



Growth Management Queensland



Improving building certification in Queensland

Discussion paper

August 2011



Looking forward and delivering now—integrated planning, strong local government and development for a growing state.

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Foreword

The building industry accounts for approximately 6.3 per cent of Australia's gross domestic product and 7.1 per cent of employment. Queensland continues to be one of Australia's fastest growing states and its building industry is a major centre of economic activity.

In 1998, Queensland introduced its own private building certification system, which improved the building approval system's efficiency and flexibility, and provided a choice of service providers.

In 2003 the system's performance was reviewed after stakeholders requested several modifications, including introducing mandatory planning and regulatory training, separating the policy and regulatory functions in the building certifiers' code of conduct, improving documentation requirements and introducing on-the-spot fines for building certifiers.

Now in 2011, the Department of Local Government and Planning is again reviewing the legislation that relates to building certification in consultation with industry and the community. The review will help Queensland's building certification system efficiently respond to the changes that have occurred in the building industry over the past 10 years, where increasingly complex buildings have been approved against a background of sophisticated codes, planning schemes and pre-building requirements.

The Queensland Government through Growth Management Queensland is reviewing and improving Queensland's building certification system to address industry and community concerns. Improving building certification in Queensland is complementary to the improvements in state planning arrangements committed to in *Shaping Tomorrow's Queensland: A response to the Queensland Growth Management Summit*. Improving the system's efficiency, transparency and reliability will ensure that the industry maintains the high standards that Queenslanders expect and will also assist in promoting liveable and affordable communities.

By consulting with both the building industry and local government, and engaging with Queenslanders, the government has been able to propose a range of practical and cost-effective options for improving the current building certification system.

Your feedback on the options presented in this paper will help the government improve and refine Queensland's building certification system as it responds to changes within the building industry.



Purpose of the discussion paper

The options in this discussion paper are intended to improve Queensland's building certification system. Queenslanders, the building industry and local governments can now have their say on the improvement options being considered. It is intended that these improvements will benefit the community as a whole, and are practical and cost effective, while improving the efficiency, transparency and reliability of the building certification system. The community, government and industry stakeholders are encouraged to have their say.

How do I provide comment?

Your comments and suggestions will help the Queensland Government develop and finalise building certification improvements. By submitting the response form, you will assist the Queensland Government in understanding community attitudes to the suggested building certification improvements.

The response form can be found at the back of this document or can be downloaded from the Department of Local Government and Planning's website at www.dlgp.qld.gov.au. You can also download the form at www.getinvolved.qld.gov.au

Other ways to comment

Post your comments, 'Attention: Improving building certification in Queensland discussion paper' to:

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Building Codes Queensland
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In person delivery:

Department of Local Government and Planning
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Closing date for comments

Written comments on the discussion paper must be received by no later than **Tuesday 30 August 2011.**



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Building certification in Queensland

What is building certification?

Building certification involves independently checking and approving building work to ensure that it complies with the safety, health, amenity and sustainability standards specified in legislation and building codes.

Building certifiers, also known as building surveyors, are involved in many aspects of the building industry. A building certifier:

- determines building applications and grants or refuses building approvals
- inspects buildings to ensure that they meet minimum standards and comply with the building approval
- informs the builder when work does not comply with the minimum standards or building approval
- performs building compliance and enforcement roles by ensuring that the builder attains compliance with the standards and building approval.

Since the introduction of private building certification, many developers and builders have engaged private building certifiers to approve their buildings rather than local governments. Private building certifiers work either for themselves or a private company.

Local governments depend on building certifiers to check that building work complies with building codes and laws. The certifier may be a local government employee or a private certifier that the local government contracts to work on its behalf.

What are the benefits for the community?

Owning or building a house is one of the largest investments a person can make. Companies and businesses also invest large amounts of money into buildings they either occupy or develop for community use.

A major focus of Queensland's building legislation is ensuring that buildings are safe and meet appropriate standards. The legislation also aims to ensure that building certifiers who approve and inspect building work act in the public interest.



The improvement options considered in this paper have been developed with the community's interests in mind. Improving the system will help protect Queensland's high-quality lifestyle and environment. Importantly, it will also ensure a safe and prosperous built environment for future generations of Queenslanders and visitors to the state.

Why does Queensland need to improve its building certification system?

In 1998, Queensland introduced a private building certification system after Victoria, South Australia and the Northern Territory had introduced similar systems in the early 1990s. Before 1998, local government building certifiers were solely responsible for building certification.

After the introduction of private building certification, many building certifiers started their own businesses. This increased competition within the industry, reduced building approval times, and led to competitive pricing and out-of-hours inspections.

Although private certification has generally been successful in Queensland, industry and government stakeholders identified several important issues that need reviewing and improving. A subsequent review in 2003 led to changes to the certification system, such as renewing the code of conduct for building certifiers, introducing on-the-spot fines for building certifier offences, and improving documentation and inspection processes. Despite these improvements, stakeholders recently reported that the government needs to strengthen the role of building certifiers by improving their professional development, work practices and available resources.

They also believe that the government should take stronger action to ensure that commercial interests and other pressures do not prevent building certifiers acting in the public interest.

Building certifiers, particularly private certifiers, face practical and commercial pressures to provide client advice that may conflict with their compliance and enforcement roles as independent checking professionals.

Building certifiers already work within an increasingly complex planning and regulatory environment, and these industry pressures and factors are exacerbating the problem. Further, with growth in Queensland expected to continue there is an increasing shortage of qualified assessors.



What are the key concerns?

Stakeholder feedback indicates that the five key issues that affect the building certification system's efficiency, transparency and reliability are:

- conflicts of interest
- disengagement of building certifiers
- confusion over the building certifier role
- the standard of building certifier work
- enforcement action.

How can Queensland's building certification system be improved?

This discussion paper sets out several improvement options aimed at:

- ensuring safe, healthy and economically viable built environments for the community
- supporting and strengthening the building certifier's role
- improving building certifiers' ability to perform their important role within the building system
- ensuring that the building regulatory system effectively deters conduct that constitutes a conflict of interest or may not be in the public interest
- improving the enforcement of building regulations.



1. Conflicts of interest

1.1 Overview

Defining conflicts of interest

A conflict of interest may occur if a building certifier acts in their own personal or business interests rather than acting in the public interest to maintain health, safety, amenity and sustainability standards for building work. Any improvements must help prevent these conflicts of interest.

If a building certifier does not act in the public interest, a constructed building may be unsafe or unsuitable for the people who either own or occupy it. This could lead to serious legal claims if someone is injured, killed or suffers financial loss as a result of using the building.

Under the building legislation, a code of conduct for building certifiers was published in 2003 and requires building certifiers to perform building certifying functions in the public interest.

The code of conduct also states that a building certifier must not perform building certifying functions if a conflict of interest could occur. This conflict could occur between their personal or business interests and their duty to clients, profession, peers and the public. A copy of the code of conduct is available on the Department of Local Government and Planning's website www.dlgp.qld.gov.au

If a building certifier breaches the code of conduct, they may face disciplinary action, such as being suspended from practising or having strict conditions placed on their licence. In extreme cases, their licence may be cancelled for several years, possibly permanently.

1.2 What are the problems?

Typical conflicts of interest

The potential for a conflict of interest exists mainly in commercial building situations or with project house builders where repeat work and large commercial interests are common. The pressures in other residential housing situations are usually different or significantly lower due to less repeat work and smaller client numbers.

The main problem is that many clients (often developers or builders) who engage and pay for a building certifier expect that the certifier will conduct inspections and grant



building approvals. However, building certifiers should actually perform a regulatory role as an independent checker to ensure that building works comply with minimum building standards. This is a compliance and enforcement role where certifiers make various, important and enduring regulatory decisions. The certifier may feel under commercial pressure to provide client-focused, commercial outcomes rather than outcomes that are in the public interest in accordance with their compliance and enforcement duties.

Building certifiers employed by local governments may face similar pressures because clients are, at any time, free to disengage from local government-provided services and engage a private building certifier to continue with the approval. For example, if a disagreement about compliance occurs, a client can simply obtain certification services from a different building certifier. Current disengagement arrangements increase the pressure on building certifiers and the factors that can lead to a conflict of interest. This paper discusses disengagement in more detail in Section 2.

The possibility of these business pressures, coupled with clients being able to ‘sack’ a building certifier, weakens and undermines certifiers’ authority as decision makers and checkers who enforce compliance within the building regulatory system.

