—Strategy for the proactive regulation of Commercial buildings	21
Recommendation 8—Collaboration with fire authorities in the development of fire safety design	23
Recommendation 9—Integrity of private building surveyors	24
Recommendation 10—Codes of conduct for building surveyors	25
Recommendation 11—Role of building surveyors in enforcement	26
Recommendation 12—Collecting and sharing data and intelligence	27
Recommendation 13—Responsibility of design practitioners	28
Recommendation 14—Adequate documentation for performance solutions	30
Recommendation 15—Approval of performance solutions for constructed building work	30
Recommendation 16—Approval of documentation throughout the construction process	31
Recommendation 17—Independent third party review	32
Recommendation 18—Mandatory inspections	33
Recommendation 19—Inspection and certification of fire safety system installation	34
Recommendation 20—A building manual for Commercial buildings	35
Recommendation 21—Building product safety	36
Recommendation 22—Dictionary of terminology	37
Recommendation 23—Implementation of the recommendations	37
Recommendation 24—Implementation plan	38
<b>Attachment A—List of recommendations</b>	<b>39</b>
<b>Attachment B—Terms of Reference</b>	<b>42</b>
<b>Attachment C—Consultations</b>	<b>43</b>
<b>Attachment D—Submissions</b>	<b>45</b>
Submissions	45
Supplementary submissions	45





## Foreword

Ministers


We have pleasure in providing you with our observations on the compliance and enforcement systems for the building and construction industry. It includes our recommendations for a national best practice model which will strengthen the effective implementation of the National Construction Code.

You commissioned our expert advice in August 2017. Throughout the process, you engaged with us openly. So did your regulators and departmental officials. Industry, too, has been candid in sharing with us its views and suggestions for better systems.

It is our considered view that the nature and extent of the problems put to us are significant and concerning. They are likely to undermine public trust in the health and safety of buildings if they are not addressed in a comprehensive manner.

Many governments are already taking remedial action. Continuing collaborative work will be required by all jurisdictions, however, in order to deliver the reforms that we propose.

We recognise with sincere thanks the support that a range of stakeholders have provided to us during the course of our inquiry. We also acknowledge the capable support provided by our secretariat team and sincerely thank them for their input, responsiveness and dedication: Mr Alan Coleman, Ms Kate Maher, Ms Caroline Pulis and Mrs Kathleen Streat.



Peter Shergold



Bronwyn Weir



## Executive Summary

In mid-2017 the Building Ministers' Forum (BMF) asked us to undertake an assessment of the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. Whilst our assessment has been thorough, this report focusses in a succinct way on shortcomings in the implementation of the National Construction Code (NCC). They will not come as a surprise to the BMF or building industry stakeholders as most have been considered in detail in a number recent government reports. We are confident that, assisted by this report, jurisdictions, working cooperatively, can address these shortcomings.

Our goal is to enhance public trust through effective implementation of building and construction standards that protect the interests of those who own, work, live, or conduct their business in Australian buildings. We make 24 recommendations. We believe that compliance and enforcement systems that incorporate our recommendations represent a national best practice model that will strengthen the effective implementation of the NCC.

A wide range of problems were set out in the Terms of Reference for us to examine, namely:

- a. roles, responsibilities and accountabilities of different parties;
- b. education and training;
- c. licensing and accreditation;
- d. accuracy of design and documentation;
- e. quality control and assurance;
- f. competencies of practitioners;
- g. integrity of private certification;
- h. inspection regimes;
- i. auditing and enforcement practices; and
- j. product importation and chain of custody.

We were asked to assess the compliance and enforcement systems in place across Australia having regard to these problems. In doing so, we have given careful consideration to the opinions of various experts that have undertaken reviews of the building and construction industry on behalf of state and territory governments in recent years.

Our work was commissioned by the BMF. The BMF is the group of Australian Government, State and Territory Ministers that has responsibility for building and construction. The BMF is created under a series of intergovernmental agreements that establish and maintain the Australian Building Codes Board (ABCB) which is responsible for the development of the NCC.

The NCC contains the technical requirements and standards for the construction of buildings and for plumbing work. The NCC is adopted by each jurisdiction in its own building legislation. The goal is to have nationally consistent technical standards applying across Australia. Whilst our country has a national technical standard for buildings, our federation provides for each state and territory to have its own laws governing the implementation of the NCC.

Jurisdictions have been very open in identifying the growing challenges they have faced in ensuring effective compliance with, and enforcement of, the NCC. So have industry bodies. Criticisms have been delivered in a constructive manner with an emphasis on finding solutions.

After having examined the matters put to us, we have concluded that their nature and extent are significant and concerning. The problems have led to diminishing public confidence that the building and construction industry can deliver compliant, safe buildings which will perform to the expected standards over the long term.

We have read numerous reports which identify the prevalence of serious compliance failures in recently constructed buildings. These include non-compliant cladding, water ingress leading to mould and structural compromise, structurally unsound roof construction and poorly constructed fire resisting elements.

We have heard suggestions that large numbers of practitioners operating in the industry either lack competence, do not properly understand the NCC and/or have never had proper training on its implementation.

We have consistently heard that the adequacy of design documentation is generally poor and that, on occasion, builders improvise, making decisions on matters which affect safety without independent oversight. This exacerbates disputes about the quality and compliance of building work. It also results in inadequate information to guide the future maintenance of safety systems in buildings. These issues undermine public accountability in building approvals processes.

We have been told that oversight by licensing bodies, state and territory regulators and local governments can be weak due either to inadequate funding or a lack of skills and resources to undertake effective enforcement. We found that, until relatively recently, there has been almost no effective regulatory oversight of the commercial building industry by regulators. Those involved in high-rise construction have been left largely to their own devices. Where there has been supervision, this has generally been by private building surveyors whom critics argue are not independent from builders and/or designers.

The compliance and enforcement systems have not been adequate to prevent these problems from emerging and they need to change as a matter of priority. There is no panacea or 'silver bullet' to resolve these problems. Our 24 recommendations are intended to operate as a suite of solutions which will address weaknesses in a comprehensive manner. We have taken a pragmatic, risk-based approach to formulate a package of recommendations. Together they address the issues of highest priority that jurisdictions should focus on over the short to medium term.

In formulating the recommendations, we have been keenly aware of the significant effort that is being expended by each jurisdiction to continue to improve their enforcement and compliance systems. We have been encouraged by the strong recognition of the need for change. Many of our recommendations are informed by the work already underway.

We do not espouse a one-size-fits-all approach to regulation. Each jurisdiction can meet its governance responsibilities in its own manner, under the cooperative oversight of the BMF. Jurisdictions should work in partnership to reach agreement on how best to implement our proposed framework. We envisage the BMF taking collective responsibility for its implementation and, in the process, strengthening its collaborative resolve and capability.

Some jurisdictions already have in place some of the things that we recommend. But all jurisdictions will have work to do to deliver the national best practice model proposed. That work program will include legislative reform, but perhaps the more challenging task will be to make changes that can shift industry culture and improve regulatory practice.

The work required to bring positive change cannot be done by governments alone. Industry has a keen self-awareness of the problems that exist. Whilst there are many participants who display competency and integrity, this is not universal. The building and construction industry needs to actively participate in lifting standards, competency and integrity if it is to produce safe and reliable buildings and continue to be an important driver of infrastructure development and economic growth.

Our recommendations represent an ambitious package, but we believe that the required shift can be achieved with a cooperative approach to change.

Of course, change takes time. We are not proposing that each jurisdiction adopt the recommendations overnight. Realistically, the recommendations should be implemented over a three year period. Resources will need to be dedicated to oversight that task by the BMF. Transparency is crucial. We believe that public confidence will be enhanced by annual reports being issued on progress with those recommendations that are accepted, in full or in part, by the BMF.

## Summary of Recommendations

**Recommendations 1 to 4** focus on the **registration and training of practitioners**.

We recommend a nationally consistent approach to the registration of certain categories of building practitioners and compulsory Continuing Professional Development, which includes mandatory hours/units dedicated to training on the NCC and the establishment of supervised training schemes which provide better defined career paths for building surveyors.

**Recommendations 5 to 7** address the **roles and responsibilities of regulators**.

We recommend a focus on collaboration between state and local government and (where applicable) private building surveyors to improve regulatory oversight. We also recommend the provision of broad powers to audit building work and take effective compliance and enforcement action. We recommend that each jurisdiction implement a proactive audit strategy for regulatory oversight of the Commercial building sector.

**Recommendation 8** goes to the **role of fire authorities** in the building design and approvals process.

We recommend that, consistent with the International Fire Engineering Guidelines, jurisdictions require early engagement with fire authorities on designs which include performance solutions on fire safety matters.

**Recommendations 9 to 11** focus on the **integrity of private building surveyors**.

We recommend minimum statutory requirements for the engagement, and role, of private building surveyors, a code of conduct with legislative status and enhanced supervisory powers and reporting obligations.

**Recommendation 12** addresses the issue of **collecting and sharing building information and intelligence**.

We recommend the creation of a central database by each jurisdiction and collaboration to develop a platform that can provide for information sharing to inform regulatory activities and the work of the BMF. Information in the databases would also be accessible as appropriate, by authorised persons including owners or purchasers of buildings.

**Recommendations 13 to 17** focus on the issues of **adequacy of documentation and record keeping**.

We recommend that there be a statutory duty on design practitioners to prepare documentation that demonstrates that proposed buildings will comply with the NCC. We recommend a more robust approach to third party review of designs and to the documentation and approval of performance solutions and variations.

**Recommendations 18 to 19** emphasise the importance of **inspection regimes**.

We recommend that jurisdictions require on-site inspections for all building works and that there be greater oversight of the installation and certification of fire safety systems in Commercial buildings.

**Recommendation 20** addresses the issue of **post-construction information management**.

We recommend that for Commercial buildings, a comprehensive digital building manual be created for owners which can be passed on to successive owners. This would include all relevant documents for the ongoing management of the building, such as as-built construction documentation, fire safety system details and maintenance requirements.

**Recommendation 21** relates to **building product safety**.

We recommend that the BMF agrees its position on the establishment of a compulsory product certification system for high-risk building products.

**Recommendations 22 to 24** deal with **the implementation of the recommendations** laid out above.

We recommend commitment to a three year timetable for the implementation of the recommendations. We recommend that the BMF establish a plan for implementation which is reported against by each jurisdiction annually. We also recommend that, to deal with the issue of differing terminology across jurisdictions, the BMF develops a national dictionary of terminology.

A consolidated list of the recommendations is set out in [Attachment A](#).

## Background

### *The Terms of Reference*

On 30 June 2017, the BMF agreed to commission an independent expert examination of the broader compliance and enforcement problems within the building and construction systems affecting the implementation of the NCC. On 24 August 2017, Professor Peter Shergold AC and Ms Bronwyn Weir were appointed as the independent experts to undertake the inquiry.

Based on the outcome of the Assessment, Professor Shergold and Ms Weir were asked to consider strategies for improving compliance and enforcement practices and to make recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC.

The Terms of Reference for our inquiry is at [Attachment B](#).

### *Consultation*

Professor Shergold and Ms Weir were asked to consult with the Commonwealth, state and territory governments, the ABCB and key industry stakeholders.

Consultation has occurred with Ministers, departmental officials and regulators in all jurisdictions. The BMF was briefed on progress on two occasions. Separate meetings were conducted with each building Minister, their advisors and/or their senior public servants. Meetings were also held with key industry bodies and other stakeholders.

A total of 55 consultation meetings were held (see [Attachment C](#)). Interested parties were encouraged to provide brief written submissions to the Assessment by 15 December 2017. Twelve submissions and two supplementary submissions were received (see Attachment D). Documentary material was also provided at a number of the meetings. Unless otherwise stated, the quotations highlighted in this report are taken from submissions received.

### *Review of previous reports and other material*

We were asked to take into account the impact of recent building regulatory reviews and reforms undertaken and implemented by state and territory governments, some of which are identified in the Terms of Reference. We also considered numerous reports, news articles and submissions to other inquiries and reviews.

Regard was had to reports that considered the benefits of harmonising building regulation such as the report on the 1991 Model Building Act, the 2004 Productivity Commission report and the 2012 report by The Centre for International Economics.<sup>1</sup> These reports have concluded that greater harmonisation of building regulation across Australia can bring significant productivity gains to the sector and economic benefit to the community.

Most jurisdictions have commissioned reviews of their building regulation systems, undertaken reforms or have been the subject of review by Auditors-General. The Assessment looked at the more recent of these including the 2014 Wallace Report, the 2015 Lambert Report, and two pertinent Victorian Auditor-General reports.<sup>2</sup> Beyond findings specific to each jurisdiction's systems, these reports identified similar overarching problems and made similar recommendations for reform.

In 2017, the Senate Economics References Committee Inquiry released its interim report on aluminium composite cladding. Queensland also released updates to its building plan and new legislation relating to non-conforming building products. NSW and Tasmania have also made laws relating to high-risk building products. The Victorian Cladding Taskforce released its interim report in 2017 and the Tasmanian Aluminium Composite Panel Audit report was released in 2018.<sup>3</sup>

<sup>1</sup> L. Dix and K. Lovegrove, *Model Legislative Provisions and Commentary*, Sydney, Federation Press, 1991; Productivity Commission 2004, *Reform of Building Regulation*, Research Report, Productivity Commission, November; The Centre for International Economics, *Benefits of building regulation reform*, Canberra, The Centre for International Economics, 2012.

<sup>2</sup> A. Wallace, *Review of the Building Act 1975 and building certification in Queensland*, Brisbane, Queensland Building and Construction Commission, 2014; M. Lambert, *Independent Review of the Building Professionals Act 2005-Final Report*, Sydney, NSW Government, 2015; Victorian Auditor-General, *Compliance with Building Permits*, Melbourne, Victorian Government Printer, 2011; Victorian Auditor-General, *Victoria's Consumer Protection Framework for Building Construction*, Melbourne, Victorian Government Printer, 2015.

<sup>3</sup> The Senate Economics References Committee, *Non-conforming building products/Interim Report: aluminium composite cladding*, Canberra, Senate Printing Unit, 2017; Department of Housing and Public Works, *Queensland Building Plan 2017*, Brisbane, Queensland Government, 2017; *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* (Qld); *Building Products (Safety) Act 2017* (NSW); *Building Act 2016 Director's Determination - Building Product Accreditation - High Risk Building Products 2017* (Tas); Victorian Cladding Taskforce, *Interim Report*, Melbourne, Department of Environment, Land, Water and Planning, 2017; Consumer, Building and Occupational Services, *Tasmanian Aluminium Composite Panel Audit Summary: Regulatory Compliance*, Hobart, Tasmanian Government, 2018.

Across the globe, in the wake of the Grenfell Tower fire, the UK is undertaking a review of its building regulation system. In December 2017, Dame Judith Hackitt released an interim report of her independent review of building regulations and fire safety.<sup>4</sup> She found “that the whole [UK] system of regulation, covering what is written down and the way in which it is enacted in practice, is not fit for purpose, leaving room for those who want to take shortcuts to do so”.<sup>5</sup>

Some of the problems addressed by Dame Judith are strikingly similar to those in the Australian building and construction industry. She identified ineffective enforcement, low levels of competency across the sector, lack of clear accountability and inadequate documentation throughout the building approvals process worsened by poor change control and quality assurance. She concluded that these manifold deficiencies have contributed to a mindset which is willing to do things as cheaply as possible and pass on responsibility for problems and shortcomings to others.

## Terminology used in this report

Throughout the report a distinction is made between Commercial and Domestic buildings. These are defined as follows:

**‘Commercial buildings’** refers to class 2–9 buildings, which includes **multi-storey residential buildings** and **public buildings**.<sup>6</sup> The term captures both public and privately-owned buildings, including those intended to be occupied by vulnerable people, such as **aged care facilities, hospitals, childcare centres and low-cost accommodation**.

**‘Domestic buildings’** refers to class 1 and 10 buildings which includes **dwelling**s, whether detached or attached (such as **terrace houses** and **villas**), **sheds, swimming pools and other non-habitable structures**.

It is appreciated that in the implementation of the recommendations, jurisdictions will decide that for some matters, the appropriate distinction between the types of buildings should be more nuanced, such as considering building heights and floor areas.

As the report makes clear, one of the challenges for implementation of the NCC is that different jurisdictions use different terminology in their building legislation. To avoid ambiguity, it is important to be clear on the language that is used in this report.

The terms ‘registration’, ‘licensing’ and ‘accreditation’ are used across jurisdictions in relation to occupational licensing regimes. Whilst there are differences in the meaning of these terms, for simplicity, this report uses the term **‘registration’**.

This report uses the term **‘building surveyors’**, rather than ‘building certifiers’.

When using the term **‘private certification’** the report refers to a statutory process for certification by privately appointed building surveyors. Under this process, a private building surveyor is appointed to review documentation and/or building work and determine whether it is compliant with the NCC and any other legislative requirements present in each jurisdiction.

For building approvals, such as building permits, certificates of construction and the like, the report uses the terms **‘building approvals’** or **‘building approvals process’**.

For occupancy permits, occupancy certificates, certificates of occupancy and the like, the report uses the term **‘occupancy certificate’**.

When using the term **‘third party review’**, the report refers to the review of a proposed design, in particular a design which includes performance solutions, by a peer or specialist. Third party review might be required by statute or might be requested by a building surveyor or other authority. A third party review can also be recommended by the designer or proactively undertaken for complex designs as part of good design practice.

A number of acronyms, abbreviations and contractions are used in this report. A glossary of key terms follows:

**ABCB Intergovernmental Agreement (ABCB IGA)** is *An Agreement between the Governments of Commonwealth of Australia, the States and the Territories to continue in existence and provide for the operation of the Australian Building Codes Board 2017*.

**Australian Building Codes Board (ABCB)** is a standards writing body that is responsible for the development of the NCC. It is established by the ABCB Intergovernmental Agreement (ABCB IGA).

4 Dame Judith Hackitt, *Building a Safer Future—Independent Review of Building Regulations and Fire Safety: Interim Report*, London, Controller of Her Majesty’s Stationery Office, 2017.

5 Hackitt, *Building a Safer Future*, p. 5.

6 Building classifications are prescribed in the NCC—Class 2 to 9 buildings are mostly covered by Volume One of the NCC and Class 1 and 10 buildings are mostly covered by Volume Two, <https://www.abcb.gov.au/-/media/Files/Resources/.../Building-classifications.pdf>, (accessed 9 February 2018).



**Building Code of Australia (BCA)** comprises Volumes One and Two of the NCC and prescribes the technical provisions for the design and construction of buildings and other structures.

**Building Ministers' Forum (BMF)** comprises the group of Australian Government, State and Territory Ministers with responsibility for building and construction. It sets the strategic direction for the ABCB, SOG and BRF.

**Building Regulators' Forum (BRF)** comprises the senior building regulator or their delegate from each jurisdiction and a senior representative from the Australian Government. The BRF provides an intergovernmental forum for state and territory building regulators to work cooperatively and efficiently on regulatory responses to issues of national significance impacting building and construction in Australia.

**Continuing Professional Development (CPD)** involves maintaining and enhancing the knowledge, skills and experience related to professional activities following completion of formal training.

**Council of Australian Governments (COAG)** is the peak intergovernmental forum in Australia. It comprises the Prime Minister, state and territory First Ministers and the President of the Australian Local Government Association.

**National Construction Code (NCC)** comprises the Building Code of Australia (Volumes One and Two), the Plumbing Code of Australia (Volume Three) and other on-site construction requirements as directed by the BMF.

**Senior Officers' Group (SOG)** comprises two senior building and construction policy officers from each jurisdiction and a senior representative from the Commonwealth. It supports the BMF by providing enhanced national policy development, collaboration and coordination amongst jurisdictions.

## Introduction

### *A performance-based approach to building regulation*

The NCC is one of the most important initiatives of the Council of Australian Governments (COAG). Many have described it as world-class. It sets minimum requirements for the design, construction and performance of buildings throughout Australia. It incorporates on-site construction standards in a systematic way. It is intended to enable all those involved in building and its regulation to understand the minimum requirements for health, safety and amenity in buildings.

The minimum requirements are based on a performance-based approach to building design and construction. Rather than set out how a building is to be constructed, the NCC states how a building or building element is required to perform. The code sets out explicit objectives, listed as a hierarchy of requirements. It is not intended to be overly prescriptive. Designers and builders have the capacity to find creative solutions to meet the performance requirements.

This is to be contrasted with traditional prescribed building codes that mandate specific construction practices. There are clear economic and aesthetic benefits to a performance-based approach: new techniques can be introduced to increase productivity; new products and innovative technologies can be applied to reduce costs or widen choice; and new creative architectural design is encouraged.

Since its adoption, there have been several reports which have identified the positive impacts of the introduction of the NCC, most notably the PC report in 2004 and the CIE report in 2012.<sup>7</sup> Others have argued that there is a need for a greater level of prescription in the articulation of the NCC.

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*“...our building regulatory regime has rushed headlong into embracing a performance based paradigm, whilst at the same time propping up and promoting a prescriptive based building administration eco-system.”*

**Building Products Innovation Council.**

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There seems to be agreement that the NCC requires continual review and improvement and that the capability of industry to apply the code is a work in progress. Nevertheless, there is a strongly held industry view that the benefits of the NCC have outweighed any negative impacts.

It is apparent to us that deriving the maximum benefit from a performance-based approach to building regulation depends on two fundamental requirements. First, there needs to be a high level of awareness and understanding across the building and construction industry of how compliance can be achieved by incorporating the performance requirements within the design process. Second, there needs to be strong public trust that the performance requirements are being met and, in particular, that health and safety is assured. At present, as this report elaborates, neither of these requirements are being fully met.

Without clear, visible and accountable compliance procedures, public confidence in the ability of governments to oversee a performance-based building and construction industry will be eroded. People need to be persuaded that the NCC is being administered to a high standard. Effective implementation is crucial. That, in essence, is what the recommendations in the report seek to address. Acceptance of the recommendations will require not just the collaborative commitment of all governments to harmonising a strengthened regulatory environment but also the active participation of all sectors of the building and construction industry.

The NCC has the capacity to instil public faith in government oversight of building activity. But this will require the public (including building owners and occupiers) to be assured that it is being effectively implemented by each jurisdiction, working harmoniously. The public is entitled to a presumption that the buildings in which they live, work and receive services are safe.

That level of trust depends upon transparency. The great American litigator and jurist, Louis Brandeis, writing in 1913 on how banks use other people's money, mused that “Sunlight is said to be the best of disinfectants”.<sup>8</sup> If the actions of individuals, organisations or government are visible, then pro-social behaviours are more assured and the need for legal or regulatory intervention is lessened.

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<sup>7</sup> Productivity Commission, *Reform of Building Regulation*, Research Paper, Canberra, Productivity Commission, 2004; The Centre for International Economics, 2012, *Benefits of building regulation reform*, Canberra.

<sup>8</sup> L.D. Brandeis, 'What Publicity Can Do', *Harper's Weekly*, 20 December 1913, p. 10.

We strongly espouse that ethos. Confidence in the NCC requires an effective disclosure regime. It needs to incorporate a number of elements. The public should be able to see how governments enforce the NCC. Decisions made during the design and construction of a building need to become an accessible record. Scrutiny is vital to public accountability. Those responsible for making and certifying decisions under the NCC need to be identified so that they can be held accountable for their decisions.

People require assurance that the products used in a building are appropriate and that they are employed to an agreed performance standard. They need to know that those who are registered to certify the standards are suitably trained and qualified, that they perform their tasks diligently during the process of construction and they cannot be perceived to have any conflict of interest with developers, builders or owners.

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*“The “Deemed to Satisfy” provisions of the Code have long been standard practice. However, in the “Performance Based” solutions provisions there is great latitude and propensity for misunderstanding and the divergence of opinions on what is meant and what are acceptable alternatives. This requires much clarification.”*

**Australian Construction Industry Forum.**

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There is ongoing debate about the best ways to improve the NCC. During our consultations, many expressed the view that the content of the NCC lacks clarity and that this should be acknowledged as a barrier to effective implementation. At the request of the BMF, the ABCB is well progressed on its ‘Improved Usability’ project which is intended to simplify the NCC. It also has a project on ‘Performance’ which includes the quantification of performance requirements to improve productivity and building outcomes. Industry continues to offer feedback on these projects.

We have not been asked to make recommendations about the NCC itself. We fully support the work that the ABCB has been tasked with and are confident that the BMF is aware of the issues that have been raised. However, the effectiveness of the implementation of the NCC will at least, in part, depend on it being a document that is able to be understood and its intentions comprehended by practitioners across the sector. The code needs to be easy to access and written in language that is readily comprehensible. Those who use it need to be able to receive clear advice from sources of authority on matters of interpretive ambiguity.

### *Modern construction practices for multi-storey residential buildings*

A significant change in the building and construction industry over the past 30 years has been the increase in construction of multi-storey buildings, particularly for residential living. According to the Australian Bureau of Statistics the number of apartments being built in high-rise buildings (that is, buildings of four or more storeys) in Australia each year has almost tripled in less than a decade.<sup>9</sup> In 2007, 30,000 apartments were built in high-rise buildings, increasing to almost 90,000 in 2015. By comparison, the number of apartments being constructed in low-rise and semi-detached dwellings over the same period was steady with approximately 10,000 new apartments in low-rise buildings and 20,000 new apartments in semi-detached buildings per year.

Contractual arrangements for multi-storey projects differ, but commonly developers engage a builder to undertake a design-and-construct project. This means the builder is responsible both for the development of the design and the construction of the building. Whilst the developer might initially engage architects and engineers to prepare early designs to obtain planning approvals, these consultants then become subcontractors. It is the builder who is responsible for the delivery of a completed building at an agreed price. Once contracted, the builder will work to find efficiencies and cost savings in the development of the design and construction of the building.

A significant percentage of apartments are sold off the plan to fund the development. However, purchasers of apartments have no rights to oversee the construction phase of the project. They must rely on the regulatory controls and competence of practitioners to deliver a compliant, safe building.

Although building approvals are required, the nature of a design-and-construct project means that many aspects of the design change after the initial approval is obtained. This often leads to just-in-time supply of documentation and squeezes the compliance checking processes.

Staged building approvals are contemplated in most building approvals systems. They are intended to allow for ongoing approvals as the design is developed and before work commences. However, regulatory controls over this process are often very limited. As a consequence, there is often a significant difference between the as-designed building documentation and the as-built building.

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<sup>9</sup> Australian Bureau of Statistics, 8752.0 *Building Activity*, Australia, 2017.

Some, but not all, jurisdictions require lodgement of as-built plans. Where as-built plans are lodged there are consistent reports that the adequacy of documentation is poor. In practice, building surveyors insist, to different degrees, on amended plans when the building work has departed from the approved plans. However, many approve, allow, or are not aware of, variations that have been made. The result is that changes to approved design occur frequently, at the discretion of the builder, project manager and/or contractors and without independent certification.

The implementation of NCC has failed to keep pace with these developments. Most compliance and enforcement systems do not account for the modern construction practices described above.

It is for that reason that several of the recommendations seek to address the issue of adequacy of documentation (Recommendations 13, 14 and 17), ongoing approval of design by independent certification (Recommendations 16, 18 and 19) and increased auditing and regulatory oversight by the state or territory regulator (Recommendations 5, 6 and 7). Each jurisdiction will need to look critically at their legislation to determine whether the statutory controls recommended are strong enough. They will also need to develop effective enforcement programs to overcome the culture of complacency that has emerged as a result of the modern construction practices described above.

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*“...our current system is nationally fragmented, needlessly complex and based on an old regulatory model which is increasingly incapable of dealing with modern industry issues and rapid change. It often fails to facilitate identification of defective work, fails to hold to account those responsible for building defects where these are detected, and fails to support innocent victims who inherit responsibility for resolving defective work.”*

**Building Products Innovation Council.**

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## *The role of the private building surveyor*

Contemporary building and construction laws derive from the 1991 Model Building Act (MB Act), elements of which have since been variously adopted by the states and territories.<sup>10</sup> A number of major reforms were embodied in the MB Act, including:

- providing a choice of either engaging a private building surveyor to certify all aspects of construction requiring approval (including the issue of an occupancy certificate) or to opt for the ‘traditional’ route in which approval was facilitated by the local authority;
- mandating professional indemnity cover for prescribed classes of building practitioners (such as engineers, architects and surveyors);
- providing for the setting of minimum qualifications for building practitioners;
- providing certainty in respect of time limitations for law suits;
- requiring judges to apportion liability for damages so that a party found liable for a given proportion of the total amount of the damages for economic loss and rectification costs resulting from the defective work would need to pay no more than the given proportion; and
- providing for “one-stop-shops” for resolving building approval disagreements.

For liability reasons, the model proposed did not have a role for local government if a private surveyor was engaged, other than to perform a document registry function. In four jurisdictions (including three with the highest volumes of building and construction work) this model has been adopted. In the other four jurisdictions, variations on the model have been adopted. In each case the private building surveyors have a certification role and either the local or territory government can accept their certification without the need to form their own opinion or take on liability for the work of the private building surveyor.

In short, in all jurisdictions across Australia private certification now occurs as part of the vast majority of building approvals process. The increase in private certification has resulted in a significant decline in the resources and capacity of most local government building authorities.

A building regulatory model that includes private certification carries with it an inherent potential for conflict of interest. That is not to say that a model where only a government official certifies building design and construction is entirely free from potential conflict. There is evidence that government processes can be open to poor practices. However, the private certification model will always have a significant potential for conflict of interest given the commercial relationship that must necessarily exist between the designer/builder and building surveyor. Even if the building surveyor is appointed by the owner, this appointment will be influenced by the builder and/or designer.

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<sup>10</sup> Dix and Lovegrove, *Model Legislative Provisions and Commentary*.

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*“The private building surveyor regime has led to a culture of complacency and an element of not rocking the boat or biting the hand that feeds you. The level of independence we originally had with municipal building surveyors has been lost.”<sup>11</sup>*

FM Global

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In the face of the shift to private certification across the country since 1993, regulatory oversight of the role of private surveyors by governments around the country has been patchy. Most of the regulators we consulted advised us that proactive audits of private building surveyors were not done or had only commenced in the past three or four years. In most jurisdictions, to the extent that auditing is undertaken, these audits are largely administrative, although there is work presently underway to develop more substantive audit programs. Intervention is rare. State licensing bodies have cancelled the registration of a relatively small number of private building surveyors in only two jurisdictions. In many jurisdictions there have been very few disciplinary inquiries into the conduct of private building surveyors.

A common complaint from local government associations around the country is that they are expected to undertake enforcement related to the poor practices of private building surveyors without being adequately resourced. They also argue that state and territory licensing bodies have been ineffective in dealing with incompetent and unprofessional practitioners. For example, the Local Government NSW has argued that the Building Professionals Board (NSW) is slow to act on non-compliance matters, requiring councils having to take on a greater enforcement role.<sup>12</sup>

There are two sides to this story. From private building surveyors we heard that sometimes when they try to undertake enforcement and refer unresolved matters to the state, territory or local government, they are ignored. Worse, on occasion, attention turns to their own conduct and they find themselves the subject of complaint and criticism.

Notwithstanding the very strongly and consistently held perception that private certification is tainted with conflicts of interest and poor practice, a range of stakeholders expressed sympathy for the difficult role of the private building surveyor. Many private certifiers are individuals of high integrity. They often experience considerable pressure from the conflicting demands they face from their clients, the regulators and the insurers. Too few in the building industry are attracted by a career as a surveyor. The profession is ageing and there are limited pathways or incentives for people to become building surveyors.

Some of those consulted have told us that the move to private certification over the past 25 years has compounded many of the problems that we have been asked to examine. We tend to agree. However, it is not just the conduct of private building surveyors that contributes to the problems but also the lack of regulatory oversight of their conduct and, more importantly, the absence of a cohesive and collaborative relationship between state and local government and private building surveyors. In the building and construction environment that has developed since the early 1990s, the governance of private building surveyors needs to be recalibrated.

There should be a tightening of government oversight of the building approvals process in order to effectively minimise the conflict of interest that is inherent in a privatised building surveying model. Some jurisdictions are considering options such as a ‘cab-rank’ or ‘chocolate-wheel’ model in which government makes the decision on the allocation of private surveyors to projects. Some jurisdictions are considering limiting the involvement of private building surveyors to issuing the building approval or conducting inspections or issuing the occupancy certificate, but not all three. Another model is to allow private building surveyors to perform all three stages of the building approvals process but only for approvals relating to Domestic and lower risk Commercial building work.

The allocation of roles between government and private building surveyors is for each jurisdiction to determine. The recommendations can be implemented regardless of the public versus private certification model in place in any given jurisdiction. They would complement any other restrictions that a jurisdiction might wish to set in place.

Our focus has been to ensure the integrity of private building surveyors. We believe that can be achieved through statutory controls to mitigate conflict of interest (Recommendation 9), a code of conduct (Recommendation 10) and mandatory reporting obligations (Recommendation 11). The recommendations also call for increased collaboration between state and local governments and private surveyors in their enforcement role (Recommendation 5).

Such interventions do not represent imposition of unnecessary red tape or bureaucratic overreach. There is a significant danger that without increased auditing and enforcement, the privatised building approvals process will lead to an ongoing decline in compliance standards. That is why we propose enhanced regulatory oversight. Improved governance of private building surveyors is necessary in order to win over vocal industry critics and, crucially, to restore public confidence that safety is paramount.

<sup>11</sup> Comments provided to the BMF Assessment by FM Global.

<sup>12</sup> Local Government NSW, *Submission to the Building Professionals Board Report on “Building Certification and Regulation – Serving a New Planning System for NSW”*, [website], 2014, p.15, <http://www.lgnsw.org.au/files/imce-uploads/127/LGNSW-submission-to-bpb-maltabarow-report-march-2014.pdf>, (accessed 3 February 2018).

## *The responsibility of builders*

The quality of buildings depends heavily on the competency and integrity of builders. There are many builders that have high standards of competency and integrity. However, the rates of disputes, alleged defects and reports of high levels of illegal phoenix activity are evidence that there are shortcomings in the performance of some builders. These need to be addressed.

Independent inspections of building work are required in most jurisdictions as a mechanism for overseeing the work of builders. However, the majority of building work is constructed without oversight. Mandatory inspections are limited in their ability to detect non-compliance. Some of the most important safety elements are hidden from view and a point-in-time inspection cannot properly assess essential construction processes. Whilst inspections during building work have merit, the competency of builders will always be a critical factor in the effective implementation of the NCC.

The recommendations are intended to strengthen the competency of builders by requiring consistent requirements not only for the registration of all builders but also for sub-categories that limit the scope of work that can be performed based on skills and competencies (Recommendations 1 and 2). It is also recommended that builders receive compulsory education on the NCC. The content of that education should be based on intelligence about common forms of non-compliance detected by regulators and insurers (Recommendation 3).

The integrity of private certification has been questioned, largely because of the relationships between builders and private building surveyors. The recommendations provide for a strengthening of the independence between builders and building surveyors (Recommendations 9, 10 and 11). They include placing obligations on private building surveyors to report builders who do the wrong thing. It is imperative that builders play their part in helping to redefine the role of private building surveyors. Builders need to recognise that inappropriate relationships with private building surveyors undermine the whole system.

The recommendations call for improvements to the quality of documentation and to increased controls over design-and-construct approaches to building (Recommendations 13 to 17). These changes should give greater protection to builders. For these changes to be effective, builders must ensure that they build to approved documentation and that where a design is unclear or not practical they call for variations to be documented before proceeding with work. For design-and-construct projects, builders must resist proceeding with work beyond the approved design. When products are being selected or substituted, the builder needs to know when to seek permission from the building surveyor.

## *The question of cladding*

Our appointment to undertake this inquiry was one of several actions taken by the BMF following the tragic deaths of 71 people in the Grenfell Tower fire in London on 14 June 2017. The circumstances of that fire continue to be investigated, but it is widely accepted that a key contributor to the ferocious nature of the fire was the presence of highly combustible polyethylene cladding that had been installed on the external walls of the tower as part of recent refurbishment works.

The BMF was considering the use of cladding containing polyethylene on buildings in Australia before the Grenfell Tower fire. In November 2014, in Melbourne's Docklands, the Lacrosse building caught fire. Over 400 occupants were evacuated as the fire raced up 13 storeys via the external façade of the building within minutes of igniting. The Lacrosse building was completed in 2012 and was clad in combustible aluminium composite cladding containing polyethylene.

Since the Lacrosse building fire, the BMF has taken a number of specific actions including reviewing the NCC and forming the SOG to advise it on issues relating to combustible cladding and building product accreditation generally. Each jurisdiction has commenced work to conduct audits of high-rise buildings. Many have initiated, or are considering, reforms to address the use of aluminium composite cladding and other high-risk building products.

The report does not make recommendations about cladding audits and rectification works. More generally, we do support the BMF seeking to reach a position on the establishment of a compulsory product certification system for high-risk building products (Recommendation 21).

Our Terms of Reference do not specifically refer to the concerns regarding combustible cladding. However, this issue has been a dominant underlying theme of the consultations we have held. As we have developed the recommendations we have asked ourselves a simple question: "would our recommendations significantly reduce the likelihood of the misuse of cladding occurring in the future?". We believe we can answer in the affirmative.

## *A better system of harmonisation*

A common theme in our consultations was the call for greater harmonisation in compliance and enforcement systems. This issue has been raised time and time again. In considering this matter the Productivity Commission concluded that “While there may be benefits from some alignment across jurisdictions of administrative processes, it is not clear that net benefits would arise from harmonisation of all aspects. A progressive approach, advancing harmonisation in those areas with the largest net benefits, may be appropriate. Effective compliance and enforcement is a higher priority than full national consistency at this stage”.<sup>13</sup> We agree with this finding.

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*“If there was one area of focus that could be immediately sought to pursue improvement, it should be seeking a commitment to develop a model NCC Administrative Code to harmonise expectations regarding the aspects identified in the terms of reference for this assessment.”*

**Fire Protection Association Australia.**

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Our appointment demonstrates a willingness by the BMF to consider consistent ways to achieve the most effective implementation of the NCC across Australia. The recommendations, if adopted by all jurisdictions, will lead to a degree of harmonisation which does not presently exist. Further, because many of the recommendations call for a national approach, the implementation process will continue to strengthen the relationships between jurisdictions and their appreciation for each other’s systems. The dissemination of good practice will be enhanced.

Under the most recent ABCB Intergovernmental Agreement (ABCB IGA), the BMF has further defined the roles of the ABCB and the SOG. The Ministers have also sought assistance on regulatory matters from a forum of building regulators (the Building Regulators’ Forum (BRF)). All three will provide the BMF with support in its work. This new governance arrangement strengthens existing efforts for collaboration and will encourage ongoing partnerships between jurisdictions on a wide range of issues. We strongly support its development.

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*“AIBS supports a single national legislative approach, or at least for each State and Territory to adopt a model version in its legislative scheme.*

*AIBS believes that eliminating the differences in administrative provisions would lead to a reduction in compliance cost to industry and therefore to the consumer.”<sup>14</sup>*

**Australian Institute of Building Surveyors**

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Given this context, we have been mindful to respect the autonomy of each jurisdiction to make their own legislative and administrative arrangements for building and construction compliance and enforcement systems. Crucial elements of the systems such as the public versus private certification model, the role of local government and fire authorities, the interface with planning controls, consumer protection mechanisms and funding models, remain matters for each jurisdiction to determine.

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*“The NCC must be enforced and policed in a way that is nationally consistent.”*

**Master Builders Australia.**

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<sup>13</sup> Productivity Commission 2004, *Reform of Building Regulation*, p. 243.

<sup>14</sup> Australian Institute of Building Surveyors, *AIBS Policy - Building Regulatory reform in Australia*, Version:001/18-Sep-17, 2017, [https://aibs.com.au/Public/Public/AIBS\\_Policies.aspx](https://aibs.com.au/Public/Public/AIBS_Policies.aspx), (accessed 13 February 2018), p. 8.

## Recommendations

### *Recommendation 1—Registration of building practitioners*

#### **The problem identified**

Registration of practitioners is a regulatory mechanism for providing public accountability. Whilst all jurisdictions register building practitioners as part of their compliance and enforcement systems, the categories that are registered differ. This affects the mobility of participants and creates complexity in applying mutual recognition. More importantly, there are gaps in the accountability of practitioners with key responsibilities for compliance with the NCC across Australia.

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*“All registration systems have the same basic characteristics in that standards must be set, courses accredited, candidates examined or assessed, and a register maintained. Performance must be monitored and failures disciplined. A register has greater effect if supported by licensing arms of government.”*

**Engineers Australia.**

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Whilst there is some crossover, the skills required for the design and construction of Commercial buildings differ significantly from the skills required for the design and construction of Domestic buildings. Many practitioners specialise in, or have capabilities limited to, either the commercial or domestic sector. Unfortunately, in many jurisdictions the scope of work that can be performed by some categories of registered practitioner is not limited to the type of design or construction work they have the capability to perform. This results in registered practitioners taking on building work for which they are not fully competent.

Although fire safety systems are a critical component of Commercial buildings and occupy a significant part of the NCC, most jurisdictions do not register the practitioners who have expertise in fire safety system design, installation or maintenance. Similarly, the design of a multi-storey building relies on the expertise of structural engineers, but three jurisdictions do not register that occupation. Builders are responsible for building work and the supervision of contractors but not all jurisdictions register builders for all types of Commercial building work.

Most Commercial buildings include complex fire safety systems that require maintenance and testing to ensure that they will operate as intended in the event of fire. Many key stakeholders believe that the standard of maintenance of fire safety systems post-occupancy is poor. However, most jurisdictions do not require fire safety system maintenance contractors to be registered.

#### **Recommendation 1:**

**That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:**

- **Builder**
- **Site or Project Manager**
- **Building Surveyor**
- **Building Inspector**
- **Architect**
- **Engineer**
- **Designer/Draftsperson**
- **Plumber**
- **Fire Safety Practitioner**

#### **Implementing the recommendation**

Each jurisdiction will need to have complementary provisions which provide that only registered practitioners can perform the work for which they hold registration. This should extend to ensuring that only appropriately qualified and registered practitioners can prepare performance solutions. Exemptions for owner-builders performing building work on Domestic buildings may be appropriate.



It is important that each category of regulation have defined sub-categories which limit the scope of work that can be performed by reference to classifications of buildings and/or building heights and floor areas. At a minimum, sub-categories referable to Commercial and Domestic buildings should be applied to each category.

For the categories of Engineers, Plumbers and Fire Safety Practitioners, there should be categories for various disciplines. The following are proposed:

- Engineers
  - civil
  - structural
  - hydraulic
  - mechanical
  - geotechnical
- Plumbers
  - water
  - drainage
  - sanitary
  - gas
- Fire safety system installers
  - fire safety engineers
  - fire protection system engineers
  - fire safety system installers
  - fire safety system maintenance contractors

Further consultation should be undertaken with industry with a view to reaching agreement on the full range of appropriate disciplines to be included.

Each jurisdiction has specific legislation for the registration of architects. Whilst this need not change, the accountability and regulatory oversight of architects should be consistent with other categories of building practitioner and aligned with the recommendations in this report. This will mean that changes are required to legislation regulating architects to provide for the following:

- the introduction of sub-categories which limit the scope of work that can be performed by architects by reference to classifications or types of buildings (Recommendation 1);
- nationally consistent requirements for registration of architects (Recommendation 2);
- mandatory CPD for architects (Recommendation 3);
- appropriate powers for the architects' licensing bodies to audit the performance of architects (Recommendations 6 and 7); and
- a statutory duty on architects to prepare documentation which demonstrates that proposed buildings will comply with the NCC (Recommendation 13).

## Further observations

In identifying the categories referred to in the recommendation, we have had close regard to the Terms of Reference and the fact that the recommendations are to be directed to strengthening the effective implementation of the NCC. Jurisdictions can and do register other practitioners operating within the building and construction industry, such as demolishers and electricians. Registration of such trades can be worthwhile. The recommendation is not intended to exclude other categories of work that jurisdictions may choose to register.

The building and construction industry is evolving fast. As the technology of building construction changes and innovative practices are introduced, new forms of expertise are emerging. There may be justification in the future for other categories of practitioner to be included in a nationally consistent approach if evidence emerges that the work performed is sufficiently complex and relates to areas of high-risk building design, construction or maintenance.

In some jurisdictions, various trade contractors are required to hold registration when contracting directly with owners. These trade contractors do not require registration if they are sub-contracting to a builder. We have not made recommendations for a nationally consistent approach to registration of trade contractors as this is likely to impose a significant regulatory burden on the building and construction industry and on regulators nationally, particularly in smaller jurisdictions. We have been unable to conclude with certainty that such a burden would be warranted. Jurisdictions that do choose to require trade contractor registration as part of their warranty or consumer protection regimes should work together to harmonise the categories of trade contractors they register.

When a builder contracts directly with an owner, it is the role of the builder to undertake building work using employees and subcontractors. It is recommended that the builder remains the primary person accountable for the proper construction of building work. Where necessary, this role should be set out in legislation. An exception to this position is fire safety system installers. The fire safety systems in buildings can be based on complex fire engineering designs and performance solutions. The installation and proper functioning of these systems is a critical building safety feature that warrants registration of specialist contractors.

## *Recommendation 2—Consistent requirements for registration*

### **The problem identified**

Currently, where the same category of practitioner is registered in two or more jurisdictions, there are often different requirements for registration. Nationally consistent training packages are limited. Each jurisdiction recognises different levels of qualification and experience when assessing applications for registration. This makes the operation of mutual recognition burdensome.

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*“Although the general roles of design, approval of design, installation, approval to occupy and ongoing maintenance exist in every jurisdiction, there is no consistency in terminology or the extent of roles or the subsets within them. This makes accountability difficult as well as mutual recognition of transportable workforces.”*

**Fire Protection Association Australia.**

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Some states and territories have been reluctant to register practitioners registered in other jurisdictions on the basis that they believe the registration standards set by other jurisdictions are of a lower level. Unnecessary impediments to the movement of skilled practitioners imposes an economic cost on the industry, limits competition, and reduces choice.

A nationally consistent approach to the requirements for registration of building practitioners (Recommendation 1) would facilitate the development of appropriate training packages for those practitioners. This should lead to nationally recognised qualifications for each category and sub-category of registered practitioner, greater labour mobility and a more comprehensive national market for appropriate insurance products.

The public needs to be assured that practitioners are trained and experienced in applying the NCC. They also need confidence that they are people of integrity and that where possible they are covered by insurance.

### **Recommendation 2:**

**That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:**

- **certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;**
- **additional competency and experience requirements;**
- **where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and**
- **evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.**

### **Implementing the recommendation**

A nationally consistent approach to regulating building practitioners is vital. However, these expanded requirements could be implemented progressively based on categories of practitioners. Given the significance of their role, priority should be given to building surveyors.

An essential element of training packages must be training on the NCC and the manner in which it needs to be applied. This is not presently a compulsory unit of study for all qualifications which are required for registration. It should be. Effective implementation of the NCC depends upon it.

Fit-and-proper person requirements are the foundation of public trust in the integrity of practitioners. These include such matters as bankruptcy and criminal checks. In the first instance, financial viability requirements are most relevant for builders. There may be justification for other categories of practitioner to be subject to similar requirements.

## Further observations

Presently, some jurisdictions rely on accreditation by industry bodies as a basis for registration. There is merit in this approach. Well-run industry accreditation can ensure that the competencies of practitioners are tailored to their area of work and can alleviate state or territory regulators from the detailed assessment of applications. If this approach is taken, the state or territory licensing body should have clear statutory responsibility for auditing performance and disciplining registered practitioners. Of course, industry associations should still take responsibility for holding their members to account and cancelling accreditation. A collaborative approach to disciplinary oversight would be beneficial.

It is important that as many practitioners as possible hold professional indemnity and/or warranty insurance in order to support accountability. It is acknowledged that insurance is not currently available for the range of practitioners proposed to be registered. This weakness needs to be addressed. There should be ongoing discussion between governments and the insurance industry to ensure that the best possible insurance is available to all categories of registered practitioner.

## Recommendation 3—Continuing Professional Development

### The problem identified

Building practitioners operate in a dynamic environment. New products, technologies and practices are actively encouraged through the performance-based NCC which, itself, is amended every three years. The introduction of nationally consistent mandatory registration requirements provides a mechanism to ensure currency of competencies. Those already practising need to have up-to-date knowledge of the current edition of the NCC.

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*“The NCC references over 100 Australian Standards and other technical documents. These documents commonly reference other technical standards (secondary and tertiary references) meaning that through the NCC alone, well over a thousand detailed standards form part of the regulatory requirements that apply to building work. No one person can possibly be required to have a comprehensive understanding of all these requirements, it is not practical or realistic. Governments and the Building Ministers need to acknowledge this reality in forming a view on any future changes to the administration framework for building work.”*

Housing Industry Association Limited.

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Many stakeholders report that building practitioners across the industry do not have a sufficient understanding of the NCC or its revisions. This has led to non-compliance or poor quality documentation of compliance. Misinterpretation or ignorance of the requirements of the NCC is not uncommon. Indeed, this failure has been offered as one explanation for the prevalence of non-compliant cladding on buildings across Australia.

### Recommendation 3:

**That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.**

### Implementing the recommendation

Regulators need to have mechanisms to identify common non-compliances which may indicate systemic misunderstanding of the requirements of the NCC. Insurers may also have data they would be willing to share. This intelligence should be collected, shared nationally and fed back to the industry promptly. It should also inform compulsory topics for CPD relevant to each category of registration.

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*“...CPD must become a mandatory consideration for all state jurisdictions that register building practitioners. This mandatory CPD consideration should ensure that practitioners will maintain a level of currency within their specialist disciplines, which should also promote aspects of consumer confidence in the overall built environment.”*

Metropolitan Fire and Emergency Services Board.

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Some of those consulted have been critical of CPD. Reservations have been expressed that CPD schemes can leave the content of training up to the discretion of participants which reduces the relevance and effectiveness of learning. Compulsory CPD schemes should provide for targeted learning on topics of genuine relevance to improve the competence of practitioners. Such topics should be focused on improving the understanding of the NCC and ensuring its effective implementation.

### **Further observations**

Industry associations can play a key role in the delivery of CPD provided that there is collaboration with regulators to ensure that the content of training is appropriate. They may be willing to assist with the administrative oversight of CPD schemes through their accreditation schemes.

Governments may wish to consider incentives to support compulsory training on the NCC.

## *Recommendation 4—Career paths for building surveyors*

### **The problem identified**

The role of the building surveyors is critical to the building approvals process. Unfortunately, there may not be an adequate supply to meet future needs. The average age of building surveyors is now over 50 and there are ill-defined and inadequate career pathways to becoming a registered building surveyor.

For many other categories of building practitioner, careers are established through apprenticeships, certificated training or other education pathways. Given the criticality of building surveyors to ensuring NCC compliance, more needs to be done to encourage new entrants to this profession, especially for those who have experience in the building and construction industry.

### **Recommendation 4:**

**That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.**

### **Implementing the recommendation**

A nationally consistent supervised training scheme for building surveyors, designed in collaboration with industry, would be most effective. Such a scheme should provide for comprehensive training on regulatory obligations, ethical conduct and the operation of the NCC.

### **Further observations**

Clarity is needed on the extent to which trainees must be supervised and how trainees can attain experience to achieve the necessary requirements for registration over a set period. The legal requirements for physical supervision of trainees needs to be pragmatic so that it is commercially viable for businesses to invest in trainees.

Governments may wish to consider incentives to support the development of, and/or participation in, a supervised training scheme.

## *Recommendation 5—Improving collaboration between regulators*

### **The problem identified**

In each state, multiple state government bodies and local councils have a role in building regulation. Private building surveyors may also have enforcement powers in relation to building work for which they have been appointed. This results in a fragmented system of regulatory oversight which is prone to duplication, confusion, unclear lines of responsibility and a lack of information sharing. This can be exacerbated in cases if some authorities believe that they have received inadequate funding. To the public, especially when things go wrong, this often looks like a game of buck-passing.

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*“Proper enforcement requires a full and detailed expression of how the enforcement activities are to be undertaken, when, and by whom.”<sup>15</sup>*

**Australian Institute of Building Surveyors**

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<sup>15</sup> AIBS, *Building Regulatory Reform*, p. 11.

With the introduction of private certification, some local governments have taken the position that they should no longer have responsibility to respond to complaints about building work because a private building surveyor has been appointed. This can lead to complaints being characterised as a disciplinary issue and referred to the state building regulator. The state regulator might direct the complainant back to local government to use its power to order work (a power which the state may not have). Alternatively, the state might characterise the same matter as a consumer affairs matter and refer it to its dispute resolution body.

In six jurisdictions, private building surveyors have powers to initiate enforcement action. Private building surveyors are sometimes reluctant to use these powers because of their commercial relationship with the builder and/or designer or because they do not receive support from local or state governments when they refer unresolved matters to them for further action.

For there to be effective regulatory oversight, all authorities and private building surveyors with enforcement powers need to collaborate closely on the performance of their functions, the timing and nature of referrals, and the sharing of information.

### **Recommendation 5:**

**That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).**

### **Implementing the recommendation**

Our aim is not to prescribe how each jurisdiction should institute these partnerships. Implementation could be achieved through enhancements to an existing panel or committee. Alternatively, a new body could be established which would be dedicated to the task of enhancing regulatory practices. Some jurisdictions may wish to establish a regulatory practice panel.

It is emphasised that the body proposed by the recommendation is not intended to be another advisory committee. Rather, the intention is to have a body that will focus on improving regulatory practice with a view to its members working together to effectively monitor building practitioners and building work. It needs to possess the authority to improve regulatory oversight.

With this in mind, the new or existing body should be made up of representatives from relevant state government bodies, local governments and private surveyors (if they have an enforcement role). It might usefully be chaired by an independent person. The body could be formalised by administrative means or be a statutory body. Either way, it should report to the relevant Minister/s in its jurisdiction. The body should meet regularly to discuss collaborative regulatory practices and procedures.

To support implementation of the recommendation, each jurisdiction will, as a first priority, wish to ensure that its legislation provides clear statements of responsibility for each authority. This will be essential to provide the necessary mandate for participation and to ensure clarity in the roles, responsibility and powers of each of the authorities. Any reforms needed should be developed having regard to how the various authorities will 'together' provide effective oversight of the building and construction regulatory systems.

The body should have terms of reference which include:

- the establishment and maintenance of written information sharing agreements that deal with matters such as:
  - shared risk assessment practices;
  - procedures for referrals; and
  - content and procedures for information sharing;
- monitoring and advising the relevant Minister/s on the effectiveness of the regulatory oversight of the industry and providing advice to the Minister/s as required;
- agreeing on the content of publications or joint websites which give clarity to both the industry and the public on complaint management processes and regulatory practices; and
- mechanisms for engagement with consumers and/or industry associations.

It might also be appropriate for fire authorities and building dispute resolution bodies to be part of the body.

## Further observations

The territories work closely with private building surveyors and as there is only one level of government involved, formal structures are unlikely to be necessary. It is a matter for the NT and the ACT to decide whether to implement this recommendation.

## *Recommendation 6—Effective regulatory powers*

### The problem identified

Audits of cladding on high-rise buildings have raised wider questions about whether authorities have the necessary powers to require rectification, recall products or issue warnings about products.

### Recommendation 6:

**That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.**

### Implementing the recommendation

Whilst it is not necessary to have nationally consistent powers, it is envisaged that all jurisdictions will need to have a minimum range of legislated powers, including:

- powers of entry for monitoring compliance;
- powers of entry where there is a reasonable belief of the commission of an offence or grounds for disciplinary inquiry;
- powers to require the production of documents or information;
- powers to investigate following a complaint or proactively;
- powers to seize documents and test and seize materials;
- powers to evacuate, make all necessary orders, or stop works;
- powers to negotiate voluntary undertakings;
- powers to undertake disciplinary processes;
- performance audit powers over all registered practitioners (including architects); and
- infringement notice and prosecution powers.

The question of which authorities (state, territory or local government or private building surveyors) should have which powers is a matter for each individual jurisdiction. However, where the same or similar powers are to be given to more than one regulator, it will be helpful to have a clearly identified lead regulator.

## Further observations

Regulation of the building product supply chain is warranted, and product recall and/or prohibition powers should exist for high-risk building products. However, it has not been recommended that all building regulators be given such powers. It is a matter for governments to decide whether such powers should sit with building or consumer affairs regulators. On one matter we are clear: if building regulators are to be given powers to regulate the supply chain, this work should not detract from their primary role.

## *Recommendation 7—Strategy for the proactive regulation of Commercial buildings*

### The problem identified

The construction of Commercial buildings is generally commissioned by developers that are in the business of building, even though they are not builders themselves and are not required to be registered. The end users of these buildings will not usually participate in the building process at all. The ability of a purchaser to assess the building's compliance with the NCC is limited. Consumers generally assume that the building regulatory system has delivered a building that is compliant with the NCC. That is not always the case and, as that is recognised, public confidence is undermined.

Building approvals processes across Australia generally provide for a very high level of self-certification of the design and construction of Commercial buildings. Until now there has been very limited proactive auditing by regulatory authorities of building work or of the registered practitioners involved in the construction of Commercial buildings.

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*“As a result of weak enforcement, parties – especially builders, building surveyors and fire engineers – are incentivised to reduce costs and they take risks doing so. These parties reap the benefits of the risky activity, but without a ‘cop on the beat’ they do not bear the consequences when things go wrong. This creates moral hazard.”*

**Enright Consulting.**

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Proactive auditing is imperative to restore public trust. Governments need to be able to detect and regulate inadequate practices. A strategy for the proactive auditing of the construction of Commercial buildings is required in each jurisdiction.

### **Recommendation 7:**

**That each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.**

### **Implementing the recommendation**

It is essential that each jurisdiction have a public strategy for proactively auditing the design, certification and construction of Commercial buildings with a view to improving regulatory oversight, education and enforcement. State regulators may collaborate with relevant councils for this work, but the responsibility for the strategy should rest with the relevant state or territory regulator in each jurisdiction.

The strategy should include targeted audits of:

- the documentation for Commercial building projects, including the standard of documentation and quality of decision making in relation to performance solutions;
- the conduct of building surveyors to ensure adherence to regulatory requirements intended to mitigate against conflict of interest; and
- the work of builders, including their management of approvals for design development, variations and product substitution.

Statutory powers to support such a strategy should include:

- performance audit powers applying to registered practitioners;
- powers to take immediate disciplinary action in high-risk cases;
- the ability to issue rectification orders or order the appointed building surveyor to take reasonable actions;
- infringement and disciplinary powers including requiring additional training, undertakings, fines, and the suspension or cancellation of registration; and
- the ability to disqualify directors in order to prohibit them from being involved in other building companies.

A public register of any enforcement action taken against any registered practitioners by the state or territory regulator should be established and maintained.

Transparency is essential. Public feedback should be encouraged. To these ends, each jurisdiction should report annually on its strategy and on the outcomes and learnings from its audits. This will enhance public accountability, spread good practice across jurisdictions and encourage collaboration with industry bodies.

### **Further observations**

Whilst the recommendation refers to auditing and oversight of the construction of Commercial buildings, this should not be taken to mean that auditing and oversight of the construction of Domestic buildings is not necessary. The recommendation is intended to prioritise the development of audit programs for Commercial buildings. Auditing might be extended to Domestic buildings in the future.

## Recommendation 8—Collaboration with fire authorities in the development of fire safety design

### The problem identified

Fire authorities play a role in the building approvals process in all jurisdictions. However, the triggers for their involvement differ. The resourcing of fire authorities to perform their role and approaches to the approvals process differs across jurisdictions. This results in similar buildings in different jurisdictions having different requirements imposed by the fire authorities.

There is consensus that, at a minimum, fire authorities should provide comment on, or consent to, performance solutions that involve fire performance requirements that relate to fire brigade intervention. However, fire authorities will sometimes want to consider, and may object to, broader aspects of the fire engineering design. The mechanisms for fire authorities to object to fire engineering designs differ across jurisdictions. In many, fire authorities have limited or no appeal rights. As a consequence, differences of opinion often remain unresolved.

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*“A more collaborative and respectful relationship is needed where the fire brigade is proactively sought to comment on areas that relate to their expertise, and designers and approval authorities are forced to consider this and better document and justify their position. ...the fire brigades have an important role to play in the design/approval process.”*

**Fire Protection Association Australia.**

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Fire authorities lack confidence that buildings will comply with the minimum fire safety requirements of the NCC. This concern seems justified given the prevalence of non-compliant combustible cladding on Commercial buildings. Measures need to be taken to improve compliance levels and to ensure a suitable level of engagement with fire authorities in the fire engineering design process.

The International Fire Engineering Guidelines (IFEG) has been endorsed by the fire safety industry and is published by the ABCB.<sup>16</sup> It contains best practice for the development of fire engineering designs and includes an obligation to engage with fire authorities as part of the design process. It has been reported to us that if the IFEG was closely followed, the quality of fire engineering designs would improve and fire authorities would be consulted early on all designs involving performance solutions as part of the fire engineering design process. This would help fire authorities gain confidence in the capability of fire safety engineers to design acceptable fire safety solutions. Unfortunately, the IFEG is not consistently followed by fire engineers across Australia and its status is limited given that fire engineers are not registered practitioners in most jurisdictions.

### Recommendation 8:

**That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.**

### Implementing the recommendation

The present edition of the IFEG was published in 2005. However, the IFEG is scheduled to be updated this year. The most effective means of establishing best practice for fire engineers and building surveyors would be to formulate a nationally consistent code of conduct for fire engineers and building surveyors based on the IFEG. A failure to comply with the code would establish a ground for disciplinary inquiry and regulatory oversight would be required to audit compliance. The development of such a code should be undertaken in collaboration with fire authorities and the fire safety industry.

### Further observations

As noted above, the role of the fire authorities in building approvals differs across jurisdictions. In some cases, the involvement of fire authorities is a source of frustration because of their lack of resourcing for this role. There are complaints that some fire authorities oppose designs on issues which are beyond their expertise. Furthermore, there is a lack consistency in interpretation of the NCC. These matters impact on the effective implementation of the NCC.

Given the diversity of opinion within the industry, the BMF may wish to consider whether a separate review of the role of fire authorities in building approvals across Australia should be undertaken with a view to addressing the issues raised.

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<sup>16</sup> Australian Building Codes Board, *International Fire Engineering Guidelines Edition 2005*, Canberra, ABCB, 2005, <http://abcb.gov.au/Resources/Publications/Education-Training/International-Fire-Engineering-Guidelines>, (accessed on 7 February 2018).



## *Recommendation 9—Integrity of private building surveyors*

### **The problem identified**

Building approval systems in all jurisdictions rely on certification by private building surveyors. Even in jurisdictions in which building approvals are issued by local government, private building surveyors or other registered practitioners can issue certificates. Legally, they can be relied on by local government without the need for substantive review when issuing the final approval.

Consequently, in all jurisdictions, private building surveyors have a direct commercial relationship with designers, owners and builders. They depend on them for their financial viability. This makes them susceptible to the interests of their client in ways which may not always align with the public interest. They make decisions independent of government with limited substantive review. As a result, conflicts of interest are inherent in all compliance and enforcement systems across Australia.

Most jurisdictions have legislated controls to mitigate conflicts of interest. However, there is substantial variation across jurisdictions. In some instances, the controls are open to broad interpretation, making them difficult to enforce.

Some jurisdictions prohibit the appointed building surveyor to issue the building approval from participating in the design process. This is because a building surveyor who has a substantial involvement in the preparation of the design may not be independent in certifying that design. In practice, it is common that a designer will seek the views of a building surveyor about how compliance may be achieved, and it is generally accepted that the building surveyor will assist with those queries. However, the interpretation of how much advice can be given before the surveyor is seen to be participating in the design differs markedly.

### **Recommendation 9:**

**That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.**

### **Implementing the recommendation**

Conflicts of interest need to be addressed comprehensively. The following matters should be legislated as a minimum:

- that it is the who owner appoints a building surveyor personally or through an agent.
- that where an agent is used, the arrangement should be subject to a requirement that the owner be given information throughout the building approvals process;
- that the engagement of a building surveyor be documented, and that termination of that engagement must not occur without the approval of a regulator or unless a mandatory process is followed;
- that the acceptance of an appointment of a building surveyor and the carrying out of any functions be prohibited where:
  - the building surveyor has participated in the design of the building; or
  - there is a direct or indirect pecuniary interest in the designer or builder or work; or
  - the building surveyor is related to a person with any of the above interests;
- that the obligations relating to the acceptance of certificates from other registered practitioners are clearly set out (that is, the checks that the surveyor must make and document when accepting certificates from others);
- that the owner and builder are required to be sent key documents directly from the building surveyor throughout the building approval process including:
  - an approved fact sheet on the role and responsibility of their building surveyor;
  - information about the surveyor's complaints management procedures;
  - all approved documents forming part of the building approvals;
  - any approved variations to documents or new design documents approved during the works;
  - results of all mandatory inspections as they occur;
  - any directions issued following mandatory inspections;
  - any enforcement actions taken by the surveyor;
  - any occupancy certificate or final inspection certificate; and
- that the owner has a right of appeal against decisions of the building surveyor.

## Further observations

Not all jurisdictions place a prohibition on building surveyors participating in design and development. Some see it as critical to mitigating perceived conflict of interest. Other jurisdictions have a variety of different controls. Minimum statutory controls need to be clearly defined and applied consistently across Australia. Audit and enforcement of such requirements need to be priorities for regulators. On complex projects, the design team should be required to include a building surveyor who is genuinely independent from the building surveyor appointed to issue the approval. This already happens for some projects. It needs to be universal practice.

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*“Building surveyors engaged to provide advice during the design stage, particularly on how to achieve compliance, cannot then accept an engagement in a statutory role for the same project without being in conflict because they would essentially be assessing and approving their own design input. ...Once engaged, there should be a legislated process of disengagement. This will ensure that the highest standards of probity are upheld which will, in turn, prevent owners and developers from seeking to corrupt the assessment system.”<sup>17</sup>*

Australian Institute of Building Surveyors

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## Recommendation 10—Codes of conduct for building surveyors

### The problem identified

The compliance and enforcement systems of five jurisdictions do not have a code of conduct for building surveyors. This is a weakness. Codes of conduct can be an effective means of documenting the clear standards of behaviour expected of professionals who have statutory responsibilities. They also provide a reference against which auditing can be carried out and disciplinary action taken where the code is not met.

Without a clear code of conduct, it is sometimes difficult for regulators to question the behaviour of private building surveyors. As a result, oversight and disciplinary action can be challenging. We found only two jurisdictions in which the licensing bodies had suspended or cancelled the registration of private building surveyors. This suggests that the regulatory oversight of building surveyors across Australia has been limited and ineffective. Unprofessional behaviour needs to be exposed and appropriate action taken.

### Recommendation 10:

**That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.**

### Implementing the recommendation

Although the role of private building surveyors in the building approvals process differs across jurisdictions, the kinds of services they offer are similar as is the inherent potential for conflict of interest. Agreement should be reached on the core content to create a nationally consistent code of conduct.

The code of conduct should have statutory authority. Key issues need to be addressed. At a minimum, each jurisdiction's code of conduct should include the following:

- the primary obligation of the building surveyor is to ensure compliance with legislation and to act in the public interest;
- building surveyors must not prepare performance solutions (but may assess and approve performance solutions prepared by others);
- building surveyors must not participate in the development of the design (the code must set out clearly and unambiguously what this means in practice);
- building surveyors must act within their area of skill and expertise (regardless of the scope of their registration);
- building surveyors must have mechanisms in place to encourage owners to advise of any concerns about non-compliant work; and
- building surveyors must have policies and procedures for the proper management of complaints from owners, adjoining owners, builders and the regulator.

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<sup>17</sup> AIBS, *Building Regulatory Reform*, p. 8 and p. 15.

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*“The message that needs to be continually promoted amongst building certifiers is that they must remain independent and impartial. ...The private certifiers’ clients are the broader...community, not just the person or entities who pay their fees.”*

Metropolitan Fire and Emergency Services Board.

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## **Recommendation 11—Role of building surveyors in enforcement**

### **The problem identified**

In most jurisdictions, private building surveyors have a statutory responsibility to inspect work during the construction phase and determine whether it accords with the building approvals and the NCC. As part of this oversight role, private building surveyors are well placed to detect fraudulent conduct and non-compliant building work. They scrutinise what is happening on a day-to-day basis and have reliable intelligence on the performance of practitioners. Establishing ways to work with private building surveyors in order to collect this information in a collaborative way would lead to more effective enforcement processes.

When certifying building approval documentation, building surveyors have on occasions been presented with fraudulent documentation to support the proposed use of products. In some instances, products are substituted by builders without notice to the building surveyor. When the building surveyor becomes aware of this, they do not necessarily notify regulators. Whether or not these instances are widespread, there is a general perception that such failures can occur within the existing procedures for checking compliance.

When private building surveyors conduct mandatory inspections and/or issue occupancy certificates, they are sometimes asked to approve work that is inconsistent with the building approval or the NCC. In these situations, it is an essential part of the private building surveyor’s role to issue directions to the builder and to ensure that those directions are complied with. If they are not, the matter should be escalated to a building regulator, the works stopped, and/or the occupancy certificate refused. There needs to be a robust response in these circumstances. Otherwise, non-compliance will remain unresolved, and builders will not be persuaded to improve their practices. Most importantly, the system of oversight would be grievously compromised.

Builders may depart from approved plans or fail to call for inspections as required. Whilst the building surveyor is obliged to take the necessary steps to confirm that the work is compliant, they should also be required to report builders when this behaviour occurs. Regulators who receive this intelligence about builders need to take appropriate risk-based action.

It is consistently reported that many private building surveyors are not inclined to take enforcement action against their ‘clients’. Further, it has been suggested that when a private building surveyor refers an unresolved matter to the government authority, appropriate follow-up action is not taken. Such concerns are routinely expressed in the industry although it is difficult to gauge the prevalence or scale of the behaviours identified. It is imperative that these matters are addressed.

### **Recommendation 11:**

**That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.**

### **Implementing the recommendation**

It is recommended that:

- where private building surveyors conduct inspections or issue occupancy certificates, they be given powers to issue directions to fix or to stop work where noncompliance is detected. If the directions are not complied with within a fixed timeframe, the building surveyor must refer the matter to the government;
- there be mandatory reporting obligations on building surveyors to report suspicions of fraudulent practices and significant departures from approved documentation to the government;
- there be training, help desks and other support for building surveyors to assist them with drafting directions and notices; and
- a matter referred by a private building surveyor should be prioritised for action by the receiving authority so that a reliable system of regulatory support is given and the matter is resolved.

## Further observations

Building surveyors have a duty to ensure that non-compliance is detected and documented. They must give clear directions to the builders for rectification. If the builder does not comply with the directions, the owner should be notified and the matter escalated to a resourced local, state or territory government that can respond expeditiously.

A mandatory reporting regime could include giving private building surveyors the ability to anonymously report problem designers and builders to the regulator or to submit ratings on the performance of the practitioners with whom they engage.

If information about these referrals was sent to a state or territory government, the information would be a source of intelligence about problem practitioners and common non-compliances. It could inform education and audit activity. It would also be easier to detect patterns of non-compliance by particular builders or designers which may support disciplinary action.

## *Recommendation 12—Collecting and sharing data and intelligence*

### The problem identified

The building approvals process in each jurisdiction requires documentation to be created before, during and on completion of building work. The systems provide for documentation and other notifications to be lodged with the relevant council or territory at various stages of building work. In some jurisdictions, there is also some form of mandatory reporting to a state or territory authority.

Unfortunately, despite requirements for record creation and keeping, key information is not readily accessible or auditable. The recent cladding audits have demonstrated that the ability to identify buildings for audit and to examine building approvals documentation in a comprehensive manner has been challenging for some jurisdictions.

It is frequently difficult to access all the relevant documents about the construction of a building, especially when the building has been sold. Important assumptions and requirements that underpin the design and performance solutions for the building are not always available to subsequent owners. This has become a bigger issue as the complexity of buildings and their fire safety systems have increased, especially where performance solutions have been used.

The insurance industry suggests that Commercial building owners who have access to, and are able to maintain, detailed building construction and maintenance documentation for buildings are likely to benefit from lower premiums.

If a consistent approach to the recording of information was taken by each jurisdiction, information sharing and data analysis to inform regulatory decision-making would be enabled. This would also enable authorised persons to access key information about the construction and approval of buildings, leading to greater transparency and auditability. It would strengthen public accountability.

### **Recommendation 12:**

**That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.**

### Implementing the recommendation

It is imperative that jurisdictions collaborate with a view to ensuring that their central database enables intelligence sharing. This will inform each other's compliance and enforcement activities and the work of the BMF. At a minimum, there needs to be agreement on the key data points that are congruent across all jurisdictions and upon which reliable information can be shared.

It is proposed that information about the construction of buildings should be lodged on a progressive basis during construction and that post-occupation fire safety system maintenance reports should also be lodged. The databases should have information about all Commercial buildings as a priority but could also contain information about Domestic buildings. Preferably, the information would be collected and stored in a digital form using emerging technologies.

Information collected should include:

- the name of the appointed building surveyor or issuing authority;
- a description of the proposed building work;
- details of all practitioners engaged;
- details of design certificates relied on and any information about third party review;
- details of any performance solutions and any information about third party review;

- inspection records;
- enforcement actions taken;
- final approval information, including details of certificates relied on and fire safety maintenance requirements and any design assumptions that must be maintained or considered in future changes to the building; and
- details of compliance inspections/certificates issued in relation to ongoing maintenance obligations through the life of the building.

A number of the recommendations relate to the relevant documentation that should be included in central databases in order to improve transparency, auditability and accountability (Recommendations 13, 14, 15, 16 and 20).

### **Further observations**

New digital technologies provide efficient ways for collecting and analysing information and providing ready access for regulators and building owners. With developing technology it is now becoming feasible to have all building approvals documentation recorded electronically. Jurisdictions have realised that the lodgement of documents across dozens of local councils is problematic when information is needed for auditing and enforcement actions. Consequently, most jurisdictions are in the process of developing centralised data platforms.

Jurisdictions should collaborate with each other on these projects. They need to reach agreement on the types of information collected so that it can be readily shared and analysed on a national basis in order to inform regulatory activity and the work of the BMF.

To implement this recommendation, further work could usefully be undertaken by the BMF to identify the most appropriate technology to interface with each jurisdiction's data platforms. Emerging technologies, such as blockchain, should be considered for suitability. Potentially, it might provide a virtual ledger of all regulatory 'transactions' in a verifiable and auditable format. It is recommended that further work examine how the Building Information Management (BIM), data procurement frameworks, the Buildoffsite Property Assurance Scheme (BOPAS) and other similar emerging digital solutions could be relevant to the establishment of these databases.

Access to the information in these central databases would need to be limited to authorised persons. The extent of such access would need to take into account considerations of privacy, national security and the protection of intellectual property in design. However, it will be important to give owners and potential purchasers of buildings a suitable level of access to provide a level of transparency about the building approvals process. At a minimum the public needs to be assured that the compliance mechanisms involved in the construction process can easily be accessed and verified by authorised persons.

## *Recommendation 13—Responsibility of design practitioners*

### **The problem identified**

The adequacy of documentation prepared and approved as part of the building approvals process is often poor. The tendency for inadequate documentation to be prepared and accepted by building surveyors at the building approvals stage has increased, in part because of owners and developers endeavouring to minimise costs on documentation. This issue needs to be addressed as a matter of priority.

Documentation to support applications for building approvals is prepared by various practitioners including architects, designers/draftspersons, engineers, builders and owner-builders. There is no nationally consistent registration of design professionals.

In some jurisdictions, the preparation of performance solutions must be done by prescribed registered practitioners but in most there are no express restrictions on who can prepare a performance solution.

Very few jurisdictions expressly state in their legislation that the duty of the designer is to prepare documentation that demonstrates that the proposed building will comply with the NCC. Schemes regulating architects do not expressly require architects to prepare documentation which demonstrates that the proposed building will comply with the NCC.

Poor quality documentation leads to builders improvising or making decisions which may not be compliant with the NCC. Performance solutions can, in some instances, be post facto rationalisations intended to address design that is not in accordance with NCC requirements. Inadequate documentation can also result in hidden costs or allow builders to cut costs without owners being aware of it.

The integrity of documentation for future use is also compromised when the approval documents do not reflect the as-built building, or when they contain insufficient detail to properly inform building risk and maintenance requirements.

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*“...there has been a steady decline in compliant design and documentation. A lack of clear and complete design documentation increases the potential for disputes and non-compliance on any project.”*

Fire Protection Association Australia.

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### **Recommendation 13:**

**That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.**

#### **Implementing the recommendation**

For some jurisdictions this recommendation will present a significant shift in their regulatory systems as they do not currently register all design practitioners and instead rely on the building surveyor to exercise a high level of discretion over the standard of design. In some jurisdictions, the building surveyor is able to participate in the design development and carries the responsibility for competent design. This approach is not consistent with Recommendations 9, 10 and 11 and severely undermines the role of the surveyor as an independent certifier. At a minimum, this recommendation should be implemented in relation to building approvals for higher risk buildings, such as many Commercial buildings.

Each jurisdiction’s legislation should expressly state that design documentation presented for building approval must:

- adequately demonstrate compliance with the NCC;
- include any relevant certificates of conformity, accreditations and other prescribed material; and
- require a declaration by each registered practitioner responsible that he/she reasonably believes that documentation demonstrates compliance with the NCC.

This requirement should apply to the work of all registered architects, engineers and designers.

#### **Further observations**

Such a declaration would not remove responsibility from the building surveyor to undertake a substantive review of the documentation. It is intended to clarify that designers are accountable for producing an adequate standard of documentation to support the building approvals process. It should also assist designers and building surveyors to resist pressure from owners and builders to prepare less than the bare minimum required.

Some jurisdictions have already taken steps to develop checklists or practice notes on the documentation that must be included for building approvals. Without clear guidance on the documentation required, there is a tendency for documentation to be limited as owners will prefer to reduce costs. Conversely, if the requirements are too high, there will be unnecessary costs imposed and initial approval may take longer. Owners might also be tempted to avoid the building approvals process altogether.

Design development needs to be allowed for during the construction process in order to accommodate innovation and flexibility. The development of guidance on the documentation required to support applications for Domestic building approvals would be beneficial. Even though it may be more difficult, guidance should include Commercial buildings.

In relation to the design of plumbing work, only some jurisdictions require that complex work be documented by a registered engineer before approval. In others, there is no regulatory requirement for documentation. This leaves the plumber responsible for both the design and installation even though they may not have the engineering skills to design the system. This weakness should be addressed in the implementation of this recommendation.

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*“Certification and compliance of hydraulic design across Australia is inconsistent and not regulated under any jurisdiction, this fragmentation negates the responsibility of hydraulic consultants which forces the plumbing installer to be accountable and responsible for the design concept.”*

Master Plumbers Australia.

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## Recommendation 14—Adequate documentation for performance solutions

### The problem identified

It is widely reported that the standard of documentation supporting performance solutions is poor. There is a lack of basic information on matters such as the relevant performance requirements and the assessment methods applied. It is common for the person preparing the performance solution to rely on their own 'expert judgement' that the performance solution complies and on that basis they proceed to self-certify the design.

Performance solutions can, in some instances, be post facto rationalisations made to address design or construction that was not built in accordance with NCC requirements. This is not their purpose. Performance solutions require project stakeholders to collaborate and develop an agreed pathway. Each requires empirical analysis, modelling and/or testing.

### Recommendation 14:

**That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificates the circumstances in which performance solutions have been used and for what purpose.**

### Implementing the recommendation

Several jurisdictions already have legislation consistent with this recommendation. There should be a national best practice guide for documenting performance solutions that could be adopted by jurisdictions and given legislative force.

## Recommendation 15—Approval of performance solutions for constructed building work

### The problem identified

Performance solutions are sometimes approved in relation to works that are non-compliant with Deemed-to-Satisfy (DtS) provisions. This might occur where the builder has not followed documentation or where documentation has been lacking in detail. For example, performance solutions are currently being offered to justify combustible cladding remaining on buildings.

Where performance solutions are accepted for constructed work on Domestic buildings, the owner of the building may not know that this has occurred. Often their agent, the builder, deals directly with the building surveyor to resolve the issue. The owner may have preferred that the works be rectified to comply with the DtS requirements.

Performance solutions are an essential feature of the NCC. Provided that the process for preparing and assessing the performance solution is sound and that third party review is undertaken as appropriate, the approval of a performance solution for constructed work may be justified. However, the integrity and transparency of the process must be at its highest in these situations to avoid perceptions of conflict of interest and lack of confidence in the systems by the public.

