

5 June 2025

Our ref: [SS:MC]

Email: [REDACTED]

Ms Angela Moody
Productivity Commissioner and Chair
Queensland Productivity Commission

By email: enquiry@qpc.qld.gov.au

Dear Ms Moody

Inquiry into Opportunities to Improve Productivity of the Construction Sector

Thank you for the opportunity to provide feedback on the inquiry into opportunities to improve productivity of the Queensland constructor sector. The Queensland Law Society (QLS) appreciates being consulted on this important inquiry.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Executive Summary/Key Points:

- QLS welcomes the government's commitment to improving productivity of the Queensland construction sector without compromising quality and safety outcomes.
- QLS supports policies to:
 - reduce complexity and enhance accessibility of government forms and processes;
 - reduce regulatory duplication;
 - review taxation, fees and other costs-of-doing-business impediments; and
 - ensure legislation is drafted, interpreted and applied consistently to achieve its intended purpose without introducing any unintended consequences.
- QLS recommends continued development towards a simplified, cohesive and clear framework of State government procurement policies.
- QLS recommends reforms to reduce the complexity and inconsistency of the current regulatory regime for construction of dwelling houses, secondary dwellings and associated structures.

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This response has been compiled by the QLS Construction and Infrastructure Law Committee and Planning and Environment Law Committee, whose members have substantial expertise in this area.

General comments

QLS welcomes the government's commitment to improving productivity of the Queensland construction sector without compromising quality and safety outcomes.

QLS supports policies to:

- reduce complexity and enhance accessibility of government forms and processes;
- reduce regulatory duplication;
- review taxation, fees and other costs-of-doing-business impediments;
- ensure legislation is drafted, interpreted and applied consistently to achieve its intended purpose without introducing unintended consequences; and
- reduce poor environmental outcomes.

QLS has long advocated for the creation of legislation and policy that is evidence-based and subject to sufficient scrutiny by all relevant stakeholders.

In implementing measures intended to improve productivity of the construction sector, early and timely consultation will help to develop effective measures meet the needs of stakeholders. Early engagement with stakeholders will assist in ensuring measures do not have any unintended consequences or, in fact, decrease productivity. QLS would welcome opportunities to provide feedback on any proposed reforms that arise from this inquiry at any stage of the policy development process.

The challenges being faced by the construction sector are multi-faceted, and QLS brings the benefit of cross-disciplinary expertise to commenting on policy initiatives. QLS advocacy is informed by engagement with our 30 legal policy committees, comprising volunteer legal practitioners with expertise in their respective fields, including fields relevant to the construction sector. QLS practitioners have on-the-ground, practical experience of how policy initiatives will affect Queensland consumers, industry and business.

As the terms of reference of this inquiry are very broad, we have not addressed all areas of potential reform in this response. Instead, we have focused on State government procurement policies and the regulation of dwelling house construction.

State government procurement policies

QLS recommends development of a simplified, cohesive and clear framework of State government procurement policies.

Our members have reported that, when assisting government entities (e.g., local governments delivering State-funded projects, statutory bodies and government-owned corporations) with the conduct of procurement processes for construction work, it can be difficult for those entities to identify, understand and properly apply the various State government procurement policies in practice. This increases:

- the time taken to prepare procurement documentation;

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- the risk that the procurement documentation will be inconsistent with State government expectations; and
- the cost of the procurement, as it often requires the government entity to seek external assistance from legal advisors and other consultants at significant expense, simply to identify, understand and ensure compliance with relevant State government policies.