The type of business relationship that some private building certifiers have with their clients only compounds the problem. A private building certifier may be the sole provider of certification services to a client, such as a builder, who gives them a large volume of work. This attractive arrangement can ensure the private certifier a steady income and provide certainty about ongoing future work. However, as a result, private building certifiers may become more focused on one client’s needs at the expense of other requirements.

Example

Steven is a private building certifier whose professional relationships with some major clients place him in difficult situations. Sometimes he faces pressure to assess a building as a particular class under the building code when he knows the client intends to use it as another class.

A client asks him to assess a building as a class 6 hotel bar, even though he knows the client will use it as a class 9 hotel bar with live entertainment. If he assesses and approves the building as a class 6 hotel bar, his client will avoid the higher building code requirements relating to fire safety and some aspects of disability access. These requirements are important for people who normally patronise public assembly buildings, such as hotel bars with live entertainment. If he refuses the request, the client may terminate Steven’s contract to provide the service. The client would also be unlikely to contract Steven for other certification services in the future.



This potential conflict of interest is difficult as Steven needs to keep his business financially strong. He may feel that he needs to interpret the law or codes and make a decision based on finances rather than a decision in the best interest of the public in relation to safety, health, amenity and sustainability.

1.3 How does Queensland compare to other states?

Other states' legislation contains further examples of conflicts of interest.

Australian Capital Territory

A building certifier may experience a conflict of interest if they have:

- been involved in the design or construction
- a personal, professional, commercial or financial relationship with the applicant or builder.

New South Wales

A building certifier may experience a conflict of interest if they are:

- involved in designing or constructing the building
- related to the applicant
- associated with the local government.

South Australia

A building certifier must not:

- be involved with any aspect of the planning or design of the project
- be employed by the person associated with the development application
- act for a local government in relation to a development after acting as a private building certifier in relation to the same development.

Victoria

A building certifier may experience a conflict of interest if they:

- perform certifying functions on a building they were employed to help design
- have a direct financial interest in the company of the person who designed or is constructing the building



- prepared or helped prepare the design for a building that is the subject of certification.

1.4 What is being considered?

Changes to disengagement requirements

Section 2 discusses options to change disengagement requirements. These changes would reduce conflict of interest pressures by ensuring that disengagement is not based on commercial interests or occurring for inappropriate reasons.

Providing more examples of conflicts of interest

This paper considers amending the legislation to provide more examples of conflicts of interest, particularly in relation to design work. This will help resolve the current uncertainty about what constitutes a conflict of interest and help ensure that, in the case of serious conflicts, prosecutions can proceed with more certainty. A recent example of where this type of clarification has been provided to industry is the Queensland Government's swimming pool safety reforms. Under these reforms, a code of conduct has been introduced for pool safety inspectors, which provides clear examples of what constitutes a conflict of interest.

The legislation could also provide greater guidance where more than one interpretation of a particular building law, code or standard is possible. In these cases, the interpretation that best achieves the legislation's purpose is preferred.

Queensland law already requires that legislation be interpreted with the purpose of the law in mind. However, this is difficult to monitor in the building certification context because applicants are unlikely to complain if they receive a benefit, even though the consequences for them may not become apparent until after the building is completed.

Therefore, this paper considers clarifying this more explicitly for building certifiers by providing practical examples in the building legislation, including specific direction on interpreting the building certifiers' code of conduct. Also, Queensland Building Services Authority (QBSA) auditors require clear guidance on how to identify breaches where a building certifier has interpreted a law in a way that inappropriately favours a client's interest.

The legislation currently outlines significant penalties for building certifiers who do not act in the public interest. However, uncertainty about what constitutes a conflict of interest or 'not in the public interest' can limit a prosecution's success. Prosecutions



can be lengthy, complicated and expensive, and, even if successful, may not result in a considerable financial penalty.

However, offence provisions have been included to highlight the seriousness of breaching certain parts of the legislation. A financial penalty can be applied for these breaches. Amending the legislation to clearly define a conflict of interest and 'not in the public interest' would help make successful prosecutions more likely. Additionally, this paper considers a range of options that focus on behaviour and professional development, such as the use of demerit points leading to suspensions, supervision and re-training requirements.

Have your say:

- 1.4.1 If legislation provided more examples of what a conflict of interest is, do you think it would help building certifiers know when they have a potential conflict of interest?

Refer to the response form at the back of this discussion paper.

Penalties for anyone who tries to influence a building certifier

This paper considers new legislative provisions that would state that any person who tries to influence a building certifier to perform certifying functions contrary to the public interest or their other obligations can be prosecuted and penalised. Introducing financial penalties for any person who tries to influence a building certifier to commit an offence under the legislation may help reduce these offences and the pressures on building certifiers in difficult commercial situations.

Have your say:

- 1.4.2 If penalties were introduced for people who influence the way a building certifier carries out their duties, do you think it would help the certifier act in the public interest?

Refer to the response form at the back of this discussion paper.

Measures to reduce inappropriate relationships between certifiers and clients

This paper considers several options for reducing the potential for inappropriate business relationships between building certifiers and their clients.



Increased targeted auditing

One option is to increase the level of QBSA auditing for private building certifiers engaged to supply high volumes of repeat work for one client. Private building certifiers would be required to notify the QBSA if they provide services for one client that exceed a set amount. The QBSA would then undertake greater auditing of that certifier, focusing on potentially inappropriate business relationships between the building certifier and the client.

A guideline could be developed to assist the auditing process, which would be structured to ensure that business relationships involving high work volumes from one client are balanced and meet all legislative requirements.

Have your say:

- 1.4.3 Will an increase in targeted auditing of building certifiers by the QBSA reduce the likelihood of certifiers developing inappropriate relationships with clients?

Refer to the response form at the back of this discussion paper.

Oversight of building certifier appointment

Another option is for the QBSA or the independent council discussed in Section 3.4, to oversee the appointment of a private building certifier. This could apply to all appointments or only in cases where a private building certifier provides services for one client that exceed a set amount. However, this option may raise issues about competition restriction.

Building certifiers could be assigned applications according to geographic location, and the applications would be evenly distributed according to the building certifier's capacity to take on the work.

Have your say:

- 1.4.4 Do you think having the QBSA oversee the appointment of building certifiers in certain cases would reduce the potential for inappropriate relationships between certifiers and clients?

Refer to the response form at the back of this discussion paper.

Mandatory limit on repeat work

A third option is to set a limit on the amount of work a private building certifier can provide for one client within a set time frame. Any work that exceeds this limit could



either be prohibited or require special approval from the QBSA. The special approval could be subject to conditions, such as requiring a peer review of the building certifier's work by a second building certifier or withholding client payments to the building certifier until they meet certain requirements. New South Wales is currently considering a similar model. However, this option may raise issues about competition restriction.

Have your say:

- 1.4.5 If a mandatory limit were to be introduced for the amount of repeat work a certifier can undertake for a single client, would this reduce the potential for inappropriate relationships between certifiers and clients?

Refer to the response form at the back of this discussion paper.

Requiring owners to engage building certifiers

This paper considers amending the legislation to require property owners, rather than builders or developers, to engage building certifiers. It also considers introducing a penalty for builders or developers who attempt to influence an owner's choice of building certifier.

The legislation currently requires a client to engage a building certifier to perform building certifying functions, which can be described as a type of contract. This engagement must be in writing, and the local government and owner must receive notice that the engagement has occurred.

If owners, rather than developers or builders, engage building certifiers, the number of certification businesses based around a few major clients could decrease, as could the influence of commercial pressures from developers and builders. However, in a small number of cases, the owner may also be the builder or developer. Therefore, this paper also considers a public education campaign to inform builders, developers and owners, as well as building certifiers, of any changes to the system.

In New South Wales, only the person with the benefit of development approval (usually the owner) can appoint the building certifier. The builder cannot unless they are the person with the benefit of development approval.



Have your say:

- 1.4.6 If the owner is required to engage the building certifier rather than the builder or developer, do you think it would reduce the commercial pressures currently being placed on certifiers?

Refer to the response form at the back of this discussion paper.

Publicising the performance of building certifiers

Building legislation already requires the QBSA to make a register of building certifiers publicly available on the internet. This register must provide information on any findings of unsatisfactory conduct or professional misconduct against a building certifier. However, the current register can be difficult to navigate and use, particularly when used to compare certifiers' performances.

