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## Australian Institute of Architects

27 February 2017

Hon. Michael De Brenni  
Minister for Housing and Public Works and Minister for Sport  
PO Box 2457  
BRISBANE QLD 4001

Dear Minister,

Thank you for the opportunity to comment on this initiative by the Queensland Government. We welcome this opportunity and are encouraged that we can provide feedback on the Queensland Building Plan discussion paper.

On receipt of the information for comment the AIA deferred the matter to our local Practice Committee who have responded as per the attached submission and we have relied on this committee's extensive experience for the input provided. Please treat our feedback as being constructive in terms of its assessment on potential technical points, as our comments are for the benefit of current State Government and the community at large.

No doubt there are further complexities in relation to the Security of Payment Issues that will need to be address by the Master Builders and others. We would be a good 'sounding board' with the construction industry on this issue as our members, through the administration of construction contracts, are required to maintain a balance between protecting the consumer, and creating an appropriate cash flow for the principal contractor and their sub-contractors.

As Paul Trotter (AIA Queensland Chapter Councilor) offered at the Ministerial Construction Council on the 19<sup>th</sup> January 2017, we would welcome further dialogue with the State Government as the policy and its legislation is developed and we are happy to work with other stakeholders to produce good quality legislation for the benefit of Queenslanders. We think this would be a prudent approach by a responsible State Government.

Once again, we thank the State Government for consulting us on these policies and we trust our feedback is welcome and useful for the community at large. Our door remains open for further input and consultation as the relevant legislation is developed.

Regards



Bruce Wolfe  
Queensland Chapter President



Australian  
Institute of  
Architects

Australian Institute  
of Architects

Queensland  
Building Plan  
Submission

**Submission to**

Department of Housing and Public Works

**February 2017**

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## SUBMISSION BY

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## PURPOSE

- This submission is made by the Qld Chapter of the Australian Institute of Architects (the Institute) to:
  - Review the Queensland Building Plan, Department of Housing and Public Works  
GPO Box 2457  
BRISBANE QLD 4001,
- At the time of this submission the President of the Queensland Chapter is Bruce Wolfe FRAIA.

## INFORMATION

### ***Who is making this submission?***

- The Australian Institute of Architects (the Institute) is an independent voluntary subscription-based member organization with approximately 12,305 members, of which 6,840 are architect members. Members are bound by a Code of Conduct and Disciplinary Procedures.
- The Institute, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.

### ***Where does the Institute rank as a professional association?***

- At approximately 12,400 members, the Institute represents the largest



**Australian Institute  
of Architects**

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## (1) SECURITY OF PAYMENT

It is noted that the Queensland Government proposes to adopt in 2018 the Project Bank Account (PBA) system for large government building projects. It is understood that this system is currently on trial for government projects in a number of Australian States.

The Australian Institute of Architects has no objections to the trial of the PBA system for large government projects in Queensland.

Before the PBA system is extended to private building projects in Queensland in 2019, there is a need to ensure that any problems with the PBA systems encountered by the Queensland government during the 12-month trial period, have been resolved. To provide confidence for the application of the PBA system in the private sector, it is recommended that an independent analysis of the government's PBA experience be undertaken by selected members of the Australian Institute of Architects, Engineers Australia and Master Builders Qld. Before the PBA system is made compulsory for the private sector, the system needs to be carefully assessed and be thought through to avoid potential problem areas.

Currently, the following problem areas are anticipated: -

(a) At this stage, the implementation requirements of the PBA system in the private sector, are anticipated to increase tender prices. It is noted that the Deloitte's report (page 15) found that overseas experience with the introduction of PBAs, has reduced subcontractors' tender prices. There is no guarantee that this will happen here. The Deloitte's report (page 22) also noted that there will be higher implementation costs when PBAs are extended to the private sector. The WA Auditor General's report dated Dec 2016 (page 15) states that the WA Government experience with PBA for government building projects costing between \$1.5M and \$100M, the PBA cost was found to be "about **\$80,000** per project to implement". The WA experience also found that PBAs "are challenging to establish due to the administrative effort required" and "require demanding administration of the monthly payment process."

(b) Not addressed in the proposal is the situation where the developer who also holds a builder's licence, in other words the developer is both the Principal and the Head Contractor. If such a developer were to go into insolvency and has not paid the correct funds into the PBA account, then the subcontractors loose out.

(c) The proposal as outlined does not consider the situation where a bank guarantee is used in major building projects as security. Also, not covered are sub-subcontractors and suppliers.