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*"I have seen many examples of fire engineering alternative solutions being developed in the days leading up to the issue of an Occupancy permit. In other words, problems are found at the last minute and solutions are reverse engineered."*

Enright Consulting.

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### Recommendation 15:

**That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.**

### Implementing the recommendation

It is important the flexibility that is allowed through performance solutions be maintained. However, there needs to be a transparent and robust process to understand the basis on which performance solutions have been established.

Requirements should include:

- that the documented performance solution refers to the fact that it was developed in relation to constructed building work and indicates the reason why the performance solution was sought for that work;

- that the building surveyor prepares a written statement of reasons for accepting a performance solution;
- that notification of the request for the approval of a performance solution and the outcome of that request be given to the owner;
- that the owner must consent or have an appeal right if they object to the use of the performance solution; and
- that the occupancy certificate lists all performance solutions relating to the work and the date of their approval.

### Further observations

In circumstances in which performance solutions are agreed retrospectively, the justification for third party review is strong. This recommendation is related to Recommendation 17 in that retrospective performance solutions could be a trigger for the requirement for third party review.

## *Recommendation 16—Approval of documentation throughout the construction process*

### The problem identified

It is common for Commercial buildings to be constructed under a design-and-construct contract which means that limited documentation is prepared at the time building work commences. Documentation is produced and developed throughout the project, allowing for innovation and flexibility and avoiding the need to amend detailed design documentation as decisions are made during the project. Even for Domestic building work, variations may occur as decisions are made during construction, particularly for renovations.

Various industry bodies have reported that for Commercial buildings, specialist practitioners may be engaged for complex design work early when detailed specifications have not yet been prepared. Often the design will contain assumptions or will be qualified. Later, when products are specified, the original designer may not be consulted to consider their effect.

This shortcoming has been reported in relation to the use of combustible cladding. Fire safety engineers are engaged to prepare a design early in the project when cladding materials have not yet been selected. Their design is subject to cladding being compliant with the NCC. Later, combustible cladding is chosen for use but there is no review of the fire engineering design.

Similarly, architects and engineers have indicated that they may be engaged early in a project to prepare initial documentation but that their engagement then ends. Detailed construction documentation is prepared by others who may not possess the relevant skills. When products specified are substituted, architects, engineers and building surveyors may not be consulted.

The building approval systems in many jurisdictions do not adequately address a design-and-construct approach. Some systems have no clear requirement for building surveyors to approve design development and variations. Others have statutory controls but there is no auditing and enforcement to ensure they are being complied with. Some jurisdictions recognise the use of staged building approvals but it is generally left to the discretion of the building surveyor to manage and document the staged process.

### **Recommendation 16:**

**That each jurisdiction provides for a building compliance process which incorporates clear obligations for the approval of amended documentation by the appointed building surveyor throughout a project.**

### Implementing the recommendation

Design development, variations and product substitutions should be approved by the building surveyor prior to associated work being carried out.

Where a project involves staged building approvals, the application for building approval should set out the proposed stages and the proposed design schedule. Notification points should be agreed to ensure that the design for each stage is properly documented and presented to the building surveyor for approval before any work for that stage commences. There should be offence provisions for builders who do not notify the building surveyor or provide the necessary documentation in advance of building work progressing.



## Further observations

In general, building surveyors need to insist on approving proposed variations before they are undertaken. If variations are discovered, building surveyors need to insist on being provided with explanatory documentation promptly.

Building surveyors should have the competence to determine when variations and substitutions might adversely impact on earlier designs and when an appropriate engineer or architect needs to be consulted before work proceeds further.

Documentation lodged with the relevant government authority should reflect what is built rather than what was proposed to be built.

Implementation of this recommendation will be challenging. It requires designers, building surveyors and builders to work to properly documented design and construction specifications. This is the lynchpin of a best practice building approvals system and considerable effort will be required to effectively bring about systemic change in this area.

## *Recommendation 17—Independent third party review*

### The problem identified

Building surveyors do not hold expertise in all aspects of building design. They often rely on engineers or other experts to design components of work. Where this occurs, the building surveyor will rely on the work of the engineer or expert as being compliant and no substantive review will be undertaken. This practice is supported in most jurisdictions by providing for statutory certificates to be issued by certain practitioners or persons considered to be technical experts, often engineers. Legislation provides that when issued and relied on in good faith, these certificates provide immunity to the building surveyor. This means that the building surveyor will not substantively review the design or inspect the work.

Except for one jurisdiction, there is no mandatory obligation for independent third party review of any component of the design. It is at the discretion of the building surveyor whether they accept a self-certification or require the design to be independently certified by another qualified practitioner. In many cases, self-certification is accepted, which means that large parts of the design are not substantively reviewed by another qualified practitioner.

Even when third party review is undertaken, many jurisdictions do not require the third party reviewer and the designer to be independent. This does not pass the public interest test.

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*“Peer review is an important, regular and accepted process associated with many building design disciplines such as structural engineering or energy efficiency. However, nationally there is not a consistent culture of peer review for fire safety performance solutions. This is likely to contribute to the acceptance and implementation of poor design solutions overall.”*

**Fire Protection Association Australia.**

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In some jurisdictions, fire authorities conduct the third party reviews of fire engineering designs which provide the necessary independent oversight. However, in many jurisdictions, consultation with the fire authority is limited to seeking comment on fire performance solutions that involve fire brigade intervention. In these circumstances, third party review should be undertaken as a separate requirement.

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*“Also there has been a tendency for performance solutions (alternative solutions) developed for one project suddenly being replicated for many other projects, sometimes in totally different circumstances that may not be justified. ...Fire Safety Engineering designs for major buildings should undergo the rigor of Peer Review to ensure that critical judgement calls or expert opinions are valid, in line with current guidelines.”<sup>18</sup>*

**FM Global**

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<sup>18</sup> Comments provided to the BMF Assessment by FM Global.

## Recommendation 17:

**That each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings.**

### Implementing the recommendation

The concept underpinning this recommendation is that legislation would prescribe what types of designs and/or buildings must be subject to independent third party review. Depending on the level of risk, independence should be assured through one of the following mechanisms:

- the third party review being conducted by a panel of experts sitting on a statutory board or panel; or
- the third party reviewer being appointed from a list of approved third party reviewers with the process administered by government; or
- third party review by other registered practitioners in appropriate categories of registration with independence based on guidance (for example in a code of conduct).

### Further observations

Many jurisdictions already make use of an expert technical panel. There is considerable merit in this approach.

There may also be value in jurisdictions placing an express prohibition on building surveyors assessing and approving performance solutions on fire safety performance requirements unless they hold requisite qualifications in fire safety performance requirements or unless the design has been approved by the fire authority.

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*“The challenge with peer reviews is to develop a scheme that adds value without becoming overly burdensome. There would need to be strict protocols around when a peer review would be required. Some issues that will require greater investigation are: who could conduct peer reviews, how the reviews would be conducted, the frequency and timing of reviews, and commercial in confidence arrangements.”*

Engineers Australia.

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## Recommendation 18—Mandatory inspections

### The problem identified

All jurisdictions have building compliance and enforcement systems that provide for inspections of some types of building work during construction. The builder is required to notify the building surveyor or council once a prescribed stage is reached. This triggers an inspection or, at least, an opportunity for an inspection.

There are significant differences across jurisdictions in the number of inspections required and the notification stages. In some jurisdictions very few inspections occur and for certain types of buildings there are no inspections required at all. Inspections are carried out by a range of persons. Very few jurisdictions require registration of inspectors. It has been reported that in some jurisdictions, inspections are carried out by builders or unqualified council officers who send photos of works to the building surveyor for review.

Increased requirements for inspections are necessary. Unfortunately, there are doubts about whether there are sufficient numbers of suitably qualified persons to conduct them. Reservations have been expressed about the conflict of interest that arises when the private building surveyor who has certified the building documentation then inspects the building work. Some question whether the inspections will be thorough and whether surveyors will be willing to act if they discover non-compliant building works.

For Commercial buildings, many jurisdictions leave it to the building surveyor to determine what inspections are appropriate. This makes it difficult for regulators to know what level of oversight is occurring and whether it is adequate.

## Recommendation 18:

**That each jurisdiction requires on-site inspections of building work at identified notification stages.**

### Implementing the recommendation

A mandatory inspections process must be supported by registration of inspectors and clear directions to building surveyors about what enforcement action is required to be taken where non-compliance is detected. The enforcement actions of building surveyors need to be coordinated with the regulatory powers and functions of the state or territory government and local governments.

Inspection stages need to be proportionate to risk. They should be aligned to checks of work involving structural elements and safety. They should also cover work which would be difficult to view at a later stage, such as in situ reinforcement in footings and framing work.

For Domestic building work the following requirements are suggested:

- minimum mandatory inspections of:
  - in situ reinforcement in footings/slabs;
  - frames, including roof constructions;
  - fire-rated wall systems;
  - pool barriers; and
  - final, post-completion of all work;
- the ability for building surveyors to require additional inspections identified at the time of approval and guidance about when this might occur, such as additional inspections of work which has been the subject of a performance solution;
- in addition, there could be a mandatory notifications process, where the building surveyor is notified at a defined stage of work, and the building surveyor applies a risk-based approach to determining whether to inspect these stages; and
- all on-site inspections should be carried out by, or be under the supervision of, registered surveyors or inspectors or by, or under the supervision of, registered engineers for prescribed types of work.

For Commercial building work the following requirements are suggested:

- provide guidance which must be used by building surveyors to determine inspections required for Commercial buildings. Ideally a national guideline would be issued and called-up in each jurisdiction's legislation as a code of conduct, or the like, with which building surveyors must comply. It would require the surveyor to set out the inspections required at the time of the initial approval and to consult with engineers about appropriate inspections points. Some jurisdictions have already developed guidance on these issues which could be used to create a national document on best practice; and
- on-site inspections to be carried out by, or under the supervision of, building surveyors or inspectors or by, or under the supervision of, registered engineers for prescribed types of works.

## *Recommendation 19—Inspection and certification of fire safety system installation*

### The problem identified

The use of performance solutions has led to fire safety systems becoming more complex in Commercial buildings. Active fire protection systems are being favoured over passive fire systems. Proper installation and maintenance of these systems is critical to occupant safety.

For Commercial buildings, fire safety engineers are often engaged to prepare fire safety engineering designs which include complex performance solutions on critical safety matters. Their involvement often ends early in the project before product specifications have been finalised. This may affect their design.

Until very recently, no jurisdiction required a registered fire engineer to inspect building work to ensure that the fire engineering design had been constructed as intended.

Fire safety system installers are not registered in most jurisdictions, but it is recommended that they be so (Recommendation 1).

Although it is common for building surveyors to require commissioning certificates from fire safety installers or the builder, only two jurisdictions mandate that these certificates be provided as part of the final sign-off of a Commercial building.

Controls required over the design, installation and certification of fire safety systems in Commercial buildings are not sufficiently strict.

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*“...there [should] be mandatory inspections for fire safety in buildings during the construction process, especially where an alternative solution has been provided. Such inspections should be undertaken by registered fire safety engineers.”*

Engineers Australia.

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### **Recommendation 19:**

**That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.**

#### **Implementing the recommendation**

The requirements necessary to implement this recommendation would include mandatory certification of the testing and commissioning of fire safety systems by registered fire safety system practitioners. To avoid any conflict of interest, the certification of testing and commissioning should not be performed by the system installer.

Where there are performance solutions on fire safety performance requirements, a registered fire engineer should be required to certify that the work complies with the fire safety engineering design. The registered fire engineer may need to inspect the building at various stages in order to be able to issue a final certificate. At the time that the fire safety engineering design is prepared, the building surveyor should be advised of the required notification stages for inspection by the fire engineer.

### *Recommendation 20—A building manual for Commercial buildings*

#### **The problem identified**

A full set of final documents for a Commercial building which includes all relevant documents for the ongoing management of the building is not usually collated and passed on to the owner or subsequent purchaser. This makes it difficult for owners to verify how decisions were made and to adequately ensure that safety systems are properly maintained over the life of the building.

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*“The often overlooked importance of design and documentation is its role in the life cycle of the building beyond occupancy approval. Poor design documentation makes verification that essential safety systems and equipment continue to perform to the standard expected throughout the life of the building extremely difficult.”*

Fire Protection Association Australia.

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### **Recommendation 20:**

**That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the buildings.**

#### **Implementing the recommendation**

The building manual should be in a digital format and be required to have prescribed information such as:

- as-built construction documentation;
- fire safety system details and maintenance requirements;
- assumptions made in any performance solution (for example, occupant characteristics);
- building product information, including certificates and details of maintenance or safety requirements; and
- conditions of use—such as occupant numbers, loads, replacement of products after certain periods (for example, glass after 25 years).

There should be a requirement for the manual to be provided to successive purchasers of the building.

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*“Ready access to the history of a building site can be an invaluable information source in all phases of the life cycle of the building.”<sup>19</sup>*

Australian Institute of Building Surveyors

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## **Recommendation 21—Building product safety**

### **The problem identified**

We have heard that there is a high incidence of building products in the market that are not compliant with the standards set out in the NCC, resulting in inferior and sometimes dangerous products being used in the construction of buildings. We have also been told about products being used in a non-compliant manner which can result in unacceptable risks to safety.

There is already a CodeMark certification system for building products. This is a voluntary certification scheme referenced in the NCC. There have been criticisms of the CodeMark system. The BMF has been aware of these issues for some time. Indeed it has already tasked the ABCB with making recommendations to address shortcomings with the CodeMark system.

Building on this work, in July 2015 the BMF tasked the SOG to investigate options for a possible mandatory scheme for high-risk building products with life safety implications. In October 2017, the BMF subsequently tasked the SOG to provide further advice on the introduction of a compulsory third party product certification scheme for high-risk building products, a national register of those products and compulsory labelling for aluminium composite panels with a polyethylene core.

The requirement for labelling of aluminium composite panels has been a priority for the BMF to address reports of product substitution, particularly in the light of cladding audits where it has been difficult to identify the type of aluminium cladding products currently on buildings.

In December 2017, NSW and the Commonwealth announced a pilot program to track the supply and installation of aluminium cladding products with assistance from suppliers and manufacturers, using import data from the Department of Home Affairs.<sup>20</sup> The program is intended to improve the capacity of the NSW Government to monitor the future installation of aluminium composite panels.

Moreover, since our assessment commenced, Queensland, NSW and Tasmania have taken steps to enhance powers to prohibit and/or restrict the use of high-risk building products and/or non-conforming building products.

The regulation of building product safety is closely related to existing consumer protection regulation administered by the Australian Competition and Consumer Commission and relevant state and territory consumer affairs regulators. There continues to be considerable dialogue between these authorities and building regulators on the most appropriate way to regulate building product safety. The jurisdictions are tending toward regulating these issues by vesting powers in the building regulator.

The collaboration between jurisdictions on these issues under the direction of the BMF is to be applauded. Further work is encouraged. There is a risk that this will be another area of growing inconsistency between jurisdictions. It is imperative that the respective roles of consumer affairs and building regulators be clarified and consistently applied across jurisdictions. It is hoped that this will lead to the regulation of building product safety consistently across Australia.

### **Recommendation 21:**

**That the Building Ministers’ Forum agrees its position on the establishment of a compulsory product certification system for high-risk building products.**

### **Implementing the recommendation**

This process is already underway. The BMF has tasked the SOG to report to it on this matter.<sup>21</sup> The product certification systems will need to include mandatory permanent product labelling and prohibitions against the installation of high-risk building products that are not certified. Once a common position is reached by the BMF, it should make it a priority to implement this through amendments to the NCC and/or through consistent reforms to each jurisdiction’s legislation.

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<sup>19</sup> AIBS, *Building Regulatory Reform*, p. 14.

<sup>20</sup> Assistant Minister Laundry, Minister Dominello, Minister Kean, Media Release, *Tracking Aluminium Composite Panels across NSW*, 18 December 2017, <http://minister.industry.gov.au/ministers/craiglaundy/media-releases/tracking-aluminium-composite-panels-across-nsw>, (accessed 9 February 2018).

<sup>21</sup> Senior Officers’ Group, *Implementation Plan: Strategies to address risks related to non-conforming building products*, 2017, <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Documents/SOG-Implementation-Plan.pdf>, (accessed 9 February 2018).

## Further observations

In relation to plumbing products, the NCC provides for WaterMark, which is a compulsory certification scheme for specified plumbing products. Under the WaterMark scheme, plumbers are prohibited from installing plumbing products which are not WaterMark certified. Queensland has recently amended its legislation to also prohibit the supply of plumbing products which are not certified under the WaterMark scheme. Plumbing industry stakeholders are calling for other states and territories to follow. The BMF tasked the ABCB with reporting to it on the introduction of a prohibition against the supply of plumbing products that are not certified under WaterMark. That work is ongoing and forms part of the ABCB's 2017–2018 work plan.<sup>22</sup>

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*“The biggest challenge from the PPI Group’s perspective is that plumbing and drainage products can be sold regardless of whether or not the product has been certified under Watermark or any other scheme creating significant confusion in the market through the supply chain.”*

Plumbing Products Industry Group (PPI Group)

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The regulation of supply chains has merit. However, the resourcing required for regulatory oversight is significant and should not detract from core regulatory activities of building regulators.

## Recommendation 22—Dictionary of terminology

### The problem identified

Each jurisdiction has developed different ways of describing the same or similar terms or processes. This is not just a semantic issue. Different terminology makes it very confusing to understand and compare the legal requirements in each jurisdiction. It also makes it difficult for industry to operate across jurisdictions and for jurisdictions to understand each other's systems when working together at a national level.

### Recommendation 22:

**That the Building Ministers’ Forum develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.**

### Implementing the recommendation

The national dictionary of terminology should be published on the ABCB's website. Ideally, the dictionary would identify preferred language based on the most commonly used terms, or some other agreed approach. Harmonisation of language is a crucial part of ensuring that there is a national approach to implementation. It enhances comparative reporting, facilitates the sharing of good practice, and assists those in the building and construction industry who work in a number of jurisdictions. Jurisdictions should then have regard to the dictionary and the preferred terms when considering reforms with a view to adopting more consistent language over time.

## Recommendation 23—Implementation of the recommendations

### The problem identified

The implementation of the recommendations will require legislative reform and changes to regulatory practice. Each jurisdiction will already have reform priorities in place for building regulation and aligning them with our recommendations will take time. On some matters, jurisdictions will want to undertake further consultation and cost-benefit analysis. Whilst we are mindful that these processes take time, it is important to recommend a timeframe for implementation. Without a clear timetable there is a risk that the impetus for change may fall away and the necessary reforms will not occur.

### Recommendation 23:

**That the Building Ministers’ Forum acknowledges that the above recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.**

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<sup>22</sup> Australian Building Codes Board, 2017–18 Annual Business Plan, <http://www.abcb.gov.au/ABCB/Business-Plan>, (accessed 9 February 2018).

## Implementing the recommendation

The recommendations have been designed to form a holistic and structured framework to improve the compliance and enforcement systems of the NCC across the country. They form a coherent package. They would best be implemented in their entirety.

As a first task, the BMF may wish to identify which recommendations to prioritise at a national level. Of course, every jurisdiction already meets some of these recommendations and thus each would have a different program of reform activity to achieve full implementation.

## Further observations

Feedback from jurisdictions has indicated that setting an implementation timetable is essential to ensuring that the recommendations are actioned in an expeditious manner. Most have agreed that a three-year timeframe is ambitious, but possible. All have agreed that significant progress should be able to be made in this period.

## *Recommendation 24—Implementation plan*

### The problem identified

In a cross-jurisdictional exercise, in which many senior officials and advisors have a wide range of policy and regulatory responsibilities, good intentions often falter. Actioning the recommendations will require ongoing and committed focus. The history of legislative harmonisation is littered with examples of fine rhetoric on national consistency not being matched by effective action at an administrative level. Implementation of good intentions is often slow.

### **Recommendation 24:**

**That the Building Ministers' Forum prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.**

## Implementing the recommendation

Transparency is crucial to effective implementation. The preparation of an agreed plan, including prioritisation of effort, will provide the basis against which to measure progress. A full list of agreed actions should be prepared, with jurisdictional performance against each one to be reported annually. This will allow the BMF to monitor achievement. The plan should be flexible enough for it to be amended over time.

It is appropriate that each jurisdiction exercises a significant degree of autonomy on how it will implement the recommendations. However, several recommendations call for jurisdictions to work together to develop a common position and/or the common content of legislation, codes of conduct or guidelines. Further engagement with industry will be necessary for the implementation of other recommendations. This will need to be prioritised and resourced. Each jurisdiction will need to commit to providing input in a timely manner.

We do not think it appropriate to propose governance arrangements for implementation of the recommendations. The BMF has recently formalised improved governance arrangements to support its ongoing work. This has included redefining the roles assigned to the SOG and the BRF. The work to implement our recommendations appears to be consistent with the role of the SOG, but with input from the BRF and ABCB, as appropriate.

## Further observations

Jurisdictions made suggestions on how to ensure the recommendations could be implemented nationally in a committed manner. A number provided us with feedback on the most appropriate governance arrangements for the BMF to action the framework. Taking into account those suggestions, matters that the BMF may wish to consider in the preparation of an implementation plan include:

- the establishment of a small dedicated implementation team, at least for the first 12 months;
- the appointment of an independent chair (not representing any one jurisdiction) to oversight the work identified in the implementation plan;
- the setting of priorities for implementation activities to be carried out on behalf of the BMF under the implementation plan;
- allocation of any specified tasks to the SOG, BRF and/or the ABCB;
- an indication from each jurisdiction on the manner in which it intends to proceed with implementation; and
- an intention to seek further independent expert assessment of the effectiveness of compliance and enforcement systems at the end of the implementation period or within another defined period.

## Attachment A—List of recommendations

### Recommendation 1:

That each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings:

- Builder
- Site or Project Manager
- Building Surveyor
- Building Inspector
- Architect
- Engineer
- Designer/Draftsperson
- Plumber
- Fire Safety Practitioner

### Recommendation 2:

That each jurisdiction prescribes consistent requirements for the registration of building practitioners including:

- certificated training which includes compulsory training on the operation and use of the NCC as it applies to each category of registration;
- additional competency and experience requirements;
- where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and
- evidence of practitioner integrity, based on an assessment of fit-and-proper person requirements.

### Recommendation 3:

That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the National Construction Code.

### Recommendation 4:

That each jurisdiction establishes a supervised training scheme which provides a defined pathway for becoming a registered building surveyor.

### Recommendation 5:

That each state establishes formal mechanisms for a more collaborative and effective partnership between those with responsibility for regulatory oversight, including relevant state government bodies, local governments and private building surveyors (if they have an enforcement role).

### Recommendation 6:

That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action.



### **Recommendation 7:**

That each jurisdiction makes public its audit strategy for regulatory oversight of the construction of Commercial buildings, with annual reporting on audit findings and outcomes.

### **Recommendation 8:**

That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process.

### **Recommendation 9:**

That each jurisdiction establishes minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors.

### **Recommendation 10:**

That each jurisdiction put in place a code of conduct for building surveyors which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry.

### **Recommendation 11:**

That each jurisdiction provides private building surveyors with enhanced supervisory powers and mandatory reporting obligations.

### **Recommendation 12:**

That each jurisdiction establishes a building information database that provides a centralised source of building design and construction documentation.

### **Recommendation 13:**

That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the National Construction Code.

### **Recommendation 14:**

That each jurisdiction sets out the information which must be included in performance solutions, specifying in occupancy certificates the circumstances in which performance solutions have been used and for what purpose.

### **Recommendation 15:**

That each jurisdiction provides a transparent and robust process for the approval of performance solutions for constructed building work.

### **Recommendation 16:**

That each jurisdiction provides for a building compliance process which incorporates clear obligations for the ongoing approval of amended documentation by the appointed building surveyor throughout a project.

**Recommendation 17:**

That each jurisdiction requires genuine independent third party review for specified components of designs and/or certain types of buildings.

**Recommendation 18:**

That each jurisdiction requires on-site inspections of building work at identified notification stages.

**Recommendation 19:**

That each jurisdiction requires registered fire safety practitioners to design, install and certify the fire safety systems necessary in Commercial buildings.

**Recommendation 20:**

That each jurisdiction requires that there be a comprehensive building manual for Commercial buildings that should be lodged with the building owners and made available to successive purchasers of the building.

**Recommendation 21:**

That the Building Ministers' Forum agree its position on the establishment of a compulsory product certification system for high-risk building products.

**Recommendation 22:**

That the Building Ministers' Forum develop a national dictionary of terminology to assist jurisdictions, industry and consumers to understand the range of terminology used to describe the same or similar terms and processes in different jurisdictions.

**Recommendation 23:**

That the Building Ministers' Forum acknowledges that the above recommendations are designed to form a coherent package and that they be implemented by all jurisdictions progressively over the next three years.

**Recommendation 24:**

That the Building Ministers' Forum prioritise the preparation of a plan for the implementation of the recommendations against which each jurisdiction will report annually.

## Attachment B—Terms of Reference

### BUILDING MINISTERS' FORUM

#### *Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia*

##### **Terms of Reference**

The independent experts, Professor Peter Shergold and Ms Bronwyn Weir, have been appointed by the Building Ministers' Forum (BMF) to undertake an external assessment of the compliance and enforcement systems for the Building and Construction Industry across Australia and the potential for further or additional reforms. Professor Shergold and Ms Weir will provide an initial report to the BMF at its meeting in October 2017. A final report will be provided to the BMF as soon as possible after the October 2017 meeting.

**Compliance systems** are the legislated processes in each jurisdiction intended to ensure that buildings are designed and constructed to comply with the National Construction Code (NCC) and are maintained (as appropriate) in accordance with legislated Australian Standards.

**Enforcement systems** are the legislated processes in each jurisdiction that allow a regulator to detect and remedy non-compliance with the NCC.

Professor Shergold and Ms Weir are engaged to, in consultation with the Commonwealth, State and Territory Governments, the Australian Building Codes Board and key industry stakeholders:

1. Examine compliance and enforcement problems within the building and construction systems across Australia that are affecting the implementation of the NCC, as they relate to:
  - a. roles, responsibilities and accountabilities of different parties;
  - b. education and training;
  - c. licensing and accreditation;
  - d. accuracy of design and documentation;
  - e. quality control and assurance;
  - f. competencies of practitioners;
  - g. integrity of private certification;
  - h. inspection regimes;
  - i. auditing and enforcement practices; and
  - j. product importation and chain of custody.
2. In undertaking the assessment, Professor Shergold and Ms Weir are to take into account the impact of recent building regulatory reviews and reforms undertaken and implemented by state and territory governments, including but not limited to:
  - a. Australian Capital Territory – Improving the ACT Building Regulatory System Review;
  - b. New South Wales – 2016 Response to the Independent Review of the Buildings Professionals ACT 2005;
  - c. Queensland – 2016 Building Plan Review;
  - d. Tasmania – 2017 Building Regulatory Framework;
  - e. Victoria – 2017 Building Regulations Sunset Review;
  - f. Western Australia – 2016 Auditor General Report on Regulation of Builders and Building Surveyors; and
  - g. Senate Economics Committee Inquiry into Non-Conforming Building Products.
3. Based on the outcome of the assessment, consider strategies for improving compliance and enforcement practices and make recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC.

## Attachment C—Consultations

1.	Building Regulators' Forum	13 September 2017
2.	The Hon Richard Wynne MP, Victorian Minister for Planning	14 September 2017
3.	Senior Officers' Group	20 September 2017
4.	The Hon Craig Laundy MP, Commonwealth Minister for Small and Family Business, the Workplace and Deregulation	21 September 2017
5.	The Hon Guy Barnett MP, Tasmanian Minister for Building and Construction	26 September 2017
6.	Mr Mick Gentleman MLA, ACT Minister for Planning and Land Management	26 September 2017
7.	The Hon Nicole Manison MLA, NT Deputy Chief Minister and Minister for Infrastructure, Planning and Logistics	28 September 2017
8.	Workshop: Building Ministers' Forum Secretariat, Building Regulators' Forum Secretariat and the Office of the Australian Building Codes Board	2 October 2017
9.	The Hon Bill Johnston MLA, WA Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement	3 October 2017
10.	Office of the Hon Matthew Kean, NSW Minister for Innovation and Better Regulation	4 October 2017
11.	Queensland Building and Construction Commission	11 October 2017
12.	Queensland Department of Housing and Public Works	12 October 2017
13.	The Hon Mick de Brenni MP, Minister for Housing and Public Works	12 October 2017
14.	Victorian Department of Environment, Land, Water and Planning	19 October 2017
15.	Victorian Building Authority	19 October 2017
16.	Australian Institute of Building Surveyors	24 October 2017
17.	NSW Fair Trading	25 October 2017
18.	Data 61	25 October 2017
19.	Standards Australia	25 October 2017
20.	Association of Accredited Certifiers	25 October 2017
21.	Master Builders Australia	26 October 2017
22.	Construction, Forestry, Mining and Energy Union	26 October 2017
23.	NSW Department of Planning & Environment	26 October 2017
24.	Insurance Council of Australia	27 October 2017
25.	NT Department of Infrastructure Planning and Logistics	30 October 2017
26.	Dr Brian Ashe, Fire Engineer, ABCB	8 November 2017
27.	Housing Industry Association	8 November 2017
28.	Department of Industry, Innovation and Science	8 November 2017
29.	ACT Environment, Planning and Sustainable Development Directorate	8 November 2017
30.	Engineers Australia	9 November 2017
31.	Fire Protection Association Australia	13 November 2017
32.	Australasian Fire and Emergency Service Authorities Council	13 November 2017
33.	Master Plumbers Australia Ltd	13 November 2017
34.	Australian Institute of Architects	14 November 2017
35.	Australian Local Government Association	14 November 2017
36.	SA Department of Planning, Transport and Infrastructure	15 November 2017
37.	FM Global	16 November 2017

38.	WA Building Commission	16 November 2017
39.	Tasmanian Department of Justice	20 November 2017
40.	Property Council of Australia (ACT Division)	21 November 2017
41.	Australian Building Codes Board	23 November 2017
42.	Professor John Thwaites	5 December 2017
43.	Property Council of Australia	8 December 2017
44.	Australian Local Government Association	18 December 2017
45.	Office of the Hon Matthew Kean MP, NSW Minister for Innovation and Better Regulation	18 December 2017
46.	Office of the Hon Bill Johnston MLA, WA Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement	9 January 2018
47.	Office of the Hon Nicole Manison MLA, NT Deputy Chief Minister and Minister for Infrastructure, Planning and Logistics	9 January 2018
48.	Mr Mick Gentleman MLA, ACT Minister for Planning and Land Management	9 January 2018
49.	Office of the Hon Richard Wynne MP, Victorian Minister for Planning	11 January 2018
50.	Centre of Smart Modern Construction (c4SMC)	12 January 2018
51.	The Warren Centre for Advanced Engineering Ltd	12 January 2018
52.	Office of the Hon Guy Barnett MP, Tasmanian Minister for Building and Construction	17 January 2018
53.	The Hon John Rau MP, SA Deputy Premier and Minister for Planning	17 January 2018
54.	The Hon Mick de Brenni MP, Queensland Minister for Housing and Public Works	17 January 2018
55.	The Hon Craig Laundry MP, Commonwealth Minister for Small and Family Business, the Workplace and Deregulation	1 February 2018

## Attachment D—Submissions

### *Submissions*

1.	The Warren Centre for Advanced Engineering Ltd	24 October 2017
2.	Enright Consulting	8 November 2017
3.	<i>Confidential</i> Submission	24 November 2017
4.	Plumbing Products Industry Group	30 November 2017
5.	Master Plumbers Australia Ltd	11 December 2017
6.	Engineers Australia	12 December 2017
7.	Building Products Innovation Council	15 December 2017
8.	Fire Protection Association Australia	15 December 2017
9.	Master Builders Australia	15 December 2017
10.	Australian Construction Industry Forum	15 December 2017
11.	Housing Industry Association Ltd	15 December 2017
12.	Metropolitan Fire & Emergency Services Board	21 December 2017

### *Supplementary submissions*

1.	Fire Protection Association Australia	8 January 2018
2.	The Warren Centre for Advanced Engineering Ltd	15 January 2018





# Licensing builders and building trades

Report 16: 2019–20

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Your ref:  
Our ref: 9171P

23 June 2020

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The Honourable C Pitt MP  
Speaker of the Legislative Assembly  
Parliament House  
BRISBANE QLD 4000

Dear Speaker

**Report to parliament**

This report is prepared under Part 3 Division 3 of the *Auditor-General Act 2009*, and is titled Licensing builders and building trades (Report 16: 2019–20).

In accordance with s.67 of the Act, would you please arrange for the report to be tabled in the Legislative Assembly.

Yours sincerely



Karen Johnson  
Deputy Auditor-General

# Contents

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<b>Auditor-General’s foreword</b>	<b>1</b>
<b>Report on a page</b>	<b>2</b>
Snapshot	2
Our conclusions	2
Our recommendations	2
<b>1. About the audit</b>	<b>3</b>
How we performed the audit	3
<b>2. Audit findings</b>	<b>4</b>
Licensing builders	4
Monitoring and enforcing compliance	4
Providing education and support	5
Managing and reporting performance	5
<b>3. Audit conclusions</b>	<b>6</b>
<b>4. Detailed findings—licensing builders</b>	<b>9</b>
Are QBCC processes to grant licences effective?	9
Does QBCC have effective quality controls over decision-making for granting licences?	11
Are QBCC licensing staff appropriately trained?	11
<b>5. Detailed findings—monitoring and enforcing compliance</b>	<b>12</b>
Is QBCC monitoring compliance strategically?	12
Is QBCC effectively monitoring compliance?	13
Does QBCC manage complaints in a timely, fair, and balanced way?	15
Does QBCC respond effectively to non-compliance?	16
<b>6. Detailed findings—providing education and support</b>	<b>18</b>
Does QBCC have an effective strategy to drive education and support services?	18
Does QBCC provide accurate and timely advice?	18
Does QBCC seek feedback to improve its education services?	20
<b>7. Detailed findings—managing and reporting performance</b>	<b>22</b>
Does QBCC have an effective performance-management framework?	22
Does QBCC effectively plan to achieve its objectives?	23
Does QBCC measure, monitor, and report on its performance?	23
Does QBCC have an effective framework to manage its projects?	26
<b>Appendices</b>	<b>27</b>
A. Full responses from entities	28
B. Audit objectives and methods	37
C. QBCC complaints management process	39

# Auditor-General's foreword

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The Queensland public sector, local governments, and wider community are facing unprecedented challenges during COVID-19.

Government-led responses need to be supported by sound controls to manage any additional risks, and effective governance and leadership must continue. Trust and confidence in our system of government is important for it to operate effectively.

The Queensland Audit Office's role in providing independent oversight over matters of public concern or importance during periods of significant change is key. We are continuing our efforts around improving state and local government governance, internal controls, financial management, reporting and performance. During this demanding time, we continue to give our clients and the Queensland public confidence in government accountability and transparency.

We have been working with entities on how best to deliver our work. We know that some entities are facing difficulties as they change how they do their work and deliver their services, and we are changing our audit activities and services as needed.

I have adjusted my reporting program, including extending some timelines for client consultation and resultant tabling dates. Over the next six months, I expect we will table most of our planned reports, with some changes to performance audits as we respond to new priorities set by state and local governments.

It is important we apply the insights from our audits across government, including to new and emerging programs being delivered in response to COVID-19. In my reports, there are learnings that are useful to all entities around administration of government as we act on COVID-19 impacts.

A handwritten signature in black ink, which appears to read "B. Worrall".

Brendan Worrall  
Auditor-General







# Report on a page

In this audit we assessed whether the Queensland Building and Construction Commission (QBCC) effectively regulates the building industry by issuing and managing licences in a fair and balanced way.

## Snapshot

This snapshot of our audit shows the importance of the building industry to the economy, industry changes, barriers QBCC faces, and key themes from our recommendations.

 <p><b>Queensland's building industry:</b></p> <ul style="list-style-type: none"> <li>• Employs 230,000</li> <li>• Contributes \$46 billion to economy</li> <li>• Around 91,000 active licences</li> <li>• Less than one per cent of licences cancelled or suspended each year</li> </ul>	 <p><b>Industry changes</b> are creating new challenges and risks</p> <p><b>Significant legislative reform</b> is transforming QBCC into a risk-focused, insights-driven regulator</p>
 <p><b>Barriers to change</b> QBCC changes are hindered by:</p> <ul style="list-style-type: none"> <li>• lack of data, resources, skills and capability</li> <li>• rate of legislative change</li> <li>• delays in approving strategies and plans.</li> </ul>	 <p><b>11 recommendations</b></p> <ul style="list-style-type: none"> <li>• Maintain momentum to become a risk-focused regulator</li> <li>• Improve planning and reporting</li> <li>• Strengthen controls</li> </ul>

## Our conclusions

QBCC recognises the imperative to move from a complaints-driven licensing authority to a risk-focused, insights-driven regulator. It has the building blocks needed to transform the organisation as required but implementing and embedding these into the organisation is taking time. Progress is hindered by a lack of data, resources, skills, and capability.

Managing licences needs a more targeted compliance program to be fully effective. The current program, while driven by agreed priorities, is too operational.

QBCC has effective processes and probity checks in place to assess whether licence applicants meet requirements. There is a risk that fraud in relation to licence applications could go undetected. Control changes that are relatively easy to implement could mitigate the risk.

## Our recommendations

We made 11 recommendations to help QBCC become a stronger and more effective regulator. They include strengthening controls and improving planning and reporting, and highlight the critical need for QBCC to commit resources and build capability as it moves to become a risk-focused, insights-driven regulator.

# 1. About the audit

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The building and construction industry (the industry) is a significant contributor to the Queensland economy. In 2018–19, it was responsible for employing around 230,000 people and contributing around \$46 billion to the state.

Over the past 20 years, the industry has changed significantly. Building has become more complex and lifestyles have changed. The increase in high-rise, medium-density residential housing creates new risks and challenges for regulation. Events in other jurisdictions and overseas show what can happen if the behaviour of the building industry does not meet community expectations and accepted building standards.

Changes to the industry and legislation have significantly impacted the Queensland Building and Construction Commission (QBCC). In 2016, it refocused its role as a regulator, away from a complaints-driven licensing authority. QBCC now has more powers to enforce the integrity and probity of the sector and the community expects it to use these powers. But to become more risk-focused it needs better data, analytics and automation.

The industry is governed by legislation, codes, and standards designed to facilitate a strong and safe environment for both domestic and commercial building industry participants and for consumers.

QBCC provides four main services for Queensland's homeowners and contractors:

- licensing services
- information and education
- dispute prevention and resolution services for homeowners
- home warranty insurance.

Licensing of commercial and domestic building and construction work can increase public confidence in the sector. It ensures people working in the industry satisfy and continue to meet minimum eligibility requirements, and have the skills, knowledge, and financial resources to competently carry out building work. Using or installing approved building products and maintaining building standards can minimise the risks of defective or incomplete building work, and reduce the risk of non-payment or late payment of debts for building work carried out.

## How we performed the audit

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The audit objective was to assess how effectively QBCC regulates the building industry by issuing and managing licences in a fair and balanced way. We did this by examining whether QBCC:

- maintains proper standards and processes to ensure only appropriately licensed operators work in the industry
- effectively regulates domestic building contracts to achieve a reasonable balance between the interests of the building contractors and consumers
- provides appropriate support, education, and advice about maintaining industry standards to those undertaking building work and to consumers
- effectively manages and reports on the performance of its core functions and operations.

The audit covered QBCC's licensing and education services. We did not examine the effectiveness of the Home Warranty Insurance Scheme or the non-conforming building products program.



## 2. Audit findings

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### Licensing builders

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The Queensland Building and Construction Commission (QBCC) has effective processes and probity checks in place to assess whether individuals and companies who apply for a licence meet the requirements. We identified two areas where potential fraud could go undetected or not be found in a timely manner. Some system access controls need tightening to reduce the risk of unauthorised changes.

QBCC relies on penalty provisions in the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to deter licensees from providing false or misleading statements or documents. The QBCC Act does not require the applicant to lodge certified documents and QBCC has assessed the potential fraud risk as low. In 2019, the Special Joint Taskforce report recommended that the licence application process require applicants to provide proof of identity, including certified photo identification. The government accepted this recommendation, but QBCC has not yet implemented it.

These risks may mean that QBCC identifies fraudulent behaviour only after a breach has been found through compliance activities. However, nothing came to our attention to indicate that any fraud had occurred.

Disparate information technology systems across QBCC create inefficiencies, difficulties in data reporting and analytics, and data integrity risks. QBCC has an approved project to address this, but it is currently on hold as the skilled resources needed were used on other priority projects.

Staff are generally well trained, but there are opportunities to improve the training and guidance materials provided. A recently revised *QBCC Quality Assurance Framework* provides further assurance that licences are granted appropriately. We found that the Licensing Services Branch has embraced and implemented the framework. However, we found low levels of engagement and take-up in other parts of the business.

### Monitoring and enforcing compliance

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QBCC had a formalised and approved compliance and enforcement strategy in place for 2018–19, but has not had one since 1 July 2019. This is because QBCC considered the strategy was too operational, focusing on activity targets rather than impacts and outcomes. QBCC has developed a new regulatory strategy to guide its transition to a risk-focused, insights-driven regulator. QBCC only expects to finalise the new strategy around April 2020, after board approval and stakeholder consultation. The strategy will then take time to embed, partly due to its reliance on having better data, including financial data on licensees. In the meantime, business as usual has been driven by agreed priorities.

Insights-driven regulation relies on having appropriate information and data to form the necessary intelligence, and then using the intelligence to identify data-driven opportunities to improve regulatory outcomes. This will improve QBCC's ability to more accurately identify risks to the industry before they occur and to use identified risks in regulatory decisions. QBCC has developed its new regulatory strategy, but resource and capability gaps mean it could take three to five years to fully implement. It will require sustained attention and disciplined management by QBCC to translate its strategy into a targeted compliance program. Delays to implementing the strategy will hinder QBCC's ability to achieve its objectives and effectively manage the transition to a risk-focused regulator.



Since 2014, a lack of financial data on licences has contributed to QBCC's largely reactive audit activity addressing financial detriment. New laws introduced on 1 January 2019 mean that licensees must now provide financial information each year, which will provide QBCC with ongoing information on licensees' financial sustainability. QBCC needs to proactively use this data as a step to becoming a more risk-focused regulator.

QBCC has a robust complaints management process that generally operates effectively. However, improving record keeping will increase its effectiveness. QBCC takes appropriate enforcement actions against parties who breach their obligations, particularly since 2016 when it refocused on its core role as a regulator.

## Providing education and support

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QBCC provides a broad range of education and advice activities through different mediums and across different regions, with appropriate quality controls over information and products. Feedback received from licensees and consumers is generally positive, but the effectiveness and value of feedback are compromised by generally low response rates and lack of qualitative responses.

QBCC's Customer Contact Centre has not met key performance indicators since 2017, such as average speed to answer a call and percentage of abandoned calls. The recently redesigned integrated voice recognition system is expected to address this, but it is too early to assess its success. The current lack of status reporting for other education and support programs makes it difficult to accurately assess their timeliness.

QBCC is moving to a more strategic education and communication approach to better target higher risk areas and regulatory needs, but this is taking longer than expected, partly due to resource and capability gaps.

## Managing and reporting performance

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QBCC recognises the imperative to move from a complaints-driven licensing authority to a risk-focused regulator. It has identified the building blocks needed to transform the organisation into the required future state. These include, but are not limited to, a new regulatory strategy, governance frameworks, integrated planning, performance management processes, and project assurance.

QBCC is making progress with this transformation but implementing and embedding the changes into the organisation is taking time. QBCC has increased staff numbers gradually over the last 18 months but progress is hindered by a lack of skills and capability, including change management capability. The speed and volume of change, including legislative change, is also a factor.

Most of QBCC's performance measures are based on activity and output, rather than on outcomes. Its operational and management reporting are currently not sufficient to understand performance and enable informed decision-making. QBCC has not evaluated any of its core regulatory functions due to a lack of evaluation skills and ability.



## 3. Audit conclusions

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Since 2016, the primary strategy for the Queensland Building and Construction Commission (QBCC) has been to refocus on its role as a regulator of the building and construction industry. This means focusing on areas that pose the greatest risk, or that threaten community safety and economic confidence in the sector.

To do this, QBCC needed to move from a complaints-driven licensing authority to a risk-focused, insights-driven regulator. While it has the building blocks to do this, implementing and embedding it into the organisation is taking time. Progress is hindered by a lack of resources, skills, and capability. The speed and volume of change, including legislative change, is also a factor.

Issuing licences and monitoring and enforcing compliance with licence requirements are key to QBCC's role, but it has more work to do to become an effective, risk-focused regulator. Managing licences needs a more targeted compliance program to be fully effective. The current program, while driven by agreed priorities, is too operational in its focus on activity targets rather than impacts and outcomes. This means that scarce resources may not be allocated towards the greatest risk of harm. Lack of financial data on licensees since 2014 has contributed to this operational approach. While new laws were introduced on 1 January 2019 meaning licensees must now provide financial information each year, it is too soon to know how well this will help QBCC to manage financial distress in the industry.

QBCC has good processes and probity checks in place to assess whether individuals and companies who apply for a licence meet eligibility requirements. There is a risk that fraud could go undetected, but control changes that are relatively easy to implement could mitigate this risk.

The lack of skills and resources was a root cause of many of the issues we found. For this reason, we looked at how well QBCC plans to meet its objectives and whether it reports effectively on its performance. QBCC needs to do more to embed its plans and processes. It is critical that QBCC allocates enough resources and develops its capability to finalise strategies, plans, and reporting frameworks to guide progress. It also needs to drive ahead with the steps needed to become an insights-driven regulator and enable it to prioritise regulatory effort where and when it is most needed.





# Recommendations

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## Queensland Building and Construction Commission

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We recommend that the Queensland Building and Construction Commission:

### Compliance and enforcement

1. allocates enough resources to finalise and implement the steps needed to become an insights-driven regulator to enable it to prioritise regulatory effort where and when it is needed, including:
  - identifying areas of greatest risk and potential harm
  - focusing on high-value, high-complexity tasks (Chapter 5)

### Licensing

2. reduces the risk of unauthorised system changes or fraud, by:
  - implementing a systematic process to remove and review the BUILD licence system access for staff who return to their substantive position once temporary roles are over (Chapter 4)
  - regularly reviewing audit log reports to ensure no unauthorised changes are made to BUILD data (Chapter 4)
3. implements recommendation 4 of the 2019 Special Joint Taskforce report that requires licence applicants to provide certified proof of identity photo identification (Chapter 4)
4. allocates and commits enough resources, with the required capability and skill, to implement its internal project to address the issue of disparate information technology systems (Chapter 4)
5. ensures the *QBCC Quality Assurance Framework* and program of quality assurance reviews are implemented across all business units covered by the framework (Chapter 4)
6. reviews and updates licence assessment training and support for staff, by:
  - reviewing procedural manuals and supporting tools to ensure they are up to date
  - formalising the training program, including setting learning objectives, to ensure all staff receive consistent and relevant training (Chapter 4)

### Education and support

7. finalises and implements the *2019–20 Customer and Communications Operational Plan* and the supporting education and communication calendar.

This should include allocating enough resources to deliver the program of activities (Chapter 6)

8. considers ways to assess and report on the quality and effectiveness of support, education, and advice provided to licensees and consumers to inform continual improvement (Chapter 6)



## Managing and reporting performance

9. establishes clear milestones and firm time frames for implementing current and future planning activities, including:
  - determining regulatory strategies, outcomes, and goals
  - undertaking and finalising corporate, special purpose, and operational planning, including budgeting, and resource planning and utilisation (Chapter 7)
10. develops and implements further elements of its performance management framework to improve accountability and adequately measure and report on its efficiency and effectiveness, including:
  - using the activity-based costings developed to implement an internal costing framework, so that consistent, reliable, and timely cost information is available on its resources and service activities
  - identifying clear service outcomes and measures to track the status and effectiveness of those goals, and management-level efficiency indicators to monitor and report on its operations and services
  - having clear accountabilities for all senior officers (Chapter 7)
11. develops the evaluation skills, capability, and processes needed for the formal assessment of the appropriateness, relevancy, process, effectiveness and/or efficiency of a program, service, initiative, or strategy (Chapter 7).

## Reference to comments

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In accordance with s. 64 of the *Auditor-General Act 2009*, we provided a copy of this report to the Queensland Building and Construction Commission. In reaching our conclusions, we considered its views and represented them to the extent we deemed relevant and warranted. The Queensland Building and Construction Commission's formal response is at Appendix A.



## 4. Detailed findings—licensing builders

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This chapter is about how effectively the Queensland Building and Construction Commission (QBCC) manages processes to grant licences to individuals and companies who satisfy the relevant licence requirements.

Under s. 31 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act), an individual is entitled to a contractor’s licence if the QBCC is, on application by the individual, satisfied that the individual:

- has the relevant qualifications and experience required to hold a licence
- is a fit and proper person to hold the licence and can lawfully work in Queensland
- is not an individual who is excluded, disqualified, or banned from holding a licence under the QBCC Act
- satisfies minimum financial requirements for the licence
- does not have an unpaid judgement debt in relation to a claim under the Queensland Home Warranty Scheme.

### Are QBCC processes to grant licences effective?

---

QBCC has effective processes and probity checks in place to assess whether individuals and companies who apply for a licence meet the eligibility requirements. The qualifications, experience and other requirements that an applicant must meet before they may be granted a licence are set out in legislation. Probity checklists and procedures used by staff reflect these requirements and processes, and adequately support decisions to grant or decline licence applications. Nothing came to our attention that indicates QBCC officers made incorrect decisions when granting licences. However, QBCC should reconsider the risk of accepting uncertified proof of identify documents. Poor access controls over the licensing system also present a fraud risk that needs mitigating.

#### Documentary evidence

QBCC does not routinely undertake validation checks to ensure the authenticity of the information provided by the applicant, such as proof of identity and relevant technical qualifications. This is because the QBCC Act does not require an applicant to lodge certified documents but has penalty provisions on providing false or misleading statements or documents. The consequences of providing false or misleading information are reinforced on the application form. While this legislative position is clear, it is possible that QBCC would only detect potential fraud by responding to complaints or undertaking compliance activity, rather than during the assessment process.



In June 2019, the Special Joint Taskforce report recommended that the licence application process require applicants to provide proof of identity, including certified photo identification. The government accepted this recommendation, stating it would be a simple change to help ensure the integrity of industry participants, but QBCC has not yet implemented this recommendation.

QBCC recently assessed the risk of accepting uncertified copies of qualifications and identity documents as low. Licensing officers undertake validation enquiries where any concern is identified. However, we still consider this a fraud risk and important that QBCC implement the Special Joint Taskforce report recommendation in a timely manner.

## Fit and proper checks

### DEFINITION

The QBCC Act provides the following considerations for QBCC when deciding whether an applicant is fit and proper to hold a contractor's licence:

- honesty and integrity in commercial and other dealings
- any failure to carry out commercial or statutory obligations and the reasons behind the failure
- whether they have done any defective work of significance
- whether they have failed to pay an infringement notice for an offence under the QBCC Act
- any other relevant factor (for example, criminal history).

QBCC has effective processes to appropriately consider whether an applicant meets the fit and proper criteria. The probity checklists and procedures require licensing staff to consider past behaviours or actions of an individual or company during the assessment process. They do this through a combination of manual and system-generated checks. Inbuilt controls mean the licensing system will not allow the application to be approved where a probity issue has been identified and not addressed. This may include complaints, insolvency history, previous history of offending, or monies owed.

All licence applications where there are potential fit and proper issues are referred to the Licensing Standards Unit for a detailed assessment and determination. The level of assessment depends on the concern circumstances, but may include national criminal history checks and inquiries with relevant courts, regulatory authorities, and police authorities. QBCC conducts face-to-face meetings with any applicant identified as high risk, to prove the veracity of information provided.

Having four teams within the Licensing Services Branch responsible for assessing and issuing licences enables QBCC to address both the complex nature of the licensing systems it administers and the harms that the licensing system seeks to manage.

## Are QBCC's licensing systems fit for purpose?

Disparate information technology systems across QBCC create inefficiencies, difficulties in data reporting and analytics, and data integrity risks. Licensing staff use three separate systems to complete a licence assessment. The systems are not integrated, requiring staff to switch between the separate systems.

Across the organisation, QBCC uses four business systems and has identified a critical need for an integrated solution that provides timely access to accurate data. QBCC has an approved strategic project to address this, but it is currently on hold as the skilled resources needed were used on other priority projects. This system project is vitally important for QBCC to become an effective risk-focused, insights-driven regulator.



## Access controls

QBCC does not have appropriate controls over the licensing system to ensure users only have access appropriate to their role and responsibilities. Poor access controls over the licensing system increase the risk that unauthorised deletions or changes to the status of a builders' licence would not be detected by management. QBCC has already commenced changes to mitigate these deficiencies in line with our recommendation.

## Does QBCC have effective quality controls over decision-making for granting licences?

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The Licensing Services Branch has internal control measures in place to promote quality decision-making. These include supervisor endorsement of higher-risk or complex decisions, weekly random reviews, and regular training. Assessments requiring a higher level of knowledge are escalated to specialist licensing officers. The licensing system also has inbuilt system controls to support the assessment process.

QBCC has implemented a revised quality assurance framework to provide further assurance that staff capability in terms of decision-making matches the requirements and expectations of the organisation. We found that the Licensing Services Branch has embraced and implemented the framework. However, in examining records for the whole of QBCC, we found low levels of engagement and take-up in other parts of the business.

## Are QBCC licensing staff appropriately trained?

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Procedure manuals and supporting tools to guide staff in the licensing assessment process are fit for purpose. Staff are trained by an experienced licensing officer using appropriate training materials consistent with licensing procedures. QBCC has a mentoring system in place for new employees.

However, we observed that some licensing staff refer to locally saved procedures that are no longer current. If staff refer to out-of-date information, there is a risk they may not follow the correct licence assessment process. QBCC should review procedures to ensure they are up-to-date and take steps to ensure staff are not referring to old materials.

QBCC has not formalised the licensing training program. It has no set learning objectives and outcomes, nor does it assess the effectiveness of its training activities in providing the required skills and knowledge.



## 5. Detailed findings—monitoring and enforcing compliance

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This chapter is about how effectively the Queensland Building and Construction Commission (QBCC) monitors and enforces compliance with licence requirements, including how it investigates and manages complaints.

QBCC utilises powers available under current legislation to carry out a program of proactive and responsive activities to identify potential breaches of licence requirements and other compliance issues.

### Is QBCC monitoring compliance strategically?

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We found that while there was a formalised and approved compliance and enforcement strategy in place for 2018–19, QBCC has not had one since 1 July 2019. This is because QBCC considered the *2018–19 Compliance and Enforcement Strategy* was too operational. Although guided by identified priorities, actual activities were not well targeted, focusing on meeting activity quotas rather than impacts and outcomes. QBCC has developed a new regulatory strategy to guide its transition to a risk-focused, insights-driven regulator. However, the new strategy, the first of its kind developed by QBCC, is only scheduled for approval by the board in April 2020, after stakeholder consultation. The strategy will then take time to embed, partly because it relies on access to better data, which will take time to collect. In the meantime, business as usual has been driven by identified priorities.

### Insights-driven regulation

The new regulatory strategy outlines QBCC’s regulatory approach and identifies goals and key outcome indicators. It defines QBCC’s strategy to become an insights-driven regulator using data-driven opportunities to improve regulatory outcomes. Insights-driven regulation will improve QBCC’s ability to more accurately identify risks to the industry before they occur and to use data to inform regulatory decisions. This includes using insights to target unscrupulous and unlicensed contractors in place of random building site audits, and will allow for more effective resource allocation.

However, insights-driven regulation relies on access to appropriate data, from which to form the necessary intelligence. To embed insights-driven regulation into the organisation, QBCC needs to better leverage data, technology, and people capability. For the 2019–20 financial year, QBCC received \$3 million of additional government funding to begin development of its program for insights-driven regulation.

QBCC has assessed it will take three to five years to fully implement all intended aspects of insights-driven regulation. It will require sustained attention and disciplined management by QBCC to translate its regulatory strategy into a targeted compliance program. Delays in implementing the regulatory strategy will hinder QBCC’s ability to achieve its objectives and effectively manage the transition to a risk-focused regulator.



## Is QBCC effectively monitoring compliance?

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QBCC's current compliance program is guided by identified priorities, but the lack of a formalised strategy and program since 1 July 2019 means there is a risk that management oversight over performance is reduced. Compliance activities were appropriately reported to QBCC's executive and its QBCC board, but the effectiveness and overall success of these activities is not clearly measured.

QBCC met only seven of its 13 targets in the *2018–19 Compliance and Enforcement Strategy*. While some business areas exceeded the number of required proactive audits, others did not meet the minimum requirements outlined in the strategy.

No formal evaluation was undertaken following the strategy's completion to examine the true value of the compliance program.

### Compliance priorities

QBCC's *2018–19 Compliance and Enforcement Strategy* addressed 10 compliance priorities, covering risks and issues such as reducing financial detriment, combatting unlicensed building work, and improving building quality. QBCC developed the 10 priorities using a risk-based approach that allowed QBCC to prioritise effort towards achieving its strategic objectives and identifying the highest risk impact. However, most of the actions or audit activities taken against each priority were not risk-based, resulting in an operational approach focused on activity targets rather than outcomes.

Since 1 July 2019, QBCC has continued to undertake activities guided by the 10 compliance priorities and other emerging priorities agreed by management. It is also guided by policies that assist QBCC to focus on matters that present the greatest risk to the industry and its participants, and to strategically discontinue matters that do not warrant ongoing investigation. One of the policies was developed following an identified need to prioritise matters for further investigation because of resource capacity. QBCC is currently reviewing the effectiveness of this policy.

### Compliance with minimum financial requirements

One of QBCC's 10 compliance priorities was to avert licensees causing financial detriment to participants of the building and construction industry. Compliance activities addressing this priority included industry education audits of licensees' financial records through an approved audit program, ensuring establishment of project bank accounts where legally required, and prosecution of anyone found to have provided false or misleading documents or to have avoided contractual obligations causing significant financial loss.

Since 2014, QBCC audit activity has been largely reactive, as it did not have the financial information on licensees needed to identify any potential insolvency issues. The main triggers for audits to assess insolvency risks were monies-owed complaints. On 1 January 2019, the Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018 commenced, meaning that licensees must now provide financial information each year. Licensees' annual reporting will provide QBCC with ongoing information on the financial sustainability of licensees and help QBCC to identify licensees without an appropriate level of working capital. The first annual reports were due on 31 December 2019. This is in addition to financial information licensees must provide when applying for a licence.



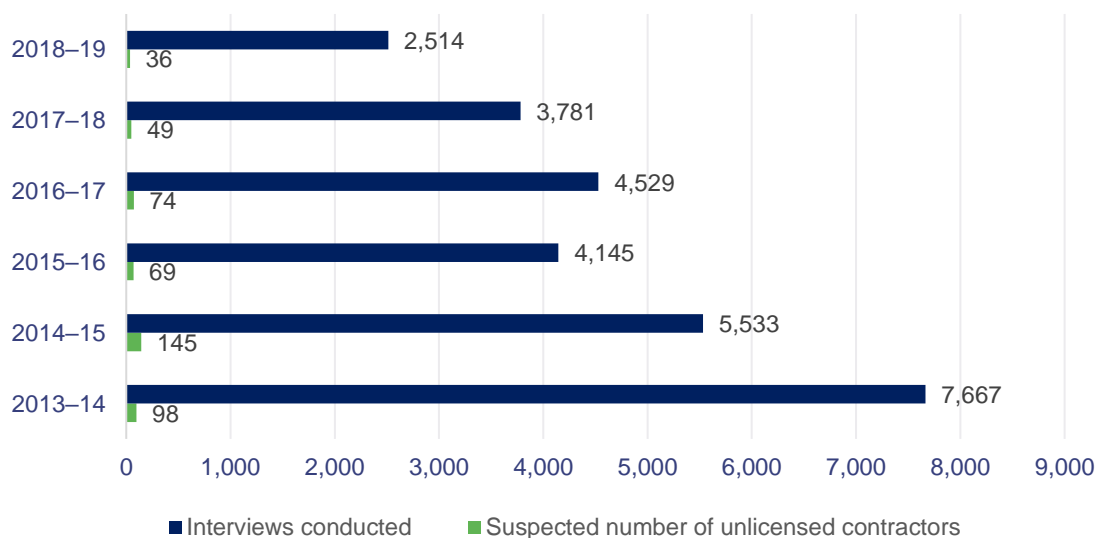
## Identifying unlicensed builders

Another compliance priority is to identify individuals or companies carrying out, or offering to carry out, work without the appropriate licence. QBCC aims to identify individuals operating without a licence through planned compliance activities and through the investigation of complaints, claims, and disputes.

If QBCC gathers enough evidence during site interviews to establish a potential breach, they refer the licensee for investigation as a suspected unlicensed contractor.

Figure 5A shows the interviews conducted between 2013 and 2019, and the corresponding numbers of suspected unlicensed contractors identified. The low rate detected indicates that this approach is not the best use of resources. In 2018–19, the rate of suspected unlicensed contractors was 1.4 per cent of contractors interviewed. QBCC does not record how many of these are confirmed and then subject to enforcement action.

**Figure 5A**  
**Number of suspected unlicensed contractors 2013–2019**



Source: Queensland Audit Office based on data extracted from QBCC annual reports.

Unlicensed contracting results in an infringement notice, prosecution, or disciplinary action. Once action is taken, QBCC does not effectively monitor those individuals to bring them back into compliance or check if they re-offend. However, under the new regulatory approach QBCC will use this information to develop intelligence to target areas of greatest harm.

## Risk-based compliance

On a regional visit to Townsville, we heard of a proactive compliance activity that was devised outside the compliance and enforcement strategy to target a potentially high-risk event.

The following case study summarises the activity and resulting outcomes, showing that the approach enabled QBCC to identify a higher proportion of unlicensed contractors than through usual compliance activities. The proactive approach demonstrates QBCC's flexibility, capacity, and capability to quickly develop and deliver an effective targeted proactive compliance program.



## Case study 1 A case study in proactive compliance

### Townsville floods 2019

The significant weather event that occurred in the Townsville region in early 2019 saw thousands of homes inundated with flood water.

QBCC has identified that after such events the community is at greater risk of using unlicensed builders, receiving defective building work, and not having the protection of a legal contract or insurance policy. To support the community in its recovery, QBCC developed and implemented a disaster response plan within a week.

#### Key outcomes from the plan included:

- effective compliance outcomes through an intense program of proactive work, including unannounced site inspections and engagement; a total of 196 site visits resulted in
  - identifying 19 suspected unlicensed contractors and one excluded individual carrying out (or offering to carry out) building work
  - 52 contractors were provided with advice on licencing requirements and undertaking building work through the QBCC's Service Centre in Townsville or during site visits
- positive feedback from licensed contractors, particularly around the proactive approach used by QBCC.

*Source: Queensland Audit Office based on information and data from QBCC Flood Disaster Audit Townsville Regional Service Centre – Phase 3 and Phase 4 Outcome Reports.*

## Does QBCC manage complaints in a timely, fair, and balanced way?

QBCC has a robust complaints management process that generally operates effectively and clear guidelines and review processes to ensure complaints are dealt with appropriately. However, improving record keeping will increase its effectiveness.

QBCC receives complaints about potential compliance breaches, potential defects, financial concerns, and safety issues. It does not have enough resources to pursue all the complaints it receives. QBCC uses a triage policy to guide the assessment of all complaints and notifications received, and direct resources to investigating matters that are likely to provide the greatest overall benefit for consumers and industry.

QBCC facilitates the resolution of complaints in two ways:

- if the contract is not completed—through an early dispute resolution service for disputes between principal contractors and consumers or between principal contractors and subcontractors, concerning building defects, non-completion, and contractual issues
- if the contract is completed—through a dispute resolution process to help consumers and contractors resolve problems when things go wrong and the consumer and builder cannot agree on an outcome. The dispute resolution process can only be initiated by consumers. QBCC does not offer a dispute resolution process between contractors and subcontractors once the contract is complete.

In 2018–19, QBCC met or exceeded three of its four timeliness measures relating to early dispute resolution cases. It does not have measures on the timeliness of claims or dispute cases received after contract completion.

The complaints management process is thorough and well documented. Assessment guidelines are available to help staff, and provide information about thresholds and required supporting evidence.

Our testing to assess whether the complaints process was effective and timely identified some minor errors. These were mainly around poor record keeping—such as lack of evidence in the case file to substantiate that required searches had been completed as part of the initial assessment. Further checks confirmed these errors had no impact on the final decision. However, inconsistent or incomplete record keeping has the potential to compromise the overall effectiveness of the process.

Appendix C contains a flow diagram of the complaints management process.

## Does QBCC respond effectively to non-compliance?

QBCC has processes in place to effectively implement enforcement action. It provides clear procedural guidance for staff on how enforcement action is to be implemented.

QBCC uses a range of enforcement options if a licensee or unlicensed individual fails to comply with legislation or there is a serious breach of relevant laws. In 2016, QBCC renewed its focus on its core role as a regulator; this correlates with a significant increase in enforcement action.

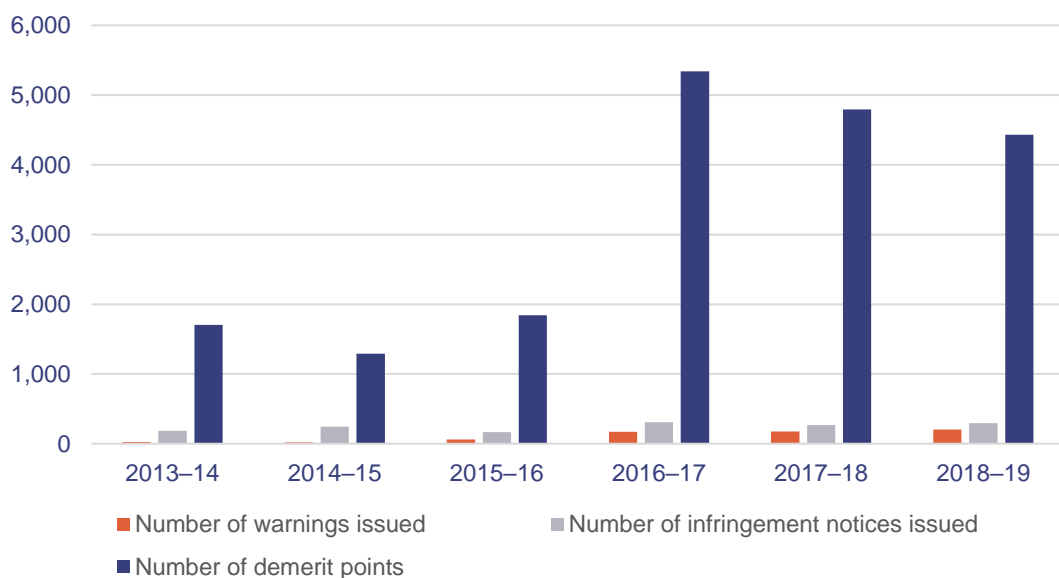
### Enforcement options

Enforcement options include stop-work orders, disciplinary actions, penalty infringement notices and demerit points, and suspending and cancelling licences.

Enforcement action and outcomes are reported regularly to the Senior Leadership Team and QBCC board. Regular team meetings and discussions within the compliance unit also provide an opportunity to discuss specific cases and courses of enforcement action.

Externally, QBCC reports on selected enforcement actions through its annual report, including the issuing of warnings, infringement notices, and demerit points. Figure 5B shows the externally reported enforcement actions taken by QBCC between 2013 and 2019.

**Figure 5B**  
**Enforcement actions 2013–2019**



Source: Queensland Audit Office based on data extracted from QBCC annual reports.

There was a significant increase in the number of warnings, infringement notices, and demerit points issued by QBCC between 2015–16 and 2016–17. Most significantly, the demerit points issued increased by 190 per cent. The increase reflects the purposeful refocus by QBCC on its core role as a regulator and its allocation of greater resources and energy on compliance activities.

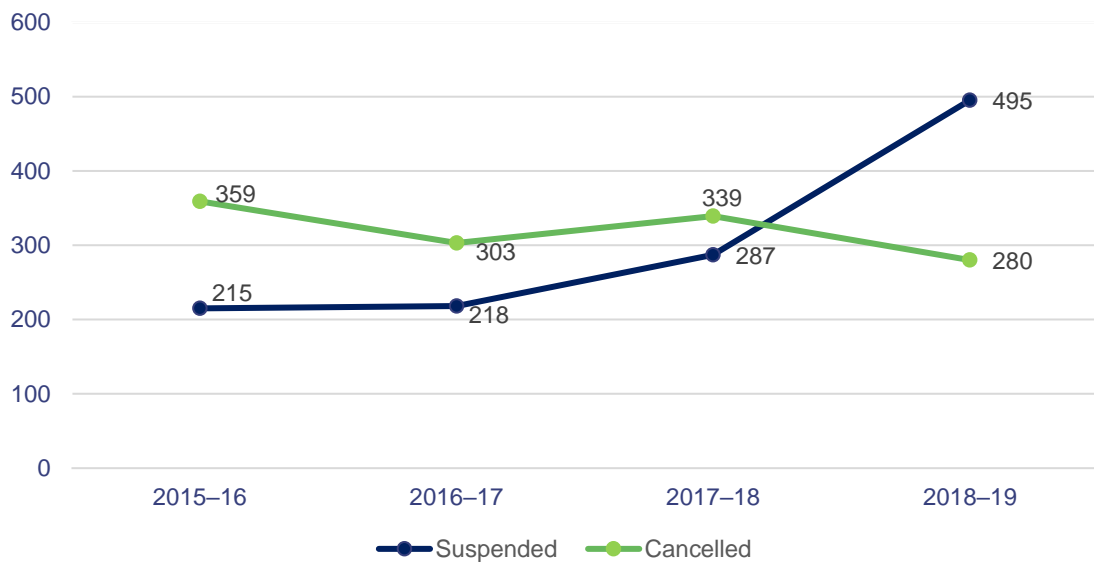
### Licence cancellations and suspensions

QBCC has the legislative capability to cancel or suspend a licence if a licensee breaches their licensing obligations, usually resulting in a serious risk of substantive harm posed by a licensee to industry participants or consumers. For example, QBCC may suspend a licence due to defective or incomplete building work resulting from inadequate supervision, non-payment of debts, and endangering or causing significant financial or other harm to industry participants or consumers.

As of 30 June 2019, there were 91,164 active licences in Queensland (an increase of about 4.5 per cent since 2015–16). In the 2018–19 financial year, QBCC cancelled 280 licences and suspended 495. This equates to less than one per cent of all licences being cancelled and/or suspended.

Figure 5C shows the numbers of licences cancelled and suspended since 2015.

**Figure 5C**  
**Numbers of licences cancelled and suspended by QBCC from 2015–2019**



Source: Queensland Audit Office based on data extracted from QBCC annual reports.

Since 2015, the number of licences cancelled by QBCC has decreased by 22 per cent, while the number of licences suspended has increased by 130 per cent. The largest increase was in 2018–19, which corresponds to the move to a more risk-based approach to compliance. Almost 43 per cent of licences suspended in 2018–19 was due to a breach of minimum financial requirements. This correlates with one of QBCC’s compliance priorities—to avert licensees causing financial detriment to participants in the building and construction industry.



## 6. Detailed findings—providing education and support

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This chapter is about whether the Queensland Building and Construction Commission (QBCC) provides support, education, and advice to those who undertake building work and to consumers in a way that is appropriate, accurate, and timely.

QBCC currently:

- delivers education seminars and webinars to consumers and contractors
- produces fact sheets and publications on a range of building industry issues
- provides information and support through its Customer Contact Centre, website, social media, and email.

### Does QBCC have an effective strategy to drive education and support services?

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QBCC is moving to a more strategic approach to providing education and support, based on insights-driven regulatory needs. However, this is taking time to implement and there is a risk that the current education and training program is not sufficiently targeted to support the achievement of a well-skilled industry with well-informed consumers.

The delay is mainly because the regulatory strategy (which identifies risks and harms for the building industry) is not yet approved. The regulatory strategy will provide further input on education and communication priorities needed before QBCC can finalise its customer and communications operational plan for 2019–20. However, work on the 2020–21 plans should have commenced in December 2019. Other reasons cited for delays in finalising the plan and resulting program of activities include lack of resources and diverting effort to emerging and higher priority activities.

In the absence of an approved plan, QBCC has a calendar of education and communication activities. It developed this through consultation across the business, stakeholder feedback, and aligning it with QBCC's strategic plan, compliance and enforcement operational plan and the *Queensland Building Plan*.

While QBCC does not currently report formally on its progress against the education and communications calendar, we found that six of the ten high-priority campaigns for 2019–20 were complete or in progress (as at December 2019). In comparison, we were advised that only half the campaigns on the 2018 calendar were completed, including four of the eight high-priority campaigns. This indicates either a lack of allocated resources in 2018 to carry out priority campaigns, an ad hoc approach, or a combination of both.

### Does QBCC provide accurate and timely advice?

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QBCC provides a broad range of education and advice for licensees, consumers, and other stakeholders. It provides education and advice through multiple mediums and across different regions.

Adequate and appropriate information is available about how to apply for a licence and maintain industry standards. However, anecdotal feedback indicates some people find it challenging to navigate the website to access information.

Upcoming events are advertised through email, social media, and on QBCC's website. However, the website link to events is not easy to find. This could mean that licensees, consumers, and other stakeholders miss critical information around licensing requirements and building standards. QBCC is looking at ways to improve the website within the confines of its existing technology.

The lack of formal reporting on progress against the education and communications calendar made it difficult to accurately assess the timeliness of education and support. However, we did find evidence that for significant industry changes, such as project bank accounts and the move to annual financial reporting, QBCC provided a range of information regularly throughout 2018 and 2019. These included Tradie Tours, information sessions, webinars, and web-based information. Tradie Tours are state-wide, face-to-face information sessions for contractors.

Written information is well presented and includes fact sheets, information packs, and frequently asked questions developed from enquiries received through the Customer Contact Centre. QBCC applies a quality assurance and approval process to content that suits the complexity and importance of the information it publishes.

## Education for licensees

QBCC provides education programs and advice for licensees, such as Tradie Tours, including technical information about common defects, new standards, legislation and regulation requirements and changes, and best practice methods. These programs are also available to others working with licensees, such as bookkeepers, accountants, and legal representatives. QBCC often partners with industry stakeholders for education programs, such as technical subject matter experts, the Australian Taxation Office, and Australian Securities and Investment Commission.

Tradie Tours are particularly well received by attendees. The aim is to educate industry on high-risk matters where informing stakeholders may lead to positive compliance outcomes. Technical topics address common defects. Non-technical topics are based on regulatory changes and requirements, or feedback received from stakeholders.

## Education for consumers

QBCC provides consumers with information about their rights and responsibilities when purchasing building work. It provides relevant information on its website and through education programs (such as homeowner information sessions and an information stand and seminars at the Brisbane Home Show).

QBCC maintains a licensee register, which can be accessed through its website. This enables consumers and building industry participants to confirm that a contractor is appropriately licensed and review a contractor's licence history. The register contains information about each licensee, including: the classes of licence held; any offences committed by the licensee; and any demerit points, licence suspensions, or cancellations.

QBCC also offers a search allowing consumers to find a licensed contractor in their local area.

## Customer Contact Centre

The QBCC Customer Contact Centre receives almost 90 per cent of enquiries by phone, and QBCC anticipates the number of calls is likely to increase. For the last two years, the Customer Contact Centre has not met key performance indicators such as average speed to answer a call and percentage of abandoned calls.



The Customer Contact Centre is considered the frontline to support licensees in complying with building industry standards and assisting consumers to understand their rights and responsibilities. The centre has around 50 staff trained to provide general advice and assistance on licensing and compliance requirements, changes in legislation, and complaints and disputes.

Figure 6A shows that QBCC has not met its Customer Contact Centre targets since 2017.

**Figure 6A**  
**Customer Contact Centre data 2017–18 to 2019–20 (July–December 2019)**

KPI	Target	FY 2017–18	FY 2018–19	FY 2019–20 YTD
Average speed of answer	5 minutes	6.47 minutes	10.19 minutes	6.56 minutes
Abandoned calls	<15%	21%	28%	21%
Average handling time	7 minutes	8.2 minutes	9.03 minutes	8.17 minutes

Note: KPI—key performance indicator; FY—financial year; YTD—year to date.

Source: QBCC Customer Contact Centre dashboard data.

QBCC recently redesigned its integrated voice recognition (IVR) system to reduce customer effort, make language more relevant and meaningful, and ensure the caller is connected to the most appropriate officer. It anticipates the system will improve Customer Contact Centre performance and address the anticipated increase in enquiries due to significant regulatory, technological, and legislative changes.

QBCC implemented the Customer Contact Centre changes in October 2019. But it is too early to assess whether the IVR improvements will result in better response and handling times. Response and handling times improved in November 2019, but there was an upward spike in December 2019 due to the large number of queries (35,808 inbound calls in December against a year-to-date average of 22,540) relating to the implementation of minimum financial reporting (MFR) annual reporting requirements.

QBCC anticipated the significant increase in enquiries relating to the implementation of the MFR annual reporting by deploying extra resources, extending call centre hours and introducing new work practices. These practices included providing a specific IVR queue for annual reporting calls, creating guidance for staff to ensure consistency, and information for licensees on its website. QBCC also updated the Frequently Asked Questions section on its website, in response to common queries received. Between 28 October 2019 and 23 February 2020, QBCC took 35,929 phone calls regarding MFR annual reporting with an 8:13 minute average handling time and two per cent abandoned calls. The average handling time again exceeded the target of seven minutes, but the percentage of abandoned calls was a significant improvement on trends since 2017 and well under the 15 per cent target.

## Does QBCC seek feedback to improve its education services?

QBCC has several feedback mechanisms in place to assess the success of its communication, education, and engagement. However, the effectiveness and value of these mechanisms is compromised by low response rates and a lack of qualitative data.



QBCC sends feedback forms to customers who attend an education event or make an enquiry. The survey asks customers to rate their experience, trust of QBCC, and how easy it was to deal with QBCC. The data is collated and used to determine the service delivery statement (SDS) measures and key performance indicators (KPIs).

Prior to July 2019, QBCC prepared monthly customer satisfaction reports and annual customer insight reports, which it circulated to business units for information. These reported on the SDS measures, KPIs, and qualitative analysis of themes from customer comments.

From 1 July 2019, the survey forms were amended to exclude open text boxes for customer comments, removing opportunities for customers to provide qualitative responses. This means the business may miss out on useful information to explain ratings, pinpoint specific issues, and find out what customers are looking for.

We were advised that the rationale to no longer collect qualitative feedback was linked with QBCC's shift from a customer-centric organisation back to a regulator. QBCC's concern was that where a decision goes against what the customer wanted, they may give unfavourable comments regardless of whether the process and service were effective. We acknowledge this concern when seeking qualitative feedback on complaint management. However, removing the option for customers to provide open comments from all survey forms means that QBCC does not know how effectively it provides support, education and advice for those who undertake building work and consumers.

QBCC still produces campaign reports on each Tradie Tour, including a lesson learned section.



## 7. Detailed findings—managing and reporting performance

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This chapter is about how well the Queensland Building and Construction Commission (QBCC) manages the performance of its functions and operations, including its governance processes over high-risk/high-value projects.

There are legislated performance management requirements for public sector entities covering:

- planning—to determine what outcomes are to be achieved for customers, stakeholders and the community
- measuring and monitoring performance—to know and be able to demonstrate the entity is operating efficiently, effectively and economically
- public reporting—to facilitate accountability.

### Does QBCC have an effective performance-management framework?

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Prior to late 2018, QBCC did not have a performance-management framework to guide governance, planning, and reporting, which resulted in ad hoc, inconsistent, and insufficient practices. QBCC then developed the enterprise performance management framework to help deliver on its objectives and core role as a regulator. However, it has not been fully implemented because of resourcing and capability constraints.

The framework has six workstreams:

- operational excellence
- governance
- business planning
- risk management
- performance reporting
- data and technology.

QBCC conducted a maturity assessment on each that identified significant gaps between its current practices and desired future state. On a maturity scale of 1 to 5 (1 being initial, 5 being efficient), QBCC rated all its workstreams 1 or 2. Business planning, performance reporting and data were rated 1. This was because of limited business planning and failure to collaborate across the organisation. Data in performance reports produced was uncoordinated and metrics were not aligned to the strategy.