This paper considers improving the legislative provisions surrounding the public register, including requiring that the register detail all building certifiers' performances in a more user friendly format so consumers can easily compare them. This approach has been taken with the Queensland Government's new swimming pool safety inspector register, which provides a user-friendly interface to enable the public to compare all licensed pool safety inspectors at once, or by using certain search criteria such as suburb.

In addition to any findings of unsatisfactory conduct or professional misconduct, the register would also detail the excellent performances of building certifiers who have been audited without any adverse findings. This would be a disincentive for building certifiers to act contrary to the public interest and reward building certifiers who perform well. It would also enable owners to make informed decisions when engaging building certifiers. However, this measure would not stop clients placing inappropriate commercial pressures on certifiers.

In Victoria, building certifiers found guilty of breaching their responsibilities are listed in the Victorian Building Commission's quarterly magazine and on its website. In New South Wales, building certifiers found guilty of breaches are listed on the Building Professionals Board's website. The list includes the number of breaches that each building certifier has been involved in and what each relates to.



Have your say:

- 1.4.7 By introducing legislation to improve public availability of a building certifier's past performance, do you think they would act more responsibly when carrying out their functions?

Refer to the response form at the back of this discussion paper.

Improving the auditing of building certifiers

This paper considers improving the legislation to clarify the purpose of auditing building certifiers' practices. A guideline for the QBSAs auditing practices could also be developed in consultation with key stakeholders.

The guideline would support and improve audits of building certifiers to:

- better scrutinise the commercial relationships of clients and building certifiers
- better clarify the relationship between the regulatory framework and the code of conduct so that if a building certifier acts contrary to the public interest, the QBSA can more easily detect the breach and take appropriate action
- implement checks to help ensure that no conflict of interest arises from a building certifiers' involvement in the design phase of a building, such as developing an alternative design, and introduce peer review in any clearly defined situations where building certifiers can give design advice (see next section for more information)
- enable compliance interpretations to be challenged by the QBSA and independently reviewed, based upon the need for interpretations in the public interest
- focus more on other important issues that may arise and less on minor administrative matters, which can be dealt with using other techniques such as education.

Have your say:

- 1.4.8 By improving the auditing of building certifiers, do you think the most important issues such as commercial relationships, safety, health and amenity will be better addressed?

Refer to the response form at the back of this discussion paper.



Clarifying the building certifier's role during design

This paper considers clarifying and clearly defining the role of building certifiers in the design phase of a project. This could enable building certifiers to contribute appropriately to the design phase and address the potential conflict of interest that could arise if building certifiers go beyond their permitted role.

A building certifier's participation in the design phase can be beneficial. For example, the International fire engineering guidelines, 2005 edition, clearly provides a role for building certifiers in the fire engineering design process. The publication also recognises that expecting a building certifier to fully understand proposals late in the design stage may be counterproductive.

However, involving the building certifier in the design phase may increase the potential for a conflict of interest. If a building certifier is to participate in the design phase, their role must be clearly defined to reduce this potential. For example, a building certifier's role in the design phase could be limited to providing compliance or limited regulatory advice, or participating under limited and carefully managed circumstances.

This paper considers amending the legislation to include clear examples of when conflicts of interest would occur if a building certifier is involved in a building's design stage. It also proposes introducing mandatory peer review to gather a second opinion of a building certifier's proposed decision if the building certifier is involved in the design phase. This would help to counter a potential conflict and enable building certifiers to provide additional valuable advice during the design stage in clearly defined ways.

Have your say:

Now that you know more about the problems between a building certifier's role in design and the potential for a conflict of interest when they approve building work, we would like to hear what you have to say about the proposals for Queensland.

- 1.4.9 Would clarifying the legislation relative to a building certifier's involvement in the design phase help them to avoid potential conflict of interest when approving building work?
- 1.4.10 Do you think mandatory peer review of decisions where a building certifier is involved in the design of a building, would help avoid situations relating to a potential conflicts of interest?

Refer to the response form at the back of this discussion paper.



2 Disengaging building certifiers

2.1 Overview

A building certifier and a client may sign a contract of engagement for the building certifier to perform certifying services for a specified building. Disengagement occurs when the building certifier cannot or does not wish to continue providing the services, or when the client does not wish to continue receiving the services. Either the building certifier or the client may discontinue the engagement by giving notice and taking any steps outlined in their contract.

2.2 What are the problems?

Current Queensland legislation contains almost no rules about disengagement. The legislation does not place any restrictions on disengagement other than the need for notice and the terms of the contract. Either the building certifier or the client may instigate disengagement without documenting their reasons at any stage of the certification process. While this has occurred in Queensland since the 1998 introduction of private certification, other states and territories legislation require the instigator to seek approval for disengagement, in all or most circumstances, from an independent body such as a board.

Without rules for disengagement, little control exists over the consistent application of building legislation throughout the building approval and inspection process. A building certifier or applicant may disengage in the middle of an approval simply because of a difference of opinion.

Applicants for building approval often disengage because they think the building certifier is too restrictively applying the building legislation. They may then engage another building certifier who will give them what they want, which could result in a building that does not comply with relevant codes and standards. People who occupy these buildings may be exposed to an unsafe environment that negatively affects their health, safety and wellbeing.

Many local governments suggest that a significant number of building certifier engagements are discontinued. This adversely affects the availability of approval documents and places pressure on individual applicants (clients), building certifiers and local government resources. If a client cannot engage another building certifier, legislation requires local governments to complete the certification services. However, many local governments have few or no in-house building certifiers to do this.



Example

Jack is a private building certifier. The builder (client) does not agree with Jack about how a fire safety system should meet regulations. The builder prefers a fire safety system that will be less expensive than the system Jack is willing to approve. Jack believes that his interpretation of the regulation is correct. The builder may decide to disengage from the contract with Jack and engage a building certifier who will approve his preferred fire safety system.

Alternatively, Jack may tire of arguing with the builder and decide to disengage from the job. In this case, the builder will need to engage another certifier or ask the local government to complete the certification functions.

Example

Ken is a private building certifier who has been engaged to assess and approve a large number of applications for houses to be built by a project builder. During construction, the builder challenges Ken's assessment of the proposed termite management systems, stating that another system would be cheaper and easier to install. Ken disagrees and insists that the system that the builder proposes will not meet the required standards.

As they cannot agree on which type of termite management system to use, the builder disengages Ken as the private building certifier. He engages a building certifier who will approve the alternative termite management system, despite Ken's concerns that this system does not comply with required standards.

The houses are constructed and sold to people who, following termite infestation, discover that the termite management system does not comply with relevant standards. As a result, several houses need expensive repairs, which considerably inconvenience the owners.

Strengthening the rules for disengagement would prevent builders disengaging from contracts because they do not like the building certifier's interpretations. It would also help prevent building owners being exposed to costly and inconvenient rectification work later.

On a related matter, strong disengagement rules have recently been introduced for pool safety inspectors as part of the Queensland Government's swimming pool safety reforms. These rules prevent a client from disengaging within three months of the initial engagement, without special approval from an independent Pool Safety Council.



2.3 How does Queensland compare to other states?

All Australian states and territories except Western Australia, which does not have private certification, have introduced disengagement rules that generally require certain stakeholders to approve disengagement. Some states and territories require a government minister or director, board, commission or registrar to approve disengagement.

Australia Capital Territory

The Australian Capital Territory requires a government registrar to approve the disengagement of a client from a building certifier, or a registrar and land owner to approve the resignation of a building certifier. The registrar determines whether the building certifier's resignation is appropriate. The registrar can also consider whether another certifier is taking over the appointment and whether the original building certifier cannot continue because of mental or physical incapacity.

New South Wales

New South Wales requires a government board to approve a replacement building certifier. The local government must also be notified.

Northern Territory

The Northern Territory requires the original building certifier to consent to appointing another building certifier. With the consent of the director (a government official) and without the consent of the owner, the building certifier can transfer the engagement to the director. An owner (client) cannot remove a building certifier who has not completed the engagement functions without the director's consent. If the building certifier becomes incapable, the owner can ask the director to approve the engagement of another building certifier.

South Australia

South Australia requires the relevant government minister to allow a private building certifier to transfer the engagement to a local government or another building certifier. In this case, the client's and replacement building certifier's consent is also required. If a building certifier becomes incapable, the matter can be referred to a relevant authority or another building certifier appointed with the minister's consent.

Tasmania

Tasmania does not allow a client to remove a private building certifier without the director's (a government official's) consent. If a building certifier resigns, becomes



incapable or dies, the client needs the director's consent to appoint another building certifier.

