



Jann Stuckey

Shadow Minister for Public Works
Shadow Minister for Information
and Communication Technology

Regulating the Building Industry and Consumer Protection

LNP Discussion Paper

For many Queenslanders, building or renovating a home is a major investment in their life. Consequently, it is important that not only the building and construction industry is properly regulated, but that if something does go wrong in this process, there is a clear and straight-forward method of action to address the problem.

Periodic review is needed to see whether current regulatory schemes in place provide suitable protection. Does the system already in place work well? Does it need to be reviewed? These are some of the important questions that should be considered and this discussion paper presents an opportunity to do just that.

The LNP is committed to delivering workable and practical solutions that meet the needs and requirements of both the community and the industry. To this end the purpose of this discussion paper is to:

- highlight some of the concerns that have been raised by consumers;
- examine the protection currently provided by the Building Services Authority, where this protection is working and where it may need improvement;
- provide an avenue for public comment; and
- put forward solutions that will provide some answers to these problems.

Jann Stuckey MP

Shadow Minister for Public Works
Shadow Minister for Information
and Communication Technology

Office of the Leader of the Opposition

Parliament House, Alice Street

Brisbane QLD 4000

PHONE: 07 3406 7997

TOLL FREE: 1800 556 956

FAX: 07 3221 1496

Electorate Office

PO Box 742

PALM BEACH Q 4221

PHONE: 07 5598 1387

EMAIL: currumbin@parliament.qld.gov.au

Regulating the Building Industry and Consumer Protection

Overview

The building industry is without doubt an important part of Queensland's economy. The December quarter update from the National Institute of Economic and Industry Research (NIEIR)¹ states that for 2008-09, total Queensland construction activity grew by 8.1% to \$41.6 billion. Further projections for 2009-10, will show a decline in Queensland construction of 5.1% to \$39.5 billion with 2010-11 seeing a further decline of 2.2% to \$38.6 billion.

With reports of a "sharp shakeout" of the housing sector under way and the loss over the past two years of more than 6,300 jobs², it would appear that there is a certain amount of volatility currently occurring in this industry.

Considering these economic factors, it is important to review the procedures and processes that fall under the Building Services Authority (BSA) on a regular basis.

Current Regulation

The BSA is a statutory authority established under the Queensland Building Services Authority Act 1991. Any contractors performing building work valued over \$3,300 must hold a BSA licence.

The BSA's own literature states that it should be the first port of call for consumer's contemplating building or regulating³.

The Queensland Building Services Authority provides the following services:

1) Education and Advice Services

The BSA provides free seminars for consumers and licensees and makes available technical publications, fact sheets and information booklets and information relating to the Domestic Building Contract Act 2000.

2) Building Services Authority Home Warranty Insurance

The Home Warranty Insurance Scheme is an insurance policy offered by the BSA for consumers, so long as a number of conditions are met. These include:

- Work must be contracted with a BSA-licensed contractor;
- The construction must be residential valued above \$3,300; and
- Coverage is provided for up to 6.5 years after the date of payment of the insurance premium or the date of the contract to build (whichever occurs earlier).
- The policy has a cap of \$400,000 which is allocated as follows:
- \$200,000 for non-completion, defects and/or subsidence that occurs before practical completion
- \$200,000 for defects and/or subsidence that occurs after practical completion

3) Dispute Prevention

The BSA provides education for licensees covering technical issues and good business practices. They also assist consumers by making available advice on resolving disputes.

4) Dispute Resolution

The BSA provides a dispute resolution service for defect-related disputes between licensees and consumers. If attempts to reach an amicable settlement fail, the BSA can attempt to provide in a step-by-step dispute resolution process seeking to have the defective work rectified.

¹ http://www.works.qld.gov.au/bib_e-news/dec2009/nieir_dec09.pdf

² <http://www.couriermail.com.au/property/jobs-lost-in-housing-industry-as-construction-drops/story-e6frequ6-1225845552419>

³ http://www.bsa.qld.gov.au/SiteCollectionDocuments/Builders_Contractors/Fact%20Sheets/C%20-%2019%20What%20is%20BSA.pdf

Regulating the Building Industry and Consumer Protection

In the event of a contractor failing to comply with the BSA's directions to rectify defective work, there is the discretion to take disciplinary action against the contractor through the Queensland Civil and Administrative Tribunal (QCAT) and rectification may be arranged under the Queensland Home Warranty Scheme.

