

ANZSOG

TITLE: The Queensland Building and Construction Commission: An Analysis of Governance, Regulatory Approach and Capability

AUTHORS: Andrew Bushnell, Patrick Brownlee, Subho Banerjee

SERIES: ANZSOG Research Insights

NUMBER: 22

DATE: April 2022

PUBLISHER: Australia and New Zealand School of Government

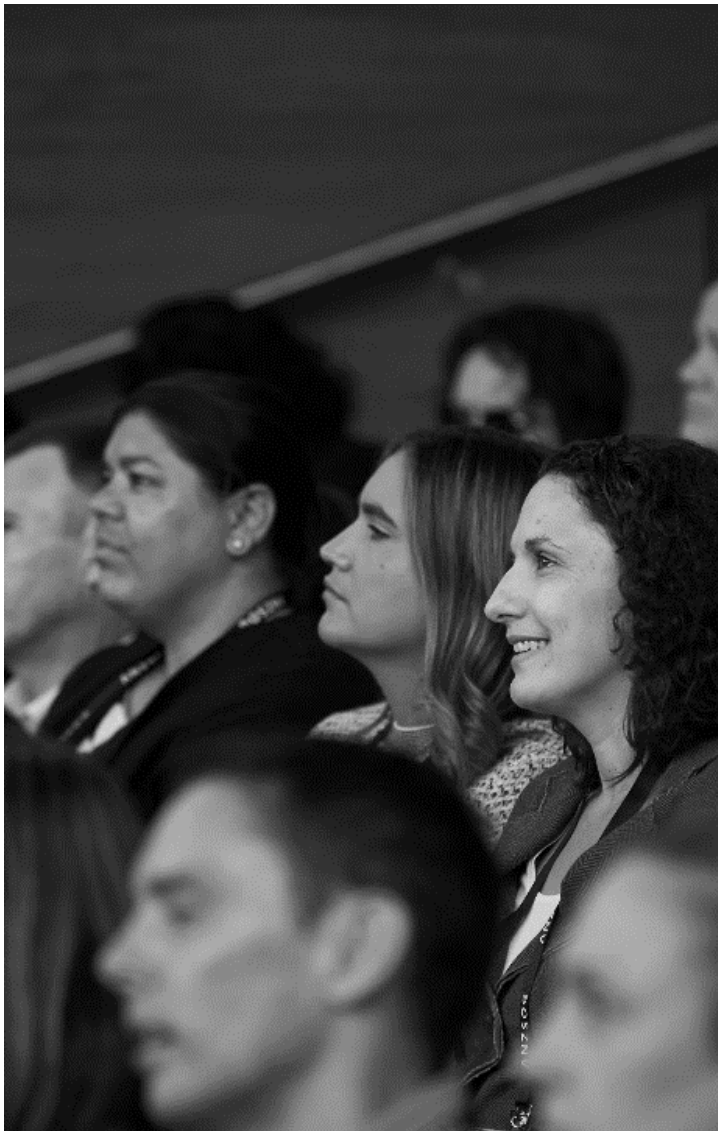
ISSN: 2653-7281

DOI: 10.54810/BGAC1535

CITATION: Bushnell, Andrew, Patrick Brownlee and Subho Banerjee. *The Queensland Building and Construction Commission: An Analysis of Governance, Regulatory Approach and Capability: ANZSOG Research Insights No. 22*. Melbourne: Australia and New Zealand School of Government, April 2022.

Queensland
Building and
Construction
Commission: An
analysis of
governance,
regulatory approach
and capability

THE QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION: AN ANALYSIS OF GOVERNANCE, REGULATORY APPROACH AND CAPABILITY



11 April 2022

Bushnell, A., Brownlee, P. and
Banerjee, S.

Contents

| | |
|------------------------------------------------------------------------------------------------------------------|----|
| Executive Summary | 4 |
| Introduction | 6 |
| Background | 6 |
| The QBCC in Context | 8 |
| Part A: The QBCC’s governance model | 11 |
| Summary Analysis of QBCC Governance Model | 18 |
| Part B: OECD best practice principles for regulators | 20 |
| Table 1: Analysis of QBCC against OECD principles of regulatory governance | 20 |
| OECD findings on regulatory independence | 22 |
| Part C: Comparison with other Australian jurisdictions..... | 26 |
| Table 2: Key features of regulatory system for comparable jurisdictions | 26 |
| Table 3: Regulatory systems, mainland states | 28 |
| Table 4: Distribution of construction industry regulation functions, mainland states | 28 |
| Table 5: Sources of funding and insurance role for construction industry regulators, mainland states | 29 |
| Table 6: Building and construction industry levies, mainland states | 31 |
| Table 7: Strategic and governance documents, building regulators, mainland states | 33 |
| Table 8: Skill and experience requirements for construction industry board appointments | 37 |
| Table 9: Composition of construction industry boards, by career background, mentions in member biographies | 39 |
| Conclusion to Parts A - C..... | 41 |

| | |
|------------------------------------------------------------------------------------------------------|----|
| Part D: Risk-based regulation in theory and practice | 42 |
| Queensland Government regulatory strategy | 42 |
| Table 10: Best practice principles for regulation making, Queensland and Commonwealth | 43 |
| Table 11: Queensland Regulator Performance Framework, model practices and supporting principles..... | 45 |
| QBCC’s interpretation of the risk-based regulatory strategy | 46 |
| The challenges of risk-based regulation | 47 |
| Observations about the QBCC as a risk-based regulator | 52 |
| Conclusion to Part D | 53 |
| Part E: Regulatory leadership capabilities and values | 54 |
| Leadership capabilities: general and specific..... | 55 |
| Table 12: Leadership capabilities matrix..... | 57 |
| Leadership Capabilities and the QBCC in context..... | 59 |
| Internal leadership | 62 |
| Table 13: QBCC values embodied in staffing | 63 |
| Values..... | 64 |
| Table 14: Behaviours and values | 65 |
| Conclusion to Part E | 66 |
| Conclusion..... | 67 |
| Appendix A: REVIEW TERMS OF REFERENCE | 69 |

Note: The authors would like to thank Professor Brian Head and Dr Vicky Comino for reviewing drafts of this document and offering feedback.

Executive Summary

This Australia and New Zealand School of Government (ANZSOG) background research report is intended to inform the Review of the Queensland Building and Construction Commission (QBCC), led by Mr Jim Varghese AM, as announced by the Queensland government in November 2021. ANZSOG was commissioned to provide an independent account of governance arrangements for QBCC and to offer a comparative analysis with other jurisdictions. Consistent with this commission, ANZSOG has not put forward recommendations in this report, but instead offered a number of observations for further consideration in the review process.

The report begins by setting out some background context for the regulation of the building and construction sector in Queensland, including the more recent history of regulatory reform in the sector. It then sets out the key features of a) the QBCC governance model b) comparative practices in other jurisdictions c) regulatory best practice evidence drawn from OECD research d) risk-based regulation as the operational paradigm for QBCC, and e) capabilities and values for regulators in relation to the QBCC.

The report makes the following observations arising from the analysis of the QBCC's governance model: **Firstly**, that the QBCC is structurally a one-stop shop with a range of related functions although with internal separation of its insurance fund management as part of statutory requirements. **Secondly**, that QBCC's overall financial position seems adequate to its functions but only because the statutory insurance fund performs well and when aggregated to show an overall financial result. In fact, and to meet requirements of recent reform of the sector, operational funding for non-insurance activities and derived from fees and levies is insufficient. Other government grants have supported operations periodically, but these might be considered *in lieu*. **Thirdly**, the mandates for regulatory strategy given to the Board and the Commission could capture more fully the complexity and demands of the sector. **Fourthly**, the QBCC is unique in that it is a regulator that directly administers an insurance scheme. Nevertheless, each jurisdiction addresses insurance in different ways; there is not

a consensus model. **Finally**, QBCC is also unique in that it does not raise a building levy, although calibration of levies always should be sensitive to jurisdictional context and needs.

In terms of best practice regulation, the analysis confirms that the focus of the QBCC is on a risk-based regulatory strategy. This approach places high demands upon the capabilities of regulators because it relies on a data-driven analysis of the regulatory environment, which is sensitive to not only to the actions but also perceptions of the regulator. Moreover, the risk-based regulatory approach tends to give regulators a high level of discretion about the identification and prioritisation of negative outcomes and the development of responses tailored to those judgements. This combination of complexity and discretion further illuminates features identified earlier in QBCC's governance model in respect of its one-stop shop model and attendant wide range of functions, its funding and use of funds, and the clarity of its strategic direction and leadership roles.

With regard to the leadership of the QBCC, the analysis suggests that a complex skill set is required across the organisational leadership team to be able to successfully navigate relationships with the Minister, the governing board, with associated line agencies and entities. The Report explains that the values embodied in a regulator like QBCC, should reflect the desirability of decision-makers at all levels being empowered to develop their understanding of the regulatory environment and exercise the discretion inherent in their roles in furtherance of the regulator's mission. This is vital for protecting the regulator's credibility and shaping the regulatory environment.

Overall, the critical underpinning of good governance in such a complex sector is to have an insights-driven approach, as is borne out by the ongoing regulatory reform process in response to recent events in Australia and internationally. It is therefore crucial to ensure that the governance, resourcing and capabilities of the QBCC enable it to be set up for success on this basis into the future.

Introduction

Background

1. The Queensland Building and Construction Commission (QBCC) is Queensland’s peak regulator for the construction industry. On 16 November 2021, the Queensland Government announced that the Department of Energy and Public Works (DEPW) had commissioned an independent review of the QBCC, with the aim of ensuring that the “policies, procedures and practices of the QBCC... are best practice for a regulator of this kind and fit for purpose...”.¹ The review is being conducted by Mr Jim Varghese AM, a former senior executive in the Queensland Public Service. DEPW has commissioned the Australia and New Zealand School of Government (ANZSOG) to provide analysis of governance matters as an input into the review. Consistent with this commission, ANZSOG has not put forward recommendations in this report, but instead offered a number of observations for further consideration in the review process. ANZSOG is an independent, not-for-profit organisation that works in partnership with 10 governments and 16 universities across Australia and New Zealand to improve public sector capability through education and research.²
2. This document provides a desktop baseline analysis of the QBCC’s governance model and mandate, regulatory approach, and capability requirements. The analysis compares the QBCC on these dimensions with other Australian construction industry regulators and with best practice as identified in the expert literature. Where noted, this analysis draws on DEPW source material provided to ANZSOG, including in relation to the Queensland Government’s 2017 election commitment to “Review the resourcing of the [QBCC]... so as to ensure that the Commission has both capacity and capability

¹ Department of Energy and Public Works (DEPW) (2022), “About the QBCC governance review,” accessed 4 April 2022. <<https://www.epw.qld.gov.au/about/initiatives/qbcc-governance-review/about>>

² For more information see: Australia and New Zealand School of Government (ANZSOG), “About us,” accessed 4 April 2022 <<https://www.anzsog.edu.au/about/about-us>>

to satisfactorily discharge its functions”.³ However, the analysis provided here is ANZSOG’s independent assessment.

3. Explanatory documents on QBCC governance arrangements provided by the DEPW were consulted alongside QBCC published material available on its website (reports and plans), and the various parliamentary Acts pertaining to the regulation of building and construction in Queensland. A range of primary and other secondary documentary sources were also consulted. Finally, our analysis has been aided by policy and governance academic experts.
4. The document is structured as follows. **Part A** outlines key features of the QBCC governance model; **Part B** provides a comparative analysis of the governance models of Australian construction industry regulators, while **Part C** places this in the context of the evidence base for best practice for regulators in this industry. **Part D** is a discussion of the QBCC’s risk-based regulatory approach, including the interactions between this approach, the kinds of risks faced by the industry, and the QBCC’s governance model. Finally, **Part E** considers evidence for the capabilities and values regulatory leaders require to be effective, and how this relates to the success of the QBCC’s governance model and regulatory approach.

³ Queensland Government (2020), *Progress report on 2017 election commitments June 2020* p. 36. Available here: <<https://cabinet.qld.gov.au/documents/2020/May/GvtCtts/Attachments/2017.PDF>> (accessed 4 April 2022)

The QBCC in Context

5. The current institutional form of the QBCC dates from the Queensland Government's response to the recommendations in the Transport, Housing and Local Government *Report No. 14, Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012*.⁴ While the government did not accept all the recommendations of that report, the report did lead to government creating the QBCC to replace the Queensland Building Services Agency (QBSA) in 2013. The QBCC comprises the Queensland Building and Construction Board (QBC Board), the Commissioner and the organisational unit under the control of the Commissioner, and the Service Trades Council, which is established separately under the *Plumbing and Drainage Act 2018* (Qld).
6. The QBSA was established in 1991 as a 'one-stop shop' for the handing of building regulation and licensing for the construction industry in Queensland. The consolidation of regulatory and service-delivery functions was intended to increase effectiveness and efficiency. In following years, consecutive governments undertook industry reforms that changed and increased the range of the functions of the regulator. These reforms included the 1999 Better Building Industry reforms, which reformed licensing among other functions, the 2001 introduction of fire protection contractor licensing, the 2003 rationalisation of licence classes, and the 2009 introduction of fire protection occupational licence classes as part of the government's continuing response to the 2000 Childers Palace Backpackers Hostel fire.
7. In 2013, the QBCC replaced the QBSA, retaining the earlier body's functions while incorporating a newly established professional governing board, which would set strategic directions, along with operational, financial, and administrative policies. The reform was also driven by growth in the construction sector, with rising numbers of building approvals, and an increasingly complex built environment. Since its inception, the mandate of the regulator has included protecting the health and

⁴ Explanatory Notes for *Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 (Qld)*. Available here: <<https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2014-1818>> (accessed 4 April 2022)

safety of consumers and workers, while also managing a variety of industry sectoral interests, including the treatment of subcontractors, the investigation of offences and disciplinary matters, and dispute resolution. These reforms sought to reduce red tape, create fair regulations, and ensure the QBCC supports the growth of the industry.⁵⁶

8. Queensland's building and construction sector is significant for the fact that it engages and is serviced by the highest number of small businesses of any sector.⁷ This presents a volume burden in terms of licencing and compliance. It also has economic regulatory implications. Small businesses' capital and cash reserves are limited. Insolvency among building services operators is common and has consequently been a real and material issue and a challenge for the regulator. In 2017-18, for example, 324 construction sector businesses became insolvent; almost half of these were businesses valued at less than \$3million.⁸ And where larger companies fail, as has also occurred,⁹ the effects flow through to these very same smaller operators as subcontractors. In 2017, and in response to this sectoral challenge, the Queensland Government further reformed the regulator, expanding its powers in respect of security of payment, non-conforming building products, building certification and a range of other functions.
9. In recent years, the critical importance of building and construction regulation has been demonstrated by several incidents, including the 2019 and 2018 evacuations respectively, of newly built residential towers at Mascot and at Homebush in NSW, and the 2017 fire at Grenfell Tower in London that saw

⁶ The Hon. Tim Mander MP (2014), "Queensland building and construction commission and other legislation bill, second reading", accessed 4 April 2022.