Victoria

Victoria requires a government commission to provide written consent for both disengaging and appointing a replacement building certifier.

2.4 What is being considered?

This paper considers amending the legislation to require the QBSA to approve all disengagements initiated by either a client or a building certifier and ensure that approval documentation requirements have been completed. The QBSA would be able to charge a fee for this service.

An independent industry council, which is discussed in section 3.5, or alternatively the Queensland Civil and Administrative Tribunal (QCAT), could hear appeals against QBSA decisions.

Example

Sophia is a private building certifier. She will not approve a client's request to use a specific waterproofing system in the bathroom wet areas. Under the changes being considered, the client would not be able to disengage Sophia as the certifier merely because they disagree with Sophia about whether they are meeting appropriate building standards. As the building certifier, Sophia would also not be able to automatically disengage, though either party could apply to the QBSA for approval to disengage.

Under no circumstances would parties be allowed to disengage from a contract without the QBSA's oversight or consent. The QBSA would determine disengagement applications according to criteria in the Building Act 1975. These criteria could potentially include death, retirement, unable to be located, incompetence, unreasonableness of parties, cancellation or suspension of a licence.

The QBSA would require copies of any assessment and approval documentation up to the time of the disengagement, which it would also provide to the replacement certifier.

The legislation would also define the role of local governments in disengagement. The local government would receive notice of any proposed disengagement and information about whether the QBSA has approved the disengagement. This would



clearly define any local government responsibilities and remove any confusion about the process.

Requiring QBSA approval for disengagement would ensure that a client cannot end the services if, for example, a building certifier interprets a building regulation in a way that does not suit the client. Also, a building certifier would not be able to disengage when a disagreement occurs.

Requiring QBSA approval to discontinue an engagement would:

- strengthen regulatory oversight of building work by ensuring that a client cannot replace a building certifier for not agreeing with their interpretation of a building regulation
- reduce pressure on applicants to find a replacement building certifier
- encourage the disclosure of all terms and conditions prior to engagement
- ensure the continuity of regulatory services and document availability
- independently assess matters in the interests of both parties and the community when one party seeks to discontinue engagement to reduce the burden on local government resources.

Example

Bob is a building certifier with his own business. He plans to retire because he has been unwell and his memory is quickly failing due to his medical condition. The QBSA may approve Bob's disengagement as building certifier because he will be unable to complete the work in the long term. The QBSA will notify the relevant local government of the proposed disengagement and the outcome.

If the QBSA decides not to approve Bob's disengagement, he could appeal against the QBSA decision.



Have your say:

Now that you know more about the problems with the disengagement of certifiers, we would like to hear what you have to say about the proposals for Queensland.

- 2.4.1 If all disengagements were to be referred to the QBSA, do you think it would ensure continuity in the assessment, approval and inspection of building work?
- 2.4.2 If the QBSA approves appointment of a replacement certifier in cases where disengagement is allowed, should the applicant for the building development approval have any say in who the new certifier should be?

Refer to the response form at the back of this discussion paper.



3 The role of a building certifier

3.1 Overview

As discussed earlier, buildings must be designed to meet minimum standards set by building laws. When someone wishes to build or alter a structure or building, they must engage a building certifier from either the local government or private sector. The QBSA licenses building certifiers.

Building certifiers must check building applications to ensure that the work will comply with relevant laws. A building certifier's role is unique within the building industry because they are expected to always act in the public interest while performing their functions. Apart from the core functions of a building certifier discussed earlier, they must also check other matters before approving building work. For example, building certifiers must ensure that proposed buildings are not approved in locations close to sewer pipes or easements, and that they meet relevant town planning scheme requirements.

Building certifiers' responsibilities are restricted to functions set out in building legislation, including:

- assessing plans and specifications against building legislation
- inspecting building work and presenting certificates as proof of inspections
- presenting a final inspection certificate or certificate of classification for a completed building.

Current legislation

The QSBA is an independent statutory body. Its purpose is to:

- regulate the building industry by licensing contractors
- educate consumers about their rights and obligations
- inform contractors of their legal rights and responsibilities
- handle disputes fairly and equitably
- protect consumers against loss through statutory insurance
- implement and enforce legislative reforms
- prosecute persons not complying with the law where necessary.



The legislation outlines the roles and responsibilities of building certifiers, builders, designers and other tradespersons. Yet, despite this, stakeholders have raised concerns that many people in the industry confuse these roles, particularly in the areas of auditing, investigating and disciplining building certifiers where compliance problems are discovered.

The QBSA is involved in licensing, auditing, disciplining and investigating complaints about building certifiers, as well as licensing and overseeing builders, designers and tradespersons.

Expanding and clarifying the building certifier's role

The differences between builder's and building certifier's roles and responsibilities are often confused. A building certifier performs an independent check or audit to ensure that a building complies with building laws, while a builder supervises the work and constructs it in compliance with approved plans and associated building laws. A builder also ensures that they meet all contractual obligations with their clients, including checking the quality of the building's finishes, constructing concrete paths and driveways, and completing work on time.

People often believe that because a building certifier approves building work, they are responsible for other matters that builders are actually responsible for. Because of this confusion, people often make complaints about defective building work against the building certifier instead of the builder, or sometimes against both. As a result, some building certifiers believe they are being singled out when complaints are made and investigated.

The QBSA may investigate complaints about defective building work, which could involve both the builder and building certifier. In cases where the builder is at fault, the QBSA may take action against them to resolve the problem. If the building certifier is found to have contributed to the problem by not properly overseeing regulatory compliance of the building work, the QBSA may take action against them.

3.2 What are the problems?

Sometimes building certifiers are incorrectly viewed as supervisors of building work. Consequently, confusion arises about their actual role. Other problems include:

- building certifiers believing they are being singled out in the complaint, audit, investigation and discipline process. Many building certifiers believe builders should be more accountable for complying with approved plans and building



code requirements because the approval and inspection process cannot reasonably be expected to disclose all code non-compliances.

- some stakeholders believing that QBSA audits and investigations focus too heavily on building certifiers. They stress that builders, designers and tradespersons may also undertake building work that is not in accordance with approval documents and contractual obligations.
- key stakeholders, such as the Australian Institute of Building Surveyors, Local Government Association of Queensland, Department of Local Government and Planning, and Queensland Fire and Rescue Service, not having direct input into or a role in auditing, investigating or disciplining building certifiers.
- building certifiers relying on certificates from other building professionals, such as tradespersons, engineers and installers, rather than performing their own inspections. This trend has further confused the role of the building certifier.

3.3 How does Queensland compare to other states?

All states except Western Australia have private building certification systems, but the framework for overseeing building certifiers varies between states. Unlike Queensland, most states separate the bodies responsible for the “prosecutor” and “judge” roles, even for less serious cases. Most states also have formal advisory bodies for building regulatory issues.

Queensland

In Queensland, authorised QBSA officers audit and investigate building certifiers. More serious cases are then referred to QCAT for decision and discipline, following changes introduced in 2003 that sought to address concerns about the QBSA performing the roles of both ‘prosecutor’ and ‘judge’.

QBSA officers are still able to decide and impose discipline in all other cases, and building certifiers can appeal against QBSA decisions to QCAT.

In Queensland, key stakeholders such as building certifiers and local governments are not involved in the process of overseeing building certifiers. However, the Department of Local Government and Planning has an informal consultative group consisting of key industry and government stakeholders.



As part of the Queensland Government's recent swimming pool safety reforms, an independent Pool Safety Council has been established to hear and decide complaints against pool safety inspectors, with rights of appeal to QCAT.

Australian Capital Territory

In the Australian Capital Territory, a government registrar investigates building certifiers. The registrar then refers cases against building certifiers to an independent tribunal for decision and discipline. The registrar can also reprimand building certifiers, impose conditions or require training.

Separate advisory boards made up of key industry and government stakeholders can also be established to provide advice on building occupational issues.

New South Wales

In New South Wales, officers of a government board investigate and audit building certifiers. They then refer cases against building certifiers to an independent board for decision and discipline. The board includes a building certifier, town planner, architect, fire safety expert and a legal representative. Building certifiers can apply for board decisions to be reviewed by an independent tribunal.

A separate advisory council made up of key industry and government stakeholders provides advice on building regulatory issues.

Northern Territory

In the Northern Territory, departmental officers investigate and audit building certifiers. They then refer cases against building certifiers to an independent board for decision and discipline. The board includes a building certifier and a legal representative. Appeals against board decisions go to a court.