QBCC has identified initiatives to improve each workstream. It is vital that it implements all initiatives in a timely manner to better manage the transition to a risk-focused regulator and help achieve its objectives. QBCC has recently recruited senior, suitably skilled staff to implement the framework and initiatives.





## Does QBCC effectively plan to achieve its objectives?

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While QBCC has robust processes to develop its organisational plans, its planning is not fully effective because its governance processes need improvement.

QBCC has finalised and approved both a *2019–23 Strategic Plan* and *2019–20 Corporate Plan*. However, at the time of the audit, management had not formally approved the supporting 2019–20 operational plans for each division. This reduces management’s ability to monitor its achievement of QBCC’s service outcomes and hold staff accountable.

As reported in earlier chapters of this report, QBCC had also not finalised its 2019–20 regulatory strategy or education and engagement plan. This means the specific-purpose plans that cascade from strategic corporate plans are not happening in a timely way. There is a risk QBCC is not adequately monitoring initiatives or maximising its resources effectively.

QBCC has an Integrated Business Planning Framework that details the essential business planning requirements for it to deliver its strategic objectives. The framework describes the various plans and reports required.

QBCC should have started work on its 2020–21 operational plans in December 2019. But this was delayed due to QBCC prioritising its resources to develop special purpose projects for the implementation of major new laws.

## Does QBCC measure, monitor, and report on its performance?

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QBCC monitors and reports externally on the effectiveness of its services through its service delivery statement (SDS) and annual report. However, its measures are largely activity and output based, rather than outcome focused. It does not provide a material assessment of the efficiency of its services to the building and construction sector.

### Performance reporting

QBCC has a documented performance reporting framework that specifies three approaches to reporting—external reporting, operational reporting and management reporting. Currently, QBCC’s operational and management reporting are not done well enough to understand performance and enable informed decision-making. QBCC does not have the skills or capability to carry out program evaluations.

### External reporting

QBCC’s service delivery statement includes 11 measures: two effectiveness measures, one efficiency measure, and eight other measures.

The efficiency measure, on debt recovery, only covers 1.2 per cent of its service budgeted expenses. Therefore, the measure does not provide a material assessment of the efficiency of its services.

QBCC does not have appropriate efficiency measures because it does not currently capture activity costs. In April 2018, QBCC identified activity-based costings for its three main services of licensing, enforcement and compliance, and technical services. The costing data are repeatable and QBCC could potentially use these to develop better efficiency measures to monitor its services.



The eight other measures are essentially activity measures. QBCC should establish more appropriate performance indicators so it can measure the extent to which it achieves its objectives and outcomes.

Figure 7A shows the service delivery statement measures and performance from 2016–17 to 2018–19. Prior to 2017–18, QBCC reported only activity or output measures. Effectiveness and efficiency measures were introduced from 2017–18. In 2018–19, QBCC met or exceeded six measures and did not meet five, including the effectiveness measures.



**Figure 7A**  
**SDS measures—Performance 2016–17 to 2018–19**

SDS measure	Target	2016–17 <sup>5</sup> actual	2017–18 actual	2018–19 actual
<b>Effectiveness measures</b>				
Perception of fairness in decision-making: percentage of survey respondents agree the final decision was fair	65%	NA	65%	56%
Percentage of decisions overturned by the Queensland Civil and Administrative Tribunal	4%	NA	2.3%	6%
<b>Efficiency measure</b>				
Cost of recovering \$1.00 of funds owed to creditors	\$0.70	NA	\$0.77	\$0.47
<b>Other measures</b>				
Percentage of early dispute resolution cases finalised within 28 days	80% <sup>1</sup>	88%	94%	80%
Average number of days to process licence applications	30 days	23 days	15 days	20 days
Percentage of owner-builder permits approved within 15 working days	90%	91%	92%	100%
Percentage of adjudication applications referred to an adjudicator within 4 days	98% <sup>2</sup>	97.6%	98%	97%
Percentage of insurance claims for defective work assessed and response provided within 35 business days	50% <sup>3</sup>	30%	59%	50%
Percentage of internal review applicants contacted within 2 business days	95%	95.7%	96%	96%
Average processing time for an early dispute resolution case (in working days)	28	NA	10	15
Average approval time for defects claims less than \$20,000 (in working days)	35 <sup>4</sup>	NA	36	45

Notes: <sup>1</sup> Target in 2016–17 was 90%.

<sup>2</sup> Target in 2016–17 was 97%; legislative changes on 17 December 2018 meant target and actual was 100%.

<sup>3</sup> Target in 2017–18 was 33%, and in 2016–17 was 90%.

<sup>4</sup> Target in 2017–18 was 31 days.

<sup>5</sup> Data for five targets not available in 2016–17.

NA—not applicable.

Source: Queensland Audit Office based on information from service delivery statements.

## Operational and management reporting

QBCC's performance reporting framework specifies that specific-purpose plan owners must provide the commissioner with a quarterly status report covering achievements and progress to date against objectives and activities, and risks and issues potentially impeding delivery. The Senior Leadership Team should also report on its operational plans' performance in monthly one-on-one meetings with the commissioner, utilising its monthly key performance indicator (KPI) scorecard report. QBCC has not effectively implemented either of these reporting mechanisms. While monthly meetings occur and there is a scorecard report template for each division, managers are not yet populating the scorecards. Specific-purpose plan reporting is not happening because none of the plans have been approved.

## Program evaluation

In addition to measuring and monitoring performance, government agencies should have processes for the formal evaluation of policies and related services (including performance measures) to enable continuous improvement in service delivery. QBCC has not evaluated any of its core regulatory functions. This is due to a lack of evaluation skills and ability. Evaluations are an essential tool to strengthen efficiency and demonstrate outcome effectiveness.

## Does QBCC have an effective framework to manage its projects?

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QBCC has developed a *Project Development and Implementation Framework* to guide its strategic and high-risk/high-value projects and initiatives. A Portfolio Governance Committee provides management oversight and control. The defined methodology and project control processes are in line with good practice, but resource and capability gaps and competing priorities have compromised execution to date.

## Oversight and control

QBCC has a Portfolio Governance Committee (PGC) that provides overall control and assurance over the approved program of strategic projects. QBCC clearly defines responsibilities and accountabilities in the committee charter, project business cases, and status reports. Portfolio and project reporting are in line with good practice. However, we noted five of the 12 scheduled PGC meetings in 2019 were cancelled, weakening what could be a strong assurance process.

QBCC has adopted the *Project Development and Implementation Framework*, which is based on a recognised project and program methodology and includes processes to monitor and control strategic and high-risk/high-value projects. Until recently, the execution of these monitoring processes was sometimes compromised by a lack of resources and capability and/or by competing priorities. However, newly created roles will be responsible for the leadership, oversight, and delivery of QBCC's strategic projects.

QBCC is currently delivering seven strategic, high-risk/high-value projects with total approved budgets of \$16.1 million. It is important, given the significant change QBCC is experiencing, that the Project Management Office is adequately and appropriately resourced with the right people who are not reallocated to different tasks.



# Appendices

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<b>A.</b>	<b>Full responses from entities</b>	<b>28</b>
	Comments received from Commissioner, Queensland Building and Construction Commission	29
	Comments received from Director-General, Department of Housing and Public Works	36
<b>B.</b>	<b>Audit objectives and methods</b>	<b>37</b>
	Performance engagement	37
	Audit objective and criteria	37
<b>C.</b>	<b>QBCC complaints management process</b>	<b>39</b>



# A. Full responses from entities

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As mandated in Section 64 of the *Auditor-General Act 2009*, the Queensland Audit Office gave a copy of this report with a request for comments to the Queensland Building and Construction Commission. We also provided a copy to the Department of Housing and Public Works for its information.

The head of these agencies are responsible for the accuracy, fairness and balance of their comments.

This appendix contains their detailed responses to our audit recommendations.



## Comments received from Commissioner, Queensland Building and Construction Commission



Contact: Brett Bassett  
Office: Brisbane  
Telephone: 139 3333  
Fax: 3225 2995

11 June 2020

Mr Brendan Worrell  
Auditor-General  
Queensland Audit Office  
PO Box 15396  
CITY EAST QLD 4002

Dear Mr Worrell,

**RE: PERFORMANCE AUDIT ON LICENSING BUILDERS AND BUILDING TRADES**

Thank you for your letter dated 22 May 2020 regarding the proposed report to Parliament and the recommendations made as an outcome of the recent performance audit.

I acknowledge the report's conclusions and wish to thank you for the recommendations made to improve in the areas of licensing, monitoring and enforcing compliance, providing education and support to licensees and consumers, and improvements to the way in which the QBCC manages and reports on performance.

The QBCC has commenced implementing the recommendations and we are very optimistic that these improvements will be delivered within the timeframes we have indicated in the attachment.

Thank you for the opportunity to provide our feedback and also please convey our thanks to your officers, who conducted the audit with the utmost professionalism. We look forward to assisting your officers again during the follow-up audit.

If you require any further information or assistance with this matter please contact me directly.

Yours sincerely,

**Brett Bassett**  
COMMISSIONER  
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

Enc.



## Responses to recommendations



### Queensland Building and Construction Commission

#### *Licensing builders and building trades*

Response to recommendations provided by the Commissioner, Queensland Building and Construction Commission (QBCC) on 11 June 2020.

Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and year)	Additional comments
<b>Compliance and enforcement</b>			
1. allocates enough resources to finalise and implement the steps needed to become an insights-driven regulator to enable it to prioritise regulatory effort where and when it is needed, including: <ul style="list-style-type: none"> <li>identifying areas of greatest risk and potential harm</li> <li>focusing on high-value, high-complexity tasks (Chapter 5)</li> </ul>	Agree	Q2 2021 (April-June)	<p>Phase 1 of the QBCC's Insights Driven Regulator (IDR) project will be completed by 30 June 2020.</p> <p>Following recent Board endorsement of the Regulatory Strategy, the IDR capability will continue to support the rollout of a targeted compliance program over the next 4 years, providing QBCC officers with insights based on real-time data to make better informed, high-value compliance and enforcement decisions, which are often difficult due to the high-complexity of the issues. This will ensure focus is better directed to the areas of greatest risk and potential harm.</p> <p>To ensure there is sufficient ongoing resources allocated, next steps include undertaking a workforce capability analysis across the QBCC, to identify what is required to support the uplift in both insights capability and capacity, with sufficient levels of digitally-literate FTE who are capable of utilising data meaningfully in the application of business intelligence, machine learning and cognitive automation techniques.</p> <p>It is envisaged this workforce strategy will be completed by 31 December 2020 and budget and resource allocation will commence from 1 July 2021.</p>



Recommendation	Agree/ Disagree	Timeframe for Implementation (Quarter and year)	Additional comments
<b>Licensing</b>			
2. reduces the risk of unauthorised system changes or fraud, by: <ul style="list-style-type: none"> <li>implementing a systematic process to remove and review the BUILD licence system access for staff who return to their substantive position once temporary roles are over (Chapter 4)</li> <li>regularly reviewing audit log reports to ensure no unauthorised changes are made to BUILD data (Chapter 4)</li> </ul>	Agree	Q3 2020 (July-September)	The QBCC is strengthening processes to: <ul style="list-style-type: none"> <li>review and remove access to the BUILD licensing system when temporary staff return to their substantive roles within the QBCC; and</li> <li>regularly review audit log reports to ensure no unauthorised changes are made to BUILD data.</li> </ul>
3. implements recommendation 4 of the 2019 Special Joint Taskforce report that requires licence applicants to provide certified proof of identity photo identification (Chapter 4)	Agree	Q4 2020 (October- December)	Work has commenced to determine the requirements to integrate the new initiative of photo identification for new licence applications, which will be implemented as an activity in the FY 2020/2021 Operational Plan and delivered by 31 December 2020.
4. allocates and commits enough resources, with the required capability and skill, to implement its internal project to address the issue of disparate information technology systems (Chapter 4)	Agree	Q3 2020 (July - September)	A business case was approved in 2017 and the subsequent annual tranche project documents have been reviewed and remain materially correct. These include works that would consolidate the user experience for the information systems being subject to this recommendation. Updated estimates including provision for new groups in the QBCC have been completed. This project will be submitted for funding consideration for the FY 2020/2021. A revised Information Services Roadmap will be developed and approved by 30 September 2020. This will enhance the understanding of what IT systems need to be enhanced; the resources and budget required; and the overarching impact on supporting the organisation.

Recommendation	Agree/ Disagree	Timeframe for Implementation (Quarter and year)	Additional comments
5. ensures the Quality Assurance Framework and program of quality assurance reviews are implemented across all business units covered by the framework (Chapter 4)	Agree	Q3 2020 (July-September)	From 1 July 2020 the Commissioner will direct that every SLT member commits and reports on a monthly basis on the application and implementation of the QA Framework
6. reviews and updates licence assessment training and support for staff, by: <ul style="list-style-type: none"> <li>reviewing procedural manuals and supporting tools to ensure they are up to date.</li> <li>formalising the training program, including setting learning objectives, to ensure all staff receive consistent and relevant training (Chapter 4)</li> </ul>	Agree	Q4 2020 (September – December)	Processes are established and being implemented for: <ul style="list-style-type: none"> <li>reviewing the Licensing Services procedure manual on an ongoing basis (integrating governance controls showing version date and numbering on the manual as evidence of regular updates). The Future of Work project is specifically supporting the review of all manuals and this work will be completed by October 2020.</li> <li>maintaining regular liaison with the QBCC's Learning &amp; Development (L&amp;D) Team to ensure all staff receive consistent and relevant training in the procedures, including revisions to the Licensing Services procedure manual. The L&amp;D system will record evidence of each staff member having undergone training.</li> </ul>

Recommendation	Agree/ Disagree	Timeframe for Implementation (Quarter and year)	Additional comments
<b>Education and support</b>			
7. finalises and implements the 2019–20 Customer and Communications Operational Plan and the supporting education and communication calendar. This should include allocating enough resources to deliver the program of activities (Chapter 6)	Agree	Q2 2020 (April-June)	<p>The 2019–20 Customer and Communications Operational Plan was finalised and implemented with quarterly reporting as an ongoing management control.</p> <p>The Education and Communication Calendar will be developed as a part of the Communications and Engagement Strategy by 30 June 2020. This supports the Regulatory Strategy and organisational needs.</p> <p>Reporting and evaluation of the success of each campaign will be conducted after the campaign is completed. An annual review of completed calendar activities will be conducted at the end of each financial year.</p>
8. considers ways to assess and report on the quality and effectiveness of support, education, and advice provided to licensees and consumers to inform continual improvement (Chapter 6)	Agree	Q2 2021 (April-June)	<p>The QBCC will consider customer feedback channels to assess and report on quality and effectiveness of education and advisory services for licensees and consumers, by 30 June 2020.</p> <p>This data will be used to enable continual improvement and quarterly reporting. Market research will be considered where it provides value for money.</p> <p>As part of the QBCC's Integrated Business Planning process, management will be required to assess and report on customer and communications performance by utilising the outcomes and metrics as documented in the Communications &amp; Engagement Specific Purpose Plan. The results of this will inform the QBCC's continuous improvement intent and transformation agenda.</p>

Recommendation	Agree/ Disagree	Timeframe for Implementation (Quarter and year)	Additional comments
<b>Managing and reporting performance</b>			
9. establishes clear milestones and firm timeframes for implementing current and future planning activities, including: <ul style="list-style-type: none"> <li>• determining regulatory strategies, outcomes, and goals</li> <li>• undertaking and finalising corporate, special purpose, and operational planning, including budgeting, and resource planning and utilisation (Chapter 7)</li> </ul>	Agree	Q2 2020 (April-June)	The QAO final report acknowledges the various frameworks which have recently been introduced and being implemented, to ensure current and future planning, budgeting and resource allocation activities are undertaken within sufficient timeframes, to enable plans to be implemented from 1 July each year.  Evidence of ongoing commitment to these undertakings will be available for review by the QAO, by 1 July 2020, by the production of a full suite of strategic, corporate, special purpose, program/project portfolio and operational plans, with associated budgets and resource allocations.



Recommendation	Agree/ Disagree	Timeframe for Implementation (Quarter and year)	Additional comments
<p>10. develops and implements further elements of its performance management framework to improve accountability and adequately measure and report on its efficiency and effectiveness, including:</p> <ul style="list-style-type: none"> <li>• using the activity-based costings developed to implement an internal costing framework, so that consistent, reliable, and timely cost information is available on its resources and service activities</li> <li>• identifying clear service outcomes and measures to track the status and effectiveness of those goals, and management-level efficiency indicators to monitor and report on its operations and services</li> <li>• having clear accountabilities for all senior officers (Chapter 7)</li> </ul>	Agree	Q4 2020 (September- December)	<p>The QBCC is well-advanced with implementing further elements of its performance management framework. Performance reporting of clearly identified service outcomes and development of individual plans for all senior officers to drive accountability are on track, to enable the delivery of clear and transparent reporting for the period ending 31 December 2020. These individual plans will be aligned and cascade from a revised Corporate Plan and the subsequent Operational Plans by division and the Specific Purpose Plans by function.</p> <p>While the QBCC is currently reporting on metrics for the Commissioner utilising a simple dashboard, the QBCC is working towards delivering on a more sophisticated suite of performance reports in a visualisation tool, to enable senior management to monitor efficiency indicators and track the status and effectiveness of goals. The new tool is on track to be implemented by 31 December 2020. The QBCC will utilise this functionality to further enhance performance reporting thereafter.</p> <p>The QBCC will also finalise a review of the activity-based costing model to ensure it is in line with the organisation as it sits now, compared to when it was first implemented. This review will be completed by 31 December 2020.</p>
<p>11. develops the evaluation skills, capability, and processes needed for the formal assessment of the appropriateness, relevancy, process, effectiveness and/or efficiency of a program, service, initiative, or strategy (Chapter 7).</p>	Agree	Q2 2021 (April-June)	<p>A function providing the evaluation skills, capability and processes will be embedded within the new Strategy and Transformation divisional structure of the QBCC.</p>

## Comments received from Director-General, Department of Housing and Public Works



Department of  
**Housing and Public Works**

Our Ref: HPW01275-2020  
Your Ref: 9171P

- 9 JUN 2020

Mr Brendan Worrall  
Auditor-General  
Queensland Audit Office  
Level 14, 53 Albert Street  
BRISBANE QLD 4002

Dear Mr Worrall *Brendan*

Thank you for your letter of 22 May 2020 regarding the performance audit on licensing builders and building trades.

I acknowledge the objective of this audit is to assess how effectively the Queensland Building and Construction Commission (QBCC) regulates the building industry by issuing and managing licences in a fair and balanced way.

Thank you for providing the draft in-confidence report and proposed 11 recommendations that aim to help the QBCC become a stronger and more effective regulator. Thank you also for your advice regarding the current timeframes for finalising and tabling the report.

The Department of Housing and Public Works (DHPW) notes the draft findings and recommendations in the report and will, where appropriate, assist the QBCC to address identified issues.

Should you need to contact an officer in relation to this matter, Dr Michelle Hill, Acting Director, Building Legislation and Policy of DHPW can be contacted on or  
email

Yours sincerely

A handwritten signature in blue ink that reads 'Liza Carroll'.

Liza Carroll  
**Director-General**

Level 31 1 William Street  
Brisbane Queensland  
GPO Box 2457 Brisbane  
Queensland 4001 Australia

Telephone +617 3008 2934  
Website [www.hpw.qld.gov.au](http://www.hpw.qld.gov.au)

## B. Audit objectives and methods

### Performance engagement

This audit has been performed in accordance with the Standard on Assurance Engagements ASAE 3500 *Performance Engagements*, issued by the Auditing and Assurance Standards Board. This standard establishes mandatory requirements, and provides explanatory guidance, for undertaking and reporting on performance engagements.

### Audit objective and criteria

The objective of the audit was to assess how effectively the Queensland Building and Construction Commission (QBCC) regulates the building industry by issuing and managing licences in a fair and balanced way.

We planned and designed this audit to provide reasonable assurance about QBCC's performance against the identified criteria. The audit addressed the primary objective through the criteria and specific criteria set out in Figure B1.

**Figure B1**  
**Audit scope**

Criteria	Specific criteria
1.1 QBCC maintains proper standards and processes to ensure only appropriately licensed operators work in the industry.	1.1.1 QBCC has effective processes to grant and renew licences to individuals and companies who satisfy the relevant requirements for a licence.
	1.1.2 QBCC identifies and acts on individuals and companies carrying out or offering to carry out building work without holding the appropriate licence.
	1.1.3 QBCC monitors ongoing compliance with licence requirements.
1.2 QBCC provides appropriate support, education, and advice about maintaining industry standards to those undertaking building work and to consumers.	1.2.1 QBCC educates and advises licensees about industry standards and expectations in a timely and accurate manner.
	1.2.2 QBCC provides timely and accurate advice to consumers about their rights and responsibilities when purchasing building work.
1.3 QBCC effectively regulates domestic building contracts to achieve a reasonable balance between the interests of building contractors and consumers.	1.3.1 QBCC proactively identifies potential issues through monitoring, audit programs, and inspections.
	1.3.2 QBCC investigates and manages complaints and disputes in a timely, fair, and balanced way.
	1.3.3 QBCC takes appropriate actions against parties who breach their obligations.

Source: Queensland Audit Office.

Our audit included regional visits to Rockhampton and Townsville.

## Scope exclusions

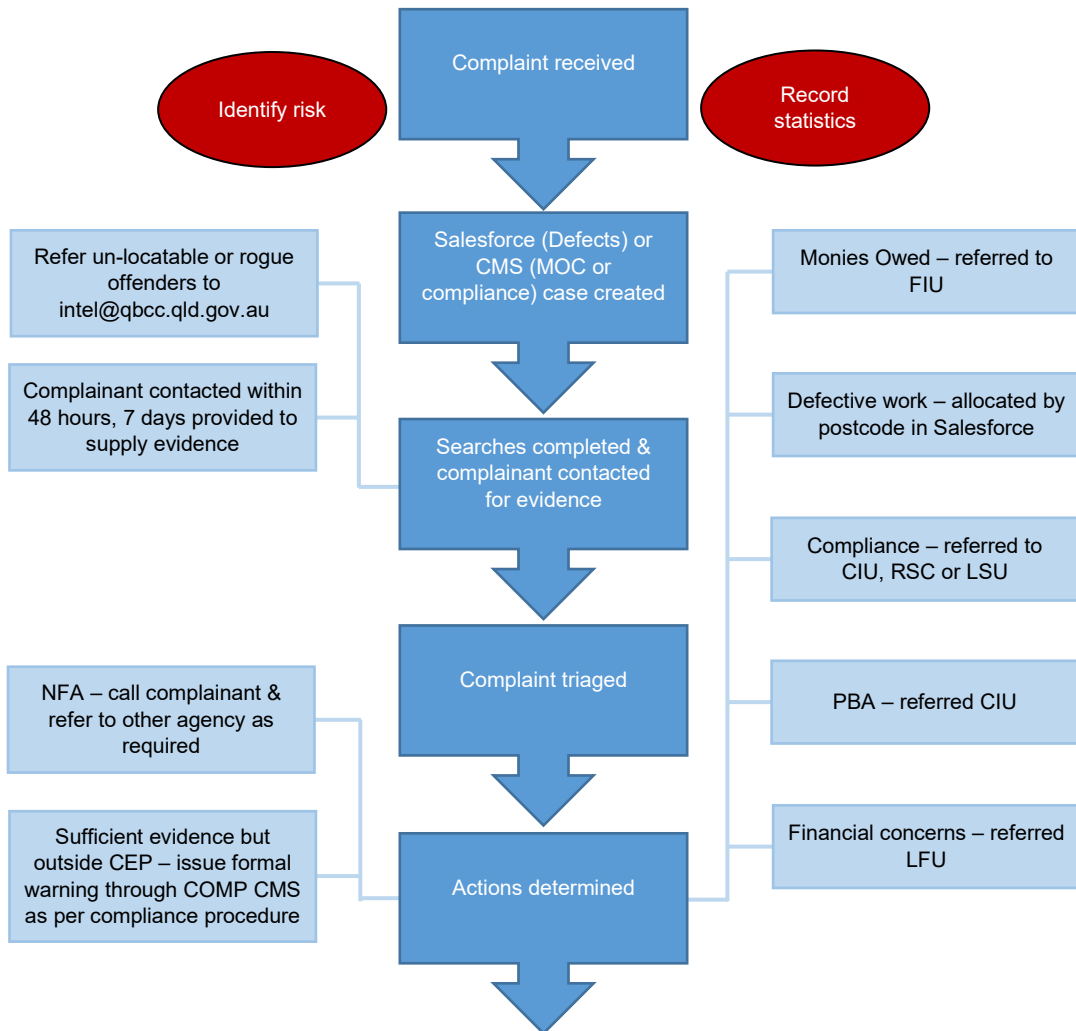
The audit did not examine the effectiveness of the:

- non-conforming building products program
- Home Warranty Insurance Scheme.





# C. QBCC complaints management process



Source: Queensland Building and Construction Commission.



## Audit and report cost

This audit and report cost \$375,000 to produce.

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# QBCC Future Blueprint

Foundational Program and Case for Investment

*October 2021*

## BACKGROUND

In late 2020 the QBC Board asked the QBCC Commissioner to develop a future vision for QBCC, known as the Future Blueprint. Its aim was to outline a transformation approach for the organisation and to address a number of internal and external challenges identified by the Board.

### Background

In 2020 the QBC Board asked the QBCC Commissioner to develop for approval a future vision for the QBCC. Known as the QBCC Future Blueprint, the purpose was to describe the future organisation that is required to meet its growing and changing regulatory roles and obligations.

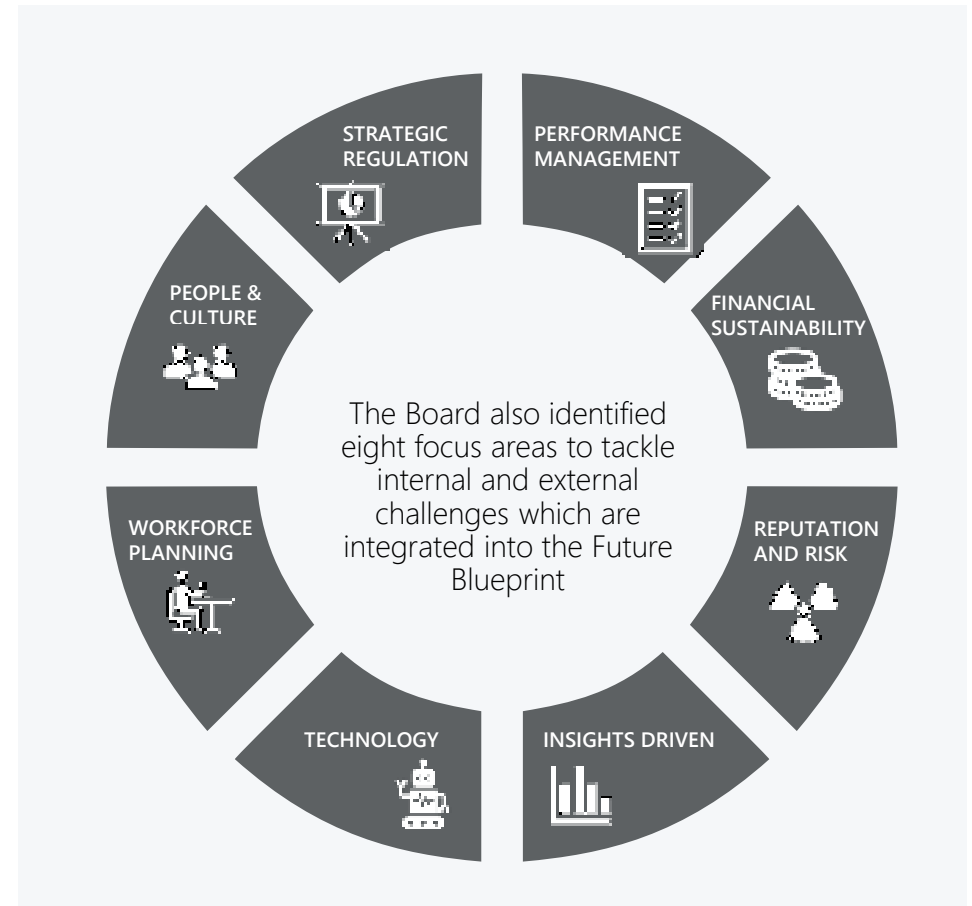
In doing so, it was recognised that a series of external and internal factors will continue to increase pressure on QBCC's ability to effectively perform both its current and future role as a critical industry regulator within the Queensland economy. Some of the key external and internal factors that are to be addressed by the Future Blueprint include:

#### External challenges:

- Increasing regulation demand
- Increasing compliance costs
- A shift towards expectations of a modern regulator
- Regulating evolving and innovative businesses

#### Internal challenges:

- Limitations of QBCC to routinely predict, detect and investigate non-compliance
- Financial sustainability and known financial constraints
- Tools, skills and capabilities required to meet future work types
- Limitations to the full potential of voluntary compliance such as inconsistent licensee/contractor journey
- Increasing need for enterprise driven digitisation
- Increasing customer expectations and expected improvements to customer experience



The range of challenges we face are clear and without change will impact our ability to effectively regulate the building and construction industry into the future

---

# FUTURE BLUEPRINT RECAP

In April 2021 the QBC Board approved the Future Blueprint's vision for QBCC. The Future Blueprint is based on achieving four key strategic outcomes for the organisation, while the transformation journey to deliver these is based on three horizons that increasingly improve the capability of QBCC.

## The Future Blueprint

The Future Blueprint's goal is to deliver:

**"A safer, stronger Queensland through proactive, risk focused and human centric regulation of the building and construction industry"**

The Future Blueprint is based on the four key strategic outcomes for the future organisation:

### 1. Risk Reduction across the Industry and its Ecosystem

Utilising insight and tactical knowledge to prioritise focus to reduce risk to the safety and growth of the industry across the social, societal and economic domains.

### 2. Compliance Made Easy

Increasing the voluntary compliance of the industry by improving the simplicity, accessibility and transparency of compliance processes to position QBCC as a trusted industry regulator.

### 3. Adaptable, Digital and Sustainable Organisation

Establishing a blueprint that aligns operations to stakeholder and employee needs, enabled by an adaptive and digitally fluent workforce, flexible workplace options, underpinned by analytics and an impact-oriented culture.

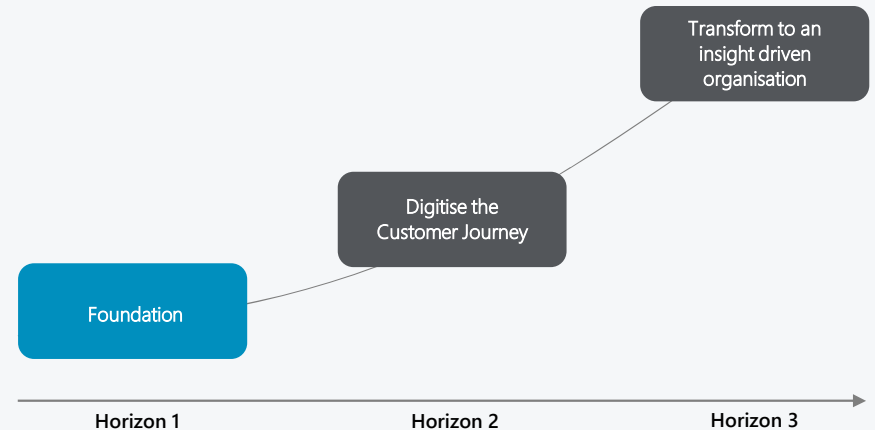
### 4. Human Centric Delivery

Building confidence, respect and a strong reputation with QBCC customers through transparent and seamless processes, delivered by an empathetic workforce that fosters strong relationships to drive optimal outcomes.

## The Future Blueprint approach

The approach to delivering the Future Blueprint is based upon:

1. Building **foundational capabilities** and prioritising work packages that provide QBCC with increased workforce and financial capacity
2. **Digitalising the customer interactions**, processes and channels to make compliance easier and more customer centric
3. Improving capabilities related to **proactive regulation** such as risk insights, proactive interventions and influencing industry



## IDENTIFYING THE FOUNDATION INITIATIVES

In approving the Future Blueprint, the QBC Board also requested further work be completed to identify what key foundational initiatives could be undertaken in the foundation phase to start the transformation, the improvements that could be expected and the investment required.

### Approval of Future Blueprint

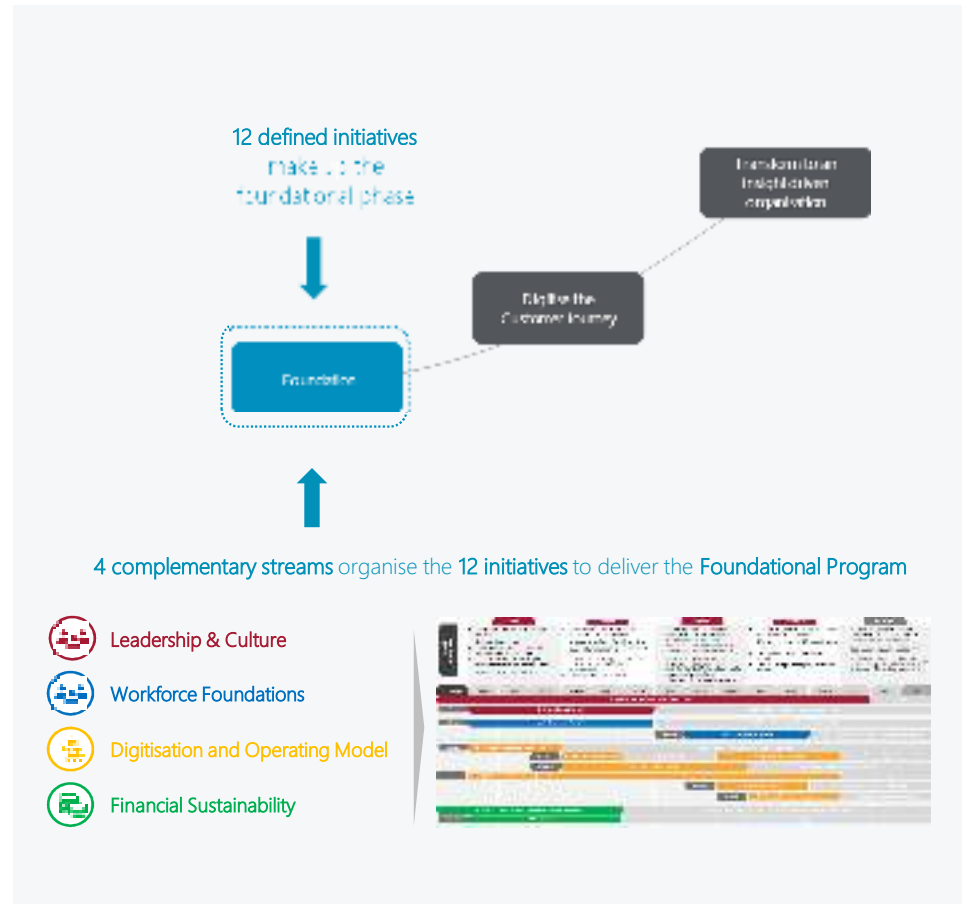
At the April 2021 Board meeting, the QBC Board approved the Future Blueprint, however also requested the following work be undertaken and presented for approval:

- **What are the projects and initiatives** that will form the **first horizon** (foundation) to deliver the vision?
- How will it be progressively delivered making sure **tangible impact** is made to the staff, industry and operations?
- What is the investment ask?

### The Future Blueprint Foundational Program

Consistent with the approach approved by the Board, a series of initiatives have been defined which together form the Foundational Program. They have been organised into four logical streams. The delivery of the foundational pieces of work will occur over the next 1 to 2 years.

Furthermore, as outlined in the Future Blueprint, based on the current capacity and capability of QBCC it has been assumed that to successfully and sustainably transform the organisation into its goal of being a proactive, risk focused and digitally enabled regulator will be a multi-year journey.





The foundation initiatives of the Future Blueprint are a combination of quick-wins (adding value early) and building block initiatives within the first 1 to 2 years; all with the aim of driving improvements in QBCC

---

# FOUNDATION INITIATIVES

The Senior Leadership Team developed and prioritised the foundation initiatives that deliver the first set of benefits to QBCC. Each initiative delivers either a quick win tangible impact to QBCC or the industry, mitigates an organisation risk or delivers an organisation capability that is critical to enable future transformation for the QBCC

	INITIATIVES	KEY OUTCOMES
Leadership and Culture	<b>Transformation Roadmap and Case for Investment<sup>^</sup></b>	<p>This high priority initiative will :</p> <ul style="list-style-type: none"> <li>• Deliver the Business Case and Roadmap for the QBCC transformation and progress towards future state objectives.</li> <li>• Equip and enhance QBCC's current strategy and transformation portfolio with foundational program management capabilities and capacity to deliver the transformation.</li> <li>• This program management function must interoperate with existing strategic projects including that of the Policy and Legislation team whereby changes to the Act and Regulations may be required or may have an impact on the proposed foundation initiatives.</li> </ul>
	Cultural Change Planning	<ul style="list-style-type: none"> <li>• This initiative will enhance QBCC's performance by identifying the culture to enable transformation and intentionally reshaping the culture to drive results.</li> <li>• People from all levels of the organisation will provide input to help understand the current culture, and with oversight of the Board contribute to the design and implementation of the future state culture (culture aspirations, roadmap, and change and communications campaign).</li> </ul>
Workforce Foundations	<b>Workforce of the Future<sup>^</sup></b>	<ul style="list-style-type: none"> <li>• This high priority initiative will enable leaders across QBCC to make long-term workforce investments to ensure the right people are in the right place, at the right time to deliver the strategic business outcomes. This will be achieved through the development of: <ul style="list-style-type: none"> <li>• An integrated workforce planning framework which outlines the foundations that enable strategic workforce planning. This will provide information that can be communicated to business leaders who will be involved in the process.</li> <li>• A strategic workforce plan, including identification of critical workforce segments and how the workforce mix may need to evolve to meet strategic objectives.</li> <li>• An operational workforce plan to support the business to deliver against immediate customer demand over the short to medium-term.</li> <li>• Delivered through a consultation approach that meets Industrial Relations obligations.</li> </ul> </li> </ul>
	Work & Workplace for the Future	<ul style="list-style-type: none"> <li>• As ways of working change and evolve, QBCC needs to develop an adaptable organisational design that enables QBCC to continue to effectively and efficiently service customers and the community while staying aligned with both the industry leading approach and the Future Blueprint. This initiative will deliver: <ul style="list-style-type: none"> <li>• Process and workflow maps from an organisational wide perspective.</li> <li>• Network and relationship maps detailing the informal ways work is performed.</li> <li>• Identification of organisational effectiveness priorities.</li> <li>• A top level organisational design (structure and roles).</li> <li>• Functional deep dives for selected priority areas including mapping detailed capability models and decision rights.</li> </ul> </li> </ul>
Financial Sustainability	<b>Medium Term Operating Plan – Toward Financial Sustainability<sup>^</sup></b>	<p>This high priority initiative, led by the Department of Energy and Public Works (EPW) with input from QBCC will develop an Operating Plan to support QBCC objectives to be financially sustainable into the future, and ensure that:</p> <ul style="list-style-type: none"> <li>• The State, industry and consumers have confidence the QBCC has the capacity and capability to effectively regulate Queensland's building and construction industry.</li> <li>• The QBC Board is confident it can meet its responsibilities.</li> <li>• The QBCC: <ul style="list-style-type: none"> <li>• is an agile and proactive regulator that can respond to emerging issues and implement reforms, as and when required</li> <li>• has exhausted all reasonable avenues (internal efficiencies) to give the government confidence that a revenue increase is needed to effectively regulate the industry</li> <li>• has developed a financial and operational evaluation strategy to ensure it maintains the capacity and capability to implement existing and future work.</li> </ul> </li> </ul>
	Benchmarking	<p>This initiative will develop a framework and a consistent approach for organisational performance measurement. It will deliver:</p> <ul style="list-style-type: none"> <li>• Detailed cost to serve calculations</li> <li>• Internal benchmarking metrics to be monitored (including calculations)</li> <li>• Baseline and target setting for transformation outcomes</li> <li>• Process defining how new metrics can be added and/or metrics can be modified.</li> </ul>

<sup>^</sup> Denotes high priority initiatives

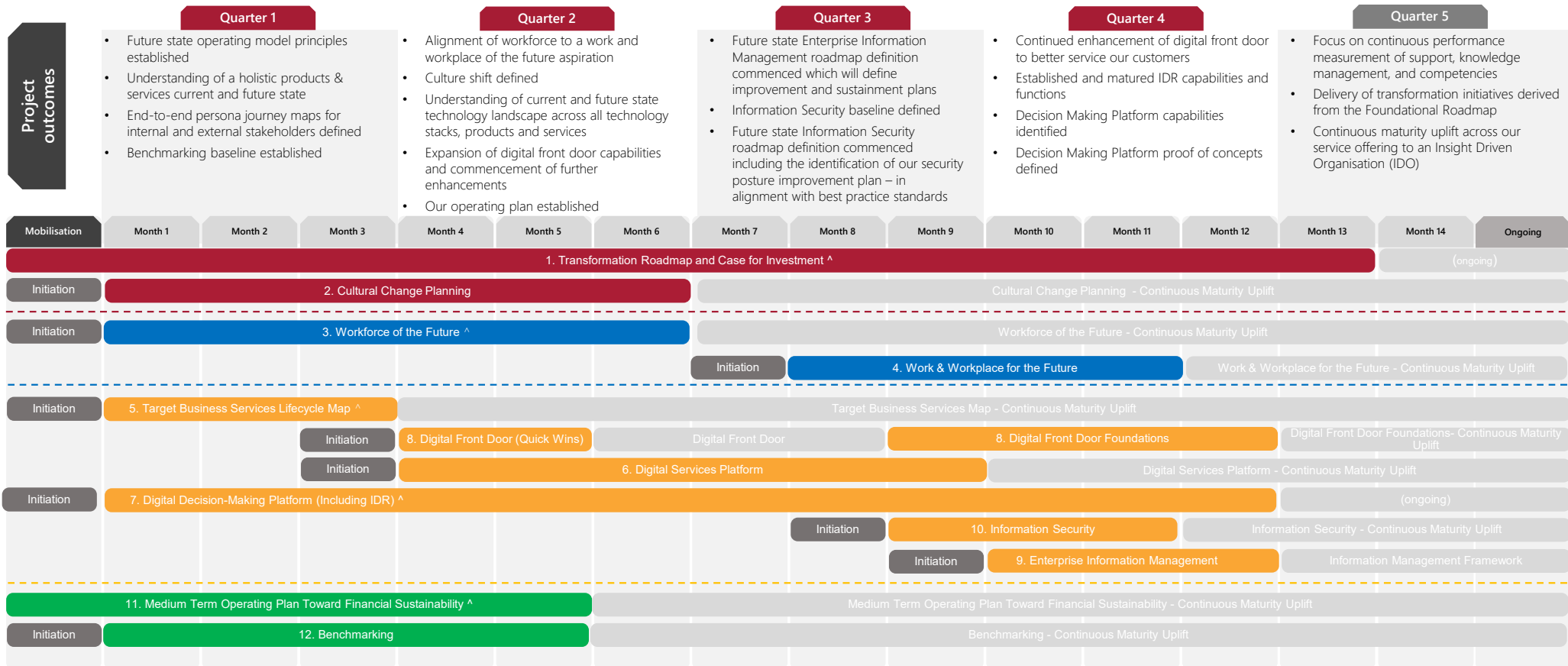
# FOUNDATION INITIATIVES

	INITIATIVES	KEY OUTCOMES
Digitisation and Operating Model	<b>Target Business Services Lifecycle Map<sup>^</sup></b>	<ul style="list-style-type: none"> <li>This high priority initiative will articulate the current and future state understanding of QBCC's business services lifecycles and how it can be enabled by people, process and technology capabilities.</li> <li>This will enable QBCC to obtain a comprehensive understanding of its stakeholders, personas, sub-personas and their respective journeys through the QBCC ecosystem.</li> </ul>
	Digital Services Platform	<ul style="list-style-type: none"> <li>This initiative will design and develop a comprehensive digital services platform model across all QBCC business functions and support services. This will position QBCC to leverage existing and future state digital platforms in becoming a more efficient and effective regulator.</li> <li>The digital services platform will act as a 'single source of truth' for the core information and business processes that are conducted within QBCC to provide services for its stakeholders. Areas defined in the scope include:               <ul style="list-style-type: none"> <li>Employee source of truth</li> <li>Financial management source of truth</li> <li>Client records source of truth</li> <li>Records/documents source of truth</li> <li>Case management source of truth</li> <li>Support (internal) services source of truth.</li> </ul> </li> </ul>
	<b>Digital Decision-Making Platform<sup>^</sup></b>	<ul style="list-style-type: none"> <li>Building on what has already been delivered through the Insights Driven Regulator project and various business intelligence and strategic planning activities, this initiative will:               <ul style="list-style-type: none"> <li>Enhance insights driven regulator capabilities to enable QBCC to leverage greater data-driven decision-making capabilities (e.g. empowered decision making leveraging data insights)</li> <li>Map existing capabilities that can be leveraged and enhanced to support data management objectives e.g. decision platform, data analytics capabilities</li> <li>Provide capacity and capability to consult and develop business use cases of which can be developed into decision making and data driven proof of concepts</li> <li>Align technology and workforce capabilities and develop a transition roadmap to support holistic insights driven organisational capabilities across QBCC including risk intelligence and proactive interventions.</li> </ul> </li> </ul>
	Digital Front Door Foundations and Quick Wins	<ul style="list-style-type: none"> <li>This initiative will design, develop and plan the capability for all QBCC stakeholders to initiate transactions and share information with QBCC via multiple integrated digital channels.</li> <li>'Adding value early' definition and execution to realise immediate benefits to initiate transactions and share information with/from external stakeholders and internal services.</li> <li>Clear understanding of internal process changes and regulatory compliance amendments required to inform the Digital Front Door transformation roadmap, integrating the use of artificial intelligence capabilities, robotics, enterprise online forms and business workflows.</li> <li>Defined Digital Front Door roadmap taking input from the digital services platform initiative including the need to progressively integrate systems and processes.</li> </ul>
	Enterprise Information Management	<ul style="list-style-type: none"> <li>QBCC is required to efficiently and effectively manage information assets to meet both internal and external information sharing and regulatory obligations.</li> <li>This initiative will define an Enterprise Information Management Framework which is applicable to QBCC's existing information assets, aligned to the Queensland Government Information Management Policy Framework and adaptable to align with the Future Blueprint.</li> <li>Through this initiative, QBCC will also define a transformation pathway to attain targeted Enterprise Information Management maturity</li> </ul>
	Information Security	<ul style="list-style-type: none"> <li>While QBCC is meeting its information security obligations, it needs to better understand what information security position and risk appetite should be taken to achieve its vision. This initiative will deliver:               <ul style="list-style-type: none"> <li>A current state of information security control features across QBCC's technology landscape and alignment to Queensland government guidelines</li> <li>Definition and agreement of information security risk appetite and current information/cybersecurity posture.</li> </ul> </li> </ul>

<sup>^</sup> Denotes high priority initiatives

# FOUNDATIONAL PROGRAM ROADMAP AND TIMELINE

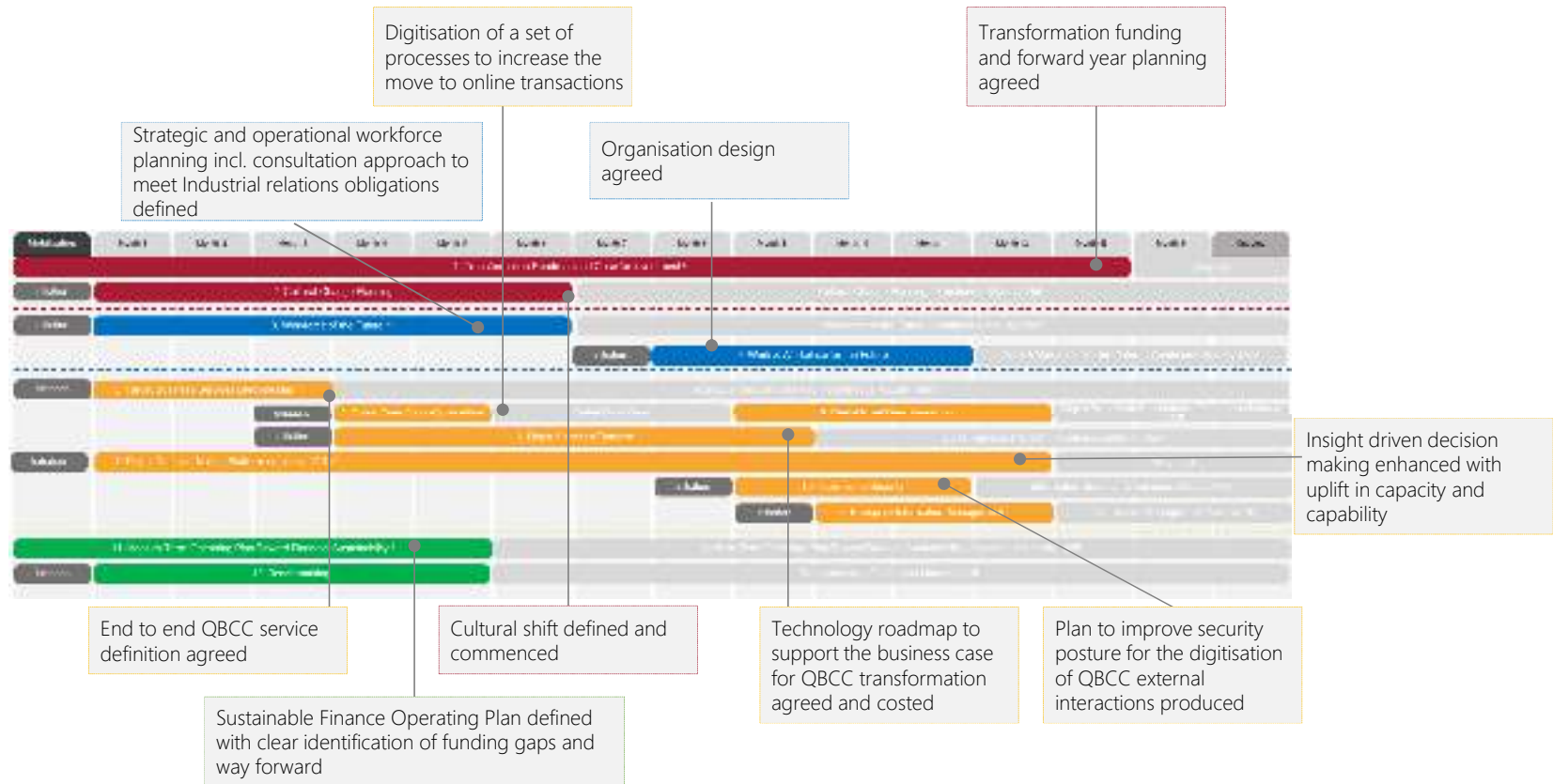
The 12 initiatives are expected to be delivered over a minimum of 13 months. As they are delivered, we will continuously uplift our enterprise maturity in readiness for subsequent transformation



^ Denotes high priority Initiatives

## KEY FOUNDATION IMPROVEMENTS OF NOTE

Across the 12 initiatives there are a number of key improvements to QBCC that will be achieved



## FOUNDATIONAL PROGRAM COSTS

After reallocation of existing internal budget QBCC requires **\$2.6m** in additional funding to deliver the roadmap over two financial years. The estimates account for the BAU, project and external effort required to support delivery of each initiative.

Funding	Estimates (\$m)
Additional funding request	\$2.60
BAU cost	\$2.40
Reallocated internal budget	\$2.50
<b>TOTAL</b>	<b>\$7.50</b>

Estimated Cost	Estimates (\$m)
Partner engagement cost	\$2.90
Internal project cost	\$2.20
BAU cost	\$2.40
<b>TOTAL</b>	<b>\$7.50</b>

COSTING ASSUMPTIONS
<p><b>Partner Engagement Costs</b></p> <ul style="list-style-type: none"> <li>External SMEs to provide industry expertise and capabilities to support the delivery of Foundational Initiatives</li> </ul>
<p><b>Internal Project Costs</b></p> <ul style="list-style-type: none"> <li>Costs associated with project funded roles (e.g. PMO) and roles where additional capacity or capability are required</li> <li>Internal project costs to be delivered by QBCC resources</li> <li>Funding for internal project costs may be allocated from existing estimates</li> </ul>
<p><b>Internal BAU Costs</b></p> <ul style="list-style-type: none"> <li>Staff costs associated with contributing to the Foundational Program initiatives as part of their day-to-day activities</li> <li>Assumes that existing BAU roles include capacity to deliver and contribute to Foundational Initiatives work</li> </ul>

Notes

*Funding estimates are best estimates only with a +/- 30% confidence and may require further review as the delivery progresses; Costing includes overheads, no additional contingency*

*The estimates numbers have been rounded in decimal, therefore the individual total may not add up to the total costs of initiatives*

*Costings are based on a 13-month timeline, with internal project cost resourcing shared across the initiatives.*

*Estimates for each initiative can be found in the Appendix*

Part of the required investment can be gathered through an internal reprioritisation of existing resources

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# PROGRAM GOVERNANCE APPROACH

The governance structure needs to be agile, lightweight and adaptable to change. Dependant on the size, scale and funding in addition to unforeseeable changes particularly with fluctuations in capacity and capability available within the organisation.

## FOUNDATIONAL ROADMAP GOVERNANCE GUIDING PRINCIPLES

- 1 Follow the Vision**
  - Make decisions in alignment with the Future Blueprint
- 2 Transparent Decision Making**
  - Make accountable and informed decisions through consultation
  - Technical and line-of-business consultation embedded through governance
- 3 Measurable Successes and Failures**
  - Utilise outcome-based performance metrics that can be identified, tracked and measured
- 4 Adaptable by Design**
  - Be adaptable by design, including the need for continuous micro changes
  - Enable and 'switch-off' governance bodies as required
- 5 Less is More**
  - Achieved balanced governance by using a simple but effective governance structure

## Agile, Lightweight and Adaptable Governance Structure



The governance structure will re-organise and adapt as required. Ensuring the delivery of program governance is always aligned to the Guiding Principles.

### Enterprise Portfolio Program Governance

- Alignment of the organisation to the Future Blueprint strategies
- Strategic prioritisation and decision making instigated by government mandates, regulatory compliance, legal obligations, industry changes and other enterprise-wide influences. Key decision-making components for the Foundational Program:
  - Scope, Time, Budget
  - Resource, Effort
  - Benefits Realisation
  - Enterprise Risks and Issues

### Foundational Roadmap Governance

- Alignment of programs and projects to deliver against the Foundational Roadmap objectives and outcomes
- Operational prioritisation and decision making instigated by competing priorities, re-alignment of direction, changes to planning, resources or budgets at program and project level
- Risk and issues management across interdependent streams and projects within the Foundational program
- Empowerment of decision-making authority/individuals to make firm and final decisions through consultation
- Technical and business design input to guide decision making across projects and streams



## DELIVERY APPROACH

The initiatives are designed to be delivered with hybrid teams bringing together QBCC subject matter experts, project management resources and delivery partners where required. Our success will also be underpinned by a program level change and communication strategy to ensure consistent messaging across QBCC.

### DELIVERY APPROACH

Multi-disciplinary hybrid teams for each initiative made of:

- Project management professionals
- QBCC Subject Matter Experts (as part of their current roles)
- External Partners

Supported by:

- Strong **governance principles** and instances to track progress
- Program and project **sponsors**
- A **program level change and communication strategy** to ensure regular and consistent messaging across the organisation

## Our Future Blueprint CHANGE MANAGEMENT STRATEGY – APPROACH



### Prepare for change

- Effective and active sponsors.
- Determining the type and size of change in the business.
- Identify key impacts and stakeholders, as well as the capacity and readiness for business change.
- Significant engagement from key stakeholders to develop and create change tools required to prepare staff and successfully rollout change
- Develop plans for change, training and communications activities, and establishing a guiding team to drive change.
- Coordinate change management for each approved initiative under the program.



### Manage change

- Implement change ensuring the change activities create the right conditions for change intervention.
- Change activities focus on engagement, communication, capability development and transition.
- Assess and monitor the readiness of the business and people for the change.
- Go-live elevated level of support to ensure seamless adoption (hypercare).
- Establish new behaviours as normal through reinforcement and demonstration.
- Undertake review and evaluation of implementation effectiveness.



### Reinforce change

- New ways of working are embedded.
- Ownership of the change by the business formally occurs from the project.
- Business takes ownership for collecting the longer-term benefits.
- Lessons learned are undertaken to inform future change.

It is important that we steer the program and govern it effectively to ensure that we are continuing to prioritise improvements that balance investment, risks, costs and trade-offs but are aligned to our long-term vision

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## FUTURE BLUEPRINT RECAP

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### Board request

1. Provide feedback on the Foundational Program and Case for Investment
2. Endorse the Foundational Program and additional \$2.6m investment request

### Proposed immediate next steps for approval

1. Finance to finalise budget re-prioritisation and confirm internal funding sources
2. Mobilise teams upon endorsement
3. Establish regular Board update governance

# Appendix

Foundation initiatives | Cost estimates

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## FOUNDATION INITIATIVE COSTS

After reallocation of existing internal budget QBCC requires \$2.6m in additional funding to deliver the roadmap over two financial years. The estimates account for the BAU, project and external effort required to support delivery of each initiative.

#	CIDs	Internal Investments		External Investments	Total
		Internal BAU Costs (\$'000)	Internal Project Costs (\$'000)	Partners Cost (\$'000)	CID Cost (\$'000)
1	Transformation Roadmap and Case for Change	\$548	\$801	\$620	\$1,969
2	Cultural Change Planning	\$181	\$46	\$240	\$467
3	Workforce of the Future	\$166	\$46	\$240	\$452
4	Work and Workplace for the Future	\$113	\$33	\$120	\$266
5	Target Business Services Lifecycle Map	\$102	\$142	\$250	\$494
6	Digital Services Platform	\$162	\$263	\$240	\$666
7	Digital Decision-Making Platform	\$432	\$391	\$777	\$1,600
8	Digital Front Door Foundations and Quick Wins	\$309	\$248	\$240	\$796
9	Enterprise Information Management	\$132	\$59	\$90	\$282
10	Information Security	\$34	\$58	\$90	\$182
11	Medium Term Operating Plan - Toward Financial Sustainability	\$26	\$43	-	\$69
12	Benchmarking	\$161	\$56	-	\$216
	Total	\$ 2,366	\$ 2,186	\$ 2,907	\$ 7,459

### COSTING ASSUMPTIONS

#### Partner Engagement Costs

- External SMEs to provide industry expertise and capabilities to support the delivery of Foundational Initiatives

#### Internal Project Costs

- Costs associated with project funded roles (e.g. PMO) and roles where additional capacity or capability are required
- Internal project costs to be delivered by QBCC resources
- Funding for internal project costs may be allocated from existing estimates

#### Internal BAU Costs

- Staff costs associated with contributing to the Foundational Program initiatives as part of their day-to-day activities
- Assumes that existing BAU roles include capacity to deliver and contribute to Foundational Initiatives work

Funding	Estimates (\$m)
Additional funding request	\$2.60
BAU cost	\$2.40
Reallocated internal budget	\$2.50
<b>TOTAL</b>	<b>\$7.50</b>

Estimated Cost	Estimates (\$m)
Partner engagement cost	\$2.90
Internal project cost	\$2.20
BAU cost	\$2.40
<b>TOTAL</b>	<b>\$7.50</b>

Notes: Funding estimates are best-estimates only with a +/- 30% confidence and may require further review as the delivery progresses; Costing includes overheads, no additional contingency; Costings are based on a 13-month timeline, with internal project cost resourcing shared across the initiatives.

Need more information?

Visit [qbcc.qld.gov.au](http://qbcc.qld.gov.au)



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West End QLD 4101  
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# QBCC FUTURE BLUEPRINT Foundational Program

**Future Blueprint Foundational Program** is a program of work to embed better business processes and practice within the organisation to establish a solid foundation prior to embarking on a transformation program that will assist the QBCC to deliver a safer, stronger Queensland through proactive, risk-focused and human centric regulation of the building and construction industry.

## The QBCC has a clear vision

- + to act as a proactive, risk-focused and digitally-enabled regulator,
- + so that we can focus on activities and opportunities that will have the greatest impact for the industry, consumers and Queensland,
- + while we balance shifting and competing expectations from the industry, our regulatory framework and our broader stakeholders.

## 4 strategies to achieve the vision



### Risk Reduction Across the Industry and its Ecosystem

*"We make it difficult for 'bad' things to happen"*



### Compliance Made Easy

*"We make it easy for 'good' things to happen"*



### Adaptable, Digital and Sustainable Organisation

*"We are enabled to make the 'good' things happen and reduce the bad"*



### Human Centric Delivery

*"We acknowledge what is important to those in the construction journey, adapting how we engage"*

## 4 Building Blocks of the Foundational Program



### Digitisation & Operating Model

*"Empowered and more efficient workforce, enabled through technology"*



### Financial Sustainability

*"QBCC will strive to be financially independent and sustainable in regulating the industry"*



### Leadership & Culture

*"Leaders that are resilient and committed to driving change. Performance driven culture"*



### Workforce Foundations

*"Establish workforce foundations to support an effective workforce strategy"*

## 12 Foundational Program Initiatives

Target Business Services Map  
Digital Front Door Foundation & Quick Wins  
Digital Services Platform  
Digital Decision-Making Platform  
Information Security  
Enterprise Information Management

Medium Term Operating Plan 3-5 Years  
Benchmarking

Foundation and Transformation  
Cultural Change Planning

Workforce of the Future  
Work and Workplace for the Future

## Foundational Program Outcomes

Clear accountability of end-to-end technology platforms and processes  
Defined & achievable pathway to further digitise QBCC technology offerings  
Incorporation and readiness to deliver compliance by design  
Insight driven decision-making enhanced with uplift in capacity and capability

Data readiness and approach to measure and track performance improvements across QBCC  
Defined framework for QBCC to work towards financial sustainability over the next 3 - 5 years

Senior leadership alignment and role modelling  
Improved staff engagement and positivity  
Staff are on board the journey with a common objective  
Established program delivery capabilities to lead the organisation through to transformation

Improved understanding of workforce to make informed long-term and financial decisions  
Organisation design which is enduring, and adaptable to constant industry and organisational changes

\$

2.6 M<sup>1</sup>



~13 months<sup>2</sup>

The Future Blueprint was produced in response to a request from the QBC Board to develop a future vision for the QBCC, outline a transformation approach for the organisation and address identified internal and external challenges. The Foundational Program includes a combination of quick-wins and business improvement initiatives that need to be in place prior to embarking on a transformation program to achieve the vision.

<sup>1</sup>\$2.6 million is the additional request, with total cost estimated as \$7.5 million. The different is made up of reallocated funds (\$2.5m) and Business As Usual contribution (\$2.4m)

<sup>2</sup>Excludes time for stand up of delivery mechanisms and close of projects



QUEENSLAND BUILDING AND  
CONSTRUCTION COMMISSION

# MINIMUM FINANCIAL REQUIREMENTS (ANNUAL REPORTING) REGULATORY GUIDE

For the 31 December 2019 Annual Reporting Day





# TABLE OF CONTENTS

- MINIMUM FINANCIAL REQUIREMENTS (ANNUAL REPORTING) REGULATORY GUIDE .... 1
  - Purpose of the Regulatory Guide.....3
  - Annual Reporting Obligations .....3
  - Minimum Financial Requirements (MFR) Obligations.....3
  - Assessment of Risk.....4
  - Regulatory Approach - categories SC1, SC2 and categories 1 to 3.....4
  - Regulatory Approach - categories 4 to 7 .....6
  - Other Matters.....6
  - Document Control .....7

## PURPOSE OF THE REGULATORY GUIDE

The Queensland Building and Construction Commission (“**QBCC**”) is a statutory body established under the *Queensland Building and Construction Commission Act 1991* (Qld) (“**QBCC Act**”).

The *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (“**MFR Regulation**”) is made pursuant to the QBCC Act.

The MFR Regulation sets out the minimum financial requirements (“**MFR**”) a contractor licensee must meet for the allowable turnover and the annual and other financial reporting requirements for contractor licensees.

This regulatory guide has been produced to inform QBCC licensees with a contractor-grade licence about the QBCC’s decision-making process in relation to compliance and enforcement of the obligations under the MFR Regulation.

This regulatory guide governs the approach by the QBCC to annual reporting for the 31 December 2019 annual reporting day.

The QBCC’s ‘Guide to Annual Financial Reporting’ available on the QBCC website and at [qbcc.build/annualreporting](https://qbcc.build/annualreporting) has been prepared to assist QBCC licensees understand their obligations in relation to MFR and annual reporting.

This document contains general statements based on typical circumstances. Where exceptional circumstances exist the QBCC may depart from its usual process.

## ANNUAL REPORTING OBLIGATIONS

Persons holding a contractor-grade licence under the QBCC Act must provide financial information every year to the QBCC demonstrating the licensee meets the MFR.

The QBCC has prepared a ‘Guide to Annual Financial Reporting’ explaining key terms and setting out information to assist licensees understand annual reporting.

## MINIMUM FINANCIAL REQUIREMENTS (MFR) OBLIGATIONS

Pursuant to s. 35(3)(a) of the QBCC Act, it is a condition of a contractor’s licence that the licensee’s financial circumstances must at all times satisfy the minimum financial requirements for the licence.

These minimum financial requirements (MFR) are set out in the MFR Regulation.

The first reporting year under the MFR Regulation is 2019. The ‘annual reporting day’ for all licensees was set at 31 December 2019. Licensees may change their annual reporting day on application to the QBCC for the 2020 calendar year.

## ASSESSMENT OF RISK

The QBCC considers licensees in categories SC1 and SC2, and categories 1 - 3 (having a maximum allowable turnover from \$1 to \$30M) to have less potential to cause catastrophic harm to the industry through financial failure. Licensees in these categories are likely to undertake projects with fewer subcontractors than those with greater turnover.

Licensees in categories 4-7 are considered to have the potential to cause greater harm to the industry should financial failure occur due to their size and likelihood of working on larger projects with more subcontractors.

From a regulatory perspective, licensees will be dealt in two groups, namely:

- SC1, SC2, categories 1 to 3; and
- Categories 4 to 7.

For the reasons set out above, the QBCC will take a facilitative approach to licensees in categories SC1 – category 3, allowing these licensees until 31 December 2020 to meet the required working capital for their licence class before any regulatory action is taken. This is subject to those licensees cooperating with the QBCC, and not having outstanding monies owing to subcontractors or other serious breaches of the law.

The QBCC will take a more strict regulatory approach for licensees in categories 4-7, detailed in this document.

## REGULATORY APPROACH – CATEGORIES SC1, SC2 AND CATEGORIES 1 TO 3

This section of the Regulatory Guide sets out the QBCC’s compliance and enforcement processes for contractor-grade licensees in categories SC1, SC2 and categories 1 to 3 in relation to the 2019 annual reporting day.

### **Failure to lodge financial information by the ‘annual reporting day’**

If licensees in these categories fail to provide any financial information<sup>1</sup> pursuant to the MFR Regulation by the annual reporting day, the QBCC will generally adopt the following cascading actions, in order:

- The QBCC will make at least two attempts to contact the licensee after the annual reporting day has passed. Such contact may include telephone or email;
- The QBCC will notify the licensee of a proposed condition on its licence<sup>2</sup> that no new contracts can be entered into until annual reporting is lodged<sup>3</sup>. However, such notification will not be given prior to 1 April 2020;
- The QBCC will impose the licence condition and give notice to show cause why the licence should not be suspended<sup>4</sup>;
- The licence will be suspended and a notice to show cause why the licence should not be cancelled will be given<sup>5</sup>;
- The licence will be cancelled.

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<sup>1</sup> If a licensee makes an attempt to lodge some information but it is not all that is required, this will not be considered a failure to lodge financial information for licensees in categories SC1 – category 3 for the 2019 annual reporting day.

<sup>2</sup> See s. 36(1) of the QBCC Act

<sup>3</sup> There is no requirement in the licence condition for the annual reporting to meet the MFR for these licensees.

<sup>4</sup> See s.49 and s. 48(1)(h) of the QBCC Act

<sup>5</sup> As above

## Failure to comply with MFR

The QBCC will assess a licensee's financial information to determine compliance with the MFR Regulation.

For **SC1, SC2 and category 1 to 3** licensees who do not comply with the MFR Regulation, the QBCC will take an educative approach, provided the licensee is responsive to reasonable requests from the QBCC and does not have unpaid debts to subcontractors or other serious breaches of law<sup>6</sup>.

The QBCC will contact these licensees to offer assistance and guidance as to how they can meet the MFR.

For the 2019 annual reporting day, these licensees will be given 12 months, until 31 December 2020, to strengthen their businesses and meet the MFR.

Where SC1 – category 3 licensees fail to comply with MFR after 31 December 2020, consideration will be given to taking regulatory action such as the following:

- Issue a notice of intention to suspend the licence allowing at least 21 days for the licensee to make written representations to the QBCC on the matter<sup>7</sup>;
- If the response to the show cause notice does not demonstrate compliance with the MFR Regulation, but does demonstrate a genuine attempt to meet the MFR, the QBCC may extend time to respond to the notice and/or impose licence conditions on the licensee;

- If the response to the show cause notice does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will suspend the licence and issue a notice of intention to cancel the licence;
- If the response to the show cause notice regarding cancellation does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will cancel the licence.

The QBCC will retain discretion in appropriate cases to impose a licence condition prohibiting a licensee from engaging in new work until it can demonstrate to the QBCC it meets MFR, rather than suspend the licence<sup>8</sup>.

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<sup>6</sup> For example, significant safety breaches or failure to comply with directions to rectify issued by the QBCC.

<sup>7</sup> As above

<sup>8</sup> See s.36(1) of the QBCC Act

## REGULATORY APPROACH – CATEGORIES 4 TO 7

This section of the Regulatory Guide sets out the QBCC's compliance and enforcement processes for contractor-grade licensees in categories 4 to 7 in relation to the 2019 annual reporting day.

### **Failure to lodge financial information by the 'annual reporting day'**

If licensees in these categories fail to provide financial information as required by s. 9A of the MFR Regulation by the annual reporting day, the QBCC will generally adopt the following cascading actions, in order:

- The QBCC will make at least two attempts to contact the licensee after the annual reporting day has passed. Such contact may include telephone or email;
- The QBCC will notify the licensee of a proposed condition on its licence<sup>9</sup> that no new contracts can be entered into until the annual report is lodged demonstrating the MFR is met;
- The QBCC will impose the licence condition and give notice to show cause why the licence should not be suspended<sup>10</sup>;
- The licence will be suspended and a notice to show cause why the licence should not be cancelled will be given<sup>11</sup>;
- The licence will be cancelled.

### **Failure to comply with MFR**

The QBCC will assess a licensee's financial information to determine compliance with the MFR Regulation.

For category 4-7 licensees where the QBCC has determined failure to meet the requirements of the MFR Regulation, the QBCC will adopt the following cascading process:

- The QBCC will issue a notice of intention to suspend the licence allowing at least 21 days for the licensee to make written representations to the QBCC on the matter;<sup>12</sup>
- If the response to the show cause notice does not demonstrate compliance with the MFR Regulation, but does demonstrate a genuine attempt to meet the MFR, the QBCC may extend time to respond to the notice and/or impose licence conditions on the licensee;
- If the response to the show cause notice does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will suspend the licence and issue a notice of intention to cancel the licence;
- If the response to the show cause notice regarding cancellation does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will cancel the licence.

## OTHER MATTERS

### **Penalties**

Under the MFR Regulation there are various offences with penalties attached, including failing to provide financial information by the annual reporting day<sup>13</sup> and failing to notify the QBCC of certain decreases in net tangible assets<sup>14</sup>. The QBCC will consider imposing a penalty where warranted.

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<sup>9</sup> See s. 36(1) of the QBCC Act

<sup>10</sup> See s.49 and s. 48(1)(h) of the QBCC Act

<sup>11</sup> As above

<sup>12</sup> As above

<sup>13</sup> Section 9A, maximum 20 penalty units

<sup>14</sup> Section 13, maximum 20 penalty units

## Document Control

Date	23 December 2019
Document history	v2.0
Citation of relevant legislation	<i>Queensland Building and Construction Commission Act 1991 (Qld); Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018 (Qld)</i>
Disclaimer	This regulatory guide is of an informative nature only and does not constitute the provision of legal advice.

## Need more information?

Visit [qbcc.qld.gov.au](http://qbcc.qld.gov.au) or call us on 139 333.





# REGULATORY STRATEGY 2020-2024



## INTRODUCTION

People spend around 90 per cent of their time in buildings. Constructing a building involves inherent risk, for those who conduct building works and, potentially, end users and the public if work is not properly controlled and at the right quality standard. Buildings are groupings of systems that rely on joint quality to perform to expectations. Underperforming systems can negatively impact the built structure and place persons inhabiting that building and its surrounds at risk of harm. The first and best protection against such risks is a high performing building industry, with skilled professionals and tradespeople alongside informed and empowered consumers (the public who use and occupy buildings).

The Queensland building and construction industry regulator, the Queensland Building and Construction Commission (the QBCC) plays a vital role to support this. When things go wrong the QBCC is the safeguard to the sector, its workers and end users. This is an important role holding the industry accountable for issues and risks.

An important distinction when considering the QBCC's role is that the QBCC while part of the building and construction sector, is not the industry itself per se. As the building and construction sector regulator, the QBCC is committed to meeting the needs of industry but also has a very distinct role in protecting Queenslanders and the industry from harm.

## OUR JOURNEY

The building and construction sector is continually evolving with new challenges and risks. In line with this, the QBCC's role has and will continue to change.

The QBCC is progressing towards its vision of becoming an insights driven, risk-based regulator and is in the process of more effectively utilising data, trends and analytics to inform regulatory activities. This is a shift from our historical role as a licensing body, complaints agency and insurer as the industry becomes more complex. Licensing is no longer just a gateway to a profession but it is a tool which we can use to manage behaviour of current licensees whether that be financial, safety or other practices.

The QBCC also has legislative powers which enables it to affect broad and profound change in businesses, the market and more broadly the Queensland economy. We now have a greater role in regulating behaviour.

### BEHAVIOUR CHANGE MANAGEMENT

**The QBCC began as a complaints and licensing body. Our role in regulating behaviour has increased with changes in industry. Our community expects us to anticipate problems, swiftly detect recidivism and move to take decisive action to prevent harm. Individual complaints are no longer enough. We now look at patterns of behaviour. Licensing is no longer simply a barrier to entry but is also a tool to which the QBCC ensures that licensees maintain appropriate standards of behaviour and skill.**



## OUR ENVIRONMENT

The QBCC is responding to the changes in our industry. Buildings are changing with a continual increase in high rise and medium density (innovative urban developments and urban infill) residential housing. This is creating new risks and challenges. Our consumers are changing as residents of multi-residential buildings (residents of strata properties) typically have less capacity to act in their own name and rather try to manage issues through their body corporate or developer. In many cases, high rise residential homes are bought 'off the plan' and it is rare if the owner is at any time involved in supervising their build.

### LIFECYCLE OF A BUILDING

**Traditionally through the QBCC's dispute resolution services, the QBCC has focused its efforts on work at the handover stage of construction, identifying and mitigating defective work. With buildings changing with the increase of high rise residential construction, the QBCC understands that we need to focus our efforts across the lifecycle of a building, from pre-completion, handover to ongoing maintenance. Under Goal 2 - Building Quality and Control, we outline our continued focus on addressing defective work at handover stage but also include newer metrics and commitments around proactive pre-completion and maintenance.**

Markets are also changing with globalisation and the rise in larger building companies employing large numbers of workers. Supply chains are growing and becoming more intricate, (both in complexity and geographically), and harder to track with less accountability until something goes wrong.

All the while our population continues to grow with currently over five million people living in Queensland. With more people in Queensland, our mandate expands and our role in regional areas is growing in demand with construction increasing in North Queensland. As a regulator, we need to use our resources wisely to be an effective regulator for Queensland, a State which is almost the size of a continent. While doing this, our challenge is to ensure that our activities are cost-efficient and effective.

While our regulatory environment is changing, our role will still continue to provide essential protections and services to industry and consumers. But responding only to complaints and after harm has incurred, is no longer enough to protect and serve Queenslanders and their needs. Events in other jurisdictions, in Australia and overseas, demonstrate what can happen if the underlying behaviour of the building industry and the building products supply chain, fails to meet community expectations and accepted building standards. The QBCC needs to ensure that the market is working for Queensland's consumers and businesses, in every part of the State.

## OUR GOALS

Across the building and construction sector, the QBCC has identified four key goals on which to focus its regulatory efforts and resources. These goals, when accomplished, each produce an important outcome that will collectively secure confidence in the Queensland built environment. Our goals, and the outcome produced from each, are:

1. **Protecting People** – Queenslanders are protected from physical or financial harm
2. **Building Quality and Control** – Queenslanders are protected against non-compliant, unsafe and unfit buildings
3. **Product Integrity** – Queenslanders are protected against unsafe or non-conforming building products
4. **Building Industry Fairness** – Our licensees and the broader industry are protected against financial harm in their work environment.

The QBCC is committed to continually improving the way we regulate. This strategy is the first of its kind developed. It sets a clear and transparent statement that we are committed to transitioning to an outcomes focused, insights driven, risk-based regulator. It also explains how the QBCC understands and performs our role. How and why we are changing is explored in detail in Part 1 of this strategy.

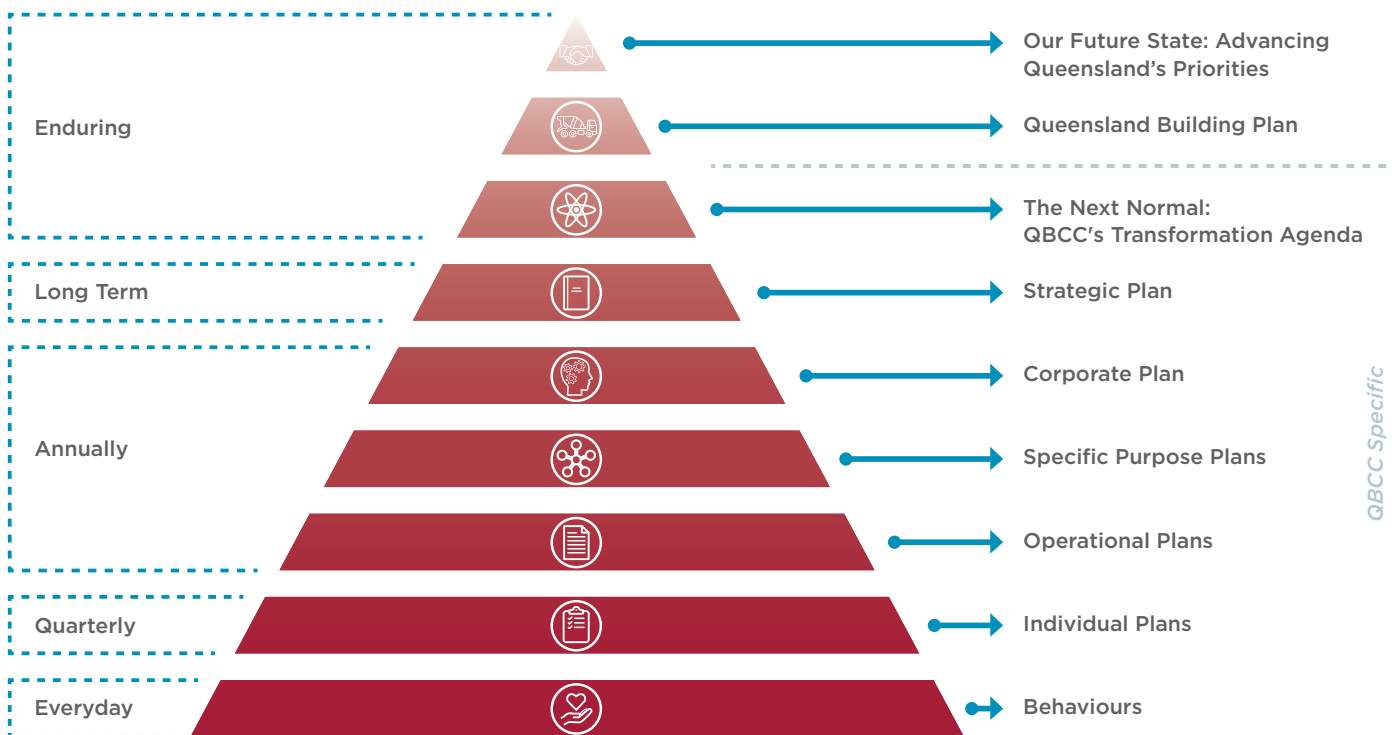
## WHO THIS DOCUMENT IS FOR AND HOW IS IT USED

This document makes visible the strategy that drives our detailed operational plans and the goals and objectives that inform our decisions and actions. This will guide QBCC officers in undertaking their work.