(d) It is known that at least two legal firms (Kaden Boriss, Legal and Clarke Kann, Lawyers) have identified potential risks and legal issues with the PBA system that will

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need to be addressed before the PBA system is applied to the private sector. The main items raised by Clarke Kann are:

"1. Principals are highly likely to insist on a provision in their construction contracts to the effect that payment pursuant to an authorisation is effective to discharge the principal from liability to pay any sum in respect of the works the subject of each authorisation.

This can present issues where any expert determination subsequently (but before practical completion) values works of a subcontractor as more than the contractor has sought to be paid in the authorisation.

2. There is more of an administrative burden placed on head contractors in monitoring payments made to the PBA and advising subcontractors that the principal has paid money to the PBA (which is to be on the same day in the NSW model).

3. It exposes the head contractor to potential breach of trust claims from subcontractors where there is a dispute as to amounts payable to a subcontractor and no authorisation is given for payment to the subcontractor for the amount in dispute.

4. Because funds are held on trust, they do not count as funds of the head contractor which has a negative impact on cash flow.

5. Accordingly, there will be a need, particularly for head contractors, to ensure all contractual terms dealing with the PBA and authorisations under the PBA are appropriately drafted to offset some of these risks. Additional attention to the terms of insurance policies will be necessary to ensure they are broad enough to give protection for any breach of trust claims."

Regarding when the application of the PBA system is made compulsory for private building projects, it is suggested that PBAs only apply to:

- Large residential complexes,
- Commercial and
- Industrial projects.

At this early stage, large single houses costing more than \$1M should be exempt. This is because the domestic building industry is different from that which applies to commercial and industrial projects. A detailed analysis is needed to determine the possible effects of the PBA system on domestic projects before the PBA system is extended to large house projects.

*Consideration needs to be provided to the 'indexing' of the construction cost thresholds and indeed an appropriate minimal threshold that considers where payments to sub-contractors have been particularly problematic. The lower the threshold, the more projects are impacted with the increased administration at the*

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*lowest level of efficiency (e.g. the process would be almost the same for large or small projects).*

**The Australian Institute of Architects is not convinced that the PBA system as proposed will solve all the problems with the current system of payment to subcontractors.** The system as proposed will keep the honest Head Contractors honest at a cost to the owner. Where the Head Contractor does not nominate payments to subcontractors in the progress claim but instead states that the total payment of the claim is for the Head Contractor then the full payment (less retention if a bank guarantee is not applicable) goes to the Head Contractor and in that situation, there is no pool of funds left in the PBA. It is assumed that for large private sector projects the Principal would engage an architect or quantity surveyor to assess the claims and then the issue of payment to subcontractors can be raised. Unfortunately, there are the situations where the subcontractors are not yet entitled to payment under the subcontract with the Head Contractor or where there are disputes with the subcontractors.

Under the proposed PBA system, the Head Contractor decides who gets paid each month. Based on the Head Contractor's claim and provided the private sector Principal's architect or quantity surveyor (if engaged by the Principal) agree with the claim, the Principal pays the amount into the PBA and this will be executed automatically by the bank when authorisation is given and this will not result in funds waiting in the PBA to be paid to subcontractors if the Head Contractor becomes insolvent.

## **(2) QLD HOME WARRANTY SCHEME**

Currently the Qld Home Warranty Scheme insurance premiums for small work are:

Insurable Value (up to)	New Residence Premium	Renovations, alterations etc Premium
\$3300	\$172.15	\$186.05
\$5000	\$179.20	\$196.20
\$6000	\$183.30	\$203.15

Due to prevailing increased building costs, the residential construction work with a market value over \$3,300 for home warranty coverage is considered to be too low. The cost for cover for projects costing less than \$5,500 is unreasonable especially for renovations and alteration work. Furthermore, the builder will pass on the above costs to the owner. This means that the added cost only makes a very small project more expensive.

It is recommended that the warranty scheme commence when the residential construction work with a market value is over \$5,500 and indexed accordingly.

Other items

- **QBCC discretionary powers** are adequate.

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- The present **level of coverage** should be increased to cover regardless of whether the project is unfinished or completed.
  - The present method of **premium calculation** for common property is suitable.
  - A **Higher premium** should be imposed on a licensed contractor who has higher claims or rectification directives.

### (3) PLUMBING & DRAINAGE ACT

It is agreed that the **whole process of permits and approvals** could be rationalized and fast tracked. The revised system should be consistent throughout all local governments. The proposed amendments are acceptable.

Regarding **off-site bathroom pods** there should be an initial inspection prior to on-site installation followed by a final inspection for fully installed bathroom approval.

Any specified rules or requirements for the monitoring and construction and maintenance of on-site **sewage and grey water treatment plants** should be such that they can be achieved in the various parts of the State (including remote areas).

Regarding plumbing in buildings on **reactive and unstable soils** some form of flexible connections may be needed.