Our members have observed that the difficulties in identifying, understanding and properly applying State Government procurement policies appear to be caused or contributed to by:

1. the very high number of individual procurement related policies;
2. inconsistent naming conventions (e.g. policies, strategies, guidelines, charters, codes, thresholds, mandates, tests or conditions), with no easily discernible distinction between the intended effect or application of the different categories of document;
3. inconsistent naming of policies, for example:
 - the Office of Industrial Relations website¹ contains a page titled “Building and construction Code of Practice 2000”;
 - this page contains a link labelled “Queensland Code of Practice for the Building and Construction Industry”;
 - when the link is followed, the title of the PDF document is “Building Code of Practice 2000”; and
 - the text of the document identifies it as the “Queensland Code of Practice for the Building and Construction Industry”;
4. inconsistent guidance on the application of policies. For example, in relation to the guidance document to the Ethical Supplier Mandate 2024, ‘The Guidelines: Ethical Supplier Mandate 2024’²:
 - the guidelines’ introductory webpage (as at 4 June 2025) states “The Ethical Supplier Mandate (the Mandate) applies to the procurement categories of General Goods and Services, Information and Communication Technology, Medical, Social Services and all future procurement categories under the Queensland Procurement Policy (QPP)”;
 - however, the guidelines themselves state the Ethical Supplier Mandate also applies to other categories such as Building, Construction and Maintenance category (BCM);
5. inconsistent levels of specific requirements. For example, some policies require particular conditions to be inserted in contracts or conditions of tendering; some require particular returnable schedules to be utilised; some impact on assessment methodologies; and some require tenderers to be pre-qualified;
6. inconsistent and unclear drafting of these policies, which makes it difficult to determine which policies apply to a given procurement and difficult to identify specific requirements with which the purchasing entity must adhere;

¹ <https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>

² <https://www.forgov.qld.gov.au/finance-procurement-and-travel/procurement/procurement-resources/search-for-procurement-policies-resources-tools-and-templates/guidelines-ethical-supplier-mandate>

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7. a lack of a single centralised resource to locate all potentially applicable policies. The “For Government” Procurement webpage contains dozens of links to different policies spread across multiple pages yet still does not include all relevant policies (for example, the Queensland Code of Practice for the Building and Construction Industry is not listed, and does not appear in the “Search for procurement policies, resources, tools and templates” search engine, and is only found on the Office of Industrial Relations webpage);
8. a lack of easy-to-follow guidance on how to determine which of the various policies apply to a particular contract; and
9. a lack of easy-to-follow guidance as to the simple, practical steps necessary for the procuring entity to comply with the specific requirements of the policy.

The QLS recommends the State government:

1. review, rationalise and update its procurement related policies, by:
 - a) eliminating superfluous policies and consolidating requirements;
 - b) reviewing drafting of policies to ensure the requirements are clear and use consistent language across policies; and
 - c) ensuring each policy is supported by a succinct, clear supporting document aimed at government officers conducting procurement processes that clearly, and concisely identifies:
 - the circumstances in which it will apply to a particular contract; and
 - the specific requirements that must be followed to comply with the policy;
2. develop and publish a single overarching guideline that identifies all procurement related policies;
3. develop tools to assist in the efficient identification of relevant policies, such as an online questionnaire that:
 - permits government officers to answer relevant questions about a particular project; and
 - based on those answers, advises which policies are relevant to the project; and
4. develop consistent, clear supporting material that contains relevant procurement clauses, contract clauses and returnable schedules that can be easily incorporated into relevant project documentation.

These measures will assist in ensuring procurement processes are conducted more efficiently, saving time and money, and State government policies are correctly implemented on State government funded projects.

Regulation of dwelling house construction

The current regulatory regime for construction of a dwelling house and secondary dwelling and associated structures (i.e., class 1 and class 10 structures) is overly technical and complex and can vary between suburbs and regions within Queensland.

Building or renovating a house may require assessment against state laws, a local government planning scheme and building assessment requirements. The form of development may also

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constitute a material change of use, carrying out operational work and/or carrying out building work.