For industry stakeholders, this strategy serves to support their understanding of the QBCC's role and, importantly, how the QBCC plans to regulate the building and construction industry. Consumers will be reassured by the QBCC's clear goals and plans for providing them protection when engaging with the industry. For regulators, across sectors and industries, and other jurisdictions, this document contributes to the broader evolution of regulatory practice in Australia and internationally.

## WHERE THIS STRATEGY FITS

This strategy fits into the QBCC’s broader governance framework by supporting the QBCC’s Strategic Plan for 2020-2024 and by providing guidance for organisational branches on where to focus their regulatory efforts. This Regulatory Strategy is a long-term strategy that sits within the strategic and corporate planning sections of the QBCC’s corporate governance framework below.



The QBCC Operational Planning will now sit underneath this strategy and outline operational activities to achieve the broader objectives. Our operational plans will include how we will deliver education, communication and awareness activities. This first strategy will run for a period of four years from July 2020 to June 2024, with annual reviews to evaluate performance against the goals and outcomes, expand the outcome indicators as the QBCC and to continuously respond to changes in the industry. Throughout this review process, the QBCC will take time to consider and determine where the majority of our regulatory effort across the business is best placed in line with this strategy and our focus on the areas of greatest harm. Comprehensive reviews will be conducted every four years.

As part of the increasing transparency of how the QBCC operates, we are also in the process of publishing detailed regulatory guides. These provide public information about our legal decision making against specific sections of our legislation, including how we have regard to facts, evidence or special or extraordinary situations.

### Oversight

Within the QBCC this strategy is overseen by the Regulatory Strategy and Action Committee which sets the priorities and shapes our communication and education agenda. This is supported by internal committees which review major enforcement and compliance matters. The QBCC also has special project groups for major matters and sustained operations and campaigns.

### Reporting

Public reporting on the QBCC performance against the goals and indicators will be included in the QBCC’s Annual Report, commencing with the report for financial year 2021-2022. The QBCC will examine opportunities for additional public reporting, including more frequent reports, during the life of this strategy. Internal management reporting will be overseen by the internal Regulatory Strategy and Action Committee and will include regular advice to the QBCC (Queensland Building Commission) Board.

# CONTENTS

Introduction .....	2
Our journey.....	2
Our environment .....	3
Our goals .....	3
Who this document is for and how is it used.....	3
Where this strategy fits .....	4
<b>PART 1 - OUR STRATEGY .....</b>	<b>6</b>
Our focus .....	6
Our effectiveness .....	6
<b>PART 2 - OUR REGULATORY APPROACH .....</b>	<b>10</b>
Identifying areas of greatest .....	10
Understanding risk and harm .....	11
Appendix 1 - BOW-TIE DIAGRAMS .....	13
Appendix 2 - OUR UNDERPINNING SUPPORTS.....	14
Appendix 3 - BIBLIOGRAPHY .....	17



# PART 1 – OUR STRATEGY

## OUR FOCUS

The QBCC’s purpose is to ‘bring peace of mind’ to all people who use buildings in Queensland and to those who take part in the process to construct them. Peace of mind, first and foremost, is achieved through a building and construction sector delivering safe, quality buildings in which Queenslanders can have confidence. Quality in the built environment is demonstrated when industry are appropriately skilled and comply with the provided designs, specifications and standards. Quality is what Queenslanders rightly expect. Industry accountability to deliver quality in the built environment will restore the confidence of consumers.

Industry, particularly through its commitment to educating and training its own workforce, plays perhaps the most important role in securing this outcome. One of the QBCC’s key focuses is to facilitate increased capacity and skill within the industry, to find and fix issues early in the built environment. Through the licensing scheme, the QBCC has a long-standing role in supporting this outcome. Future initiatives, such as the introduction of a new Compulsory Continuing Professional Development (CCPD) framework in Queensland, present opportunities for the QBCC to continue to support industry’s own efforts to achieve quality building outcomes.

Queenslanders also expect that their trust in the building and construction industry will be underpinned by an effective industry regulator. Queenslanders deserve to be confident that the industry regulator will act to ensure building requirements are being met, industry is held accountable for poor quality work and, in particular, that consumer health and safety is assured.

As the Queensland building regulator, the QBCC has an important role to protect the community from adverse harms. To the Queensland industry and its consumers, the QBCC is:

- **a regulator** – we anticipate, prevent and mitigate risks and harm; and
- **an insurer** – we rectify and compensate in cases of actual harms and losses.

This Regulatory Strategy identifies particular risks and harms that can arise in and from the building industry. It also outlines the current issues impacting the building and construction industry in Queensland. It explains how we analyse and assess those risks and harms, and the way in which our work is organised to predict, detect, prevent and mitigate them. The culmination of this work is four goals and outcome statements which we explore in greater depth below.

## OUR EFFECTIVENESS

The QBCC has mapped and evaluated these risks using the well-known bow-tie methodology (see Appendix 1). These diagrams are operational tools used to visualise the effectiveness of the QBCC’s activities and also identify opportunities to prevent harm from escalating.

In addition to our ongoing functions, the QBCC faces dynamic threats. These occur when persons intentionally seek benefit from evading or undermining the laws to which the majority of the industry comply. This can manifest in activities such as phoenixing, unlicensed or deceitful conduct and various forms of fraud. The QBCC and the broader Queensland Government respond to these dynamic threats with customised responses, including the Special Joint Taskforce to investigate subcontractor non-payment in the Queensland building industry.

### OUR JOURNEY FROM OUTPUTS TO OUTCOMES

**Traditionally the QBCC has measured outputs which focus on the organisations efficiency and response rate. These are still considered important measures for the QBCC to track. However, to become an outcomes-focused regulator through this strategy, we have commenced a deliberate shift to measure against the outcomes the QBCC wants to impact and achieve. These outcome measures aim to show the QBCC’s impact to prevent harm for industry and consumers across the built environment.**

Dynamic threats and other factors impact on the success of the four outcomes that we are striving to achieve. We have identified indicators which will track the progress and success of achieving these outcomes. These ‘key outcome indicators’ are a mixture of lead (early warning indicators) and lag (progress over time) measures. The QBCC currently has capability to measure a number of these indicators. Several others included in this Strategy require data sources and methods which the QBCC will be developing over time. These are identified in this strategy as for ‘future development’ and inclusion in the performance monitoring and reporting regime set out. The QBCC will adapt and tailor our regulatory efforts and resources to the areas of greatest risk or harm on the intelligence derived from these measures.

## GOAL 1 – PROTECTING PEOPLE

*Our aim is to protect Queenslanders from physical or financial harm suffered as a result of unfair or unresolved building disputes and non-compliant pools.*

Across our regulatory scope we interact with consumers, contractors and businesses who have at some point experienced harm. This harm occurs in many forms. Physical harms and threats to human safety can arise from unsafe building sites, poorly completed building work and unsecured or unprotected swimming pools. Financial losses can arise from unfair or unresolved disputes or the loss of a safe or secure place to live due to incomplete building work or unreasonable conduct, including by consumers themselves. While this goal mentions financial harm, Goal 4 outlines additional expectations we have about fairness in the commercial dealings that occur within the building industry particularly including security of payment.

### UNLICENSED WORK

**The QBCC, through our licensing framework, protects consumers by ensuring that licensees have the skills and experience required to competently perform work within their licence scope. On the same goal, the QBCC aims to reduce the prevalence of unlicensed work across the building and plumbing sectors. Under our Insights Driven Regulator program of work, we are developing new tools to enable the QBCC to proactively identify persons operating or advertising without the appropriate licence.**

As part of our regulatory scope, we also regulate pool certificate compliance and pool safety inspector conduct and licensing. Pool safety is high-risk and harm can be catastrophic when built protections fail. We also see a number of companies with poor safety systems of work which result in workers being seriously injured on the job. The QBCC prevents harm to building workers by working with licensees who have experienced a safety incident to ensure safe systems of work are in place and improved where necessary.

#### **Our commitments. The QBCC will:**

- respond to residential and commercial disputes about building work, both pre- and post-completion
- provide transparent and fair dispute resolution services to industry and consumers regarding building work
- protect consumers through settlement of warranty claims that are lawful, fair, reasonable, clear and transparent
- take appropriate action against contractors who have caused harm
- take appropriate action against persons who carry out defective work (including fire protection work)

- focus on adequate supervision by nominees (multiple companies/geographic location)
- work with other agencies to improve consumer protection and contractor safety
- commit to the ongoing review of complaints received, regardless of the outcome
- hold licensees accountable to have contracts in writing
- help consumers know their rights and responsibilities during and after the build process
- encourage builders to adopt complaint and dispute management systems.

#### **Our key outcome indicators are:**

- reduce the number of child immersion incidents in pools
- percentage of compliant pools with valid pool certificates across residential, rental and short-stay properties
- rate of serious reportable injuries or fatalities
- increase in percentage of construction jobs completed without complaint or incident
- improve the rigour of supervision provided by nominees (including fire protection)
- number of disputes handled unfairly or left unresolved between builders and consumers (Direction to Rectify)
- percentage of claims fully compensated under the Queensland Home Warranty Scheme (QHWS).

#### **Our key outcome indicators for future development are:**

- reduced number of unlicensed or inappropriately licensed contractors operating in the marketplace (including plumbing and drainage work)
- consumer and industry awareness of law, their rights and responsibilities (including pool safety and contracts)
- industry willingness to lodge a complaint or safety incident report
- course completion rate for owner builders on safe handling of unsafe building products
- increase in the number of contracts in writing.

## GOAL 2 – BUILDING QUALITY AND CONTROL

*Protecting Queenslanders against non-compliant, unsafe or unfit buildings which arise through failures of accountability.*

It is of utmost importance that people can have peace of mind that their building is well built, safe, fit for purpose and has systems that work together to protect them in adverse conditions such as fires or natural disasters.

The aim of this goal is to protect Queenslanders from unsafe, unfit and/or non-compliant buildings. Quality in the built environment is secured when industry is appropriately

skilled, key parties fulfil their responsibilities and work complies with the provided designs, specifications and standards. Quality is what Queenslanders rightly expect.

The QBCC under this goal will hold industry accountable to deliver quality in the built environment. We will focus our attention on areas of highest risk including buildings of the greatest complexity and sensitivity in their design and construction, or use by occupants. This is a nationally acknowledged area where state regulators need to improve their focus and metrics. We will also continue to focus our efforts on trends in the built environment with an aim to reduce the prevalence of common defects or building issues.

**Our commitments. The QBCC will:**

- identify builders with poor handover practices or practices of concern, and conduct targeted activities to improve these practices
- undertake proactive audits and inspections of buildings under construction to identify issues early and take appropriate action to ensure issues are rectified
- take appropriate action to hold licensees accountable for defective work
- investigate integrity of passive fire certification work if the presence of defective building work suggests that certification may be inadequate
- take appropriate action to address fire critical defects and persons not properly inspecting, testing and maintaining lifesaving systems
- uphold high performance of certifiers through proactive audits, focusing on new certifiers or those performing large volumes of work or those working upon complex buildings
- identify and source timely and comprehensive information about new construction projects to assist it in scheduling audits and inspections by its officers.
- provide a consistent presence on building sites, targeting education and compliance activity based on insights.

**Our key outcome indicators are:**

- reduction in the number of detected issues or practices of concern involving more than three commercial builders (e.g. poor handover practices)
- number of defects involving multi-residential high rise buildings particularly structural defects like safety-related systems or components, and waterproofing
- decrease in the rate of compliance issues identified from proactive audits and complaints about certifiers
- degree to which building and building designer documentation are found to be complete, reliable and available during any QBCC investigation or audit.

**Our key outcome indicators for future development are:**

- level of consumer confidence in new residential buildings
- decrease in overall percentage of defective work by builders that result in a Direction to Rectify
- increase industry adoption of CCPD.

**GOAL 3 – PRODUCT INTEGRITY**

*Protecting Queenslanders against unsafe or non-conforming building products which pose a serious risk to public health and safety, and building quality.*

Unsafe products can pose a serious risk to public health and safety, and in certain circumstances cause catastrophic harm. This has been demonstrated in high profile cases such as the fires at Grenfell Tower and Lacrosse Tower. Non-conforming building products can shorten service life, economic value and amenity of a building.

The QBCC under this goal are committed to protecting consumers from harm posed by products that are not fit for purpose, whether they are unsafe, non-compliant or misrepresented. The QBCC will do this by holding persons in the supply chain accountable for products that do not perform to the level necessary to be safe for their intended use and compliant with relevant laws and standards. The QBCC will focus our efforts on those buildings and products which pose the greatest risk of harm.

We will focus our regulatory attention on the parties that are best placed to prevent or control the risk and remove the threat from the community, industry and supply chain. The QBCC will continue to collaborate with co-regulators across Australia to provide national consistency to product integrity. The QBCC will also increase consumer and industry knowledge of these types of products, so that people are informed and empowered to report issues.

**Our commitments. The QBCC will:**

- take appropriate action so that entities who are best placed to control and mitigate the risk of non-conforming building products (NCBPs) are empowered or compelled to as appropriate
- take appropriate action, including leveraging co-regulator partnerships and undertaking proactive activities to identify and protect consumers from harm posed by NCBPs
- work with key entities in the supply chain to increase the number of adequate quality assurance procedures in place to check products before they reach the market
- work with industry to increase the number of industry-owned adequate complaint processes in place to rectify and remove NCBPs
- increasing industry and consumer understanding of NCBPs to avoid their supply and use
- ensure that all regulated building owners in Queensland have appropriately checked their buildings under the Safer Buildings Queensland program to determine that they do not have cladding fire risk.

**Our key outcome indicators are:**

- increase industry education of NCBPs laws
- proportion of NCBPs complaints where NCBPs lead to action involving importers, manufacturers or distributors
- percentage of building products examined by the QBCC where they are accompanied by the required information to enable their compliant use
- the number of eligible buildings who have complied with the Safer Buildings Queensland program
- number of recommendations to building owners made by fire engineers, as part of the Safer Buildings program, are in place or complete.

**Our key outcome indicators for future development are:**

- proportion of manufacturers, suppliers, retailers, developers and major builders with quality assurance schemes in place to prevent supply of NCBPs
- proportion of manufacturers, suppliers and retailers complying with QBCC direction or voluntary undertaking to prevent, remove or recover NCBPs – entry to supply chain
- proportion of developers and major builders complying with QBCC direction or voluntary undertaking to prevent, remove or recover NCBPs – on-site.

**GOAL 4 – BUILDING INDUSTRY FAIRNESS**

*Protecting licensees and the broader industry against financial harm in their work environment.*

Everyone should feel certain that their wages or invoices owed will be paid. This often hasn't been the case in the building and construction sector with many companies with poor financial practices 'going under' and bringing with them, the people and companies working for them. Given the sums of money and numbers of subcontractors involved in major building and development projects, large development companies and tier one builders in particular can contribute to significant downstream financial hardship if they fail to pay amounts owing by them or become insolvent. Unless there is a genuine problem with the work performed, builders should not be left unpaid by the developers for whom they are working. Similarly, contractors and trade subcontractors should not be left unpaid by builders, unless there are genuine problems with the work performed.

Under this goal the QBCC aims to increase confidence in the financial health of the sector. We will do this by using insights and our new legislative powers to conduct a financial health check of the industry. We will also take action to protect the industry from businesses that display poor financial management. Based on the size and risk to the industry, the QBCC will take appropriate action to ensure licensees in the sector are financially sound.

**Our commitments. The QBCC will:**

- use data analytics and insights to detect early licensees at risk of insolvency to reduce impact on the sector
- continue to use licensing as a tool to check that people entering the industry are financially sound
- hold developers and other entities engaging a builder or trade subcontractor accountable to pay on time and in full, or provide a payment schedule
- take appropriate action so that debts owed are paid in full
- take appropriate action so that retention amounts or security held under a contract are discharged appropriately
- undertake a financial health check of the industry to ensure industry has the capital to operate financially sound businesses.

**Our key outcome indicators are:**

- likelihood of audit or inspection of security of payment and Minimum Financial Requirements laws
- level of compliance by developers and tier 1 builders with obligation to properly respond to a payment claim, including through issuing a payment schedule
- the dollar value of working capital within the Queensland building and construction sector, comprising licensees net tangible assets
- the value and number of monies owed complaints percentage year on year and amount paid to claimant
- number and percentage of adjudication decisions that are not honoured by participants
- adjudications are paid within five days of the adjudication decision.

**Our key outcome indicators for future development are:**

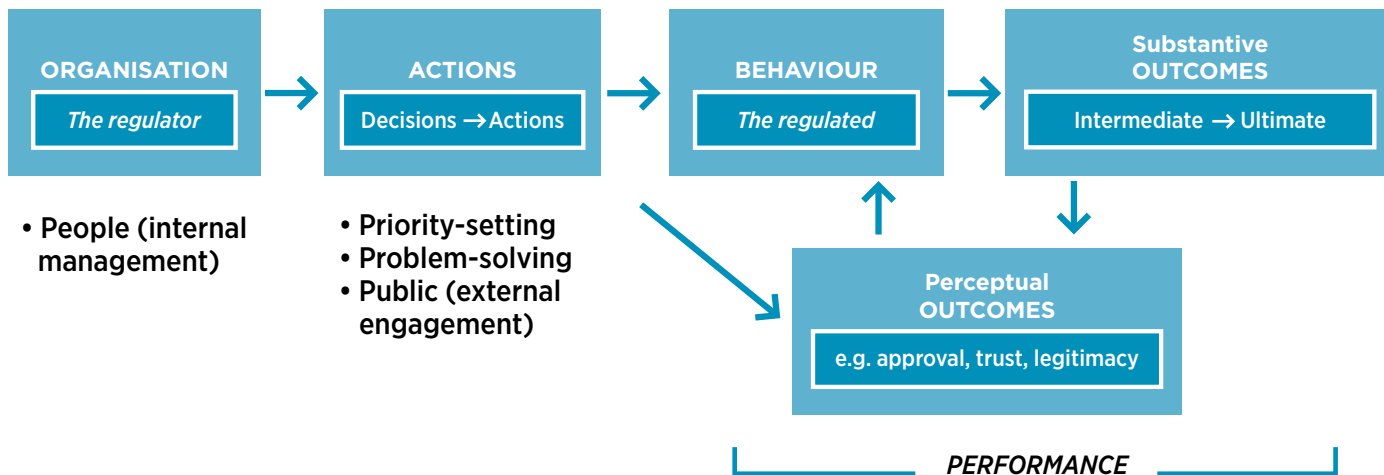
- reduction in the number of licensees who have their licence cancelled or suspended on financial grounds
- reduction in the number of accountants having their qualified accountant status removed due to QBCC's compliance actions
- reduction in the number and size/impact of insolvencies
- reduction in the number of retentions that are not returned
- year-on-year increase in compliance with Minimum Financial Requirements.



## PART 2 – OUR REGULATORY APPROACH

A regulator’s role is to take action in the market and the industry to ensure that the activities it regulates are complying with relevant laws and performing as the community expects. Coglianese (see the diagram below) sets out a ‘causal chain’ which links the organisation, through its actions and outcomes, to the core attributes of regulatory excellence.

### A MODEL OF REGULATORY ORGANISATION, ACTION AND PERFORMANCE



Source: Cary Coglianese, *Listening, Learning, Leading: A Framework for Regulatory Excellence*, Penn Program on Regulation (University of Pennsylvania Law School), 2015

The QBCC’s regulatory performance is affected by the first two boxes in this chain:

1. internal management (the basis for sound decision-making and action-taking; ensuring adequate resources and building strong human capital)
2. priority-setting/decision-making (consistent reliance on careful, evidence-based decision-making; priorities should be informed by consideration of risks)
3. problem-solving (finding the right tool for the purposes and circumstances at hand;)
4. external engagement (generally, greater and earlier engagement is better; both listening and reason-giving are important).

(Coglianese, 2015).

According to Coglianese, improving these four factors and perfecting ‘the chain of regulatory excellence’ requires the development of ‘people excellence’, defined as regulatory staff commitment to doing their utmost to deliver public value and to improving their ability to deliver that value.

### IDENTIFYING AREAS OF GREATEST RISK AND HARM

Identifying risks as they emerge in a consistently proactive and responsive manner is crucial to achieving the goals set out in this strategy. Moving to a risk-based approach is currently being undertaken across our organisation and will take time to achieve a consistent, integrated approach.

Our aim is that in future we will follow a clear and consistent process when identifying regulatory risks, with risks being identified in the following ways:

1. **non-compliance reported by members of the community** – reports of non-compliance by members of the community help us to systematically identify areas of risk
2. **collaborating with key industry stakeholders** – to understand trends and test responses when appropriate
3. **collaborating with other agencies** – working closely with other regulators, government and agencies to coordinate efforts and collaborate to better regulate and protect against harm
4. **proactively identifying risk** – we are building our ability to monitor insights, trends and data to detect compliance breaches and risks to prevent harm.

Analysing the information we receive and developing that intelligence into insights at low effort to our organisation is a long term goal. The QBCC already collects significant volumes of intelligence through reports from the public and through collaboration with other agencies. New legislative changes, such as the *Building Industry Fairness (Security of Payment) Act 2017*, have expanded the information we hold and have challenged the way we proactively take action to target areas of greatest harm across the sector.

Over the next four years, the QBCC will focus on building the ability to identify areas of greatest risk or harm by:

- better utilising the information and data in-house
- building stronger relationships and collaborations with mutually-beneficial agencies and utilising existing stakeholder networks
- beginning to investigate and build infrastructure to better analyse intelligence.

## THE VALUE OF KEY STAKEHOLDER RELATIONSHIPS

**The QBCC values continued engagement with key industry and consumer stakeholders. The QBCC Board have under its banner a Stakeholder Advisory Committee and also the Service Trades Council to which the QBCC regularly engages with. The QBCC uses this engagement to identify industry or consumer intel or trends to ensure our regulatory efforts are focused on the greatest areas of harm and risk. We also leverage key stakeholder networks to disseminate important industry and consumer information. This information for industry is an important way that the QBCC can help to prevent unintentional non-compliance from industry members. This is detailed further in our compliance posture below. The QBCC also use key stakeholder relationships to test our regulatory approach to gauge effectiveness prior to implementation.**

While the bulk of the industry's non-compliance incidents are likely to be low risk in terms of harm and, in sheer numbers, would warrant significant investment, the QBCC must strategically identify where the greatest behavioural shifts and outcomes for industry and consumers can be affected. The QBCC must leverage its finite resources (financial, human etc.) ensuring powers are deployed to achieve maximum impact.

The QBCC must balance the responsibility to act regarding individual offenders and to act to change broader, non-compliant market behaviours and conduct. While continuing to pursue isolated cases, the QBCC is currently developing a number of strategic operations designed to identify specific, rogue parties and particular behaviours which are wide spread in the market and impacting Queenslanders more broadly. The QBCC will rely upon industry consultation, historical and contemporary intelligence, and other forms of evidence together with observations of industry trends, practice and culture to identify the targets for these operations.

Detailed, internal planning documents will be developed to support the QBCC's broader regulatory approach and to guide the strategic operations currently under development.

## UNDERSTANDING RISK AND HARM

Our regulatory approach is determined by the level of regulatory risk, the compliance posture of the regulated entity and the likely impact or outcome of regulatory intervention.

Regulatory risks are behaviours that:

- demonstrate non-compliance with the legislation we administer
- present potential or actual consumer or industry harm
- impact on our ability to be an effective regulator
- require a regulatory response due to public concern.

Where possible we will monitor industry trends, data and analytics and use evidence to shape a targeted compliance program, focusing on those issues that pose the highest risk to Queenslanders. Risks can take many forms.

For example, risks posed by:

- a particular product
- a poorly constructed building
- the conduct of a business
- a new or emerging industry trend
- the conduct or business model of an entire industry.

To determine a risk rating, the QBCC considers the likelihood of the risk occurring and the consequence if it were to occur to reach a risk rating. This risk rating is to triage and determine the amount of resources or focus the risk is allocated within the broader organisation and, if a case moves to investigation and enforcement action, to determine the level of action taken by the QBCC, proportionate to the level of risk.

### Understanding compliance posture

The QBCC has a wide range of tools at disposal to achieve regulatory compliance, including but not limited to legal actions. The QBCC uses proportionate enforcement action dependent on the compliance posture of our target industry participants and the risk rating of the matter.

Developing a tool for dividing the target group into a number of different kinds of violating and complying people is critical to ensure effective and proportionate regulatory responses. The QBCC has identified four categories for assessing the compliance posture, or willingness of an entity to comply, of our target industry participants. These are:

- 1. willing and able to comply and take all reasonable steps to do so** – most parties fall within this category
- 2. willing to comply but unintentionally failed to do so** – some parties will generally seek to comply but occasionally will make errors or misunderstand what is required. Other parties may try to comply but through lack of capacity, frequently are unable to meet the requirements

**3. prepared to test the boundaries of the law in order to minimise compliance obligations** – these parties will do the bare minimum necessary to comply and may occasionally ‘cut corners’ on issues of technical compliance

**4. deliberately avoid compliance obligations and perhaps harm those the QBCC aims to protect** – a small group of regulated parties will deliberately break the law and actively seek to avoid detection.

**Approach to enforcement**

The compliance posture of an industry participant is a consideration for the QBCC in taking any enforcement action.

Where parties have failed to comply in the first instance and are demonstrating they are willing and able to change, the QBCC will consider using approaches that assist the entity to achieve outcomes rather than reverting immediately to a strong regulatory response. In cases where the issue is high risk or requires urgent action to stop the conduct, the QBCC will use the full force of its enforcement tools. This is the same for entities who deliberately avoid compliance or are recidivist offenders. For systemic issues, a multi-faceted compliance strategy using several tools in combination may be used to target an entire industry.

Alternatively, in situations where large parts of the industry are facing dramatic change or pressure, the QBCC can respond by amending its regulatory posture. Significant events, such as economic recession/depression, disease outbreak, radical shifts in legislation etc. may occur which materially change the way the building and construction industry operates. In these situations, the QBCC may adapt its regulatory approach to respond to the changes in the industry. Such incident-specific regulatory approaches will sit within the broader framework and support the achievement of the goals set out in this Strategy even where they may be expressed in a separate document.

Similarly, in other cases, some industry stakeholders may be complying with the law without necessarily understanding the law. This situation may arise when trade or business practices are passed down through generations, are embedded in company culture and custom, or are commonly understood or accepted industry practices. In these circumstances, when the laws change, the communication approach to these industry stakeholders requires special attention.

By triaging matters by risk, the QBCC can act quickly against those that present the highest risk to Queenslanders, preventing loss and harm.



# APPENDIX 1 – BOW-TIE DIAGRAMS

## CONCEPTUALISING THE EFFECTIVENESS OF OUR REGULATORY ACTIVITIES

Bow-tie diagrams are a simple and effective tool for visualising and conceptualising the effectiveness of activities to prevent harm or risk. Bow-tie diagrams illustrate the links between the causes of harm and the barriers or defences in place to stop that risk of harm being realised and resulting in real loss or harm. Barriers or defences appear on both sides of the bow-tie diagram. They can be proactive and stop the risk becoming 'live' or be reactive to stop a 'live' risk causing harm or loss.

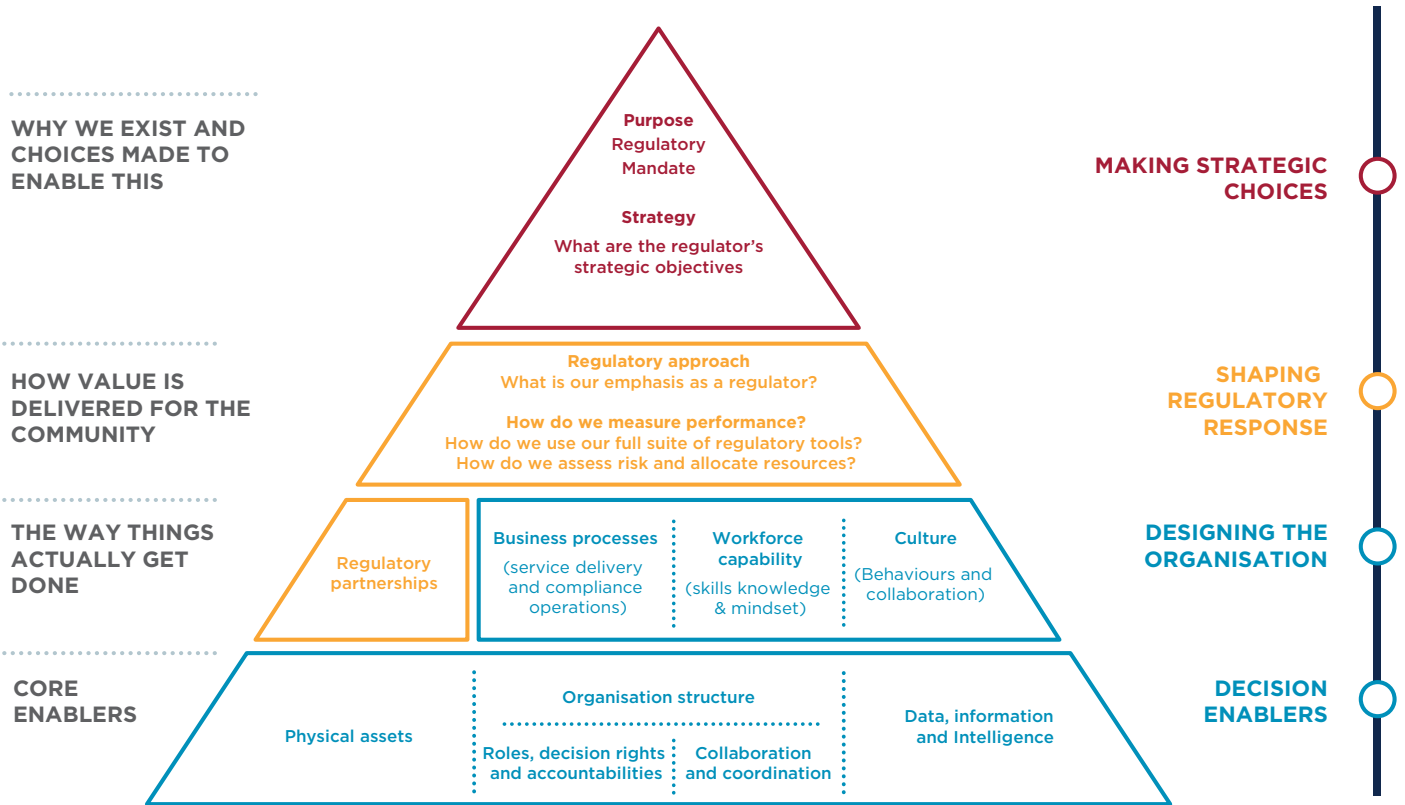
As a regulator and an insurer, the QBCC's own operations are, in some instances, intended to be the barrier or the defence shown in the bow-tie diagrams presented in this appendix. There are other cases where good practice by the building industry or allied industries, such as the finance sector, will be a commercially-based barrier or defence to harms that can arise in the building industry. Regardless of who delivers a barrier or defence, as the regulator of the sector, the QBCC takes an overarching

interest in whether all of our intended barriers and defences are in existence, available for use and effective in their operation. In some cases, the bow-tie diagrams indicate barriers which the Commission, the market or other stakeholders should put in place.

We have mapped key activities within our current regulatory scope in the bow-tie diagrams for each of the four outcome areas in our Regulatory Strategy. We have then, in white, identified areas for new and innovative programs where we can strengthen our current defences. Each bow-tie diagram includes a control panel which provides a snapshot of the effectiveness of each defence mechanism. The QBCC's management will use these diagrams alongside other metrics such as 'key outcome indicators' (see Part 1) to evaluate and track the QBCC's success in achieving our four regulatory goals.

# APPENDIX 2 – OUR UNDERPINNING SUPPORTS

Our regulatory approach is structured on *Regulatory excellence – aligning an integrated operating model with regulatory purpose* by Dr Claire Noone, Nous Group. The previous parts of this strategy explore the top two tiers of Dr Noone’s regulatory model below. This appendix addresses the bottom two tiers of Dr Noone’s regulatory triangle meaning the way things actually get done and our core enablers.



\*Diagram used with permission from Dr Claire Noone, Nous Group

## THE WAY WE GET THINGS DONE

### Regulatory Partnerships

The QBCC shares our regulatory scope with a number of similar regulators. The QBCC understands the need to build relationships with cognate regulators to pursue mutually beneficial regulatory outcomes. For this reason, the QBCC will continue to focus on better and closer collaboration to achieve mutually beneficial regulatory outcomes for the public and industry. The QBCC is an active participant in the national Building Regulators’ Forum which includes representation from all Australian states and territories, as well as the Commonwealth Government. The QBCC will also continue its involvement in customised responses to dynamic threats such as the prescribed Phoenixing Taskforce and collaboration with the Asbestos Safety and Eradication Agency. We also value building relationships with other agencies which might not work in the regulatory sphere but have unique information or intelligence that we can use to improve our regulatory approach and environmental awareness.

### POOL SAFETY CERTIFICATES

There are parts of the QBCC’s regulatory scope that require us to work particularly closely with other co-regulators. For example, to ensure the compliance of pools in Queensland. The QBCC works alongside local governments, but is not responsible for the safety of the pool itself. Local governments are responsible for rectifying any issues with the safety of the pool itself whereas the QBCC is responsible for the pool certificate or pool safety management plan and the Pool Safety Inspector’s conduct.

As shown in the bow-tie diagrams for Goal 1 – Protecting People, there are a number of activities where the QBCC and local governments work in tandem to ensure that relevant pools in Queensland have been checked and are safe.

## BUSINESS PROCESSES

Our objective is that the business processes supporting our regulatory approach have the following characteristics.

<b>Efficient</b>	We are working towards an operating model which reduces low impact administrative burden to provide our staff with more time to focus on areas of highest risk, to most efficiently achieve the goals of this strategy.
<b>Transparent</b>	We will be open in our decision-making and processes, including our justification for doing so. We strive to help regulated parties to understand our decision-making processes. We report regularly back to the public on our progress and performance.
<b>Responsive</b>	We detect, prevent and mitigate new and emerging issues through a risk-based regulatory approach, research and innovation. We focus on matters of greatest risk of harm based on intelligence.
<b>Consistent</b>	We aim for a consistent regulatory approach in all aspects of our work and in all dealings with regulated parties. We value impartiality and fairness.
<b>Proportionate</b>	We strive to have a regulatory response that is proportionate and scalable dependent on the risk being addressed. To determine what tool to use in any situation, the QBCC considers the nature of the problem and the desired outcome.

These commitments are already being implemented across the business and are a core value of our people. We will continue to integrate these principles into our regulatory approach to help meet consumer and industry expectations and to provide best practice.

As shown in each bow-tie diagram, the QBCC has proposed a number of areas where it can drive greater efficiency and effectiveness from its processes. We also have in place a number of policies and procedures, such as enforcement and triaging policies and our Stakeholder Engagement Framework, to provide clarity to our staff on how their role contributes to the overall vision and regulatory approach of the QBCC.

### Workforce Capability

As our role is continuing to change and expand, it is critical that our workforce evolves to support our changing role. Recently the QBCC has completed a Workforce Capability Assessment to determine the functions, workforce skills and staffing levels required to successfully deliver our vision and purpose. This assessment focused on ensuring that we have the right skillsets and competencies to deliver as an effective regulator. A key recommendation from

the Workforce Capability Assessment was that the QBCC continue to build and develop the next level of technical experts. This recommendation has been implemented and a new Technical Services Branch has been stood up with an Assistant Commissioner – Technical overseeing this important area. Similarly recommendations in the report suggested procurement of specialist skills such as forensic accounting to assist with the QBCC's new legislative powers in financial licensee management. This recommendation has also been adopted with the recruitment of QBCC's first Forensic Accountant. We are continuing to adapt to new demands and build our capability as the need arises.

## CORE ENABLERS

### Physical assets

Today the QBCC is primarily a human services-driven organisation with the additional assets required to deliver our business including a vehicle fleet, portable equipment carried by our officers and information assets to enhance the productivity of our staff. As the QBCC progresses deeper into our journey to become an insights driven regulator, our reliance on technology assets will grow and inter-jurisdictional examples indicate that we may in future make use of remote sensing technologies.

### Organisational structure

Our organisation is structured in functional units. This has its benefits as we have excellent content knowledge and well performing teams. We are continuing to work on our capacity to work across functional lines to provide a seamless end-to-end response to issues as they arise. Our work has begun at all levels and throughout our new legislative changes we have stood up a number of cross-functional teams to work together to deliver outcomes for the industry and consumers.

### Education and engagement

To support voluntary compliance, we use a range of mediums to inform businesses and consumers about their responsibilities and rights. We understand that a well-informed industry and its consumers drive compliance. We provide consumers with information and advice on their rights, and industry members with advice and support to meet their obligations under the legislation we administer. This strategy is supported by a Communications and Engagement Strategy.

### Data, information and intelligence

As outlined in Part 2, the QBCC's vision is to become an insights driven regulator. By continuing to build our access to and ability to analyse and use intelligence for regulatory purposes, we are better able to manage sectoral risk, leveraging data to support proactive decision-making.



## APPENDIX 3 – BIBLIOGRAPHY

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\*The regulatory triangle diagram used in this strategy has been used with permission from Dr Claire Noone, Nous Group from her presentation to the National Regulators Community of Practice on Regulatory excellence – aligning an integrated operating model with regulatory purpose.



**Need more information?**

Visit [qbcc.qld.gov.au](http://qbcc.qld.gov.au) or call us on 139 333.



**Please note:** This report was not written for the purpose of the QBCC Governance Review, nor was it written focusing on the same objectives.

# The Next Normal Strategy

April 2021

# Contents



The Vision

3



The Opportunity

5



The Future

9



Horizons &  
Endorsement

31



The Next Normal...

...will deliver

We will...

Act as a proactive, risk-focused and digitally-enabled regulator

So that we can...

Focus on activities and opportunities that will have the greatest impact for the industry, consumers and Queensland

Whilst we...

Balance shifting and competing expectations from the industry, our regulatory framework and our broader stakeholders

A safer, stronger Queensland through proactive, risk focused and human centric regulation of the building and construction industry

# Development of the Next Normal

To deliver against the current challenges, the Next Normal Strategy has been developed with inputs from the work previously done and additional stakeholder engagement.



## Key Reference Documents

- QAO Licensing Builders and Building Trades Report 16
- QBCC Regulatory Strategy 2020-2024
- QBCC Strategic Plan 2020-2024
- QBCC Preliminary Transformation Strategy Document
- Next Normal Stakeholder Experience Strategy 2021-2026
- IDR Strategy and accompanying documents
- Proposed Outcomes from Workforce Capability for SLT Consultation
- Industry expertise and current construction industry data

# QBCC has a pivotal role to play in the future of the building and construction industry

## Queensland Government sector spending

During 2021, the construction industry is expected to be supported by the Government's investments on the First Home Loan Deposit Scheme and the HomeBuilder program<sup>1</sup>. This increased spending provides QBCC with an opportunity to embrace the growth and change in the industry in order to position themselves as a trusted and transparent regulator.



## Encouraging and facilitating license issue

Licenses ensure safety and risk mitigation but can act as a barrier to entry if the process is too complex. The Australian Treasury has announced it will be working with the states to simplify occupational licensing and promote national recognition of qualifications<sup>1</sup>. It will be imperative for QBCC to eradicate unlicensed work and ensure license currency.



## Embracing technology for engagement

With organisations investing heavily in online engagement and services over the past year, it has become the expected norm. There is now the expectation of licensees to be able to pay and engage online<sup>3</sup>.

## The future of the building and construction industry



## Increase in commercial real estate

Due to the support of a growing population, retail activity is expected to hold steady in Queensland particularly for neighbourhood retail centres and specific large format retail centres with a focus on construction and technology<sup>4</sup>. Improving auditing strategies and building up the skills of the QBCC workforce will ensure there is capacity to reduce construction risk.



## Population inflow from the south into Queensland

Demand for residential properties in Queensland will increase. As demand increases, increased proactive risk mitigation, reputation management and education must be pursued.



## Robotics and automation

As technology in the construction industry is embraced and increasingly used onsite and within manufacturing, QBCC must consider the risks associated with its use and the regulatory changes that may come.<sup>2</sup>

### Sources

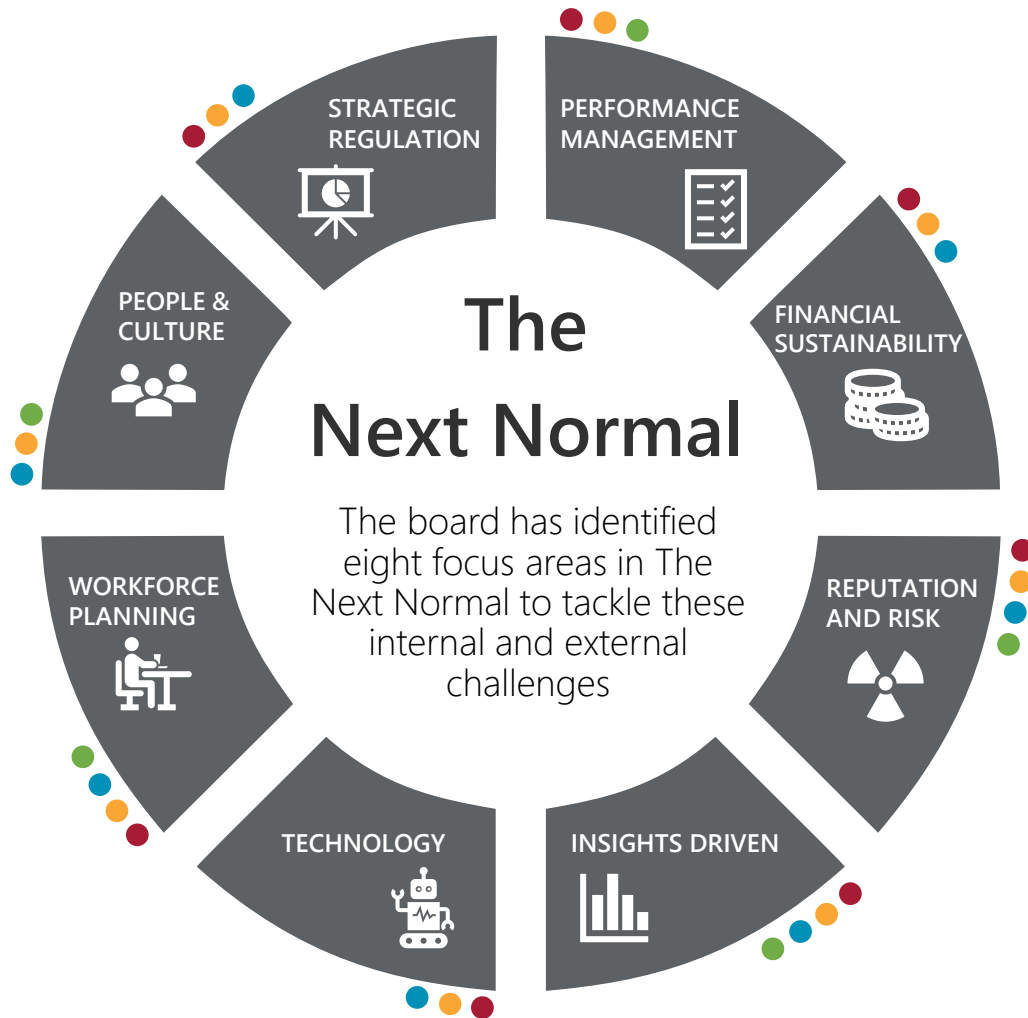
1. *Building economic resilience in Queensland report, Queensland Productivity Commission*
2. *Deloitte real estate construction predictions*
3. *Deloitte | Government trends 2021*
4. *Colliers' Industrial Research and Forecast Report*

**In an industry with increasing complexity we must prepare for the changes that lie ahead.**

**We want to be well positioned to deal with the current and future demands of our stakeholders – those that use, or rely on a confident building and construction industry.**

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# However, the QBCC is facing many challenges across four key areas that impact our ability to be an effective industry regulator



## Challenges preventing effective risk reduction of the industry and its ecosystem

Limited ability to prioritise and perform risk focused regulatory activities.

A workforce constrained by the current culture, tools available, skills and capabilities.

Financially unsustainable and limited ability to enact changes to the sector.



## Challenges creating a barrier to compliance

Inconsistent QBCC licensee/contractor journey which does not assist voluntary compliance.

Limited resources reducing proactive detection and investigation of non-compliance.

Gaps in certifiers and licensee's knowledge of legislative requirements.



## Challenges preventing a sustainable and effective organisation

Gaps in change leadership capability with a misaligned culture to strategic direction.

Lack of cohesive strategic leadership that gives rise to a siloed workforce.

Limited digitisation causing inefficient and dis-jointed processes with hard copy data collection.



## Challenges impacting consumer confidence

Unable to focus beyond minimum requirements due to resourcing and/or financial constraints.

Upset consumers and public distrust due to lack of consumer empathy and poor processes.

Staff being emotionally impacted by complaints from consumers.

### Sources

1. QBCC Stakeholder interviews, March 2021
2. WFQ Qualitative Survey Data, 2021
3. QBCC's Proposed outcomes WFC for discussion with SLT, 2017



**Without adapting to challenges now,  
the QBCC drastically impacts their responsibility to  
effectively regulate the building and construction  
industry today and into the future**

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In the Next Normal, the QBCC has four key strategies that will underpin the future of regulation of the industry for a safer Queensland



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### 1. Risks Reduction Across the Industry and its Ecosystem

*"We make it difficult for 'bad' things to happen"*



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### 2. Compliance Made Easy

*"We make it easy for 'good' things to happen"*



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### 3. Adaptable, Digital & Sustainable Organisation

*"We are enabled to make the 'good' things happen and reduce the bad"*



### 4. Human Centric Delivery

*"We acknowledge what is important to those in the construction journey, adapting how we engage"*

# Several strategic shifts will help us achieve our ambition and maximise our potential

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## 1. Risks Reduction across the Industry and its Ecosystem

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Utilising insight and tactical knowledge to prioritise focus to reduce risk to the safety and growth of the industry across the social, societal and economic domains.

- End to end and insight driven approach to regulation →
- Proactive regulation on what matters, making the greatest impact to the construction ecosystem →



## 2. Compliance Made Easy

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Increasing the voluntary compliance of the industry by improving the simplicity, accessibility and transparency of compliance processes to position QBCC as a trusted industry regulator.

- Digital customer experiences for all contractor and consumer touch points →
- Delivery of comprehensive and easily accessible training to the industry →
- Intuitive, effective and continuous improvement of processes aligned to customer needs →



## 3. Adaptable, Digital & Sustainable Organisation

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Establishing a blueprint that aligns operations to stakeholder and employee needs, enabled by an adaptive and digitally fluent workforce, flexible workplace options, underpinned by analytics and an impact-oriented culture.

- Digitally enabled building and construction regulator →
- Integrated and smart internal systems and processes →
- An adaptable, mobile and innovative workforce and workplace →
- Performance focused culture with change enabled leaders →
- Optimal and efficient use of financial resources and revenue diversification →



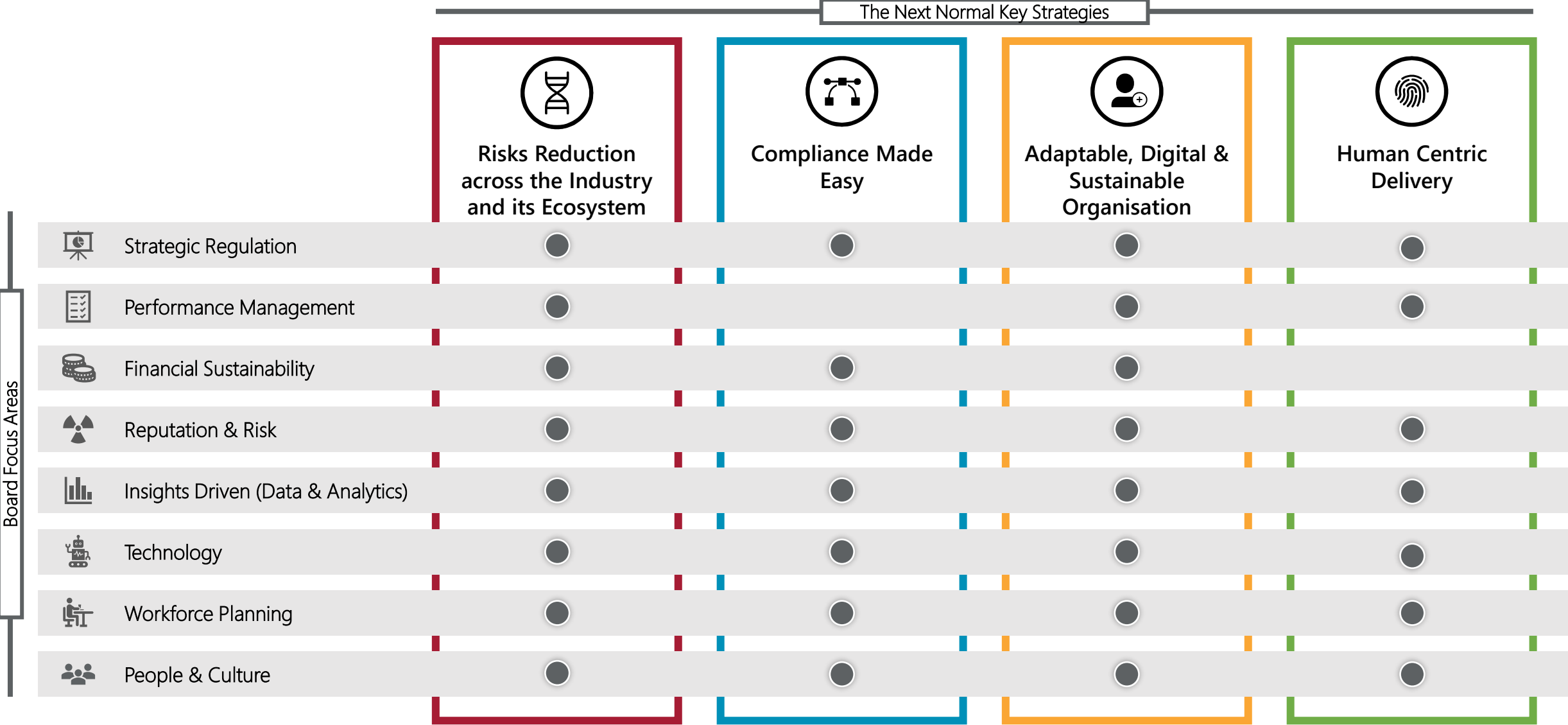
## 4. Human Centric Delivery

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Building confidence, respect and a strong reputation with QBCC customers through transparent and seamless processes, delivered by an empathetic workforce that fosters strong relationships to drive optimal outcomes.

- Understanding what is important to our stakeholders and how to best help them →
- Tiered support to foster consumer relationships →
- Building confidence through transparency and better reporting of outcomes delivered →

# The challenges have shaped the QBCC Next Normal key strategies to deliver our ambition, aligned to the Board focus areas



# Seven programs of work have been prepared to illustrate the tangible improvements from the key strategies

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The programs of work are each associated with a key strategy and address many of the current state challenges that the QBCC needs to overcome to achieve the Next Normal vision and deliver a safer, stronger Queensland through proactive, risk focused and human centric regulation of the building and construction industry.

The future state operations of the QBCC are described for each program of work to illustrate how the relevant challenges are addressed, key strategy outcomes are realised and the stakeholder experience is improved, along with details of the Workforce and People Foundations required to enable the programs of work.

## Programs of Work Overview



### 1. Risks Reduction Across the Industry and its Ecosystem

*1.1 Risk Focus & Insight Driven Approach*

*1.2 Influence Industry Behaviour*



### 3. Adaptable, Digital & Sustainable Organisation

*3.1 Virtual Organisation / Operations*

*3.2 Leadership*



### 2. Compliance Made Easy

*2.1 Digital Contractor Journey Experience*



### 4. Human Centric Delivery

*4.1 Digital Homeowner Journey Experience*

*4.2 Tiered and Tailored Service Approach*

# 1. Risks reduction across the industry and its ecosystem

*"We make it difficult for 'bad' things to happen"*

Through proactive risk regulation, QBCC will not only increase their financial sustainability by allocating resources where the greatest impacts can be made, but will also improve their external image through proactive reduction of defects and complaints to be seen as a regulator who works with its community to keep them safe and drive growth in the industry.

## Strategy Programs of Work

1.1 Risk Focus & Insight Driven Approach

1.2 Influence Industry Behaviour

### Industry Bodies

*"QBCC are on top of the legislation updates and proactively work with stakeholders and us to provide a safe building and construction industry"*



### Media

*"QBCC has great insights into the building industry and demonstrates that they have strong capability to regulate the industry, keep it compliant and keep the community safe through proactive risk reduction"*



### The Big Building Companies

*"I work with my QBCC engagement manager on a regular basis. We work through legislation changes to the industry together to achieve better compliance and less defects, reducing risk to the community and the industry."*



### Tier 1 Stakeholder Manager

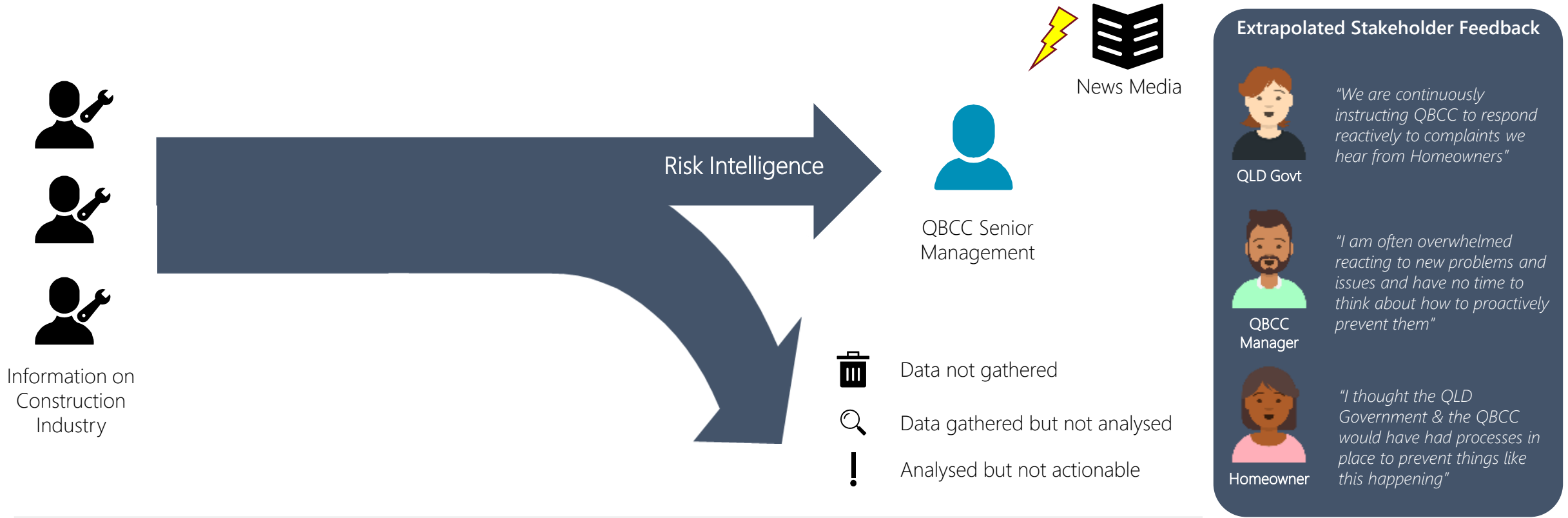
*"I am responsible for owning the relationships with our largest stakeholders and work with them on new and updated regulations across the industry, responding to compliance requirements and managing non-compliance to reduce risk in the industry"*



# 1.1 Risk Focus & Insight Driven Approach – Current state



Risk Intelligence fails to make its way to QBCC’s Senior Management resulting in critical views from news media outlets over issues they perceive the QBCC should have been proactive about.



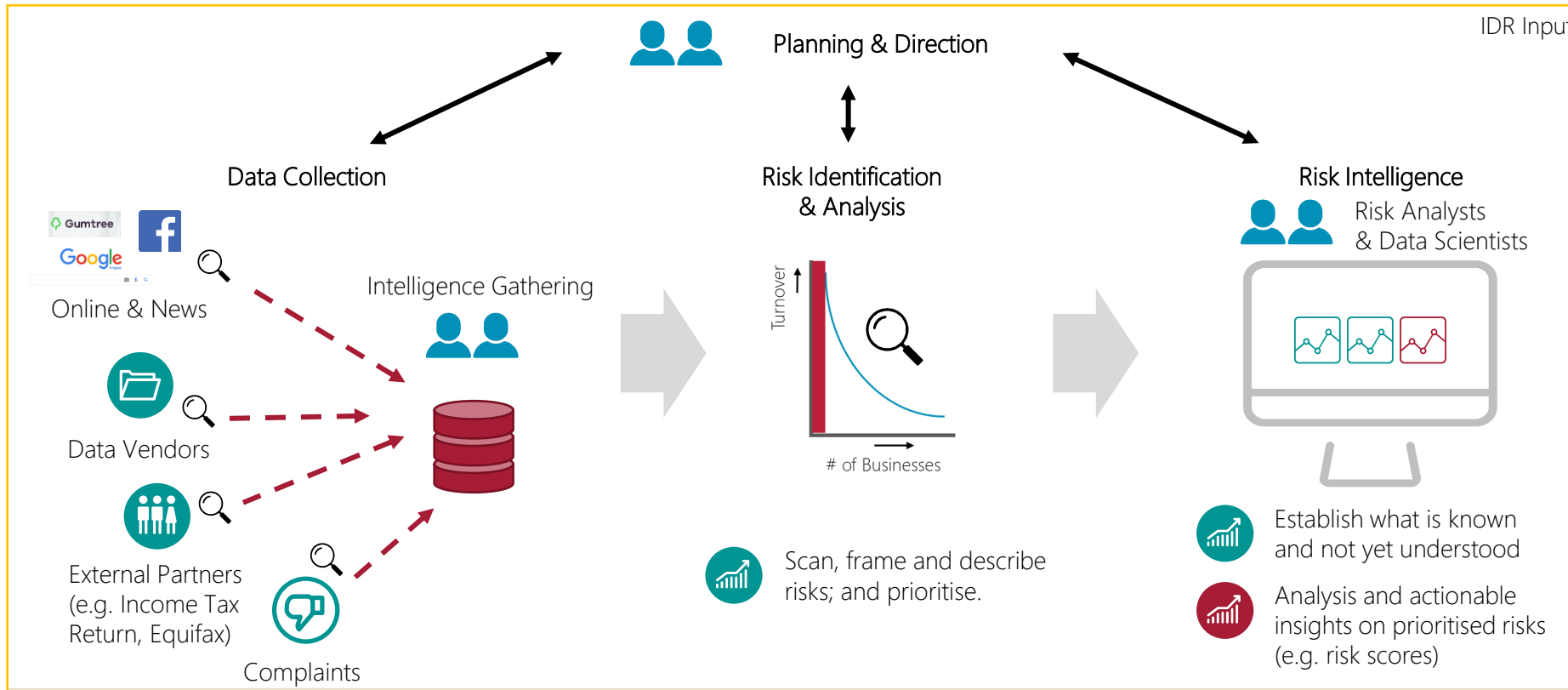
## Workforce and People Foundations

- Workforce Strategy**
  - Lack of workforce strategy to inform buy, borrow, build, bot resourcing decisions for risk and insights capabilities.
- Culture**
  - Workforce is aware of industry requirements however needs to improve the curious and stakeholder centric mindset required to improve risk processes.
- Operating Model**
  - Operating model is not optimised to embed data and analytical skills required to be more risk focused.



# 1.1 Risk Focus & Insight Driven Approach - Future State Illustration

Leveraging risk analytics to identify and achieve a sophisticated understanding of current and emerging risks to the construction industry and citizens based on data gathered by the QBCC from a wide array of sources.



**Desired Stakeholder Feedback**

**QLD Govt**  
"We have faith in QBCC as a regulator and know they are ensuring the building industry is compliant to all construction legislation, creating a safe environment for Queenslanders"

**QBCC Manager**  
"Insights give me the ability to effectively prioritise the assignment of QBCC's limited resources"

**Homeowner**  
"I don't hear about failures of the construction industry on the news or from my friends, so I'm confident about my house construction"

## Challenges addressed

The following challenges related to this strategy are addressed in this program of work:

Limited ability to prioritise and perform risk focused regulatory activities

A workforce constrained by the current culture, tools available, skills and capabilities.

## Strategy outcomes illustrated

- End to end and insight driven approach to regulation
- Proactive regulation on what matters, making the greatest impact to the construction ecosystem

## Required Workforce and People Foundations Uplift

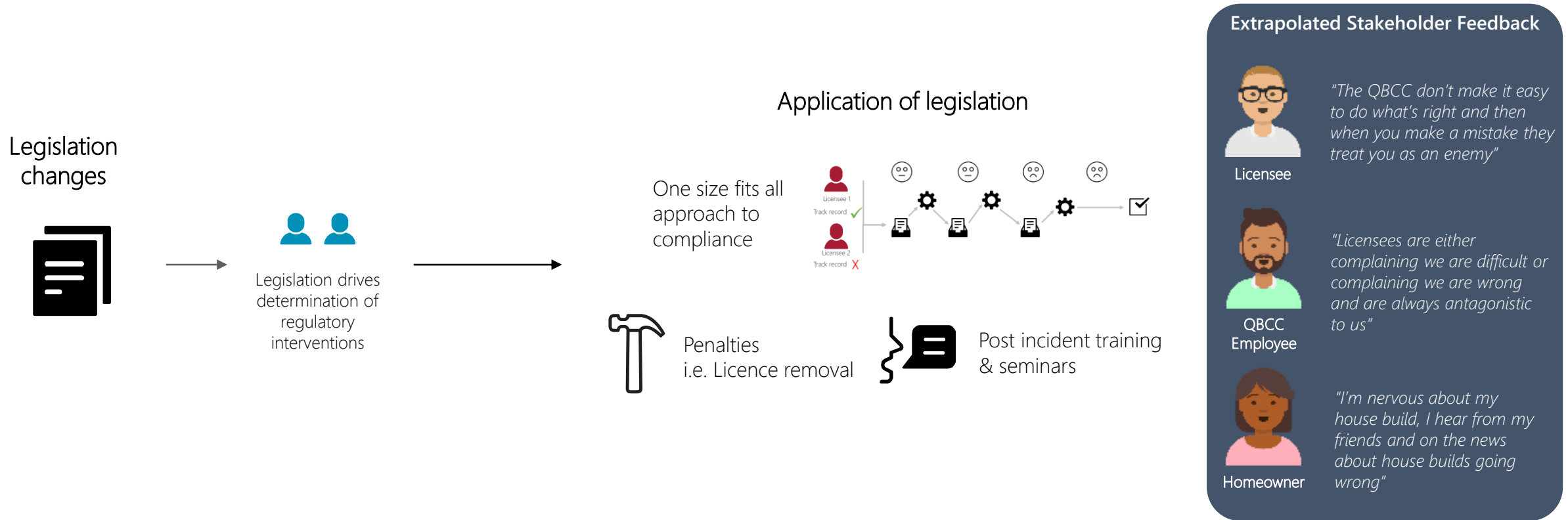
<b>Workforce Strategy</b>	<ul style="list-style-type: none"> <li>Develop a workforce strategy to be clear on buy, borrow, build, bot plan to obtain required data and analytics talent.</li> </ul>
<b>Culture</b>	<ul style="list-style-type: none"> <li>Foster a workforce that acknowledges the importance of regulatory risk focused approaches and data analytics and has a curious mindset.</li> </ul>
<b>Operating Model</b>	<ul style="list-style-type: none"> <li>Define an operating model that will reinforce the right behaviours and ways of working to enable sharing of data, analysis and development of clear strategies &amp; action plans.</li> </ul>





## 1.2 Influence Industry Behaviour – Current State

A 'one size fits all' approach is taken to all but the worst cases of Licensees, providing little incentive for compliance and the establishment of a good track record for a Licensee. Responses are also made in one form, too late, often creating disgruntled Licensee's that staff have to engage with.



### Workforce and People Foundations

Culture

- Teams often operate in silos which influences ability to effectively collaborate and share knowledge.

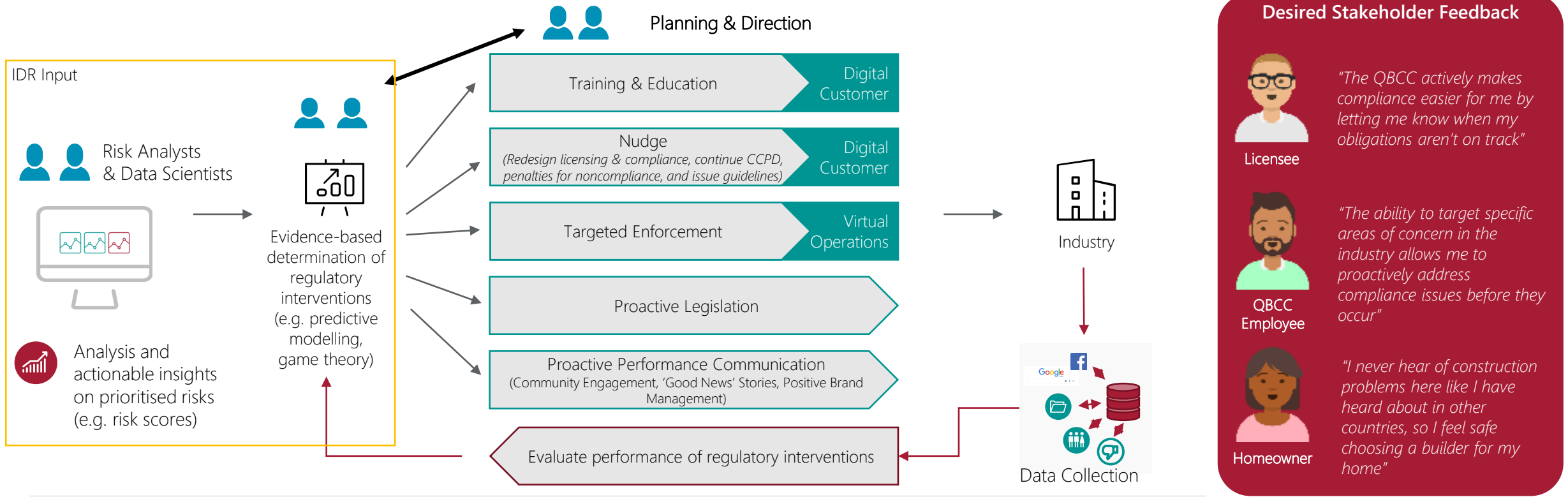
Skills & Adaptability

- Learning strategies are not aligned to strategic outcomes nor focus on capability required to educate the industry.



## 1.2 Influence Industry Behaviour - Future State Illustration

Using the Risk Focus & Insight Driven Approach to allow QBCC to determine targeted interventions for priority industry risks. Continual evaluation will be required to refine interventions as it becomes clearer what levers lead to which outcomes.



### Challenges addressed

The following challenges related to this strategy are addressed in this program of work:

Limited ability to prioritise and perform risk focused regulatory activities.

Financially unsustainable and limited ability to enact changes to the sector.

### Strategy outcomes illustrated

● End to end and insight driven approach to regulation.

● Proactive regulation on what matters, making the greatest impact to the construction ecosystem.

### Required Workforce and People Foundations Uplift

Culture

- Leverage story-telling and knowledge sharing to educate the broader industry and influence stakeholder behaviour.
- Build the narrative capability within the organisation.

Skills & Adaptability

- More informed learning investment decisions based on industry changes.

## 2. Compliance Made Easy

*"We make it easy for 'good' things to happen"*

QBCC will create a **seamless, simple and efficient digital customer journey** that enables stakeholders to **easily comply** with building compliance and regulation. Compliance is enabled through **bite sized, manageable and relevant training content** that is easily accessed to keep on top of legislative updates.

### Strategy Program of Work

2.1 Digital Contractor Journey Experience

#### QBCC Customer Service Officer

*"We are receiving less volume of complaints which is enabling the customer service team to focus on what matters such as, proactive activities and providing customers with an ideal experience when connecting with us, through technology."*



#### Industry Bodies

*"QBCC are on top of the legislation updates and are proactively working with stakeholders and us to provide safer buildings and constructions. We trust them as a regulator within our industry."*



#### Homeowners/Citizens

*"I have confidence in QBCC and trust that sites will be built in compliance with legislation. When I make a complaint, it is simple and seamless and I can do this online and check the status. When speaking with QBCC, they provide frictionless and personalised service."*



#### Small-Medium Sized Businesses

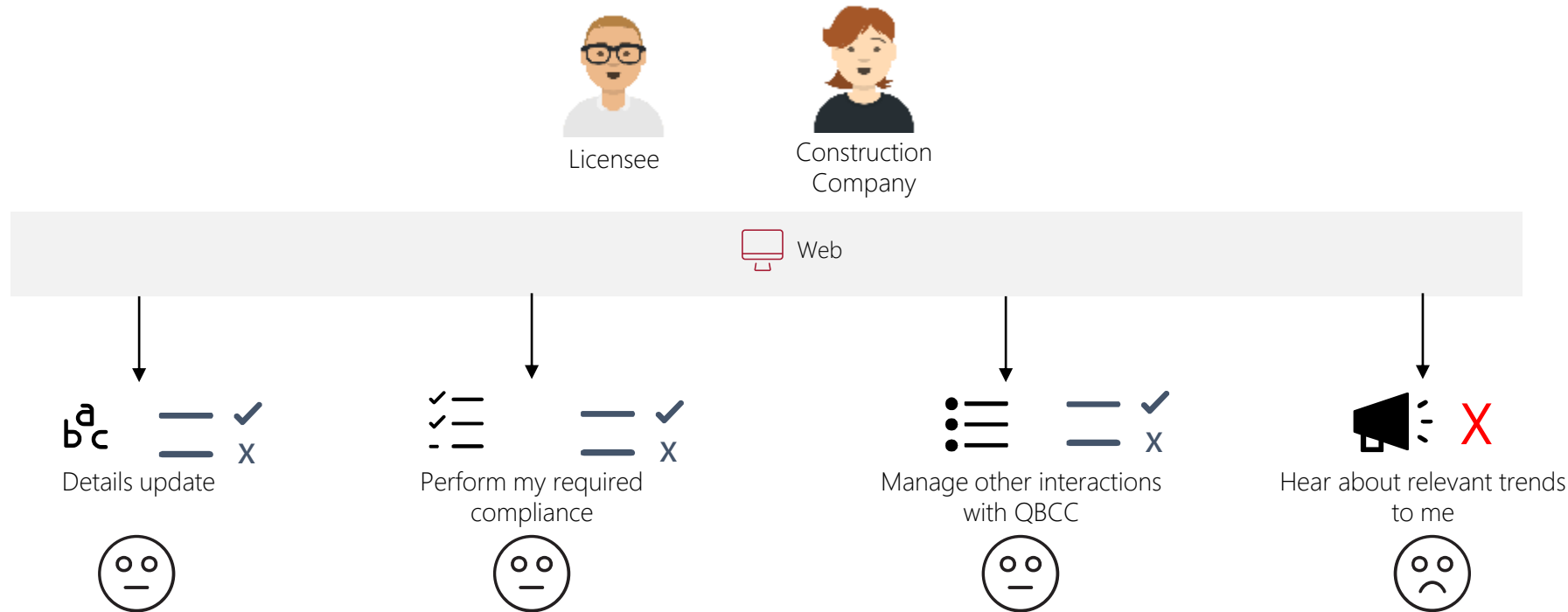
*"QBCC makes it simple for me to be a compliant building business. Compliance processes are simple and heavily automated, they share the latest regulation updates and provide me with the relevant training to keep up to date."*





## 2.1 Digital Contractor Journey Experience - Current State

Some modern channels and processes are in place, however the lack of an integrated digital experience means Licensee's of different varieties can find dealing with the QBCC frustrating and cumbersome. This leads to Licensee's "ducking" necessary compliance to save costs which impacts the timeliness and accuracy of the QBCC's services to the greater building industry.



**Extrapolated Stakeholder Feedback**

**Licensee**  
*"Something simple with the QBCC is usually a frustrating experience. There are some online options, but often I have to waste my time on the phone or physical going in."*

**Construction Company**  
*"We're more technologically advanced than the QBCC so we have to waste time preparing our material in their format."*

**QBCC Contact Centre Employee**  
*"My usual work day includes getting yelled at and being treated badly by consumers who have been on the phone for half an hour to get help with something really basic that they should be able to do online."*

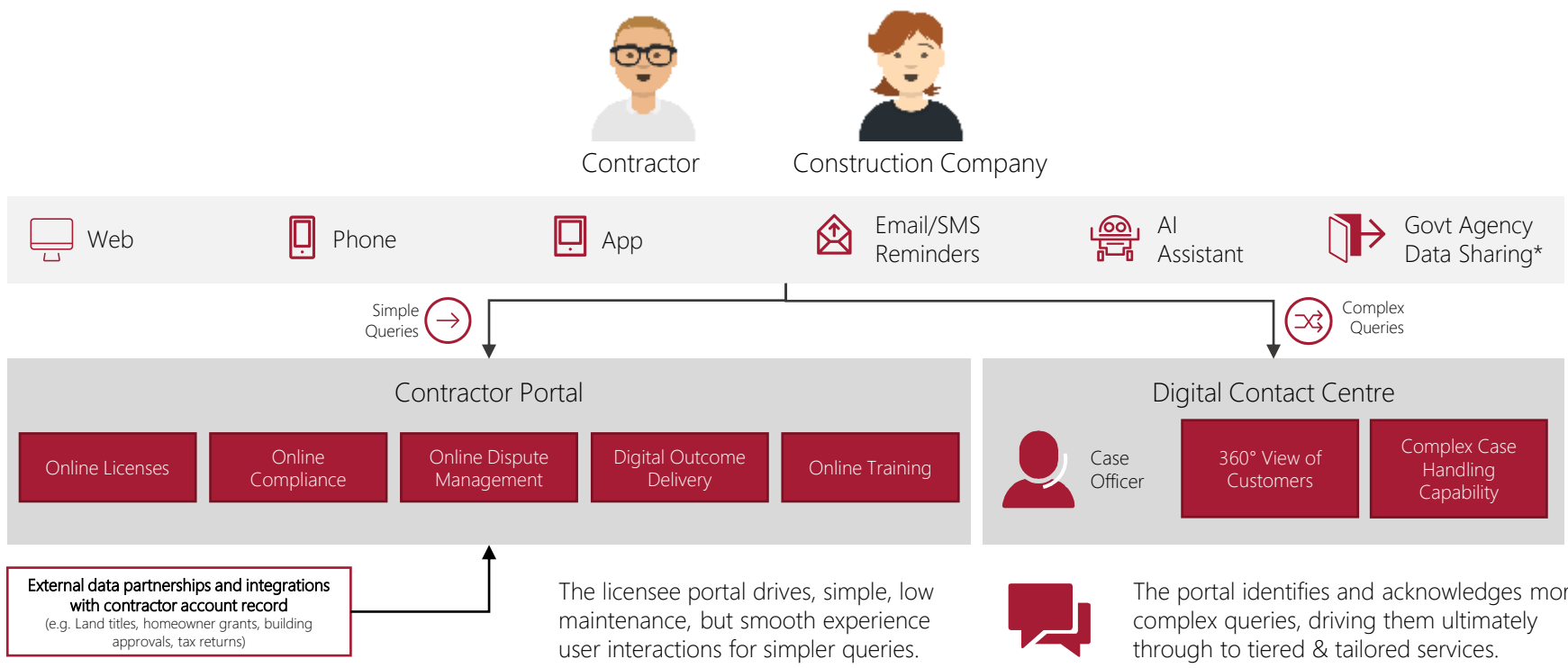
### Workforce and People Foundations

- Workforce Strategy**
  - Limited clarity on the strategy to transform the workforce to fully support online customer journeys.
- Culture**
  - Culture is focused on just the process rather than taking a humanistic focus to understand customer requirements.
- Skills & Adaptability**
  - Contact centre staff have high turnover meaning they are more likely to have knowledge gaps.
  - Staff have variable, but overall insufficient levels of digital literacy to deal with online issues.



# 2.1 Digital Contractor Journey Experience - Future State Illustration

Utilising targeted digital channels to provide stakeholders with simplified and proactive interactions with QBCC. For complex matters, trained case officers will be provided with a 360° view of customers to manage resolution activities.



### Desired Stakeholder Feedback

**Licensee**

*"The QBCC actively makes compliance easier for me by proactively seeking information and doing the admin for me and I can work with them when it suits me."*

**Construction Company**

*"The portal provides a central point so I can get all the accurate information I need to make an informed decision easily."*

**QBCC Contact Centre Employee**

*"I apply my knowledge and skills to help QBCC consumers with their complex queries. The work is interesting & rewarding."*

## Challenges addressed

- The following challenges related to this strategy are addressed in this program of work:
- Inconsistent QBCC licensee/customer journey which does not assist voluntary compliance.
  - Limited resources reducing proactive detection and investigation of non-compliance.
  - Gaps in certifiers and licensee's knowledge of legislative requirements.

## Strategy outcomes illustrated

- Digital customer experiences for all contractor and consumer touch points
- Intuitive, effective and continuous improvement of processes aligned to customer needs
- Delivery of comprehensive and easily accessible training to the industry

## Required Workforce and People Foundations Uplift

<b>Workforce Strategy</b>	<ul style="list-style-type: none"> <li>Develop a clear workforce strategy to inform the changes to customer facing roles.</li> </ul>
<b>Culture</b>	<ul style="list-style-type: none"> <li>Leverage human centred design to inform customer journey mapping and accompanying processes to build trust and transparency with consumers.</li> </ul>
<b>Skills &amp; Adaptability</b>	<ul style="list-style-type: none"> <li>Ensuring contact centre staff (eventually all staff) deeply understand new customer journeys.</li> <li>Upskill the staff on the technology supporting new customers journeys i.e. AI assistant.</li> </ul>

\*Subject to government priorities and passing of associated legislation<sup>1</sup>

<sup>1</sup> <https://www.datacommissioner.gov.au/data-legislation/data-availability-and-transparency-bill>

# 3. Adaptable, Digital, Sustainable Organisation

*"We are enabled to make the 'good' things happen and reduce the bad"*

Driven by change enabled leaders and an empowered workforce focused on collaboration, QBCC has the ability to transform their systems and processes with digitisation and create an adaptable and innovating workforce with flexible workplace options. QBCC will be on the forefront of industry changes and use technology to design efficient and integrated internal procedures

## Strategy Programs of Work

3.1 Virtual Organisation / Operations

3.2 Leadership

### QBCC Leader

*"I understand the importance of continuous learning and development to best equip both my team and I with the capabilities needed to be adaptable in an ever-changing industry. The QBCC is capable of positively shaping the building industry."*



### Customer Service Officer

*"Being able to see a single view of the customer enables me to reach time targets to answer calls as I can more easily answer customer queries. I spend little time handling complaints and dealing with frustrated customers."*



### Building Inspector

*"Technology has enabled me to perform certifications virtually with comfort that I am getting an honest view of the site. With continuous learning and development programs, I am able to inspect all types of construction sites."*



### Unions

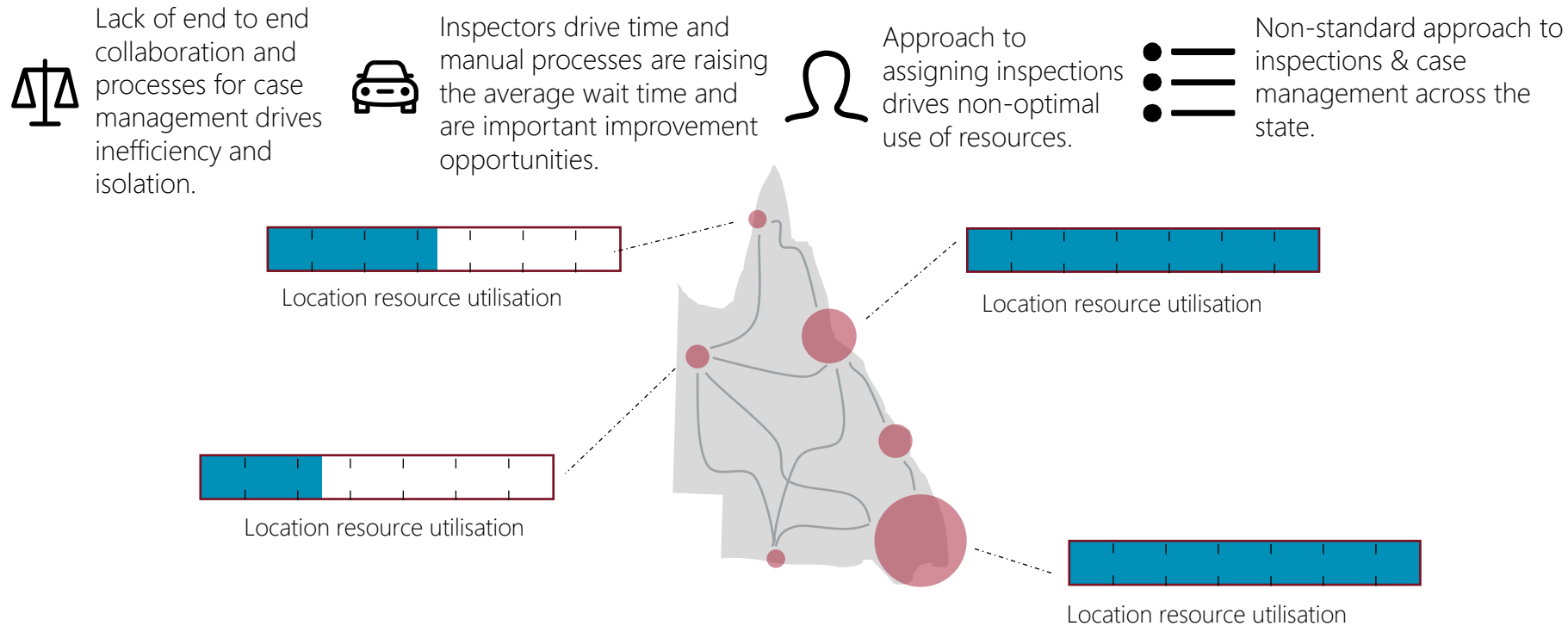
*"QBCC treats their employees fairly and keeps their best interests at the centre of what they do. We work with them to update their enterprise bargaining agreements and achieve the best outcome for all."*





## 3.1 Virtual Organisation / Operations - Current State

Fixed location teams, lack of a resource management capability, little to no take-up of technology enabled efficiency opportunities and different processes across the state drives silos between the QBCC teams that contribute to inefficiency of resource assignments and subsequent delays in service delivery.