All innovative plumbing products should be **watermarked** and be compliant with the Australian Standards.

Any reform of the **temperature control devices** should take in the views of the public.

Orientation and pitch to achieve maximum efficiency of **solar hot water systems** are known. However, this should **not** be made compulsory for all building projects.

### (4) QUEENSLAND HOUSING CODE

It is difficult to comment on general statements when detail information is not supplied.

However, concern is raised due to the use of the words “**design rules**” in the statement:

“Providing local government and the housing and property development industries with up-to-date siting and **design rules** that reflect emerging best practice for dwelling house development.”

If this means a restriction on the design of houses, the Australian Institute of Architects would be opposed to the proposal.

Also, it is stated, that one of the proposals will **reduce the number of relaxation applications and siting-related building development appeals**. The Australian Institute of Architects needs more details of the proposal but the Australian Institute

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of Architects would be concerned if this proposal makes it impossible to obtain a relaxation for a unique or a special case.

It is assumed that the proposal of **consistent set of siting solutions** with state-wide application is to overcome the wide variation of siting provisions in various local government areas. However, it should be noted that what is appropriate for Brisbane may not be appropriate for country towns. The Australian Institute of Architects is opposed to rules that do not allow for some flexibility as such rules will result in monotonous housing estates.

In principle, **faster and less expensive approval processes** would be welcomed but how is this to be achieved and what is a standard housing development?

If QHC will not impose density outcomes or set minimum lot sizes and will only deal with housing outcomes inside allotments, then:

- Will the QHC write housing outcomes for every block size approved by a local government? and
- How will QHC encourage more affordable housing and reduce land costs if the QHC will not impose density outcomes?

#### **(5) RECONFIGURING A LOT CODE (RaL Code)**

It is difficult to comment on general statements when detail information is not supplied.

It is understood that this code plus the QHC will provide codes for the subdivision land and will include allowance for a variety of lots and layouts and allowance for roads and parkland. It is suggested that under these codes approvals can be simpler and more streamlined.

As the RaL Code will not specify a minimum lot size, it will allow local governments to nominate smaller or micro lots. Caution is needed to ensure that this arrangement results in an urban design outcome that is acceptable to the surrounding community and does not produce detrimental planning results and social issues that can be the outcome.

#### **(6) BUILDING CERTIFICATION**

Where a Certification of Classification is required, it is the certifier's role to confirm compliance to enable the Certification of Classification to be issued and in this situation the builder must comply with the certifier's requirements.

In the case of single dwellings, a Certification of Classification is not required. There is merit in allowing the owners to obtain **more inspections** and call for a final inspection if issues arise between the certifier and the builder. The owners need to be aware up-front of the costs involved if they require more inspections.

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Restricting the use of '**competent persons**' is needed to prevent them doing complex and/or engineering inspections. It is suggested that the government should establish a junior level of certifiers and list the type of routine inspections that they can undertake.

Mandatory inspections for **fire separation** of duplexes and townhouses is strongly supported.

It is acceptable that the local government (and not the certifier) to have the sole responsibility for taking **enforcement action**.

The protection of the consumers is the role of the QBCC.

It is assumed that there is evidence for increasing the auditing of certifiers. This will most likely increase administration costs for both QBCC and certifiers who may in turn increase their fees.

Only a licensed person should do all **waterproofing**.

#### **Additional Proposal “The cab rank system”**

It has been suggested that there is a perception that Certifiers potentially have a conflict of interest, due to the financial relationship existing between the Certifiers and their clients. Certifier’s regulatory role requires them to act in the public interest.

This perception could only occur where the Certifier is engaged and paid by the Head Contractor. There would be no conflict of interest where the Certifier is engaged, and paid by the owner who is not the Head Contractor and the Certifier reports directly to that owner.

To overcome the perception of conflict of interest where the Certifier is engaged by the Head Contractor, it is proposed that a Certifier can only be engaged by a Head Contractor for one building project per year so that for other building projects undertaken by the Head Contractor during the year, the Head Contractor has to engage other Certifiers.

**The Australian Institute of Architects is opposed to the proposed ‘cab rank’ system** for the following reasons:

- (a) Some Certifiers are not capable of assessing complex commercial and health projects.
- (b) Being told who you are to use could result in some conflicts.
- (c) Such a system has the potential to produce Certifiers who require their interpretation to be accepted and will not consider other interpretations that are acceptable to other Certifiers.

