

14 April 2022

Committee Secretary
Transport and Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Via email: trc@parliament.qld.gov.au

Dear Committee Secretary,

Thank you for the opportunity to provide feedback on the *Building and Other Legislation Amendment Bill 2022* (BOLA Bill) that is currently being reviewed by the Transport and Resources Committee.

The Property Council of Australia is the leading advocate for Australia's biggest industry – property. We are a national not-for-profit organisation established to promote the work of the property industry in delivering prosperity, jobs and strong communities to all Australians. The Queensland Division of the Property Council represents over 380 member companies across residential, commercial, retail, retirement living, industrial, tourism and education sectors.

Head Contractor Licensing

The Property Council supports the provisions of the BOLA Bill that seek to retain the current head contractor licensing exemption in the *Queensland Building and Construction Commission Act 1992* (QBCC Act) for non-residential work. This exemption is relied on extensively by members of the property industry in commercial contracting, including development agreements and lease agreements, or by businesses undertaking projects that involve a relatively minor element of building work. Its repeal would have resulted in a range of businesses incurring increased costs to secure a licence to undertake work they have no intention to themselves undertake or purport to be qualified to undertake. This would be on top of the already escalating material and labour costs.

In many instances it is likely removing the licencing exemption would have prevented certain parties from continuing to work in the industry in the way they currently do, or altogether, on the basis the licence cannot be secured or is not a viable business model.

While retention of the head contractor exemption is supported, the Property Council is concerned by the inclusion of provisions allowing exclusions from the head contractor licensing exemption to be prescribed in a regulation. This would create an unacceptable level of uncertainty for industry by leaving the door open for exemptions to be restricted or removed quickly and at any time, without parliamentary scrutiny or public consultation.

Any decision to regulate an exclusion from the head contractor licensing exemption would require a detailed consideration of what the exclusion seeks to achieve against the existing provisions of the Act. Previous consultation in relation to removal of the exemption provisions did not contemplate removal of the exemption for only certain classes of head contractors.

Any regulation made under this proposed amendment to the Act would therefore represent a new policy or direction which has not been subject to the usual scrutiny. There is no good reason or public benefit in setting up what is essentially a 'fast-track' regime to permit the introduction of what are currently unidentified and undeveloped regulations, without a guarantee of consultation.

In our view the ordinary and appropriate way to ensure adequate consultation and scrutiny is to address proposed amendments to the head contractor exemption provisions as amendments to the Act itself, if and when a need arises.

Further, we query whether allowing the exemption contained in the Act to be constrained by subordinate legislation is in fact a 'Henry VIII clause' (where the Crown, on advice from executive government, can restrict the application of an Act of Parliament), and in breach of the Fundamental Legislative Principles set out in the *Legislative Standards Act 1992*.

Parliamentary Committees have, in the past, recommended removal of such provisions from Bills. We would encourage this committee to consider doing the same.

Concerns have been raised that the exemption increases sub-contractor payment insecurity by allowing head contractors to avoid the project trust account framework. This concern appears to have been dealt with by the BOLA Bill's inclusion of measures ensuring that exempt head contractors' sub-contractors are covered by the retention trust account framework. It should be noted however that the BOLA Bill does not provide sufficient certainty around when trust accounts are or may be required for subcontractors, something that the Property Council believes requires further clarification.

Contemporary consumer expectations about efficiency of buildings

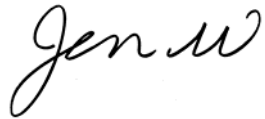
The Property Council supports measures to encourage building sustainability and works to ensure that this issue is front of mind for future projects. We would welcome the opportunity to continue to work with Government on measures that would increase the sustainability and resilience of Queensland buildings.

In that vein, the Property Council supports the measures in this Bill aimed at removing obstacles to owners who wish to install solar panels in their residential property by 'banning the banners', i.e. introducing measures to constrain corporate bodies' ability to restrict or prohibit the use of solar panels on the basis of social character and visual amenity.

The Property Council also supports the Bill's measures aimed at increasing the use of greywater across a range of projects and developments, such as in cooling towers for air conditioning and for flushing toilets. We do however wish to emphasise the need to ensure it does not affect the health and safety of occupants. It is pleasing to see that a regulatory framework has been proposed in this Bill to ensure depositing of greywater and other wastewater is done in a safe and sanitary way.

Thank you for the opportunity to provide feedback on this legislation. If you require any additional information or would like to discuss this matter further, please don't hesitate to contact me on 0448 432 936 or jwilliams@propertycouncil.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jen W'.

Jen Williams
Queensland Executive Director