### Extrapolated Stakeholder Feedback



Building Inspector

"I have 25 years of experience building and sometimes I have to drive 2 hours to a site to look at one simple defect anyone could tell is wrong."



QBCC Case Manager

"Licensees and Homeowners get frustrated at me because it takes so long to get a building inspector for their case, and I can't help due to a lack of information."



Licensee's & Customers

"The QBCC is so slow to respond to matters that are important to me."

### Workforce and People Foundations

#### Skills & Adaptability

- Dis-jointed learning programs that are not aligned to strategic objectives.
- Variable digital capability across the workforce.

#### Operating Model

- Further embedment required to bring to life state-wide distribution of work across the whole organisation.
- Field inspectors spending significant amount of time travelling between sites and fulfilling manual processes creating suboptimal use of resources.

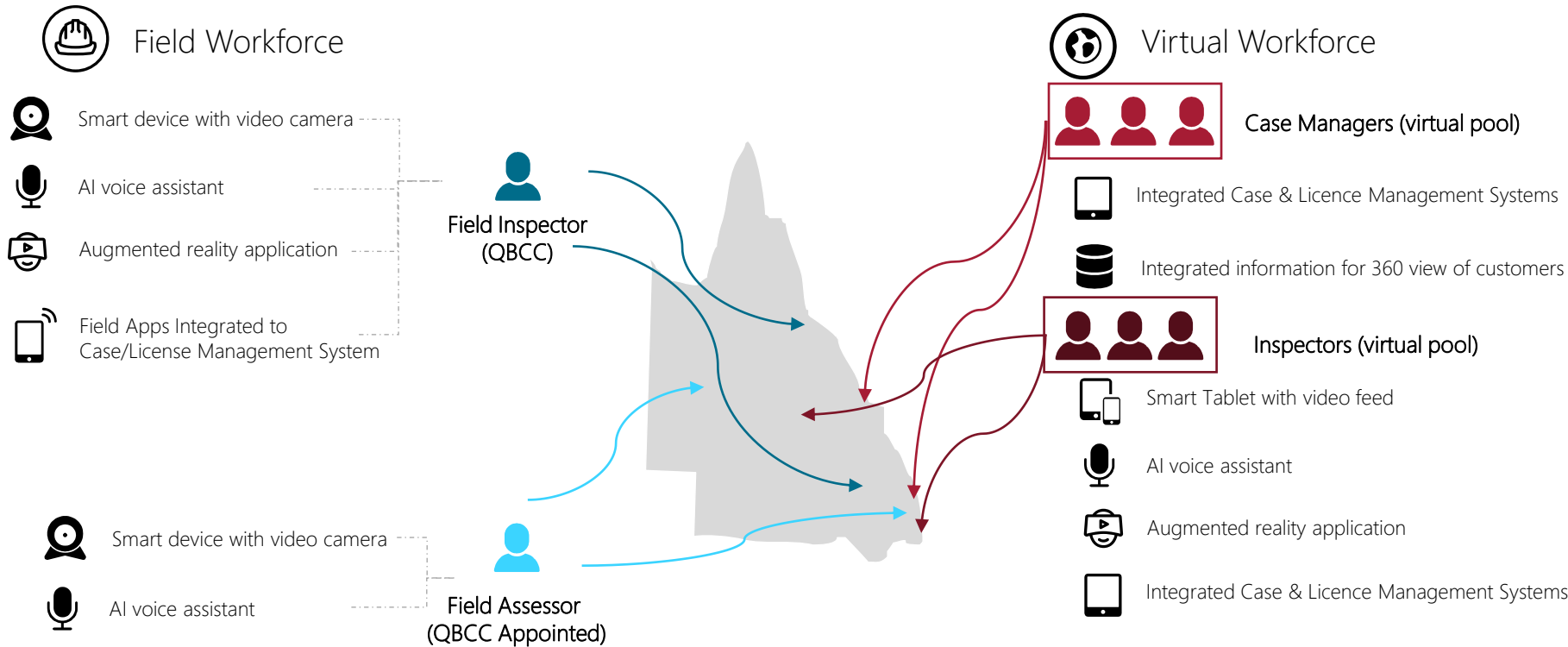
#### Culture & Leadership

- Leaders are siloed in thinking and do not have the change capability to support a strategic transformation.



# 3.1 Virtual Organisation / Operations - Future State Illustration

Empowering the QBCC to work in a connected fashion across the state using standardised work, automated processes and integrated information.



**Desired Stakeholder Feedback**

**Building Inspector**  
*"I can inspect from offsite or onsite when I need to. My evidence is automatically collated, categorised and stored securely. I also do more inspections that match my technical expertise."*

**QBCC Case Manager**  
*"I can do my job from anywhere with an internet connection knowing that all of QBCC's information is available to me and I have clear processes to use."*

**Licensee's & Customers**  
*"Inspections are easy to schedule in a timely manner and outcomes of them are available to me soon after."*

## Challenges addressed

The following challenges related to this strategy are addressed by this program of work:

- Lack of cohesive strategic leadership that gives rise to a siloed workforce.
- Limited digitisation causing inefficient and dis-jointed processes with hard copy data collection.

## Strategy outcomes illustrated

- Digitally enabled building and construction regulator
- Integrated and smart internal systems and processes
- An adaptable, mobile and innovative workforce and workplace

## Required Workforce and People Foundations Uplift

<b>Skills &amp; Adaptability</b>	<ul style="list-style-type: none"> <li>Upskill the workforce in tools to support virtual ways of working.</li> <li>Embed continuous learning and a focus on performance as part of how work gets done.</li> </ul>
<b>Operating Model</b>	<ul style="list-style-type: none"> <li>Standardise the processes to further embed state-wide distribution of work.</li> <li>Review role design of niche roles in light of efficiencies created by technology.</li> </ul>
<b>Culture &amp; Leadership</b>	<ul style="list-style-type: none"> <li>Change leaders needed to drive transformation and embed continuous improvement into everything they do.</li> </ul>





## 3.2 Leadership - Current State

The QBCC has limited change leadership capability to lead the organisation through this type of transformation and cultural changes need to be driven via a clear articulation of the target state culture and focusing the workforce further on performance and continuous learning.



### Need to Strengthen Change Leadership

Change leadership capability and resilience across the organisation are not at the level required to support the scale of the transformation and on-going adaptability of the QBCC. Leaders are individually strong but need to work together strategically to be collectively effective.



### Misaligned Culture

There is the need for leadership to elevate the purpose driven nature of the QBCC staff to support the strategic alignment and the realisation of the Next Normal. Ensuring the target state culture will enable the strategy and is measurable is key.



### Milestone Reward Focused

Strong focus on tenure and milestones with further emphasis required within performance and recognition processes around the behaviours required to drive strategic outcomes.



### Need to Further Strengthen Learning Focus & Environment

Learning and development are not strategically aligned to capability requirements or built in a manner that enables regular updates. Further investment is required to optimise the LMS and micro learning. Leadership needs to show a true investment in continuous learning.



QBCC Staff

*"I have a strong sense of purpose to help the Queensland community but my purpose is not necessarily aligned to QBCC's strategic goals."*



## 3.2 Leadership - Future State Illustration

QBCC will require its leaders to become leaders of change, who are not only resilient, adaptable and strategically aligned themselves, but embed these capabilities in their team to enable the Next Normal transformation to be successful.

### LEADERSHIP OF THE FUTURE

- 

Leaders drive change and challenge current practices to drive improvement in processes and outcomes to become a proactive and innovative workforce.
- 

Leaders are resilient and have a structured leadership approach to enhance strategic outcomes and transformation.
- 

Leaders drive delivery and take accountability for their team's input in delivery on strategic goals and knowledge of the importance of risk focus and proactive regulation.
- 

Leaders understand the role of culture in business performance and hold themselves, and others, accountable to positively influence it

#### Challenges addressed

Lack of cohesive strategic leadership that gives rise to a siloed workforce.

#### Strategy outcomes illustrated

● — Performance focused culture with change enabled leaders →

### WHAT DOES A CHANGE LEADER LOOK LIKE?

#### Leader of Change

- Structured leadership approach to enhance strategic outcomes and transform the QBCC to be an adaptable workforce.
- Accountable and instils this through team.
- Collaborates with other leaders.
- Proactive in ways of working and thinking.
- Well informed on new norms to find ways to improve processes, capabilities and the QBCC as a regulator.
- Understands the importance of continuous learning and development to be adaptable in an ever-changing industry.
- Rewards performance and not tenure.
- Aligns team in being adaptive in new ways of working across QBCC, and supports them to do this to drive execution on the QBCC's goals.



QBCC Staff

*"I have a strong sense of purpose in my work and know how I am helping QBCC reach its strategic goals."*



#### Indicators of Success

Execution capability to land transformation

Continuous learning and development

Leaders collaborating with purpose across divisions



#### Where I spend my time

Continuous Learning Development

QBCC Mission and Strategic Goals

Strategic Transformation & Process Improvement

20%

40%

40%



#### What I Think, Say, Do?

**Think:** How can we challenge the norm?

**Say:** QBCC is capable of positively shaping the building industry.

**Do:** Empower my team by focusing on continuous development and unleashing potential.

# 4. Human Centric Delivery

*"We acknowledge what is important to those in the construction journey, adapting how we engage"*

QBCC builds **trusted relationships** through clear understanding of its **stakeholders**. We are focused on **driving outcomes** as a **regulator** but demonstrating our human-centred approach to customers. QBCC reports & **measures their reputations & trusted relationships** & highlight this to the industry, **building credibility**.

## Strategy Programs of Work

4.1 Digital Homeowner Journey Experience

4.2 Tiered & Tailored Service Approach

### QBCC Customer Service Officer

*"I work in our tiered customer service centre which enables me to build relationships with my consumers and be transparent about the process that we are undertaking."*



### Industry Bodies

*"We can see that QBCC is building trust with their consumers through transparent processes. These processes are supported by relationships and QBCC employees who really understand what their consumers are going through."*



### Homeowners/Citizens

*"When I lodge a complaint the process the QBCC will undertake to investigate is clear and they will respond to me efficiently. I have a clear contact that I can reach out to within the QBCC to follow up on progress, however this is often not required as I am aware of when I should be getting an update."*



### Media

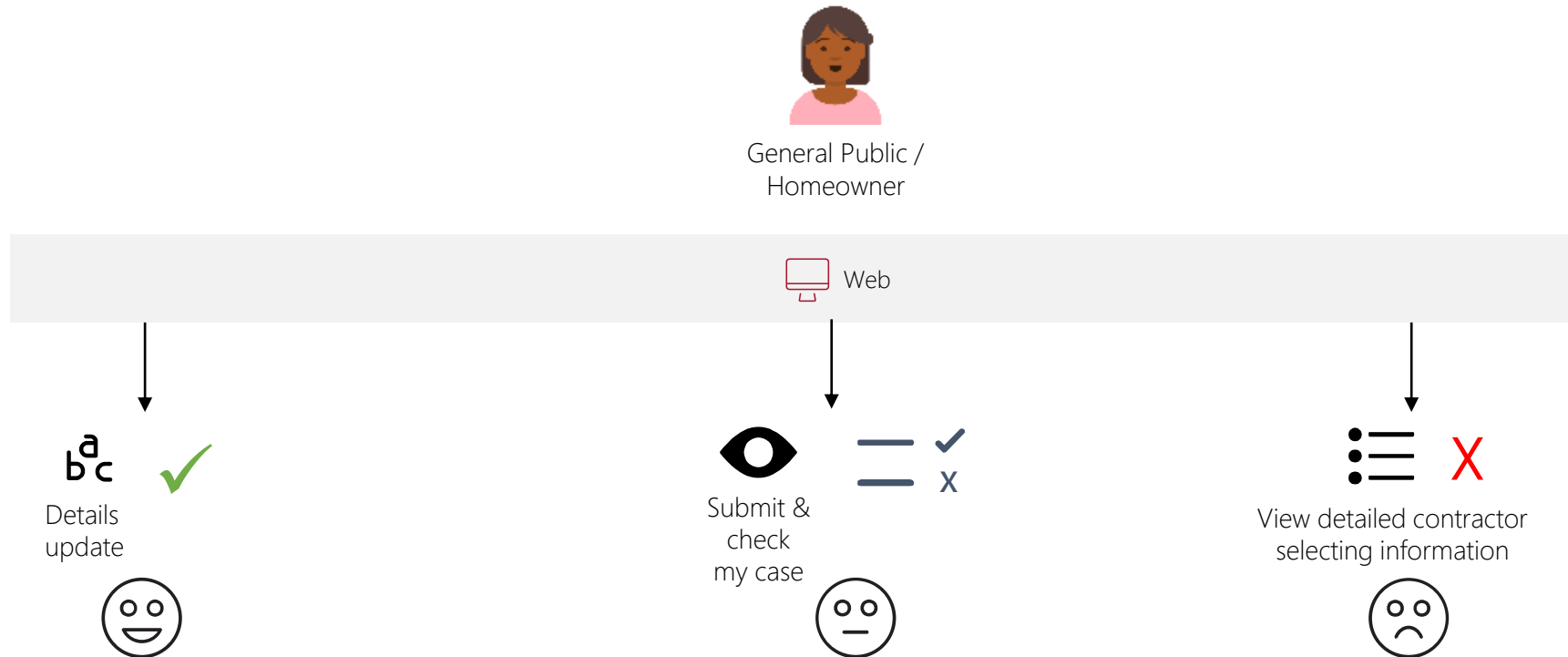
*"The QBCC is building their reputation within the industry. They have demonstrated to consumers that whilst they are a regulator and it is their job to protect Queenslanders they care about their end consumer and they are empathetic with their experience and their issues."*





## 4.1 Digital Homeowner Journey Experience - Current State

As the QBCC is predominantly operating through face-to-face and phone channels without an integrated digital experience, transparency of services to homeowners is limited and service excellence in fairness, is more difficult to demonstrate.



**Extrapolated Stakeholder Feedback**

 Homeowner  
*"Managing my case with the QBCC is frustrating and difficult. I wish I could do these simple things online instead of having to wait half an hour to talk to someone."*

 QBCC Contact Centre Employee  
*"The Queensland homeowners I deal with are all frustrated and anxious and I don't have a lot of agency or ability to help, which leaves me frustrated as well."*

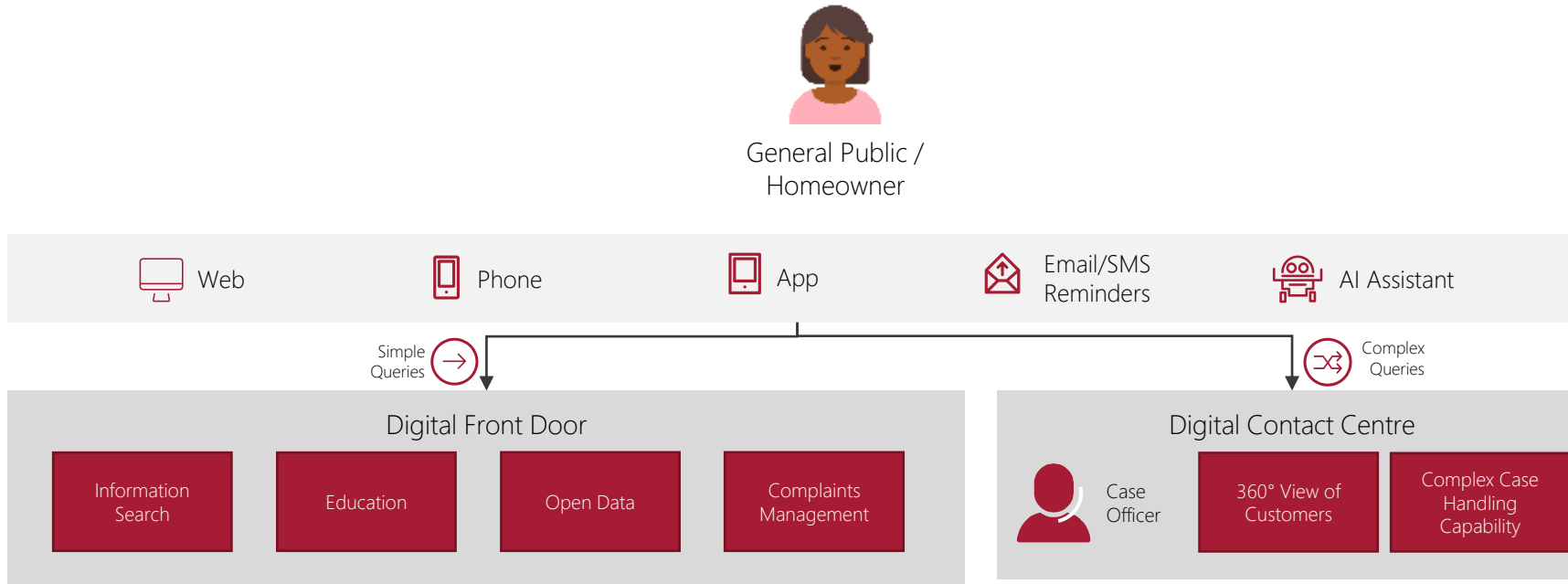
### Workforce and People Foundations

Workforce Strategy	<ul style="list-style-type: none"> <li>Limited clarity on the strategy to transform the workforce to fully support online journey for homeowners.</li> </ul>
Culture	<ul style="list-style-type: none"> <li>Culture is focused on processes rather than taking a humanistic focus to understand homeowner requirements.</li> <li>No collaboration between teams to understand issues relating to each homeowner.</li> </ul>
Skills & Adaptability	<ul style="list-style-type: none"> <li>Contact centre staff have high turnover meaning they are likely to have knowledge gaps in issues facing homeowners.</li> <li>Staff have variable but overall insufficient digital literacy to deal with online issues relating to homeowners.</li> </ul>



# 4.1 Digital Homeowner Journey Experience - Future State Illustration

Using digital channels to provide stakeholders with simplified and proactive interactions with QBCC. For complex matters, trained case officers will have a 360° view of customers to inform resolution activities.



The homeowner portal drives simple, low maintenance, but smooth user interactions for simpler queries.



The portal identifies and acknowledges more complex queries, driving them ultimately through to tiered & tailored services.

## Desired Stakeholder Feedback



Homeowner

*"I can manage my case online, and the site was helpful in showing me where to look for useful homeowner information."*



QBCC Contact Centre Employee

*"I can do my job from anywhere with an internet connection, all of QBCC's information is available to me and I have clear processes to use."*

### Challenges addressed

The following challenges related to this strategy are addressed by this program of work:

Unable to focus beyond minimum requirements due to resourcing and/or financial constraints.

Upset consumers and public distrust due to lack of transparency and poor processes.

### Strategy outcomes illustrated

- Understanding of what is important to our stakeholders and how to best help them →
- Building confidence through transparency and better reporting of outcomes delivered →

### Required Workforce and People Foundations Uplift

Workforce Strategy	<ul style="list-style-type: none"> <li>Develop a clear workforce strategy to inform the changes to homeowners to customer facing roles.</li> </ul>
Culture	<ul style="list-style-type: none"> <li>Leverage human-centred design to inform customer journey mapping and accompanying processes to build trust and transparency with homeowners.</li> </ul>
Skills & Adaptability	<ul style="list-style-type: none"> <li>Ensuring contact centre staff deeply understand new customer journeys for homeowners.</li> <li>Upskill the staff on the technology supporting new customers journeys for homeowners i.e. AI assistant.</li> </ul>



## 4.2 Tiered & Tailored Service Approach - Current State

A "few sizes fits all" approach breeds frustration with the commission's consumers as they feel like they aren't being understood and treated with an understanding of their situation.

Regulation Focus

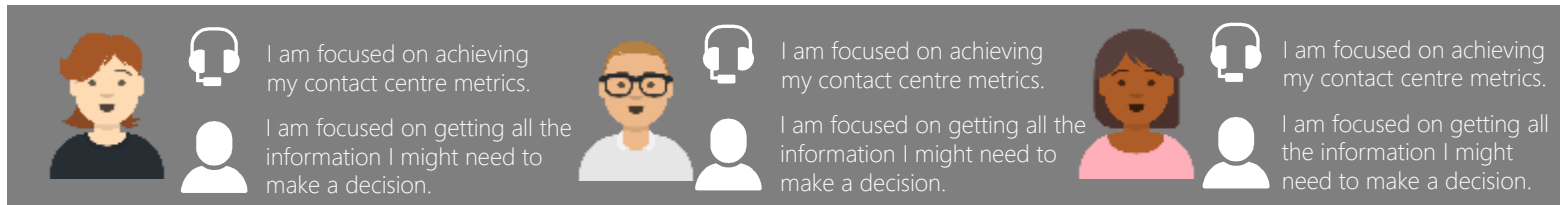


Extensive Compliance

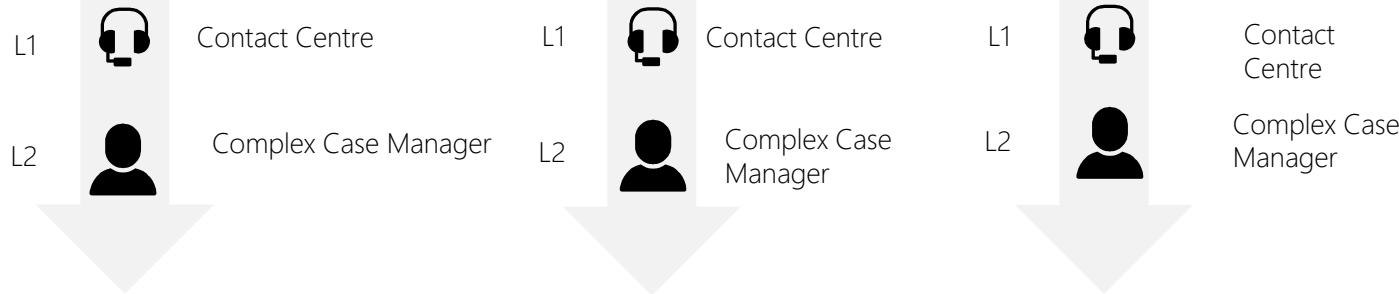


Extensive Compliance

Service/Support Focus



Service/Support Focus



### Extrapolated Stakeholder Feedback



Homeowner

"The commission seems to think because I raised a case I know the ins and outs of the building industry. They want all these forms and I don't even understand why."



Construction Company

"We don't really deal with the commission, they manage small type builders and wouldn't know how to deal with us. They don't know our business."



Licensee

"All of the compliance I have to do is ridiculous. The big companies probably have someone to do this but at my shop, it's just me and I don't want to spend my weekend filling in forms."

### Workforce and People Foundations

Workforce Strategy

- Staff in consumer facing roles are being emotional impacted by disgruntled consumers leading to high turnover.

Culture

- Culture is focused on "sticking to the rules" rather than considering a humanistic view of consumer issues.

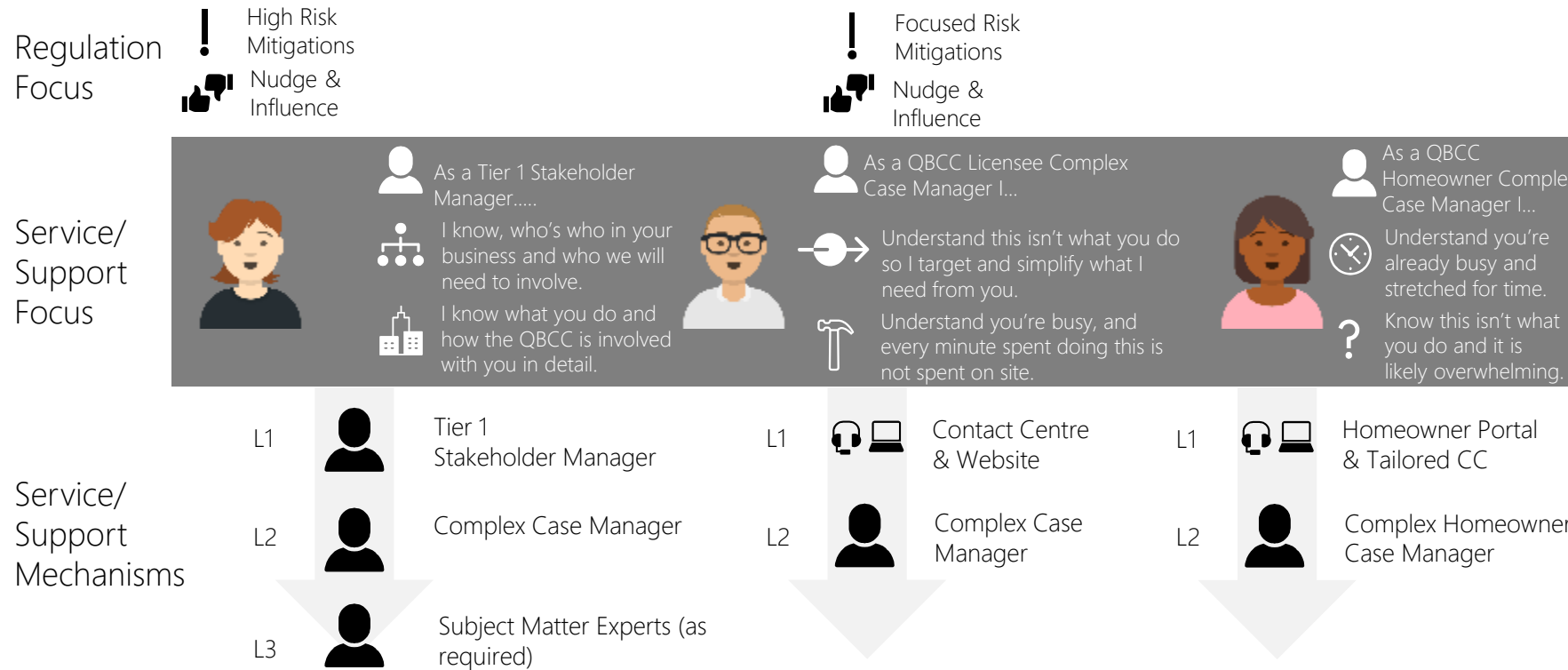
Skills and Adaptability

- Due to high turnover in consumer facing roles, staff are less likely to have the industry knowledge and understanding required to show empathy with consumers.



## 4.2 Tiered & Tailored Service Approach - Future State Illustration

Adopting a tiered and tailored approach to facilitate a personalised service experience for the commission's diverse consumer groups.



**Desired Stakeholder Feedback**

**Homeowner**  
 "I feel QBCC are very focused on homeowners and what I need during my construction journey; they make sure the industry does right by us."

**Construction Company**  
 "We deal with the commission on some complex matters, but they understand us, and that makes it easier"

**Licensee**  
 "The commission only requires common sense compliance tasks for the size of business I am. They know I'm not like the big companies."

### Challenges addressed

The following challenges related to this strategy are addressed by this program of work:

- Staff being emotionally impacted by complaints from consumers.
- Upset consumers and public distrust due to lack of consumer empathy and poor processes.

### Strategy outcomes illustrated

- Understanding of what is important to our stakeholders and how to best help them
- Building confidence through transparency and better reporting of outcomes delivered
- Tiered support to foster consumer relationships

### Required Workforce and People Foundations Uplift

<b>Workforce</b>	Staff in contact facing roles are having an enjoyable employee experience when dealing with consumers due to improved data on consumer journey.
<b>Culture</b>	A human-centred design approach is taken when dealing with consumers and improving processes.
<b>Skills &amp; Adaptability</b>	Industry knowledge and capability uplift required to understand new consumer journeys.

**The Next Normal will transform the QBCC over the next five years to support a safer, stronger Queensland.**

**In approaching this transformation, QBCC must first establish a variety of foundational capabilities to be well positioned to execute on the chosen transformation priority.**

---



# Our approach to transformation will depend on available funding & government policy priorities

QBCC has a variety of priority options for pursuing transformation which are explored in two alternate scenarios; however, for transformation to be successful we must address a variety of organisational gaps to establish the necessary foundational capabilities.

QBCC's current gaps in capability will limit achievement of the key strategies and as such, would need to be addressed as a first priority to ensure smooth delivery of the Next Normal.

From there, the path to the Next Normal will be dependant on the QBCC's upfront funding situation and government policy priorities. These priority options are explored below, including the funding requirements required to deliver the priority and their likely transformation scenario.

## The Imperative

### Establish Foundational Capabilities

Address current gaps and deficiencies that will prevent or constrain QBCC achieving The Next Normal vision across:

- Workforce foundations.
- Leadership and culture.
- Technology delivery and operating model.
- Financial sustainability.

## Priority Option Examples

### Risk Mitigation Focus

Priorities may provide additional funding with the expectation of reducing construction industry risk. Proactive regulation initiatives are highest priority.

### Consumer/Contractor Focus

Priorities may dictate reducing compliance burden on the industry. The digital customer journey and initiatives related to compliance made easy are highest priority.

### Sustainability/Savings Focus

Priorities may emphasise financial prudence, requiring the QBCC to fund additional activity from savings. Efficiency related initiatives that drive savings are the highest priority.

## Funding requirements

Significant upfront investment.

Internal cost savings redistributed to partially fund transformation efforts.

## Scenario

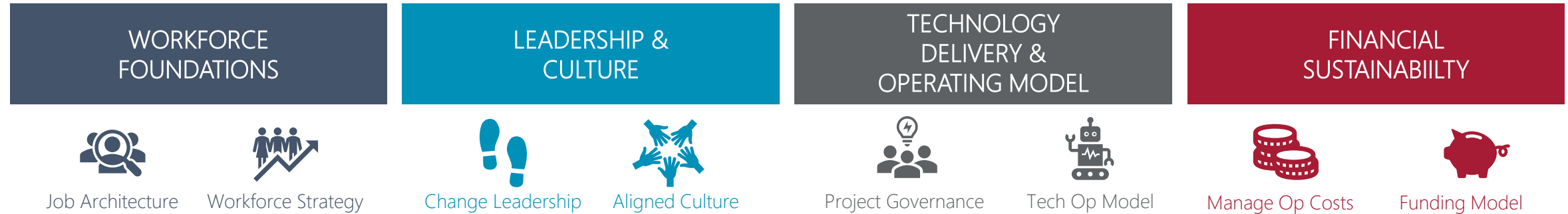
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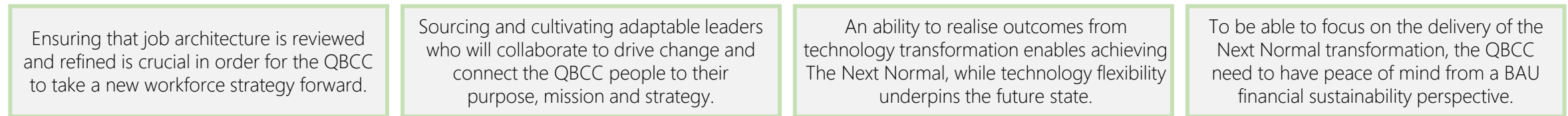
# QBCC will need to consider the foundations required to delivery these priorities

Irrespective of the chosen priority, there are foundations that QBCC needs to strengthen in order to be in a position to enable change; workforce structures, change capability, operating model and financial sustainability.

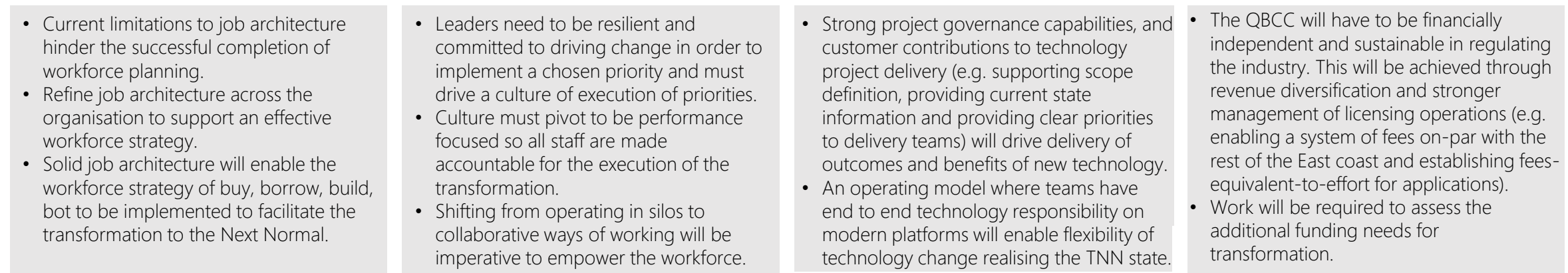
## PUTTING IN PLACE THE BUILDING BLOCKS TO TRANSFORM QBCC



### WHY?



### WHAT?



# The Workforce that will drive The Next Normal Strategy

The QBCC Workforce of the future is digital and drives value through Capability, Insight and Speed; it is not just the use of technology but using digitisation to enable strategy.

## What makes a digital workforce?

### Capability

#### Human Centric

Liberated from low value case maintenance and corrections, and can focus on 'richer value-add' interactions with consumers.

#### Continuous Capability Uplift

Leaders role model the importance of continuous development and create capacity for learning experiences and organic sharing of knowledge. Learning strategy is able to pivot to align to new technology and strategy changes.

### Insight

#### Visibility of Customer Journey

Case-related enquiries are digitised enabling staff to concentrate on value-added interactions with visibility of all customers' digital interactions.

#### Data & Analytical Capability

Strong analytics capability leveraging central view of rich, clean and structured organisational data.

#### Proactive Decision Making

Predictive analytics to drive decisions across the organisation.

### Speed

#### Increase Speed to Value

Use of agile methodology and flexible talent to pivot and adjust.

#### Automation

Streamlined processing via a combined human and digital workforce.

## What do we need to get there?

### Process & Governance

#### Change Leaders

Resilient, purpose driven, collaborative leaders that challenge the norm to facilitate change and strategic goals within the organisation.

#### Physical Workplace (Accommodation)

There is autonomy and flexibility around the location and timing of how work is executed. Employees work across fluid networks of teams to achieve consumer missions in virtual-hybrid environments.

#### Standardisation

Continuous improvement to harmonise and simplify processes.

### Talent & Culture

#### Strategically Aligned

A culture that is aligned and purpose driven in nature to drive strategic goals.

#### Multi-functional Teams

Facilitates a workforce that uses collaboration to solve problems and is cross-functional.

#### Performance Focused

Shift to focus on employee outputs and outcomes, over time on the clock. A workforce that is comfortable being a part of hybrid ways of working.

### Technology

#### Cloud Based, Mobile Native

Business applications that are available anywhere and made for mobile use.

#### Democratised Technologies

Use of Low-Code Platforms that enable anyone to configure or extend technologies.

#### AI & Automated

Technology will automate lower order tasks, with the workforce well versed in applying automations.

# The Next Normal Transformation Journey Scenario #1

Early risk reduction transformation activities requiring significant upfront investment with benefits realised through Horizons 2 and 3.

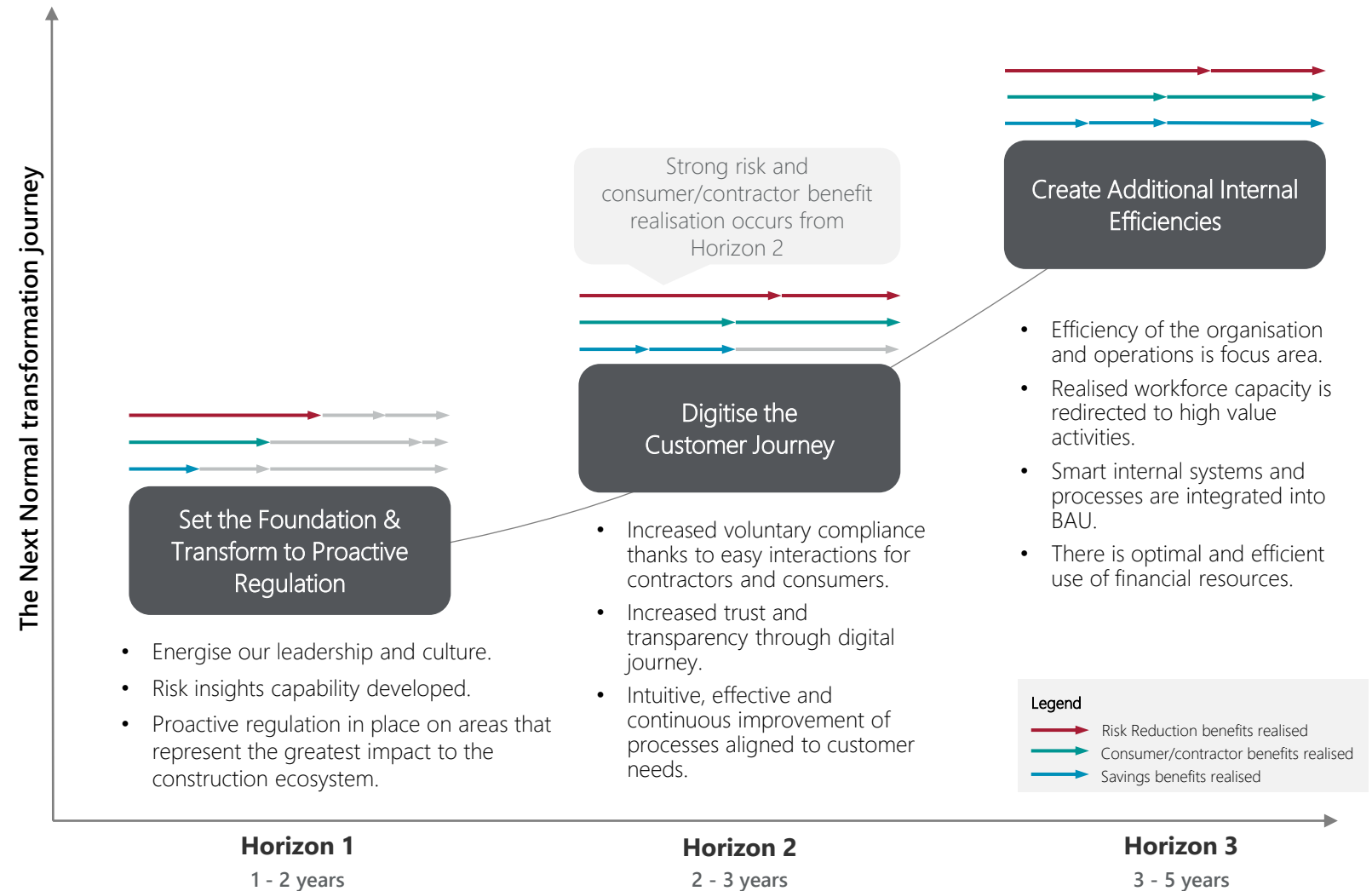
## Scenario #1 Rationale

This Scenario focuses on establishing a foundation to support the Risk Mitigation Priority option by equipping the QBCC to *rethink* how it supports the industry through proactive regulation.

This will allow the QBCC to influence industry behaviours through regulatory interventions based on insights from advanced analytics, ultimately reducing risk throughout the industry and demand on the QBCC resources.

This Scenario is characterised by early transformation activity during Horizon 1 to enable risk-driven, proactive regulation. The full benefits will be realised in 3 - 5 years through Digitisation of the Customer Journey in Horizon 2 and as the basis for Internal efficiency improvements in Horizon 3.

To execute this scenario effectively, it is assumed that significant investment will be available upfront to deliver the foundational transformation activities.



# The Next Normal Transformation Journey Scenario #2

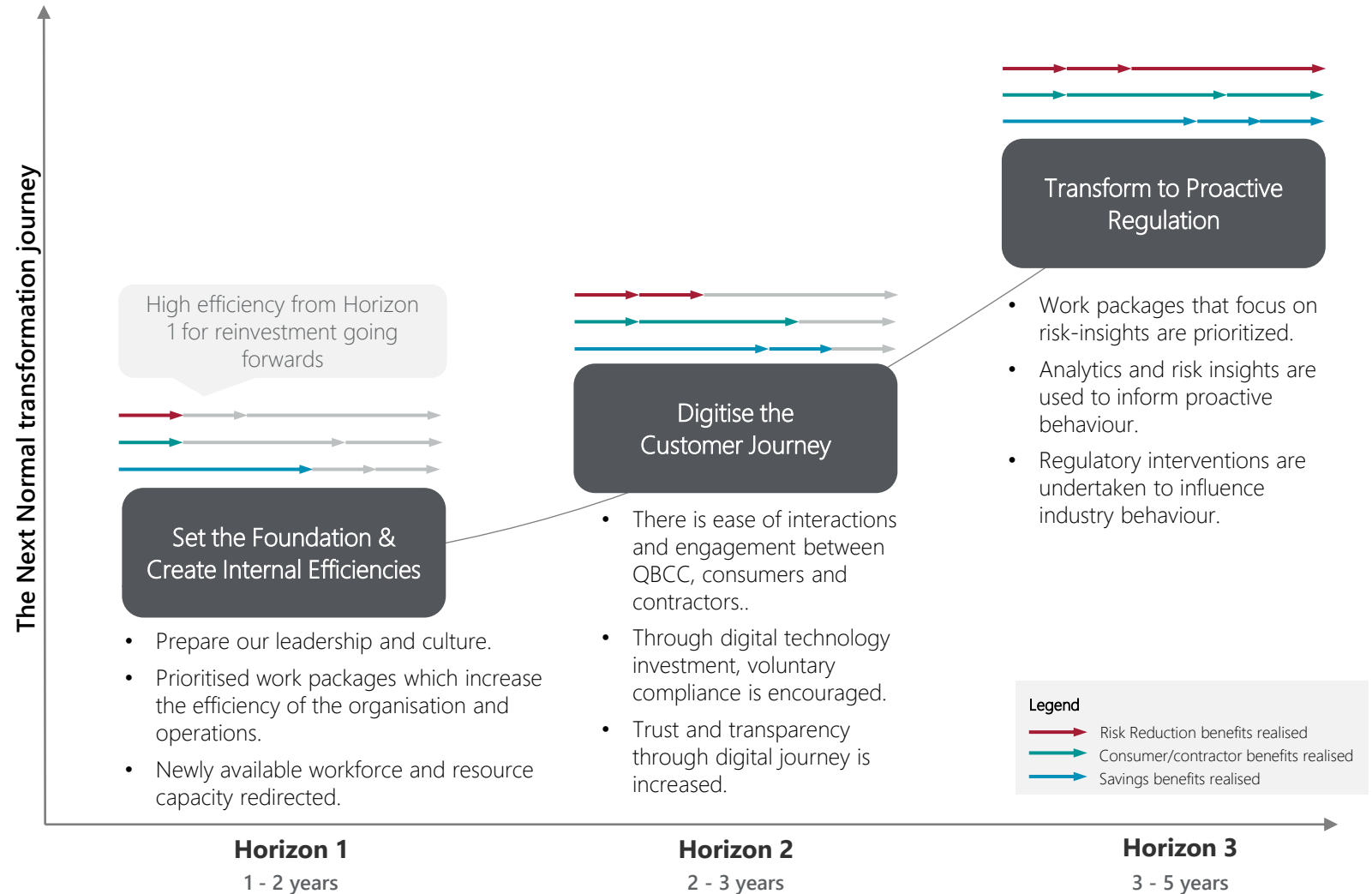
Economically balanced transformation funded partially through the realisation of progressive efficiency benefits.

## Scenario #2 Rationale

To sustainably transform the QBCC, Scenario #2 takes a conservative approach. It focuses on building internal capabilities to realise efficiencies *early* to de-risk transformation *later*.

This scenario focuses on building on foundational capabilities and prioritising work packages in order to provide the QBCC with increased workforce and financial capacity. Releasing capacity through targeting inefficiencies in areas of people, process, data and technology will allow for reinvestment of resources to continue meaningful and high value transformation pursuits.

Following initial capacity release, Horizon 2 and 3 focus on reinvesting these benefits to realise further improvements. Horizon 2 will look to invest further in voluntary compliance and building trust between the consumer, contractors and the QBCC. Horizon 3 then prioritises advance analytics pursuits to deliver actionable insights and risk-driven behaviour.



To proceed we are seeking endorsement of the Next Normal vision and objectives so we can start developing its execution roadmap

1. Reduce the **compliance burden** for improved stakeholder experience



2. Improve **regulatory effectiveness** to reduce industry risk



The Next Normal

4. Become an **empathetic workforce** to build **confidence** with those in the construction journey



3. Create an **adaptable, digital and sustainable organisation** to increase capacity and focus on what matters





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# The Next Normal Strategy - Appendices

April 2021



A1

# Current State Details

# Current - Strategic Regulation

The QBCC is now evolving from being a licensing body and complaints agency to becoming an organisation capable of continually evolving with the new challenges and risks arising in the building and construction sector.

## Key Strengths

### Clear vision and strategy

The QBCC has clearly defined what is the future of its regulatory role: “anticipate, prevent and mitigate risks and harm across the industry”. The QBCC understand the importance of moving towards becoming a risk based regulator, covering the full spectrum of products, services, behaviours and activities that create or mitigate risk in the sector and leveraging insight for decision making.

### Delivering on minimum legislative requirements

With the current level of effort the QBCC deliver on the minimum legislative requirements.

## Key Challenges

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Volume of continuous legislation changes

Constant development and implementation of new reforms are challenging due to current resources constraints. Late or last minute shift in legislation intent are also making it difficult to plan for those changes.

*Challenges preventing a sustainable and effective organisation*



### Resourcing is not adequate

The QBCC role has evolved, however the resourcing or capabilities have not changed, making it difficult to move towards a more strategic regulator role. The QBCC are limited in pursuing upstream activities due to those resource constraints.

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Smart resourcing

The QBCC is currently not able to act efficiently and target more risky activities due to not being able to harness the insights and resources required. Risks and resources must be managed effectively in the Next Normal.

#### Sources:

- The Next Normal Transformation Strategy – working draft Feb 2021
- QBCC stakeholders interviews – March 2021

# Current - Financial Sustainability

The ever-increasing number of reforms and legislation that have come through to strengthen the QBCC regulatory role since its inception has led to the QBCC General Fund deficit.

## Key Strengths

### Clear view on imperative to change

The QBCC is clearly aware that to meet the costs needed to provide its regulatory services, it must generate sustainable cashflows and deliver ongoing operational efficiencies.

### Significant analysis conducted to reach financial sustainability

Work has been conducted to understand the different levers required for a more sustainable financial position. Options for revenue diversification are currently under discussion but are yet to be pursued.

## Key Challenges

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Ongoing deficit position

The General Fund Business As Usual (BAU), has been operating in a deficit position since the inception of the QBCC on 1 December 2013. This is largely due to unchanged regulatory fees and increased legislation. This has been an ongoing concern as the QBCC relies on financial support via an annual funding submission to Government.

*Challenges preventing a sustainable and effective organisation*



### Limited legislation changes for funding

Evolution towards a more sustainable funding model will be dependent on changes in legislation as the QBCC is a regulatory body. This can take time to eventuate, depending on the current economic context. Limited negotiating is being performed to enable the QBCC to become self-funding.

*Challenges preventing a sustainable and effective organisation*



### Revenue diversification required

There are a number of avenues that have been flagged for investigation around the QBCC revenue sources. Effort is required to action investigations into revenue diversification, process optimisation and ensuring the correct license fees are being paid.

#### Sources:

- The Next Normal Transformation Strategy – working draft Feb 2021
- QBCC stakeholders interviews – March 2021

# Current - Performance Management

The QBCC has commenced its journey to become a risk-focused insights driven regulator and have several frameworks defined; however, some improvements to the overall organisation performance management is key for success into the future.

## Key Strengths

### Performance Management Framework Developed

The frameworks development is a current positive, however, it is only partially implemented due to resourcing and capability constraints.

### Existing Integrated Business Planning Framework

The framework specifies three approaches to reporting: external, operational and management reporting.

### Documented Performance Reporting Framework

The framework covers the essential business planning requirements for it to deliver its strategic objectives. It describes the various plans and reports required to achieve this goal.

### External reporting exists

External reporting on the effectiveness of the QBCC's services exists through an annual report and a service delivery statement.

## Key Challenges

*Challenges impacting a human-centric and consumer focused organisation.*



### Individual performance management

An opportunity exists to shift the way in which the workforce celebrates their staff and moving away from recognising milestones to acknowledging high performance. Developing a clearer link between performance and overall strategy is crucial to focus on customer and business outcomes.

*Challenges preventing a sustainable, agile and effective organisation*



### Limited view of organisation performance

Operational and management reporting lack the required depth to understand performance and enable informed decision-making. Furthermore, the external reporting is activity based and does not give an assessment of the effectiveness of the QBCC in achieving desired regulatory outcomes.

*Challenges preventing a sustainable and effective organisation*



### Planning, budgeting and forecasting cycle

Planning, budgeting and forecasting processes are disconnected. Without an integrated process the business lacks the support to create meaningful budgets and visibility on the end-to-end process. Clear linkage between the strategic planning cycle and the budgeting cycle, will lead to the strategic intent of QBCC being realised.

#### Sources:

- Licensing builders and builder trades Report 16: 2019-2020 ; Queensland Audit Office
- The Next Normal Transformation Strategy – working draft Feb 2021
- PBF Review - 2020
- QBCC stakeholders interviews – March 2021

# Current – Risk & Reputation

An intrinsic relationship exists between risk and reputation at the QBCC; it is clear that this relationship is well understood by the organisation from the outset, however, it is also clear that the process to manage both aspects of the organisation is often manual.

## Key Strengths

### Enterprise Risk Management Framework

The framework demonstrates existence of a risk escalation strategy and clearly outlines the course of action when a risk eventuates.

### Stakeholder Experience Strategy

By recognising the holistic nature of stakeholder experiences, the QBCC considers both external and internal parties important to their risk management strategy.

### Recognising the Direct Link

The QBCC has recognised a clear linkage between the risks faced by the organisation and the reputation it possesses; this promotes risk conscious decision-making processes.

## Key Challenges

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Limited leverage of data & analytics for risk management

The Enterprise Risk Management Framework does not mention the use of automation, data and analytics tools; if implemented they would streamline the risk management process allowing for better mitigation. Furthermore, analytics could be used to assess the risks associated with the Licensee.

*Challenges impacting consumer confidence*



### Reputational Risk

There is no active pursuit of ensuring the reputation of the QBCC in the community is positive. Reputational risk is of increasing concern partly due to the increase in social media use and instantaneous communications making it more difficult for regulators to control how they are perceived.

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Cybersecurity Risk

With an increased use of technology post-transformation, cybersecurity and attacks must be kept front of mind. This plays into both the QBCC's reputation as a trust and safe regulator as well as the risk of cyber attacks on consumer, contractor and licensee data.

#### Sources:

- Licensing builders and builder trades Report 16: 2019-2020 ; Queensland Audit Office
- The Next Normal – Stakeholder experience strategy 2021-2026
- The Next Normal Transformation Strategy – working draft Feb 2021
- QBCC stakeholders interviews – March 2021
- Deloitte Exploring Strategic Risk - 2013

# Current - Insights Driven (Data and Analytics)

The QBCC's journey to become an insights driven organisation requires a key investment in data and analytics and using insights to inform decision-making.

## Key Strengths

### Scope Extended

A number of POCs have been worked on however, these are requiring data refresh or capacity by staff in order to be utilised.

### Interest in Insights

Based off interviews, there is interest from stakeholders in a number of areas of the organisation around the possibility of having and utilising insights to inform actions and decisions.

### Education

Progress has been made on developing the skills required to implement some aspects of the IDR programme of work.

## Key Challenges

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Foundational Data Governance & Insights Culture

A lack of governance and data management has caused technical roadblocks and a delay in completion of a number of initiatives due. Similarly, there has been limited organisation-wide insights awareness and insights driven development.

*Challenges preventing a sustainable and effective organisation*



### Executive Governance

Limited governance and accountability is possibly the largest hurdle and cause of the lack of implementation of the IDR strategy. Business ownership of products has not been defined creating challenges around pursuit. This has also lead to a delay in the regular review and amendment of the IDR strategy.

*Challenges preventing a sustainable and effective organisation*



### Implementation momentum / budget

The IDR Business Case has lost momentum and priority in terms of implementation. Despite approving a centralised approach to Insights and Analytics, limited investment has been made to implement this function. This is partly due to financial constraints.

#### Sources:

- IDR Status Report, received 4th March 2021
- Stakeholders interviews March 2021

# Current – Workforce Planning

While there a number of key strengths, QBCC must invest in functional and sustainable workforce planning in order address the existing challenges around succession planning, multi-functional teams and integration.

## Key Strengths

### Solid Industry Knowledge

The corporate and industry knowledge within the organisation, particularly at the front line, is strong and will enable the organisation to focus on capability uplift in other areas.

### Robust Remote Working Capabilities

QBCC adapted with COVID and enabled remote working flexibility. This shift had a 90% uptake from QBCC employees and enabled the on-going delivery of services to customers.

### Senior Stakeholder Engagement

There is commitment from senior stakeholders to optimise workforce processes and increase capability. The People and Culture Committee report directly to the board.

### Unwavering Productivity Levels

There has been minimal industry impact on productivity across QBCC during the pandemic. Productivity reporting demonstrates that the QBCC workforce was effective and efficient despite the unpredictable trends during the pandemic.

## Key Challenges

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Job Architecture and Succession Planning

Creating consistent job architecture and clarifying succession planning, would enable meaningful analysis for workforce optimisation and lower knowledge retention risks. Focusing on critical roles will significantly benefit the organisation to reduce turnover rates and improve performance.

*Challenges preventing a sustainable and effective organisation*



### Embracing Multi-Functional Teams.

Creating a workforce that uses collaboration to solve problems and is cross-functional. Common messaging indicates a lack of collaboration across teams and avoidance of current resources that support this.

*Challenges preventing a sustainable and effective organisation*



### Improved Working and Integration

A shift in mindset is required to build capabilities in ways of working and to integrate teams to best serve the organisation's mission. The QBCC needs to develop an integrated delivery model between regional and central services to enable greater distribution of workload and prioritisation of work.

#### Sources:

- Stakeholder workshops 2021
- QBCC's Proposed outcomes WFC for discussion with SLT, 2017
- QBCC TNN Accommodation Initiative Approach, 2021
- QBCC'S People and Culture Committee COVID-19 Impacts Productivity Assessment, 2021

# Current – People & Culture

Ongoing people and cultural management activities must be invested in to ensure the Next Normal can be implemented and maintained successfully.

## Key Strengths

### Strong Purpose Driven Staff

QBCC employees have demonstrated they are purpose-driven in their approach to work and they want to contribute to the betterment of society. QBCC should leverage this to align to strategic goals.

### Inclusive Culture

An organisation that values, integrity, diversity and inclusion principles. It is apparent in employee survey data that the people at QBCC are a great group to work with demonstrating an inclusive work environment.

### Openness To Outside In Thinking

Employees are open to using outside innovation to create change and improve workforce processes.

### Valued Focus on Work Life Balance & Flexibility

Employees recognise the flexibility and work life balance promoted at QBCC which will help attract new talent. This is backed up employee survey responses and 90% of the workforce participating in remote working.

## Key Challenges

*Challenges preventing a sustainable and effective organisation*



### Aspirational Culture and Leaders of Change

Combining strategically aligned leaders who support their teams in new ways of working will allow the organisation to transform and achieve their well-defined strategic goals. This mentality will establish a culture of aspiration, which is crucial to the organisation's transformation.

*Challenges creating a barrier to compliance*



### Ongoing Learning and Development

Learning and development programs need to be designed to fill capability gaps, be strategically aligned and foster a culture of continuous improvement. The focus of this is to enable QBCC's workforce to keep on-top of industry changes and consume learning in manageable pieces as required.

*Challenges preventing effective risk reduction of the industry and its ecosystem*



### Developing a Change Capability

Will improve QBCC's ability to absorb and respond positively to change, which will provide leaders with the required toolkits to support the workforce. QBCC needs to have the ability to be an adaptive and agile organisation to support the reallocation of resources in order to deliver on key priorities.

#### Sources:

- Stakeholder workshops 2021
- QBCC's Proposed outcomes WFC for discussion with SLT, 2017
- Working for Queensland Survey Responses, 2020
- Various QBCC Frameworks



# Current – Technology

In the current environment of no significant changes, IT services are being delivered capably, however challenges regarding delivery track record and capabilities are identified when viewing the capability through the lens of being an enabler for The Next Normal Transformation.

## Key Strengths

### Services are delivered in a stable manner

Foundation ICT service metrics such as availability, post release customer satisfaction, incident numbers and incident resolution performance indicate stable and capable service delivery.

### Modernising ICT Environment outside of core systems

The majority of systems within the QBCC environment are cloud based modern tools e.g. PowerBI, CAMMS. These tools possess capabilities that allow them to be integrated and linked easily when the core parts of the QBCC systems environment are refreshed.

## Key Challenges

*Challenges preventing a sustainable and effective organisation*



### Lack of Large Project Delivery Capability & Track Record

The smaller scale of the QBCC means that capability to deliver large scale, transformational IT projects is not present and is required to be sourced externally. Additionally, the track record of large scale IT delivery at QBCC is unexemplary as evidenced by the IDR project issues.

*Challenges preventing a sustainable and effective organisation*



### Ageing & Bespoke Core Systems

QBCC's core Case & Licensing management systems are bespoke, built on legacy systems and in the case of CMS, on no longer supported technology. This challenge drives organisational risk, increased system maintenance requirements and constrains QBCC's capability and flexibility.

*Challenges preventing a sustainable and effective organisation*



### IT Capability Gaps

Although sufficient for the current vision and requirements of the IT function, there are IT capability gaps that will hold back achievement of the Next Normal vision. Notable gaps are security, strategy development & architecture, data & analytics and scaled DevOps delivery methods.

#### Sources:

- Stakeholder Interviews 2021
- IDR Working Session – Current State 12<sup>th</sup> March
- QBCC IFS Scorecard provided by Ainslie White 5<sup>th</sup> March 2021
- IS Team Structure provided by Ainslie White 5<sup>th</sup> March 2021
- PR1.3e - QBCC ISMS Risk Register (DRAFT 202010) provided by Ainslie White 5<sup>th</sup> March 2021



# Workforce Current State

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# QBCC is transforming to respond, and so must its workforce

*How can we transform QBCC in a pragmatic and iterative manner to deliver on the QBCC vision to be a smarter, proactive building and construction regulator that builds trust and confidence in all we do?*

## People and Culture

### What is People & Culture to QBCC?

- We value our people and building a positive and productive culture.
- We help our people become the best they can be and invest in their success and wellbeing.
- We attract people who want to make a difference and want to work with us .

**How does QBCC align to deliver enhanced stakeholder outcomes through a transformed culture and employee experience**

- How can QBCC foster a culture where employees work cross-functionally and collaboratively across the organisation?
- How does QBCC create a workforce that is adaptive, resilient and connected to the purpose of achieving organisational strategic goals?
- How can QBCC create leaders who empower teams to take ownership for customer experience?
- How do we create a culture where people focus on what is required to drive customer outcomes?
- What are the biggest behavioural shifts that are required to enable transformation?
- How can QBCC embrace continuous learning and development to upskill their employees and equip them for unforeseen challenges?
- How can QBCC utilise the existing knowledge within the workforce to educate the broader group?

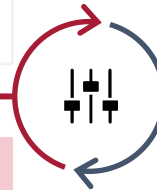
## Workforce Planning

### What is Workforce Planning to QBCC?

- We have the right people in the right roles.
- Our workforce planning is pre-emptive and forward looking.
- We have a contemporary and flexible approach to managing our capacity and capability.

**What are the systematic workforce shifts that are needed to meet the challenges and opportunities presented by the changing environment**

- How do the workforce capabilities enable a strategic workforce plan to be successfully implemented?
- What change capabilities are required to enable a successful transformation at QBCC?
- How can QBCC continually leverage their current workforce and upskill their capabilities to deal with an ever-changing industry?
- What organisational structure will best enable QBCC to deliver on its strategic goals?
- How does QBCC balance the right composition of remote and on-site working to work productively towards its strategic goals?
- How can QBCC reward how works gets done to align to strategic goals?
- What level of leadership capability is required to drive purpose and results?



# To understand the challenges and shift required, QBCC must assess its Work, Worker and Workplace

The Work, Worker, Workplace Model looks at three sets of levers to drive and align QBCCs culture and workforce.



## Work

- There is knowledge of the current skills required to complete business however, an understanding of what will be required in the future and what this looks like across QBCC is limited.
- The constantly changing industry environment creates challenges in prioritising the work and aligning teams to deliver the right services required for QBCC.
- Current systems, internal processes and procedures are impeding on QBCC's ability to deliver services and the Next Normal transformation. Consideration needs to be given to digitally enabling the workforce to deliver current and future services.
- Capabilities (e.g. transformational leadership) required to deliver the Next Normal transformation are not present and are critical to the success of the business.
- Limitations to job & career architecture hinder the successful completion of workforce planning (inc. succession planning). Currently 46% of job titles are unique across the organisation.



## Worker

- QBCC has strong technical leaders which has enabled technical expertise across several areas within the business.
- Change leadership capability and resilience across the organisation are not at the level required to support the scale of the transformation and on-going adaptability of QBCC.
- There is the need to elevate the purpose driven nature of QBCC staff to support strategic alignment and the realisation of the Next Normal.
- There is opportunity to look at how QBCC embeds its desired culture of innovation and better connecting QBCC people to QBCC's purpose and values (e.g. agility, performance, digital fluency).
- Knowledge transfer activities are limited and create risks for the organisation with the potential loss of key information retained at an individual level.
- Some functions have a tendency to use a contingent workforce to manage workload, where there is potential opportunity to upskill internally or use external vendors.



## Workplace

- QBCC is aligned to deliver to what has been required of them, not the work that will be required of them.
- QBCC adapted very well to the COVID crisis and there was a 90% uptake of virtual working. Productivity was not impacted by the move to virtual working and provides the chance to continue with the new hybrid model.
- Dis-jointed processes and double handling creating inefficiencies in processes could be improved with clear accountability and knowledge sharing.
- Centralised team workload is creating bottlenecks that regional areas are impacted by.
- Shifting from alignment to milestones, to recognising high performance and embedding the framework to build and retain talent.
- Currently learning is conducted on a mandatory as-needed basis, limiting QBCC's ability to keep up to date with industry changes.

# How is QBCC currently positioned to deliver its services?



Current limitations are impeding on QBCC's ability to accurately identify the required skills and capabilities to deliver current and future services.



## Professional

Fundamental career skills, that enable all staff to perform in the work environment

A need to strengthen .....

- Stakeholder focus.
- Digital literacy.
- Change agility.
- Data management.
- Collaboration.



## Technical

Highly specialised skillsets that require extensive knowledge and experience to perform specific roles

A need to build.....

- Specialised licensing capability.
- Change management.
- Program management and execution.



## Leadership

Skills applied by those performing leadership responsibilities

QBCC leaders require more focus on.....

- Continuous improvement.
- People leadership.
- Execution and accountability,

## Workforce Data Insights

Job Architecture:

- 272 unique position titles for 585 individuals indicates a current lack of consistent career architecture, limiting meaningful analysis at the role / job family level.
- Spans of control of 5.29 is within the 'best practice' range of 5 to 10 considered by Australia Public Service Commission (APSC). There is an outlier with 24 directors which is of concern.

Workforce model:

- **Enabling functions are 55.55% of the workforce.** Made of the following divisions: CIO, CSO, CLO, CFO, CHRO, Ministerial and Executive Services, Government and Media Relations.
- 15.55% of the workforce is contingent.

Diversity:

- QBCC are **meeting a significant portion of their diversity & inclusion targets** except for Aboriginal & Torres Strait Islander employees and employees with a disability.

Engagement

- QBCC sees a **significant reduction in engagement of employees with 4 – 6 years of service.** This highlights a risk of knowledge brokers leaving the organisation and without a knowledge transfer approach, this would likely impact productivity and output within that function.

# What are QBCC's current capabilities and capacity to deliver the work?



Increased capacity alone will not provide the improvement required for QBCC to deliver the Next Normal Transformation. A workforce enabled through technology, knowledge sharing and capability uplift will support in driving towards being a smarter, proactive building and construction regulator.



## CAPABILITY

Functional Area	Insights
Office of CSO	Leadership of project management office to develop a more structured leadership approach to enhance strategic transformation outcomes.
Office of Assistant Comm Tech	Requires investment in capability uplift to reduce single points of failure that has caused a need for more staff.
Office of STAR	Yearning for forward thinking around inequitable skill sets for different types of building sites requiring inspection.
Office of CIO	Demonstrated ability to deliver smaller projects however, capacity and capability to deliver large transformation projects not evident.
Office of CFO	Focus on upskilling Business Partnering & Management Accounting services and consider alignment with the business to enable greater integration.
Office of Registrar	Statutory appointment required for registrar position and registrar's direct reports have proven they have the skills required to fulfil duties.
Office of CHRO	Capability uplift in change management and workforce optimisation required to achieve Next Normal transformation.
Office of CLO	Developing risk area due to continuous changing education requirements to meet standards of the role.



## CAPACITY

Functional Area	Insights
Office of CSO	Potential to review workload across resources to help strive towards desired outcomes.
Office of Assistant Comm Tech	Opportunity to leverage regional services staff to aid state-wide workload reducing procedural bottle necks.
Office of STAR	Chance to embrace technology used during the pandemic to enable more timely and efficient inspections to increase capacity. Risk of not being able to attract new talent to niche roles with limited career progression opportunities.
Office of CIO	Tendency to use a contingent workforce to manage workload, where there is potential opportunity to upskill internally or use external vendors.
Office of CFO	Team has leveraged external consultancy to expediate strategy for the function.
Office of Registrar	Team is resourced comfortably for the output that is required.
Office of CHRO	Function needs further delivery capacity to allow follow through on key initiatives.
Office of CLO	Attraction of talent is impacted by salaries offered for this job family.

# How is QBCC setup to deliver the work required?

Process inefficiencies and limited technology enablement restrict QBCC's ability to deliver what is and what will be required of them.

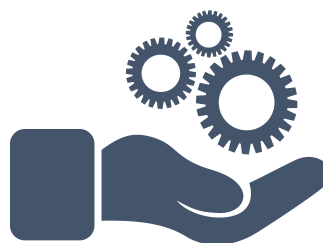
## Disconnect & Silos

- There is currently disconnect between teams, influencing a lack of collaboration and knowledge sharing. There is a need to build on these to not only improve integrity of data resources, but a more enjoyable employee experience.
- Licensing and compliance services continue to work in silos and should take guidance from resolution services and embrace multi-functional teams. This would enable more collaborative thinking and better use of resources to drive a better customer outcome.



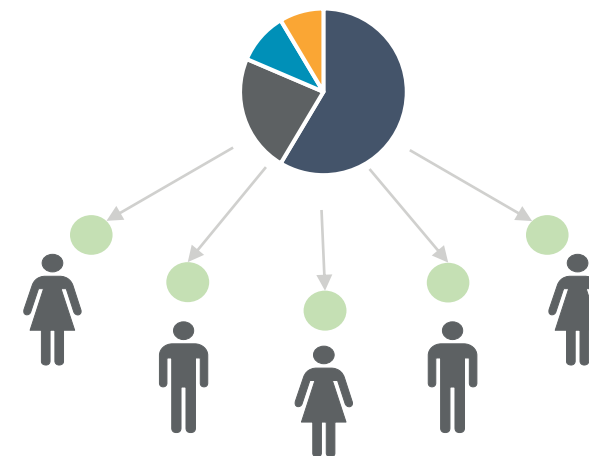
## Process Inefficiencies

- A need to focus on gaps in efficiency and accountability in quality assurance of the development of procedures to create a seamless customer experience.
- Dis-jointed processes and double handling creates inefficiencies in processes surrounding Financial Assessments, Licensing Standards and Monies Owed that could be improved with clear accountabilities and sharing knowledge resources.



## Centralised Distribution

- Further embed statewide distribution of work beyond Resolution Services to balance current disparity in workload between regional offices and head office, particularly in licensing, creating a more efficient customer journey.
- Refine and develop a SME model across the regional offices with regional managers to align the current inconsistent employee investment and inequitable escalation processes across the state.



### Sources:

- Stakeholder workshops 2021
- QBCC's Proposed outcomes WFC for discussion with SLT, 2017

# Where are QBCC's strengths in Workforce Planning?

How can QBCC leverage the areas they are excelling in?



Solid Industry Knowledge	Robust Remote Working Capabilities	Senior Stakeholder Engagement	Unwavering Productivity Levels
<p>The corporate and industry knowledge within the organisation, particularly at the front line, is strong and will enable the organisation to focus on capability uplift in other areas.</p>	<p>QBCC adapted with COVID and enabled remote working flexibility, this shift had a 90% uptake from QBCC employees and enabled the on-going delivery of services to customers.</p>	<p>There is commitment from senior stakeholders to optimise workforce processes and increase capability. The People and Culture Committee report directly to the board.</p>	<p>There has been minimal industry impact on productivity across QBCC during the pandemic. Productivity reporting demonstrates that the QBCC workforce was effective and efficient despite the unpredictable trends during the pandemic.</p>

Sources:

- QBCC TNN Accommodation Initiative Approach, 2021
- Stakeholder workshops 2021
- QBCC'S People and Culture Committee COVID-19 Impacts Productivity Assessment, 2021



# What are QBCC's challenges with Workforce Planning?

What are the challenges QBCC will face in the next five years regarding their workforce?



## Consistency in Job Architecture

Opportunity to create a consistent job and career architecture, to enable meaningful analysis at the role / job family level as a foundation for workforce optimisation.



## Continuous Capability Uplift

Building a workforce that focuses on employee development and invests in continuous learning and capability uplift to support strategic goals and keep up with industry changes. i.e. new legislation, increase in commercial buildings.



## Embracing Multi-Functional Teams

Creating a workforce that uses collaboration to solve problems and is cross-functional. Common messaging indicates a lack of collaboration across teams and avoidance of current resources that support this.



## Balancing Employee Turnover

Creating the right balance of turnover and retention across the organisation is a challenge. With areas where turnover rates are too high and others where there may be stagnation, there is a need to focus on creating a balance between the two.



## Investing in Succession Planning

Lack of clarity on succession planning for critical niche roles (e.g. building inspectors), within an aging workforce we are creating knowledge retention risks. The introduction of succession planning with a focus on critical roles will help reduce the technical knowledge risk for the organisation.



## Streamlining Processes

There is a need to leverage technology to support the delivery of services, through streamlining processes and procedures. The challenge for QBCC will be adapting to new technology, on-going adoption and learning in a timely manner.



## Integrating Regional Services

An integrated delivery model between regional and central services, would enable greater distribution of workload and support the prioritisation of work within the function and regionally.



## New Ways Of Working

In order for the QBCC to become the flexible and mission-centric organisation it needs to adapt with the ever-changing building industry. There needs to be a fundamental mindset shift in the workforce, from building capabilities in different ways of working and removing comfort around outdated processes.

### Sources:

- Stakeholder workshops 2021
- QBCC's Proposed outcomes WFC for discussion with SLT, 2017

# Where are QBCC's strengths in People & Culture

What are the key strengths of QBCC's current culture?



## Strong Purpose Driven Staff

## Valued Focus on Work Life Balance & Flexibility

## Inclusive Culture

## Openness To Outside In Thinking

QBCC employees have demonstrated they are purpose-driven in their approach to work and their want to contribute to the betterment of society. QBCC should leverage this to align to strategic goals.

Employees recognise the flexibility and work life balance promoted at QBCC which will help attract new talent. This is backed up employee survey responses and 90% of workforce participating in remote working.

An organisation that values, integrity, diversity and inclusion principles. It is apparent in employee survey data that the people at QBCC are a great group to work with, demonstrating an inclusive work environment.

Employees are open to using outside innovation to create change and improve workforce processes.

### Sources:

- Stakeholder workshops 2021
- QBCC's Proposed outcomes WFC for discussion with SLT, 2017
- Working for Queensland Survey Responses, 2020

# What are QBCC's challenges within People & Culture?

What are the challenges QBCC will face in the next five years regarding their people and culture?



## Creating An Aspirational Culture That Enables The Next Normal Transformation

QBCC's aspirational culture needs to support the achievement of the Next Normal strategic objectives by creating a workforce that puts their stakeholders centre of mind. To support this QBCC needs to embrace the opportunities offered by technology through the integration of digital talent, and equipping their people with digital skillsets to confidently work across the increasing number of technology platforms and support new technology products and initiatives.



## Ongoing Learning & Development

Learning and development programs should not only be strategically tailored to fill capability gaps (e.g., data & analytics; digital) but be built in a manner that enables regular updates and development of micro learning. The focus of this is to enable QBCC's workforce to keep on-top of industry changes and consume learning in manageable pieces as required. Opportunity to involve operational teams in education planning and development.



## Developing Leaders of Change

While leaders across QBCC have strong industry knowledge and well-defined strategic goals, the challenge they face is the need to become change leaders across all levels. This is to both support the transformation and be leaders who can align and support their teams in the new ways of working across QBCC.



## Shifting to Performance Recognition

Opportunity to shift the way in which the workforce celebrates their staff and moving away from recognising milestones to acknowledging high performance, enabling a greater output for the overall organisation.



## Building & Utilising Meaningful Frameworks

There is a need to create frameworks that drive a culture focused on enhancing customer outcomes. These frameworks will need to be embedded into the new ways of working across QBCC.



## Developing Change Capability

Develop a change function and capability that can assess the organisation's ability to absorb and respond positively to upcoming change, which will provide leaders with the required toolkits to support the workforce. QBCC needs to have the ability to be an adaptive and agile organisation and support the reallocation of resources to deliver on key priorities.

### Sources:

- Stakeholder workshops 2021
- Various QBCC Frameworks



# Insight Driven Organisation

Summary

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# IDO Summary

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The execution of the IDO Strategy aimed to enable the QBCC to actively respond to current risks and enforce compliance with existing standards thanks to targeted proactive decision making, leveraging relevant, accurate and timely data.

## Harnessing...



### Advanced Analytics

Designing, planning, testing and deploying predictive and other models to explore or describe relationships within or between datasets.



### Cognitive Decision Support

Applying artificial intelligence and cognitive techniques to produce continuous insights about past, present and predicted future trends.



### Business Intelligence

Digital reporting of multiple integrated data sets that informs decisions about organisational performance, risk and strategic planning.



### Industry Intelligence

Use of research techniques and other largely qualitative sources of investigation to prepare environmental scanning and other related insights.

## ...to create an Insight Driven Organisation



# Considerations for risk reduction methods across the industry and its ecosystem

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The IDO strategy uses data-driven insights to help enable risk mitigation and reduction activities.

## External Data Partnerships and Integrations

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There is an opportunity for the QBCC to minimise data collection and effort by setting up partnerships and integrating with other Government organisations to leverage data and insights.

This integration will ultimately save the QBCC time and resources, as well as relieve Government reporting duplicity for contractors.

There are a number of partnerships which would be beneficial to investigate:

- National Personal Insolvency Index Search.
- Debt Agreements Service.
- API Connect | Equifax Australia.
- ABN Lookup.
- Pricing – Notify.
- Australian Business Register.
- myGovID.
- Income Tax Returns.
- USI Registry System support and information.



## Risk Scoring

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Risk scoring of contractors is an item to be investigated that could support the strength of the QBCC's risk-focused activities. Using evidence-based data and modelling of the risk score will inform the QBCC of contractors requiring more frequent monitoring. This concept could be expanded to include a user pays system for negative indicators.\*

A method of calculating Risk Scoring may include the aggregation of;

1. Negative indicators (complaints, fines, investigations, demerit points), and;
2. Positive indicators (paying fees on time, compliments, CCPD).



# QAO recommendations

Alignments of Queensland Audit Office recommendations to The Next Normal

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# Alignment of The Next Normal Strategies to QAO Recommendations

The 11 recommendations provided by the QAO June 2020 report were also considered in the definition of the Next Normal.

## Next Normal Strategies

### 1. Risks Reduction Across the Industry and its Ecosystem

#### 1.1 Risk Focus & Insight Driven Approach

#### 1.2 Influence Industry Behaviour

- QAO Compliance and Enforcement Recommendation 1.
- QAO Licensing Recommendation 5.
- QAO Managing and Reporting Performance Recommendations 9, 10 & 11.

### 2. Compliance Made Easy

#### 2.1 Digital Contractor Journey Experience

- QAO Licensing Recommendation 3 & 5.
- QAO Education and Support Recommendation 7 & 8.

### 3. Adaptable, Digital & Sustainable Organisation

#### 3.1 Virtual Organisation / Operations

#### 3.2 Leadership

- QAO Licensing Recommendation 2, 3, 4, 5 & 6.
- QAO Education and Support Recommendation 7.
- QAO Managing and Reporting Performance Recommendations 10 & 11.