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- (d) In performance-based design solutions, it is essential that Certifiers be available for the early design stage. With complex design solutions, it is necessary that the Certifier has the ability to quickly understand the proposed design, give appropriate advice and have the ability to work with the design team. Under the proposal, it is suggested that Certifiers may not be able to offer their expertise at earlier stages of a project as the assigned Certifier under the 'cab rank' system may be known at that stage of the project. If this would occur, then performance-based design solutions would be difficult to achieve in Queensland and therefore, the benefits of the performance NCC for the State would be lost and as a result buildings will become more expensive. The current NCC is a performance-based document aimed at encouraging performance-based designs especially in large projects.
- (e) Experience has shown that some Certifiers are so risk averse that they are unwilling to use what the NCC allows to be used. To avoid this problem architects have engaged Certifiers who are experienced to understand the design of complex building projects.
- (f) The proposed 'cab rank' system would require the creation of a bureaucracy for the administration of requests for a Certifier, the maintenance of a list of available Certifiers and the allocation of Certifiers. The cost of this system will be added to the Certifiers fee and the owner will pay more.

#### **General Comments**

- Certifiers should state what **inspections** that they will undertake and what inspections they require engineers to undertake.
- **Outside the mandatory inspections**, there is a need to restrict the matters certifiers are able to request prior to issuing a Form 21, e.g., requiring Form 15 & 16 for gutters in Class 1 buildings even though the storm water system as a whole has been designed by a competent person, such as a hydraulic consultant.

#### **(7) NON-CONFORMING BUILDING PRODUCTS (NCBP)**

Because some non-conforming building products have been used on a number of projects, there is a need to ensure that all building products comply. The proposed proposals are generally supported provided suppliers are also required to ensure that the materials they sell are fit for the proposed purpose.

#### **(8) INCLUSIVE COMMUNITIES**

Much of what is proposed is covered by the NCC or a variety of material such as The Australian Health Facilities or Australian Standards which are referenced by the NCC. Instead of writing new rules it is suggested that reference be made to the appropriate references listed above. If any of the nominated items are not covered by the above documents then the State should request their inclusion in an amendment to NCC.

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In a very large complex the suggested added facilities can be justified and acceptable from a cost point of view. However, in **medium to small public buildings** the suggested facilities could add a significant cost to a project. This is an area that needs to be investigated further.

## **(9) LIVEABLE HOUSING DESIGN**

The Liveable Housing Design requirements are not overly onerous and common sense suggests that they should be the minimum level of residential planning. Therefore, mandating the minimum standard ("Silver Level") of Liveable Housing Design for all new residential dwellings in Queensland by 2020 is supported.

To encourage the earlier adoption of the "Silver Level" of Liveable Housing Design in new dwellings the Government needs to provide **significant financial incentives** such as exemption from stamp duty and state planning charges and reduced home warranty premium.

Obviously very steep sites and very small lots will need to be allowed an exemption from the "Silver Level" of Liveable Housing Design.

## **(10) LICENSING REFORM**

There is a need to **simplify the process of licensing**. The proposals are generally agreed with the exception of:

- **The licensing of apprentices** - only fully qualified persons should be licensed.
- **Provisional plumbing licences** should be removed.
- Requiring only **plumbers to install metal roofs** is **totally unacceptable**.

The process of Forms 15 and 16 should be reviewed. They should be formally based on and related to the consultant's professional indemnity insurance.

## **(11) SUSTAINABLE BUILDINGS**

Based on the experience of many practitioners in achieving 6-star rating for houses they are concerned that the current computer programs are generally unsuitable for Queensland climate conditions. The adoption of the **national 6-star standard for new units** should be delayed until the computer programs are modified to fully cater for Queensland climate conditions.

Producing user-friendly information for **existing houses and units** is acceptable.

Regarding **commercial buildings**, more information is needed regarding the proposed strategies (maintenance standard and voluntary building standards for living roofs and walls).

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Regarding **compliance programs** more information is needed to clarify the statement "strategies including improving the documentation requirements for energy efficiency features with house plans."

**Strongly supported is the proposal to oversight of house energy assessors.** House energy assessors need to be properly trained to understand Queensland climate conditions and not just how to interpret computer program simulations.

It is suggested that the **NSW BASIX** assessment tool be allowed to be an alternative tool to be used instead of the computer programs currently in use in Qld. The NSW BASIX assessment tool analyses the development (including dwellings) for compliance with sustainability targets for water, energy and the minimum performance levels for the thermal comfort in the proposed development.

It is noted that in this sustainable buildings section, reference is made to energy (solar), water efficiency, living roofs and walls. No mention is made regarding building lifecycle, reusable materials, embedded energy and passive Haus.

Proposals for **Government buildings** are acceptable.

## **REFERENCES**

Clark Kann Lawyers (A. Agnew). "Project Bank Accounts: Protection for all?" March 2016.

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**END**