<https://documents.parliament.qld.gov.au/speeches/spk2014/Timothy_Mander-Everton-20141015-267423815669.pdf>

⁷ Department of Employment, Small Business and Training, 2018, *State of Small Business 2018*

⁸ Australian Securities and Investments Commission (2018), *Australian insolvency statistics series 3.2 – released November 2018*

⁹ ABC News, 17 October 2018, *Hundreds of jobs lost as major central Queensland building company JM Kelly collapses*, available at: www.abc.net.au/news/2018-10-17/major-building-company-collapses-central-queensland/10387422

massive loss of life caused by the use of combustible cladding. In response to rising concern about regulatory failures in the construction industry, a national assessment of the effectiveness of compliance and enforcement systems in Australia was undertaken and the results published in the Building Confidence Report (BCR) (2018).¹⁰ The BCR found widespread systemic failures and regulatory oversight across Australia. Among the concerns raised were issues with regulator capability, failure to regulate high-rise construction, inadequacy of design documentation and weaknesses in compliance and enforcement systems that did not anticipate and prevent avoidable problems. The recommendations made in the BCR report have been implemented across jurisdictions, and by 2019 Queensland had implemented or partially implemented 19 of the 24 reforms.¹¹ The reforms made since the release of the BCR report have further increased the regulatory oversight of the QBCC and extended its powers and responsibilities, with a consequent increase in the QBCC's resource needs.

10. Planning for growth in building and construction is sensitive to issues of supply chain certainty, increases in material costs and labour demand, and in the two most recent years marked by COVID 19, disruption to the supply of goods and labour due to a reduction in skilled migration. Sectoral sensitivity to issues of supply and demand has also been challenged by the size and shape of building services. The picture here is one of ongoing reform and an illustration of (the need for) insights-driven regulation. The QBCC is required to operate in and anticipate the acute and high stakes challenges that attend the construction sector, while also ensuring compliance with Australian Standards and the National Construction Code (NCC).

¹⁰ Peter Shergold and Bronwyn Weir (2018), *Building confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, Australian Government. Available here:

<https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf> (accessed 4 April 2022)

¹¹ Building Ministers' Forum (2019), *Building confidence report: implementation plan*, Australian Government. Available here: <<https://www.industry.gov.au/sites/default/files/2019-03/building-confidence-report-implementation-plan.pdf>> (accessed 4 April 2022)

Part A: The QBCC's governance model

11. To facilitate the comparative analysis undertaken below, this section outlines certain key features of the QBCC's governance model and compares its operation with the intent of Parliament as stated in the governing legislation and other relevant documentation.¹² These key features are the structure, mandate, functions, and funding of QBCC.
12. *Structure:* The QBCC is established under the *QBCC Act 1991 (Qld)*. The legislation specifies that the QBCC comprises the Queensland Building and Construction Board (QBC Board), the Commissioner and the organisational unit under the control of the Commissioner, and the Service Trades Council, which is established separately under the *Plumbing and Drainage Act 2018 (Qld)*. The structure divides governance responsibilities as follows:
 - a. The QBCC reports to the Minister for Public Works, who may give the QBCC "a written direction in relation to the commission and its functions". Such direction is to be tabled in Parliament and included in the QBCC's annual report (s 9). However, since its establishment in 2013, none of the QBCC's annual reports have included any such direction, suggesting that no Minister has ever exercised this right. Nor has any similar document, like a Statement of Expectations, ever been issued to the QBCC.
 - b. The QBC Board is the QBCC's "governing body" (s 10) and has 7 functions (s 11), including "deciding the strategies... and policies of the commission", "ensuring" that the QBCC "performs its functions", "providing guidance and leadership to the commissioner", providing the same to the Service Trades Council except in relation to certain functions under the *Plumbing and Drainage Act 2018*, advising the Minister on issue affecting the industry and consumers and the Commission, advising the Minister about unfair trade practices, and

¹² This is not intended to be an exhaustive description of the features of governance of regulators, but to capture these areas of interest to the QBCC as agreed between DEPW and ANZSOG. For example, mechanisms for appealing regulatory decisions are not included in this analysis, nor are processes for public engagement. The focus in this section is more narrowly on the structure of the body and the relationships between its leaders, rather than its interactions with the regulated community – this is canvassed in subsequent sections.

consulting with the industry and consumers. The board is to be appointed by the Governor in Council (that is, on the recommendation of the Minister), to comprise “not more than 10” members, and to have “as far as possible, equal representation” of “experience and competence” in six different areas: building and construction, finance, corporate governance and risk, insurance and the reinsurance market, consumer advocacy and awareness, and public sector governance, including administration and enforcement of laws (s 12).

- c. The Commissioner is appointed “by the board with the Minister’s prior written approval” (s 20D). The Commissioner has responsibility for many functions connected with the operation of the QBCC, including the “overall management” of the Commissioner’s “organisational unit”, administration of licensing, inspections, compliance enforcement, issuing warnings, consumer education, publishing information about products, and providing classes for licensees, owner-builders, and others (s 20J). In exercising his or her responsibilities, the Commissioner “must give effect to any policy or direction of the board relevant to the responsibility” – though there are also certain functions the Commissioner must undertake independently of the board, like decisions about licenses. The Commissioner is to report regularly to the board on the administration of QBCC Act and provide special reports as requested (s 20K).¹³
- d. The Service Trades Council is an advisory body which represents the interest of the plumbing and drainage trades. It is empowered to advise the Minister directly on matters relevant to

¹³ All references in this paragraph are to the *Queensland Building and Construction Commission Act (1991) (Qld)*. Available here: <<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1991-098>> (accessed 4 April 2022)

Style note: the QBCC Act does not capitalise ‘commission’ and ‘commissioner’. This style is preserved in quotes, but throughout this report the words are capitalised.

the plumbing and drainage trades, to make policy recommendations to the commissioner, and to review certain decisions made by the commissioner.¹⁴

13. *Mandate*: The QBCC is a ‘one-stop-shop’ regulator that combines its regulatory functions with its role as an insurer and the provision of various services to the industry. Its website describes its role as “providing information, advice and regulation to ensure the maintenance of proper building standards and remedies for defective building work... [and thereby] promote confidence in the building and construction industry”. Accordingly, the QBCC defines its mandate as “To independently regulate the building and construction sector, and efficiently manage the insurance fund”.¹⁵ The QBCC’s mandate and stated role reflect the objects of the QBCC Act, at s 3.¹⁶
14. *Functions*: Parliament has given the QBCC a wide range of functions to perform in keeping with its mandate. Its functions under the *QBCC Act* include the licensing of individuals and companies, oversight of contracts and subcontracts, the operation of a statutory home warranty insurance scheme, orders for the rectification and remediation of building work, approval of building products, and conducting compliance inspections. Under the *Building Act 1975 (Qld)*, the QBCC is charged with the certification of buildings, fire safety, and pool safety.¹⁷ The *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* (BIF Act) and associated regulations provide measures designed to ensure

¹⁴ Queensland Building and Construction Commission (QBCC) (2014) “A voice for service trades,” accessed 4 April 2022. <<https://www.qbcc.qld.gov.au/service-trades-council-stc/voice-service-trades>> *Plumbing and drainage Act 2018* (Qld), ss 105-108. Available here:

<<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2018-017>> (accessed 5 April 2022)

¹⁵ QBCC (2014), “Overview,” accessed 4 April 2022. <<https://www.qbcc.qld.gov.au/about-us/overview>>

QBCC (2014) “Our mandate, purpose, vision and behaviours,” accessed 4 April 2022.

<<https://www.qbcc.qld.gov.au/about-us/our-mandate-purpose-vision-behaviours>>

¹⁶ “The objects of this Act are (a) to regulate the building industry—(i) to ensure the maintenance of proper standards in the industry; and (ii) to achieve a reasonable balance between the interests of building contractors and consumers; and (b) to provide remedies for defective building work; and (c) to provide support, education and advice for those who undertake building work and consumers; and (d) to regulate domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners; and (e) to regulate building products to ensure—(i) the safety of consumers and the public generally; and (ii) persons involved in the production, supply or installation of building products are held responsible for the safety of the products and their use; and (f) to provide for the proper, efficient and effective management of the commission in the performance of its functions.” *Queensland Building and Construction Commission Act 1991 (Qld)*, s 3. See fn 9 for link.

¹⁷ *Building Act 1975* (Qld). Available here: <<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1975-011>> (accessed 4 April 2022)

workers in the industry are paid for their work and gives the Commissioner the power to enforce those measures.¹⁸

15. *Funding*: The QBCC is funded by a combination of licensing fees, premiums paid by members of the statutory insurance scheme, fees charged to policyholders, moneys recovered from licensees found at fault, returns on investments, and non-recurrent grants from DEPW. Per s 26(3) of the QBCC Act, money collected under the insurance scheme is to be paid into a statutory Insurance Fund and used for the administration of the fund and for paying out claims to policyholders, rather than for the general operations of the QBCC. Asymmetrically, the QBCC Act does permit the transfer of funds from QBCC's General Statutory Fund (its operational fund) to the Insurance Fund (s 25(4)). However, because the two funds and related functions are both administered by QBCC, the insurance fund makes payments to the general fund to cover services rendered.¹⁹ A review of the last three years of publicly reported financial figures reveals:

- a. In the most recent reported year, 2020-21, QBCC posted a surplus of \$61 million, up from less than \$2 million the year before, and \$17 million the year before that. Between 2013-14 and 2017-18, QBCC ran surpluses in all but the last of those years. However, the General Fund, which covers QBCC's regulatory functions, consistently ran at a deficit.²⁰
- b. In 2020-21, QBCC saw a significant rise in revenue to \$303 million, up from \$196 million the year before, and \$223 million the year before that. This rise was driven primarily by increases in premium revenue and insurance administration revenue (i.e., demand),²¹ but also significant were an increase in license revenue and a rebound in investment revenue (to \$36 million, from a small loss the year before, and revenue of \$15 million the year before that).

¹⁸ *Building Industry Fairness (Security of Payment) Act 2017* (Qld). Available here: <<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2017-043>> (accessed 5 April 2022).

Building Industry Fairness (Security of Payment) Regulation 2018 (Qld). Available here: <<https://www.legislation.qld.gov.au/view/pdf/inforce/current/si-2018-0016>> (accessed 5 April 2022).

¹⁹ Based on information provided to ANZSOG by DEPW.

²⁰ *Ibid*

²¹ Revenue increase from growth rather than substantial increases in standing charges.

- c. The same year, QBCC also saw a significant rise in expenses, to \$242 million, up from \$194 million and \$207 million the previous two years. The rise was almost entirely a result of increased expenses in outward reinsurance and claims approved and charged. Other significant changes in expenses over the three-year period include an increase in employee expenses in 2019-20 from 2018-19 of 22%, to \$64 million from \$53 million, and a fall in impairment losses on financial assets, which were \$24 million in 2020-21 but \$35 million and \$56 million in the two years prior.
- d. The statutory insurance scheme accounts for most of QBCC's revenue: premiums, fees and reinsurance and recoveries together constituted 66% of QBCC revenue in 2020-21, 74% in 2019-20, and 70% in 2018-19. At the same time, two of the three largest expenses for QBCC are related to the insurance scheme: outward reinsurance and claims approved and charged. The second-largest expense for QBCC is employee expenses, but the public reports do not breakdown how much of this expense is related to QBCC's insurance functions. Similarly, the reports do not parse the expense of supplies and services into the different functions. However, per s 68D(3)(b) of the QBCC Act, premiums are to be set by the Commission to "ensure insurance premiums are sufficient to meet the costs mentioned in section 26(3)". That is, the scheme is intended to be self-sufficient in respect of administration and pay-outs to policyholders.²² Moreover, as noted above, the insurance fund pays for insurance-related services provided by QBCC.
- e. It should be noted that the insurance fund payments to the General Fund for services rendered, appear to support QBCCs overall financial position. QBCC's non-insurance related revenues (license revenues, investment revenue, other revenue, and gains on disposal/revaluation of assets) would alone be insufficient to cover QBCC's expenses, which

²² *Queensland Building and Construction Commission Act 1991 (Qld)*, as above

include the costs of administering the insurance scheme, by themselves. As noted in sub-point (a) above, operating revenue runs at a deficit.

- f. In terms of assets, QBCC saw an improvement in its position in 2020-21, with assets rising to \$561 million from \$460 million and \$448 million the two years prior. The increase is entirely accounted for by an increase in 'other financial assets', which refers to funds invested with Queensland Treasury Corporation and Queensland Investment Corporation Limited. Cash reserves were \$17 million in 2020-21, compared to \$27 million and \$11 million the two years prior.
- g. Liabilities also increased but not to the same extent. Total liabilities were \$367 million in 2020-21, up from \$327 million the year before and \$351 million the year before that. Contributing factors here include a difference in payables across the year, a category which includes claims approved but not yet paid, and changes in unearned income liability, which refers primarily to insurance premiums not yet collected. As a result, QBCC's net position has improved to \$195 million from \$134 million and \$96 million the two prior years.²³

16. In 2013, the QBCC replaced the Queensland Building Services Agency (QBSA) as part of a wide-ranging reform of the construction industry. The history of the QBCC further clarifies the intent behind its governance model.

17. The primary piece of legislation for this reform is the *Queensland Building Services Authority Amendment Act 2013*. That act makes clear that the QBCC was intended to be a successor to the QBSA: first, the QBCC was established by an amendment to the existing legislation, which was renamed as part of the amendment; and secondly, the explanatory notes for the act state that the QBCC "will be

²³ QBCC (2021), *Annual Report 2020-21*. Available here: <<https://www.qbcc.qld.gov.au/qbcc-annual-report-2020-2021>> (accessed 4 April 2022)

QBCC (2020) *Annual report 2019-20*. Available here: <<https://www.qbcc.qld.gov.au/qbcc-annual-report-2019-2020>> (accessed 4 April 2022)

similar to the current QBSA” and that the “role of the Minister will remain essentially unchanged”.²⁴

In taking this approach, the Queensland Government rejected the recommendation of a 2012 inquiry report by the Transport, Housing and Local Government Committee on the QBSA that “the ‘one stop shop’ model for the provision of Queensland government building services be discontinued”.²⁵

18. As the explanatory notes state, the main significance of the reform is the introduction of the QBC Board, which is designed to “be more reflective of the governance structure of a public company”, meaning that the board “will set the strategic direction and the operational, financial and administrative policies of the Commission”. Hence, the legislation (at s 10) and the explanatory notes describe the QBC Board as the “governing body” of the QBCC. The 2012 parliamentary inquiry recommended that “any new Board is a governing (not advisory) board”, and this was supported by the Government, which further noted that the board’s “responsibilities should be similar to those required for directors under the *Corporations Act 2001* (Cth)”.²⁶ This explicit likening of the new structure to a corporation can also be seen in the legislation’s explanatory notes describing the Commissioner as “in effect the chief executive” of the QBCC.²⁷ However, it should be noted that while it was not called a “governing body”, the QBC Board’s predecessor, the Queensland Building Services Board (QBS Board), was similarly charged with the function “to make and review policies governing the administration of this Act”.²⁸

²⁴ *Queensland Building Services Authority Amendment Act 2013 (Qld)*. Available here:

<<https://www.legislation.qld.gov.au/view/pdf/asmade/act-2013-038>> (accessed 4 April 2022)

Explanatory notes for that act, available here: <<https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2013-1751>> (accessed 4 April 2022)

²⁵ Department of Housing and Public Works (2013), *Queensland Government response to the Transport, Housing and Local Government Committee Report No. 14: Inquiry into the operation and performance of the Queensland Building Services Authority 2012*, Queensland Government, Recommendation 1. Available here: <<https://cabinet.qld.gov.au/documents/2013/May/BSA%20Ctte%20Report/Attachments/Response.pdf>> (accessed 4 April 2022)

²⁶ *Ibid*, Recommendation 4

²⁷ Explanatory notes for *Queensland Building Services Authority Amendment Act 2013 (Qld)*, p. 3. See fn 17 for link.