This dispute resolution process does possess limits. The BSA cannot initiate this process until either building work is complete or the contract has been lawfully terminated. Other limitations include the inability of the BSA to resolve contractual disputes, or disputes about building work which is still the subject of a valid contract.

Industry Regulation v Consumer Protection

Critics have often observed that the BSA appears to place too strong a focus upon the protection of those working within the building and construction industry, at the expense of protecting consumers. Many of the limitations placed upon the BSA's ability to intervene during the construction process appear to limit its ability to intervene on behalf of the consumer in many situations that arise.

Discussion Items

It is vital that both consumer and industry stakeholders examine this situation and assess the potential for legislative improvements to address these areas of concern.

Discussion Area 1 – Educational Issues:

- How effective have the educational and advisory services provided by the Building Services Authority been to date?

- Are consumers fully aware of the protection, services and limitations of the BSA?
- Does the BSA do enough to promote the running of local seminars?
- Is the BSA's web site information easily accessible and understandable?
- Can a lay person/consumer easily understand this information?
- Do these services need to be improved, and how can that be done?
- Is the information relating to the Domestic Building Contract Act 2000 up to date and easy to understand?
- Is the BSA consumer hotline efficient enough in respect to waiting times to get through to an operator?

Discussion Area 2 – Home Warranty Insurance:

- How long does it take for insurance claims to be processed and more importantly, how long should it take for payout?
- Is \$400,000 enough to provide appropriate insurance cover for consumers?
- Is there a specified time-frame for this insurance scheme? Should there be a minimum or maximum specified period?
- Does the insurance scheme provide sufficient protection? Does it cover enough areas?
- Should the scheme's coverage be expanded?
- Do consumers have a false impression of what this insurance scheme actually protects?

Regulating the Building Industry and Consumer Protection

Discussion Area 3 – Dispute Protection:

- How effective is the BSA's training on technical issues?
- How effective is the BSA's training on good business practices?
- Is the BSA pro-active enough in acting to prevent a bad situation deteriorating further?
- Should there be an expansion of the abilities and responsibilities of the BSA to intervene during a construction process to correct identified problems from persisting down the line?
- Does the current system expose consumers to a lack of protection at any time during the construction process?
- Is there a danger presented in expanding the protection offered by the BSA? Does allowing builders in difficulty to continue to operate or trade their way out of trouble allow consumers to enter into hazardous contracts?
- Does the BSA's ability to licence/remove licences provide enough protection/deterrence to get 'shonky' builders out of the industry?
- Should the BSA be more proactive in policing the industry? Should this be the role of the BSA?

Discussion Area 4 – Dispute Resolution:

- How long does it take for parties involved in a dispute to receive a hearing from QCAT?
- Is QCAT a fair, proportionate and impartial body?
- Is QCAT too legalistic a mechanism for consumers to be involved in? Are avenues of appeal clear-cut?

- Is the BSA a fair, proportionate and impartial body when involved in disputes?
- Is the BSA too limited in what it can intervene in?
- Is there adequate ability for consumers to bring their own information or reports to the resolution process or is information relied upon only that provided by the BSA? (i.e. inspection reports)
- Should the BSA be a decision-making body or should it serve an investigative role and defer decisions to an outside body?

Conclusion

As the law and society evolve, it is important to ensure that the mechanisms put in place to regulate and monitor important industries such as building and construction are up to date, effective, fair and workable. Discussing the issues that are governed by bodies such as the BSA plays an important part in such a review.

Submissions and Feedback

The LNP welcomes feedback on the items and issues raised in this discussion paper. Submissions and comments can be forwarded by:

Email:

currumbin@parliament.qld.gov.au

Mail:

Jann Stuckey MP
Member for Currumbin
PO Box 742
PALM BEACH QLD 4221

Phone: (07) 5598 1387

Fax: (07) 5598 1861