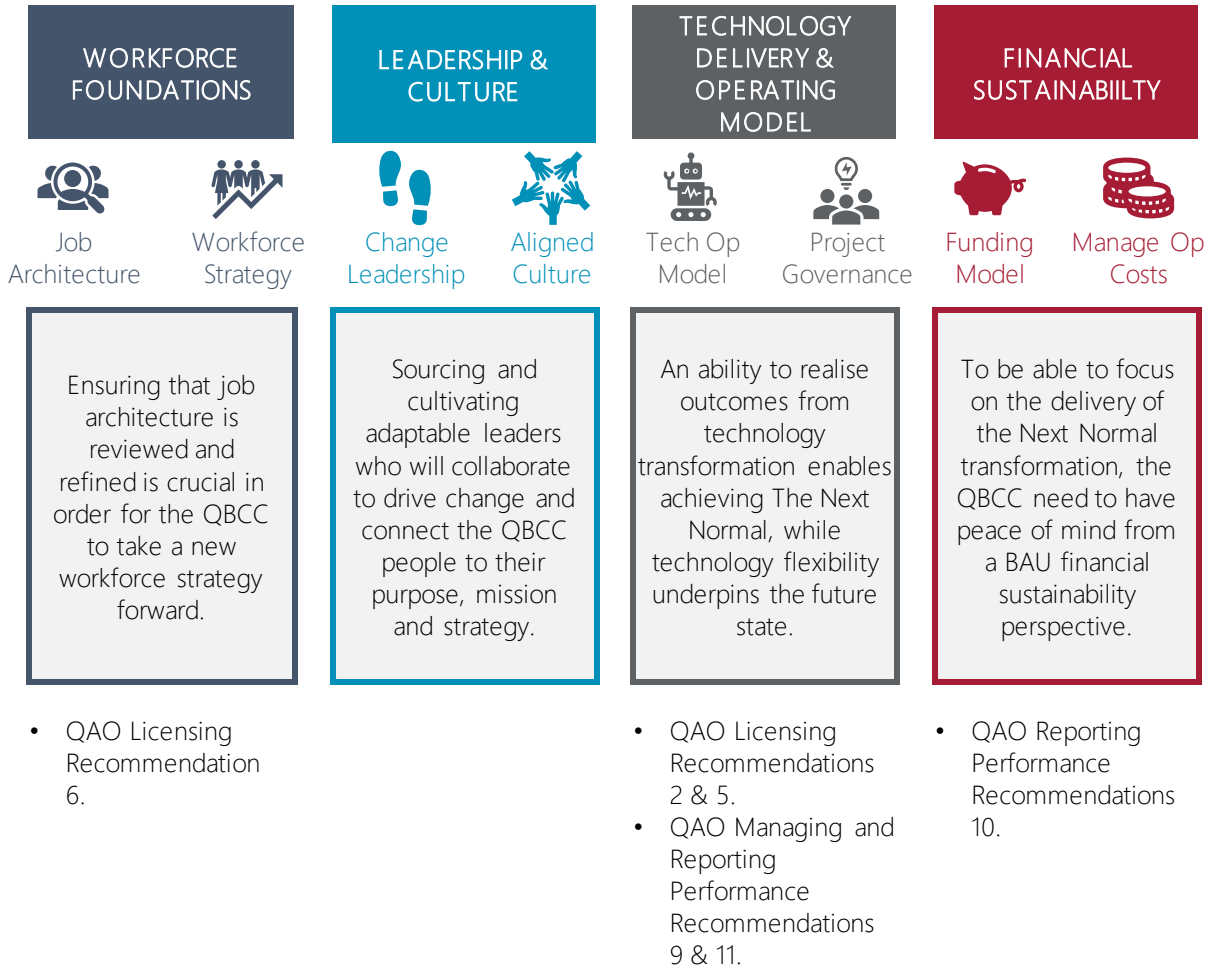
### 4. Human Centric Delivery

#### 4.1 Digital Customer Journey Experience

#### 4.2 Tiered and Tailored Service Approach

- QAO Education and Support Recommendation 7 & 8.

## Next Normal Foundations







Supporting Research

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# Benefit Validation – Proactive Regulation

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# Proactive Regulation Benefits

Research into proactive regulation identified that although practices across the world are in their infancy, where the concept has been applied, discernible benefits across three different benefit categories, all relevant to the QBCC were identified.

! Proactive regulation was evidenced in the research to be the driver of the three different types of desirable benefits.

## Compliance Benefits

A number of types of onsite work have had observable improvements in Victoria since the introduction of proactive building inspections. Proactive inspections were focused on certain sets of building elements and within this, frequency of compliance issues has decreased even when normalised for inspection numbers over two years;

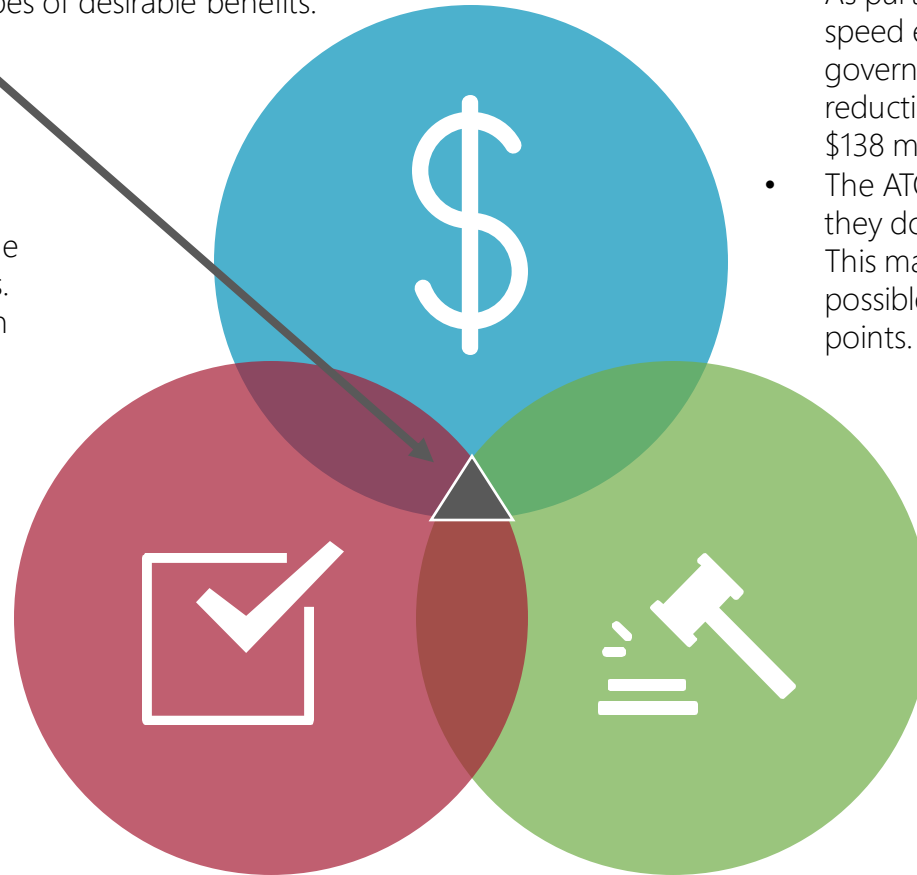
- Timber framing connection bolt ins prevalence reduced from 1% of sites to 0.3%.
- Swimming pools not having self-closing gates decreased from 0.7% to 0.07%.
- Swimming pool fences not having climbable zones decreased from 1.4% to 0.5%.

## Financial Benefits

- As part of the National Road Safety Strategy 2011 – 2020, average speed enforcement of heavy vehicles is being conducted by the NSW government at identified high risk areas resulted in a substantial reduction of fatal crashes and serious injury crashes to the tune of a \$138 million benefit to the community.
- The ATO corporate plan defined an objective to use data in everything they do and a strategy to extend automation and analytics use cases. This manifested in real time analytics is used to prompt taxpayers for possible errors of their submitted data against “typical” comparison points. These entries were adjusted to the tune of \$114 Million in 2018.

## Enforcement Benefits

- The 2014 Senate report into the performance of the Australian Securities and Investments Commission identified where a proactive regulation approach would have had successes, notably identifying earlier the collapse of Storm Financial in 2009 and preventing further associated losses.



Sources:

[https://www.vbavic.gov.au/\\_data/assets/pdf\\_file/0017/129050/Q2-Proactive-Inspections-Program-Quarterly-Report.pdf](https://www.vbavic.gov.au/_data/assets/pdf_file/0017/129050/Q2-Proactive-Inspections-Program-Quarterly-Report.pdf)

[https://www.aph.gov.au/parliamentary\\_business/committees/senate/economics/asic/final\\_report/index](https://www.aph.gov.au/parliamentary_business/committees/senate/economics/asic/final_report/index)

<https://www.pc.gov.au/research/completed/regulatory-technology>

[https://www.roadsafety.gov.au/sites/default/files/2019-11/nrss\\_implementation\\_report\\_nov2017.pdf](https://www.roadsafety.gov.au/sites/default/files/2019-11/nrss_implementation_report_nov2017.pdf)

<https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/ATO%20Corporate%20plan%202018-19.pdf>

# Programs of Work – Case Studies

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# The Next Normal - Case Studies

- QBCC's Next Normal is an innovative vision that shifts the thinking on regulation in Queensland and combines a number of emerging concepts in both regulation and wider business & industry trends.
- To begin to demonstrate the legitimacy of this vision and make it real and tangible, Deloitte have collected a set of case studies demonstrating individual components of QBCC's Next Normal in operation and aligned them to defined programs of work.



**Risks Reduction  
Across the Industry  
and its Ecosystem**



**Compliance Made  
Easy**



**Adaptable, Digital &  
Sustainable  
Organisation**



**Human Centric  
Delivery**



CITY of BOSTON



# Program of Work Case Studies



## Risks Reduction Across the Industry and its Ecosystem



### ● — Fire Department of New York – Proactive Insight Driven Inspections



Influence Industry Behaviour



#### Context

- The Fire Department of New York (FDNY), set about a host of changes in managing fire inspections as a result of an incident in 2007 that caused preventable firefighter deaths and injuries.



#### How it was done

- FDNY's risk-based inspection system, prioritises the building inspections to be performed by the department based on a risk score.
- The risk score is determined by combining data from a number of agencies including type of building, construction materials, fire-proof features, most recent inspection date and age of the building.
- The system called 'Firecast' leverages a data warehouse and an IBM-developed business intelligence system to generate insights.



#### Observed benefits

- Building violations identified with same resources up 10 percent in 60 days.
- Increase in recent inspection of buildings with fire incidents, providing firefighters with up to date on the ground information.
- Increase in identification of more complex fire risk situations.



#### Key Strategy Realisation

An insightful combination of data, with mature analytics applied enables identification of higher risk buildings, thereby enabling more impactful use of resources, enhanced identification of compliance issues and therefore improves safety and regulatory outcomes.



#### Lessons for the QBCC

- The data sources required to achieve accuracy and insightfulness in proactive risk identification will come from a number of agencies and require smart integrations.
- Risk identification models will require refinement as more is learnt about the nature of risks, to baseline their success against real identified defects and complaints and to recalibrate models based on what is learnt.

# Program of Work Case Studies



## Risks Reduction Across the Industry and its Ecosystem



● — WorkSafe New Zealand's rapid response to an emerging risk



Influence Industry Behaviour



### Context

- Regulator observed a spike in notifications about uncontrolled ammonia releases



### How it was done

- A training program was rapidly developed alongside a new assessment tool, technical bulletin, and practice guide.
- An external assessment program targeting New Zealand businesses commenced, visiting over 120 relevant sites
- Businesses invited their service providers and engineers to the assessments for conversations on safely servicing and maintaining equipment based on the technical bulletin and practice guide materials. Although half of the site visits also had enforcement action, the conversations were deemed more impactful



### Observed benefits

- Significantly increased awareness of the OH&S risks presented by ammonia and how to manage them
- Positive engagement with NZ businesses



### Key Strategy Realisation

Working with the community to keep them safe improved the regulator's public image and reduced risks across the industry



### Lessons for the QBCC

- Relationships with industry stakeholders are key for positive outcomes
- Compliance doesn't need to be driven by enforcement

# Program of Work Case Studies



## Risks Reduction Across the Industry and its Ecosystem



### ● — Nudging fair-work compliance in Australia



Influence Industry Behaviour



#### Context

- Non-compliance with fair-work legislation in Australia imposes significant costs on workers, businesses, and the community.



#### How it was done

- The Behavioural Economics Team of the Australian Government (BETA) used nudging techniques to improve compliance.
- These included planning prompts, compliance reminders, simplified communications, and redesigned audit processes.
- Employees were also encouraged to sign up to the FWO *My account* tool, and were provided timely reminders of award wage increases.



#### Observed benefits

- Monetary entitlement non-compliance reduced 24% compared to base case.
- Audits found to be more helpful & less complex, confronting and confusing.
- The alternative audit made employees better off on average by over \$900 due to improvements in ongoing compliance.



#### Key Strategy Realisation

Working with the community to make compliance improvements on the regulator's external image and reduces complaints, while reducing industry compliance risk.



#### Lessons for the QBCC

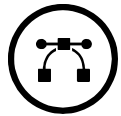
- Enforcement is not the only approach to influencing compliance.
- Simple solutions such as redesigning forms can be incredibly effective, cost effective, and scalable.
- Most firms want to do the right thing.

Read more:

<https://behaviouraleconomics.pmc.gov.au/sites/default/files/projects/building-persistent-compliance-labour-law.pdf>



# Program of Work Case Studies



## Compliance Made Easy



CITY of BOSTON

### ● — Digital permitting journeys in Boston



Digital Journeys



#### Context

- Complex permitting requirements in Boston caused issues for developers and homeowners.



#### How it was done

- The city implemented a digital portal allowing users to check the status of permits and information on timelines and responsible parties.
- The city tailored an appeals process for small projects to speed up approvals.
- Built on Accela Civic Platform and OpenCounter SaaS services.
- Systems allow for anytime access, transparency, scalability, and flexibility.
- Enabled online permit processing and digital assistance with business, residential, and zoning matters.



#### Observed benefits

- 94% reduction in open complaints.
- On-time issuance up 19%
- Number of permits issued up 21%.
- Approval cycle time down from 28 to 23 days.



#### Key Strategy Realisation

The seamless and simple digital portal made it easy to comply with requirements.



#### Lessons for the QBCC

- A difficult permitting process is a huge barrier to growth for small businesses.
- For the digital journey to be useful, the QBCC must understand the pain points of the current process.

Read more:

<https://datasmart.ash.harvard.edu/news/article/how-boston-is-making-permitting-and-licensing-easier-621>

[https://www.youtube.com/watch?v=W\\_n4LsMPwrg](https://www.youtube.com/watch?v=W_n4LsMPwrg)

<https://web.archive.org/web/20170310215405/https://www.cityofboston.gov/news/default.aspx?id=17888>

# Program of Work Case Studies



## Compliance Made Easy



● — A one-stop-shop for Government Services in NSW



Digital Journeys



### Context

- Service New South Wales aimed to simplify citizen access to government services with a shift to digital transactions.
- A one-stop-shop approach to improving customer experience was taken.



### How it was done

- A broad digital portal was implemented enabling online service delivery for a range of building industry services including; applying for contractor licenses, applying for owner builder permits, pool registrations, certifier accreditations amongst other government services such as business registration across a range of industries & personal services such as births, marriages and deaths.
- A notable personal service is the provision of Digital Drivers Licence. Leveraging blockchain technology to promote security, the Digital licenses are replacing all the functions of traditional drivers licences including identity confirmation.
- Customers use one verified and secure account and one point of entry to access a range of government services and receive a consistent user experience across these services.



### Observed benefits

- Increased customer satisfaction from 60% before launch to a sustained 97% even years later.
- Scaled from 3000 transactions a week at launch to over one million per week.
- Latest addition is the Digital Drivers Licence (DDL) with 28 percent of NSW licences being a DDL.



### Key Strategy Realisation

The developed online customer journey with 360 visibility of stakeholders drove simpler interactions and improved customer and governmental outcomes.



### Lessons for the QBCC

- Development based on an understanding of the customer is critical
- A well-designed portal can have significant benefits to customer satisfaction and engagement.

Read more:

<https://www.mckinsey.com/industries/public-and-social-sector/our-insights/building-a-one-stop-shop-for-government-services-in-australia>

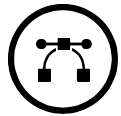
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<https://www.themandarin.com.au/109229-is-services-australia-the-last-great-hope-for-federal-digital-transformation/>

<https://www.mulesoft.com/case-studies/api/service-nsw>

<https://which-50.com/more-than-one-million-nsw-residents-have-a-digital-driver-licence/>

# Program of Work Case Studies



## Compliance Made Easy



### ● — Digital Portal Transformation at the Residential Tenancies Authority



Digital Journeys



#### Context

- The RTA traditionally relied heavily on paper-based forms and processes.
- They aimed to develop a next-gen, scalable and secure online portal solution.



#### How it was done

- The system was developed with an AWS backbone, its customer experience supported by React with a .NET Core.
- The solution was designed to integrate with core CRM systems and automatically scale to meet demand, while minimising ongoing costs.
- The system was built to seamlessly integrate with the Queensland Government's novel digital identity platform, QGov.



#### Observed benefits

- Queenslanders can use a single-  
logon to securely manage services.
- Essential RTA transactions can be completed anywhere, anytime.
- Strong customer uptake has been observed.



#### Key Strategy Realisation

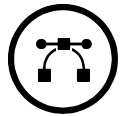
The developed online and light-touch customer journey drove simpler interactions and improved customer and governmental outcomes.



#### Lessons for the QBCC

- The novel QGov identity verification platform gives the QBCC the opportunity to lead the way in single sign-on government services.
- Integration opportunities lead to lighter-touch compliance and streamlined businesses processes.

# Program of Work Case Studies



## Compliance Made Easy



Australian Government  
Australian Taxation Office

### Intelligent circumstance analysis at the ATO



Enabling Easy Compliance (AI Assistant)



#### Context

- The ATO recognised that tax agents may not realize when they have made mistakes in the reporting process.
- They needed a way to intelligently prompt agents who may be non-compliant.



#### How it was done

- The ATO uses real-time analytics to prompt users for possible errors or oversights to drive compliance.
- Amounts entered in *myTax* are compared with those of others in similar circumstances. If the information entered is significantly different from expected, the taxpayer is prompted to recheck the amounts entered.
- The tools in place apply machine learning algorithms to cluster and classify respondents.



#### Observed benefits

- In 2018, about 7% of myTax users (240,000 people) received these prompts and could quickly double check their compliance before it reached the ATO.
- These prompts resulted in taxpayers adjusting entries by approximately \$113 million.



#### Key Strategy Realisation

The intelligent and risk-based AI assistant made interactions simpler and improved taxpayer and government outcomes.



#### Lessons for the QBCC

- Most stakeholders want to be compliant, and some just need guidance in the right direction.
- Data already held can be a great asset to artificial intelligence initiatives.

# Program of work Case Studies



## Adaptable, Digital & Sustainable Organisation

### Virtual inspections in Los Angeles



Virtual  
Operations



#### Context

- The Los Angeles Department of Building and Safety (LADBS) had to find a way to make inspections safe during COVID-19.



#### How it was done

- LADBS implemented virtual building inspections.
- Real-time video streaming is used to show inspectors the condition of the building site and that work is to code.



#### Observed benefits

- Improved inspection efficiency driven by reduced driving requirements.
- No impact on inspection effectiveness.



#### Key Strategy Realisation

By transforming their processes with digitisation and fostering an innovative workforce, the LADBS are on the forefront of industry changes.



#### Lessons for the QBCC

- Virtual inspections are indeed effective.
- It must be clear which types of inspections can be completed virtually.

Read more:

<https://www.californiaconstructionnews.com/2020/10/10/la-department-of-buildings-introduces-new-virtual-inspection-program/>  
[www.youtube.com/watch?v=igub6pbKwEI](https://www.youtube.com/watch?v=igub6pbKwEI)

# Program of Work Case Studies



## Adaptable, Digital & Sustainable Organisation



### ● — South East Water's Mobile Workforce



Virtual Operations



#### Context

- England's South East Water (SEW) company maintains a distribution network of 14,000 kilometres of water mains.
- To drive funding from regulators, SEW needed to deliver rapid and effective services to boost customer satisfaction.



#### How it was done

- SEW deployed a mobile workforce management solution based on IBM Maximo Asset Management Scheduler.
- The solution increased the information available regarding when contractors attended a site, the work they performed, and the likely date the work would be completed.
- Contractors can take pictures and video of site work, such that the centrally located works planning team can quickly validate that the work has been performed properly.



#### Observed benefits

- Virtual quality assurance integrated with back office processes drove increased speed of end to end services.
- Increased customer satisfaction driven through improved customer facing information and transparency.



#### Key Strategy Realisation

With a digital workforce solution, SEW were able to drive improved management of their dispersed workforce resulting in both flexibility and service quality gains.



#### Lessons for the QBCC

- Field workers can be supported by a smaller, centralised workforce.
- Virtual operations are possible in large geographies.
- Quality and effectiveness are not negatively impacted by virtual operations.

# Program of Work Case Studies



## Adaptable, Digital & Sustainable Organisation

### Virtual Workforce Management in the Lanarkshire Council\*



Virtual Operations



#### Context

- North Lanarkshire Council carries out on average 7,500 home visits every day.
- Traditional workforce management struggled to ensure essential communities services were provided with multiple inefficiencies in processes.



#### How it was done

- The Lanarkshire council engaged a software provider, Kirona, to deliver an encompassing virtual workforce management solution.
- The resulting key tools a Dynamic Resource Scheduler and Job Manager, manage tasks from smart resource routing and job scheduling in the office, to keeping track of resources in a real time manner to managing the results and subsequent administration of field work.
- Field resources have an integrated mobile app to update their locations, status etc.



#### Observed benefits

- Efficient allocation of work i.e. minimising travel time maximised resources and reduced cost to serve by 15%.
- A 20% increase in productivity metrics was also observed.



#### Key Strategy Realisation

A smart resource management capability is applied to assignment of work across the geography, enabling “work from anywhere” for back office staff, maximising the efficiency of the teams out in the field and creating the circumstances required for a “virtual” organisation to function.



#### Lessons for the QBCC

- Virtual operations are possible across a geography when enabled by the right capabilities.
- Further, application of a smart resource management capability can drive increases in productivity and reductions in cost to serve.

# Program of Work Case Studies



## Adaptable, Digital & Sustainable Organisation



### ● — Transformational leadership in New Zealand



Change Enabling Leaders



#### Context

- New Zealand police commissioner Mike Bush needed to realize a “180-degree shift” in New Zealand policing moving from the existing culture to one of ‘prevention first’.



#### How it was done

- One of the most significant enabling factors for Bush was executives and leaders within the force championing the change.
- “It was critical for the leadership team to get out and regularly talk to the front line”.
- He states transformation would have failed if it wasn’t for this change leadership.
- “It has to be central to your position”.



#### Observed benefits

- The “Prevention First” transformation was successful.
- New Zealand’s crime rate is down 20% in four years.
- Public satisfaction in policing has increased from 79 percent to 84 percent.



#### Key Strategy Realisation

Change-enabled leaders lead an adaptable workforce that can transform systems and processes



#### Lessons for the QBCC

- Ambitious change requires leadership to embrace and champion change.
- Engagement with frontline stakeholders is key to the transformation effort.



# Program of Work Case Studies



## Human Centric Delivery



### Human centric Veterans' Affairs



Tiered & Tailored Service Approach



#### Context

- The US Department of Veterans' Affairs found that it was not listening to the voice of the veteran.
- The DVA had a vision of revamping how veterans interact with the Department.



#### How it was done

- The DVA delivered a human-centered redesign in which it set out to understand exactly what customer segments it had, and what each segment needed.
- A 360 view of Veterans was developed to tailor engagements to their requirements.
- A single point of contact was assigned to each Veteran that understood their full history and needs.
- User history, demographic factors, technology usage, preferred mode of contact and more were methods used to tailor service delivery and methods of engagement.



#### Observed benefits

- The DVA saw a 25% increase in trust.
- It is able to more accurately gauge and meet the needs of veterans.



#### Key Strategy Realisation

By understanding its stakeholders, the DVA built trust and drove better outcomes for veterans.



#### Lessons for the QBCC

- Understanding which customer segments interact with the QBCC and their use cases is critical.
- Putting the customer first doesn't mean sacrificing your role as a regulator.

Read more:

[https://www.va.gov/playbook/downloads/Toward\\_A\\_Veteran\\_Centered\\_VA.pdf](https://www.va.gov/playbook/downloads/Toward_A_Veteran_Centered_VA.pdf)

<https://governmentciomedia.com/how-vas-approach-human-centered-design-improved-veterans-experience>



# **Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012**

**Report No. 14**  
**Transport, Housing and Local  
Government Committee**  
**November 2012**

# **Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012**

**Report No. 14**

**Transport, Housing and Local Government  
Committee**

**November 2012**

## **Transport, Housing and Local Government Committee**

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<b>Deputy Chair</b>	Mrs Desley Scott MP, Member for Woodridge
<b>Members</b>	Mr John Grant MP, Member for Springwood Mr Darren Grimwade MP, Member for Morayfield Mr Trevor Ruthenberg MP, Member for Kallangur Mr Anthony Shorten MP, Member for Algester Mrs Tarnya Smith MP, Member for Mount Ommaney Mr Bill Byrne MP, Member for Rockhampton
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### **Acknowledgements**

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## Contents

<b>Abbreviations</b>	<b>vi</b>
<b>Glossary</b>	<b>vii</b>
<b>Chair’s foreword</b>	<b>viii</b>
<b>Recommendations</b>	<b>ix</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Role of the Committee	1
1.2 Inquiry process	1
1.2.1 <i>The referral</i>	1
1.2.2 <i>Reporting deadline</i>	2
1.2.3 <i>Public submissions</i>	2
1.2.4 <i>Public briefing</i>	2
1.2.5 <i>Public hearing</i>	2
<b>2 QBSA – functions and responsibilities</b>	<b>3</b>
2.1 Functions and responsibilities under the <i>Queensland Building Services Act 1991</i>	3
2.1.1 <i>Functions and Responsibilities of the General Manager of the QBSA</i>	3
2.1.2 <i>Administration of the Queensland Home Warranty Scheme under the QBSA Act</i>	4
2.2 Functions and responsibilities under the <i>Domestic Building Contracts Act 2000</i>	4
2.3 Functions and responsibilities under the Building and Construction Industry Payments Act 2004	5
2.4 Functions and responsibilities under the <i>Building Act 1975</i>	5
2.5 Technical support for the Queensland Civil and Administrative Tribunal	6
2.6 Other functions of the QBSA	6
2.7 Functions and responsibilities of the Queensland Building Services Board	6
2.8 Overview of Statistics (2011-12)	7
<b>3 The governance arrangements of and between the QSA Board and the General Manager</b>	<b>8</b>
3.1 Background – governance arrangements of the QBSA Board	8
3.2 Background - Governance arrangements between the QBSA Board and the General Manager	8
3.3 Evidence received on governance arrangements of the QBS Board and between the Board and the General Manager	9
<b>4 Does the QBSA achieve a balance between the interests of building contractors and consumers</b>	<b>11</b>
4.1 Introduction - QBSA’s statutory obligations to achieve a “reasonable balance”	11
4.2 Overview of evidence received on whether the QBSA’s achieves a “reasonable balance”	12
4.2.1 <i>Background to the evidence provided on ‘reasonable balance’</i>	12
4.2.2 <i>Examples of evidence received that QBSA genuinely seeks to achieve balance</i>	12
4.2.3 <i>Examples of evidence that the QBSA has a bias against consumers</i>	13
4.2.3 <i>Examples of evidence that the QBSA has a bias against builders</i>	14

4.3	Recommendations from submissions suggesting organizational reform of the QBSA	15
<b>5</b>	<b>Dispute resolution - directions to rectify defective or incomplete work</b>	<b>21</b>
5.1	Directions to Rectify - Background	21
	5.1.1 <i>Legislative requirements</i>	21
	5.1.2 <i>Rectification of Building Work Policy</i>	21
	5.1.3 <i>Statistics on directions to rectify</i>	22
5.2	Issues raised in evidence about directions to rectify	22
	5.2.1 <i>Issues of concern raised by property owners about the directions to notify process</i>	22
	5.2.2 <i>Issues of concern raised by builders about the directions to notify process</i>	24
5.3	Solutions suggested in submissions to enhance the directions to rectify process	26
	5.3.1 <i>Education and training for consumers, building inspectors and licensees</i>	27
	5.3.2 <i>Prevention through contract administration</i>	27
	5.3.3 <i>Increased penalties to encourage timely rectification</i>	28
	5.3.4 <i>Building product compliance</i>	28
	5.3.5 <i>Independent arbitration</i>	29
	5.3.6 <i>Early intervention and mediation</i>	29
	5.3.7 <i>Ability to intervene in contractual disputes</i>	30
5.4	Tendering for and performing rectification work on behalf of the QBSA	34
5.5	QCAT review of rectification decisions	36
	5.5.1 <i>Introduction</i>	36
	5.5.2 <i>Concerns about QCAT's role raised in evidence</i>	36
	5.5.3 <i>Concerns raised about the use of QCAT as a delaying mechanism</i>	38
	5.5.4 <i>HIA recommendations in relation to QCAT</i>	38
5.6	Contracts and contract management	39
	5.6.1 <i>Introduction</i>	39
	5.6.2 <i>Quality of Documentation and Communication - Plans and Specifications</i>	40
	5.6.3 <i>Proposals for a uniform contract</i>	40
	5.6.4 <i>Contract management</i>	41
5.7	Support, Education and advice for both those who undertake building work and consumers	42
	5.7.1 <i>Background</i>	42
	5.7.2 <i>Evidence provided on consumer and contractor education programs</i>	44
5.8	Systemic issues raised in evidence about the organisational culture of the QBSA	47
<b>6</b>	<b>Queensland Home Warranty Scheme</b>	<b>49</b>
6.1	Introduction	49
	6.1.1 <i>Home warranty schemes</i>	49
	6.1.2 <i>The Queensland Home Warranty Scheme</i>	49
6.2	Evidence received on the QHWS	50
	6.2.1 <i>Conflict of interest</i>	51
	6.2.2 <i>Subsidence</i>	53
	6.2.3 <i>Scheme exclusions</i>	53
	6.2.4 <i>Education, training and access to information</i>	54

6.2.5	<i>Resolution of insurance issue disputes</i>	55
<b>7</b>	<b>QBSA licensing function</b>	<b>57</b>
7.1	Background information on the QBSA licensing regime	57
7.1.1	<i>Licence grades and classes</i>	57
7.1.2	<i>Eligibility requirements to hold a licence</i>	57
7.1.3	<i>Banned, disqualified and excluded persons</i>	59
7.1.4	<i>Auditing (licensing and financial)</i>	60
7.2	Adequacy of the QBSA licensing requirements and auditing processes	60
7.2.1	<i>Licence ‘creep’</i>	60
7.2.2	<i>Eligibility requirements</i>	61
7.2.3	<i>Section 42 of the QBSA Act: Unlawful carrying out of building work</i>	63
7.2.4	<i>Disciplinary regime</i>	64
7.2.5	<i>Auditing processes</i>	67
7.2.6	<i>Online licence search facility</i>	68
7.2.7	<i>Continuing Professional Development (CPD) for contractors</i>	69
7.3	The coverage of trades by the QBSA and the role of industry groups	71
7.3.1	<i>Background</i>	71
7.4	National licensing	74
<b>8</b>	<b>Reducing regulation to lower the cost of building a home</b>	<b>76</b>
8.1	Introduction	76
8.2	Evidence received by the committee on reducing regulation	76
	<b>Appendices</b>	<b>79</b>
	Appendix A – List of Submissions	79
	Appendix B – Witnesses at the public briefing	83
	Appendix C – Witnesses at the public hearing	84
	Statement of reservation	86

## Abbreviations

AHSCA	The Association of Hydraulic Services Consultants Australia
AIB	The Australian Institute of Building
AIBS	The Australian Institute of Building Surveyors
APRA	Australian Prudential Regulation Authority
the Assembly	Legislative Assembly of Queensland
BCG	Brisbane Certification Group
BCIP Act	<i>Building and Construction Industry Payments Act 2004</i>
BDAQ	Building Designers Association of Queensland
BSA	Queensland Building Services Authority (see also QBSA)
Building Act	<i>Building Act 1975</i>
the Committee	Transport, Housing and Local Government Committee
CPD	Continuing Professional Development
DBC Act	<i>Domestic Building Contracts Act 2000</i>
DHPW	Department of Housing and Public Works
FRL	<i>Financial Requirements for Licensing policy</i>
HIA	Housing Industry Association
LGAQ	Local Government Association of Queensland
MB	Master Builders
MSG	Major Sub-contractors Group
PQC	Queensland Government Prequalification System
QBSA	Queensland Building Services Authority (see also BSA)
QBSA Act	<i>Queensland Building Services Act 1991</i>
QBS Board	Queensland Building Services Board
QCAT	Queensland Civil and Administrative Tribunal
QHWS or the Scheme	Queensland Home Warranty Scheme (see also the Scheme)
the Scheme	Queensland Home Warranty Scheme (see also QHWS)
Standing Orders	Standing Rules and Orders of the Legislative Assembly
TQ	Timber Queensland Ltd



## Glossary

Category 1 defective building work	<p>Defective building work (other than residential construction work causing subsidence) that is faulty or unsatisfactory because it does one or more of the following:</p> <ul style="list-style-type: none"> <li>a) adversely affects the structural performance of a building</li> <li>b) adversely affects the health or safety of persons residing in or occupying a building</li> <li>c) adversely affects the functional use of a building</li> <li>d) allows water penetration into a building.</li> </ul>
Category 2 defective building work	<p>Defective building work (other than category 1 defective building work or residential construction work causing subsidence) that is faulty or unsatisfactory because:</p> <ul style="list-style-type: none"> <li>a) it does not meet a reasonable standard of construction or finish expected of a competent holder of a contractor's licence of the relevant class; or</li> <li>b) it has caused a settling in period defect in a new building.</li> </ul>
Firewall	<p>A firewall is a legal barrier set up between divisions of an organisation to prevent them from sharing inside information when this might lead to a conflict of interest.</p>
Judgement debtor	<p>Where a court has issued a monetary judgement in your favour, the person who must pay you this money is the 'judgement debtor'.<sup>1</sup></p>
Licensee	<p>Includes all licensed grades and classes under the QBSA Act as well as certifiers licensed un the Building Act.</p>

<sup>1</sup> [http://www.commerce.wa.gov.au/consumerprotection/PDF/Publications/if\\_they\\_dont\\_pay.pdf/](http://www.commerce.wa.gov.au/consumerprotection/PDF/Publications/if_they_dont_pay.pdf/) accessed 23 November 2012.

## Chair's foreword

On behalf of the Transport, Housing and Local Government Committee (the Committee) of the 54<sup>th</sup> Parliament of Queensland, I am pleased to present the Committee's report number 14 – Inquiry into Operation and Performance of the Queensland Building Services Authority (QBSA).

On 2 August 2012, the Legislative Assembly agreed to a motion that the Committee inquire and report on the operation and performance of the QBSA in its regulation of the industry, including the maintenance of proper standards in the industry.

The Committee has consulted widely and gathered evidence from key consumer and industry groups as well as numerous individual consumers and builders throughout the inquiry. I would like to acknowledge those who have briefed the Committee, provided written submissions, and others who have informed the Committee's deliberations through their participation in the inquiry process.

The Committee is particularly appreciative of the effort taken by the many individual homeowners and contractors (licensees) who have made the effort to provide evidence even though it has taken considerable energy to re-experience what for many has been an emotionally and financially distressing experience. As one submission has noted "Building or renovating a house is often one of the most expensive and emotionally charged experiences in a consumer's life."<sup>2</sup>

The Committee notes that in general the construction industry in Queensland is overwhelmingly compliant with a high percentage of builders completing projects to an acceptable standard and that relatively few residential building projects end in dispute. This is evidenced by the figures for 2011-12 where there was a total of 73,256 insurable building contracts, with 4,726 complaints received by the QBSA, and 896 directions to rectify issued. However, the Committee is also very aware that for the small percentage of homeowners who are in dispute with a building contractor and proceed to claim, it is often a very stressful experience both emotionally and financially.

The Committee has received a significant amount of detailed evidence from submitters and witnesses. Given the limited timeframe for the Inquiry, the Committee has taken a strategic approach to the evidence and has recommended changes to the current building services framework and functions which it believes will help to alleviate some of the issues raised by making the process more straightforward and transparent. The Committee has also referred a number of issues to the Minister for Housing and Public Works to undertake further examination in consultation with industry and consumers.

I wish to thank the members of the Committee for their detailed consideration of the issues covered by the inquiry. I also thank the Committee's secretariat for their support and assistance throughout the inquiry process.

I commend the report to the House.



Howard Hobbs MP  
**Chair**

November 2012

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<sup>2</sup> Builders Collective of Australia, *Submission No.26*, p.4.

## Recommendations

### Recommendation 1 19

The Committee recommends that in the interests of improved confidence and transparency, the “one stop shop” model for the provision of Queensland government building services be discontinued and that the Queensland Building Services Authority be disbanded as soon as alternative mechanisms for delivering its functions can be established.

### Recommendation 2 19

The Committee recommends that the Minister for Housing and Public Works restructure the building services currently provided by the QBSA so that there is a clear and transparent divide between the roles of licensing; management of directions to rectify and complete work; and management of the limited home warranty scheme.

### Recommendation 3 19

The Committee recommends that the Minister for Housing and Public Works, consider the following model as a restructuring option for the new building services authority.

Establish a new statutory authority with each of the following functions legislatively “firewalled” from each other and managed by a general manager who is directly accountable to, and reports through, a decision making board (possibly through a sub-committee) to the responsible Minister:

- registration and regulation of licensees and certifiers
- management of the limited home warranty scheme
- management of directions to rectify and complete.

### Recommendation 4 19

The Committee recommends that the Minister for Housing and Public Works ensure that any new Board is a governing (not advisory) board and the membership of the board is truly representative and impartial.

### Recommendation 5 20

The Committee recommends that Minister for Housing and Public Works ensure the Department of Housing and Public Works includes a specialist building capability to provide the Minister with independent advice on the provision of building services.

### Recommendation 6 20

The Committee recommends that Building Codes Queensland remain in the Department of Housing and Public Works.

### Recommendation 7 20

The Committee recommends that the Minister for Housing and Public Works ensure that the reformed building services provided by the Queensland Government continue to be self-funding.

### Recommendation 8 20

The Committee recommends that the Minister for Housing and Public Works take the views of stakeholders into account when examining the appropriate structure for the reformed building authority and Board.

- Recommendation 9** 33
- The Committee recommends that building inspectors employed by the building authority be required to undertake regular training **and assessment** on their knowledge of current building regulations, standards and codes to ensure they can make informed decisions on whether building work requires rectification.
- Recommendation 10** 33
- The Committee recommends that building inspectors employed by the building authority be provided with dispute resolution training to ensure they have the skills required to negotiate an agreed outcome between homeowners and builders whenever possible.
- Recommendation 11** 33
- The Committee recommends that the Minister for Housing and Public Works examine options to enable early intervention and mediation in disputes over defects and incomplete work with a view to resolving as many as possible before they escalate further.
- Recommendation 12** 33
- The Committee strongly recommends that the Minister for Housing and Public Works seek amendment to the legislation to extend the powers of the new building authority to intervene when disputes arise during a contract period.
- Recommendation 13** 33
- The Committee recommends that the Minister for Housing and Public Works seek amendment to the regulations and/or legislation to ensure the new building service authority is required to respond to requests to identify defects promptly and to ensure the rectification work is also carried in a timely manner and to an appropriately high standard.
- Recommendation 14** 34
- The Committee recommends that the Minister for Housing and Public Works investigate ways in which to improve the building certification system in Queensland to ensure private certifiers are held accountable where they approve illegal or defective works, and to ensure the works are rectified.
- Recommendation 15** 34
- The Committee recommends that the Minister for Housing and Public Works investigate ways in which licensees who construct and certifiers who approve unlawful or defective work (for example where a building is structurally unsound or built partially outside the property boundary) can be made responsible for rectification of the works.
- Recommendation 16** 36
- The Committee recommends that the Minister for Housing and Public Works review the current tendering process for rectification work and completion work with a view to ensuring a transparent and accountable process is put in place.

- Recommendation 17** 39
- The Committee recommends that the Minister for Housing and Public Works re-examine the use of QCAT as the only mechanism for reviewing QBSA decisions, to ensure the review process is more streamlined and user friendly and that the Minister consider introducing legislated timeframes for reviewing decisions of the new building authority.
- Recommendation 18** 39
- The Committee recommends the Minister for Housing and Public Works resolve the conflict whereby QCAT relies on QBSA building advice, for example by establishing an independent advisory board or using the Department of Public Works and Housing to provide specialist building advice to QCAT.
- Recommendation 19** 42
- The Committee recommends that the Minister for Housing and Public Works amend legislation to introduce a mandatory standard building contract for domestic building work and require contractors to use this contract as part of their licensing conditions.
- Recommendation 20** 42
- The Committee recommends that the Minister for Housing and Public Works seek amendment to legislation to require that homeowners seek legal advice before signing a building contract, or require them to sign a statement if they decide against seeking legal advice.
- Recommendation 21** 42
- The Committee recommends that if the Minister for Housing and Public Works decides against introducing a mandatory standard contract, the Minister use the evidence submitted as part of this inquiry as the basis for a review of all building contracts drafted by industry groups with a view to discouraging any inherent bias towards the building contractor.
- Recommendation 22** 42
- The Committee recommends that the Minister for Housing and Public Works review the evidence provided to the inquiry about payments and contractual issues relating to subcontractors with a view to improving the current system.
- Recommendation 23** 46
- The Committee recommends that the Minister for Housing and Public Works consider transferring:
- the consumer advice function to the Office of Fair Trading which is responsible for consumer rights and responsibilities and
  - the consumer and contractor information and training function to Building Codes Queensland in the Department of Housing and Public Works.
- Recommendation 24** 46
- The Committee recommends that the Minister for Housing and Public Works establish a telephone service in the Department of Housing and Public Works to provide a single point of inquiry for consumers to ensure they are directed to the appropriate building services provider/authority.

- Recommendation 25** **48**
- The Committee recommends that the Minister for Housing and Public Works ensure QBSA staff undergo training in customer relations and receive the training necessary to carry out their roles and responsibilities in the new authority or relevant government department to the highest possible standard.
- Recommendation 26** **53**
- The Committee recommends that the Minister for Housing and Public Works consider extending the Scheme to provide for:
- a tiered approach where homeowners can select the level of cover they wish to purchase, for example levels may be determined by the type of work being undertaken, the level of risk associated with the work and the maximum amount of cover desired and
  - the opportunity to take out cover for building works that do not need a building approval.
- Recommendation 27** **54**
- The Committee recommends that the Minister for Housing and Public Works consider extending the Queensland Home Warranty Scheme to the construction or renovation of all homes irrespective of the method of construction and to swimming pools and ancillary structures.
- Recommendation 28** **55**
- The Committee recommends that an information pack and fact sheet be developed by the new building authority and that building contractors should be required to provide these to each person taking out insurance for residential construction works before a contract is signed in order to:
- ensure consumers fully understand the limited nature of the insurance before they sign the building contract and
  - educate consumers about important provisions of the Scheme, including what the insurance does and does not cover.
- Recommendation 29** **55**
- The Committee recommends the fact sheet referred to in the previous recommendation be published on all relevant departmental websites as well as the building authority's website.
- Recommendation 30** **55**
- The Committee recommends that Queensland Home Warranty Scheme be renamed to better reflect its function, for example *Limited Home Warranty Scheme*.
- Recommendation 31** **56**
- The Committee recommends that the Minister for Housing and Public Works investigate processes for reviewing building authority decisions in relation to the Limited Home Warranty Scheme including the option of introducing a mediation process for dispute resolution.
- Recommendation 32** **63**
- The Committee recommends that the Minister for Housing and Public Works use evidence provided to this inquiry on the current licensing regime to undertake an independent review of all existing licenses to test for fitness for purpose, eligibility requirements, costs and benefits.

- Recommendation 33** **64**
- The Committee recommends that Section 42 of the QBSA Act, which provides that “a person must not carry out, or undertake to carry out, building work...unless that person holds a contractor’s licence of the appropriate class under this Act”, be revised to make it clear that there is no breach of the Act if the “building work” is carried out by an appropriately licensed builder.
- Recommendation 34** **65**
- The Committee recommends that:
- the Minister for Housing and Public Works investigate the value of establishing a structure and/or process for the review of disciplinary decisions (prior to escalation to QCAT) and
  - in implementing the disciplinary regime, the new building authority incorporate the provision of explanations for banning, disqualification and exclusion decisions to the licensees/applicants.
- Recommendation 35** **65**
- The Committee recommends that the Minister for Housing and Public Works seek amendment to the QBSA Act to provide that where an individual’s ‘relevant bankruptcy event’ and ‘a relevant company event’ stem from the same financial incident, that they be deemed one event for the purposes of penalties.
- Recommendation 36** **67**
- The Committee recommends that the new building services authority:
- review the current disciplinary regime for licensees with a view to strengthening penalties where appropriate
  - implement the regime in a comprehensive and consistent manner and
  - establish a rigorous ongoing auditing process to ensure compliance.
- Recommendation 37** **68**
- The Committee recommends that the new building authority:
- retain the current audit regimes (i.e. licence and financial audits) with a view to increasing the numbers and effectiveness of these regimes and
  - implement a new audit regime to check routinely for compliance with building standards and codes.
- Recommendation 38** **69**
- The Committee recommends that the online search facility be reviewed to ensure that consumers are able to access as much relevant and substantiated information as legally possible about a builder’s status and that provision be made by the new building authority for the database to be maintained on a regular and ongoing basis.
- Recommendation 39** **70**
- The Committee recommends that the Minister for Housing and Public Works investigate:
- the benefits of mandatory Continuing Professional Development (CPD) for all licensees and
  - the potential to link mandated CPD to licence eligibility requirements.

**Recommendation 40**

**73**

The Committee recommends that the Minister for Housing and Public Works use the evidence provided to the inquiry to examine ways in which the industry groups can take a greater role within the newly formed building authority in terms of licensing standards and procedures for their members.

**Recommendation 41**

**75**

The Committee recommends that the Minister for Housing and Public Works take the recommendations contained in this report into consideration before agreeing to any timeframes for the introduction of the draft Regulations stemming from the National Occupational Licensing System.



## 1 Introduction

### 1.1 Role of the Committee

The Transport, Housing and local Government Committee (the Committee) is a statutory Committee established on 18 May 2012 by the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly (the Standing Orders).<sup>3</sup> The Committee consists of both government and non-government members and its primary areas of responsibility include transport, main roads, housing, public works, and local government.<sup>4</sup>

In relation to its areas of responsibility, the Committee:

- examines legislation, including subordinate legislation, to consider the policy to be enacted and the application of the fundamental legislative principles set out in part 4, section 24 of the *Legislative Standards Act 1992*
- considers the Appropriation Bills (acting as an estimates committee)
- assesses the public accounts and public works of each department in regard to the integrity, economy, efficiency and effectiveness of financial management and
- has a responsibility to consider any other issue referred to it by the Assembly, whether or not the issue is within a portfolio area.<sup>5</sup>

The Committee may deal with these matters by considering them and reporting and making recommendations about them to the Assembly.<sup>6</sup>

### 1.2 Inquiry process

#### 1.2.1 The referral

On 2 August 2012, the Legislative Assembly (the Assembly) agreed to a motion that the Committee inquire and report on the operation and performance of the Queensland Building Service Authority (QBSA) in its regulation of the industry, including the maintenance of proper standards in the industry and that, in undertaking this inquiry, the Committee should consider:

- whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers
- whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home
- the effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers
- the governance arrangements of and between the board and the general manager
- the effectiveness of the Queensland Home Warranty Scheme and its protections
- whether the current licensing requirements of the QBSA are adequate and that there are sufficient auditing processes to maintain proper standards
- the number of trades licensed by the QBSA and whether industry groups could take a greater role within QBSA in terms of licensing standards and procedures for their members and
- examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.

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<sup>3</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.

<sup>4</sup> Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.

<sup>5</sup> Section 92(2) *Parliament of Queensland Act 2001*.

<sup>6</sup> Section 92(3) *Parliament of Queensland Act 2001*.

Further, the Assembly asked the Committee to consult with key industry groups including home builders and building contractors, industry participants and relevant experts.

#### *1.2.2 Reporting deadline*

The Committee has been asked to report to Parliament by Friday 30 November 2012.

#### *1.2.3 Public submissions*

The Committee advertised its inquiry in August 2012 by seeking submissions through:

- a media release to 364 media outlets
- letters to 29 specific stakeholders including industry and consumer representative bodies.
- emailing 351 subscribers registered to receive information from the Committee and
- placing advertisements in the Roma Western Star 10 August 2012, Courier Mail, Townsville Bulletin, Rockhampton Morning Bulletin, Toowoomba Chronicle 11 August 2012, Qld Country Life 16 August 2012 and Cairns Post 18 August 2012.

The Committee received and considered 109 submissions. A list of submissions is included at Appendix A. Submissions have been made public (other than those which submitters requested remain private) and are available at:

<http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries/INQ-BSA>.

#### *1.2.4 Public briefing*

On 27 August 2012, the Committee received a public briefing where it heard from 8 witnesses including the Building Advisory Group, the Housing Industry Association, Master Builders Queensland, officers from the QBSA and the Chair of the Queensland Building Services Board. A list of witnesses who appeared is included at Appendix B.

#### *1.2.5 Public hearing*

On 8 October 2012, the Committee held a public hearing where it heard from 34 witnesses including home owners and their representatives, builders, tradespeople and their representatives, academics, lawyers and officers from the QBSA. A list of witnesses who gave evidence at the hearing is included at Appendix C.

Transcripts from the public briefing and the public hearing, as well as the QBSA's responses to Questions on Notice taken at the public hearing have been published and are available at: <http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries/INQ-BSA>.

## 2 QBSA – functions and responsibilities<sup>7</sup>

The QBSA was established in 1992 as a single ‘one stop’ shop entity to carry out licensing, dispute resolution and Qld Home Warranty Scheme functions. It is established under the *Queensland Building Services Act 1991* (QBSA Act) as a body corporate which replaced the Builders Registration Board of Queensland.

The QBSA consists of the Queensland Building Services Board (QBS Board), the General Manager and the organisational unit which is under the control of the General Manager. The specific functions of the QBSA are detailed below. Further detail about each of these functions is provided throughout the report.

### 2.1 Functions and responsibilities under the *Queensland Building Services Act 1991*

The objects of the QBSA Act are to:

- regulate the building industry to ensure the maintenance of proper standards in the industry and achieve a reasonable balance between the interests of building contractors and consumers
- provide remedies for defective building work and
- provide support, education and advice for those who undertake building work and consumers.

The QBSA has a broad range of functions under the QBSA Act relevant to the regulation and licensing of persons who carry out, or undertake to carry out, building work in Queensland. “Building work” is defined under the QBSA Act as the erection or construction of any fixed structure.

The *Queensland Building Services Authority Regulation 2003* (QBSA Regulation) prescribes types of work that are not building work to be regulated under the Act, including:

- work of a value of \$3,300 or less, unless the work requires an occupational licence or constitutes hydraulic services design work
- work performed by an architect, engineer or licensed surveyor in each of their professional practice
- electrical work under the *Electrical Safety Act 2002*
- installation of acoustic or thermal control
- work consisting of earthmoving and excavating
- construction work in mining
- certification work performed by a building certifier under the *Building Act 1975* (Building Act) in the Certifier’s professional practice and
- prescribed civil construction such as the construction of public roads, dams and bridges.

#### 2.1.1 Functions and Responsibilities of the General Manager of the QBSA

The General Manager has all executive powers of the QBSA and the responsibility for the overall management of the QBSA. The functions and responsibilities of the General Manager include:

- administration of the licensing system established by the Act
- administration of a system of inspection established by the Act
- issuing directions for rectification of building work under the Act
- taking disciplinary and other proceedings under the Act
- assessing and approving payment of insurance claims under the Qld Home Warranty Scheme
- undertaking strategic planning, having regard especially to the cyclical industry conditions, to ensure that the QBSA’s available revenue base, and its assets and reserves, are enough to allow the QBSA to maintain the services it is required to provide
- issuing warnings to the public or and section of the public

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<sup>7</sup> Unless otherwise referenced, section 2 of this report includes information provided by the QBSA in its *Submission No.65*.

- providing and promoting consumer education
- providing an advisory service to consumers about:
  - their statutory rights and obligations
  - insurance claims that may arise about building work
  - the QBSA's role, functions and operating procedures and
  - any incidental matters.
- providing courses of instruction for:
  - persons seeking to obtain licences
  - licensees
  - persons proposing to carry out building work as owner builders and
  - other persons seeking to acquire knowledge or expertise in subjects related to the building industry.

### **2.1.2 Administration of the Queensland Home Warranty Scheme under the QBSA Act**

The QBSA administers a not-for-profit statutory home warranty scheme for residential construction work called the Queensland Home Warranty Scheme (the Scheme). The Scheme covers homeowners for loss suffered in the event of a contractor failing to complete a contract or carrying out defective residential construction work. The term of the Scheme's cover is 6.5 years.

The parameters of cover provided under the Scheme are determined by the QBSA Act, QBSA Regulation and the applicable Insurance Policy Conditions made by the QBS Board.

The maximum amount payable under the Scheme's insurance policy conditions for claims is:

- \$200,000 for claims of non-completion (including pre-completion defects), vandalism or forcible removal per policy (this includes an amount of up to \$5,000 for alternative accommodation and storage costs)
- \$200,000 limit for all claims relating to fire, storm or tempest per policy (this liability is subject to the lodgement of a valid non-completion claim prior to the event)
- \$200,000 per policy for claims for post-completion defects and subsidence (this amount includes and amount of up to \$5,000 for alternative accommodation and storage costs).

The QBSA Act requires that the Scheme is managed in accordance with the actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts paid from the Insurance Fund. The QBSA is required to calculate the premiums payable to ensure they are sufficient to meet the costs of administering the scheme and to the costs for paying out claims. Premiums increase incrementally with the value of the work (which includes the cost of labour and materials).

The appropriate insurance premium must be paid by the licensed contractor responsible for carrying out, or managing the construction work. In most instances this cost is added to the price for the contracted construction work. A copy of the Certificate of Insurance and the Insurance Policy Conditions are posted to the homeowner as soon as the premium is received.

The QBSA has advised that in 2011-12, 73,256 policies were issued. Approximately one-third were for new construction with the remainder being for work involving alterations and additions to existing homes. In 2011-12, 2,128 homeowners were assisted by the Scheme with a total amount of claims amounting to \$37.6 million.

## **2.2 Functions and responsibilities under the *Domestic Building Contracts Act 2000***

The *Domestic Building Contracts Act 2000* (DBC Act) regulates domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners, and to maintain appropriate standards of conduct in the building industry.

- The QBSA's functions include the investigation and prosecution of breaches of the DBC Act. Breaches of the DBC Act are most commonly dealt with through the issue of an infringement notice under the *State Penalties Enforcement Act 1999*.
- The DBC Act authorises the QBSA to prepare and publish suggested forms of domestic building contracts. The QBSA also approves contract information statements for the purposes of the Act.

### **2.3 Functions and responsibilities under the Building and Construction Industry Payments Act 2004**

The object of the *Building and Construction Industry Payments Act 2004* (BCIP Act) is to ensure that a person is entitled to receive and is able to recover progress payments where a person undertakes to carry out construction work under a construction contract, or undertakes to supply related goods and services under a construction contract.

The BCIP Act states that the object is to be achieved by:

- granting an entitlement to progress payments whether or not the relevant contract makes provision for progress payments and
- establishing a procedure that involves:
  - the making of a payment claim by the person claiming payment
  - the provision of a payment schedule by the person by whom the payment is payable
  - the referral of a disputed claim, or a claim that is not paid, to an adjudicator for decision and
  - the payment of the progress payment decided by the adjudicator.

The BCIP Act establishes an Adjudication Registry consisting of a Registrar and registry staff. The Registrar is subject to the direction of the General Manager of the QBSA.

In addition to the BCIP Act, the *Subcontractor's Charges Act 1974* provides a mechanism for securing monies owed to a subcontractor by a contractor through the lodging of a charge in the Courts. The *Subcontractor's Act* does not give the QBSA any powers or functions in relation to its operations.

### **2.4 Functions and responsibilities under the Building Act 1975**

Amongst other matters, the *Building Act 1975* (Building Act):

- regulates private certifiers and other building certifiers and the performance of building and private certifying functions
- regulates the engagement of private certifiers and
- provides for the licensing of, and complaints, investigations, and disciplinary proceedings against, private certifiers and other building certifiers.

The QBSA has the following functions under the Building Act:

- license individuals as building certifiers and give private certification and development approval endorsements
- monitor compliance by building certifiers with specified provisions of the Building Act
- carry out audits of building and private certifying functions
- investigate written complaints made to it about alleged unsatisfactory conduct or professional misconduct by building certifiers or former building certifiers
- take disciplinary action against building certifiers or former building certifiers for unsatisfactory conduct or professional misconduct
- give the chief executive, at least once each year, a list of building certifiers and a summary of disciplinary action taken against building certifiers and
- keep a register of building certifiers.

## 2.5 Technical support for the Queensland Civil and Administrative Tribunal

The QBSA provides technical services to the Queensland Civil and Administrative Tribunal (QCAT) in relation to building work. At the request of the President of the QCAT, the QBSA provides expert reports to the QCAT and may act as an assessor in a proceeding concerning building work.

If appointed as an assessor in a proceeding concerning building work, the QBSA may provide one or more of the following services as requested by the QCAT:

- give expert evidence about the building work
- sit with the QCAT and give advice about the building work related matters relevant to the proceeding
- decide a question of fact about the building work and give the tribunal a written report stating the decision and the reasons for it
- give advice to the tribunal about the building work, including conducting an inquiry or investigation into a matter and give a written report of the assessor's findings in the inquiry or investigation.

The QBSA does not charge for the above services, including the provision of expert reports where the QBSA is not a party to the dispute.

The administration and funding of the QBSA and the QCAT are independent of each other.

## 2.6 Other functions of the QBSA

In addition to its statutory functions, the QBSA carries out a range of functions to assist consumers, the general community, the building industry and the Queensland Government. These include:

- disaster recovery assistance (advice on rebuilding after natural disasters)
- technical support for QCAT in relation to building work and
- community Information Support through a contact centre (telephone and online) to building industry stakeholders. Services include a phone-pay service which enables licensees to pay renewal fees and Queensland Home Warranty Scheme premiums.

The QBSA has advised the Committee in its submission to the Inquiry that contractors and consumers often contact the QBSA about building issues that include matters outside its jurisdiction including:

- local government and planning issues
- employment arrangements, including relevant awards
- contractual disputes in the QCAT (not involving defective building work or the QBSA)
- Australian Standards and Codes applicable to building work
- disputes relating to engineering, architectural or electrical work and
- queries relating to the occupational licensing of plumbers, drainers, gasfitters and electricians.

The QBSA further advised the Committee that in these circumstances it assists the public to identify and contact the appropriate regulator or service provider to their enquiry.

## 2.7 Functions and responsibilities of the Queensland Building Services Board

The QBS Board is established under the QBSA Act and has the following functions:

- to make and review policies governing the administration of the QBSA Act
- to provide guidance and leadership to the General Manager and monitor the General Manager's management of the QBSA
- in conjunction with the General Manager, to establish strategic direction for the QBSA
- to advise the Minister on issues affecting:
  - the building industry
  - consumers

- the administration of the QBSA Act and
- the administration of the QBSA
- to give advice to the Minister about unfair or unconscionable trading practices affecting security of payments to subcontractors and
- to consult with, and advance the interests of, the building industry and its consumers consistently with the objects of the QBSA Act.

The QBSA Act authorises the QBS Board to make and review policies governing the administration of the Act. To have effect, a policy of the Board must be approved by regulation and published in the gazette. Policies that are currently in effect are:

- Financial Requirements for Licensing policy
- Insurance Policy Conditions
- Rectification of Building Work policy.

The QBS Board consists of 8 members comprising:

- Three (3) members who are licensees, or directors of companies that are licenses subject to the following conditions:
  - at least one of the licensees must be a licensed builder
  - at least one of the licensees must be a licensed contractor other than a licensed builder and
  - one other
- two (2) members appointed as representatives of consumers
- one (1) member appointed as a representative of either or both of the general insurance industry and the accounting profession
- one (1) member appointed as a representative of building and construction unions and
- one (1) member appointed as a public service officer (currently the Director-General, Department of Housing and Public Works).

All members of the QBS Board, other than the public service member, are voting members. The Chair and members of the QBS Board are appointed by the Governor in Council. Members of the QBS Board are appointed for a term of no longer than 3 years. However, the Chair or members may be reappointed at the expiry of a term.

The QBS Board or the Minister for Housing and Public Works may appoint committees for the purpose of advising the Board on a particular subject or subjects.<sup>30</sup> The following committees are currently appointed:

- Policy Committee
- Finance and Audit Committee
- Insurance Committee
- Licensing Committee and
- Fire Protection Occupational Licensing Committee.

## **2.8 Overview of Statistics (2011-12)**

- There were approximately 4,726 building disputes regarding defective and incomplete work compared to 73,256 building contracts for insurable residential projects.
- The QBSA issued 896 directions to rectify.
- There were 60 reviews by QCAT regarding directions with decision being upheld in 95% of cases.
- 2,128 homeowners were assisted by the QHWS with a total amount of claims amounting to \$37.6 million.
- As at 30 June 2012, the QBSA had 84,436 licensees registered under the QBSA Act and 398 building certifiers licenced under the Building Act.

### 3 The governance arrangements of and between the QSA Board and the General Manager

#### 3.1 Background – governance arrangements of the QBSA Board<sup>8</sup>

The QBS Board is established under the QBSA Act which provides the Board with the following governance functions:

- provide guidance and leadership to the general manager and monitor the General Manager's management of the authority
- in conjunction with the General Manager, to establish the strategic direction for the Authority and
- advise the Minister on issues affecting the administration of the QBSA.

The Chair and members of the QBS Board are appointed by the Governor in Council. The Board comprises eight members as detailed on page 7 of this Report. All members other than the public service member are voting members.

Section 14 of the QBSA Act provides that the Board, or the Minister, may appoint committees for the purpose of advising the Board on a particular subject or subjects. The QBS Board has established a number of committees including the Finance, Audit and Risk Committee, Insurance Committee and Policy Committee. The committees report directly to the QBSA Board. General Manager, relevant executive Managers and QBSA staff provide secretariat and other assistance to the committees.

The Finance, Audit and Risk Committee oversees internal auditing of the QBSA, including strategic and annual audit plans and management responses to the internal auditor's recommendations for improvement and strategic risk management. The Committee considers and oversees the QBSA's budgetary functions, financial statements and financial position. The Committee meets bi-monthly.

The Insurance Committee advises the QBS Board on the performance of the Queensland Home Warranty Scheme and associated issues.

The Policy Committee advises the QBS Board on policy issues relevant to the QBSA related legislation and is instrumental in developing new policies relating to the building industry.

Over the past four years, the Policy Committee has considered a number of issues including:

- subcontractor accountability
- requests to rectify defective building work procedure
- dispute management system procedures and
- national licensing reforms.

#### 3.2 Background - Governance arrangements between the QBSA Board and the General Manager<sup>9</sup>

Under the QBSA Act, the General Manager has all the executive powers of the QBSA and the responsibility for the overall management of the Authority. The General Manager is independent of the QBS Board's control in performing the functions and responsibilities associated with the General Manager's executive powers and overall management of the QBSA. The QBSA Act requires the General Manager to report regularly to the QBS Board on the administration of the QBSA Act and, at the request of the Board, provide it with a special report on a particular subject.

While the General Manager is independent of the QBS Board in the exercise of executive powers and the overall management of the QBSA, the General Manager has a statutory obligation to give effect to the board's policies.

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<sup>8</sup> Information in this section has been drawn from QBSA *Submission No.65*. pp.42-43.

<sup>9</sup> Information in this section has been drawn from QBSA *Submission No.65*. pp.43-43.



The General Manager is not appointed by the QBS Board. Under the QBSA Act the General Manager is appointed by the Governor in Council. The remuneration and conditions of appointment of the General Manager are determined by the Minister.

The QBSA Act also creates a statutory position of Insurance Manager for the QBSA. The Insurance Manager is appointed under the executive powers of the General Manager in consultation with the QBS Board. The role of the Insurance Manager includes reporting regularly to the QBS Board on the administration of the Queensland Home Warranty Scheme and, if asked by the QBS Board. The Insurance Manager is independent of the General Manager's direction in reporting to the QBS Board, but is otherwise subject to the General Manager's direction.

### **3.3 Evidence received on governance arrangements of the QBS Board and between the Board and the General Manager**

While the Committee did receive comments in a number of submissions about the governance arrangements of the QBS Board and the arrangements between the Board and the Manager, in general this issue did not feature largely in the evidence received by the inquiry. Examples of the comments and issues raised are provided below:<sup>10</sup>

The Housing Industry Association (HIA):

*The QBS[A] Board is essentially an advisory body to the Authority. The General Manager does not formally report to the Board, rather to the Minister for Housing and Public Works. To operate effectively HIA believes it is important the General Manager report directly to the Board and be appointed by the Minister on a recommendation from the Board, as applies in other statutory authorities. This will deliver a clearer role for the Board and more transparent accountability for the General Manager.*<sup>11</sup>

One building contractor notes:

*Remove the Board as a Board could never be found to satisfy such a diverse industry and could only hinder the operations of the BSA. In my 20 years as a licence holder I have never been informed of the Board or of anything they have done. The current members sadly are generally not at the coal face of the industry and would not therefore provide relevant input. The best information we received was through the BSA's own 3 monthly magazine, now not produced. This should be started again and also used as a tool for the BSA to both survey the industry and gather relevant information from licenced persons.*<sup>12</sup>

A number of licensees have questioned whether there is adequate representation of building trades and professions on the QBS Board:

*Arrangements between the board and the general Manager are outside my experience, but I question if the Board Members are chosen to represent a good cross section of the building trade.*<sup>13</sup>

*... we have 3 members on a seven[sic] person board that may only represent 10 - 20% of the registered builders in Queensland.*<sup>14</sup>

*No building professional disciplines are represented on the QBSA Board and, as such, the QBSA fails to adequately administer the licensing of professional building disciplines.*<sup>15</sup>

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<sup>10</sup> Other submissions which raised issues on governance include numbers 11, 13, 13a, 48,

<sup>11</sup> HIA, *Submission No.38*, p.27.

<sup>12</sup> Private *Submission No.60*. p.2.

<sup>13</sup> Mr John Andrew, *Submission No.49*, p.2.

<sup>14</sup> Michael Nash Constructions, *Submission No.15*, p.3.

Consumers have also raised concerns that consumers are not truly represented:

*The Qld Building Services Board has one consumer member, reading ..... [his] background in the BSA Annual Report 2010-2011, it is hard to see how his background in insurance and business qualifies him to represent consumers (if "consumer" means the ordinary home owner, among others). The board membership looks like it represents the sectors of the building industry.....it should have a larger representation of genuine "consumers".<sup>16</sup>*

#### **Committee comment**

The Committee notes concerns raised by a small number of stakeholders about the representative make-up and membership of the Board.

The Committee is of the view that the QBSA Board should be truly representative and impartial.

The Committee has also noted a 2009 independent Review of Queensland Government Bodies (including statutory authorities) which recommended that the QBSA Board should be a governing board and the General Manager role should be accountable to, and report through, the governing board to the responsible Minister.<sup>17</sup>

The Committee has made a number of recommendations regarding structural reform of the QBSA and the QBSA Board at the end of section 4 of this report (see pages 19-20).

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<sup>15</sup> The Association of Hydraulic Services Consultants Australia, *Submission No.63*, p.1.

<sup>16</sup> Mr Don Jender, *Submission No.32*, p.4.

<sup>17</sup> S. Webbe and P. Weller, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, March 2009, p.136, recommendation 121.

## 4 Does the QBSA achieve a balance between the interests of building contractors and consumers<sup>18</sup>

### 4.1 Introduction - QBSA's statutory obligations to achieve a "reasonable balance"<sup>19</sup>

One of the stated objectives of the QBSA Act is to "achieve a reasonable balance between the interests of building contractors and consumers". This specifically relates to QBSA's role in issuing directions for defective or incomplete building work, its licensing functions, dispute resolution and Queensland Home Warranty Scheme functions.

Under section 18(2A) of the QBSA Act, the General Manager is prohibited from having regard to the implications for the statutory insurance scheme when deciding the action to be undertaken in relation to a licensee's licence and that under the QBSA organisational structure, decisions regarding payments of claims for insurance and decisions relating to the imposition of conditions, suspension and cancellation of licenses and prosecution of offences are made by two "entirely separate" divisions which are under the management of separate executive managers.

In its submission to the Inquiry the QBSA advises that decisions regarding payments of claims for insurance are made by assessment officers in the QBSA's "Resolution Services" division. Decisions relating to the imposition of conditions, suspension and cancellation of licences (e.g. for breach of financial requirements) and prosecution of offences are made by the QBSA's "Compliance" division. The QBSA also advises that decisions made by the two divisions are entirely separate.

Technical decisions on whether building work is defective or incomplete are determined by a building inspector. Building inspectors and insurance assessment officers are both located in the "Resolution Services" division of the QBSA. QBSA advises that these officers have distinct functions and delegations with respect to their areas of responsibility and expertise. The building inspector may provide technical advice to the insurance assessment officer on the work required to rectify or complete, including the scope of work relevant to the rectification or completion. In all other respects, the relevant officers make independent decisions in regards to their functions and delegations.

In its submission, QBSA goes on to detail that the QBSA Act provides safeguards in relation to decisions throughout the dispute and insurance process. Specifically, any affected party may apply to the QCAT for a review of any of the following decisions:

- a decision to direct or not to direct rectification or completion of building work
- a decision that building work undertaken at the direction of the QBSA is or is not of a satisfactory standard
- a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete residential construction work
- a decision to disallow a claim under the Queensland Home Warranty Scheme wholly or in part
- a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the Queensland Home Warranty Scheme.<sup>20</sup>

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<sup>18</sup> This section provides a general overview on how well the QBSA achieves and is "perceived to achieve" a balance in relation to directions relating to defective or incomplete work, its licensing functions, and the Home Warranty Insurance Scheme. Sections 5 to 7 of this report examine these functions in more detail.

<sup>19</sup> Unless otherwise specifically referenced this introduction is based on material provided by the QBSA *Submission No.65*, pp.16-17.

<sup>20</sup> QBSA, *Submission No.65*, p.17.

## 4.2 Overview of evidence received on whether the QBSA's achieves a "reasonable balance"

A review of submissions has provided the Committee with widely varying perspectives on the issue of whether the QBSA achieves balance in the performance of its duties. Views range from those purporting that the QBSA genuinely seeks to achieve balance, to those claiming the QBSA has a bias against consumers, and those claiming the QBSA has a bias against builders. The following pages provide some examples of the evidence provided.

One submitter observes that:

*As someone who has been frequently involved with the QBSA, I wish to make the general personal observation that the organisation is overly bureaucratic and often seems to be more concerned with protecting its own position than protecting the interests of building contractors and consumers.<sup>21</sup>*

### 4.2.1 Background to the evidence provided on 'reasonable balance'

The Builders Collective of Australia provides an insightful introduction to the concerns surrounding building or renovating a house:

*Building or renovating a house is often one of the most expensive and emotionally charged experiences in a consumer's life. Builders and consumers rightly expect that the building regulatory regime will protect both consumers and builders by enabling fair outcomes for all. The industry expects arrangements to be in place to ensure minimum standards are set and met, qualifications for builders and other practitioners are obtained and maintained, compliance is monitored and enforced, dispute resolution is available to all parties and consumers and builders understand and comply with a standard contract fair to both consumer and builder.*

*Furthermore industry and consumers see this as a government responsibility to administer these functions to deliver consumer protection as a Government can operate as an honest broker with a degree of accountability and governance not possible from the private sector. Consumers also look for protection in the event that a builder does not, or cannot, complete contracted work and that the builder returns to rectify defects during an agreed statutory 'warranty' period.<sup>22</sup>*

The Australian Master Tilers Association comes to the conclusion that it is almost inevitable that there will be a perception of bias:

*Due to the emotion involved in any dispute, it is almost inevitable that, when the BSA is required to make a ruling, one side or the other will be under the impression that the BSA is taking sides. This is true for both the Consumer and the Building Contractor, depending on the outcome of the ruling (i.e. whether a direction to rectify is issued or not).<sup>23</sup>*

### 4.2.2 Examples of evidence received that QBSA genuinely seeks to achieve balance:<sup>24</sup>

*BDAQ [Building Designers Association of Queensland] believes that BSA seeks to achieve a balance between the interests of building contractors and consumers. Unfortunately, they get to deal with contractors and consumers at a time of heightened emotions and in such a state there is always a potential for miscommunication. Whenever BSA is required to intervene in an issue, the result is a significant cost to one party or the other and a ruling against one side will always give an impression of the authority "taking sides".*

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<sup>21</sup> Mr Lev Mizikovsky, *Submission No.41*, p.2.

<sup>22</sup> Builders Collective of Australia, *Submission No.26*, pp.4-5.

<sup>23</sup> The Australian Master Tilers Association, *Submission No.90*, p.2.

<sup>24</sup> For further examples see submissions 26, 69, 90

*Building designers deal with both sides of the building contract and are aware that, for as many consumers who believe that the BSA protects builders, an equal number of builders believe that BSA takes the side of consumer.<sup>25</sup>*

.....

*It is our view that Queensland Building Services Authority currently operates effectively within the parameters established by legislation. There is never a satisfactory answer when something goes wrong during a building project and regardless of the outcome one party will feel hard done by.<sup>26</sup>*

Timber Queensland Ltd (TQ) agrees:

*It is TQ's experience in matters we have been party to with the QBSA that relate to technical assessment and opinions in respect to the use and application of timber, that the BSA have provided a fair and reasonable balance between the interests of the consumer and contractor. This has been demonstrated where directions have been re-visited based upon our independent expert advice. We have also noted, that on occasion, they have encouraged a 'natural justice' outcome where matters have not been within the legal bounds of their legislative framework.<sup>27</sup>*

#### 4.2.3 Examples of evidence that the QBSA has a bias against consumers

A significant number of submissions (mostly consumers) argue that the QBSA has a bias against consumers<sup>28</sup>. A submission from Mr and Mrs Cedaro sums up many peoples concerns as follows:

*I question how an organisation who accepts annual dues from builders can possible purport to independently and impartially oversee disputes between consumers and builders who pay an annual fee t[o] them.<sup>29</sup>*

A confidential submission raises a concern that:

*The residential building industry in Queensland has become a David and Goliath struggle with the cards stacked clearly with the industry.*

*Extreme prejudice, bullying, outright denial of natural justice and manipulation of the facts, system and due process has translated into nothing less than assault emotionally and financially toward consumers.<sup>30</sup>*

Mr and Mrs Wyeth's submission provides the following detailed argument:

*This State controlled "system" which includes a number of diverse responsibilities, allows the General Manager of the BSA and his staff to manipulate the QBSA Act in whatever way they choose as they are only accountable to an occasional Board meeting and QCAT. There is no transparency, no independent arbitration or an Ombudsman that a consumer can appeal to and with all its differing obligations, the BSA has and does demonstrate a clear "conflict of interest" that favours their licensees.*

*For example:*

- *As managers of the Home Warranty Insurance Scheme, the BSA are in a unique position. Having licensed the builders and tradespeople in the first instance they then receive annual fees and insurance premiums from them, (which is the BSA's income) so they are obliged to protect them.*

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<sup>25</sup> Building Designers Association of Queensland (BDAQ), *Submission No.27*, p.2.

<sup>26</sup> BDAQ, *Submission No.27*, p.7.

<sup>27</sup> Timber Queensland Ltd, *Submission No.18*, p.2.

<sup>28</sup> For further examples of perceived bias against consumers see submissions 68, 71, 75, 99, 102,

<sup>29</sup> Mr and Mrs Cedaro, *Submission No.2*, p.1.

<sup>30</sup> Confidential *Submission No.99*, p.14.

- *Any claim upheld by the Home Warranty Insurance Scheme is an admission of failure by the BSA (the managers of the HWI scheme) to properly assess the licensee's competence in the first place and to hold a licence.*
- *The BSA under the QBSA Act are then obliged to recover any money paid out by the Insurance Scheme from their offending licensee. In other words they could seriously financially damage, even bankrupt their licensee, so it is in the BSA's interest to minimise the damage and the insurance payout.*
- *By denying independent arbitration for consumers and by putting all decision making in the BSA and QCAT's hands (both State Government Agencies) the BSA does not have to carry out any "cost benefit analysis" of claims and can (and I would suggest does) deliberately select non legally represented[sic] consumers to contest and deny their justifiable insurance claims in order to maintain its required APRA [Australian Prudential Regulation Authority] payout percentage.*
- *In denying self represented consumers claims (self represent because they cannot afford to pay large legal fees) the BSA does not have to worry about what it costs them. The BSA can run up (and does) unlimited expense in contesting claims. As shown in their Annual report, in addition to their own "in house" legal team, they hire "top of town lawyers" and consultants (at over \$4m) to represent them in disputes and at QCAT, and use unlimited time of their own staff to contest a claim. These costs can be, and are, out all proportion to the cost of settling the claim. In this regard the BSA use their financial resources in the hope of "breaking" the consumer or by forcing them to withdraw. The General Manager claims that it usually takes 3-4 years to have a claim heard at QCAT! What an affront to consumers, is this equality?*
- *In addition of course, there are the cost[s] incurred of a claim that are eventually heard at QCAT. The QCAT costs have to be met by taxpayers.*
- *The BSA is a very profitable organisation (it has accumulated over \$50million in assets) and it is easy to see why. Its income is derived from license fees and insurance premiums. Under "the system", it is compulsory for every builder and tradesperson working in Queensland to be licensed by the BSA and every licensee, carrying out work over \$3,000, has to pay BSA insurance — there is no competition, it is a State Government monopoly.*
- *Insurance companies normally invest the premiums received and payout claims from their investment income. BUT, the BSA is able to invest both the licence fees it receives and the insurance premiums and waste enormous sums of money in employing administrative staff (approximately 350) in fighting comparatively small claims — and "then is able to recover any money paid out, from its licensee"! WHY?<sup>31</sup>*

#### 4.2.3 Examples of evidence that the QBSA has a bias against builders

In contrast, a number of submitters (mostly builders) have claimed that the QBSA has a bias against building contractors<sup>32</sup>, for example Mr Rick Rendell submits:

*The balance between the interests of the consumers and contractors is in my opinion and experience with disputes, skewed in favour of the consumer. There seems to be a mindset that contractors are cowboys ..... and that there is dishonesty and chicanery being practiced upon the consumer. Contractors are just ordinary people with families and dependants, with responsibilities and risks arising from their relationship[s] with consumers. My experience is with building disputes and with owners who will at times utilise the BSA process to void*

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<sup>31</sup> Mr and Mrs Wyeth, *Submission No.30*, pp.3-5.

<sup>32</sup> For further examples of perceived bias against contractors see submissions 79 and 80.

*making payments due under the contract. The contractor frequently has no recourse except through the courts, a costly, lengthy process with still no guarantee of being paid. I believe the BCIPA process needs to be available for a contractor's action against a resident home owner to recover monies. I have seen many more shonky consumers than contractors. The safeguards provided to consumers by the home warranty scheme ensure a reasonable outcome in the event of a contractor's demise or misbehaviour. This is of course premised upon the consumer complying with the policy conditions and this cannot be relaxed as the scheme requires administrative rigor to remain viable.<sup>33</sup>*

The HIA provides the following useful insight into the question of real and perceived conflict of interest in relation to the QBSA:

*The perceived advantage of this broad role for the QBSA is that it can provide a "one-stop-shop" for both consumers and contractors. But this is also its fundamental weakness – the QBSA is caught trying to be all things to all people. For the most part the QBSA is able to successfully juggle these conflicts but there is a sizeable minority of cases where the internal contradictions in the QBSA's role inhibit good outcomes. There is no other jurisdiction in the country that combines all of these functions into the one body.*

*The QBSA faces a number of challenges in relation to equity for the parties, perceived bias from both consumers and contractors and confusion by the public over their role. QBSA inspectors are constantly put in a position by consumers and contractors expecting them to address contractual/legal matters which the QBSA is unable to do. From the contractor's perspective they may be being told by the QBSA that they have to repair defective or incomplete work even though their client may owe the contractor tens of thousands of dollars. If the work is not repaired then their licence is at risk of cancellation.*

.....

*The one-stop-shop structure of the QBSA creates the perception and the potential for conflicts of interest to arise among its functional areas. From the perspective of licensed building and trade contractors there is a perception that the QBSA acts, especially when resolving disputes, to use its licensing powers to coerce contractors into resolving disputes that they would otherwise contest. From a consumer's perspective there is always a suspicion that the QBSA will err on the side of saying work is not defective with a view to protecting the insurance scheme from potential claims.<sup>34</sup>*

### **4.3 Recommendations from submissions suggesting organizational reform of the QBSA**

A number of submitters were satisfied with the current structure of the QBSA, including the Australian Institute of Building (AIB) which *"supports the 'one-stop shop' model of the BSA, but there should be vigilance to ensure the integrated model does not impact on the BSA's independence and objectivity."*<sup>35</sup>

However, many submissions from both the building industry and consumers provided advice to the Committee on how the QBSA could be structurally reformed to enhance assistance to both industry and consumers. Some examples are provided below.<sup>36</sup>

The HIA recommends that the functions currently undertaken by the QBSA be separated and that an independent governing board oversee the regulation and licensing function which would be the only function to remain with the QBSA.

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<sup>33</sup> Mr Rick Rendell, *Submission No.11*, pp.1-2.

<sup>34</sup> HIA, *Submission No.38*, p.3.