²⁸ *Queensland Building Services Authority Act 1991 (Qld)* (superseded), s 9(1)(a). Available here: <<https://www.legislation.qld.gov.au/view/pdf/asmade/act-1991-098>> (accessed 4 April 2022)

19. Alongside its governance function the board also has an advisory function. The explanatory notes state that the board “will advise the Minister on the performance of the Commission and on issues affecting the building industry and consumers”. This is reflected in the statutory functions of the board, which (as noted in Paragraph 5(a)(ii) above) include both “providing guidance and leadership to the Commissioner” and “advising the Minister” on various issues within the industry. The dual nature of the board’s functions was reinforced by the 2017 amendment to s 12 of the QBCC Act that increased the maximum number of board members from 7 to the current 10 and inserted the board’s competencies requirement.²⁹ Contemporaneous documentation does not reveal the exact reason for the change, but it might be surmised that the decision to increase the size of the board was intended to facilitate the board having the mix of experience and competencies that the Government intends it to have, including, in particular, the consumer advocacy and awareness requirement, the inclusion of which reflects the intended advisory function of the board.

Summary Analysis of QBCC Governance Model

20. Based on the above, certain **features** of QBCC’s governance model can be identified, and these features can be tested against best practice as found in the literature and in other regulators and jurisdictions:
- a. *Feature 1:* In the building and construction industry, Queensland has a centralised one-stop shop system of regulation. This model has been reaffirmed by successive governments, first by the creation of the QBCC in 2013, which retained the legislative architecture of the regulator, and then with the strengthening of the QBCC in 2017 by the passage of the BIF Act, which expanded the board and gave the QBCC additional regulatory functions.
 - b. *Feature 2:* The QBCC in the most recent reporting period ran an operational surplus, has significant net assets, and its position improved by a rebound in its investment income. Its

²⁹ This amendment was made by the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), s 254. Available here: <<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2017-043>> (accessed 4 April 2022)

financial model and management demonstrate it can provide funds to cover its operational remit. However, this has not been consistent over the last three years with investment funds subject to market volatility. Moreover, the statutory insurance scheme accounts for a large part of QBCC's revenue, but these funds are separate to the performance of QBCC's regulatory functions. Other operating income has gradually increased over the last three years. Investment in staff increased by 20% over the three years to 2021, although still slightly under its target staffing number.³⁰

- c. *Feature 3:* No Minister has so far exercised the statutory right to give the QBCC and QBC Board directions, whether in the form of a specific policy determination or a more general statement of expectations.
- d. *Feature 4:* The QBC Board is established as a governing body, with the Commissioner charged with executing the strategy determined by the Board. However, the Board also has a Ministerial advisory function, a continuation of previous arrangements. The Board is, however, explicitly excluded from a range of executive decisions presumably for reasons of probity.

³⁰ QBCC (2021), as above, p37

Part B: OECD best practice principles for regulators

21. The purpose of this section is to compare the governance model of the QBCC with some of the key principles of regulator best practice identified in the literature, and in particular the principles identified by the Organisation of Economic Cooperation and Development (OECD) in its series on the governance of regulators.
22. Per the OECD, the aim of a regulator’s governance model should be to aid the effectiveness of the regulation for which it is responsible and to build trust in the regulator within government and the community. To this end, the OECD identifies 7 best practice principles for the governance of regulators: role clarity, preventing undue influence and maintaining trust, decision-making and governing body structure, accountability and transparency, engagement, funding, and performance evaluation.³¹ These principles give rise to a range of recommendations for governance structures, against which the above analysis of the QBCC can be compared. This analysis is in Table 1, below.

Table 1: Analysis of QBCC against OECD principles of regulatory governance

| OECD principles ³² | QBCC |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Regulators should not be assigned conflicting or competing functions or goals [without] clear public benefit in combining these functions and [where] the risks of conflict can be managed effectively. | <ul style="list-style-type: none"> The QBCC has a wide mandate and a wide range of functions. There are no obvious conflicts between these functions. As discussed in the next section, the QBCC is unique in the Australian context for being both the building industry regulator and the direct administrator of a home warranty insurance scheme. |
| The principal responsibility for assisting the executive to develop government policy should sit with the responsible executive agency and the regulator should have a formal advisory role in this task... and there should be specified mechanisms for regulators to contribute to the policy-making process. | <ul style="list-style-type: none"> Policy development is not included in the statutory functions of the QBCC, nor is policy included in QBCC’s strategic plan. Policy interaction between the QBCC and DEPWW seems to be limited to the QBCC Board’s advisory function to the Minister. |
| Where legislation empowers the Minister to direct an independent regulator, the limits of the power to direct the regulator should be clearly set out. | <ul style="list-style-type: none"> The QBCC Act gives the Minister the broad right to issue directions “in relation to the Commission and its function”, with only formal limitations (that direction must be in writing and made public) |
| The criteria for appointing members of a regulator’s governing body, and the grounds | <ul style="list-style-type: none"> The QBCC Act provides a range of experience and competencies that the Board should possess, but the |

³¹ See generally OECD (2014), *The governance of regulators*, OECD Publishing: Paris. Available here: <https://read.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en#page1> (accessed 4 April 2022)

³² *Ibid*, pp. 30, 46, 68, 98, 106 (NB: Principles have been selected for relevance.)

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| and process for terminating their appointments, should be explicitly stated in legislation. The process should involve the legislature or judiciary for greater transparency and accountability. | process of appointment and termination is left to the Governor in Council, consistent with guidelines and conventions governing broader Qld public sector appointments |
| Policies, procedures and criteria for selection and terms of appointment of the governing body should be documented and readily available to aid transparency and attract appropriate candidates. | <ul style="list-style-type: none"> The Queensland Government advises that the selection process should be “merit-based”, refer to the Department of Premier and Cabinet’s register of nominees for government boards, and pay heed to government policy in respect of diversity targets.³³ Guidance does not explicitly require transparency in the appointment process but would presumably at least follow state Board appointment processes |
| There should be a clear allocation of decision making and other responsibilities between the responsible accountable political authority, the governing body and the Chief Executive Officer (CEO) or individual in charge of the organisation’s performance and implementation of decisions. | <ul style="list-style-type: none"> For the reasons noted above, the dual nature of the QBC Board’s remit is operationally functional. Other material and evidence is needed to explore actual practice, for example consultations and review of meeting records. Advising and governance may demand different skill and experience and is an area for the Review to seek evidence that Board processes are able to select for this |
| Where a regulator has a multi-member governing body, the CEO or individual responsible for managing the organisation’s performance and implementing regulatory decisions should be primarily accountable to the regulator’s governing body. | <ul style="list-style-type: none"> Under the QBCC Act, the Commissioner is appointed by the Board (with the Minister’s approval) and reports only to the Board, which advises the Minister. |
| The role of members of the governing body who are appointed for their technical expertise or industry knowledge should clearly be to support robust decision making in the public interest, rather than to represent stakeholder interests. | <ul style="list-style-type: none"> The QBCC Act lists “experience and competence” required by the board, and explicitly states that members are to be able to “make a contribution to the effective and efficient performance of the Commission’s functions”. However, see the discussion of board composition in the next section: the QBC Board also does explicitly provide for more representation of sectoral interests compared with other jurisdictions. |
| Funding levels should be adequate to enable the regulator, operating efficiently, to effectively fulfil the objectives set by government... [and] Funding processes should be transparent, efficient and as simple as possible. | <ul style="list-style-type: none"> The QBCC ran a healthy surplus in the most recent financial year. As noted below, the QBCC does not raise funds via a building levy, which is somewhat unusual in Australia. |
| Regular independent external reviews of regulators should be arranged by the government, legislature or the regulator itself, in addition to any internal reviews. | <ul style="list-style-type: none"> In addition to the review to which this document is a contribution, there have been a number of reviews of the building and construction industry in recent years, including the <i>Building Confidence Report</i> (2018), a review by Weir Legal and Consulting (2018), and audit of the QBCC’s building licensing functions by the Queensland Audit Office.³⁴ |

³³ Department of the Premier and Cabinet (2016), *Welcome aboard*, Queensland Government, Section 4: Selection and recruitment. Available here: <<https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/welcome-aboard/selection-recruitment.aspx>> (accessed 4 April 2022)

³⁴ This information was provided to ANZSOG by DEPW.

-
23. Table 1 reinforces the features identified in Part A about QBCC governance arrangements, in reference to both OECD recommended features and comparable Australian jurisdictions practice. In particular, the roles of the Minister, QBC Board, and Commissioner contain variations in certain features. These variations may be necessary to service the Queensland model and/or context; they may be enhancements on minimum recommended features. It should be noted that variations in governance features from the OECD model may be commonplace across jurisdictions.
24. The reference to diversity is straightforward in the OECD recommendation. While the QBCC Act is concerned with the remit of industry experience in terms of breadth of members, the diversity (lived experience) aspect is addressed generally in other Queensland board governance expectations and not a specific QBC Board membership document.

OECD findings on regulatory independence

25. In this section, the QBCC is compared against the OECD's understanding of regulatory independence. The principles discussed above aim to capture what is required for a regulator to be both independent and accountable. OECD research finds that independence and accountability are positively correlated: regulators with more independence tend to have stronger accountability measures. And accountability measures are correlated with the scope of the functions the regulator undertakes: governments tend to impose stronger accountability measures on wider-ranging regulators.³⁵
26. Independence can be defined as the condition under which a regulator is "not subject to the direction on individual regulatory decisions by executive government".³⁶ This is not an absolute standard, because regulators ultimately derive their authority from the legislature and are answerable to the executive. However, there is a threshold of independence that regulators must usually meet or exceed in order to build trust among the entities they regulate. The answer to the question of how

³⁵ OECD (2016a), *Governance of regulators' practices: accountability, transparency and coordination*, OECD Publishing: Paris, p. 17. Available here: <<https://www.oecd.org/publications/governance-of-regulators-practices-9789264255388-en.htm>> (accessed 4 April 2022)

³⁶ OECD (2014), as above, p. 47

independent a regulator should be turns on the outcomes the government aims to achieve and the circumstances of the regulated market. As the OECD puts it: “Independence is a tool towards more effective outcomes – and not an end in itself”.³⁷ Independence is most expedient where there is demand for impartial decision-making, a need for competitive neutrality between government and non-government entities, and where regulation is potentially high impact for regulated entities. An independent regulator may also contribute to stability within the regulated sector by making regulatory decision-making more consistent. In addition, there are other market failure arguments for regulatory independence, including expert governance reducing the information asymmetry between government and regulated entities (which are generally best placed to know the market).³⁸

27. Accountability is linked in practice with transparency: the OECD supports measures, already practised in many Australian jurisdictions, like Ministerial Statements of Expectation, the publication of annual reports and other reports to the executive and legislature, and the development of performance indicators.³⁹ Also important in this respect is stakeholder engagement and public consultation. While there is a risk of industry capture of these processes, they are also opportunities for gathering evidence and making public executive government’s regulatory strategy.⁴⁰ An OECD literature review shows that there is broad agreement on the “determinants of independence” – that is, those features of regulator governance that are associated with independence, including accountability measures. Common features include budget independence, whether the head of the regulator can be dismissed, appointment by parliament of head or members of the regulator, reporting to executive government or representatives from the regulated sector, executive price-setting power, and power to review or approve contract terms between regulated entities.⁴¹ More generally, the OECD recommends that

³⁷ OECD (2016b), *Being an independent regulator*, OECD Publishing: Paris, p. 33. Available here: <<https://www.oecd.org/publications/being-an-independent-regulator-9789264255401-en.htm>> (accessed 4 April 2022)

³⁸ See also: *ibid* pp. 35-7; OECD (2014), as above, pp. 47-52

³⁹ OECD (2014), as above, Chapter 2. The OECD’s observations are based in part on an assessment of two Australian regulators, the Australian Competition and Consumer Commission and the Australian Energy Regulator.

⁴⁰ OECD (2016b), as above, pp. 25-7

⁴¹ OECD (2016b), as above, pp.38-44

regulators cultivate a “culture of independence” that includes, consistent with the principles identified above, **role clarity** and **transparency** and **accountability**, along with financial independence, independence of leadership, and staff behaviour (meaning, among other things, giving staff a measure of independence in their work).⁴²

28. In the Australian context, it is sometimes emphasised that the independence of regulators is as much a product of certain practices and behaviours within agencies as it is a product of the kind of formal or structural institutional features recommended by the OECD. As Carolyn Jackson puts it, “Fundamentally, independence is about how the institutional environment and the agency interact”.⁴³ That is, the actions of regulators influence both their level of and the perception of their functional independence: how regulators exercise their discretion, participate in the policymaking process, and engage with regulated entities, among other actions they might take, affects how they are treated by government and whether stakeholders treat them as apolitical and impartial actors or as in some sense implicated in matters not strictly within the purview of their mandates. Clearly, a regulator’s functional independence will depend, at least in part, on the capabilities and values of decisionmakers within the agency. As noted in Part D, below, this is especially relevant to risk-based regulatory approaches that rely on regulators exercising wide-ranging discretion. Consequently, Part E explains the capability needs and values of regulators.
29. The QBCC is established as an independent regulator. While the word ‘independent’ is not used in this context in the QBCC Act, the QBCC interprets independence to be part of its mandate, and the establishment of governance features like the QBC Board suggests this is consistent with government’s intent. However, based on the OECD’s research and recommendations, there are certain notable structural features of the QBCC related to its independence (without entering any judgement about its independence). For example, the Minister can make a directive to the Board (s

⁴² OECD (2017), *Creating a culture of independence: practical guidance against undue influence*, OECD Publishing: Paris pp. 23-32. Available here: <<https://www.oecd.org/gov/creating-a-culture-of-independence-9789264274198-en.htm>> (accessed 4 April 2022)

⁴³ Carolyn Jackson (2014), “Structural and behavioural independence: mapping the meaning of agency independence at the field level” *International Review of Administrative Sciences* 80(2) pp. 257-275, p. 259

20G(3) of the QBCC Act), but any such direction is then subject to tabling in Parliament (per s 9). The OECD also recommends that board members' terms should be at least 5 years and staggered to cut across electoral cycles – but the term for QBC Board members is “no more than 3 years” (s 15), and this is shorter than the four-year electoral cycle of the state, meaning that an appointee's term might be served entirely within a parliamentary term.

30. A related consideration, because it goes to perceptions of the functional independence of the agency, is transparency. For example, the appointment process for the QBC Board, while governed by broad whole-of-government guidelines, follows procedure laid out in the Act; however, QBCC-specific processes (such as a skills matrix for potential appointees) are not articulated and the procedure for appointments by the Governor in Council do not seem to be publicly available. Government departments are responsible for preparing all documentation (Cabinet Submissions and Executive Council Minutes) to cover recruitment to the Board.⁴⁴ Additionally, the Act is silent on reappointment of Board members. Arguments for or against the value of reappointment notwithstanding, an administrative amendment could resolve any ambiguity on whether reappointment is allowable.