Our members' experience suggests reform of the regulatory regime for dwelling houses would support productivity and address housing supply and affordability issues. In this respect, we make the following comments and recommendations:

1. In principle, QLS supports the preparation of a Queensland Housing Code, provided it will cut red tape, achieve consistency across the state and avoid duplication of processes. We would welcome the opportunity to provide our members' feedback during development of the draft Queensland Housing Code.
2. The *Building Act 1975* (Qld) (**Building Act**) and the *Planning Act 2016* (Qld) (**Planning Act**) include different definitions of 'building work'. We recommend these different definitions be considered in the context of the broader inquiry and any proposed amendments arising from the inquiry.
3. We recommend reviewing the language of the Building Act and building assessment provisions (including the *Queensland Development Code (QDC) MP 1.1 and 1.2*) and alternative provisions in planning schemes against the background of the Planning Act to achieve consistency and avoid confusion. For example:
 - the Building Act uses the terms 'performance requirement', 'performance solution', 'building solution', 'acceptable solution', 'qualitative statement' and 'quantifiable standard' in various contexts;
 - the QDC uses the terms 'performance criteria' and 'acceptable solutions';
 - the National Construction Code (**NCC**) sets out 'Performance Requirements' and 'Deemed to Satisfy Solutions';
 - the ABCB Housing Provisions use 'Deemed-to-Satisfy Provisions', which are acceptable forms of construction that meet parts of the NCC; and
 - planning schemes usually use 'performance outcomes' and 'acceptable solutions', but some use 'qualitative statement' and 'quantifiable solution' for alternative provisions.

While the contexts vary, the adoption of consistent terms (where possible) would remove some of the confusion surrounding interpretation and application of the relevant laws.

4. We recommend reviewing and simplifying the current system for building assessment provisions nominated under a local law, planning scheme or resolution, including reviewing the advantages and disadvantages of the system. This would include considering whether it is necessary to retain the reference to a resolution and local law or whether all provisions could be included in the relevant planning scheme.
5. Currently, there is very little consistency across planning schemes and their provisions are often difficult to interpret and apply. Therefore, we recommend introducing guidelines, examples or standard provisions that clearly demonstrate how alternative provisions and other provisions that may be adopted under a planning scheme, local law or resolution are to be drafted and operate.
6. We recommend reviewing the definition of 'QDC residential design and sitings provisions' in the Building Act with respect to the prescribed aspects of Parts 1.1 and 1.2 of the QDC.

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In particular, we suggest considering whether a private certifier has the necessary assessment powers, e.g. with respect to height.

7. We recommend reviewing the current Concurrence Agency Response process and seeking feedback from local governments, developers and certifiers on this process.
8. We recommend reviewing and redrafting the development application forms and associated guidelines that are applicable to carrying out building work assessable against a planning scheme and building work assessable against the Building Act in the context of the broader review.
9. We recommend amending Schedule 6 Part 1 and/or Part 2 Section 2(2) of the *Planning Regulation 2017* (Qld) (**Planning Regulation**) to extend the application of the material change of use prohibitions to building works assessable against the planning scheme.
10. We recommend reviewing Schedule 9 Part 3 Division 2 Tables 1 to 3 of the Planning Regulation in the context of the broader inquiry, the Building Act and the QDC, to clarify the extent of a local government's referral jurisdiction and the circumstances in which referral is required. Currently, there appears to be some confusion as to when the private certifier assessing the application applies the performance criteria (if an acceptable solution is not met) and when referral to a local government is required.
11. We recommend amending Schedule 9 Part 3 Division 2 Table 8 of the Planning Regulation to remove any referral where, but for Schedule 6 of the Planning Regulation, the change of use associated with construction of a dwelling house would have been assessable as a material change of use. As currently drafted, item 4 of Table 8 is unclear in its operation because a material change of use is a different type of development to building work, and it is not appropriate to apply provisions applicable to a material change of use to an assessment of building work.
12. We recommend providing guidance on the review and redrafting of the standard provisions applicable to the assessment of building work in Parts 1 and 5 of most planning schemes. These provisions were prepared against the backdrop of the Standard Planning Scheme Provisions (subsequently titled the Queensland Planning Provisions), and their application has been confusing.
13. We recommend seeking input from private certifiers regarding the complexity and practical difficulties arising out of the current legislation, which effectively requires certifiers to seek planning assistance to meet their obligations under the current regime.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED], or by phone on [REDACTED].

Yours faithfully



Genevieve Dee
President