

12 March 2018

Our ref: (KB - Gen)

Committee Secretary  
Transport and Public Works Committee  
Parliament House  
George Street  
Brisbane QLD 4000

By email: [tpwc@parliament.qld.gov.au](mailto:tpwc@parliament.qld.gov.au)

Dear Committee Secretary

### **Plumbing and Drainage Bill 2018**

Thank you for the opportunity to provide comments on the Plumbing and Drainage Bill 2018. Queensland Law Society appreciates being consulted on this important legislation.

The Queensland Law Society (the QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 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. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Given the time constraints surrounding the introduction of this Bill, and of other bills also introduced at this time, we have not undertaken an exhaustive review of each provision of the Bill and its effect. Our comments are restricted to certain provisions of the Bill which we consider require removal or redrafting.

#### **The right to claim privilege against self-incrimination**

The right to claim privilege against self-incrimination. This is a longstanding, fundamental right which should not be removed unless appropriately justified, and as a last resort.

Clause 48 relates to the supply of documents and information in audit. We submit that instead of abrogating the right to claim privilege, a more proportionate result of the failure to provide the requisite documents and information would be that practically, the person fails the audit or has other action taken against them because this information cannot be used during to make a favourable decision.

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We do not consider that it is appropriate for a penalty to be imposed for the failure to give this information and documents as this contradicts this fundamental right and thus should be considered a "reasonable excuse".

Further clauses 97(3)(b) and (c) of the Bill also clearly breach the right to claim privilege without sufficient justification. While subsection (2) of this clause has specifically referred to this right, the extremely broad nature of s97(3)(b) and (c) removes any protection this right gives.

### **Offences and penalties**

The penalties imposed by the proposed legislation are objectively harsh when compared with other like offences in similar acts and when reviewing the purpose of this Bill. The explanatory material provided compares the penalties with the *Building Industry Fairness (Security of Payment) Act 2017*, however, QLS objected to the penalties placed in this act due to their severe nature.

In our submission, the penalties under clauses 56, 57, 186 and 187 of this Bill should be modelled on the *Building Act 1975* and *Electrical Safety Act* rather than the *Building Industry Fairness (Security of Payment) Act 2017*. For example, section 126 of the *Building Act 1975* imposes a maximum of 165 penalty units on a building certifier acting without a licence. We submit that similar penalties should be considered in this Bill.

The QLS also opposes the imposition of jail terms as a penalty under this Bill. Such penalties are disproportionate to the objectives of the Bill. We also hold concerns with a regulation imposing a penalty which has not been subjected to parliamentary review and scrutiny.

In addition, we consider that these offence provisions should not limit an excuse or defence that could appropriately apply in the circumstances. These clauses, where no defence or excuse is provided, should be amended to expressly state that a reasonable excuse is able to be provided. A tribunal, court or commission should be able to exercise appropriate discretion when finding that an offence has been committed.

### **Transitional regulation-making power**

Clause 174 of the Bill which contains a transitional regulation-making power allows the legislature to by-pass the parliamentary process. Although the purpose of the power is to facilitate a smooth transition into the new scheme, any material that imposes obligations or affects the rights of individual should be included in the primary legislation.

We make the same submission in respect of clause 157.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to [K.Brodnik@qls.com.au](mailto:K.Brodnik@qls.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ken Taylor', written in a cursive style with a long horizontal stroke extending to the right.

Ken Taylor  
**President**