⁴⁴ Department of the Premier and Cabinet (2016), as above

Part C: Comparison with other Australian jurisdictions

31. The comparison of the QBCC's governance model with the OECD evidence base suggests that some of the observed features of the QBCC vary from best practice as understood in the literature. However, as the OECD notes, the key question in respect of a governance model is whether it aids the regulator in achieving the objects for which it was created by the legislature. It is important, then, to place the QBCC within the context of the actual practices of similar regulators operating in similar circumstances. For relevance and brevity, the comparative analysis has been restricted to Australia's jurisdictions with a sizeable building and construction industry.
32. To establish the basis for the comparative analysis Table 2, below, shows by state the peak regulator, its governance model, and its functions.

Table 2: Key features of regulatory system for comparable jurisdictions

| State | Peak regulator | Governance | Functions |
|-----------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| New South Wales | NSW Fair Trading and Office of the Building Commissioner (OBC), both within the Department of Customer Service | The OBC reports to the Minister for Better Regulation and Innovation, and works with NSW Fair Trading, which has related functions (see below) and the same Minister. NSW Fair Trading is part of the government's customer service cluster; OBC is an independent body under the auspices of DCS. ⁴⁵ | The functions of building industry regulation are divided between the OBC (defects, rectification), NSW Fair Trading (disputes, security of payments, safety compliance), Service NSW (licensing, certification). |
| Victoria | The Victorian Building Authority (VBA) | The VBA reports to the Minister for Planning. It is governed by the VBA Board, which sets "direction and priorities" and oversees the functions of the VBA, including appointing the CEO. The VBA Board is chaired by the Chief Commissioner and has 12 members in total, who have a mix of experience relevant to the industry. The CEO is responsible for day-to-day operations. | The VBA lists its functions as including: registration, licensing and disciplining builders and plumbers; security of payment; certification; inspections; compliance; data collection; and handling consumer complaints. ⁴⁶ |
| South Australia | The State Planning Commission is established by the <i>Planning, Development and Infrastructure Act</i> | The Minister responsible for the Commission is the Minister for Planning and Local Government (at present, this portfolio is held by the Attorney-General). | The commission does not seem to perform any regulatory functions directly. Building-related functions are delegate to the BTP. Licensing and |

⁴⁵ Department of Customer Service (2021), *Annual report 2020-21*, New South Wales Government, p. 13. Available here: <<https://www.nsw.gov.au/sites/default/files/2022-02/DCS%20Annual%20Report%202020-2021.pdf>> (accessed 4 April 2022)

⁴⁶ Adapted from p. 11 here: Victorian Building Authority (2021), *Annual report 2020-21*, Victorian Government. Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0004/144373/VBA-Annual-Report-202021.pdf> (accessed 4 April 2022)

| | | | |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>2016 (PDI Act), and has responsibility for the Building Rules, which include that Act. Other functions are undertaken by Consumer and Business Services (CBS), a division of the Attorney-General's Department, which handles the licensing and registration of builders and plumbers⁴⁷ and handles complaints, and the Small Business Commissioner, who is responsible for security of payment.⁴⁸</p> | <p>The Commission is appointed by the minister and comprises four members (maximum of six) who must have relevant expertise as stipulated in the PDI Act and one <i>ex officio</i> representative from the Attorney-General's Department. The Commission is supported by that department. The Commission has delegated some of its building-related functions⁴⁹ to the Building Technical Panel (BTP) (a committee established pursuant to the PDI Act), which has four permanent members and six experts who join as required.</p> | <p>registration and other consumer matters are handled by CBS. Security of payment sits with the Small Business Commissioner. Compliance and inspections are the responsibility of local councils.⁵⁰</p> |
| Western Australia | <p>Building and Energy (includes the Building Commissioner), which is a division of the Industry Regulation and Consumer Protection Group within the Department of Mines, Industry Regulation and Safety (DMIRS). The Building Commissioner role is performed by the Group head, the Deputy Director General Industry Regulation and Consumer Protection.⁵¹</p> | <p>DMIRS serves three Ministers who are all multi-hatted. Their portfolios include Mines and Petroleum, Energy, Environment, Commerce, and Industrial Relations. The Building Commissioner reports to the Director General of the Department, who reports to the Ministers. The Minister also appoints the Building Services Board, which is responsible for statutory functions like determining conditions on, amending, and cancelling the registration of builders, and determining disciplinary actions on complaints forwarded by the Commissioner.</p> | <p>Building and Energy is responsible for regulation, enforcement, inspection, consumer complaints, and the registration or licensing of builders, building surveyors, adjudicators, electrical workers, gas fitters, painters, and plumbers.⁵² Per s 86 of the above act, the Building Commissioner is responsible for functions including administering the Building Services Board, research and training, the provision of information relevant to building standards and consumer protection, auditing building work, handling complaints. The Building Services Board is responsible for the functions related to registration.</p> |

⁴⁷ Government of South Australia (2020), "Building and trades," accessed 4 April 2022.

<<https://www.sa.gov.au/topics/business-and-trade/licensing/building-and-trades>>

Consumer and Business Services (2018), "Work and business licences," accessed 4 April 2022.

<<https://www.cbs.sa.gov.au/work-business-licences>>

⁴⁸ Small Business Commissioner (2022), "Security of payment," accessed 4 April 2022.

<https://www.sasbc.sa.gov.au/security_of_payment>

⁴⁹ State Planning Commission (unknown year), "Role of the panel," accessed 4 April 2022.

<https://www.saplaningcommission.sa.gov.au/building-technical-panel/role_of_the_panel>

⁵⁰ PlanSA (unknown year), "Inspections and compliance," accessed 4 April 2022

<https://plan.sa.gov.au/resources/building/inspections_and_compliance>

⁵¹ Department of Mines, Industry Regulation and Safety (2019), "Leadership structure," accessed 4 April 2022.

<https://www.dmirs.wa.gov.au/sites/default/files/atoms/files/dmirs-leadership-structure_0.pdf>

⁵² Department of Mines, Industry Regulation and Safety (2022), "About Building and Energy," accessed 4 April 2022. <<https://www.commerce.wa.gov.au/building-and-energy/about-building-and-energy-1>>

33. The first feature identified above was that the QBCC is a one-stop-shop with a wide range of functions.

This is unusual in Australia, as can be shown by breaking down some of the information in Table 2:

- a. Table 3 analyses the mainland states by three aspects of their building industry regulatory systems: whether there is a single peak regulator, whether the regulatory system includes an independent statutory authority, and whether there is a board that plays some governance role in the regulatory system.
- b. Table 4 shows alternatives to Queensland’s one-stop shop model; it analyses the distribution of regulatory function across different agencies within the mainland states

Table 3: Regulatory systems, mainland states

| | Single peak regulator? | Independent statutory authority? | Board with governance functions? |
|-------------------|------------------------|----------------------------------|----------------------------------|
| Queensland | Yes | Yes | Yes |
| New South Wales | No | Yes | No |
| Victoria | Yes | Yes | Yes |
| Western Australia | Yes | No | Yes |
| South Australia | No | No | Yes |

Table 4: Distribution of construction industry regulation functions, mainland states

| | Licensing and registration | Site inspections | Rectification orders | Certification of building products | Payment security | Adjudications | Consumer complaints | Publicity |
|------------|----------------------------|------------------|----------------------|------------------------------------|------------------|------------------|---------------------|-----------|
| QLD | QBCC | QBCC | QBCC | QBCC | QBCC | QBCC | QBCC | QBCC |
| NSW | Service NSW | Various | OBC | NSW Fair Trading | NSW Fair Trading | NSW Fair Trading | NSW Fair Trading | Various |
| VIC | VBA | VBA | VBA | VBA | VBA | VBA | VBA | VBA |
| WA | B&E (BSB) | B&E | B&E | B&E | B&E | B&E | DMIRS | B&E (BC) |
| SA | CBS | Various | SPC | SPC | SBC | SBC | CBS | SPC |

34. Tables 3 and 4 show that Australia’s largest jurisdictions have taken diverse approaches to regulating the construction industry:

- a. The two systems that are most similar are those in Queensland and Victoria. While Queensland, Victoria, and Western Australia have consolidated regulatory functions into a

single peak regulator, the Western Australian body is not an independent statutory body but is instead part of a government department.

- b. Four of the states have boards that perform some governance role within the regulatory system, but as Table 2 details, these roles differ widely: whereas the QBC Board is intended as the equivalent of a corporate board for the QBCC, and a similar arrangement obtains in Victoria, in South Australia, the Building Technical Panel is a committee of the State Planning Commission, which has a remit much wider than the construction industry, and in Western Australia, the Building Services Board is limited to registration and disciplinary functions. New South Wales has no board of any kind but has recently established the independent Office of the Building Commissioner to supplement the functions of its main multi-sector regulator.

35. The **second identified feature** above was that QBCC’s financial position seems healthy. However, it must be reiterated that the home warranty insurance scheme is effectively self-funding and its revenues are not available to QBCC for its regular operations. This prompts two points of comparison with the other mainland states’ regulators: sources of funding, and whether other regulators also run insurance schemes. This information is contained in Table 5, below.

Table 5: Sources of funding and insurance role for construction industry regulators, mainland states

| | Primary funding | Insurer? |
|-----------------|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Queensland | Licensing and registration (regulator) Insurance premiums (insurer) | Yes – home warranty insurance scheme |
| New South Wales | Licensing and registration Developer levy | No – home building compensation cover is provided by iCare HBCF. ⁵³ |
| Victoria | Building permit levy Consolidated revenue | No – cover is offered by Victorian Managed Insurance Authority and by some private insurers. ⁵⁴ |

⁵³ State Insurance Regulatory Agency (unknown year), “List of licensed insurers or providers,” accessed 4 April 2022. <<https://www.sira.nsw.gov.au/insurance-coverage/home-building-compensation-insurance/list-of-licensed-insurers-or-providers>>

⁵⁴ Consumer Affairs Victoria (2021), “Domestic building insurance,” accessed 4 April 2022. <<https://www.consumer.vic.gov.au/licensing-and-registration/builders-and-tradespeople/running-your-business/warranties-and-insurance/domestic-building-insurance>>

| | | |
|-------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| South Australia | Consolidated revenue Fees (development assessment) ⁵⁵ (SPC) | No – SA Government underwrites private insurers that provide cover. ⁵⁶ |
| Western Australia | Consolidated revenue Building Services Levy | No – WA Government approves private providers. ⁵⁷ |

36. Table 5 shows that Queensland is the only state with a construction industry regulator that also administers an insurance scheme. While other states' regulators play a regulatory role in the construction insurance market, they are not insurers. In New South Wales, South Australia, and Western Australia, home warranty insurance (and equivalents) are provided by approved private insurers, whereas in Victoria, there is a government scheme but it is administered separately from the VBA, and the government also permits some competition from private insurers.
37. QBCC is somewhat unusual among building and construction regulators in mainland states in that it is not funded by a building levy. In three other mainland states, such levies, imposed on builders, fund different parts of the regulatory system: in NSW, the recently introduced developer levy will fund the regulatory activities of NSW Fair Trading and the Office of the Building Commissioner; in Victoria, the building levy is the primary source of funding for the VBA; and in Western Australia the levy funds the Building Commissioner, an office within Building and Energy.⁵⁸ In South Australia the levy is specifically for funding construction industry training programs. The situation in Queensland is more similar to South Australia than the other mainland states. There are three building levies in Queensland, imposed by s 66 of the Building and Construction Industry (Portable Long Service Leave) Act 1991: the building and construction industry training levy, which funds Construction Skills Queensland, an independent industry-run training provider; the long service levy, which funds a portable long service

⁵⁵ State Planning Commission (2021), *Annual report 2020-21*, Government of South Australia, p. 31. Available here: https://dit.sa.gov.au/__data/assets/pdf_file/0012/948387/State_Planning_Commission_Annual_Report_2020-21.pdf (accessed 4 April 2022)

⁵⁶ South Australia Government Financing Authority (2020), "Building indemnity insurance," accessed 4 April 2022. <https://www.safa.sa.gov.au/Insurance/building-indemnity-insurance>

⁵⁷ Department of Mines, Industry Regulation and Safety (2021), "Home indemnity insurance," accessed 4 April 2022. <https://www.commerce.wa.gov.au/publications/home-indemnity-insurance>

⁵⁸ *Building Services (Complaint Resolution and Administration) Regulations 2011* (WA), Division 3. Available here: https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_12698_homepage.html (accessed 11 April 2002)

scheme administered by QLeave; and the work health and safety levy, which funds WorkSafe.⁵⁹ The use of building and construction industry levies in mainland states is shown in Table 6, below.

Table 6: Building and construction industry levies, mainland states

| State | Building and construction industry levies | Threshold | Levy | Project cost per \$1000 |
|---------------------------------|-------------------------------------------|----------------------------|--------|-------------------------|
| Queensland ⁶⁰ | Portable Long Service Leave Levy | \$150,000 | 0.35% | \$5.75 |
| | Work Health and Safety Levy | \$150,000 | 0.125% | |
| | Construction Skill Queensland Levy | \$150,000 | 0.1% | |
| New South Wales ⁶¹ | Long Service Levy | \$25,000 | 0.35% | \$3.50 |
| | Developers Levy | To be confirmed | | |
| Victoria ⁶² | Building Permit Levy | \$10,000 | 0.128% | \$1.28 |
| | Cladding Rectification Levy | \$800,000 | 0.128% | \$3.56 |
| | Portable Long Service Leave Levy | 2.7% of total remuneration | | |
| South Australia ⁶³ | Construction Industry Training Fund Levy | \$40,000 | 0.25% | \$2.50 |
| | Portable Long Service Leave Levy | 2% of total remuneration | | |
| Western Australia ⁶⁴ | Building Services Levy | \$45,000 | 0.137% | \$3.37 |

⁵⁹ *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld), s 66.

⁶⁰ QLeave (2022), "What is the levy?" accessed 4 April 2022. <<https://www.qleave.qld.gov.au/building-and-construction/levy-payers/what-is-the-levy>>

⁶¹ Long Service Corporation (2022), "What is Long Service Levy," accessed 5 April 2022.

<<https://www.longservice.nsw.gov.au/bci/levy/about-the-levy/long-service-levy>>

The Developer Levy was introduced by the *Building Legislation Amendment Act 2021 (NSW)*, which amended the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* to insert s 6A, which gives the Secretary of the Department of Customer Service the power to impose a levy on building work. At the time of writing, the details of the levy are still being discussed with stakeholders.

The relevant provision is available here: <<https://legislation.nsw.gov.au/view/html/inforce/current/act-2020-009#sec.6A>>

⁶² Victorian Building Authority (2019, *Building permit levy: practice note 73-2019*, Victorian Government.

Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0007/78181/PN-73-Building-Permit-Levy.pdf> (accessed 5 April 2022)

The Cladding Rectification Levy only applies in metropolitan Melbourne. The levy increases with the cost of the project: 0.128% for projects costing between \$800,000 and \$1 million; 0.256% for projects costing between \$1 million and \$1.5 million; 0.82% for projects costing \$1.5 million or more. It is paid on top of the Building Permit Levy. Victorian Building Authority (2022), "Cladding rectification levy FAQs," accessed 5 April 2022.

<<https://www.vba.vic.gov.au/tools/bams/cladding-rectification-levy-faqs>>

⁶³ Construction Industry Training Board (2022), "About the levy," accessed 5 April 2022.

<<https://citb.org.au/pay-a-levy/about-the-levy>>

Portable Long Service Leave (2022), "How to register," accessed 5 April 2022.

<<https://www.portableleave.org.au/employers/about-the-scheme>>

⁶⁴ DMIRS charges a flat fee of \$61.65 for buildings with total cost below the threshold. It also charges a higher levy (0.274%) for approvals for unauthorised building work. Department of Mines, Industry Regulation and Safety (2021), "Building Services Levy," accessed 5 April 2022. <<https://www.commerce.wa.gov.au/building-and-energy/building-services-levy>>

Construction Training Fund (2021), "We collect a levy," accessed 11 April 2022. <<https://ctf.wa.gov.au/what-we-do/we-collect-a-levy>>

| | | | | |
|--|----------------------------------|----------------------------|------|--|
| | Construction Training Fund Levy | \$20,000 | 0.2% | |
| | Portable Long Service Leave Levy | 1.35% of employee pay rate | | |

38. Table 6 shows that Queensland's building and construction industry combined levies imposed upon developers for workforce entitlements and conditions are comparable in intent with other jurisdictions. However, Queensland's levies are imposed on projects above \$150,000, a threshold that is significantly higher than those other states. On the other hand, Queensland's levies for its industry portable long service leave scheme are applied on total value of a works; other than NSW, the other jurisdictions limit such levies only to the gross payroll value of a works or employer. It is also worth noting that the Construction Skill Queensland Levy is charged at a lower rate upon projects over a higher threshold than South Australia's similar Construction Industry Training Fund Levy. Only Western Australia currently charges a general levy to developers for projects, which is collected by local governments and remitted to the Building Commissioner. NSW is currently bringing in a developer levy which will apply to funding compliance and quality assurance the residential apartments sector. Consolidated revenue, then, remains the other funding source for a number of jurisdictions.
39. The **third feature** above was that no Minister has issued a direction to the QBCC under the Act. While a specific direction as to a regulatory outcome would be unusual, and contrary to the principles of independence recognised by the OECD, those same principles strongly suggest that Ministerial Statements of Expectation and similar are important for regulatory independence, and by extension effectiveness, because they clarify the roles of the key actors within the regulatory system and support transparency. It is therefore worthwhile to broaden this observation and compare the use of such strategic documents across Australian jurisdictions. This information is compiled in Table 7, below.

Table 7: Strategic and governance documents, building regulators, mainland states

| State | Key documents | Notes |
|-----------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Queensland | Ministerial charter letter (1 Dec 2020) ⁶⁵ | Letter from Premier outlining portfolio priorities (see below for details). |
| | QBCC Strategic Plan 2020-2024 ⁶⁶ | A plan-on-a-page that states the mandate, objectives, strategies, measures, and risks and opportunities for QBCC over the period. |
| | Queensland Government Regulator Performance Framework ⁶⁷ | Identifies 5 model practices against which each Queensland regulator is to report annually. Model Practice 1 is to “Ensure regulatory activity is proportionate to risk and minimises unnecessary burden”. ⁶⁸ |
| New South Wales | NSW Fair Trading Roadmap 2019-2022 ⁶⁹ | Outlines strategic outcomes, activities, and measures for three action areas: ‘Consumers are empowered and protected’, ‘Businesses comply’, and ‘Trusted regulator’. A section for sector action plans, including for building and construction, notes they have not yet been developed (p. 12). |
| | NSW Fair Trading Statements of Regulatory Intent | Statements issued to clarify the approach taken by the agency to specific regulatory matters. Relevant examples include the three statements issued interpreting the <i>Home Building Act 1989</i> . ⁷⁰ |
| | Construct NSW strategy ⁴⁹ | The strategy that the NSW Building Commissioner was established to oversee. Identifies six areas of reform: regulation, ratings, education, contracts, digital tools, and data and research. Progress against the strategy is regularly reported. ⁷¹ The NSW Government had previously released a discussion paper. ⁷² |

⁶⁵ The Hon. Anastacia Palaszczuk MP (2020), *Letter to The Hon Mick de Brenni MP*, Queensland Government. Available here: <<https://cabinet.qld.gov.au/ministers-portfolios/assets/charter-letter/mick-de-brenni.pdf>> (accessed 4 April 2022)

⁶⁶ QBCC (2021), *Strategic plan 2020-2024*, Queensland government. Available here: <https://www.qbcc.qld.gov.au/sites/default/files/QBCC_Strategic_Plan_2020-2024.pdf> (accessed 4 April 2022)

⁶⁷ Queensland Treasury (2019), “Regulator Performance Framework” in *Queensland Government Guide to Better Regulation*, Queensland Government. Available here: <<https://s3.treasury.qld.gov.au/files/Queensland-Government-Guide-to-Better-Regulation-May-2019.pdf>> (accessed 4 April 2022)

⁶⁸ QBCC (2021), *Reporting on the Queensland Government’s Regulator Performance Framework 2020-21*, Queensland Government. Available here: <<https://www.qbcc.qld.gov.au/sites/default/files/report-regulator-performance-framework-2020-2021.pdf>> (accessed 4 April 2022)

⁶⁹ NSW Fair Trading (2019), *NSW Fair Trading Roadmap 2019-2022*, NSW Government. Available here: <https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/453298/FT05003-0219-443811.pdf> (accessed 4 April 2022)

⁷⁰ NSW Fair Trading (2021), “Statements of regulatory intent,” accessed 4 April 2022. <<https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/statements-of-regulatory-intent>>

⁷¹ Department of Customer Service (2021), *Construct NSW update report*, NSW Government. Available here: <<https://www.nsw.gov.au/sites/default/files/2021-02/Construct%20NSW%20Update%20Report%20February%202021.pdf>> (accessed 4 April 2022)

⁷² NSW Fair Trading (2019), “Building stronger foundations,” accessed 4 April 2022. <<https://www.fairtrading.nsw.gov.au/consultation-tool/building-stronger-foundations>>

| | | |
|-----------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <i>Towards a customer-centric government (May 2021)</i> ⁷³ | The NSW Government's overarching strategy for its service delivery reforms, including the Department of Customer Service. |
| Victoria | Minister's Statement of Expectations (2021-2023) and Commissioner's response ⁷⁴ | The Minister's letter specifies three key strategic expectations and seven governance and service delivery improvements the agency is expected to make in the period. The Commissioner's response includes an attachment noting specific steps the agency will take to meet the Minister's expectations (though this attachment does not seem to be publicly available). |
| | VBA Corporate Plan 2018-22 ⁷⁵ | The Corporate Plan outlines the agency's vision, objectives, and the steps it is taking towards reform. It also includes sections on strategic risk and changes in the operating environment. |
| | VBA Annual Plan ⁷⁶ | A plan-on-a-page outlining the year's priorities, based on the overarching Corporate Plan. |
| | VBA Regulatory Approach ⁷⁷ | Outlines the VBA's mission, its approach to setting priorities, its principles, and its 'joined-up' approach to regulation. |
| | VBA Compliance and Enforcement Policy ⁷⁸ | Outlines the approach that the VBA takes to its responsibilities as a regulator, including proactive monitoring and risk assessment and responding to complaints. |
| | VBA Service Charter ⁷⁹ | States the vision and mission of VBA as a service provider and summarises the services it offers and those it does not. |
| South Australia | State Planning Commission Strategic Plan 2021-22 ⁸⁰ | Short document stating the goals, guiding principles, and priorities of the Commission in the period. |
| | Consumer and Business Services | Plan-on-a-page stating the unit's goals, strategies, and deliverables for the period. |

⁷³ NSW Government (2021), *Towards a customer-centric government*. Available here: <<https://www.nsw.gov.au/sites/default/files/2021-08/towards-a-customer-centric-government.pdf>> (accessed 4 April 2022)

⁷⁴ Victorian Building Authority (2022), "Minister's Statement of Expectations," accessed 5 April 2022. <<https://www.vba.vic.gov.au/about/ministers-statement-of-expectations>>

⁷⁵ Victorian Building Authority (2018), *Victorian Building Authority Corporate Plan 2018-22*, Victorian Government. Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0003/97428/Victorian-Building-Authority-Corporate-Plan-2018-22.pdf> (accessed 5 April 2022)

⁷⁶ Victorian Building Authority (2020), *VBA Annual Plan 2020-21*, Victorian Government. Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0003/122961/Victorian_Building_Authority_2020-21_Annual_Plan.pdf>

⁷⁷ Victorian Building Authority (2016), *Regulatory approach: the Victorian Building Authority's strategy to regulate the Victorian building and plumbing industries*, Victorian Government. Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0010/97480/VBA-Regulatory-Approach.pdf> (accessed 5 April 2022)

⁷⁸ Victorian Building Authority (2020), *Compliance and enforcement policy*, Victorian Government. Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0011/99029/Compliance-and-Enforcement-Policy.pdf> (accessed 5 April 2022)

⁷⁹ Victorian Building Authority (2022), *Victorian Building Authority service charter*, Victorian Government. Available here: <https://www.vba.vic.gov.au/__data/assets/pdf_file/0013/100192/VBA-Service-Charter.pdf> (accessed 5 April 2022)

⁸⁰ State Planning Commission (2020), *State Planning Commission Strategic Plan 2021-2022*, Government of South Australia. Available here: <https://dit.sa.gov.au/__data/assets/pdf_file/0011/539804/State_Planning_Commission_Strategic_Plan_-_2021-22.pdf>

| | | |
|-------------------|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Strategic Plan 2019-22 ⁸¹ | |
| | <i>The 30-year plan for Greater Adelaide</i> ⁸² | This is the state's overarching planning strategy. Some of its goals involve changes to building standards and other building-related policy. ⁸³ |
| Western Australia | DMIRS <i>Towards 2024 Strategic Plan</i> ⁸⁴ | Two-page plan stating strategic themes and departmental priorities. Conceives of DMIRS as a "regulator, service provider and policy maker". |
| | Premier's charter to the Council of Regulators (27 May 2021) ⁸⁵ | In 2021, the Premier established this Council, comprising the heads of different agencies, and issued this charter which sets out the Council's responsibilities in delivering whole-of-government regulatory reform. |
| | Streamline WA Steering Committee Terms of Reference ⁸⁶ | This document sets out the purpose and responsibilities of the Streamline WA Steering Committee, a better regulation body comprising representatives from state and local governments as well as the private and non-profit sectors. |

40. Based on Table 7, Queensland's construction industry regulatory system is strategy-led, but as an *industry* strategy is articulated in fewer documents than in New South Wales and Victoria. In this respect, Queensland is more like South Australia and Western Australia. But in those states, regulatory functions are largely run from within government departments and as part of multi-sector systems (planning, building and energy). Based on the above analysis of the OECD's principles, a one-stop shop, single-sector regulator like QBCC might be expected to have available more, rather than less, strategic

⁸¹ Consumer and Business Services (2019) *Strategic Plan 2019-2022*, Government of South Australia. Available here: <<https://www.cbs.sa.gov.au/sites/default/files/resource-files/cbs-strategic-plan2019-22.pdf>> (accessed 5 April 2022)

⁸² Department of Planning, Transport and Infrastructure (2017), *The 30-year plan for Greater Adelaide: 2017 update*, Government of South Australia. Available here: <https://livingadelaide.sa.gov.au/__data/assets/pdf_file/0003/319809/The_30-Year_Plan_for_Greater_Adelaide.pdf> (accessed 5 April 2022)

⁸³ State Planning Commission (2021), *30-year plan for Greater Adelaide – 2017 update report card*, Government of South Australia. Available here: <https://livingadelaide.sa.gov.au/__data/assets/pdf_file/0011/893927/30-Year_Plan_for_Greater_Adelaide_-_2017_Update_Report_Card_-_2020-21.pdf> (accessed 5 April 2022)

⁸⁴ Department of Mines, Industry Regulation and Safety (2020), *Strategic plan: Towards 2024*, Government of Western Australia. Available here: <<https://www.dmirs.wa.gov.au/sites/default/files/atoms/files/towards2024.pdf>> (available here 5 April 2022)

⁸⁵ Premier of Western Australia (2021), *Premier's charter to the Council of Regulators (27 May 2021)*, Government of Western Australia. Available here: <<https://www.wa.gov.au/system/files/2021-08/premiers-charter-to-the-council-of-regulators.pdf>> (accessed 5 April 2022)

⁸⁶ Government of Western Australia (2022), "Streamline WA Steering Committee Terms of Reference," accessed 5 April 2022. <<https://www.wa.gov.au/government/publications/streamline-wa-steering-committee-terms-of-reference>>

documentation – an impression that is strengthened by the numerous strategic documents governing the similarly-structured VBA.⁸⁷

41. A distinction should be made between operational strategy and sectoral strategic foresight, with a capability for the latter being of real public interest in the context of a highly complex sector. As per s11 of the Act, the Board has responsibility for deciding strategy for QBCC. Nevertheless, noting the earlier *Feature 3* that no Ministerial directive has been issued to the Board, QBCC strategy (foresight) could be clarified by ministerial statement. It may be the case that sub-directive communiques to this effect have been exchanged with the Board and evident in minutes or other records. A key question for QBCC, as for all regulators, is whether leaders in the agency are clear about their roles in developing and implementing a strategic approach to their regulatory mission. As such, the question raised here is not whether QBCC should have more planning documents, but whether its existing documents capture its strategy and support the kinds of strategic foresight required for the fulfilment of its mandate. This question also goes to the kinds of capabilities required of the board and senior staff.
42. The final identified feature was that QBC Board’s role as a governing body **has both a governing and advisory role**. As a governing body, QBC Board should, according to the OECD, be capable of contributing to the regulatory mission of the regulator over and above representative interests of different stakeholders within the regulated sector (see Table 1, above). In its advisory role, the Board should be well-informed about the regulatory environment. Both roles suggest a need for capabilities and values derived not only from and of benefit only to respective constituent sectors. To this end, the QBCC Act imposes a requirement on the Minister that the Board should represent an even mix of stipulated experiences and competencies. The other mainland states with boards (whether primarily

⁸⁷ However, in this respect, QBCC is not an outlier among Queensland regulators. The former Queensland Productivity Commission notes in its 2021 report *Improving regulation* that “While some statutory agencies in Queensland are currently provided SOEs by the relevant minister (as a requirement under relevant legislation) there is no consistent, whole-of-government use of SOEs in a regulatory context”. QPC (2021) *Improving regulation*, Queensland Government, p. 31. Available here: <<https://qpc.blob.core.windows.net/wordpress/2021/03/Regulation-research-paper-3.3.21.pdf>> (accessed 5 April 2022)

for governance or advice to the Minister) have similar legal requirements. This is shown in Table 8, below.