A separate advisory committee made up of key industry and government stakeholders provides advice on building regulatory issues. The committee includes members representing building certifiers and peak building industry bodies.

South Australia

In South Australia, authorised officers investigate building certifiers. They then refer cases against building certifiers to a government minister for decision and discipline.

A separate advisory committee made up of key industry and government stakeholders provides advice on building regulatory issues. The committee includes members representing building certifiers, local governments and fire brigades.



Tasmania

In Tasmania, approved investigators investigate and audit building certifiers. They then refer cases against building certifiers to a government director for decision and discipline. Appeals against the director's decisions go to a separate appeals board.

A separate advisory committee made up of key industry and government stakeholders provides advice on building regulatory issues. The committee includes members representing building certifiers, local governments and fire brigades.

Victoria

In Victoria, a government commission investigates and audits building certifiers. The commission then refers cases against building certifiers to an independent board for decision and discipline. The board includes a building certifier, legal representative, consumer representative and an independent chairperson. Appeals against board decisions go to a separate appeals board.

A separate advisory committee made up of key industry and government stakeholders provides advice on building regulatory issues. The committee includes members representing building certifiers, local governments and fire brigades.

3.4 What is being considered?

An independent body for hearing disciplinary matters about building certifiers

Queensland's current building certification system relies on the QBSA to license, audit, investigate and discipline building certifiers. The QBSA deals with cases of unsatisfactory conduct, while cases of professional misconduct are referred to QCAT for decision and discipline.

The QBSA also regulates most other building practitioners, such as builders, designers and trade contractors, under different legislation. Stakeholders suggest this combination of operational roles has contributed to community and industry confusion about the roles of building certifiers and builders, particularly when disciplinary decisions can be made within an operational role.

The exclusion of key stakeholders, such as building certifiers and local governments, from the process of disciplining building certifiers may be problematic. Concerns also persist about the QBSA performing the roles of both 'prosecutor' and 'judge' for matters that do not need to be referred to QCAT.

It is proposed to remove the distinction between unsatisfactory conduct and professional misconduct as it is considered this distinction may not be useful. Instead



all disciplinary matters will be considered, in the first instance, by the one disciplinary body.

There are two proposed options for the independent body that will hear these disciplinary matters.

One option is for all types of disciplinary decisions to be referred to QCAT for a hearing. This would ensure that the compliance role of the QBSA was separated from a disciplinary role. i.e. the QBSA would no longer be both prosecutor and judge. This option would promote high-quality, independent disciplinary decisions. However, it is likely to result in increased costs and time involved in each disciplinary hearing.

Another option would be to establish an independent council under the BA for building certifier disciplinary matters, which may be named the Building Certification Council. Under this model the QBSA would continue to license, audit, and investigate building certifiers, while the independent council will undertake disciplinary hearings. The benefits of this model would include:

- addressing any perception of conflict of interest issues on behalf of the QBSA,
- providing an easily accessible, cost effective, and timely means of conducting disciplinary hearings, and
- providing a degree of peer review of the conduct of licensees.

The council could include representatives from the Department of Local Government and Planning, Queensland Fire and Rescue Service (QFRS), Local Government Association of Queensland (LGAQ), the Australian Institute of Building Surveyors, the Royal Institution of Chartered Surveyors and a consumer representative

The functions of the council will be to hear disciplinary matters with respect to certifiers. The council, similar to the Plumbing Industry Council, would have authority to take certain disciplinary actions. For example, this could include requiring the certifier to pay a fine up to a certain amount of penalty units, suspending a certifier's licence for up to one year or imposing certain conditions on a certifier's licence. Where the council believes that further disciplinary action outside the scope of its disciplinary powers may be warranted, it would have the authority to refer the matter to QCAT. Also, decisions of the council could be appealed to QCAT.

Additional non-binding functions of the council could include:

- setting annual targets and benchmarks for the QBSA in auditing building certifiers, which would help guide compliance programs



- identifying building certification problems, issues and trends
- identifying training needs for building certifiers.

Annual benchmarks and a guideline for auditing would be developed by the Department of Local Government and Planning, with input from the council, to outline auditing priorities. The guideline would cover auditing and target areas such as:

- relationships between building certifiers and clients, including matters such as repeated business and advice
- interpretations by building certifiers, which must be overseen and reviewed for public interest
- conflicts of interest where a building certifier is involved in design work
- records that building certifiers must keep and forward to the local government
- current trends or areas that the advisory body believes may assist the industry.

Have your say:

- 3.4.1 Would the best approach to improving the current disciplinary system for building certifiers be for QCAT to hear all disciplinary matters?
- 3.4.2 Or would the establishment of a new independent industry council, such as the Building Certification Council, be the best approach to improving the current disciplinary system for building certifiers?
- 3.4.3 If a new independent industry council were to set annual audit targets, detect building certification issues and trends, and identify training needs for certifiers, would this help clarify the role of building certifiers?

Refer to the response form at the back of this discussion paper.

Developing a consumer guideline

A consumer guideline could be developed to help consumers better understand the building certifier's role. The guideline's content would include explanatory material on:

- the building approval and inspection process
- engagement of a building certifier



- a building certifier's roles and responsibilities
- what to expect (and not expect) from a building certifier and other building practitioners, such as builders and trade contractors
- the local government's role
- the QBSA's role
- what consumers can do if things go wrong.

Have your say:

3.4.4 Would a guideline help consumers to better understand the role of building certifiers, and the building approval and inspection process?

Refer to the response form at the back of this discussion paper.

Training building certifiers

Industry bodies usually train building certifiers for continual professional development, often in partnership with the Department of Local Government and Planning. While this practice works well and should continue, the Department of Local Government and Planning could provide additional building certifier training packages where necessary, such as when the advisory body recommends extra training or when major new regulations are introduced. Training content would include issues such as public interest, as well as local government issues or issues that arise from the auditing process.

Have your say:

3.4.5 If additional training packages were to be provided by the Department of Local Government and Planning, do you think this would improve building certifiers' understanding of new regulations and key issues?

Refer to the response form at the back of this discussion paper.



More precisely outlining roles and responsibilities

Current building legislation outlines building certifiers' roles and responsibilities. However, some stakeholders believe that legislation needs to more precisely define these to reduce current confusion.

This paper considers changing the building legislation to more clearly outline building certifiers' roles and responsibilities by better defining the limits of their functions. For example, the legislation could describe best industry practices for a building certifier's inspection procedures to clarify builder and building certifier responsibilities.

As discussed earlier, the legislation would more clearly state that where more than one interpretation of a particular building law, code or standard exists, the interpretation that best achieves the legislation's purpose should be used. This requirement would also be included in the building certifiers' code of conduct.

Have your say:

3.4.6 Would confusion over a building certifier's role be reduced if the building legislation more clearly outlined the limits of their functions?

Refer to the response form at the back of this discussion paper.

Reviewing provisions relating to competent persons and inspection processes

Queensland's building legislation currently allows building certifiers to rely on certificates from other qualified practitioners (known as competent persons) for building designs, which also occurs in most other states and territories. The legislation allows this because some design aspects may be very complex or outside the building certifier's expertise. The legislation also allows building certifiers to rely on certificates from competent persons for building inspections. This enables a building certifier to ensure building work is inspected if they are not able or competent enough to do it themselves. It also allows them to have a highly qualified person inspect highly specialised and complex building components, such as fire alarm systems.

However, these provisions have led to some building certifiers overly relying on certificates from people such as installers. They rely on certificates for aspects of building work that were not intended to be covered by the 'competent person' framework. As a result, building certifiers are taking less and less responsibility for inspections. This is a concerning trend because building inspections are an important



safeguard, and building certifiers must be familiar with what they are approving and inspecting.

This paper considers improving the legislation to clarify the expectations on building certifiers by better defining the role of competent persons in the design and inspection processes. This would also reduce the incidences of unlicensed competent persons performing inspections and certifying aspects of building work.

Have your say:

3.4.7 If the building legislation were to be amended to better define the role of competent persons, would this help to clarify the requirements of building certifiers and reduce the incidence of unlicensed competent persons performing certifier functions?

Refer to the response form at the back of this discussion paper.



4 Standard of building certifiers work

4.1 Overview

Before building certifiers grant a building approval, they must ensure that all relevant local government permits or requirements for the development have been obtained. These may include approval to use a site, install on-site sewerage systems or build over local government sewer pipes.