<sup>35</sup> AIB, *Submission No.84*, p.2.

<sup>36</sup> For further examples see submissions 60, 75, 80

*It is because of these fundamental conflicts built into the current one-stop-shop structure of the QBSA that HIA recommends that the functions of the QBSA need to be separate.*

*... the policy framework for the building industry's regulation should be managed by one body Building Regulation Queensland, and governed by an independent board. Put simply HIA's recommended approach is to reallocate the QBSA's functions so that:*

- *contractor licensing functions remain with the QBSA;*
- *dispute resolution moves under a judicial umbrella in a specialist division of QCAT that is funded by an allocation from the QBSA licensing fees;*
- *warranty insurance to have claims managed by the private sector and underwriting to be managed by the Treasury's Insurance Division;*
- *consumer education to be undertaken by the Office of Fair Trading; and*
- *regulation of contracting relationships to be developed by the newly established Building Regulation Queensland.<sup>37</sup>*

Later in its submission the HIA also recommends that contractor information be provided by industry associations and by Building Codes Queensland.<sup>38</sup>

LK & HM Young, General Builders, agree that there needs to be a significant restructure:

*The only recommendation I believe is available is complete dissolution of the department of Queensland Building Services Authority and replace this service with a new body group to assist the construction Industry with specialized professionals available for training, education, dispute management in these described scopes of professions.<sup>39</sup>*

The Australian Institute of Building Surveyors (AIBS):

*The AIBS ask that the enquiry consider a clear delineation and transparency of separation between Government and Judiciary matters and consider the maintenance of private Certifier/Building Surveyor rights to mitigate potential damage.<sup>40</sup>*

RICS Oceania has provided its own organisational structure as a possible alternative for the QBSA:

*... RICS is charged through its Royal Charter to act in the public interest. Because of this public interest mandate RICS has established a separate Regulatory Board. This board sits alongside, rather than under, the Management Board of RICS.*

*The Regulatory Board maintains issues such as complaints, discipline, rules of conduct and codes of ethics, as well as providing regulatory services to firms, providing security to the public as members are regulated by a body that can oversee structures of compliance.*

*RICS sees that a system such as this may benefit the operations of QBSA and the Queensland Government by streamlining the process for building surveyors through certification to licensing.<sup>41</sup>*

Mr Malcolm Cronk suggests appointment of an independent person to head the QBSA:

*It is absolutely essential that the head of the QBSA not have any conflicting interests such as being the head of or member of any other building industry body such as the QMBA, HIA, etc. Such affiliations absolutely prejudice the rights of the consumer.<sup>42</sup>*

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<sup>37</sup> HIA, *Submission No.38*, p.4.

<sup>38</sup> HIA, *Submission No.38*, p.27.

<sup>39</sup> LK&HM Young *Submission No.10*, p.5.

<sup>40</sup> AIBS, *Submission No. 50*, p.3.

<sup>41</sup> RICS Oceania, *Submission No.97*, pp.2-3.

<sup>42</sup> Mr Malcolm Cronk, *Submission No.9*, p.2.



A private submitter recommends the QBSA be disbanded and reconstituted “...under a new act which clearly defines, in laymans terms, its operation and responsibilities.”<sup>43</sup>

Mr Wayne Orenshaw recommends:

- *This Inquiry be extended, or a new Inquiry be set up with extended objectives, to allow more input from Queensland builders most of whom are not aware of the Inquiry.*
- *The Minister restructures the QBSA in consultation with consumers and the building industry.*
- *As part of that restructure a body be set up to supervise the activities of the QBSA and deal with complaints against it.*
- *A new leadership with knowledge of the building industry but with no history of employment with the QBSA be appointed.*<sup>44</sup>

Numerous submitters have also recommended non-structural solutions to improve the operation and performance of the QBSA for example Mr Glen Place’s suggestions detailed below.<sup>45</sup> Operational proposals such as these are examined in detail in later sections of this report.

*QBSA should play a greater role in:*

- *mediation between Contractor and Client.*
- *inspecting of all contractors work.*
- *introduce Continuous Professional Development (CPD)*
- *improving the quality of contract documentation and communication.*
- *introducing Codes of Practice and Codes of Conduct.*
- *carry out more audits and monitoring on Building Certifiers and their work practices.*
- *ensure Building Certifiers properly carry out their certification services.*
- *carry out audits and monitoring on Licensed Holders and their work practices.*
- *carry out audits and monitoring on Licensed Holders that have produced defective work where rectification has been necessary.*
- *work actively to remove Un-licensed persons from the industry.*
- *increase penalties for Un-licensed persons performing illegal building work.*
- *give the BSA the tools to carry out the work.*
- *introduce “Early Intervention”.*
- *increase the minimum experience requirements for Building Designers.*<sup>46</sup>

David and Jenny da Costa sum up what many submitters are appealing for:

*What the public is seeking is an organisation who has the resources, expertise, bureaucratic muscle and the willingness to genuinely listen to and act upon issues raised, so that the outcome will be one of fairness and equity to all parties concerned.*<sup>47</sup>

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<sup>43</sup> Private, *Submission No.60*, p.1.

<sup>44</sup> Mr Wayne Orenshaw, *Submission No.89*, p.12.

<sup>45</sup> See also Building Advisory Group, *Submission No.102*, p.1.

<sup>46</sup> Mr Glen Place, *Submission No.80*, p.6.

<sup>47</sup> David and Jenny da Costa, *Submission No.40*, p.2.

### Committee comment

The Committee generally agrees with Deborah Brown's observation that *"It is probably impossible for the BSA to balance the interests of both parties so that both are happy, since to some extent their interests are opposed."*<sup>48</sup>

However, the evidence provided to the Committee shows there is a strong perception by both consumers and builders that the QBSA is biased in one way or another and the Committee is of the view that there is a fundamental weakness in the "one stop shop" structure of the QBSA which facilitates and perpetuates the strong perception that the QBSA has an essential conflict of interest in carrying out its functions and responsibilities.

The Committee believes the perception of conflict of interest is further exacerbated by the role of the General Manager who is concurrently responsible for:

- licensing and the collection of fees from licensees and certifiers
- administration of licensee audits and disciplinary action
- attempting to resolve disputes about rectification of defective or incomplete work
- issuing directions to rectify defective or incomplete work
- managing the tendering process for allocation of rectification and completion work to builders
- providing building advice to QCAT when QCAT is reviewing decisions made by the QBSA
- assessing and approving payments of insurance claims under the Home Warranty Insurance Scheme
- administering the Home warranty Insurance Scheme in accordance with the actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts paid from the Insurance Fund
- undertaking strategic planning to ensure the QBSA's available revenue base, and its assets and reserves, are enough to allow the QBSA to maintain the services it is required to provide.

The Committee is strongly of the view that there must be a clear and transparent divide between the roles of licensing; dispute management over directions to rectify and complete; and management of the insurance scheme. This means that each of these functions must at a minimum be legislatively or organisationally firewalled<sup>49</sup> from each other and report through separate general managers to a Board or Director-General of a department.

While the Committee is recommending a firewall be put in place to separate these functions it has no objection to the back office functions of these three agencies being merged to achieve operating efficiencies in functions such as human resources, finance, communication, data and evaluation, regional accommodation and support.

As noted on page 10 in the previous 'Committee comment', the Committee agrees with the spirit of the 2009 independent Review of Queensland Government Bodies which recommended that the QBSA Board should be a governing board and the General Manager role should be accountable to, and report through, the governing board to the responsible Minister.<sup>50</sup>

The Committee believes that the Department of Housing and Public Works should include a specialist building capability to ensure the Minister for Housing and Public works receives independent advice on the provision of building services and the Committee is of the view that Building Codes Queensland should remain in the Department of Housing and Public Works.

<sup>48</sup> Ms Deborah Brown, *Submission No.29*, p.1

<sup>49</sup> See Glossary for definition of a firewall.

<sup>50</sup> S. Webbe and P. Weller, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, March 2009, p.136, recommendation 121.

Sections 5.3.1 and 5.7 of this report examine the consumer and industry advice functions undertaken by the QBSA and the Committee makes recommendations about these functions on page 46.

The Committee also strongly recommends that the Minister for Housing and Public Works take the views of building and consumer stakeholders into account when examining any major changes to building services provided by the Queensland Government.

Sections 5-7 of this Report provide more evidence explain in more detail why the Committee is making the recommendations below as well as making further recommendations regarding the operation and performance of the QBSA.

**Recommendation 1**

The Committee recommends that in the interests of improved confidence and transparency, the “one stop shop” model for the provision of Queensland government building services be discontinued and that the Queensland Building Services Authority be disbanded as soon as alternative mechanisms for delivering its functions can be established.

**Recommendation 2**

The Committee recommends that the Minister for Housing and Public Works restructure the building services currently provided by the QBSA so that there is a clear and transparent divide between the roles of licensing; management of directions to rectify and complete work; and management of the limited home warranty scheme.

**Recommendation 3**

The Committee recommends that the Minister for Housing and Public Works, consider the following model as a restructuring option for the new building services authority.

Establish a new statutory authority with each of the following functions legislatively “firewalled” from each other and managed by an general manager who is directly accountable to, and reports through, a decision making board (possibly through a sub-committee) to the responsible Minister:

- registration and regulation of licensees and certifiers
- management of the limited home warranty scheme
- management of directions to rectify and complete.

**Recommendation 4**

The Committee recommends that the Minister for Housing and Public Works ensure that any new Board is a governing (not advisory) board and the membership of the board is truly representative and impartial.

**Recommendation 5**

The Committee recommends that Minister for Housing and Public Works ensure the Department of Housing and Public Works includes a specialist building capability to provide the Minister with independent advice on the provision of building services.

**Recommendation 6**

The Committee recommends that Building Codes Queensland remain in the Department of Housing and Public Works.

**Recommendation 7**

The Committee recommends that the Minister for Housing and Public Works ensure that the reformed building services provided by the Queensland Government continue to be self-funding.

**Recommendation 8**

The Committee recommends that the Minister for Housing and Public Works take the views of stakeholders into account when examining the appropriate structure for the reformed building authority and Board.

## 5 Dispute resolution - directions to rectify defective or incomplete work

### 5.1 Directions to Rectify - Background<sup>51</sup>

#### 5.1.1 Legislative requirements

Under section 72 of the QBSA Act, the QBSA may direct a person who carried out defective or incomplete building work to rectify the work. Section 72(14) provides that the QBSA:

*Is not required to give direction under this section to a person who carried out building work for the rectification of the building work if the authority is satisfied that, in the circumstances, it would be unfair to the person to give the direction.....*

[for example]

*The authority might decide not to give a direction for the rectification of building work because of the amount payable but unpaid under the contract for carrying out the building work.*

The QBSA has advised that where a complaint about defective building work is received initial contact is made with the parties to clarify the issues and try and resolve the matter without the need for further intervention. In 2011-12 approximately 27% of disputes were resolved in this way.

If the dispute cannot be resolved in this way a site meeting is held with both parties and QBSA building inspector who must hold at minimum a Builder – Medium Rise licence and five years relevant building experience. The meeting provides an opportunity to further clarify the issues in dispute and obtain independent assessment by the building inspector as to whether the work under dispute is defective building work under the QBSA Act. At this stage the contractor may decide to rectify without the QBSA issuing a direction to rectify or the consumer may reconsider their complaint if the inspector determines that the work complies with the relevant Australian Standards.

If the dispute cannot be resolved voluntarily, the QBSA makes a decision about whether to issue the building contractor with a direction to rectify defective or incomplete work. In making this decision, the QBSA building inspector has a statutory obligation to take into account all circumstances that are reasonably relevant.

#### 5.1.2 Rectification of Building Work Policy

The QBSA Board has developed a *Rectification of Building Work Policy* to guide inspectors in relation to when it is fair and reasonable for the QBSA to give direction to rectify. The policy is publicly available and includes guidance in relation to:

- what constitutes defective building work
- categories of defective building work and
- reasonable timeframes for the notification by consumers of defective building work.

Consistent with section 72 of the QBSA Act, this policy provides that a building contractor who carries out defective work would be required to rectify that work, unless in the circumstances rectification is unfair or unreasonable. The policy provides examples of where it might be unfair or unreasonable to issue a direction where a consumer has delayed making their application for example:

- for category 1 defective building work<sup>52</sup> or residential construction work causing subsidence, the delay exceeds 3 months after the defective work became apparent or
- for category 2 defective building work<sup>53</sup>, the delay exceeds 6 months after the work was completed or left incomplete.

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<sup>51</sup> This section is based on information provided by the QBSA, *submission no.65*, pp.10-12.

<sup>52</sup> See Glossary for definition of Category 1 defective building work.

### 5.1.3 Statistics on directions to rectify

The number of complaints about defective or incomplete building work received by the QBSA in the 2011-12 financial year was 4,726 – 73% of these came from southeast Queensland and the remaining 27% came from regional Queensland.<sup>54</sup> The average number of directions to rectify building work finalized per annum over the last four financial years is 946. The number of directions has remained fairly steady over the last four years with a slightly larger number - 1,188 in 2009-10.

Under section 86(1)(e) of the QBSA Act, QCAT may review decision of the QBSA to direct or not to direct rectification or completion of building work. In the 2011-12 financial year 60 reviews of QBSA decisions were heard by QCAT with the QBSA decision being upheld in 57 cases or 95% of cases. The average number of reviews which upheld the QBSA decision on directions to rectify is 91% over the last four years.

## 5.2 Issues raised in evidence about directions to rectify

The QBSA's management of decisions on directions to rectify has featured strongly in the evidence provided to this inquiry and significant concerns have been raised by both home owners and builders. Specific issues raised in the evidence include:

- lack of compliance with building codes and standards
- lack of compliance with legislative and regulatory requirements
- QBSA not auditing or monitoring building work to ensure building standards are being met
- onus being placed on homeowner to identify defective work
- building inspectors lacking appropriate knowledge and experience to make decisions to rectify
- building inspectors having personal links with building contractors and failing to disclose their conflict of interest
- perception of bias (both ways) in directions to rectify
- narrow definition of what a defect is
- timeliness and quality of the rectification work
- onus being placed on the homeowner to assess whether the rectification work is to an acceptable standard
- tendering for and performing of rectification work on behalf of the QBSA and
- inability of the QBSA to intervene when a contract is still in place

### 5.2.1 Issues of concern raised by property owners about the directions to notify process<sup>55</sup>

The Walkers raise the following concerns:

*The QBSA does not appear to monitor the quality of work performed by contractors. Rather the QBSA dumb down the expectations, as long as there is an absence of serious structural defects they think it's OK. This is consistently evident in transcripts and published decisions for QCAT and CCT cases, where independent experts markedly differ with the BSA approach. The BSA should ensure that contractors consistently provide workmanship that would be expected from a reasonably competent contractor.*

*The BSA takes a soft approach towards building contractors who fail to comply with the Domestic Building Contracts Act (DBCA). They are reluctant to issue penalties and even investigate non-compliance. They take occasional action (We say to publicly demonstrate some enforcement) but are inconsistent in their approach. This legislation was written to set*

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<sup>53</sup> See Glossary for definition of Category 2 defective building work.

<sup>54</sup> QBSA, *Submission No.65*, p26.

<sup>55</sup> Numerous submissions covered these issues including submission Nos 57, 66, 90, 93

*the expectations for the conduct of domestic construction. Failure of the BSA to enforce these expectations has numerous consequences including:*

- *leaves consumers vulnerable to what contractors term “usual practice” of non-compliance and the risks that poses to consumers*
- *leaves consumers unable to discern between honest contractors and those who flout the legislation when viewing licensee history displayed on the QBSA website*
- *contractors know they are likely to get away with non-compliance or at most receive a slap on the wrist with no true consequences thus reinforcing poor practices.*<sup>56</sup>

Mr Don Jender raises the issue of lack of compliance with building codes and standards and also raises a concern that while consumers are not building experts they are often the only person responsible for identifying defects and are left to determine whether the rectification work meets appropriate standards:

*My view as a consumer is that the BSA does not do enough to enforce the standards which builders are supposed to adhere to. The general position should be that the consumer is entitled to expect that a house will be built to satisfy all relevant standards. When it is not, the BSA should force the builder to rectify to meet those standards. It is important to realise that consumers are not building experts, so may not realise that work is substandard (or indeed that there is a defect). But when a consumer identifies a probable defect and reports it to the BSA, the BSA should investigate and enforce building standards. In my experience, BSA performance here is variable.*

.....

*For instance, BSA might ask/direct a builder to rectify a defect. On my experience, the onus is on the home owner to verify that remedial work which the builder has done is satisfactory. BSA does not check that rectification work the builder proposes to fix defects will meet standards, nor that the work when actually done does meet standards. But a home owner will often not have the expertise to make such assessments. ....So I think BSA should do more to support the home owner in verifying that remedial work does meet standards.....*<sup>57</sup>

Ms Deborah Brown argues that legislative and regulatory requirements are simply not being met by builders and that no-one is enforcing their compliance:

*It is just accepted that builders do not do the provide documentation etc. nor keep records as required to fulfil their legislative and regulatory obligations. If this is accepted practise then all the changes in the world to regulations etc. won't make ONE BIT of difference because they are not enforced. The problem is that the regulations and legislation are not effectively enforced, there is no accountability. There is NO ATTEMPT by the Builder to set in place correct procedure because they KNOW it is accepted by BSA and QCAT and Master Builders that Builder's will not provide the correct documentation and whatever they do provide will be GOOD ENOUGH.*<sup>58</sup>

The following issues are frequently raised by consumers in submissions:

- building inspectors not having the skills/knowledge to undertake the inspections at the 'expertise level' required (this is also an issue for many builders - see section 5.2.2 of the report) and

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<sup>56</sup> G & M Walker, *Submission No.75*, p.1.

<sup>57</sup> Mr Jender, *Submission No.32*, pp.2-3.

<sup>58</sup> Ms Deborah Brown, *Submission No.29*, p.1.

- building inspectors having personal links with building contractors and failing to disclose their conflict of interest.<sup>59</sup>

The Walkers also raise a concern about QBSA's narrow interpretation of "a defect":

*....the QBSA stick to their narrow interpretation of defects. They would need to have a complete shake up of their culture. The concept of "it might not be what you asked for or wanted, but it's not defective" has to change if they are to have involvement in dispute resolution. The QBSA personal would need to shift their expectations for involvement dispute resolution because if work is not the quality expected of a reasonably competent contractor, or not the product specified in the contract, or the dimensions in the contract etc then it is not good enough.*

Other submissions raise the issue of the QBSA not ensuring that rectification work is undertaken in a timely manner, for example:

*Builders use regulations and legislation as a door stop not as a point of reference. The time frames allow for issues to stretch into years, this is TOTALLY UNACCEPTABLE.<sup>60</sup>*

Submissions also raise concerns about the issue of substandard rectification work<sup>61</sup> and the fact that "There doesn't appear to be any recourse for poor rectification work that is not up to the required standard."<sup>62</sup>

Mathews Hunt Legal raises a concern specific to body corporate owners:

*...in large-scale developments with defective building works, they face significant rectification works often worth hundreds of thousands of dollars.*

*In our experience, the QBSA has been ineffective in providing appropriate remedies for such defective building works. For example, the QBSA has closed files based on so-called evidence produced by the builder regarding their compliance with QBSA directives, without allowing the Body Corporate to make submissions on whether the directives were completed in a satisfactory manner. This has resulted in the owners of the scheme being forced to foot the bill to remedy the situation, when the builder's repairs are inadequate, or faulty.<sup>63</sup>*

Finally, homeowners often raise a concern that there is a bias toward the building contractor<sup>64</sup> while this is countered by contractors feeling there is a bias toward consumers (see section 5.2.2).

### 5.2.2 Issues of concern raised by builders about the directions to notify process

From a builder's perspective, LK & HM Young are also concerned that standards are not being referenced:

*The QBSA provide no remedies for identified defective work. The BSA inspectors simply agree with the consumer, that they feel, based on their own personal opinion, that the contractor has not completed the task in dispute to their standard, no reference is ever made about an Australian standard etc., and then this inspector would issue a direction to rectify. Within this document of direction to rectify, and from my own personal experiences with dealings with the BSA, they will not and cannot offer suggestions on their personal expectations in regards to rectifying work deemed unsatisfactory by the property owner.<sup>65</sup>*

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<sup>59</sup> See for example Building Advisory Group, *Submission No.102*, p.1.

<sup>60</sup> Deborah Brown, *Submission No.29*, p.1.

<sup>61</sup> David and Jenny Da Costa, *Submission No.40*, p.1.

<sup>62</sup> Mathews Hunt Legal, *Submission No.88*, p.3.

<sup>63</sup> Mathews Hunt Legal, *Submission No.88*, p.1-2.

<sup>64</sup> See for example, Private, *Submission No.93*, p.1.

<sup>65</sup> LK & HM Young, *Submission No.10* p.4.



While building inspectors must hold at minimum a building licence and have at least five years relevant building experience a number of submissions have raised concerns about whether BBSA building inspectors have the knowledge required to make decisions on rectification. Others have queried the dispute resolution skills of QBSA staff<sup>66</sup>. The submission from builders LK & HM Young illustrates the concern raised:

*I know that many Inspectors employed by the QBSA do not have the professional academic knowledge development to be able to manage and mediate disputes between the stakeholders involved in issues of disagreement.....*

*As this issue of the interaction of QBSA to resolve building disputes is clearly not within the Professional knowledge required by their employees, disputes always end up being resolved either by legal professionals when the issue concerns contract disagreements or by engaging independent professional legal advice when the issue of dispute is addressing construction law.<sup>67</sup> .....*

*I have been present on numerous occasions, on the behalf of Principle contractors, where a complaint has been made to the BSA in regards to defective work.... BSA staff present at these site meetings, have made outrageous statements about the installation of structural elements within s structure, for me, then to inform the BSA, that they incorrectly advised the principle contractor of minimum standards required.*

*During this exchange of correction by me to the BSA, the staff clearly expressed to me that they were not aware of these every important manufacturers specifications in regards to exposure to the elements, to which I was then asked and did provide to the BSA staff, the correct manufacturers specification for elements to be protected as required. This simple fact once again highlights the incompetence and lack of academic knowledge obtained by staff employed by the BSA.<sup>68</sup>*

Asset Outdoor Additions agree that “[T]here is also definitely an inconsistency of the knowledge from one inspector to another and also their ability to correctly categorise defective workmanship” and goes to express a concern when QBSA inspectors attend a site, “..we are always requested to fix something. It is fairly obvious that this done to appease the customer.”<sup>69</sup>

The view that building inspectors take “the easy way out” is confirmed by builders LK and HM Young: *QBSA involvement has only increased the element of frustration between the parties and to achieve a resolution, further costs now have been introduced for both parties having to proceed to court with legal representation to gain a positive solution for all stakeholders involved. Costs incurred by this incompetent, laissez-faire nature displayed by the QBSA inspectors in their ability to work with both parties to resolve a disagreement....<sup>70</sup>*

Carl Martin (building contractor and certifier) goes on to report that:

*These BSA inspectors have considered all the facts and have a good regard to the natural justice process with a high degree of fairness. In the some cases I have witnessed where the contractor will be asked to repair defects that are not confirmed as defects by the BSA but the contractor will generally fix the matter in favour of the consumer. It is important that when the consumers’ are unhappy that they cannot seek a political fix to minister to back door the process if the consumer is unhappy with the umpire’s decision<sup>71</sup>.*

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<sup>66</sup> For example see *Submission No. 67*

<sup>67</sup> LK & HM Young, *Submission No.10* p.4.

<sup>68</sup> LK & HM Young, *Submission No.10* p.6.

<sup>69</sup> Asset Outdoor Additions, *Submission No.83*, p.2.

<sup>70</sup> LK&HM Young, *Submission No.10* p.4.

<sup>71</sup> Mr Carl Martin, *Submission No.98*, p.2.

### 5.3 Solutions suggested in submissions to enhance the directions to rectify process

A number of recommendations have been made to the Committee on how to remedy issues surrounding directions to rectify and the dispute resolution process.

The Australian Institute of Building (AIB) provides the following suggestions:

- *There should be a greater focus on proactive inspections by BSA to improve the overall standard of building works;*
- *There needs to be additional support for building inspectors through a commitment to training and quality;*
- *The BSA should consider introducing an adjudications process to manage residential disputes and a triage approach to prioritise and effectively manage disputes.*
- *BSA should a one-stop shop for disputes between consumers, builders and trade contractors, and the Queensland Civil and Administrative Tribunal (QCAT) should only be used for appeals.....*
- *The BSA should provide greater clarity to consumers and contractors regarding what is a reasonable standard of construction and clearer definition of a defect; and*
- *Information on the most common building defects is needed for industry training.<sup>72</sup>*

Mr Glen Place also provides a comprehensive strategy:

*... the answer lies in being able to intervene in an issue before it gets to the stage where conflicted emotions mean that there is never going to be a satisfactory outcome for all parties. The problems that arise, in what must be acknowledged is a tiny percentage of the total building work in Queensland, could be further reduced;*

- *if BSA was enabled to intervention earlier during a contract,*
- *if consumers engaged an independent third party to manage the building contract,*
- *if BSA carries out monitoring and audits of Building Certifiers.*
  - *Stop Building Certifiers' Offices maned/run by certifier cadets.*
  - *Carrying out mandatory inspections.*
  - *Must not be just "Ticket Collectors". (I.e. collecting Form 15, 16 & 21, etc.)*
  - *Review the use of Competent Persons.*
- *if BSA carries out audits and monitoring of licensed builders, building designers and trade contractors' work,*
- *if BSA was involved in controlling or providing guidance regarding the minimum quality of construction documentation,*
- *if communication improved.<sup>73</sup>*

Specific suggested solutions made by submitters can be categorized into:

- education and training for consumers and licensees
- training of building inspectors in both building requirements and dispute resolution
- prevention through contract administration
- increased penalties to encourage timely rectification
- building product compliance
- independent arbitration
- early intervention and mediation
- ability to intervene in contractual disputes.

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<sup>72</sup> AIB, *Submission No.84*, p.3.

<sup>73</sup> Mr Glen Place, *Submission No.80*, p.2.

Examples of these suggested approaches are detailed below in no particular order.

### 5.3.1 Education and training for consumers, building inspectors and licensees (see also section 5.8)

A number of submissions suggest that the direction to rectify process would be improved by increased education for consumers, building inspectors and builders.<sup>74</sup> Examples are provided below.

Mr Glen Place suggests:

*Homeowners should be provided free of charge access to the Building Codes of Australia, Australian Standards, the National Construction Code and any other reference to help them investigate whether a defect is exactly that. This could possibly reduce claims as well as clarify to homeowners the BSA findings. This information should be made available via the BSA website. This will also allow a fair level playing ground.*<sup>75</sup>

Building Approvals Queensland provides a suggested method for keeping licensees up-to-date:

*An effective way to inform license holders on relevant changes in legislation would be I feel, to email such information to the applicable license holders advising of changes (where obviously Q.B.S.A. have email addresses of those licensees). This proactive measure would assist in informing changes to licensees on legislation ensuring possible legal compliance being more readily achieved at a minimal cost to Q.B.S.A.*<sup>76</sup>

Master Builders suggest that:

*We believe the BSA needs to be tightly focused in its operations. The BSA should not be competing in the marketplace. For example, rather than providing information to builders on industry-related issues such as building practices and apprentices pay rates – which industry bodies such as Master Builders and the Housing Industry Association are well positioned to do – the BSA should upgrade its systems to collect detailed information on the nature of building defects. This would provide groups such as Master Builders and the Housing Industry Association with a basis for targeted industry training. One of the BSA's strengths in this regard is its network of regional offices. We support maintaining a strong regional presence.*<sup>77</sup>

*What is desperately needed is detailed information on the nature of building defects. Each month the BSA publishes the top 10 defects; however, there is insufficient detail to ascertain the cause of the problem. BSA should upgrade its systems to collect detailed information on the nature of building defects. This would provide groups such as Master Builders and the Housing Industry Association with a basis for targeted industry training.*

*Following on from this, the BSA should work with industry in setting standards and tolerances to comprehensively define what defective means for various elements of building work. This would provide certainty to all of the parties involved (consumers, contractors and BSA's inspectors).*<sup>78</sup>

### 5.3.2 Prevention through contract administration

The Building Designers Association of Queensland attempts to identify ways in which the process can be improved at the "front end" by ensuring there is adequate contract administration and thereby minimising the chance that things will go wrong:

*Some solutions may come at an additional up-front cost to the consumer but these have the potential to save significantly more than the up-front cost. Based on "Getting it Right the First*

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<sup>74</sup> Consumer and industry education is discussed in more detail in sections XX and xx of this report.

<sup>75</sup> Private, *Submission No.93*, p.8.

<sup>76</sup> Building Approvals and Consultancy, *Submission No.78*, p.1.

<sup>77</sup> Master Builders, *Submission No. 61*, p.7.

<sup>78</sup> Master Builders, *Submission No.61*, p.5.

*Time", BDAQ contends that an additional 1— 3% of the construction cost at the beginning of projects for quality documentation can result in a potential saving of 10 — 15% over the construction period where a full and quality service by the building designer is delivered. A number of published submissions to this inquiry indicate that consumers are relying on BSA to undertake contract administration and quality management on building projects. BDAQ submits that this is not and should not be the role of BSA or the Home Warranty Scheme. Contract administration by the designer has the potential to deal with issues before they become problems.<sup>79</sup>*

### 5.3.3 Increased penalties to encourage timely rectification

Other submissions suggest an increase in penalties, for example:

*Legislation should be changed and should state that if defects are not complete with 6 weeks of practical completion the builder will be fined \$1000 for each day defects are outstanding and points will be placed against their license. This would solve or at the very least dramatically decrease this issue of builders not completing defects in a timely manner over night as long as QBSA ENFORCED IT.<sup>80</sup>*

Ms Jill Van Dorssen agrees that increased penalties will have an impact:

*Power to apply and enforce realistic consequence on contractor for non-compliance during the term of contract in addition to 'penalty points'. Where the cause of the dispute is determined to be the contractors responsibility, the owners should be entitled to immediate financial compensation for hardship and associated costs including but not limited to rent associated with delays, legal costs etc. This could be by way of authorised back charge provisions on contractor's right to payment.<sup>81</sup>*

### 5.3.4 Building product compliance

Timber Queensland puts the case for QBSA being given additional responsibilities for building material and product compliance as it believes:

*A high percentage of defective building works are related to inappropriate or non-compliant building products being supplied to and used by contractors. Contractors and builders typically purchase building products 'in good faith' in the belief that they are both compliant with minimum standards and are 'fit for purpose'. Unfortunately, many building product suppliers have scant knowledge of what their obligations are and do not deliver compliant or fit for service product. Builders and contractors generally do not have the detailed technical expertise to be able to assess delivered product for compliance. In respect to timber products this invariably relates to non-compliance with Building Code of Australia (BCA) or Australian Standards (AS) requirements regarding durability, preservative treatment or moisture content.*

*TQ believe that the legislation and powers of the QBSA should be expanded to enable QBSA to undertake building material and product compliance auditing and enforcement direct on suppliers and manufacturers (where required, by-passing the builder). The auditing for compliance should be to BCA and relevant AS requirements where they exist, or on a 'fit for purpose' basis, if no standards exist.<sup>82</sup>*

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<sup>79</sup> BDAQ, *Submission No.27*, p.7.

<sup>80</sup> Ms Deborah Brown, *Submission No.29*, p.2.

<sup>81</sup> Ms Jill Van Dorssen, *Submission No.70*, p.3.

<sup>82</sup> Timber Queensland, *Submission No.18*, p.2.

### 5.3.5 Independent arbitration

Other submitters have suggested that arbitration must be undertaken by an independent body, for example Mr Malcolm Cronk argues *“The Queensland Government [should] immediate[ly] implement an independent home owners’ advocate to ensure that home owners are treated fairly and without the obvious bias and negligence that is currently cultural within the QBSA.”*<sup>83</sup>

Ms Jill Van Dorssen agrees:

*True fair and equitable dispute resolution should be provided by an independent body that has the ability to provide basic impartial advice to consumers on all matters, defective work, errors and emissions, minor legal matters relating directly to the contract, and/or contractor, without causing consumers additional legal costs.*<sup>84</sup>

The Australian Master Tilers Association proposes early advice from an independent expert:

*We do note, however, that independent expert advice is, at times, not sought early enough. Although the BSA is an independent body, often the Consumer believes that the BSA will protect the interest of the Building Contractor and vice versa. With the early assistance of an independent expert, funded equally by both sides of the dispute, disputes may well be resolved in a more timely and cost effective manner through a consultation and mediation process, rather than the BSA making a ruling in favour of one side.*<sup>85</sup>

Mr Michael Nash also argues for independent advice:

*It is critical that the role of looking after consumer and contractor interests be kept independent and not self regulated, the swimming pool industry being a prime example.*<sup>86</sup>

### 5.3.6 Early intervention and mediation

There appears to be a general consensus amongst licensees and consumers that early intervention would go a long way towards preventing protracted, costly and distressing disputes.

*..... probably just as important, is the apparent lack of action by the BSA especially in the initial stages of problems becoming apparent. I have personally been involved in a number of these cases where, it is my opinion that if proactive action had been taken in the early stages the situation would not have blown out to the protracted and always distressing and costly and documented episodes I know have already been submitted.*<sup>87</sup>

Timber Queensland suggests availability of expertise and advice in the early stages of disputes would assist:

*Builders, sub-contractors and consumers could be assisted and would benefit where there was greater, freely available access to expertise and advice in the early stages of building design and construction. Whilst members of industry associations have access to this expertise in the respective fields, it is generally not available to non-members and the public. With appropriate resourcing, there may be opportunities for the QBSA to provide rapid response support services in this respect.*<sup>88</sup>

Mr John Andrew, a builder, suggests enforced compliance with standards, and mediation in the early stages, would assist in keeping disputes out of the court system:

*.... if the QBSA were to try all avenues of mediation before litigation, fees could be reduced. And less time would be spent in the courts. Compliance with Australian Standards and*

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<sup>83</sup> Mr Malcolm Cronk, *Submission No.9*, p.2.

<sup>84</sup> Ms Jill Van Dorssen, *Submission No.70*, p.3.

<sup>85</sup> Australian Master Tilers Association, *Submission No.90*, p.2.

<sup>86</sup> Mr Michael Nash, *Submission No.15*, p.7.

<sup>87</sup> Building Advisory Group, *Submission No.102*, p.4.

<sup>88</sup> Timber Queensland, *Submission No.18*, p.4.

*Building Code of Australia is the price we as a community are going to have to live with if we want a high standard of building.*<sup>89</sup>

Mr Don Jender, a consumer, agrees:

*The current system seems to rely on consumers formally complaining to the BSA about defective work. Since consumers might not recognize defective work, BSA should do more auditing of building work at critical stages. This would give builders more incentive to build to standards. In addition, defective work in some areas (eg foundations, slab, frame) is very expensive or impossible to fix later on. More auditing should reduce the number of defects consumers need to complain about to the BSA, thus saving the BSA eventual work and saving consumers money, time and stress.*<sup>90</sup>

Timber Queensland refers to recent changes undertaken by QBSA in response to the KPMG Report<sup>91</sup>:

*TQ strongly support the KPMG findings regarding early intervention and mediation to try and resolve disputes before they escalate and become overly emotive and irrational, by either party. On numerous occasions we have undertaken inspections on completed houses where homeowners have applied hundreds of 'post it's' to highlight perceived imperfections where their initial concerns may have only related to a few more significant and justifiable issues which if addressed early could have quickly resolved issues. It is encouraging to see QBSA have pro-actively responded to this KPMG recommendation.*<sup>92</sup>

The Australian Master Tilers Association also refers to a recent initiative by the QBSA to improve the process:

*The recent establishment of the BSA's "Technical Standards Unit" should go a long way to help in reducing the incidences of defective building work and disputes. The AMTA welcomes and supports the formation of this proactive unit. We believe that inspections and examinations of building work during construction can only lead to positive outcomes for both the Consumer and the Building Contractor. Early intervention into a potential problem before it becomes a defect is far better than handling a later dispute.*

*Industry groups, like the AMTA, could potentially enhance the effectiveness of this unit and could be called upon to assist in providing technical advice and information to contractors and the Technical Standards Unit when industry specific problem need to be resolved.*<sup>93</sup>

### 5.3.7 Ability to intervene in contractual disputes

There appears to be consensus amongst most homeowners and contractors that the QBSA powers should be extended to allow it to intervene in contractual disputes. There are however, notable exceptions such as the submission by Mr Mick Rendell where he stresses that the QBSA should not be involved in adjudicating contractual issues.<sup>94</sup>

The evidence provided in submissions illustrates confusion amongst home owners about the QBSA's power to intervene in contractual disputes.

The QBSA clarifies its roles and responsibilities in relation to contracts in its submission. It advises that the purpose of the DBC Act is to regulate domestic building contracts with a view to achieving a reasonable balance between the interests of building contractors and building owners and maintaining appropriate standards of conduct in the building industry.

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<sup>89</sup> Mr John Andrew, *Submission No.49*, p.2.

<sup>90</sup> Mr Don Jender, *Submission No.32*, p.6.

<sup>91</sup> KPMG, *Queensland Building Services Authority Organisational Review Project*, June 2011.

<sup>92</sup> Timber Queensland, *Submission No.18*, p.2.

<sup>93</sup> The Australian Master Tilers Association, *Submission No.90*, p.3.

<sup>94</sup> Mr Mick Rendell, *Submission No.11*, p.2.

*A key function of the QBSA in relation to the DBC Act is the investigation and prosecution of offences stated in the DBC Act. In most instances, breaches of the DBC Act are dealt with by way of issuing an infringement notice under the State Penalties Enforcement Act 1999 (infringement notice).*

*The most common breaches of the DBC Act are:*

- *Failure to put contract in writing (section 26 of the DBC Act);*
- *Failure to give the owner a contract information statement (section 40(1) of the DBC Act);*
- *Receiving a deposit in excess of the limits (section 64(1) of the DBC Act); and*
- *Failure to ensure contract complies with formal requirements (section 27 of the DBC Act).*

*The above offences comprise approximately 90-95% of all prosecutions and infringement notices issued for DBC Act offences for the last four years.<sup>95</sup>*

The QBSA goes on to explain that the QBSA Act provides the QBSA with dispute resolution powers with respect to defective or incomplete building work. The QBSA's functions and responsibilities under the QBSA Act and the DBC Act in relation to contractual issues are limited to the enforcement of relevant offence provisions. The QBSA is not a judicial body and cannot make decisions regarding the resolution of contractual disputes such as the ordering of damages, injunctive relief and compensation. Further, under the QBSA Act, the QBSA does not have functions or powers in relation to formal conciliation or arbitrations services in regard to building disputes.<sup>96</sup>

A number of submitters recommend that legislation be amended to allow the QBSA to intervene in contractual disputes in order to prevent disputes escalating. Mr Carl Martin clearly articulates the issue of concern:

*There is no clearly definable dispute management process during construction adequate to resolve matters detected that are minor but escalates into a major incidence if not attended. The consumer matter turns into a major dispute and contractual nightmare if the matter is not addressed to the consumer satisfaction at this earlier point. I have witnessed instances where the consumer has then caused the breakdown of the contract during construction, requiring the BSA to finish the construction.*

*The BSA cannot generally get involved during the construction as matters are contractual. It would be good if there was a process that allows an easy intervention when a defect was detected or perceived defect or noncompliance with the regulations/NCC/BCA was capable of being instigated. Other state jurisdiction, the insurance underwriter of the Act insurance/fidelity fund allows a monitoring process. The inspection may either cause the builder to fix problem or face higher insurance fees. This reduces the claims to their insurance fund. This would assist in diminishing the number of disputes and disgruntled consumers.<sup>97</sup>*

The Building Designers Association of Queensland goes on to explain:

*The answer lies in being able to intervene in an issue before it gets to the stage where conflicted emotions mean that there is never going to be a satisfactory outcome for all parties.<sup>98</sup>*

.....

*BDAQ understands that legislation prevents BSA from becoming involved in disputes about building work until the building contract has been completed (after Practical Completion).*

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<sup>95</sup> QBSA, *Submission No.65*, p.18.

<sup>96</sup> QBSA, *Submission No.65*, p.20.

<sup>97</sup> Mr Carl Martin, *Submission No.98*, p.2.

<sup>98</sup> BDAQ, *Submission No.27*, p.2.

*Disputes between building designers and their clients generally occur before the completion of the building contract and thus are outside the influence of BSA. Experience with disputes between building designers and their clients is that early intervention and mediation will prevent issues from becoming disputes.*<sup>99</sup>

Master Builders argue that “*The scope of the BSA’s involvement in resolving disputes needs to be expanded to include contractual disputes*”<sup>100</sup> and builder, Mr Glen Place agrees this “*Change to allow for BSA involvement during the contract period... would help reduce construction cost as the dispute could be resolved before the work was completed.*”<sup>101</sup>

Some homeowners also contend that the powers of the QBSA should be extended to intervene at the contract stage, for example Mr and Mrs Walker advocate:

*We believe that the QBSA provides minimal remedies for defective building work. There are too many “outs” or excuses (whether legislatively correct or not) used by the QBSA to not be involved. For example, we can’t be involved in “contractual matters”, we can’t be involved while the contract is “afoot”, once a proceeding is commenced at QCAT the BSA cannot be involved.*<sup>102</sup>

#### **Committee comment**

The Committee is concerned at the substantial evidence provided that the current QBSA direction to rectify and complete process has numerous weaknesses both legislative and operational including:

- lack of compliance with building codes and standards
- lack of compliance with legislative and regulatory requirements
- QBSA not auditing or monitoring building work to ensure building standards are being met
- onus being placed on homeowner to identify defective work
- building inspectors lacking appropriate knowledge and experience to make decisions to rectify
- building inspectors having personal links with building contractors and failing to disclose their conflict of interest
- perception of bias (both ways) in directions to rectify
- narrow definition of what a defect is
- timeliness and quality of the rectification work
- onus being placed on the homeowner to assess whether the rectification work is to an acceptable standard
- tendering for and performing of rectification work on behalf of the QBSA and
- inability of the QBSA to intervene when a contract is still in place.

The Committee has examined the possible solutions presented by witnesses and submitters and has made specific recommendations (detailed below) where it is confident a proposed course of action will have both a positive impact and will be relatively straightforward to implement.

With regards to more complex proposals the Committee recommends that the Minister for Housing and Public Works undertake further examination of the proposed solutions.

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<sup>99</sup> BDAQ, *Submission No.27*, p.6.

<sup>100</sup> Master Builders, *Submission No.61*, p.2.

<sup>101</sup> Mr Glen Place, *Submission No.80*, p.3.

<sup>102</sup> Mr G & Mrs M Walker, *Submission No.75*, p.2.



The Committee believes that some of the emotional and financial distress that it has witnessed during this inquiry may well be avoided if there was earlier intervention in the dispute process (both contractual and non-contractual) and if building inspectors are provided with the skills to negotiate an agreed outcome at the early stages of a dispute. The Committee is therefore recommending early intervention and mediation in disputes and for legislative amendment to extend the powers of the new building authority to intervene when disputes arise during a contract period.

Sufficient evidence has been provided to convince the Committee that regulations and/or legislation should be amended to ensure the new building service authority responds to requests to identify defects promptly and to ensure the rectification work is also carried in a timely manner and to an appropriately high standard.

Members of the Committee are concerned that even where the relevant authorities have determined that a building has been constructed unlawfully, for example with structural faults or across a property's boundary, no process is put in place to ensure the rectification of the unlawful works.

**Recommendation 9**

The Committee recommends that building inspectors employed by the building authority be required to undertake regular training **and assessment** on their knowledge of current building regulations, standards and codes to ensure they can make informed decisions on whether building work requires rectification.

**Recommendation 10**

The Committee recommends that building inspectors employed by the building authority be provided with dispute resolution training to ensure they have the skills required to negotiate an agreed outcome between homeowners and builders whenever possible.

**Recommendation 11**

The Committee recommends that the Minister for Housing and Public Works examine options to enable early intervention and mediation in disputes over defects and incomplete work with a view to resolving as many as possible before they escalate further.

**Recommendation 12**

The Committee strongly recommends that the Minister for Housing and Public Works seek amendment to the legislation to extend the powers of the new building authority to intervene when disputes arise during a contract period.

**Recommendation 13**

The Committee recommends that the Minister for Housing and Public Works seek amendment to the regulations and/or legislation to ensure the new building service authority is required to respond to requests to identify defects promptly and to ensure the rectification work is also carried in a timely manner and to an appropriately high standard.

#### **Recommendation 14**

The Committee recommends that the Minister for Housing and Public Works investigate ways in which to improve the building certification system in Queensland to ensure private certifiers are held accountable where they approve illegal or defective works, and to ensure the works are rectified.

#### **Recommendation 15**

The Committee recommends that the Minister for Housing and Public Works investigate ways in which licensees who construct and certifiers who approve unlawful or defective work (for example where a building is structurally unsound or built partially outside the property boundary) can be made responsible for rectification of the works.

### **5.4 Tendering for and performing rectification work on behalf of the QBSA**

QBSA advises in its submission that under section 74 of the QBSA Act, if rectification work in respect of residential construction work is required, the QBSA must seek tenders for carrying out the work. The QBSA may accept any tender that it considers appropriate, irrespective whether the tender was for the lowest cost. Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the QBSA to be reasonable in the circumstances. Tenders are sought from a panel of rectifying contractors established under section 73 of the QBSA Act. Decisions in regard to the amount payable under the Scheme, are based on the quotations provided through the tender process.<sup>103</sup>

A number of concerns have been raised by builders about the way in which QBSA selects builders to undertake rectification work. For example:

*My understanding of Qld government purchasing policy is that goods and services over a certain value are required to be delivered by Pre-Qualified Contractors or PQC [Queensland Government Prequalification System] registrants. I will not go into the PQC system but it is handled by a significant section of the Qld government and people who wish to deal with the Qld government need to comply with a myriad of terms and conditions.*

*Only PQC registered organizations can build houses for the Queensland government bodies such as Project services. Why does the BSA choose not to use this system?*

*I am PQC qualified, yet when I have brought this policy to the BSA's attention it is as if I am from another planet, they simply have chosen NOT to comply with the government's own policy. I request that the policy be utilized especially in relation to rectification works. There is a pool of underutilised PQC qualified contractors who are being overlooked because the BSA has it's own separate criteria for selection. Consistency, and removal of duplication is all we look for.<sup>104</sup>*

Another concern from builders LK & HM Young:

*The simple fact, that the BSA has this power [to contract builders to perform rectification work], can be foreseen as scam to perform work by a preferred supplier thus costing the principle contractor hard earned money in compensation payable to the BSA to re-inburst their preferred trade contractor. This whole process is a scam abused by the BSA to minimise*

<sup>103</sup> QBSA, Submission No.65, p.17.

<sup>104</sup> Michael Nash Constructions, Submission No.15, p.6.

*their [l]egal liability for rectification work performed on the behalf of an identified trade contractor's defect.<sup>105</sup>*

Mr Wayne Orenshaw adds:

*The QBSA accepts sub standard work and pays excessive prices to the sub contractors it appoints to rectify consumer complaints or complete projects, with numerous instances of QBSA hired subcontractors performing unnecessary and ill-conceived work to the detriment of the project and the consumer. The unnecessary costs that the QBSA incurs are a cost on government and consequently on taxpayers.<sup>106</sup>*

Mr Michael Nash proposes that the current process of tendering is inadequate:

*Currently the pricing of rectification work is by a panel of selected contractors decided on by the BSA, in a closed, limited tender.*

*To allow full transparency these bids should be done on an open public tender basis by PQC registered contractors only. This would bring consistency to the way building work is handled by the government and increase competition and value for money for the taxpayers.*

*Utilising the web based tender system would also make sense. Dollar values would need to be determined to justify what was tendered and what was not, however, smaller value jobs could be bundled together to get better value for the government as well as better continuity for the contractor.<sup>107</sup>*

Mr Glen Place also raised the issue of lack of instruction on how to carry out the rectification work and suggests:

*Currently BSA gives the contractor a direction to rectify. BSA does not provide suggestion or instructions on how the rectification may be carried out.*

*It may be considered a step in the right direction if BSA were to give instructions on how to carry out the rectification work.*

*BSA should insist that all rectification meets at least the minimum Australian & industry stand. If a schedule of work was provided it should go a long way to reduce the amount of rework.<sup>108</sup>*

Mr Lev Mizikovsky, who was until recently Managing Director and CEO of Tamawood Limited, also raises the following concerns about the tendering process:

*Under the statutory scheme, from time to time the QBSA engages building contractors to rectify defective or complete building work. This happens, for example, where a consumer's house has construction defects but the contract builder has failed or refused to rectify them (perhaps because of bankruptcy).*

*The cost of such rectification works is borne, in the first instance, by the insurance scheme. The QBSA is empowered to recover that cost, if it can, from the contract builder.*

*My complaint is that the process by which the QBSA engages the rectification builders is not transparent. I understand that the QBSA, in each particular case, seeks quotations from several potential rectification builders. Obviously, that is appropriate. I also understand that, from time to time, the USA advertises for expressions of interest from builders for consideration of participation on its Tender Panel.*

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<sup>105</sup> LK & HM Young, *Submission No.10* p.5.

<sup>106</sup> Mr Wayne Orenshaw, *Submission No.89*, p.12.

<sup>107</sup> Mr Michael Nash, *Submission No.15*, p.6.

<sup>108</sup> Mr Glen Place, *Submission No.80*, p.3.

*However, the decision as to which rectification builders are placed on the Panel, or asked to quote on particular jobs, does not seem to be subject to public scrutiny.*

*More importantly, for the purpose of my submission, it does not seem that the QBSA ever seeks rectification quotations from the large building companies, such as Tamawood. To my knowledge, none of those lower cost companies has ever been approached by the QBSA in that regard.<sup>109</sup>*

### **Committee Comment**

The Committee is concerned to ensure that appropriate tendering processes are used for contracting builders to undertake rectification and completion work. The committee believes that a review of the current processes should be undertaken to ensure that they are transparent and accountable.

### **Recommendation 16**

The Committee recommends that the Minister for Housing and Public Works review the current tendering process for rectification work and completion work with a view to ensuring a transparent and accountable process is put in place.

## **5.5 QCAT review of rectification decisions**

### *5.5.1 Introduction*

In its submission, QBSA states that the QBSA Act provides safeguards in relation to decisions throughout the dispute process. Specifically, any affected party may apply to the QCAT for a review of the following decisions:

- a decision to direct or not to direct rectification or completion of building work and
- a decision that building work undertaken at the direction of the QBSA is or is not of a satisfactory standard.<sup>110</sup>

### *5.5.2 Concerns about QCAT's role raised in evidence*

Homeowners have provided substantial evidence that the QCAT review process is unsatisfactory as it is ineffective, time-consuming and costly as submitted by the Walkers *"The QCAT process is lengthy and expensive even for self-represented parties. The cost of engaging expert witnesses alone is extremely high."*<sup>111</sup>

For example, Mr and Mrs Tucker argue that an alternative model should be developed as:

*The problems in housing or housing construction are generally framed by problems of disadvantage and surveys display an imbalance accordingly. Drawing attention to the different moral judgments applied to a powerful industry such as building than to those (judgments) applied to an individual consumer, is a central aspect of the state's role (for example by a parliamentary committee).*

*Therefore shifts to informal systems of justice without exorbitant costs and inbuilt intimidations which disempower the individual consumer is a compelling argument for a parliamentary committee to address. This would be even more so for matters involving a*

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<sup>109</sup> Mr Lev Mizikovsky, *Submission No.41*, p.2.

<sup>110</sup> QBSA, *Submission No.65*, p.17.

<sup>111</sup> G and M Walker, *Submission No.75*, p.4.

*quantum lacking sufficient gravity to impose a formal system which may produce an escalation in conflict over time.*

*While Section 3 and Section 4 of the QCAT Act proscribe objects and functions endeavouring to overcome such problems; for example:*

- *S3(b) to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick;*
- *S4(c) ensure proceedings are conducted in an informal way that minimizes costs to parties, and is as quick as is consistent with achieving justice;*

*the case study presented demonstrates a need for an alternative model, where appropriate, that is functional rather than one that aspires.<sup>112</sup>*

The Tuckers go on to propose a detailed alternative model in their submission.<sup>113</sup>

Mr Cronk also contends that QCAT is not the appropriate body to look review building disputes:

*Removal of all building disputes from QCAT. QCAT is not tied to rules of evidence and the Members are not technically knowledgeable in this area, and therefore cannot make decisions that are respectful of the evidence. We were constantly pressured by QCAT members to pay our builder. The evidence of the significant and dangerous extent builder's poor work was not considered by QCAT Members who were incredibly protective and biased toward the builder from the outset<sup>114</sup>.*

The Wyeths agree that QCAT is not an independent arbiter:

*QCAT in their role in "the system", have shown to us and to many consumers that they are not Arbitrators and they are not independent, as claimed by the BSA in their annual report. QCAT are part of a State Government monopoly system and their role is to review the decisions of the BSA, that is all.*

*In reviewing the BSA's decisions, QCAT must "stand in the shoes of the Authority". How can this be Arbitration? In reviewing their fellow State Government Agency's decision, they deny natural justice to consumers, fail to fairly assess a self represented consumer claim against the BSA as the BSA are legally represented and refuse to award costs and damages to successful self represented consumers, in accordance with the QBSA Act. These costs would of course be levied against their fellow State Government Agency, "so there is no chance!"<sup>115</sup>*

The Building Advisory Group raises the following concerns:

- *QCAT members not experienced to make decisions ie building works, which by nature are multifactorial and complex*
- *The BSA/QCAT are not responsible for the actions in that QCAT process takes 4-5 years and should be reduced of between 6 weeks to 6 months*
- *Challenging a QCAT decision is costly and bias towards the QBSA or Contractor as the Contractor is seen as the expert, even if they are the perpetrator*
- *Delaying tactic to support contractor and remove the QBSA*
- *BSA loses in QCAT are rare, if they do, they change policy to adjust example 'may' or 'at the discretion of the BSA', or as resources permit*
- *Current legislation confined to QCAT no other court jurisdictions.<sup>116</sup>*

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<sup>112</sup> Mr and Mrs Tucker, *Submission No.39*, p.2.

<sup>113</sup> Mr and Mrs Tucker, *Submission No.39*, p.3.

<sup>114</sup> Mr Malcolm Cronk, *Submission No.9*, p.3.

<sup>115</sup> M & H Wyeth, *Submission No.30*, p.5.

<sup>116</sup> Building Advisory Group, *Submission No.102*, p.1.

Mr Wathib Jabouri raises a concern that too many defect cases end up in QCAT:

*The BSA needs to be forced to deal with the customers complaints without frequently throwing this responsibility on the shoulder of the ..QCAT that cannot have its decisions self-enforced, that is crippled by a mass of corruption/misconduct/incompetency of many of its members and staff. Moreover, applications to QCAT proved to be unnecessarily wasting of time and money of homeowners who were betrayed by BSA that refused to take direct actions against their rogue licencees, and ignored considering the massive evidence of facts and legal provisions that support the customers' cases against the licencees.*<sup>117</sup>

### 5.5.3 Concerns raised about the use of QCAT as a delaying mechanism

The Committee also received evidence that the QCAT review process is often used as a delaying mechanism.

To provide background information on this issue QBSA advises in its submission that under section 83 of the QBSA Act, the QBSA generally cannot act in relation to a dispute if a proceeding about the building work has been started in the QCAT or removed from a Court to the QCAT. An exception is provided in the limited circumstance where the QBSA considers building work needs to be urgently rectified or completed. In this circumstance, the QBSA may apply to the QCAT for an order that building work be rectified or completed.<sup>118</sup>

Concerns have been raised in a number of submissions that builders can, and do, use section 83 of the QBSA Act to their advantage, for example, Russell and Clare Bach request that “... the restriction on the powers of the QBSA to investigate a builder (section 83 QBSA Act) whilst there is a contractual dispute before the Tribunal be removed.”<sup>119</sup>

Mr Don Jender argues:

*The current system whereby a builder can file a QCAT complaint which has the effect of "freezing" action about defects should be changed. Currently a home owner can be stranded in a prolonged defect limbo because of this situation.*<sup>120</sup>

Dwyer Builders Collective concur that “recalcitrant” builders misuse the system:

*If there were to be any tweaking of the QBSA system we would simply recommend that the scope of dispute resolution be expanded to also include contractual disputes. Our feedback is that recalcitrant builders can merely claim a 'contractual dispute' to the QBSA which has the consequence of sidelining and sidestepping the intent of the consumer protection system.*<sup>121</sup>

### 5.5.4 HIA recommendations in relation to QCAT

In contrast to many submissions the HIA has recommended that QCAT take on an even greater role and recommends that:

- *Building disputes under \$25,000 be managed through QCAT's current consumer and trader dispute processes;*
- *QCAT be the body to manage all building disputes over \$25,000 through a specialist building division;*
- *The building division of QCAT be funded by the proportion of licensing fees that the QBSA currently applies to dispute resolution. It is envisaged that the current building inspectors of the QBSA would transfer to QCAT to become specialists to assist in dispute resolution;*

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<sup>117</sup> Dr Wathib Jabouri *Submission No.68*, p.7.

<sup>118</sup> QBSA, *Submission No.65*, p.31.

<sup>119</sup> Russell and Clare Bach, *Submission No.72*, p.3.

<sup>120</sup> Mr Don Jender, *Submission No.32*, p.7.

<sup>121</sup> Dwyer Builders Collective, *Submission No.26*, p.7.

- *That fees be introduced for claims made to the specialist building division of QCAT;*
- *That the specialist division of QCAT would have a broad range of dispute resolution tools at its disposal including mediation, conciliation, expert determination and full hearings;*
- *Where QCAT orders rectification of building work that any disputed funds are held in trust by QCAT as a condition of the work proceeding;*
- *That industry standards be drawn from existing industry standards and tolerances guides in addition to the provisions of building law; and*
- *The extension of the BCIPA processes for resolving payment disputes to contracts between licensed contractors and home owners.<sup>122</sup>*

#### **Committee comment**

The Committee notes the concerns raised by a significant number of consumers about the unsatisfactory process of having to go through the QCAT process if they disagree with a decision made by the QBSA or if their builder decides to refer an issue to QCAT prior to the consumer being able to involve the QBSA in their dispute.

The Committee is concerned that the QCAT process appears to be costly and time consuming and that it rarely results in a QBSA decision being overturned. The Committee is further concerned that the high success rate for QBSA decisions being upheld may be a direct result of the fact that QCAT relies on technical advice from QBSA on building issues.

The Committee notes the recommendations made by the HIA but has decided against recommending that a specialist building division of QCAT be established and instead recommends that the Minister for Housing and Public Works look at establishing an advisory board to provide independent building advice to QCAT or that QCAT draw on the building expertise of the Department of Housing and Public Works (see also recommendation 5).

#### **Recommendation 17**

The Committee recommends that the Minister for Housing and Public Works re-examine the use of QCAT as the only mechanism for reviewing QBSA decisions, to ensure the review process is more streamlined and user friendly and that the Minister consider introducing legislated timeframes for reviewing decisions of the new building authority.

#### **Recommendation 18**

The Committee recommends the Minister for Housing and Public Works resolve the conflict whereby QCAT relies on QBSA building advice, for example by establishing an independent advisory board or using the Department of Public Works and Housing to provide specialist building advice to QCAT.

## **5.6 Contracts and contract management**

### *5.6.1 Introduction*

The QBSA advises that it is legislatively authorised to prepare and publish suggested forms of domestic building contracts. The QBSA publishes various forms of domestic building contracts, including contracts for major and minor works. The contracts are available on the QBSA website for use by consumers and contractors without charge. However it further advises that industry participants are

<sup>122</sup> HIA, *Submission No.39*, p.11.

not required to use the QBSA published contracts and that there are a number of other standard form contracts available on the market. For example, a number of industry associations publish contracts for use by their members. Contractors may also opt to develop their own contracts for use with their clients provided that the contracts comply with the DBC Act.<sup>123</sup> (Sub

#### 5.6.2 *Quality of Documentation and Communication - Plans and Specifications*

The Building Designers Association Queensland believes that many disputes within the building industry begin with inadequate plans and specifications.

*BDAQ has been working hard to improve the quality of documentation produced by members. Our ultimate aim must be to avoid contract variations which are a significant cause of disputes. We have had an impact on the work of participating members. Unfortunately we cannot influence those who are not members or members who choose not to participate in our professional development programs. BDAQ understands the reluctance to mandate professional development throughout the builder and trade contractor licence regime but would argue that CPD is common practice amongst regulated professions and could easily be introduced for Building Design licensees. The Association already operates a voluntary pilot scheme which could be rolled out and managed by BDAQ.*<sup>124</sup>

#### 5.6.3 *Proposals for a uniform contract*

A number of submissions call for a mandatory uniform building contract including the HIA.<sup>125</sup> The 2011 KPMG Organisation Review of the QBSA also recommended the introduction of one mandatory uniform contract or a series of contracts for domestic building work.<sup>126</sup>

Ms Jill Van Dorssen has provided an in-depth analysis and critique of the Master Builders building contract in her submission.<sup>127</sup>

A standard contract would provide for standard clauses and definitions which would resolve the problem identified below:

*Legal loopholes used by the BSA and contractors to catch consumers out need to be identified and the legislation improved to protect parties. One in particular is the complex interpretation of "lawful termination". This can impact on QCAT decisions and on BSA insurance coverage. Our situation with regard to "lawful termination" and our home warranty insurance was not tested. This term needs to be simplified with a set of clear compulsory provisions in all domestic building contracts. This could be legislated, as is the definition of practical completion.*<sup>128</sup>

The Major Subcontractors Group recommends the government:

*Introduce a standard form contract for all Queensland Government and Local Council commercial building contracts; and include the specific requirement that the building contractor must pass through the contract terms to the sub-contractor without amendment. Such a contract will reintroduce reasonableness tests for performance in good faith.*<sup>129</sup>

The Committee has received evidence in a number of submissions raising concerns about sub-contractor payments and contract issues. While these issues are not within the terms of reference of

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<sup>123</sup> QBSA, *Submission No.65*, pp.19-20.

<sup>124</sup> BDAQ, *Submission No.27*, pp.4-5.

<sup>125</sup> HIA, *Submission No.38*, p.18.

<sup>126</sup> KPMG, *Queensland Building Services Authority Organisational Review Project*, June 2011, p.83.

<sup>127</sup> Ms Jill Van Dorssen, *Submission No.70*.

<sup>128</sup> G & M Walker, *Submission No.75*, p.4.

<sup>129</sup> Major Subcontractors Group, *Submission No.35*, p.4.



this inquiry, the Committee recommends that the Minister for Housing and Public Works review the evidence provided to the Committee on sub-contractor issues.<sup>130</sup>

#### 5.6.4 Contract management

The Building Designers Association of Queensland has raised a concern that problems often occur when consumers take on responsibility for monitoring contracts themselves.

*.... 99% of complaints received from consumers at the BDAQ office are about design work carried out with no written contract in contravention of Part 4A.*

*Contracts between builders and consumers will generally comply with the legislation as a number of complying standard contract forms are available. Problems can occur when consumers take on responsibility for administering the contracts themselves. Contract administration by a third party, particularly the designer of the building, would act as a buffer to prevent issues from becoming disputes and would advise owners about progress payments and workmanship issues.*

*BDAQ has identified product substitution as one cause of dispute where a less expensive product is used compared to what was specified.....Contract administration is one way of lowering the risk of substitution with sub-standard product.*

*Information about the requirements of Part 4A of the Act should be promoted as applicable to building design and documentation work and be included in information provided to consumers.*

*Contract administration by the person or entity who designed the building should be promoted to consumers or mandated for all building contracts.<sup>131</sup>*

#### **Committee comment**

The Committee is of the view that significant benefits would flow from having a standard home building contract including that homeowners, their legal advisers and contractors would be fully aware of the contract clauses and conditions and of their rights and obligations.

The Committee is concerned that many consumers only appear to seek legal advice about their building contract once something goes wrong. The Committee is therefore strongly of the view that homeowners should seek legal advice before signing a contract to build a new home or renovate an existing house, while recognizing that some people will wish to opt out of receiving such advice.

The committee is concerned that builders currently use contracts developed by industry associations which contain clauses that favour the licensee. The Committee is therefore recommending that builders be required to use the new standard contract as part of their licensing conditions.

If the Minister decides against introducing a mandatory standard contract the Committee recommends that the new building authority review the current building contracts drafted by industry groups with a view to discouraging any inherent bias towards the building contractor.

The Committee has received evidence raising concerns about contractual and payment issues relating to sub-contractors. While these issues are not within the terms of reference of this inquiry, the Committee recommends that the Minister for Housing and Public Works review the evidence provided to the Committee on these sub-contractor issues with a view to improving the current system.

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<sup>130</sup> For example, see submission nos 11, 13, 13a, 15, 35, 38, 61, 82

<sup>131</sup> BDAQ, *Submission No.27*, p.5.

**Recommendation 19**

The Committee recommends that the Minister for Housing and Public Works amend legislation to introduce a mandatory standard building contract for domestic building work and require contractors to use this contract as part of their licensing conditions.

**Recommendation 20**

The Committee recommends that the Minister for Housing and Public Works seek amendment to legislation to require that homeowners seek legal advice before signing a building contract, or require them to sign a statement if they decide against seeking legal advice.

**Recommendation 21**

The Committee recommends that if the Minister for Housing and Public Works decides against introducing a mandatory standard contract, the Minister use the evidence submitted as part of this inquiry as the basis for a review of all building contracts drafted by industry groups with a view to discouraging any inherent bias towards the building contractor.

**Recommendation 22**

The Committee recommends that the Minister for Housing and Public Works review the evidence provided to the inquiry about payments and contractual issues relating to subcontractors with a view to improving the current system.

**5.7 Support, Education and advice for both those who undertake building work and consumers**

*5.7.1 Background<sup>132</sup>*

One of the stated objects of the QBSA Act is to provide support, education and advice for those who undertake building work and consumers.

The QBSA activities which promote this object include:

- the provision of information and support services to customers by the QBSA's Contact Centre
- the delivery of education seminars to consumers and contractors throughout Queensland
- the provision of information and support services to consumers and contractors through the QBSA's website
- the provision of a licensee register, which is freely available to search through the QBSA's website
- the productions of factsheets and publications for contractors and consumers on a wide range of building industry related issues
- the provision of technical and mediation services by QBSA building inspectors to parties in dispute or potential dispute about building matters
- the provision of advisory assistance to licensed contractors who are experiencing financial stress.

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<sup>132</sup> Information in this section is taken from *QBSA Submission No.65*, p.32.

### QBSA Contact Centre

The QBSA has a contact centre which provides telephone and online services to building industry stakeholders. Telephone services include a phone-pay service which enables licensees to pay their renewal fees and Queensland Home Warranty Scheme premiums. The QBSA advises that its telephone and website services are well utilised and are highly rated by clients for usefulness and ease of use. The QBSA's Contact Centre assists 96% of callers at first point of contact, without calls having to be transferred to another part of the QBSA. This rate has been consistent over the past 4 years.

The Contact Centre handled 218,835 calls in the 2011-2012 financial year. Of these calls, 56% of calls related to general enquiries, for example: licensing, owner building and defective work-related calls, and 44% were for phone-pay services.

### QBSA Education Seminars

The QBSA delivers education programs for contractors and consumers. These programs aim to provide current information and advice to address issues prevalent in the Queensland building industry. For example, the seminars for contractors include technical information to address common defects identified in complaints received by the QBSA.

The QBSA in conjunction with Construction Skills Queensland, BUSSQ [Building Super] and QLeave delivers major education seminars (Better Building Supershows) for industry participants throughout Queensland. These seminars are for all licensees, their staff and subcontractors. The 2012 program includes roof drainage, timber balustrades, business strategies workshops, external waterproofing, timber durability and QBSA's industry update and feedback forum. The program features presentations by industry experts and QBSA staff.

In the 2011-12 financial year over 1,265 contractors attended the Better Building SuperShows with 97.9% of attendees surveyed indicating they would recommend the Better Building Supershow to others.

Regional Contractor Education Seminars are held throughout Queensland. These programs address common technical defects, new standards and regulations and provided demonstrations of best practice methods.

The QBSA provides trade-specific seminars throughout the year. In 2011-12 98 trade specific seminars were held throughout the State with attendance reaching 4,638 individuals, an increase of 1,066 on the previous year. These seminars targeted different sectors of the industry, to ensure maximum relevance and benefit. Topics included contractual obligations, how to avoid concreting and block and bricklaying defects and the new timber framing code. Coinciding with the introduction of fire protection occupational licensing in January 2009, the QBSA provided a series of seminars for the fire protection industry explaining the new licensing requirements and responding to industry concerns.

The QBSA publishes a range of documents to assist applicants for licences, licensees, consumers, the building industry and the general public. These documents, which include fact sheets, licensing information statements and technical information, are available on the QBSA website free of charge. The QBSA also publishes a regular newsletter for contractors, *'Building Links'*, which is designed to keep contractors informed of new legislative requirements, building regulations and codes and assistance on how to comply with regulations.

The QBSA delivers a home owner education program to guide home owners through the building and renovating process, from deciding on a project to choosing a contractor, entering into a building contract, dealing with building disputes and maintaining the work after completion. The QBSA also provided information and advice to thousands of attendees at nine home shows throughout the State.

### 5.7.2 Evidence provided on consumer and contractor education programs

Again, submitters varied in their views about QBSA's consumer and contractor education programs. Some examples are provided below.

Timber Queensland submits that education programs are essential:

*Again, TQ strongly support the KPMG finding that the role and functions that QBSA undertake in contractor and consumer education is vital and should be reinforced to reduce the incidence of defective building work. The proactive contractor and consumer education and training programs undertaken by QBSA address the high priorities identified by their own top 10 defects issues together with other priorities that industry groups such as TQ bring to their attention. These activities including the Trade Specific shows, Super Shows and the newly developed 'You Tube' site are highly valued by building industry material suppliers and associations.....*

*It has been identified that participation by the building industry in ongoing education and training initiatives undertaken by the QBSA and by building industry groups invariably attracts participation by the same practitioners and licensees over and over again and that a very high percentage of the industry who would most benefit from this education do not avail themselves of these initiatives. ...*

*It is understood that many of the initiatives that QBSA undertake in this regard are funded by external support from organisations such as Construction Skills Queensland (CSQ) who have significant resources for up-skilling and training in the building and construction industry. We would encourage the Queensland Government to foster continued on-going support from CSQ resources (committed 3 year funding programs would be desirable) to enable these programs to be efficiently delivered.<sup>133</sup>*

Builder Mr Mick Rendell commends the QBSA:

*BSA is well placed to ... to educate stakeholders, considerable effort is on-going to bring contractor's skills into line with requirements through BSA's seminar program and the fact sheets available on line on the web site. BSA's web site is to be commended and it provides excellent assistance to all stakeholders.<sup>134</sup>*

Whereas builders LK & HM Young are less enthusiastic and suggest that Construction industry training seminars need to be conducted by professionals within these areas of scope, being either contract law or construction law because:

*The education programs occasionally advertised and conducted by the BSA for public information seminars, are conducted by BSA staff, who have limited skills in verbal communication, thus endeavour to justify their lectures or presentations with pathetic humour as a way of disguising their lack of public speaking communication training or skill development. These BSA conducted public seminars are a waste of tax payer's money.<sup>135</sup>*

A number of stakeholders have identified that the ongoing education and training of contractors is inadequate, poorly attended or attended by same practitioners.

Mr John Andrew states that:

*Road shows etc. don't seem to be working with DVD's and lectures poorly presented. The presentations seem to be targeting builders rather than tradesmen. Tradesmen are unaware of these presentations and, after speaking to contractors on site today, most would be unable to attend a day time function anyway. All agreed that if they were run after hours or*

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<sup>133</sup> Timber Queensland, *Submission No.18*, p.3.

<sup>134</sup> Mr Mick Rendell, *Submission No.11*, p.2.

<sup>135</sup> LK & HM Young, *Submission No.10*, p.4.

*weekends, attendance would be greater...tradesmen are travelling further west from coastal regions and these tradesmen certainly do not appear to be as knowledgeable as tradesmen from the Darling Downs. I have observed a lack of auditing and training with these alien tradesmen.*<sup>136</sup>

Ms Deborah Brown provides positive comment about service at the centres but not the telephone service:

*One thing that I can say as a positive for the BSA is the service at the counter at its centres was good and when you get an experience advisor on the telephone then this service is of help. I was misled on a few occasions by staff missing fundamental information out but overall the system is helpful.*<sup>137</sup>

Mr Don Jender:

*It also seems that more needs to be done to educate builders and tradespeople in the required standard of work. I know BSA does some work in this area already, in terms of seminars and publications. It seems that a more intensive and perhaps regulatory effort is needed. After all, licensed builders and tradespeople are supposed to know how to do work properly before they start working on houses.*<sup>138</sup>

Mr Glen Place adds:

*The BSA Road Shows are effective education tools for contractors and are always topical being based on real experience in managing building defects and disputes.*

*As a building designer I only form a small part of the licensing regime and have very specific training needs and often don't get full value out of the BSA shows.*<sup>139</sup>

Asset Outdoor Additions provides:

*There is definitely an inadequate information process for builders. There-needs to be a division set up to professionally handle inquiries such as mine without the need to be directed to the legal department.*

*The BSA also needs to provide more in-house training for builders particularly in regards to their obligations under the QBSA Act and the DBC Act. This should become a mandatory process when a builder first gets their licence. This would go some way to producing better informed builders and better compliance with regulations.*

*Unfortunately at present, the builder receives a couple of booklets that, I am sure most builders don't even bother to read. The BSA then perform audits for compliance, there is no consultation if breaches are found, there is just instant breach notices sent to the builder. If you want to dispute the notice your only recourse is to go the QCAT to have the matter reviewed. This is often a lengthy and costly exercise for both parties.*<sup>140</sup>

BDAQ:

*BDAQ believes that BSA provides effective support, education and advice to licensees and consumers. The BSA Road Shows are effective education tools for contractors and are always topical being based on real experience in managing building defects and disputes. The consumer sessions BDAQ has been involved in are seen as providing invaluable consumer education. The BSA web site provides plenty of information for anyone involved in the building process.*

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<sup>136</sup> Mr. John Andrew, *Submission No. 49*, pp.2-3.

<sup>137</sup> Ms Deborah Brown, *Submission No.29*, p.7.

<sup>138</sup> Mr Don Jender, *Submission No.32*, p.3.

<sup>139</sup> Mr Glen Place, *Submission No.80*, p.3.

<sup>140</sup> Asset Outdoor Additions, *Submission No.83*, p.4.

*As building designers are a small part of the licensing regime and have very specific training needs they often don't get full value out of the BSA shows. This is one by-product of building designers being part of the trade contractor licensing. This is an area where BDAQ as an industry body can provide assistance in improving the process. It would simply be a matter of BSA supporting or endorsing the existing BDAQ programs.<sup>141</sup>*

The Building Advisory Group provides the following evidence:

*This leads me to a further point where the BSA could be more proactive in relation to the qualifications and ongoing training of those in the building industry. Whilst I applaud the BSA and associated organizations ie the HIA and Master Builder's Association in running seminars, they are only voluntary and obviously not attended by those most in need. Other professional groups, eg Architects and engineers must do yearly courses just to keep their registrations, so why not the tradespeople at the pointy and most critical end of the process? The incentives could be on a rewards basis rather than a penalty basis.<sup>142</sup>*

The HIA has recommended that the consumer education functions of the QBSA should become part of the role of the Office of Fair Trading and that the contractor information be undertaken by industry associations and Building Codes Queensland.<sup>143</sup>

### **Committee comment**

The Committee is concerned that consumers are provided with independent advice on Queensland Government building services and is therefore recommending that the consumer advice function should be transferred to the Office of Fair Trading.

The Committee is also of the view that the consumer and contractor information and training function would be best undertaken by Building Codes Queensland.

### **Recommendation 23**

The Committee recommends that the Minister for Housing and Public Works consider transferring:

- the consumer advice function to the Office of Fair Trading which is responsible for consumer rights and responsibilities and
- the consumer and contractor information and training function to Building Codes Queensland in the Department of Housing and Public Works.

### **Recommendation 24**

The Committee recommends that the Minister for Housing and Public Works establish a telephone service in the Department of Housing and Public Works to provide a single point of inquiry for consumers to ensure they are directed to the appropriate building services provider/authority.

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<sup>141</sup> BDAQ, *Submission No.27*, p.3.

<sup>142</sup> Building Advisory Group, *Submission No.102*, p.4.

<sup>143</sup> HIA, *Submission No.38*, p.27.

## 5.8 Systemic issues raised in evidence about the organisational culture of the QBSA

The Committee has noted that a large number of submissions include references to QBSA staff behaving in an unprofessional manner when interacting with both consumers and licensees.

Consumers and licensees report that they regularly receive incorrect and inconsistent advice and are often treated with disrespect. The Committee has received consistent reports of harassment, intimidation and bullying. Some examples are provided below and many other submission raise similar concerns<sup>144</sup>:

Builders LK & HM Young claim:

*....staff employed by QBSA, to be unskilled in areas of expertise, and often making rude and unfounded statements.*

*It is a known fact that QBSA employees demonstrate bias, rudeness, bad behaviour and incompetent decisions always favouring the property owner.*

*During My dealings with the QBSA, in all capacities, whether, being employed by the BSA to rectify works completed by other trade contractors, or endeavouring to work with the BSA to resolve disputes with the public, I have always been harassed, threatened and been presented with unreasonable options which the BSA intends to enforce regardless of true underlying facts of the dispute.<sup>145</sup>*

Mr and Mrs Conway concur:

*.....the QBSA and its representatives actions and interpretations have at most times been ad-hoc, bullying, unprofessional and deceptive, leading us with no choice to but to seek tribunal action that was not necessary.<sup>146</sup>*

Mr Wayne Orenshaw adds:

*Intimidation and harassment has become commonplace for the staff and is now part of the culture of the QBSA. Builders are afraid to stand up to the QBSA because of the power it wields.<sup>147</sup>*

A private submission from a certifier raises serious concerns:

*The stress and aggravation caused by the current Manager to several Private Certifiers has resulted in an exit of a great number of good men with years of experience, integrity, loyalty, dedication and pride in the building industry - so much so, that the impact upon those men's families due to victimisation is far more reaching than realised eg nervous breakdowns, financial hardship, marital problems, and death from strokes & heart attacks. In my own instance, it became so great that I handed in my licence rather than subject my wife to further medical problems caused by constantly occurring court proceedings & litigation.<sup>148</sup>*

Builder Mr Jonathon MacDonald suggests that the culture of the QBSA should be reformed in the following way:

*Examining opportunities for reform of the Authority with a view to enhance assistance for both industry and consumers; I would suggest that the QBSA be re branded as an advocate for good building practice not just the Authority this would go some way to gain respect from all stakeholders as being the licensing Authority for all trades and a source of sound advice on good building practice and to develop a better understanding of the relevants[sic] of the BCA*

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<sup>144</sup> Submissions which raise similar concerns include nos 1,2,3,5,6,8,17,19,20,21 22,23,24,25,29,30,31,42,44,46,47,53,57,58,59,62,87, 91,92,93,99,101,105

<sup>145</sup> LK & HM Young, *Submission No.10*, p.6.

<sup>146</sup> Mr and Mrs Conway, *Submission No.85*, p.7.

<sup>147</sup> Mr Wayne Orenshaw, *Submission No.89*, p.12.

<sup>148</sup> Private, *Submission No.94*, p.1.

*by builders and consumers, the staff of the Queensland Building Regulator (suggestion) should be polite, helpful and knowledgeable and that the field Officers should be competent and possess an understanding of building practice as well as the BCA and not to take a judgmental stance, the Officers would have the training to act in a mediator role to defuse potential conflict.*<sup>149</sup>

#### **Committee comment**

The Committee is concerned at the extent of the evidence that points to an unprofessional organisational culture in the QBSA, particularly in relation to staff dealings with individual consumers and contractors.

The Committee has noted reports that both consumers and licensees regularly receive incorrect and inconsistent advice and are often treated with disrespect. The Committee is particularly concerned by the consistent reports of harassment, intimidation and bullying.

The Committee believes that the establishment of a new building authority will provide an opportunity for staff to receive training in customer relations and also to be provided with whatever training is necessary to undertake their roles and responsibilities in the new authority or relevant government department to the highest possible standard.

#### **Recommendation 25**

The Committee recommends that the Minister for Housing and Public Works ensure QBSA staff undergo training in customer relations and receive the training necessary to carry out their roles and responsibilities in the new authority or relevant government department to the highest possible standard.