Table 8: Skill and experience requirements for construction industry board appointments

| Legislation | Text of provision |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>QBCC Act 1991</i> (Qld), s 12(2) | In appointing a person as a member, the Governor in Council is to... (b) have regard to the person's experience and competence in the following areas— (i) building and construction; (ii) finance; (iii) corporate governance and risk; (iv) insurance, including knowledge and experience in the reinsurance market; (v) consumer advocacy and awareness; (vi) public sector governance, including administration and enforcement of laws; and (c) as far as possible, ensure the board has equal representation of the areas mentioned in paragraph (b). |
| <i>Building Act 1993</i> (Vic), s 201(2) | The Minister must, so far as is practicable, ensure that the Commissioners appointed have between them skills, experience and knowledge in relation to building, plumbing, architecture, the interests of consumers, dispute resolution, insurance, law, financial management, public administration and the administration of regulatory regimes. |
| <i>Planning, development and infrastructure Act 2016</i> (SA), s 18(2) | The Minister must, when nominating persons for appointment as members of the [State Planning] Commission, seek to ensure that, as far as is practicable, the members of the Commission collectively have qualifications, knowledge, expertise and experience in the following areas: (a) economics, commerce or finance; (b) planning, urban design or architecture; (c) development or building construction; (d) the provision of or management of infrastructure or transport systems; (e) social or environmental policy or science; (f) local government, public administration or law. <i>The Building Technical Panel is a committee of the State Planning Commission, constituted under s 29 of the Act.</i> |
| <i>Building Services (Registration) Act 2011</i> (WA), s 67(2) and <i>Building Services (Registration) Regulations 2011 r 8</i> | The Board consists of the following members appointed by the Minister — (a) a member designated by the Minister as chairperson of the Board; (b) 2 members each of whom has knowledge of and experience in representing the interests of consumers; (c) for each occupation group — 2 members each of whom has experience as a registered building service provider in a class comprising that group. <i>The regulations list 3 occupation groups: builders, building surveyors, and painters.</i> |

43. The board appointments models of Queensland and Victoria are similar: the stipulated skills required for the QBC Board and VBA Board are practically the same, though the QBCC Act explicitly mentions the reinsurance market, reflecting its status as an insurance provider. The wider-ranging SA State Planning Commission is broadly similar to Queensland, though reflecting its multi-sector remit, it includes “building construction” as a distinct area of experience. Conversely, the narrower focus of Western Australia’s Building Services Board is reflected in its composition. It is designed to represent stakeholder interest groups, presumably with a view to ensuring fairness in the handling of registration matters, including disciplinary measures against registered practitioners.

44. While it is not possible to analyse these boards by their members' skills, as this would require a considerable amount of familiarity with the individuals in question, it is possible to analyse appointee's biographies (which are, without variance, publicly available) by work history, as a proxy for experience. Appointees tend to have worked in different parts of the construction industry, so the analysis in Table 9 tallies mentions of different kinds of experience across the sector. The principal interest here is in whether a board, taken as a whole, evidences a mix of experiences across the industry being regulated. None of this analysis is intended as a commentary on the skills or suitability of any individual appointees, and for this reason the figures below have been anonymised. The analysis is contained in Table 9, below.

Table 9: Composition of construction industry boards, by career background, mentions in member biographies

| Primary career | QBC Board ⁸⁸ (10 members) | VBA Board ⁸⁹ (11 members) | SA State Planning Commission ⁹⁰ (6 members) | Building Technical Panel (SA) ⁹¹ (10 members) | Building Services Board (WA) ⁹² (9 members) |
|---------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------------------------|-------------------------------------------------------------|-----------------------------------------------------------|
| Business | 2 | 3 | 1 | 3 | 5 |
| Law & governance | 2 | 5 | 1 | 3 | 1 |
| Finance & Economics | 2 | 1 | 0 | 0 | 1 |
| Industry Union | 2 | 0 | 0 | 0 | 0 |
| Advocacy & NFP | 7 | 5 | 0 | 0 | 1 |
| Education & skills | 4 | 2 | 0 | 3 | 1 |
| Public sector | 0 | 3 | 5 | 7 | 2 |
| Regulation | 1 | 2 | 0 | 1 | 2 |
| Politics | 2 | 1 | 1 | 0 | 0 |

Legend:

- Business: member has owned or worked in management in a construction business.
- Law & governance: member has worked as a lawyer or in corporate governance, including consultancy.
- Finance & economics: member has worked in a role requiring finance skills or education in economics.
- Union: member has worked in a trade union.
- Advocacy & NFP: member's biography includes a role in issue advocacy or work in a not-for-profit.
- Education & skills: member has worked in tertiary education or industry skills provision.
- Public sector: member has worked in government (at any level) in a role not explicitly regulatory.
- Regulation: member has worked in a regulator or in a policy role to do with regulation.
- Politics: member has held elected office (at any level).

⁸⁸ QBCC (2022), "QBC Board," accessed 5 April 2022. <<https://www.qbcc.qld.gov.au/about-us/qbc-board>>

⁸⁹ Victorian Building Authority (2022), "VBA Board," accessed 5 April 2022. <<https://www.vba.vic.gov.au/about/vba-board>>

⁹⁰ State Planning Commission (2022), "Commission members," accessed 5 April 2022. <https://www.saplanningcommission.sa.gov.au/commission_members>

⁹¹ Building Technical Panel (2022), "Panel members," accessed 5 April 2022. <https://www.saplanningcommission.sa.gov.au/building-technical-panel/members?SQ_VARIATION_731622=0>

⁹² Department of Mines, Industry Regulation and Safety (2022), "Building Services Board," accessed 5 April 2022. <<https://www.commerce.wa.gov.au/building-and-energy/building-services-board>>

-
45. Table 9 shows that structurally, the QBC Board is not unusual, having a similar number of members to boards in other states. As to the composition of that membership:
- a. In the two states with governing boards as part of one-stop shop regulators, Queensland and Victoria, the boards have a wide range of professional experience. In Queensland, a majority of board members have experience in issue advocacy and the not-for-profit sector, and this sector is also prominent in the membership of the VBA Board. In South Australia and Western Australia, this is not the case.
 - b. The QBC Board is the only board currently with members with stated work experience in relevant industry trade unions, which reflects the OECD's advice that board composition should be based on representation for different interests as well as the skills required to fulfil the regulator's mandate. That said, across the sample, there are many business leaders and lawyers who have worked in corporate governance, including compliance, suggesting that most Boards favour certain legal-administrative skills.
 - c. In South Australia and Western Australia, the experiences of board members closely match the technical or narrow focus of the boards' roles. In South Australia, both the State Planning Commission and its Building Technical Panel feature strong representation of current and former public servants, and this is chiefly because many of these individuals have worked as planners in government. In Western Australia, the Building Services Board is designed to represent the different parts of the construction industry and so many of the members have worked as owners of or practitioners in private business.
46. Addressing the issue of diversity as a feature of lived experience as much as community representation, the Victorian government guidelines are an instructive example of clarity about diversity and reporting on this. Through Public Boards Appointments Victoria, a clear set of resources including a skills matrix is offered, and while the guidelines are not strictly enforceable under the legislation, reporting to relevant authorities is mandatory, including reporting to, for example,

Aboriginal Affairs, Department of Families, Fairness and Housing, and Regional Development Victoria.⁹³

Conclusion to Parts A - C

47. The analysis of the QBCC's governance model undertaken so far identifies 4 features. First, that it is structurally a one-stop shop with a range of related functions although with internal separation of its insurance fund management as part of statutory requirements. Secondly, that QBCC's overall financial position seems adequate to its functions but only because the statutory insurance fund performs well; in fact, and to meet requirements of recent reform of the sector, operational funding for non-insurance activities and derived from fees and levies is insufficient. Other government grants have supported operations. Thirdly and fourthly, further consideration could be given to the specificity of the mandates for regulatory strategy given to the Board and the agency. These features were compared to the OECD's literature and guidance on regulatory governance to indicate where the QBCC builds upon, or exhibits features that are variations of, best practice. The analysis then compared the QBCC to other Australian construction industry regulators. The other states tend to have models other than the one-stop shop, and the one that currently is most like the QBCC, the VBA, has a clearer path for identifying the mandate for regulatory strategy and the roles of its different parts. The QBCC was also found to be unique in that it is a regulator that directly administers an insurance scheme. In relation to the likely costs of addressing the continuing challenges to the sector, the analysis of levies and funds indicates that proven mechanisms exist to raise revenue proportionally from developers where required. The comparison highlights that calibration of any levies is sensitive to jurisdictional context and needs and that Queensland levies are less burdensome on lower-value works than those of other states.

⁹³ Victorian Government (2022), "Diversity on Victorian Government Board Guidelines," accessed 5 April 2022. <<https://www.vic.gov.au/diversity-victorian-government-board-guidelines>>

Part D: Risk-based regulation in theory and practice

48. The purpose of this part of the report is to place the QBCC within the context of Queensland's risk-based regulatory strategy, to discuss what risk-based regulation means in theory and practice, and to examine how this has been interpreted by the QBCC in its publicly available governing documents. The question is whether and how this regulatory strategy illuminates the features of the QBCC's governance observed in the previous part of the report.

Queensland Government regulatory strategy

49. The Queensland Government's regulatory strategy is provided in *The Queensland guide to better regulation* ("the guide"), which is overseen by the Office of Best Practice Regulation (OBPR) within the Treasury Department.⁹⁴ The purpose of the guide is to establish a process for regulatory impact analysis and to establish the Regulator Performance Framework, which outlines model practices for government regulators and requires them to report annually on their performance against those practices. In both respects, the guide was written to be consistent with the principles agreed by the former Council of Australian Governments (COAG) in its *Best practice principles for regulation making (2007)*. This document has subsequently been replaced by National Cabinet's *Regulatory impact analysis guide for Ministers' meetings and national standard setting bodies*.⁹⁵ These principles can be found in Table 10, below.

⁹⁴ Queensland Treasury (2019), as above (see fn 63)

⁹⁵ Department of Prime Minister and Cabinet (2021), *Regulatory impact analysis guide for ministers' meetings and national standard setting bodies*, Commonwealth of Australia. Available here: <<https://obpr.pmc.gov.au/sites/default/files/2021-06/regulator-analysis-guide.pdf>> (accessed 5 April 2022)

Table 10: Best practice principles for regulation making, Queensland and Commonwealth

| <i>Queensland Government guide to better regulation 2019 (from COAG, 2007)</i> | <i>Regulatory impact analysis guide for ministers' meetings and national standard setting bodies, National Cabinet 2021</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Establishing a case for action before addressing a problem. • Considering a range of feasible policy options including self-regulatory, co-regulatory and nonregulatory approaches, and an assessment of their benefits and costs. • Adopting the option that generates the greatest net benefit for the community. • Ensuring, in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that: <ul style="list-style-type: none"> ○ the benefits of the restrictions to the community as a whole outweigh the costs; ○ and the objectives of the regulation can only be achieved by restricting competition. • Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear. • Ensuring that regulation remains relevant and effective over time. • Consulting effectively with affected stakeholders at all stages of the regulatory cycle. • Ensuring that government action is effective and proportional to the issue being addressed. | <ul style="list-style-type: none"> • Policy makers should clearly demonstrate a public policy problem necessitating government intervention, and should examine a range of genuine and viable options, including non-regulatory options, to address the problem. • Regulation should not be the default option: the policy option offering the greatest net benefit — regulatory or non-regulatory — should be the recommended option. • Every major decision to regulate must be the subject of a Regulation Impact Statement. • Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals, as well as other policy makers to avoid creating cumulative or overlapping regulatory burdens. • The information upon which policy makers base their decisions must be published at the earliest opportunity. • All regulation should be periodically reviewed to test its continuing relevance. |

50. Importantly, risk assessment is not specifically listed as a core principle of regulation. Instead, risk frames and informs the principles severally and taken as a whole. For this reason, the guide goes on to advise that “The Government’s response to a potential policy issue should be proportionate to the risk that the issue presents,” where *risk* means “the risk of non-compliance or regulatory failure”. The assessment of risk is based on the consequences of non-compliance – so where an activity might be extremely harmful without regulation, then a risk-based strategy suggests a more prescriptive approach, but where an activity occasions only the risk of minor harms, then the regulatory approach should be proportionately less prescriptive. As the principles suggest, this balancing of risk and prescription is relevant to the decision to regulate, the development of regulation, regulatory enforcement, and in reviewing regulation’s effects. Summarising, the guide identifies two “key elements” for a risk-based approach: “ensuring that regulations are designed and drafted with

consideration of risk... [and] that regulators' compliance and enforcement activities are appropriate based on the risk that particular businesses and activities pose".⁹⁶

51. The details of Queensland's regulatory impact assessment process are beyond the scope of this report. But more broadly, it is important to note that as a Queensland regulator, the QBCC is expected to be capable of making evidence-based risk assessments and to engage in that kind of analysis right throughout the regulatory policy cycle. This requires, per the guide, assessing regulatory impact, and hence the risk of non-compliance, along multiple dimensions, including breadth, intensity, proportionality, frequency, probability, reversibility, uncertainty, and community concern. The complexity of these tasks is relevant to the kinds of capabilities the QBCC's leadership should possess – a topic taken up in more detail in Part E, below.
52. To ensure regulatory agencies are fit for this purpose, the guide also includes the Regulator Performance Framework (RPF). The purpose of the RPF is to outline model practices for Queensland regulators to follow.⁹⁷ As their name suggests, the practices define how regulatory policy is to be implemented; in this way, they complement the principles noted above, which go to the policy cycle in full. The model practices are in Table 11, below.

⁹⁶ Queensland Treasury (2019), as above, p. 6

⁹⁷ *Ibid* pp. 27-8

Table 11: Queensland Regulator Performance Framework, model practices and supporting principles

| Model practice 1: Ensure regulatory activity is proportionate to risk and minimises unnecessary burden | Model practice 2: Consult and engage meaningfully with stakeholders | Model practice 3: Provide appropriate information and support to assist compliance | Model practice 4: Commit to continuous improvement | Model practice 5: Be transparent and accountable in actions |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • a proportionate approach is applied to compliance activities, engagement and regulatory enforcement actions • regulators do not unnecessarily impose on regulated entities • regulatory approaches are updated and informed by intelligence gathering so that effort is focused towards risk | <ul style="list-style-type: none"> • formal and informal consultation and engagement mechanisms are in place to allow for the full range of stakeholder input and Government decision making circumstances • engagement is undertaken in ways that helps regulators develop a genuine understanding of the operating environment of regulated entities • cooperative and collaborative relationships are established with stakeholders, including other regulators, to promote trust and improve the efficiency and effectiveness of the regulatory framework | <ul style="list-style-type: none"> • clear and timely guidance and support is accessible to stakeholders and tailored to meet the needs of the target audience • advice is consistent and, where appropriate, decisions are communicated in a manner that clearly articulates what is required to achieve compliance • where appropriate, regulatory approaches are tailored to ensure compliance activities do not disproportionately burden particular stakeholders (e.g. small business) or require specialist advice | <ul style="list-style-type: none"> • regular review of the approach to regulatory activities, collaboration with stakeholders and other regulators to ensure it is appropriately risk based, leverages technological innovation and remains the best approach to achieving policy outcomes • to the extent possible, reform of regulatory activities is prioritised on the basis of impact on stakeholders and the community • staff have the necessary training and support to effectively, efficiently and consistently perform their duties | <ul style="list-style-type: none"> • where appropriate, regulatory frameworks and timeframes for making regulatory decisions are published to provide certainty to stakeholders • decisions are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions • indicators of regulator performance are publicly available |

53. Within the context of risk-based regulation, the model practices can be seen, in part, as means by which information relevant to risk assessment is gathered: through stakeholder engagement, a continuous cycle of making and evaluating regulations, and appropriate transparency in that process. This information is then used in the development of proportionate regulation based on a full understanding of the regulatory environment.