The Queensland Government has published the code of conduct for building certifiers, which contains standards that certifiers must comply with. These include requirements that building certifiers comply with all legislative requirements, obtain all relevant information and clearly document all their decisions.

This code of conduct aims to ensure that building certifiers always keep the interests of the public in mind when they perform their certifying functions. It also helps the QBSA, as the auditor of building certifiers, to ensure that building certifiers protect the community as a whole when they interact with the built environment.

Before private certification, people had to apply to their local government for building approval. The local government would assess building applications against building regulations and ensure that the application complied with planning schemes and local government requirements.

Now people can choose to have private building certifiers assess their applications rather than building certifiers employed by local governments. As a result, some private building certifiers have become more focused on their clients' needs and less on other local government requirements.

This combination of factors has led to a reduced standard of assessment and approval work by some building certifiers. The unprecedented growth in Queensland's construction industry in recent years has only exacerbated the problem, as the increased work has not resulted in an increased number of Queensland building certifiers. Building certifiers are under more pressure to meet the needs of a growing industry, which can mean spending less time on each job, and potentially producing an inferior standard of work.

4.2 What are the problems?

Some local government planning schemes are very complex, and building certifiers can have difficulty identifying the requirements that relate to building applications they are assessing. Improving the standardisation of these requirements in planning



schemes would make them easier for designers, building certifiers and builders to find.

In the long term, this would give the community more certainty when developments are being approved and constructed to form Queensland's built environment. The health, safety, amenity and even financial viability of buildings would improve due to the availability of consistent information that certifiers could confidently apply. Greater standardisation of planning schemes forms part of the Government's current reform of planning legislation.

Some local governments take a long time to send building certifiers important information, such as planning scheme requirements, local law requirements, sewer pipe locations or flood information. Sometimes the information is vague and does not help the building certifier do their job. If they do not have enough information, building certifiers may approve building work that does not comply with planning scheme requirements or may even be located over a sewer pipe. This can lead to expensive and disruptive rectification work at a later stage to comply with the local government requirements. A building certifier may also face disciplinary or legal action for not ensuring that the building work complies with all the relevant local government requirements.

Example

Sally has been engaged as the private building certifier to approve a new house. She checks the local government's planning scheme for any requirements and cannot find any that apply. However, the planning scheme is very large, complex and difficult to understand. To ensure that no other local government requirements apply, she asks the local government for any information that could affect the construction of the proposed house.

After several weeks, the local government sends Sally a plan of the site that shows the location of sewer and stormwater pipes. However, the plan does not show the dimensions to indicate the pipe's distance from the boundary. Because the information took so long to arrive, she is under pressure to approve the house for construction. The pipes on the local government's plan look far enough away from the house and, based on the limited information provided, she does not see a problem.

After gaining approval, the builder starts constructing the house and discovers that the sewer pipe runs directly under the rear of the house. This causes further delays because Sally has to arrange for the local government to approve the house's location over the sewer pipe.



Sometimes building certifiers do not consider all of a local government's information and requirements when they issue a building approval. This places pressure on a local government's resources because it may then need to follow up on the requirements that the certifier overlooked or did not properly consider.

In the above example, the local government's information was vague and took a long time to arrive. While this contributed to most of Sally's problems, some building certifiers do inadvertently overlook or ignore local government information because of timeframes and the volume and complexity of requirements.

Example

William has been engaged as the private building certifier to approve an extension to an existing house. As the local government's planning scheme is so complex, he asks the local government for information about any planning requirements that may apply to the proposed extensions.

The local government responds that no planning requirements relate to the proposed extensions. However, they do advise William of an overland flow easement running down the side of the property, and indicate that he should consider a minimum flood level. William checks the location of the easement but does not seek further information about any flood levels. He then issues the building approval.

Several months after the extensions are finished the local government needs to access the easement to carry out maintenance. They discover that the extensions have been built much lower than the required flood level. The local government must engage a contractor to resolve the issue. Due to the seriousness of the problem it takes several months to resolve. In the end, they decide to lower the level of the overland flow easement and build a wall to divert water away from the house. This costs the local government a lot of money and the work takes a long time to complete.

Another problem contributing to cases of unsatisfactory work standards in the building certification industry is that a small number of building certifiers are handling a large amount of work. Over the last 10 years, little difference has occurred in the total number of building certifiers practising in the industry, yet the amount of building work has steadily increased. Currently, approximately 130 000 building applications are made each year. Approximately 320 practising building certifiers assess the applications which mean each building certifier assesses and approves more than 400 applications each year.



Dealing with this many applications may require more time than they have. Consequently, building certifiers may overlook or not fully consider important aspects of building applications, which could result in problems similar to those in the above examples.

The QBSA has indicated that although the total number of licensed building certifiers has remained steady for many years, it expects a shortage to occur in the near future. A recent survey by the Local Government Association of Queensland found that approximately 70 Queensland building certifiers will retire in the next 10 years. Additionally, an overall shortage of building certifiers is occurring across Australia, which gives Queensland little hope of increasing or maintaining its number of building certifiers by bringing them across from other states and territories.

4.3 What is being considered?

Demerit point system

The QBSA has established a demerit point system for licensed builders, designers and trade contractors. However, this system does not currently apply to building certifiers. Under this system, if a building contractor breaches certain contractual requirements or legislation, they accumulate demerit points. Once they reach a certain number of points, they may be penalised. Penalties range from having their licence removed or suspended for a period to having conditions imposed on their licence that limit the work they can do.

This paper considers introducing a similar demerit point system for building certifiers. This system could be useful across a range of building certifier obligations, such as not lodging documents with the local government on time.

Like a driver licence, a building certifier would accumulate points for various breaches. If a building certifier accumulates a specific number of demerit points, further disciplinary action could be taken. This could include removing or suspending their licence, or imposing conditions on their licence that require them to undertake training or work under another building certifier's supervision.

The demerit point system would provide an opportunity to guide or educate building certifiers about their obligations relating to more administrative functions. Imposing relatively small, on-the-spot fines may be less effective than the cumulative disincentive that a demerit point system poses because, as demerit points accumulate to a specified level, the range of possible actions against certifiers would eventually threaten their business viability.



An example of such a system is the demerit point system for pool safety inspectors as part of the Queensland Government's recent swimming pool safety reforms.

Example

Ben is a private building certifier engaged to approve a carport and shed on a residential allotment. He approves the building work but does not forward the approval documents to the local government as required under the building legislation. The local government discovers that Ben has approved several buildings in the area but not forwarded any approval documents.

The local government also discovers that many of the approved buildings have been inspected but Ben has not forwarded the inspection documentation. The local government advises the QBSA, which conducts a detailed audit of Ben's approvals. They establish he has approved several buildings across several local government areas and has not fulfilled his obligations under the legislation to forward documentation to the local government. As a result, a substantial amount of important information is not available to the public. The QBSA considers this an important matter and allocates demerit points to Ben.

The QBSA continues to monitor Ben's practice and discovers that he is continuing to ignore his obligations under the legislation. They allocate further demerit points to Ben but his practice does not change. The QBSA decides Ben's conduct is sufficiently serious to require him to submit to peer supervision for six months.

Have your say:

4.3.1 Would a demerit point system that resulted in referrals for appropriate disciplinary action and the identification of targeted training opportunities for building certifiers help to improve certifier conduct?

Refer to the response form at the back of this discussion paper.

Improving training opportunities

This paper considers allowing the QBSA and QCAT to require building certifiers to undertake extra training and education if they breach their obligations to ensure that they understand their obligations under the law.



Additionally, existing education programs would focus on making building certifiers more aware of their obligations under the code of conduct, such as keeping appropriate records of the work they approve and inspect. Providing frequent education programs would improve certifiers' understanding of their obligations and responsibilities, and help to ensure they do not overlook local government requirements relating to sites of proposed building work.

Have your say:

4.3.2 If building certifiers were required to undertake additional training if they breached their obligations and existing education programs focused more on the certifier code of conduct, would this help to improve certifiers' understanding of their requirements?

Refer to the response form at the back of this discussion paper.

This paper considers changing the law to require local governments to provide specific information within prescribed time frames. They would be allowed to charge a reasonable fee for this service to cover costs. This information could include advice on issues specific to the local government area, such as planning scheme matters, local laws, resolutions, declared flooding and bushfire areas, easements and sewer locations. This would address the difficulties that building certifiers sometimes face in obtaining essential information from local governments in a timely manner.

Have your say:

4.3.3 If local governments were to be required to provide certain information within specified timeframes, subject to the payment of a reasonable fee, would this help building certifiers to perform their functions in a more timely manner?