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<sup>149</sup> Mr Jonathon MacDonald, *Submission No.48*, p.4.



## 6 Queensland Home Warranty Scheme

### 6.1 Introduction<sup>150</sup>

#### 6.1.1 Home warranty schemes

Home warranty schemes are mandatory requirements in all jurisdictions in Australia except Tasmania. Home warranty insurance protects homeowners against financial loss arising from defective or incomplete building work, and also provides protection for subsequent owners. Schemes differ between Australian jurisdictions.

#### 6.1.2 The Queensland Home Warranty Scheme

Under the QBSA Act, the QBSA administers a not-for-profit statutory home warranty scheme for residential construction work called the Queensland Home Warranty Scheme ('the QHWS' or 'the Scheme'). The Scheme covers homeowners for loss suffered in the event of a contractor failing to complete a contract for residential construction work or carrying out defective residential construction work.

The term of cover is 6.5 years, and in general terms, the maximum amount payable under the Scheme's insurance policy conditions for claims is as follows:

- \$200,000 for claims for non-completion including pre-completion defects, vandalism or forcible removal per policy. The maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs.
- \$200,000 limit for all claims relating to fire, storm or tempest per policy. This liability is subject to the lodgment of a valid non-completion claim prior to the event.
- \$200,000 per policy for claims for post-completion defects and subsidence. This maximum amount includes an amount of up to \$5,000 for alternative accommodation and storage costs of up to \$5,000.

Pursuant to section 26A of the QBSA Act, the QBSA must ensure that the Scheme is managed in accordance with actuarially sustainable principles so that the amounts paid into the Insurance Fund will be sufficient to satisfy the amounts to be paid from the Insurance Fund.

Section 68D of the QBSA Act requires the QBSA to state the premiums payable under the Scheme, or the way it is calculated, in the Government Gazette. Before stating the premium, or the way it is calculated, the QBSA must:

- have regard to its obligation under section 26A,
- ensure premiums are sufficient to meet the costs of administering the Scheme and the costs of paying out claims and
- obtain the Minister's approval.

Under the QBSA Act, the appropriate insurance premium must be paid by the licensed contractor responsible for carrying out or construction managing the work. In most instances, this cost is added to the construction price for the contracted residential construction work. Premiums increase incrementally with the value of the residential construction work. The value of residential construction work includes the cost of labour and materials.

The QHWS provides warranty cover to a home owner in relation to defective or incomplete residential construction work carried out by a building contractor. If there is building work that is not rectified in accordance with a direction and the work is residential construction work the matter is referred to an insurance assessment officer to determine whether the consumer is entitled to a claim under the QHWS. The assessment officer makes this decision based on the QBSA Act, QBSA Regulation and the

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<sup>150</sup> Information taken from QBSA, *Submission No.65*, pp.13 and 21-22.

applicable Insurance Policy Conditions. The decision made by the building inspector about the building work being defective or incomplete is not revisited.

Pursuant to section 71 of the QBSA Act, if the QBSA makes any payment on a claim under the QHWS, the QBSA may recover the amount of the payment, as a debt, from the building contractor who carried out the work.

The Insurance Policy Conditions for the QHWS are contained in a policy of the QBS Board. In relation to claims for defective residential construction work under the QHWS, the Insurance Policy Conditions provide that the Scheme's liability, and therefore the contractor's liability for the payment as a debt under section 71 of the QBSA Act, will not arise in the following circumstances:

- where, in the opinion of the QBSA, the insured unreasonably refuses access to the contractor, or their agent, to undertake rectification
- where the QBSA issues a direction to rectify defective building work, until the QBSA is satisfied that the contractor will not comply with that direction or the requirements of the QCAT or a Court in relation to that direction and
- where the contractor has a continuing obligation to complete the residential construction work e.g. where the contract has not been terminated.

Further, in deciding matters relevant to claims under the QHWS, the QBSA must make a wide range of assessments under the Insurance Policy Conditions relevant to whether a claim is payable, the scope of works for rectification and the amount payable. In making these assessments, the Insurance Policy Conditions requires the QBSA to apply tests based on reasonableness and necessity.<sup>42</sup> The QBSA's assessments in this regard directly affect the financial interests of the building contractor and the consumer involved.

Under section 86 of the QBSA Act, the QCAT may review a range of decisions relating to the QHWS including decisions to disallow a claim under the Scheme.<sup>43</sup> Further, as mentioned above, when reviewing a decision of the QBSA, the QCAT hears and decides the review by way of a fresh hearing on the merits.

Refer to pages 46-58 of Submission No. 65 from the QBSA for additional background on the Scheme, including the history of the Scheme, work and persons covered, work and persons excluded, other key features, the role of the QCAT and the process for making a claim.

## 6.2 Evidence received on the QHWS

Some inquiry participants consider that the existing Scheme is effective in protecting consumers, is cost effective and one of the best schemes in Australia. On the other hand, others identified issues such as administration of the Scheme; an actual or perceived conflict of interest resulting from the functions of the QBSA; issues regarding payout for certain types of insurance claims and dispute resolution.

The current Scheme is considered to be one of the best in Australia by some people, providing a more cost effective option and greater protection for consumers and contractors than those in other jurisdictions.<sup>151</sup> Master Builders Queensland expressed strong support for the Scheme, noting that it offers value for money insurance and is the envy of other states and territories.<sup>152</sup>

The BDAQ considers the Scheme to be effective, but could be improved.<sup>153</sup> However, any improvements to the Scheme would, as considered by Mr Glen Place, increase the cost of housing if

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<sup>151</sup> See for example submissions 27, 61, 80 and 82.

<sup>152</sup> Master Builders, *Submission No.61*, pp.5-6.

<sup>153</sup> BDAQ, *Submission No.27*, p.3.

implemented.<sup>154</sup> These improvements could include better informing consumers, including clear definitions of warranty triggers, better contract management by consumers and improving the quality of documentation and communication between parties.<sup>155</sup>

Mr Don Jender does not consider the Scheme to be satisfactory, and believes that the insurer (the QBSA) will attempt to find any reason to avoid paying a claim:

*Insofar as homeowners know about the BSA and QHWS at all, the impression seems to be that it is a scheme to assist homeowners with defective housing (defects identified within 6.5 years). Indeed this was the impression we had initially — people told us how lucky we were that BSA provided insurance coverage for faults.*

*In practice it seems to me the QHWS is designed to provide an image of support for homeowners. However, like all insurance policies, it is written by the insurer to support the interests of the insurer, not the policy beneficiary (the home owner). The devil is in the fine detail of the policy clauses and the exemptions they give the BSA.<sup>156</sup>*

Builders, LK and HM Young believe that the Scheme has been mismanaged and is biased towards property owners,<sup>157</sup> while the Building Advisory Group notes the poor administration of the BSA<sup>158</sup>. Mr and Mrs Walker consider that the Scheme has “... let many consumers down” due to the low standards applied by the BSA when assessing claims.<sup>159</sup> There is also concern that the Scheme “... does not function in the spirit of s3(b) of QBSA Act to ‘provide remedies for defective building work’.”<sup>160</sup>

The Master Plumbers Association is concerned that the Scheme does not “... adequately protect the consumer from defective works. Often, defective work is not picked up by the BSA inspections or is incorrectly identified.”<sup>161</sup>

A number of additional issues with the Scheme were identified, and are considered in the following sections.

### 6.2.1 Conflict of interest

A real or perceived conflict of interest in the administration of the Scheme was identified in evidence received by the Committee, reportedly resulting from the many roles fulfilled by the QBSA.<sup>162</sup> These include roles of licensor, regulator, assessor and insurer within a single organisation. Mr John Andrew, a builder, noted that it is likely that officers that handle claims are also aware of budgetary considerations of the organisation which may influence their decisions in this regard.<sup>163</sup>

A number of inquiry participants recommend that the insurance function be transferred to the private sector.<sup>164</sup> HIA notes “... the inherent potential for conflicts of interest in the QBSA’s “one-stop-shop” structure are sufficiently serious that its functions, especially its warranty insurance functions, need to be devolved.”<sup>165</sup> Although HIA would prefer to see a competitive market for this type of insurance, the

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<sup>154</sup> Mr Glen Place, *Submission No.80*, p.4.

<sup>155</sup> Mr Glen Place, *Submission No.80*, p.4.

<sup>156</sup> Mr Don Jender *Submission No.32*, p.4.

<sup>157</sup> LK and HM Young, *Submission No.10*, p.5.

<sup>158</sup> Building Advisory Group, *Submission No.102*, p.4.

<sup>159</sup> G and M Walker, *Submission No.75*, p.2.

<sup>160</sup> Mr and Mrs Conway, *Submission No.85*, p.7.

<sup>161</sup> Master Plumbers Association, *Submission No.81*, p.2.

<sup>162</sup> See for example submissions 9, 32, 38, 49 and 99.

<sup>163</sup> Mr John Andrew, *Submission No.49*, p.2.

<sup>164</sup> See for example, Submissions 9, 32 and 38.

<sup>165</sup> HIA, *SubmissionNo. 38*, pp.24-26.

organisation acknowledges that this may not be achievable in the current insurance market. As a move towards competitive insurance, HIA recommends the following:

- insurance policy be developed by the new 'Building Regulation Queensland',
- premiums be collected by contracted agencies such as post offices, insurance brokers and private certifiers,
- claims management be tendered to private sector claims management companies, and
- the Scheme's finance and underwriting arrangements be undertaken by State Treasury.<sup>166</sup>

In addition, HIA believes that the type of work being undertaken and the level of risk associated with this work should be taken into consideration in the calculation of the premium payment. This would reportedly "... allow the consumer to easily understand who is a responsible builder and those that are in constant trouble and will reward responsible builders with increased work."<sup>167</sup>

Mr Don Jender also believes that the insurance function should be transferred to the private sector, similar to insurance provided for motor vehicle third party insurance, noting that this would support competition and innovation.<sup>168</sup>

InterRISK Queensland did not identify issues regarding conflict of interest within QBSA, however, recommended an alternative structure to the current insurance scheme in-line with that described above. That is, home warranty insurance would be a consumer based product whereby consumers could purchase this insurance in the same way that homeowner insurance is currently purchased. The consumer would be the insured and beneficiary of any claim, and would pay, for example, monthly premiums.<sup>169</sup>

Electrite Pty Ltd considers that, "[i]f the warranty scheme was left to the insurance industry to underwrite that system would very quickly sort out who will be issued the necessary insurance cover to allow a building permit to be issued for the residence to be constructed and who will not."<sup>170</sup>

### Committee comment

The Committee is concerned about the issues experienced by individuals, organisations and contractors with regard to the Queensland Home Warranty Scheme. For consumers to have faith in the Scheme, the conflict of interest, whether actual or perceived, must be eliminated. The Committee considers it essential to reduce the conflict of interest through separating the insurance role from the other functions.

The Committee has recommended in recommendation 2 of this report (page 19) that the Minister for Housing and Public Works separates the insurance function currently undertaken by the QBSA from other functions, such as licensing and dispute resolution, by either a legislative and/or organisational firewall within a new building authority or by an alternative appropriate mechanism.

The Committee agrees that insurance premiums should reflect the type of work being undertaken, the level of risk associated with the work, and the desired level of cover in-line with many other types of insurance available.

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<sup>166</sup> HIA, *Submission No.38*, pp.24-26.

<sup>167</sup> HIA, *Submission No.38*, pp.24-26.

<sup>168</sup> Mr Don Jender, *Submission No.32*, pp.4-5.

<sup>169</sup> InterRISK Queensland, *Submission No.37*, pp.2-3.

<sup>170</sup> Electrite Pty Ltd, *Submission No.7*, p.1.

### Recommendation 26

The Committee recommends that the Minister for Housing and Public Works consider extending the Scheme to provide for:

- a tiered approach where homeowners can select the level of cover they wish to purchase, for example levels may be determined by the type of work being undertaken, the level of risk associated with the work and the maximum amount of cover desired and
- the opportunity to take out cover for building works that do not need a building approval.

#### 6.2.2 Subsidence

Issues regarding insurance for the subsidence of houses were identified by some inquiry participants.<sup>171</sup> There has been an increase in the number of insurance claims resulting from subsidence, and hence increased stress on the Scheme.<sup>172</sup> Master Builders advises that most subsidence problems are caused by faulty engineering design and as such, engineers should be held to account rather than the builders involved.<sup>173</sup>

Although there is a 'no-fault' policy with regard to subsidence, Mr Jender believes this only applies to the builder and that homeowners are often found to be 'at fault', for example if they have not implemented relevant drainage requirements or met appropriate Australian Standards:

*The BSA then uses any alleged home owner fault as a reason to deny a QHWS claim. The effect of this is to disadvantage home owners who are not building/drainage/soil experts and who are unlucky enough to have a house with subsidence problems. The above BSA Annual Report (page 25) notes that subsidence claims are increasing, so the BSA has an incentive to fight claims if at all feasible, in order to defend its insurance fund ... No doubt the BSA does provide help for home owners under the QHWS when there is no scope for denying a claim (eg when a builder becomes bankrupt). However, a home owner who has a QHWS claim denied then labours under huge disadvantages if he wishes to dispute the BSA decision.*<sup>174</sup>

Dispute resolution with regard to insurance complaints is considered further in section 6.2.5 of this report.

#### 6.2.3 Scheme exclusions

Currently, the Scheme does not insure manufactured homes or swimming pools that are not constructed at the same time the adjoining house is constructed. The HIA recommends that the Scheme be expanded to cover both of these items.<sup>175</sup>

*The areas where HIA believes that the coverage of the insurance is inadequate is its current exclusion of manufactured housing. The definition of what is manufactured housing is becoming increasingly blurred as more and more major components of new homes can be assembled off-site. The principle should be that the insurance is available to anyone buying a new home for their or a tenant's long term occupation, irrespective of how it is built and irrespective of the titling arrangements for the land on which the home is located.*

*There is also an inconsistency in the scheme's coverage of swimming pools. If the pool is part of a contract that includes a home, then the pool will be covered, but a standalone pool contract will not be covered. HIA acknowledges that there is some private insurance available for pools but only members of the Swimming Pool Association have access to the insurance*

<sup>171</sup> See for example submissions 32 and 61.

<sup>172</sup> Master Builders, *Submission No.61*, pp.5-6.

<sup>173</sup> Master Builders, *Submission No.61*, pp.5-6.

<sup>174</sup> Mr Don Jender, *Submission No.32*, pp.4-5.

<sup>175</sup> HIA, *Submission No.38*, pp.24-26.

*for their clients. Insurance coverage for pools should be available from the QBSA scheme on a voluntary basis.*<sup>176</sup>

The Scheme only covers building work that requires building approval, such as for a kitchen or a bathroom. The HIA considers that insurance should be available on a voluntary basis for works that do not require building approval.<sup>177</sup>

#### **Committee comment**

The Committee is concerned that the QHWS does not cover manufactured homes given the increase in the construction of this type of housing. The Committee also believes that consideration should be given to including swimming pools when they are built as a stand-alone item under the Scheme, as they are already included under the Scheme when constructed with a house.

#### **Recommendation 27**

The Committee recommends that the Minister for Housing and Public Works consider extending the Queensland Home Warranty Scheme to the construction or renovation of all homes irrespective of the method of construction and to swimming pools and ancillary structures.

#### *6.2.4 Education, training and access to information*

The level of understanding about the Scheme by consumers is of concern to the Brisbane Certification Group (BCG).<sup>178</sup> The organisation believes this reflects the imprecise information asserted by the QBSA, which is that consumers are protected for all possible eventualities. To address this, the BCG recommends that a publication that explains the Scheme be developed and be required to be provided to all consumers during contract negotiations for the construction of new homes, renovations or the sale of a new home.<sup>179</sup>

ATFA considers there needs to be “... more education for both contractors and consumers around the Home Warranty Scheme.”<sup>180</sup> Mr Jender advises that subsequent homeowners should also be educated on the Scheme, because there are time limitations on complaints about defects.<sup>181</sup> To address this issue, he recommends that a method of informing subsequent owners about the Scheme should be developed, by an organisation other than the QBSA due to the conflict of interest issues identified above.

The name of the Scheme is of concern to the HIA, which believes that it is potentially misleading to consumers:

*Consumers will have built up an expectation of what a warranty will deliver through their experience with consumer goods, but the QBSA’s policy is unlike the warranty on a consumer good in many ways, especially in that there is a dollar limit on the amount of cover available.*

*What the QBSA’s scheme really provides is a performance bond: if the contractor does not perform the contract satisfactorily there is an amount of money available to complete the conditions of the contract. “Completion Bond” might be a preferable way of describing the consumer protection that is being offered.*<sup>182</sup>

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<sup>176</sup> HIA, *Submission No.38*, pp.25.

<sup>177</sup> HIA, *Submission No.38*, pp.25.

<sup>178</sup> BCG, *Submission No.96*, p.3.

<sup>179</sup> BCG, *Submission No.96*, p.3.

<sup>180</sup> AFTA, *Submission No.33*, p.2.

<sup>181</sup> Mr Don Jender, *Submission No.32*, pp.4-5.

<sup>182</sup> HIA, *Submission No.38*, p24.

To address this issue, the HIA recommends that the name of the Scheme be renamed as a completion bond.

#### **Committee comment**

The Committee agrees with the Brisbane Certification Group, that the mandatory provision of standard information to consumers at key periods during contract negotiation would be of great assistance to educate consumers about the Scheme and ensure they are not misled about inclusions and exclusions.

The Committee believes that the name of the Scheme does not accurately reflect its nature and may mislead consumers. Therefore, it is recommended that the Scheme be renamed, to clearly communicate that the Scheme is limited.

#### **Recommendation 28**

The Committee recommends that an information pack and fact sheet be developed by the new building authority and that building contractors should be required to provide these to each person taking out insurance for residential construction works before a contract is signed in order to:

- ensure consumers fully understand the limited nature of the insurance before they sign the building contract and
- educate consumers about important provisions of the Scheme, including what the insurance does and does not cover.

#### **Recommendation 29**

The Committee recommends the fact sheet referred to in the previous recommendation be published on all relevant departmental websites as well as the building authority's website.

#### **Recommendation 30**

The Committee recommends that Queensland Home Warranty Scheme be renamed to better reflect its function, for example *Limited Home Warranty Scheme*.

#### **6.2.5 Resolution of insurance issue disputes**

Asset Outdoor Additions believes that the QCAT, or an alternative independent body, requires the power to be able to review the findings of the QBSA. This body should be able to review the facts of the case, the findings of the BSA and the timeframes and "... make a decision based on reasonable outcome for the consumer instead of a commercial decision for the BSA."<sup>183</sup>

The inequitable position that home owners find themselves in when attempting to dispute a QBSA decision was highlighted by Mr Jender:

*No doubt the BSA does provide help for home owners under the QHWS when there is no scope for denying a claim (eg when a builder becomes bankrupt). However, a home owner who has a QHWS claim denied then labours under huge disadvantages if he wishes to dispute the BSA decision.*<sup>184</sup>

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<sup>183</sup> Asset Outdoor Additions, *Submission No.83*, p.5.

<sup>184</sup> Mr Don Jender, *Submission No. 32*, pp.4-5.

Mr Don Jender provides some of the reasons why the QBSA is potentially in a stronger position than those in dispute with the organisation over matters such as insurance, include because the QBSA:

- developed the policy for the Scheme and interprets it
- has expertise in building matters
- has access to legal advice through the in-house legal department and through external legal advisors if needed
- has more time, knowledge and financial resources than the average home owner and
- has legal representation at QCAT hearings, whereas home owners are more likely to represent themselves with limited building industry, engineering and legal background.<sup>185</sup>

Mr Jender recommends that a mechanism to “... facilitate mediated or compromise settlement of BSA/home owner disputes under the QHWS” be introduced.<sup>186</sup>

#### **Committee comment**

The Committee acknowledges the concerns that some submissions have raised regarding the dispute resolution of insurance issues, including the potentially inequitable position some consumers find themselves in when attempting to address disputes that involve the QBSA.

#### **Recommendation 31**

The Committee recommends that the Minister for Housing and Public Works investigate processes for reviewing building authority decisions in relation to the Limited Home Warranty Scheme including the option of introducing a mediation process for dispute resolution.

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<sup>185</sup> Mr Don Jender, *Submission No. 32*, pp.4-5.

<sup>186</sup> Mr Don Jender, *Submission No.32*, pp.4-5.



## 7 QBSA licensing function

### 7.1 Background information on the QBSA licensing regime<sup>187</sup>

#### 7.1.1 Licence grades and classes

Under the QBSA Act, it is an offence for a person to carry out building work or provide building work services for the work unless that person holds an appropriate licence under the Act.

A person who carries out building work under an owner builder permit is exempted from this requirement and, with the exception of fire protection work, an employee of a licensed contractor who performs building work for the contractor, but does not supervise the work, is also exempt from the requirement to hold a licence. In most instances, work of a value of \$3,300 or less is not building work and does not require a contractor's licence or supervisor's licence to carry out.<sup>188</sup>

The QBSA Act provides for the following grades of licences:

Contractor's licence – a licence which authorises a person to carry out all classes of building work or carry out building work for one or more classes specified in the licence; under the QBSA Act a contractor's licence may be issued to an individual or a company; contractor's licences are categorised under the QBSA Regulation as builder contractor's licences and trade contractor's licences.

Nominee Supervisor's licence – a licence which authorises an individual to personally supervise building work, or if the individual is the company's nominee provide supervisory services for building work and perform the functions required of a nominee under the QBSA Act.

Site Supervisor's licence – a licence which authorises an individual, while the individual is an officer or employee of a licensed contractor, to personally supervise building work carried out under the contractor's licence.

Fire Protection Occupational licence – authorises an individual, while the individual is an employee of a licensed contractor, to personally carry out and personally supervise fire protection work carried out under the contractor's licence.

In addition to the licensing system under the QBSA Act, the QBSA also licences building certifiers under the *Building Act 1975*.

The QBSA Act provides that licences be divided into classes by regulation. The commencement of the QBSA Regulation in 2003 substantively changed and reduced the licence classes available under the QBSA Act and so there remain 39 classes of licence which the QBSA continues to renew<sup>189</sup> even though those classes of licence are no longer issued by the QBSA.

#### 7.1.2 Eligibility requirements to hold a licence

The eligibility requirements for all licence grades can be seen in Table 1 below. Specific requirements for all licence classes are prescribed in Schedule 2 of the QBSA Regulation.

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<sup>187</sup> The information in this section is taken from the QBSA, *Submission No.65*, pp.61-79.

<sup>188</sup> Section 5 of the QBSA Regulation prescribes the range of work where a licence is required for the work regardless of value.

<sup>189</sup> Section 43 of the QBSA Regulation specified the classes of licences that may be held and renewed after commencement of the Regulation.

**Table 1: Licensing requirements according to licence grade**

Licensing requirement	Contractor licence (Individual)	Nominee Supervisor licence	Site Supervisor licence	Fire protection occupational licence
Able to lawfully work in Queensland	Yes	Yes	Yes	Yes
Technical qualifications	Yes	Yes	Yes	Yes
Managerial qualifications	Yes	Yes	No	No
Experience requirements	Yes	Yes	No	No
Financial requirements	Yes	No	No	No
Fit and proper	Yes	Yes	Limited	Limited
No unpaid judgement debt under section 71 (QHWS)	Yes	Yes	No	No

Financial licensing requirements

An applicant for a contractor’s licence must satisfy the requirements stated in the *Financial Requirements for Licensing policy* (the FRL policy)<sup>190</sup> of the QBSA Board. The stated objectives of the FRL policy are to “*promote financially viable businesses and foster professional business practices in the Queensland building industry*”. The FRL policy provides minimum requirements relating to:

- Net tangible assets - licensed contractors must hold prescribed levels of assets or capital to support the annual turnover permitted under their licence
- Business liquidity - licensed contractors must satisfy a liquidity test to establish that they have sufficient current assets to meet debts as they fall due and
- Professional indemnity insurance - licensed contractors providing advice and design services must hold prescribed minimum levels of professional indemnity insurance.

Fit and proper licensing requirement

All licence classes are subject to the ‘fit and proper’ licensing requirement. The QBSA Act provides a non-exhaustive list of relevant factors that the QBSA may have regard to in deciding whether a particular individual is fit and proper to hold a licence including:

- grossly defective building work constituting tier 1 defective work (a person may become a banned individual under Part 3D the QBSA Act if they have carried out tier 1 defective work)
- commercial and other dealings in which that person has been involved and the standard of honesty and integrity demonstrated in those dealings
- any failure by that person to carry out commercial or statutory obligations and the reasons for the failure and
- if the person is an enforcement debtor under an enforcement order for an infringement notice offence for the QBSA Act or for the *Domestic Building Contracts Act 2000* – where the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.

<sup>190</sup> <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Accountants/Publications/Financial%20Requirements%20for%20Licensing.pdf> accessed 28 November 2012.

### 7.1.3 Banned, disqualified and excluded persons

#### Banned individuals

A person classified as a banned individual under the QBSA Act is taken not to be fit and proper to hold a licence for the term of the ban. The QBSA must not issue a licence to a person who is a banned individual or to a company for which a banned individual is a director, secretary, influential person or nominee. A person may become a banned individual under the QBSA Act if they have carried out tier 1 defective work.<sup>191</sup> Under the QBSA Act, an individual given a notice for tier 1 defective work is banned from holding a licence for 3 years. If the individual is banned for a subsequent time, the term of the ban is for life. QBSA advises that, in the last 4 financial years, 2 individuals have been categorised as banned individuals for a period of 3 years and, to date, no permanent bans have been made under the QBSA Act.

#### Disqualified individual:

Under the QBSA Act, contractors incur demerit points if they are convicted of a demerit point offence or become a judgement debtor for an unsatisfied judgement debt in relation to a building contract or a domestic building contract. A person who is convicted of a demerit point offence attracts 2 demerit points against their licence. A person who is a judgment debtor for an unsatisfied judgement debt attracts 10 demerit points. In the case of licensed contractors, demerit points are recorded on the licensee register and are available to be viewed free of charge on-line by homeowners, contractors and suppliers.

The QBSA Act specifies a range of offences in the QBSA Act and *Domestic Building Contracts Act 2000* as demerit offences, including failure to rectify building work as required by a direction issued by the QBSA. Other offences that attract demerit points include offences relating to contracts (disclosures, contents, etc.), licensing, insurance and payments (deposits, progress payments, completion payments etc.)

A person who accumulates 30 demerit points within a three-year period is disqualified from holding a contractor's licence or nominee supervisor's licence under the QBSA Act for three years ("disqualified individual"). If the person within 10 years of the first ban, accumulates a further 30 demerit points over a three-year period, they are disqualified from holding a contractor's licence or nominee supervisor's licence under the QBSA Act for life. QBSA advises that, in the last 4 financial years, ten (10) people have been disqualified for three years and no persons have been disqualified for life.

The number of contractors allocated with demerit points is small<sup>192</sup> when compared to the number of contractors licensed under the QBSA Act (e.g. 84,436 licensees as at 30 June 2012 with only 399 contractors allocated demerit points in 2011/12).

#### Excluded individuals and excluded companies:

The QBSA Act provides for the exclusion of an individual from holding a contractor's or nominee supervisor's licence if:

- the individual takes advantage of the laws of bankruptcy or becomes bankrupt (relevant bankruptcy event) and 5 years have not elapsed since the relevant bankruptcy event happened or
- the individual was a director, secretary of or influential person for a company which has within 12 months had a provisional liquidator, liquidator, administrator or controller appointed, wound up, or ordered to be wound up (the relevant company event) and 5 years have not elapsed since the event happened.

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<sup>191</sup> Tier 1 defective work is defined in Part 3D of the QBSA Act.

<sup>192</sup> For the number of demerit points issued based on financial year (2008-2012), see QBSA *Submission No. 65*, p.69.

The QBSA Act also provides that a company may be excluded from holding a contractor's licence (an excluded company), if an individual who is a director or secretary of, or an influential person for, the company is an excluded individual.

An individual may be permanently excluded from holding a licence if the individual has twice been an excluded individual for a relevant bankruptcy or company event and the QBSA has given the individual a notice under the QBSA Act in relation to the event. In the 2003-2012 financial years, a total of 402 individuals have been permanently excluded under the QBSA Act from holding a contractor's or nominee supervisor's licence.

#### 7.1.4 Auditing (licensing and financial)

**Licence audits:** The QBSA ordinarily conducts a licensing audit twice a year. This involves QBSA inspectors visiting building sites and interviewing all persons performing building work to ensure they are appropriately licensed.<sup>193</sup> However, in 2011-12 the QBSA assisted the Queensland Reconstruction Authority in the assessment of the rebuilding efforts following the widespread flooding of Queensland in early 2011 and the impact of Cyclone Yasi. Instead of conducting two licensing audits of random sites QBSA instead conducted a large number of audits focussing on disaster affected areas. In 2011-12, 2,229 contractors were interviewed at 932 building sites. A relatively high incidence of unlicensed contractors was detected due to the volume of natural disaster work being undertaken.

The QBSA also undertook 20,868 disaster recovery assessments on behalf of the Queensland Reconstruction Authority. This involved quarterly inspections to measure the rate of residential building recovery, inspecting and providing advice on building work, policing licensing and assisting contractors and consumers to ensure they had the appropriate contractual and home warranty insurance arrangements in place.

**Financial audits:** The QBSA also conducts financial audits of licensed contractors<sup>194</sup> as part of its compliance functions. The purpose of the audits is to ensure that licensed contractors continue to comply with the requirements stated in the *Financial Requirements for Licensing* policy of the QBSA Board.<sup>195</sup> Under section 35 of the QBSA Act, it is a statutory condition of holding a contractor's licence that the licensee's financial circumstances must at all times satisfy the financial requirements in the QBSA Board's policies.

## 7.2 Adequacy of the QBSA licensing requirements and auditing processes

While some stakeholders are generally supportive of the current licensing regime<sup>196</sup>, there are many who believe it is too onerous, wasteful and inefficient for a range of reasons.

### 7.2.1 Licence 'creep'

A number of stakeholders have raised the issue of 'licence creep' and cite the increasing numbers and range of licences the QBSA is now requiring.

The Major Subcontractors Group (MSG) considers that:

*There is significant merit in undertaking an independent review of all existing licenses to test for fitness for purpose, costs and benefits...This suggestion is based on MSG member concerns about the 'license creep' where the QBSA has continually sought to capture new parts of the industry that previously did not require licensing, and to introduce new licenses. Such decisions appear to have been largely based on the goals of the QBSA management rather*

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<sup>193</sup> For further information about numbers of site interviews, licence audit outcomes and infringement notices issued, please see the QBSA Submission No. 65, pp.74-75.

<sup>194</sup> Details of the number of these financial audits can be found in the QBSA Submission No. 65, p.75.

<sup>195</sup> <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Accountants/Publications/Financial%20Requirements%20for%20Licensing.pdf> accessed 28 November 2012.

<sup>196</sup> See submission nos 11, 18, 36, 61

*than on a transparent assessment of the costs and benefits (including consumer protection benefits) of expanding the range and coverage.*<sup>197</sup>

Electrite Pty. Ltd. state that:

*(There is) no need to have any builder registration for persons or companies wanting to operate in the commercial building industry. And if the committee feels a must for a registration regime, then it should simply take the form of a register of those in the industry with a nominal fee with allowance for 5 year renewals. ....The current system of annual registration and financial reporting achieves nothing and frankly offers zero security to anyone. It is simply nothing more than another impost on business overheads and a total waste of time and money...The requirement for all the various trade registrations should be scrapped. By allowing all the various registrations you actually aid and abet fools coming into the industry.*<sup>198</sup>

HIA expresses concerns about the requirement for an individual contractor who is operating under a company structure to also have to pay licence fees for a company licence stating that:

*Currently under the provisions of the QBSA Act an individual contractor who is operating under a company structure is required to not only maintain the licence fees associated with the individual trade licence, but also a company licence. The double dipping of licence fees on individuals is an impost that should be removed. This is particularly the case for contractor licence holders as they are small business operators and should not be made to pay almost a thousand dollars annually to have their QBSA individual and company licence. It is a significant burden on small building businesses in Queensland.*<sup>199</sup>

The Australian Institute of Building Surveyors raises concerns about the QBSA continuing to maintain a licence class (Fire Safety Professional) even though it is now obsolete:

*The BSA implemented a license regime for individuals who intend to inspect and/or conduct audits on special fire services on existing buildings...Their intent was to fill a gap that existed at the time with persons conducting fire safety engineering practices, but inadvertently mixed the audit role with the fire safety engineering role. Since then, the Engineers Board have created a license class for fire safety engineers, thereby rendering obsolete, BSA's creation of that license. Discussions between the BSA and industry representatives have recognised this point and all agreed that the BSA drop this license class...We have been given to understand that the BSA Board is having second thoughts over what Industry has clearly expressed should happen...The problems of maintaining this license class are wide ranging, but of particular concern (is) the inability of Building Surveyors who perform this role at the approval stage, not being able to perform this same role, after the approval stage.*<sup>200</sup>

### 7.2.2 Eligibility requirements

Stakeholders have also made a range of suggestions in relation to improving the eligibility requirements for licensing in regard to the experience, financial and technical/qualification requirements.

The BDAQ believes that the current educational and financial requirements for licensing are generally adequate. However, BDAQ also submits that:

*The current experience requirement for building designers to be granted a licence is two years. Common practice is to allow a range of experience gained during the time when the*

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<sup>197</sup> Major Subcontracts Group, *Submission No.35*, p.8.

<sup>198</sup> Electrite Pty. Ltd., *Submission No.7*, p.1.

<sup>199</sup> HIA, *Submission No.38*, p.15.

<sup>200</sup> Australian Institute of Building Surveyors, *Submission No. 50*, pp.1-2.

*applicant is gaining the required qualification. BDAQ believes that two years of experience is inadequate to prepare a person for the responsibility required of a licensed building designer unless it includes experience across a specific range of duties which would be encountered by a building design practice. The experience requirement for a building design licence should be a minimum of two years full time in a building design or architecture office after the educational qualification has been gained.*<sup>201</sup>

The HIA however would like to see the experience requirement removed altogether, stating that:

*In HIA's experience in dealing with licence applications it is the experience requirement that is the most vague and subjective part of the process. The type of work an applicant has done, the extent of that engagement and the quality of that work are all difficult to define and costly for applicants to comply with. Most importantly though HIA argues that the experience requirement is unnecessary as the applicant has already met acceptable industry standards of competence in their field through having the appropriate technical qualification. Duplicating this objective piece of information with opaque experience requirements is a red tape burden that adds no value to the licensing process. If there are views that the technical qualifications are inadequate those views should be channelled through the training authorities rather than add another complex experience requirement to holding a licence.*<sup>202</sup>

The Major Subcontractors Group has raised concerns about the financial requirements stating that:

*In relation to the (financial) auditing process, the cost for MSG members to secure externally audited reports required to satisfy the Financial Requirements for Licensing policy is an expensive, direct cost to the business...The MSG notes that in relation to the residential sector, it appears that notwithstanding QBSA's process for auditing licensees, there remains high numbers of business defaults.*<sup>203</sup>

Mr John Andrew believes that the technical/qualification requirements need to be improved stating that:

*I believe more training before issuing a licence is needed. Industry groups seem to have sped up the process, taking over from TAFE colleges. I'm not convinced this is a good thing although the material taught at TAFE colleges was sometimes dated. Apprenticeship training groups can only be as good as the tradesmen with whom the apprentice is placed. Last year I visited a job site where the apprentice was awaiting the arrival of his training officer. He seemed concerned about updating his log book; however upon the arrival of the training officer, the apprentice was only questioned regarding whether he was being bullied in any way etc. with no examination of competency of the training he was receiving.*<sup>204</sup>

#### **Committee comment**

In accordance with Recommendation 2 of this report, the Committee believes that the licensing and associated regulatory functions currently undertaken by the QBSA should be separated from the dispute resolution and insurance functions by either a legislative and organisational firewall within a new building authority or another appropriate mechanism.

The Committee believes that, while there is broad support for a licensing regime, sufficient concerns have been raised by a number of stakeholders about the current licensing system to warrant an independent review.

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<sup>201</sup> BDAQ, *Submission No. 27*, p.6.

<sup>202</sup> HIA, *Submission no. 38*, p.15.

<sup>203</sup> Major Subcontractors Group, *Submission No. 35*, p.8.

<sup>204</sup> Mr John Andrew, *Submission No. 49*, pp.2-3.

**Recommendation 32**

The Committee recommends that the Minister for Housing and Public Works use evidence provided to this inquiry on the current licensing regime to undertake an independent review of all existing licenses to test for fitness for purpose, eligibility requirements, costs and benefits.

**7.2.3 Section 42 of the QBSA Act: Unlawful carrying out of building work**

Section 42 of the QBSA Act provides that “A person must not carry out, or undertake to carry out, building work (except exempt building work) unless that person holds a contractor’s licence of the appropriate class under this Act.”<sup>205</sup>

The Electrical Contractors Association has raised concerns that this section has the effect of preventing electrical contractors from submitting for jobs that involve an element, no matter how minor, of building work (such as a solar hot water installation). Currently, an electrical contractor is deemed to be in breach of this section for unlicensed contracting if they provide a single invoice to the customer even though the plumbing component of the solar hot water installation was performed by a plumber with the appropriate QBSA license. The Electrical Contractors Association states that:

*In several cases that were brought to our attention earlier this year licensed electrical contractors received substantial fines from the QBSA after installing solar hot water systems. In these instances, the electrical work was completed by fully licensed electrical contractors, while the plumbing component of the solar hot water installation was performed by a plumber with the appropriate QBSA license...In contrast, under section 56(3)(b) of the Queensland Electrical Safety Act a person conducting a business that includes the performance of electrical work, who does not hold an electrical contractors' licence, is not in breach of the unlicensed contracting provisions as long as the electrical work is to be sub-contracted to a person holding the appropriate electrical license. In the interests of ending a restrictive trade practice, the ECA proposes that this provision be replicated in the QBSA Act to allow electrical contractors to submit for the same work as their building counterparts.*<sup>206</sup>

A number of other stakeholders have raised this same issue.<sup>207</sup>

Clayton Utz has also raised concerns about the unintended consequences of Section 42 of the QBSA Act:

*...The licensing provisions of the Act...have...the unintended consequences of putting at risk the enforceability of agreements entered into by commercial parties such as an owner of land agreeing to procure the construction of a building for a tenant (agreement for lease) or a purchaser of the land (development agreement)...The wide scope of section 42 of the Act...is likely to have the consequence that such parties are undertaking to carry out building work (even though), in those instances the party who has agreed to undertake building work will invariably engage a licensed builder to carry out the physical building work...The recent approach of the Queensland Courts has been to adopt a strict interpretation of the Act, and on such an interpretation the undertakings given by these parties under such agreements would likely be caught by section 42 of the Act. The Act could readily be amended without impacting on the objects of the Act by saying a party is not required to obtain a builder's licence if the party that actually performs the physical the building work is in fact appropriately licensed...We request the State consider amending the legislation to make it clear a party that agrees with another party to undertake building work will not be in breach*

<sup>205</sup> Section 42(1) of the QBSA Act 1991.

<sup>206</sup> Electrical Contractors Association, *Submission No. 66*, p.2-3.

<sup>207</sup> Submissions 35 and 64

*of the Act (and therefore put the agreement with the other party at risk) if the actual building work is undertaken by an appropriately licensed builder.<sup>208</sup>*

#### **Committee comment**

The Committee believes that Section 42 of the QBSA Act, which provides that “a person must not carry out, or undertake to carry out, building work...unless that person holds a contractor’s licence of the appropriate class under this Act”, has created unintended consequences for a range of stakeholders.

The Major Subcontractors Group has cited instances where the QBSA has issued penalty infringements and/or deemed licensed electrical contractors unfit to submit for work as a principal contractor where that work might require minor works to be sub-contracted to other licensed tradespeople, for example, minor plumbing works required in a substation refit.<sup>209</sup>

The Electrical Contractors Association provides the example (given above) of licensing arrangements surrounding solar hot water installations whereby an electrical contractor is deemed to be in breach of licensing laws because they act as a principal contractor and subcontract out the minor plumbing elements involved in a solar hot water installation.<sup>210</sup>

The Committee believes that these unintended consequences can be removed without altering the intent of the section.

#### **Recommendation 33**

The Committee recommends that Section 42 of the QBSA Act, which provides that “a person must not carry out, or undertake to carry out, building work...unless that person holds a contractor’s licence of the appropriate class under this Act”, be revised to make it clear that there is no breach of the Act if the “building work” is carried out by an appropriately licensed builder.

#### **7.2.4 Disciplinary regime**

The HIA has expressed concerns that the QBSA is not currently required to provide a detailed explanation as to why or how a banning, disqualification or exclusion decision was reached. The HIA recommend that:

*The QBSA should provide a clear and detailed explanation to licensees and applicants for licences as to what part of their licensing decisions.(sic) Decisions made by the QBSA can have a significant impact on the operation of a business, and could significantly affect the career and livelihood of an individual. A simple and concise explanation could assist the affected party plan their future.<sup>211</sup>*

The HIA has also recommends that:

*There should be a mechanism in place under the QBSA Act for the licence holder to have a decision regarding their licence internally reviewed within a limited timeframe of notification, say 28 days from receiving the statement of reasons, by an established panel made up of senior QBSA personnel and independent external people. This mechanism will enable for a decision within a shorter timeframe, without having major impacts on a contractor’s abilities to earn a livelihood. Licensees would still have the opportunity to appeal to QCAT if they did not accept the panel’s findings.<sup>212</sup>*

<sup>208</sup> Clayton Utz, *Submission No. 45*, p.1.

<sup>209</sup> Major Subcontractors Group, *Submission No. 35*, p.9.

<sup>210</sup> Electrical Contractors Association, *Submission No. 66*, p.2-3.

<sup>211</sup> HIA, *Submission No.38*, pp.13-14.

<sup>212</sup> HIA, *Submission No. 38*, pp.13-14.



### Committee comment

The Committee believes that builders and trade contractors are entitled to an explanation for their banning, disqualification or exclusion from holding a licence. Further, the Committee is supportive of establishing a timely process for the review of banning, disqualification and exclusion decisions (prior to proceeding to QCAT) to provide for natural justice. However, the Committee does not agree with the HIA's suggestion for the QBSA to establish an internal process to review its own decisions.

### Recommendation 34

The Committee recommends that:

- the Minister for Housing and Public Works investigate the value of establishing a structure and/or process for the review of disciplinary decisions (prior to escalation to QCAT) and
- in implementing the disciplinary regime, the new building authority incorporate the provision of explanations for banning, disqualification and exclusion decisions to the licensees/applicants.

Regarding the exclusion criteria, the HIA states that:

*The current determinations of "excluded" and a "permitted" individual under the QBSA Act are ambiguous to say the least. The format of determining excluded and permitted status relies on 'event' deeming provisions. One 'event' can result in an individual becoming unlicensed for five years, whereas two 'events' can result in the individual becoming permanently excluded... The biggest concern is that what most people would regard as one event counts as two in the provisions of the Act. Where a building company fails this often results in the bankruptcy of the directors. While the failure of the business and the bankruptcy had the same cause, the Act requires these to be counted as two events resulting in permanent exclusion from the industry of the director.<sup>213</sup>*

### Committee comment

The Committee is concerned that the QBSA's approach to the deeming of financial events (such as bankruptcy, insolvency, etc.) has an adverse and potentially unfair impact on licensees.

The QBSA currently deems the failure of a business and the consequential bankruptcy of the individual directors as two events. While one financial event recorded against an individual can result in that individual becoming unlicensed for five years, two financial events recorded against a licensee results in permanent exclusion.

### Recommendation 35

The Committee recommends that the Minister for Housing and Public Works seek amendment to the QBSA Act to provide that where an individual's 'relevant bankruptcy event' and 'a relevant company event' stem from the same financial incident, that they be deemed one event for the purposes of penalties.

A range of other stakeholders have expressed concerns about the current banning, disqualification and exclusion regime, specifically, that the penalties are often not issued, that they do not act as a disincentive to building contractors and that the regime (of banning, disqualification and exclusion) is not fully and properly implemented.<sup>214</sup>

<sup>213</sup> HIA, *Submission No. 38*, p.14.

<sup>214</sup> Submissions 2, 3, 5, 6, 17, 20, 21, 24, 29, 30, 46, 47, 59, 91, 92, 93, 101, 103

A confidential submitter states that:

*Then you find out later that many builders have lost licences before, and yet continue to spring straight back again with new companies, often taking a break to do an 'owner build' or own project during their period of suspension. They can apply again within three years. This is a ridiculous short time of penalty compared to the damage they cause to the consumer, when they should be banned for life.*<sup>215</sup>

Ms Catherine Cleary states that:

- *Defective work is reduced in BSA Direction to Rectify.*
- *No repercussions for the builder for a Failure to Rectify.*
- *Unsatisfactory work is considered acceptable...*
- *Wrong doing such as "unlawful carrying out of building work" is overlooked and Demerit points are often not issued.*<sup>216</sup>

Mr Mark Beilby states that:

*QBSA building inspectors repeatedly attempted to closes cases which had category 1 defects without rectification...(we were) offered cash settlement for monies to be paid into bank account of our choice with no conditions by the general manager of the QBSA. This would leave the dwelling with existing category 1 defects.*<sup>217</sup>

One stakeholder, in a private submission, states that:

*Both the BSA Resolution Managers advised that this crack was a Category 1 defect and should be presented to the BSA if any future claims are presented (which there were). This defect was presented to the BSA in May 2012 claim of items however the BSA inspector found this item was not a defect. So I asked "was it" or "was it not" a defect? The BSA Inspector was advised of the comments from the two (2) BSA Resolution Managers however this information was ignored.*<sup>218</sup>

Another private submitter states that:

*I believe the BSA has introduced a claim management technique...To achieve this goal, the BSA allows builders to trade insolvent until they announce insolvency giving these persons a fraudulent unjust enrichment opportunity...When consumers with costly tier one defects, are pushed into the tribunal by the BSA or dodgy builder, this practice saves the BSA and the builder the cost of rectification and allows the builder to continue trading with a clean licence (no directions).*<sup>219</sup>

Rodney and Pieta Cedaro state that:

*The builder in question had been trading whilst insolvent for more than 12 months. The QBSA auditing system didn't manage to pick this up either. If it had (have) the builder in question would have been disqualified under the QBSA's guidelines, his license revoked and we'd have never been exposed to him. Another shortcoming of the QBSA.*<sup>220</sup>

Electrical Contractors Association states that:

*Members have also suggested that in order to discourage builders from relying on liquidation laws to avoid debts, a comprehensive database should be kept by the QBSA which would record the details of builders who have become bankrupt and banned from conducting business for a period of time. If such a list were to be made publicly available, consumers would be reluctant to engage these businesses. This could act as a powerful deterrent to*

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<sup>215</sup> Confidential, *Submission No 54*, p.2.

<sup>216</sup> Buderim Clinic, *Submission No.43*, p.3.

<sup>217</sup> Mr Mark Beilby, *Submission No. 25*, p.2.

<sup>218</sup> Private, *Submission No. 93*, p.2.

<sup>219</sup> Private, *Submission No. 24*, p.7.

<sup>220</sup> Rodney and Pieta Cedaro, *Submission No. 2a*, p.4.

*unscrupulous builders trying to avoid paying subcontractors by hiding under the shield of bankruptcy.*<sup>221</sup>

#### Committee comment

The Committee is concerned that, while the current regulatory framework for disciplinary action seems sound, there appear to be numerous instances where the QBSA has failed to properly implement its own system which has resulted in untold numbers of licensees continuing to freely operate and has compromised the protection of the consumers. The Committee believes that the disciplinary regime should act as a disincentive for licensees to abrogate their responsibilities and obligations under all relevant legislation.

#### Recommendation 36

The Committee recommends that the new building services authority:

- review the current disciplinary regime for licensees with a view to strengthening penalties where appropriate
- implement the regime in a comprehensive and consistent manner and
- establish a rigorous ongoing auditing process to ensure compliance.

#### 7.2.5 Auditing processes

A number of stakeholders expressed a range of views about the QBSA's auditing processes. While the Master Builders informed the Committee that it doesn't see the need for any additional auditing requirements<sup>222</sup>, the Australian Timber Flooring Association submits that:

*It is felt that the QBSA don't police the timber flooring industry at all and don't pursue the unlicensed operators, the QBSA only penalise those who do the right thing, those who are licensed, regarding minor misdemeanours.*<sup>223</sup>

Timber Queensland also states that:

*Auditing of standards and processes could probably be increased and improved, but it is recognised that significant resources would be needed to achieve this.*<sup>224</sup>

#### Committee comment

The Committee considers that a significant number of the disciplinary regime issues raised in submissions (see Section 7.2.4) stem from the QBSA's inadequate implementation of its current auditing processes and systems. Further, the Committee considers the scale and volume of licensee breaches of building codes and standards in Queensland to be one of the critical issues in this inquiry and notes that the QBSA's current approach (to auditing licences and finances) fails to monitor or supervise this critical area.

The Committee also notes with concern the high rates of licence infringement notices issued in ratio to the number of investigations carried out.<sup>225</sup> Therefore, the Committee believes that the new building authority should, in addition to the current audit regime and as a priority, introduce audits of building standards and codes to ensure standards of work across the State are maintained and that both consumers and licensees are protected.

<sup>221</sup> Electrical Contractors Association, *Submission No. 66*, p.5.

<sup>222</sup> Master Builders, *Submission No.61*, p.6.

<sup>223</sup> ATFA, *Submission No. 33*, p.3.

<sup>224</sup> Timber Queensland Ltd., *Submission No. 18*, p.4.

<sup>225</sup> QBSA, *Submission No. 65*, p.75.

### Recommendation 37

The Committee recommends that the new building authority:

- retain the current audit regimes (i.e. licence and financial audits) with a view to increasing the numbers and effectiveness of these regimes and
- implement a new audit regime to check routinely for compliance with building standards and codes.

#### 7.2.6 Online licence search facility<sup>226</sup>

Under the QBSA Act the QBSA is required to keep a register of licensees. The Licensee Register contains particulars about each licensee including information regarding:

- the classes of licence held
- directions given to the licensee requiring rectification of building work
- offences committed by the licensee against the QBSA Act or the DBC Act and other disciplinary history
- the application of demerit points
- licence suspensions and cancellations and
- the number and value of residential construction work carried out by the licensee.

The Licensee Register is available for inspection at the offices of the QBSA and on the QBSA's internet site. The QBSA provides an online licence search facility on its internet site. The search facility enables consumers and building industry participants to confirm that a contractor is appropriately licensed and review the contractor's licence history prior to entering into a contract for building work.

Some stakeholders recommend the removal of the online public record altogether while others recommend that all complaints about a builder be included on the site.

HIA proposes that:

*The online public record be removed all together. Instead HIA proposes that the "builder rating" proposal (explained in detail in its submission) would be a more acceptable and easier method to use for all concerned.*<sup>227</sup>

Russell and Clare Bach recommend that:

*The QBSA make available on the builder's licence search section of the QBSA website all complaints about a builder investigated by the QBSA with the decision of the QBSA ( e.g dismissed, guilty, recommended actions, warning issued, removal of licence) . This would then be similar to that for certifiers.*<sup>228</sup>

Building Approvals and Consultancy make the following suggestion:

*An easier way for persons to be able to identify licenses could be through more user friendly license information viewing via the computer system/web site of Q.B.S.A. i.e. outline current license type/s and restrictions being completely separate to history of licensee, all in easy readable versions. The Fire Licenses particularly tend to be complex currently and could be simplified.*<sup>229</sup>

<sup>226</sup> Information in this section is taken from QBSA Submission No. 65, p.37 unless otherwise stated.

<sup>227</sup> HIA, Submission No.38, p.15.

<sup>228</sup> Russell and Clare Bach, Submission No. 72, p.3.

<sup>229</sup> Building Approvals and Consultancy, Submission No.78, p.1.

### Committee comment

The Committee is of the view that there is significant merit in retaining the current online licence search facility but acknowledges that, in disclosing information about a licensee's status, a balance must be struck between safeguarding the licensees and informing consumers.

The Committee has received numerous submissions<sup>230</sup> which claim that the online search facility is not properly maintained with up to date information about a contractor's QBSA status.

### Recommendation 38

The Committee recommends that the online search facility be reviewed to ensure that consumers are able to access as much relevant and substantiated information as legally possible about a builder's status and that provision be made by the new building authority for the database to be maintained on a regular and ongoing basis.

#### 7.2.7 Continuing Professional Development (CPD) for contractors

Numerous stakeholders have suggested that Continuing Professional Development (CPD) be made compulsory within the building industry. Several stakeholders have further suggested that eligibility for licences be linked to ongoing, mandated CPD while others express support for the involvement of industry groups in the provision of CPD.<sup>231</sup>

Mr Mick Rendell states that:

*A formal CPD scheme should be a prerequisite for licensing. This will cause practitioners to be current with their skills in an environment that is constantly changing and will eliminate those inactive licensees that no longer work in the industry.*<sup>232</sup>

As the Australian Master Tilers Association points out:

*The need for ongoing professional development for license holders has been identified in the past, but unfortunately a system where a license holder is required to attend a certain number of approved and endorsed educational sessions has not been put in place. We believe the implementation of a compulsory professional development program as condition for license renewal, should be considered. These programs could be delivered and endorsed by both the BSA and Industry bodies.*<sup>233</sup>

Mr Robert Davies from Bonafide Building Approvals states that:

*There does not seem to be a way of up skilling tradespeople, it is only voluntary. The rules change every week. The designers, trades, & architects & engineers are not keeping up with the legislation. How about cutting down on all the misconceptions, mistakes & general apathy towards the changing rules & make it a condition upon having a valid licence to keep up with the rules? Is too much to ask? We already have great responsibility to get it right, but it is continually falling on us to educate the rest, when any mistake is going to be costly & time consuming.*<sup>234</sup>

Timber Queensland Inc. states that:

*TQ strongly supports the need for CPD across the whole building sector and believe greater industry participation would greatly assist in reducing disputes and delivering better outcomes for both contractors and consumer. We would encourage the Government to initiate means to achieve greater uptake of CPD either by making it compulsory as a license*

<sup>230</sup> Submissions 2, 3, 5, 24, 59, 93, 101.

<sup>231</sup> Other submissions that support CPD include submissions 78, 80, 90, 98 and 102.

<sup>232</sup> Mr Mick Rendell, *Submission No. 11*, p.2.

<sup>233</sup> The Australian Master Tilers Association, *Submission No.90*, p.3.

<sup>234</sup> Bonafide Building Approvals, *Submission No. 28*, p.4.

*condition or alternatively, by offering inducements or offsets to licensees where they voluntarily undertake CPD.*<sup>235</sup>

Many stakeholders, including Timber Queensland have also suggested that there is a role for industry groups to play in continuous professional development:

*Both formal and informal CPD should be accepted and approved by QBSA under appropriate guidelines and delivery of CPD should be open to all industry groups, and associations etc. that can demonstrate their bona fides. We would also encourage QBSA to continue to deliver CPD in their own right as they will be able to address specific needs that others may not have an interest in or knowledge to deliver.*<sup>236</sup>

The Master Builders state that:

*There is an important role for industry groups such as Master Builders to improve the skills, knowledge and judgement of members. To that end Master Builders is developing a voluntary Continuing Professional Development scheme with the aim of improving the quality of building, enabling members to be more productive and increasing consumer confidence in the sector. We would be grateful for any support the BSA could provide in developing a voluntary CPD system.*<sup>237</sup>

BDAQ state that:

*Mandatory Continuing Professional Development for building designers should be introduced or a CPD schimne[sic] managed by an industry association should be mandated. BDAQ has developed the framework for a Code of Practice for design and documentation of building projects which is used in our own CPD training sessions for members. Based on the research carried out and reported in 2005 in "Getting it Right the First Time" savings of 10 – 15% on the cost of building can be achieved by improving the quality of documentation across all sectors. There are additional non-monetary savings to be achieved by reduced disputes, reduced delays and re-work.*<sup>238</sup>

Mr John Andrew recommends a points system, stating that:

*A point system would mean compulsory attendance to training programs and Webb sites etc. that allow easier access to Australian Standards etc. Membership with HIA and Master Builders and improve awareness and skills of the tradesmen.*<sup>239</sup>

### **Committee comment**

The Committee believes that the continuing professional development (CPD) of licensees is critical to the overall improvement of compliance with standards and therefore, a reduction in the number and severity of incidences of defective work. The Committee also notes broad support from the building industry and associated trades for the introduction of mandatory CPD.

### **Recommendation 39**

The Committee recommends that the Minister for Housing and Public Works investigate:

- the benefits of mandatory Continuing Professional Development (CPD) for all licensees and
- the potential to link mandated CPD to licence eligibility requirements.

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<sup>235</sup> Timber Queensland, *Submission No.18*, p.3.

<sup>236</sup> Timber Queensland, *Submission No.18* p.3.

<sup>237</sup> Master Builders, *Submission No. 61*, P.6.

<sup>238</sup> BDAQ, *Submission No. 27*, p.5.

<sup>239</sup> Mr John Andrew, *Submission No. 49*, pp.2-3.

### 7.3 The coverage of trades by the QBSA and the role of industry groups

#### 7.3.1 Background<sup>240</sup>

##### Trades licensed by the QBSA

The QBSA Act establishes a licensing system for contractors and supervisors carrying out building work and for workers performing fire protection work. The QBSA does not license or regulate the following building related professions:

- professional engineers registered under the *Professional Engineers Act 2002*
- architects registered under the *Architects Act 2002*
- electrical contractors and electrical mechanics licensed under the *Electrical Safety Act 2002*
- plumbers and drainers (other than contractors) licensed under the *Plumbing and Drainage Act 2002*
- gasfitters (other than contractors) licensed under the *Petroleum and Gas (Production and Safety) Act 2004* and
- surveyors registered under the *Surveyors Act 2003*.

Mr Michael Nash expresses concern that all participants involved in building projects (ie. architects and engineers) are not required to be licensed by the QBSA.

*Integral to the house are the plans and specifications, these are often produced and overseen by architects and engineers. Neither architects nor engineers are required to be licensed under the BSA act as it stands now...Quite simply if you are going to have any watertight process to determine fault of any house building matter **ALL** participants need to be answerable to the umpire (BSA in this case). Today that is not the case and certain professions have sought to be outside the system and this can/does lead to unfair delivery of adjudication in many matters...Having integral parts of the process outside the system is akin to the warranty for my car becoming invalid because the producer of the wheels is not accountable to the manufacturer.<sup>241</sup>*

Brookfield Multiplex agrees stating that:

*The Queensland licensing system is a broad based system spread over a number of entities representing various professional bodies. We have witnessed a more streamlined approach in other states that have moved to a single licensing regulator overseen by a board of industry participants. In our opinion, this single licensing regulator model has merit.<sup>242</sup>*

However, the Major Subcontractors Group remains strongly supportive of the maintaining the separate licensing arrangements for electricians, stating that:

*Electrical sub-contractors in the MSG remain strongly supportive of the existing arrangements for electrical licensing to be contained within the separate Electrical Safety Act 2002 (Qld). The responsibility for this Act resides with the Attorney General and Minister for Justice holding responsibility for this legislation. Electrical contractors are not required to be licensed by the QBSA, unless they engage in building works.<sup>243</sup>*

##### The role of industry groups within the QBSA

Stakeholder groups take a role within the QBSA through representation on the Board and the following committees (appointed under Section 14 of the QBSA Act):

- Insurance Committee
- Financial and Audit Review Committee

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<sup>240</sup> All information taken from the QBSA Submission No. 65 unless otherwise stated.

<sup>241</sup> Mr Michael Nash, Submission No. 15, p.5.

<sup>242</sup> Brookfield Multiplex, Submission No. 69, p.3.

<sup>243</sup> Major Subcontractors Group, Submission No.35, p.9.

- Policy Committee
- Licensing Committee
- Fire Occupational Licensing Committee.

While some stakeholders have expressed concerns about the involvement of Industry Groups in licensing, others are broadly supportive.

G and M Walker state that:

*We do not believe that industry groups should take a role in terms of licensing standards or procedures for their members. This would create a serious conflict of interest. The viability of "Industry Groups" is dependent on membership fees just as trade unions are dependent on membership fees. This conflict of interest would only serve to increase the risk of standards declining, it may also place financial impost on quality contractors feeling forced to join these associations.*<sup>244</sup>

Mr Jonathan MacDonald states that:

*The QBSA needs to be in control of all licensing of Building trades as the Authority, without any involvement from industry groups as industry groups are self interested and cannot be allowed to control standards.*<sup>245</sup>

Mr Mick Rendell concurs stating that:

*It is difficult to understand how equity would be maintained with involvement by contractor organisations apart from the current Board appointments. i-HA (sic) and MBA perform a role to educate their members; it is worth commenting that only around 15% of building contractors are in these organisations.*<sup>246</sup>

A number of stakeholders are cautiously supportive. For example, while the Major Subcontractors Group is supportive of industry groups (peak and smaller industry groups) playing a greater role in licensing standards, it also states that:

*Whilst industry groups should play a role in licensing procedures, caution is required to ensure that the licensing system overall is as efficient and cost effective as possible. Dilution of centrally administered procedures and/or widespread procedural modifications based on individual sectors could risk introducing greater inefficiency.*<sup>247</sup>

Timber Queensland Ltd agrees stating that:

*There is potential for industry groups to have a greater role within QBSA in standards and procedures appropriate to licensing of their members however not all licensees are members of a representative organisation and compulsory membership would be a very contentious issue. 'Conflict of interest' issues may also arise where representative industry groups had charge of auditing their own members versus their non-members.*<sup>248</sup>

The Australian Timber Flooring Association (ATFA) concurs, stating that:

*The QBSA have little effect in the timber flooring industry, it would make sense to create a working partnership with ATFA.*<sup>249</sup>

Landscape Queensland states that:

*Landscape Queensland with the assistance of Horticulture Australia Ltd, has developed Industry Accreditation and Certification schemes... As the softscape or non-structural areas of*

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<sup>244</sup> G and M Walker, *Submission No. 75*, p.3.

<sup>245</sup> Mr. Jonathan MacDonald, *Submission 48*, p.3.

<sup>246</sup> Mr Mick Rendell, *Submission No. 11*, p.2.

<sup>247</sup> Major Subcontractors Group, *Submission No. 35*, p.9.

<sup>248</sup> Timber Queensland Inc., *Submission No. 18*, p.4.

<sup>249</sup> ATFA, *Submission No. 33*, p.3.



*landscaping are largely unregulated, industry has designed these schemes in an attempt to self-regulate. The requirements for industry accreditation also include the holding of appropriate licenses and qualifications including those issued by the QBSA and other regulatory and training bodies. It is noted that licensed electricians and plumbers are required to maintain an industry association membership through their respective industry peak bodies to meet licensing requirements. This requirement could be an additional requirement for landscapers wishing to be QBSA licensed.*<sup>250</sup>

The Solid Plasterers Alliance Queensland also state that:

*There is a great opportunity however to involve Industry Associations in the issuing of Licenses and the required level of pre-checks of applications. License Applications should be checked and verified by Qualified Tradespeople with current Industry knowledge. This would provide applicants with an opportunity to discuss their application with Trade Qualified, experienced assessors, who could examine the application with better judgement and flexibility, as opposed to the "pigeon hole" type system that currently exists. Associations may also be able to suggest suitable relevant solutions for applications that are falling short of the mark.*<sup>251</sup>

Some stakeholders believe that industry groups should take sole responsibility for governance of the industry with LK and HM Young stating that:

*Industry groups as an example HIA, QMBA should be the sole consultancy organisation providing education, training, professional advice and independent governing body to ensure sound professional interpretations of disputes and or assistance as required, developing a more equitable resolution between ail (sic) stakeholders within the construction industry.*<sup>252</sup>

#### **Committee comment**

The Committee believes that there is some scope for industry associations to be more involved in the licensing of trades however it is wary of inadvertently creating new conflicts of interest and/or cumbersome or duplicative licensing regimes.

The Committee is not supportive of industry associations taking sole responsibility for licensing of trades.

#### **Recommendation 40**

The Committee recommends that the Minister for Housing and Public Works use the evidence provided to the inquiry to examine ways in which the industry groups can take a greater role within the newly formed building authority in terms of licensing standards and procedures for their members.

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<sup>250</sup> Landscape Queensland, *Submission No. 36*, pp.3-5.

<sup>251</sup> The Solid Plasters Alliance Queensland, *Submission No. 73*, p.3.

<sup>252</sup> LK and HM Young, *Submission No. 10*, p.5.

## 7.4 National licensing<sup>253</sup>

In February 2006, the Council of Australian Governments (COAG) agreed to new measures to enable people with trade qualifications to work in any State or Territory in Australia without the need to undergo additional testing and registration processes. An important aim of a national licensing system is to remove overlapping and inconsistent regulation among the jurisdictions resulting in red tape reduction and improved labour mobility and productivity. The scheme will allow licensees to perform regulated work anywhere in Australia whilst holding a single national license.

The national occupational licensing system is based on cooperative national legislation being introduced by all jurisdictions. On 5 November 2010, Queensland passed the *Occupational Licensing National Law (Queensland) Act 2010* giving effect to the Intergovernmental Agreement signed in April 2009. Since the passing of the national law, the policy development process has continued and has resulted in changes to a number of assumptions that were made at the time the national law was initially drafted. These changes are substantive and require an Amendment Bill to be passed in Victoria prior to adoption in the other participating jurisdictions.

The national regulation will be implemented in two stages with both stages now being implemented in 2013 (rather than 2012 as originally planned). Stage I will include property-related (excluding conveyancers and valuers), electrical, plumbing and gasfitting, refrigeration and air-conditioning.<sup>254</sup> Stage II will include all remaining occupations, including building and related occupations.

Extensive consultation has been undertaken over the last half of 2012 by the COAG National Licensing Taskforce including:

- the release of Regulation Impact Statements
- the release of consultation drafts of legislation
- information/ consultation sessions in all capital cities and
- public submissions were invited (closing date in October 2012).

Several stakeholders have raised concerns about the national licensing regime including Timber Queensland Inc. which states that:

*We (also) have considerable concerns regarding the proposals to introduce/adopt a National Occupational Licensing Scheme for Queensland as agreed by the previous Government at COAG. Industry and Government in Queensland have invested millions of dollars in education and training over the past few decades to raise the standards of construction to address Queensland's specific climatic challenges, and to deliver strong, durable housing that meets or exceeds the actions generated by our climate, cyclones and storms. There is already some evidence that where southern contractors have come into our markets to undertake work post disasters that repairs and reconstruction have been found wanting in subsequent events.*<sup>255</sup>

Stakeholders seem particularly concerned about the reduction in the number of licence classes as proposed in the reform. The Australian Institute of Building states that:

*AIB questions whether moving from 60 licence classes as currently exist in Queensland to 20 classes under the national model will adequately protect consumers.*<sup>256</sup>

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<sup>253</sup> Information taken from Mr Wayne Jarred, Queensland Parliamentary Library and Research Service, *The establishment of a national licensing system for specified occupations*, unless otherwise stated.

<sup>254</sup> <http://nola.gov.au/resources/faqs/#Question5> accessed 22 November 2012

<sup>255</sup> Timber Queensland, *Submission No.18*, p.4.

<sup>256</sup> Australian Institute of Building, *Submission No.84*, p.3.

The Master Builders state that:

*We have grave concerns about the push to national licensing. In our view the cost of the likely outcome far outweighs the benefits. Cutting the 60 licence classes for builders and trade contractors back to less than 20 (under the national licensing reform) would be a very bad outcome for consumers, who want peace of mind that they're engaging a professional building contractor.*<sup>257</sup>

#### **Committee comment**

The Committee notes the concerns raised in submissions about the proposed national licensing system. However, as the national licensing system is being considered through a separate process, the Committee does not wish to make any specific recommendations in this regard.

The Committee is however concerned that the recommendations contained within this report are considered separately to the national licensing scheme process.

#### **Recommendation 41**

The Committee recommends that the Minister for Housing and Public Works take the recommendations contained in this report into consideration before agreeing to any timeframes for the introduction of the draft Regulations stemming from the National Occupational Licensing System.

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<sup>257</sup> Master Builders, *Submission No. 61*, p.6.

## 8 Reducing regulation to lower the cost of building a home

### 8.1 Introduction

The Committee's terms of reference for this inquiry asked it to consider whether the QBSA could make further changes in order to reduce regulation to lower the cost of building a home.

The QBSA advises in its submission that it undertakes a number of activities that mitigate the cost of building a home including:

- Under the DBC Act, all contracts must be in writing and comply with requirements stated in the Act. The QBSA publishes a domestic building contract and associated documents suitable for the construction of a home. The published contract complies with the DBC Act and is available free of charge on the QBSA's website.
- The QBSA provides a free dispute resolution service in relation to complaints about defective or incomplete building work. This service minimises the costs that would otherwise be incurred by consumers and contractor in resolving a dispute, including costs associated with potential legal action.
- The QBSA provides free education seminars for consumers and contractors throughout the State relevant to the construction of a home. These seminars include information as to how to avoid common causes of dispute and defective building work. (Sub 65 p.25)

### 8.2 Evidence received by the committee on reducing regulation

In general, homeowners who commented on this term of reference, were concerned that any reduction in regulation could result in an increase in substandard work, for example Mr Don Jender submits:

*I imagine the building industry would like BSA reform with a view to having less BSA regulation of building activity, since it is often faster and cheaper to build substandard work, and hope to fend off complaints later. Obviously this type of reform is against the interests of consumers.<sup>258</sup>*

Mr Glen Place cannot identify meaningful ways to reduce QBSA regulation:

*I can't see any way that QBSA could make changes to reduce regulations to lower the cost of building a home.*

*The BSA insurance scheme is the best in Australia. It has the best protection for consumers.*

*License fees forms a small part of the cost of doing business in the building industry. The cost of compliance with financial requirements may be perceived to be greater but in reality the requirements simply form the minimum financial review that should be undertaken by any business. The cost to businesses and consumers of a business trading while insolvent is far greater than the impact of the cost of compliance.*

*For building designers, the requirement is for Professional Indemnity Insurance which is important as a consumer safety net.*

*Poor documentation is contributing to the increased costs of residential subdivisions and the construction of houses.<sup>259</sup>*

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<sup>258</sup> Mr Don Jender, *Submission No.32*, p.6.

<sup>259</sup> Mr Glen Place, *Submission No.80*, p.2.

The BDAQ concurs and suggests one way of reducing housing costs would be to introduce mandatory CPD for building designers:

*BDAQ believes that regulation overseen by BSA has little impact on the cost of building a house. The licence fee forms an insignificant part of the cost of doing business in the building industry. The cost of compliance with financial requirements may be perceived to be greater but in reality the requirements simply form the minimum financial review that should be undertaken by any business. The cost to downstream businesses and consumers of a business trading while insolvent is far greater than the impact of the cost of compliance. For building designers, the requirement is for Professional Indemnity Insurance which is important as a consumer safety net and to protect the business and family of the building designer.*

*BSA could support industry to raise the quality of documentation and hence reduce housing costs by;*

- *supporting industry up-skilling measures by mandating continuing professional development for building designers,*
- *enabling early intervention to allow better monitoring of the quality of documentation.*<sup>260</sup>

The AMTA agrees that the issue is not about QBSA regulation but rather the costs of development and building approvals:

*The AMTA does not believe that reduction in BSA regulations could achieve significant cost savings in the construction of a new home. The license fees are reasonable and the potential negative impact on consumers of a reduction the financial requirements for Building Contractors far outweighs any potential cost savings.*

*In our opinion the costs associated with gaining Development and Building Approvals at a local government level constitute a significantly higher financial burden on the building industry. We believe that a speedier, more streamlined approval process is more likely to not only lower the cost of building a home, it would also aid in the economic recovery of the Building Industry.*

*The approval process, from the time a developer purchases a block of land to the eventual Building approval to begin construction of homes can take years. Compared to the costs attached to this process, the financial burden imposed on Building Contractors due to BSA regulations is relatively insignificant.*<sup>261</sup>

Timber Queensland agrees that it would be preferable to reduce regulation in other areas:

*Timber Queensland's experience is that the most significant cost burdens imposed on the building industry due to regulations are those that result from planning constraints, local authority head works charges, unnecessary or overly conservative building regulations, compliance with environmental legislation and also WH&S legislation. Other than total repeal of the QBSA Act, licensing and the warranty schemes, which we believe would not be acceptable to the public, we do not see where any significant savings could be achieved by a reduction in the regulations.*<sup>262</sup>

Mr Don Jender:

*It is important to consider the cost of building a house in the context of total cost of ownership, plus the intangible costs. The purchase price paid to the builder is only the start of the total cost, and it may not be desirable to try to absolutely minimize that purchase price. For instance, in the absence of effective standards and regulation, a builder might build a*

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<sup>260</sup> BDAQ, *Submission No.27*, pp.2-3.

<sup>261</sup> The Australian Master Tilers Association, *Submission No.90*, p.2.

<sup>262</sup> Timber Queensland, *Submission No.18*, p.2.

*lower priced house. However the buyer might pay considerably more over the years in trying to fix the defects in the house, not to mention the uncosted time and emotional cost involved.*

*My impression is that, on paper, the current systems of standards and regulation should produce houses of reasonable price and quality. However, in practice this often does not happen. There are many reasons for this, such as builders not knowing or not working to standards (to cut costs), and inadequate regulation of building work by the BSA.*

*My view is that what is needed is more effective enforcement of the regulations which currently exist.<sup>263</sup>*

#### **Committee comment**

The Committee notes that submissions on this term of reference do not provide the Committee with sufficient evidence to make any recommendations about regulation within the charter of the QBSA that could be amended to reduce the cost of building a home in Queensland.

The Committee is of the view that the reforms recommended in this report will reduce the cost of building compliance by improving the efficiency of the dispute and rectification services provided by the QBSA.

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<sup>263</sup> Mr Don Jender, *Submission No.32*, p.32.

## Appendices

### Appendix A – List of Submissions

Sub #	Submitter
1	Mr James Laird
2	Rodney and Pieta Cedaro
3	Mr and Mrs Evans
4	RPK Publications
5	KJ Graham
6	Mr Jeff and Mrs Carol Tucker
7	Electrite Pty Ltd
8	Mr Ladislav and Mrs Catherine-Ann Morlok
9	Mr Malcolm Cronk
10	L.K and H.M Young
11	Mr Mick Rendell
12	Mr Jethro Andersen
13	Mr Sidney Marr
14	James Conomos Lawyers
15	Michael Nash Constructions
16	Consumers Federation of Australia
17	Ms Teresa Wareing
18	Timber Queensland Ltd
19	Mr Rebel Dobson
20	Mr Noel Matsen
21	Rainforest Gems
22	Private
23	Mr Nev Whittle
24	Confidential
25	Mark Beilby and Catherine McGrath
26	Builders Collective of Australia
27	Building Designers Association of Queensland Inc

28	Davies Bonafide Building Approvals
29	Ms Deborah Brown
30	Mel and Heidi Wyeth
31	Mr Alan English
32	Mr Don Jender
33	Australian Timber Flooring Association
34	Mr Thomas Ward
35	Major Sub-Contractors Group
36	Landscape Queensland Industries Association inc
37	InterRISK Queensland Pty Ltd
38	Housing Industry Association
39	Mr and Mrs Tucker
40	David and Jenny da Costa
41	Mr Lev Mizikovsky
42	Sandgate Brighton Child Care
43	Buderim Clinic
44	Brett and Elizabeth Grayson
45	Clayton Utz
46	Mrs F M Sanders
47	Mr Elizabeth Bourne
48	Mr Jonathan MacDonald
49	Mr John Andrew
50	Australian Institute of Building Surveyors
51	Confidential
52	Confidential
53	Confidential
54	Confidential
55	Mr Rob Thomson
56	Mr Paul Buchanan
57	Aqualine Apartments



58	TJ and LM Donohue
59	Ms Judith Turner
60	Private
61	Master Builders
62	Smart Sewage Solutions Pty Ltd
63	The Association of Hydraulic Services Consultants Australia
64	Confidential
65	Building Services Authority
66	Electrical Contractors Association
67	Private
68	Dr Wathib Jabouri
69	Brookfield Multiplex
70	Ms Jill Van Dorssen
71	Paul and Jocelyn Jamieson
72	Russell and Clare Bach
73	Solid Plasterers Alliance Queensland
74	Civil Contractors Federation Queensland Branch
75	G and M Walker
76	Local Government Association of Queensland
77	Scott
78	Building Approvals and Consultancy Pty Ltd
79	Open Plumbing
80	Mr Glen Place T/a Place Designs
81	Master Plumbers Association of Queensland
82	Mr Jonathan H Sive
83	Asset Outdoor Additions Pty Ltd
84	The Australian Institute of Building
85	Mr and Mrs Conway
86	Confidential
87	Confidential

88	Matthews Hunt Legal
89	Mr Wayne Orenshaw
90	Australian Master Tilers Association
91	Jolyon Ellis and Doris Grosskurth
92	Sharon, Springfield Lakes
93	Private
94	Private
95	Mr Ian Lydiard
96	Brisbane Certification Group
97	RICS Oceania
98	Mr Carl Martin
99	Confidential
100	Mr Michael Gilbert
101	Mr Heath Rainbow
102	Building Advisory Group
103	Mr Philip Eason
104	Mr Adam Webb
105	Ms Catherine Cleary
106	Mr Neil Patmore
107	Mr Mario Menso
108	Mr Rick Waters
109	Mr Malcolm Varty

## Appendix B – Witnesses at the public briefing

### Monday, 27 August 2012 at the Queensland Parliament

<b>Witnesses:</b>
Mr Nick Newton, Chair – Building Advisory Group
Ms Christine Eason, Secretary – Building Advisory Group
Mr Warwick Temby, Executive Director – Housing Industry Association
Mr Graham Cuthbert, Executive Director, Master Builders Queensland
Mr John Gaskin, Chair – Queensland Building Services Board
Mr Ian Jennings, General Manager – QBSA
Mr Ian White, Deputy General Manager, Operations and Service Delivery - QBSA
Mr Jason Smith, Deputy General Manager, Policy, Strategy and Communications - QBSA

**Appendix C – Witnesses at the public hearing**

Monday 8 October 2012 at the Queensland Parliament

<b>Witnesses</b>
Mr Michael Coonan
Mr Philip Eason
Mr Don Jender
Mrs Clare Bach
Dr Russell Bach
Mr William Tucker
Mrs Heidi Wyeth
Mr Mel Wyeth
Ms Katherine Clarke
Ms Catherine Cleary, Buderim Clinic
Mr Bruce Moore, President – Homesure Consumer Association
Mrs Fay Sanders - Homesure Consumer Association
Ms Pauline Wilson
Mr John Andrew
Mr Jonathan MacDonald
Mr Michael Nash
Mr Adam Webb
Mr Warren Fletcher, Chair – Australian Timber Flooring Association
Mr Frank Moebus, Managing Director – Australian Master Tilers Association Ltd
Mr Malcolm Richards, CEO – Electrical Contractors Association
Mr Kelvin Slade, Councillor – Master plumbers Association
Mr Mark Sorby, CEO – Landscape Queensland
Mr William Watson, Trustee and Plumbing Contractor – Master Plumbers Association
Mr Russell Brandon, Executive Director – Building Designers Association of Queensland
Mr Colin Jennings, Government Liaison, RICS Oceania
Mr Stacy Kennedy, President – Australian Institute of Building Surveyors
Mr Damian Long, President – Civil Contractors Federation Queensland

Mr Robert Row, CEO - Civil Contractors Federation Queensland
Mr Ross Sadler, Major Subcontractors Group
Ms Tracy Haynes, Principal Adviser, Planning and Development - LGAQ
Mr Greg Hoffman, General Manager, Advocacy - LGAQ
Mr Ian Jennings, General Manager – QBSA
Mr Ian White, Deputy General Manager, Operations and Service Delivery - QBSA
Mr Jason Smith, Deputy General Manager, Policy, Strategy and Communications - QBSA

**Statement of reservation**

**DESLEY SCOTT MP**

SHADOW MINISTER FOR COMMUNITIES, CHILD SAFETY, DISABILITY SERVICES AND MENTAL HEALTH

MEMBER FOR WOODRIDGE



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Ms Kate McGuckin  
Research Director  
Transport, Housing and Local Government Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Ms McGuckin

**Re: Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 - Statement of reservation**

The Opposition wishes to notify the committee of its reservations about aspects of the Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 report. Due to the considerable size and detail of the report, we will detail the reasons for our concern during the parliamentary debate on the committee report.

Yours sincerely

A handwritten signature in cursive script that reads "Desley C. Scott".

Desley Scott  
**Member for Woodridge**