QBCC's interpretation of the risk-based regulatory strategy

54. QBCC's main publicly available strategy document is its *Strategic Plan 2020-2024* ("the plan").⁹⁸ This document is a plan-on-a-page that outlines QBCC's objectives, strategies, performance measures, and risks and opportunities. Here 'risk' means something other than the risk of non-compliance, which is listed as the first, but still just one, of the risks faced by QBCC. The specific risk of non-compliance is described as "Failure to instil a respect for regulation and compliance, caused by ineffective and/or misguided regulatory actions resulting in adverse impacts to the sustainability of licensees, the sector and compromising the safety of [the] community". Also relevant here is the tenth identified risk, regarding data management: "Failure to yield accurate data caused by poor data governance and quality resulting in an inability to make informed decisions impacting the effectiveness of the QBCC and its reputation". This explicit awareness of the importance of data to QBCC's regulatory and other functions is consistent with a risk-based regulatory strategy, which, as discussed below, requires continual engagement with and assessment of the regulatory environment.
55. In the same vein, the QBCC has in recent years committed to becoming an "Insights-Driven Regulator" (IDR). The 2020-21 Annual Report indicates that this means the development of "data architecture and visualisation tools that enable early warning and detection capability" in respect to risks like insolvency, licensee risk, defective work claims, and compliance. This capability is part of a "strategic risk approach" that comprises "regulatory risk (industry non-compliance and insurance fund management issues) and corporate risk (human resources, systems and data, governance, reputation

⁹⁸ QBCC (2021), as above (see fn 62)

and financial management, and sustainability issues)”. Development of the IDR program was the subject of a nearly \$3 million grant from Queensland Treasury in 2019-20, indicating its consistency with Queensland Government priorities in respect of better regulation practices. It is mentioned as part of QBCC’s work against two of its four strategic objectives, one in relation to quality and the other in relation to efficiency and financial stability.⁹⁹

56. Every Queensland regulator is required to report on its performance against the RPF’s model practices. Since the implementation of the RPF, there have been three reporting years. The QBCC’s self-assessment against the five model practices over the three years evinces a range of actions to engage with the industry, learn about the regulatory environment, and apply the information thereby obtained: proactive investigation of compliance rates, regularly convening the Service Trades Council, face-to-face events and seminars, self-assessments, and the development of a new strategic plan.¹⁰⁰

The challenges of risk-based regulation

57. Based on the above, it can be observed that the QBCC has worked, and is working, to implement government’s intent that regulation should follow a risk-based strategy. In its implementation, the QBCC has placed an emphasis on gathering and analysing data from the regulatory environment. The purpose of this section is to provide a brief overview of risk-based regulation more generally, with a view to identifying other relevant aspects of this strategy that bear upon the practices of the QBCC, especially considering the features identified in its governance model.
58. Risk-based regulation (RBR) approaches have proven popular and have been adopted across Australia, Canada, the UK and New Zealand throughout the early 2000s. RBR is used widely both by specific regulatory agencies and also as an approach aimed at any regulated activity, and has been broadly

⁹⁹ QBCC (2021), as above (See fn 20), p. 10, p. 31, p. 90

¹⁰⁰ QBCC (2021) *Reporting on the Queensland Government’s Regulator Performance Framework 2020-21*. Available here: <<https://www.qbcc.qld.gov.au/sites/default/files/report-regulator-performance-framework-2020-2021.pdf>> (accessed 5 April 2022)

The 2018-19 and 2019-20 reports are included in QBCC’s annual reports for those years.

2018-19: <<https://s3.treasury.qld.gov.au/files/Queensland-Building-and-Construction-Commission-2018-19.pdf>> (Appendix 1) (accessed 5 April 2022)

2019-20: <<https://s3.treasury.qld.gov.au/files/Queensland-Building-and-Construction-Commission-2019-20.pdf>> (Appendix 1) (accessed 5 April 2022)

promoted by governments across Australia. As the RPF notes, “These practices are consistent with similar principles adopted in other jurisdictions nationally and internationally”.¹⁰¹

59. According to the OECD, RBR begins with acknowledging that government “cannot regulate to remove all risk and that regulatory action, when taken, should be proportionate, targeted and based on an assessment of the nature and magnitude of the risks and the likelihood that regulation will be successful in achieving its aims”. As such, RBR has been called “a pragmatic approach to regulation because it recognises that risks can be managed or reduced, but not eliminated”.¹⁰² While there is no singular definition of RBR, it can be stated broadly that RBR approaches tend to share a common starting point and some key elements. The common starting point is in the understanding that risks are the focus, not rules. This approach is not primarily about the enforcement of rules, it is about understanding that not every rule can be enforced and that choices must be made. Choices are made according to the level of risk identified. Accordingly, RBR frameworks generally have four common features: setting a clear understanding of risk tolerance, identifying risks, assigning a score/value to the risks identified, and then allocating resources based on the scores assigned.¹⁰³
60. Since its rise to prominence, RBR has generated a considerable literature discussing its benefits and challenges. In relation to the benefits of RBR, the Productivity Commission notes that RBR offers a process for prioritisation, which focuses on risks identified as having both a higher impact and likelihood of occurring and aims to reduce unnecessary regulatory burdens. There is a broad sense that a risk-based approach is cost effective as it enables the reduction of ‘red tape’ and that the

¹⁰¹ Queensland Treasury (2019), as above, p. 27

¹⁰² Arie Freiberg (2017) *Regulation in Australia*, Sydney: The Federation Press, p. 455

¹⁰³ See: Robert Baldwin, Martin Cave, and Martin Lodge (2011), ‘Risk-based Regulation’ in *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed, Oxford University Press; Fiona Haines (2017), “Regulation and risk” in Peter Drahos (ed.), *Regulatory theory: Foundations and applications*, Canberra: ANU Press, 181-196; OECD (2010), *Risk and Regulatory Policy: Improving the governance of risk*, Paris: OECD. Available here: https://read.oecd-ilibrary.org/governance/risk-and-regulatory-policy_9789264082939-en#page1 (accessed 5 April 2022)

decisions made can be supported, explained, and quantified.¹⁰⁴ On this last, the OECD suggests that the main benefits of RBR are in costs avoided. By targeting regulation to higher risk activities, regulators can avoid expending their limited resources on lower probability and lower impact risks and can avoid intervening in the market in disproportionate and inappropriate ways that drive up costs for citizens and stakeholders. Expressed more positively, RBR permits the more efficient use of regulator resources, as well as devolving responsibility for risk management to the level most appropriate and efficient. In addition, risk assessment provides a sound basis for engagement with regulated entities, and in explaining regulatory decisions and building confidence within the regulated environment. In sum, “For regulators, a risk-based regulatory approach can have at least three benefits: it contributes to regulatory efficiency by targeting the approaches of the regulator to allocate resources where risk is greatest; it can systematically improve decision making processes by providing new evidence and insights into potential risk, and; it can assist in providing defensible rationale for decision making, that can withstand external challenge from the courts, or potentially the media”.¹⁰⁵

61. However, RBR also poses several challenges for regulators, chiefly to do with the complexity of the task it sets for them: the identification of certain adverse outcomes as harms, the weighing of those harms by likelihood and potential impact, and the careful design of limited interventions tailored to that risk assessment. Rothstein *et al* identify three general kinds of challenges faced by RBR, which they characterise as *epistemic*, *institutional*, and *normative* – that is, learning enough about the regulatory environment, being sufficiently resourced and capable to properly analyse that information, and producing rules that satisfactorily balance the interests of different stakeholders.¹⁰⁶ Along similar lines, for present purposes, there are two specific challenges inherent in RBR that are relevant to the structure and operations of QBCC:

¹⁰⁴ Productivity Commission (2014), *Regulator Audit Framework*, Commonwealth of Australia, Box 1 on p. 23. Available here: <<https://www.pc.gov.au/research/supporting/regulator-audit-framework/regulator-audit-framework.pdf>> (accessed 5 April 2022)

¹⁰⁵ OECD (2010), as above, pp. 17-18, p. 25, p. 28

¹⁰⁶ Rothstein et al (2006), “The risks of risk-based regulation: insights from the environmental policy domain”, *Environment international* 32, pp. 1056-1065

- a. *Informational challenge*: The first major challenge in RBR is that it requires accurate data gathering and assessment to identify risks in the regulatory environment. It is frequently claimed in the literature that, as the OECD puts it, “A significant constraint on undertaking risk assessment and analysis is the availability of reliable and comprehensive data”. This is because risk assessment is inherently complex – for example, it includes the interrelation of risks, the political factor in risk identification and assessment, the need for intervention to anticipate risk, the subjective perception of risk, and challenges in communicating risk.¹⁰⁷ For this reason, RBR is understood to place high capability demands upon regulators, not only in terms of technical work, but also because of the role played in RBR by human judgement and the consideration of non-technical and subjective matters.¹⁰⁸
- b. *Institutional challenge*: Relatedly, then, the second major challenge of RBR is the demands it places upon the regulatory agency as an actor within the regulatory environment. Here, it is important to be careful about the relationship between RBR and approaches that are outcome-, problem-, or performance-based (all meaning approximately the same thing).¹⁰⁹ RBR is outcome-based in that it requires the identification and characterisation of certain outcomes as harms (or similar). But the assessed risk in RBR is the risk of non-compliance, on the premise that non-compliance *may* lead to foreseeable harms. Thus, there are two distinct probabilistic determinations involved: First, the probability of non-compliance includes factors other than the probability of the harm materialising within the regulatory environment, including the relative costliness of compliance for regulated entities; and secondly, the credibility and reputation of the regulator. In the literature, this point is usually made by noting that RBR in practice includes two different kinds of risk: the risk of social harms materialising, and the business or operational risks occasioned by the regulator.¹¹⁰

¹⁰⁷ OECD (2010) as above pp. 20-1

¹⁰⁸ Freiberg, (2017), as above, p. 463

¹⁰⁹ *Ibid* pp. 235-239

¹¹⁰ *Ibid* p. 464; Rothstein as above; OECD (2010) p. 30

Importantly, to the extent that harm to the regulator’s operations or reputation may diminish its effectiveness as a regulator, then to that same extent, the risk of social harm increases.

62. To put the institutional challenge slightly differently, Baldwin and Black argue that risk-based regulators in effect “construct” or define the risks that they aim to mitigate, and this process is influenced by institutional factors like resources and frameworks, and “political, communicative, and reputational factors” like protecting the reputation and social license of the regulator, all of which affect decisions about regulatory priorities. For this reason, operational decisions like enforcement may change the regulatory environment and so themselves increase or decrease the risk of non-compliance. And in turn, this dynamism itself poses an institutional challenge for regulatory agencies, which must keep up with the effects of their own rules and enforcement actions.¹¹¹ So the effectiveness of a regulator in part turns on how reliably it makes these complex and subtle judgements concerning its regulatory environment, and how those judgements reflexively make that environment still more complex.
63. Moreover, because RBR relies on gathering and analysing data and regulators then acting prudently upon that data to produce regulation that balances the various interests at play, RBR must be sensitive to material changes in the regulatory environment. A risk-based framework can become “unresponsive to changing circumstances... and fail to detect and deal with new risks and changes in risk profiles”¹¹² – which is why frameworks like Queensland’s seek to commit regulators to continuing cycles of evaluation and improvement. This is particularly relevant to the building and construction industry, which has seen long-term growth, including throughout the pandemic, and innovation in building materials and construction methods and certification practices that place new informational

¹¹¹ Robert Baldwin and Julia Black (2016), “Driving priorities in risk-based regulation: what’s the problem?”, *Journal of law and society* 43(4) pp. 565-595

¹¹² Baldwin, Cave and Lodge (2011), as above, p. 288

demands upon regulators.¹¹³ Changes like this not only affect regulatory decisions, but also require regulators to evaluate their objectives and performance measures at regular intervals.

Observations about the QBCC as a risk-based regulator

64. The RBR approach adopted by the Queensland Government raises the question of whether the QBCC's governance model fits that approach. That is, the nature of the RBR approach bears upon the structural features of the QBCC's governance model observed earlier, in two specific ways:
- a. *Complexity*: As noted, the RBR approach entails a highly complex regulatory task. In turn, this means that a regulator undertaking this task will require a high level of capability. This bears upon the features identified above describing the QBCC's mix of functions, funding sources, and staffing levels (Features 1 and 2, above). As a one-stop shop regulator, QBCC has a broad range of functions, meaning the regulatory environment that it governs is also broad and therefore especially complex – particularly considering the institutional challenge described in the previous section. This complexity also bears upon the sustainability of the QBCC's revenue streams and decisions about how those resources are deployed.
 - b. *Discretion*: The RBR approach gives regulators scope for identifying harmful outcomes and prioritising regulatory actions accordingly. Prioritisation involves consideration of a wide range of factors, including not only empirical matters but also normative and political matters – the total regulatory environment. RBR therefore places a strong emphasis on leadership and on the quality of policymaking processes. This bears upon the features identified above which relate to the strategic direction of the QBCC and the functions of its Board and management (Features 3 and 4 above). Effective prioritisation requires clear direction as to regulatory goals, performance measures, and the values that are to guide policymakers and leaders within the regulator. In turn, this suggests the importance of clearly identifying the roles of different parts of the organisation in respect of policymaking and the development and implementation

¹¹³ Maria Joao Ribeirinho et al (2020), *The next normal in construction: how disruption is reshaping the world's largest ecosystem*, McKinsey & Company

of the regulator's strategy, including, for example, clarifying the role that the governing board plays in advising on the policymaking process and priorities. Finally, the importance of discretionary judgement in RBR also bears upon the capabilities of the regulator, in particular the kinds of leadership capabilities it will expect of its Commissioner, as the chief executive, and the board as the regulator's governors. The issue of capabilities is addressed in the next part of this report.

Conclusion to Part D

65. The Queensland Government and the QBCC have adopted a risk-based regulatory strategy. According to the literature, this approach places high demands upon the capabilities of regulators, because it relies on a data-driven analysis of the regulatory environment, which is sensitive to not only to the actions but also perceptions of the regulator. Moreover, the risk-based regulatory approach tends to give regulators a high level of discretion about the identification and prioritisation of negative outcomes and the development of policy settings tailored to those judgements. This combination of complexity and discretion further illuminates features identified earlier in QBCC's governance model in respect of its one-stop shop model and attendant wide range of functions, its funding and use of funds, and the clarity of its strategic direction and leadership roles.