Refer to the response form at the back of this discussion paper.

Developing strategies to increase the number of building certifiers

The Queensland Government is developing strategies to increase the number of building certifiers in Queensland. In partnership with peak industry bodies, it could work with and encourage educational institutions, such as TAFE colleges and universities, to provide accredited courses for building surveyors.



The Queensland Government could also work with the Australian Government to simplify entry for overseas building certifiers into Australia. It would progress this strategy, and develop specific bridging courses for overseas building certifiers, in consultation with key industry bodies.

The Queensland Government could also consider expanding its existing cadet partnership with the QBSA, under which government agencies, local governments and private certification businesses would take on cadet building certifiers. Victoria currently runs a similar cadet program, which the Commonwealth Government partly funds.

Have your say:

- 4.3.4 Would measures to increase the number of accredited courses and cadet programs in Queensland lead to an increase in the availability of building certifiers?

Refer to the response form at the back of this discussion paper.

Requiring building certifiers to undertake specific training to assess alternative fire safety designs

Alternative designs involving fire-related matters often involve complex issues that may be beyond the skills and qualifications of many building certifiers to assess. To help ensure that building certifiers properly assess these alternative designs, this paper considers requiring building certifiers who want to approve building developments that involve alternative fire designs to undertake an approved fire engineering course.

Other states have similar ways of dealing with the issue of approving alternative fire designs. For example, Victoria requires building certifiers to hold a Graduate Certificate in Performance-Based Building and Fire Codes.

Have your say:

- 4.3.5 If a requirement were introduced that building certifiers who assess alternative designs for fire-related matters must undertake an approved fire engineering course, do you think this would result in a better fire safety outcome?

Refer to the response on the back of this discussion paper.



5 Enforcement of building regulations

5.1 Overview

Enforcing building regulations is an important part of Queensland's building regulatory system. Without proper enforcement, serious problems such as fire safety issues may not be addressed. Although most people do comply with the regulations, enforcement action is necessary for those who do not. However, enforcement action can be time consuming, stressful and costly, particularly if it involves action through the court system.

Ideally, buildings must be built properly the first time, as problems can be very expensive and difficult to fix at a later stage, such as a concrete floor. Therefore, enforcement action for non-compliant work is essential during the construction stage. Any problems not resolved at this stage may be passed on to future owners when the building is sold.

Building legislation allows local governments and private building certifiers to take enforcement action, though private building certifiers can take action only for work they are engaged to certify. The enforcement process generally requires that both a show-cause notice and then an enforcement notice be sent in the initial enforcement stage. If the notices have no effect, local government or private certifiers can take further action, such as court proceedings.

5.2 What are the problems?

Although private building certifiers have enforcement powers, they have little incentive to take enforcement action against their own clients. In addition, private certifiers are generally not set up or do not have the resources to take enforcement matters through an expensive and time-consuming court system. Therefore, it is unrealistic to expect private building certifiers to take enforcement action beyond issuing the initial notices.

As a result, enforcement action is frequently passed on to local governments, even if a local government has not been engaged to perform the building certification work. This places strain on the governments' limited financial and staff resources.

Local governments may also be reluctant to complete enforcement action for work under the approval of a private building certifier. This weakness in the current enforcement system can result in unresolved compliance problems, such as unsafe retaining walls located on property or street boundaries. This can have tragic



consequences; such as total collapse causing possible injuries to people nearby. Therefore, the current enforcement system needs enhancing to protect the community against unsafe building matters.

Example

Luke is the private building certifier for a new shopping centre. At an inspection, he finds that the number of installed toilets do not meet regulations. Luke asks the builder to fix the problem but the builder does not comply due to the costs involved. Luke issues a show-cause notice to the builder asking him to explain why he shouldn't receive an enforcement notice, but the builder does not respond. Luke then issues an enforcement notice.

As the builder still does not comply, Luke notifies the local government of the problem and discontinues his engagement as the building certifier. The local government considers the high cost of progressing enforcement action through the court system and decides not to take further action. The building is completed with insufficient toilet numbers and sold to an unsuspecting new owner several years later. The new owner then faces a major problem when a key tenant complains about the lack of toilets. To retain the tenant, the new owner has to install extra toilets at great expense.

Example

Susan is a private building certifier for alterations to an existing warehouse. The approval issued by Susan included compliant balustrades for a mezzanine floor in the building. However, the builder decided to change the balustrade to a design which is inconsistent with the approval.

The decision to change the design of the balustrade was based on recommendations from the manufacturer. No subsequent discussions with Susan occur. During the final inspection Susan discovers that the balustrade does not comply with the approval or the relevant legislation. Susan highlights this matter to the builder and issues a notice to rectify the situation to require the new balustrades meets the relevant legislation.

After several requests are ignored by the builder due to time constraints, Susan issues an enforcement notice. The builder ignores Susan's enforcement action. She passes the matter on to the local government. Due to resources constraints, the local government does not take immediate enforcement action. In the meantime before council officers are able to attend the site warehouse workers are exposed to the potential dangers of the non-compliant balustrades.



5.3 What is being considered?

This paper considers limiting the enforcement role of private building certifiers to the initial stages of any enforcement action. If a private building certifier were to find noncompliant work, they would request that it be fixed and follow up the request. If the problem was not resolved, the building certifier would then issue an enforcement notice. They would not be required to issue a show-cause notice first.

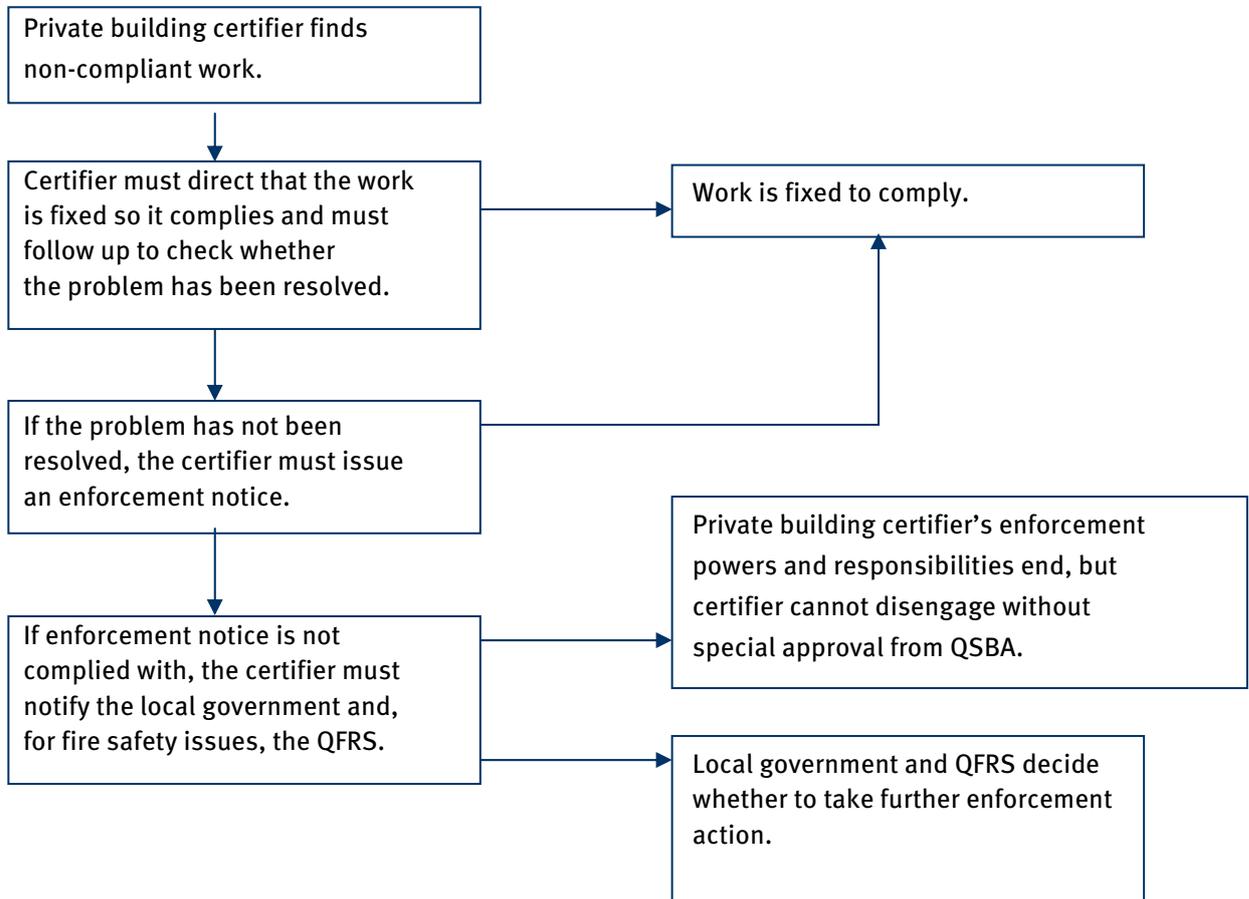
If the enforcement notice was ignored, the private building certifier would have to notify the relevant local government and, for fire safety issues, the QFRS. To better clarify their role in the enforcement process, the private building certifier would have no further enforcement powers or responsibilities, but would be required to continue their engagement as the building certifier unless the QBSA granted them special approval to disengage. Private building certifiers would be audited to check that they were fulfilling their enforcement role properly. The model is summarised in Figure 1.

This model is aimed at helping private building certifiers undertake the initial stages of enforcement action at the construction stage when rectification work is easiest and least expensive. Taking action to rectify non-compliant work early would reduce the pressure on local governments, which may otherwise have to take responsibility for the initial stages of enforcement action not taken by private building certifiers.

This enforcement model was recently introduced for swimming pool inspections done by building certifiers as part of the Queensland Government's swimming pool safety reforms.



Figure 1: Proposed changes to enforcement processes for private building certifiers



Example

Amanda is the private building certifier for a new high-rise office building. At an inspection, she finds that the fire sprinkler system does not meet regulations. Under the changes being considered, Amanda must direct the builder to fix the system and follow up to see if the problem has been fixed. If the builder does not comply, Amanda must issue an enforcement notice to the builder. She will not need to issue a show-cause notice first.

If the builder does not comply with the enforcement notice, Amanda must notify the local government. She would have no further enforcement powers or responsibilities, but would be required to continue her engagement as the building certifier unless she received special approval to disengage. As the issue relates to fire safety, she would also have to notify the QFRS. The local government and QFRS would then decide whether to take further enforcement action.



Have your say:

Now that you know more about the potential to improve the enforcement of Queensland's building regulations, we would like to hear what you have to say about the proposals;

- 5.3.1 If a private building certifier finds non-compliant work that they have been engaged to certify, should they be required to direct that it be made to comply and then follow up to see if the problem is resolved?
- 5.3.2 If the work still does not comply, should the certifier be required to issue an enforcement notice and should the current requirement to issue a show-cause notice first be removed?
- 5.3.3 If the enforcement notice is not met, should the certifier be required to notify the local government and, for fire safety issues, the QFRS?
- 5.3.4 To better clarify their role in the enforcement process, should the private building certifier's enforcement powers and responsibilities end once they have notified the local government and, for fire safety issues, the QFRS?

Refer to the response form on the back of this discussion paper.



Have your say

Improving building certification in Queensland

Your comments will assist the Queensland Government in understanding community attitudes to the suggested building certification improvements.

All fields are optional, we appreciate as much feedback as you are willing to provide. You can also complete this form online at www.getinvolved.qld.gov.au

1.0 Conflicts of interest

1.4.1 If legislation provided more examples of what a conflict of interest is, do you think it would help building certifiers know when they have a potential conflict of interest?

- Yes
- No

1.4.2 If penalties were introduced for people who influence the way a building certifier carries out their duties, do you think it would help the certifier act in the public interest?

- Yes
- No

1.4.3 Will an increase in targeted auditing of building certifiers by the QBSA reduce the likelihood of certifiers developing inappropriate relationships with clients?

- Yes
- No

1.4.4 Do you think having the QBSA oversee the appointment of building certifiers in certain cases would reduce the potential for inappropriate relationships between certifiers and clients?

- Yes
- No



1.4.5 If a mandatory limit were to be introduced for the amount of repeat work a certifier can undertake for a single client, would this reduce the potential for inappropriate relationships between certifiers and clients?

- Yes
- No

1.4.6 If the owner is required to engage the building certifier rather than the builder or developer, do you think it would reduce the commercial pressures currently being placed on certifiers?

- Yes
- No

1.4.7 By introducing legislation to improve public availability of a building certifier's past performance, do you think they would act more responsibly when carrying out their functions?

- Yes
- No

1.4.8 By improving the auditing of building certifiers, do you think the most important issues such as commercial relationships, safety, health and amenity will be better addressed?

- Yes
- No

1.4.9 Would clarifying the legislation relative to a building certifier's involvement in the design phase help them to avoid potential conflict of interest when approving building work?

- Yes
- No

1.4.10 Do you think mandatory peer review of decisions where a building certifier is involved in the design of a building, would help avoid situations relating to a potential conflicts of interest?

- Yes
- No

2.0 Disengaging building certifiers

2.4.1 If all disengagements were to be referred to the QBSA, do you think it would ensure continuity in the assessment, approval and inspection of building work?

- Yes
- No

2.4.2 If the QBSA approves appointment of a replacement certifier in cases where disengagement is allowed, should the applicant for the building development approval have any say in who the new certifier should be?

- Yes
- No

3.0 The role of the building certifier

3.4.1 Would the best approach to improving the current disciplinary system for building certifiers be for QCAT to hear all disciplinary matters?

- Yes
- No

3.4.2 Or would the establishment of a new independent industry council, such as the Building Certification Council, be the best approach to improving the current disciplinary system for building certifiers?

- Yes
- No

3.4.3 If a new independent industry council were to set annual audit targets, detect building certification issues and trends, and identify training needs for certifiers, would this help clarify the role of building certifiers?

- Yes
- No

3.4.4 Would a guideline help consumers to better understand the role of building certifiers, and the building approval and inspection process?

- Yes
- No

3.4.5 If additional training packages were to be provided by the Department of Local Government and Planning, do you think this would improve building certifiers' understanding of new regulations and key issues?

- Yes
- No

3.4.6 Would confusion over a building certifier's role be reduced if the building legislation more clearly outlined the limits of their functions?

- Yes
- No

3.4.7 If the building legislation were to be amended to better define the role of competent persons, would this help to clarify the requirements of building certifiers and reduce the incidence of unlicensed competent persons performing certifier functions?

- Yes
- No

4.0 Standard of building certifiers' work

4.3.1 Would a demerit point system that resulted in referrals for appropriate disciplinary action and the identification of targeted training opportunities for building certifiers help to improve certifier conduct?

- Yes
- No

4.3.2 If building certifiers were required to undertake additional training if they breached their obligations and existing education programs focused more on the certifier code of conduct, would this help to improve certifiers' understanding of their requirements?

- Yes
- No

4.3.3 If local governments were to be required to provide certain information within specified timeframes, subject to the payment of a reasonable fee, would this help building certifiers to perform their functions in a more timely manner?

- Yes
- No

4.3.4 Would measures to increase the number of accredited courses and cadet programs in Queensland lead to an increase in the availability of building certifiers?

- Yes
- No

4.3.5 If a requirement were introduced that building certifiers who assess alternative designs for fire-related matters must undertake an approved fire engineering course, do you think this would result in a better fire safety outcome?

- Yes
- No

5.0 Enforcement of building regulations

5.3.1 If a private building certifier finds non-compliant work that they have been engaged to certify, should they be required to direct that it be made to comply and then follow up to see if the problem is resolved?

- Yes
- No

5.3.2 If the work still does not comply, should the certifier be required to issue an enforcement notice and should the current requirement to issue a show-cause notice first be removed?

- Yes
- No

5.3.3 If the enforcement notice is not met, should the certifier be required to notify the local government and, for fire safety issues, the QFRS?

Yes

No

5.3.4 To better clarify their role in the enforcement process, should the private building certifier's enforcement powers and responsibilities end once they have notified the local government and, for fire safety issues, the QFRS?

Yes

No

General comments or suggestions

Do you have any other general comments or suggestions about improving building certification in Queensland?

Thank you for taking the time to provide us with your feedback.

Optional

Name: _____

Postal address: _____

Email address: _____

Send us your comments

By post: 'Attention: Improving building certification in Queensland discussion paper' to: Department of Local Government and Planning
Building Codes Queensland
PO Box 15009 City East QLD 4002 Australia

In person: Department of Local Government and Planning
Building Codes Queensland
Level 5, 63 George Street Brisbane Queensland

Online: You can also complete the form online at www.getinvolved.qld.gov.au