Part E: Regulatory leadership capabilities and values

66. Noting that QBCC’s governance model and risk-based regulatory strategy both emphasise the need for highly capable decision-makers who can understand the regulatory environment in full and appreciate the complexity and subtlety of regulatory action, the purpose of this section is to consider the kinds of capabilities that regulators like QBCC need their leadership to have, and how this relates to existing guidance in respect of capabilities in the Queensland public sector and the QBCC.
67. Good governance of a regulatory body depends upon its board, advisory bodies, senior executives, and commissioners. Regulatory bodies are supported in the selection and function of their senior executive by codified public service capabilities and expectations. Research undertaken by ANZSOG for the Australia Public Service Academy to inform a model of skills and capabilities for regulators highlighted that alongside general public service leadership capabilities, a senior regulatory executive “is more likely than other public servants to be the final decision maker on an issue, as distinct from providing advice to a Minister. Their role as ultimate decision-maker can lead to a public profile and associated scrutiny, and result in conflict and confrontation with some people that are being regulated”.¹¹⁴ The regulatory domain also affects the capabilities required and exercised by senior regulatory executives. To this end, a specific capability requirement within a regulatory agency’s skill set is being able to “[e]nsure their Regulatory Posture reflects the scale, scope and sensitivities of their Regulatory Domain”.¹¹⁵
68. Fundamentally, leaders of regulatory bodies have a responsibility to uphold the public interest insofar as they are subject to the broader framework of Ministerial responsibility to Parliament and the public. Given their role includes public engagement and executive functions, their public responsibilities include a set of values. Beyond the service defined values implicit and explicit in the leadership

¹¹⁴ ANZSOG, with Adam Beaumont and Grant Pink (2021), *Key capability areas of senior executives who shape regulatory organisations and cultures: A report to the Australian Public Service Academy*, Melbourne: ANZSOG, p.3

¹¹⁵ *Ibid* p.8

Capabilities Matrix (Table 11), social outcomes like justice, equity and fairness are also relevant to how regulators define ‘the public’ and ‘value’.¹¹⁶

69. In broad terms, other OECD countries can be said to include a consideration of values as part of regulatory capability. For example, among the six high level competencies for Canadian agency leaders is an expectation to “uphold integrity and respect”¹¹⁷ of their relevant office. Deciding the values is an important precursor and this process itself should also reflect the values that it aims to establish. As the literature cautions, however, it is the operational aspect of capabilities that often is wanting. In the case of values (expected of regulatory leaders), the cognitive and behavioural and experiential judgements required can be more challenging to operationalise. An implication for the QBCC Board and the Minister in recruiting and approving commissioner appointments is understanding their own skills and values in effecting a merit-based selection process.

Leadership capabilities: general and specific

70. The Capabilities Framework identifies six broad leadership capabilities and outlines various leadership behaviours and leadership qualities for senior APS staff. These capabilities are: Visionary, Influential, Collaborative, Entrepreneurial, Enabling, and Delivers.
71. There is growing recognition of regulation as a distinct profession (including government regulators, compliance officers, and regulatory affairs professionals), reflecting the specific capabilities that regulation requires, especially in complex domains.¹¹⁸ It is important to note that unlike some other leadership positions in both the public and private sectors, regulatory leaders in government agencies may need a high level of technical knowledge. As Dr Lorraine Cherney notes, regulators require a mix of horizontal capabilities or “transferable regulatory skills... applicable across multiple regulatory and

¹¹⁶ A. Lindgreen et al (eds.) (2019), *Public Value: Deepening, enriching, and broadening the theory and practice*, CRC Press

¹¹⁷ Government of Canada (2016), “Key leadership competency profile and examples of effective and ineffective behaviours,” accessed 5 April 2022. <<https://www.canada.ca/en/treasury-board-secretariat/services/professional-development/key-leadership-competency-profile/examples-effective-ineffective-behaviours.html>>

¹¹⁸ See, e.g., Appendix A in ANZSOG (2021), as above, which surveys capability frameworks from across the different parts of this new profession.

policy domains, roles, and positions” and vertical capabilities or “sector-specific expertise”.¹¹⁹ In particular, it is these latter capabilities that set regulatory leaders apart from the broader class of public sector leaders; it is often important for regulatory leaders to have a good understanding of technical matters within the regulatory environment.

72. ANZSOG research on leadership capabilities for regulators as summarised in Table 12 matches APS Leadership capabilities with specific additional requirements for leaders of regulatory bodies. Extensive research and development underpin this framework, which is intended to meet public interest accountability and transparency demands and to reflect the substantial responsibility given over to regulatory leaders as employees under the Crown.¹²⁰ The APS framework and the dimensions specific to regulators are closely aligned with the OECD’s recommended capability set.¹²¹

¹¹⁹ Lorraine Cherney (2021), *Professional development training for regulators*, National Regulators Community of Practice, p. 5. Available here: <<https://www.anzsog.edu.au/preview-documents/publications-and-brochures/5623-nrcop-regulator-professional-development-march-2021-regulatory-professional-development/file>> (accessed 5 April 2022)

¹²⁰ Table 11 is adapted from ANZSOG et al (2021), as above

¹²¹ QBCC (2021), as above, p29

Table 12: Leadership capabilities matrix

| | Visionary | Influential | Collaborative | Entrepreneurial | Enabling | Delivers |
|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>SES Capability Description</i> | To provide the best policy advice to government, senior leaders need to be able to scan the horizon for emerging trends , identifying opportunities and challenges for the nation. | To take the government’s policy agenda forward, senior leaders need the capacity to persuade others towards an outcome, winning and maintaining the confidence of government and key stakeholders. | In making progress on issues that cut across agencies, sectors and nations, senior leaders need to be able to develop relationships, build trust and find common ground with others. An openness to diverse perspectives is critical. | In finding new and better ways of achieving outcomes on behalf of government and citizens, senior leaders need to be able to challenge current perspectives, generate new ideas and experiment with different approaches . They also need to be adept at managing risk . | Creating an environment that empowers individuals and teams to deliver their best for government and citizens is a core requirement for senior leaders. This includes setting expectations , nurturing talent and building capability | Senior leaders need to be highly skilled at managing the delivery of complex projects, programs and services . This includes harnessing the opportunity provided by digital technology to improve delivery outcomes for citizens . |
| <i>Senior regulatory executives need to be able to....</i> | <ul style="list-style-type: none"> Be recognised as a Regulatory Professional leading a capable, credible and best-practice Regulator Shape, set, and drive the regulator’s future vision, mandate, values and culture Articulate and proactively communicate desired Regulatory Outcomes Articulate the regulator’s role across the regulatory system Decisively modify regulatory focus, Regulatory Posture and Strategy based on emerging risk levels. | <ul style="list-style-type: none"> Engage with government to ensure regulatory expectations relating to performance, KPIs and outcomes are realistic and achievable Proactively engage to shape policy settings to deliver Regulatory Outcomes Leverage authority and mandate to modify or shift behaviour of the regulated community to deliver on Regulatory Outcomes | <ul style="list-style-type: none"> Ensure genuine engagement drives Regulatory Practice and delivers Regulatory Outcomes, whilst maintaining the integrity of the regulatory system Identify, develop, maintain and leverage purposeful relationships with co- and peer regulators (local, state, national and international) Actively utilise relationships with co-regulators to deliver on shared responsibilities, and advance mutually beneficial Regulatory Outcomes Develop productive relationships with dutyholders, stakeholders and wider community to deliver Regulatory Outcomes | <ul style="list-style-type: none"> Utilise a whole-of-system regulatory stewardship approach, ensuring it is fit-for-purpose, current and effective in delivering Regulatory Outcomes Identify and exploit opportunities to develop and adapt Regulatory Practice Utilise the complete regulatory toolkit and non-traditional problem-solving methods to deliver Regulatory Outcomes | <ul style="list-style-type: none"> Shape a strong Regulatory Culture and Regulatory Approach to harness the whole regulator in delivery of regulatory outcomes Support and grow the capability of regulatory professionals and the broader regulatory profession Create an environment where teams identify and avoid undue regulatory influence and capture Support teams to make timely, transparent and robust regulatory decisions | <ul style="list-style-type: none"> Maintain an untiring focus on Regulatory Outcomes Drive development and embedding of Regulatory Strategy, risk based operational planning, Regulatory Practice, and supporting regulatory systems Commit to valuing, supporting and advancing regulatory practice and the regulatory craft Drive, evaluate, continuously improve and report on Regulatory Outcomes and regulatory performance |

| | | | | | | |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Domain specific senior regulatory executives need to be able to...</p> | <p>Possess necessary knowledge and understanding of the Regulatory Domain</p> <p>Frame, maintain and adjust Regulatory Outcomes to the domain's context</p> <p>Ensure their Regulatory Posture reflects the scale, scope and sensitivities of their Regulatory Domain</p> <ul style="list-style-type: none"> ▪ Place knowledge and insights of the Regulatory Domain and sector within broader regulatory context to drive regulatory focus and effort. | <p>Engage with dutyholders, stakeholders and communities specific to Regulatory Domains to ensure regulatory duties and obligations deliver desired Regulatory Outcomes</p> <p>Leverage dutyholder, stakeholder and community relationships to ensure Regulatory Outcomes are understood</p> <ul style="list-style-type: none"> ▪ Draw on a deep and specialist knowledge of the regulated domain and sectors to inform Regulatory Posture and Strategy | <ul style="list-style-type: none"> ▪ Recognise that regulatory roles and outcomes can span one or more Regulatory Domains when identifying co-and peer regulators [and] delivering shared programs with mutual benefit [and] developing productive relationships | <p>Appreciate the interplay and interdependence of the Regulatory Domain within the broader regulatory system, when exploring opportunities or adopting entrepreneurial approaches</p> <p>Identify and exploit opportunities within and across Regulatory Domains to develop and adapt Regulatory Practice</p> <ul style="list-style-type: none"> ▪ Identify and collaborate with colleagues and peers within and across Regulatory Domains when exploring non-traditional regulatory methods (e.g. regulatory sandboxes) | <p>Recognise that Regulatory Domains are a subset of the broader Regulatory Profession when: establishing Regulatory Culture for their primary Regulatory Domain; determining an appropriate Regulatory Approach; and developing Regulatory Practitioners, Managers and Executives</p> <p>Enable and support the development of Regulatory Professionals within do main specific capabilities</p> <ul style="list-style-type: none"> ▪ Understand and utilise their organisation's specific governance structure (e.g., reporting to an Agency or Departmental head, Minister, Independent Board, Chair or Body) to improve Regulatory Culture, governance and effectiveness | <p>Maintain an unwavering focus on regulatory domain outcomes</p> <p>Appreciate that regulatory delivery varies across regulatory domains when:</p> <ul style="list-style-type: none"> ○ developing strategy and compliance plans ○ honing and refining regulatory practice <ul style="list-style-type: none"> ▪ delivering and reporting on regulatory domain outcomes |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

-
73. Table 12 demonstrates that there are many capabilities unique to, or particularly important for, regulatory leaders, including mastery of the regulatory domain, the ability to set feasible, measurable targets for performance, and leveraging the expertise of a governing board in developing effective policy.
74. A matrix of capabilities of this nature is intended to support confidence in the regulator to ensure “regulation is implemented and administered well – that is, fit-for-purpose while maintaining essential safeguards and reducing compliance burden”.¹²² Leadership matters and should be seen to matter in terms of public scrutiny. A commitment to quality of leadership in this way does not negate the political dimension of regulatory work. On the contrary, it stands as an investment in public trust as well as sectoral trust. An effective regulatory leader then is one able to engage with politicians and ministers on their own terms, supported by the relevant board.
75. In its 2021 report, ANZSOG notes that because regulatory leadership requires a unique mix of public administration and regulatory technical skills, regulatory leaders will have taken different careers paths in the progression of their careers, with some having risen vertically within one agency, others coming in horizontally from leadership positions outside the regulatory domain or the regulator profession, and some having ‘zig-zagged’ between regulation and other areas. Identifying these different paths is important for up-skilling a regulatory agency’s workforce, as the range of skills required for regulatory leadership bears both on recruitment and on development opportunities for staff as they progress in their careers.

Leadership Capabilities and the QBCC in context

76. The Queensland Public Sector Commission’s (QPSC) *Leadership competencies for Queensland* is intended for public sector leaders generally, equivalent to the APSC’s framework. It identifies many similar capabilities, listed in 3 categories: *Vision*, which captures strategy and change; *Results*, which captures talent development, relationships, and outcomes-focus; and *Accountability*, which captures

¹²² ANZSOG et al (2021), as above, p3

inclusion, growth, and governance and risk management. These are broken down further by different “leadership streams”, including the executive and chief executive streams. There are many points of overlap with the APSC framework. However, because of its focus on public sector leadership, the QPSC document does not seek to identify capabilities for regulators. Moreover, in its breakdown of the leadership streams, executives and chief executives are not defined as having no “specialist/technical” responsibilities, and the breakdown of competencies reflects this emphasis on general, high-level skills.¹²³

77. Insights into regulatory leadership capability bear upon not only the Commissioner and her or his staff, but on how the statutory competencies of the QBC Board should be interpreted. In particular, the meaning of “ability to make a contribution to the effective and efficient performance of the Commission’s functions” is linked to the kinds of capabilities that regulators like the QBCC are known to need, as captured in Table 12. These insights also bear upon recruitment, training, and retention of staff (though it should be noted that it is not possible to judge from outside the QBCC how much overlap exists already between the Commission’s development programs and the capabilities required for regulatory leadership). The main implication is that the competencies identified in, for example, the QPSC Framework should be applied to the QBCC’s specific circumstances by incorporating additional insights about the distinctness of regulators and the regulatory profession.
78. As noted earlier, the Queensland building and construction industry has seen considerable growth exacerbating issues including supply chain certainty, increases in material costs and labour demand and, in the two most recent years marked by COVID 19, a shortage in labour supply due to a reduction in skilled labour migration. Consequently, public confidence in the industry and its regulation continues to be tested, and various business uncertainties will affect industry investment. The QBCC has a governance model that includes a chief executive, the Commissioner, and a governing board

¹²³ Queensland Public Service Commission (2022), *Leadership competencies for Queensland*, Queensland Government. Available here: <https://www.forgov.qld.gov.au/__data/assets/pdf_file/0025/182527/leadership-competencies-for-queensland-brochure.pdf> (accessed 5 April 2022)

selected for its relevant capabilities. These offices are charged with developing and implementing a highly complex risk-based regulatory strategy and supporting policies in a dynamic, multi-stakeholder and large-scale sector of the economy. As such, QBCC has high capability needs.

79. Questions arise as to the level of detail with which domain-specific leadership skills and experience should be stipulated. The capabilities framework is instructive at a high level and sits alongside the existing QBCC Act, which is more generic in terms of stipulated capabilities for the QBC Board. In the context of the risk-based strategy adopted by government, senior executives within the regulatory agency, as well as appointees to the QBC Board, ought to have the kinds of skills and professional experience that are necessary for that kind of regulatory approach. Such skills include: processes for preparing formal risk assessment reports; valuing and assessing available information/evidence; ranking risks and risk-reduction opportunities; judgement and deliberation alongside policy and legislation; transparency in procedures.¹²⁴
80. Moreover, a key performance indicator of leadership in this industry context might be found in the QBCC's capacity and record in undertaking and commissioning targeted applied research and insights on sector and market trends and challenges.
81. Drawing context and regulatory risk management together, the QBCC leadership has an additional regulatory interest in being aware of inter-agency interests and responsibilities. The building and construction industry has concerns ranging across infrastructure, planning, and skills and training, and these matters are under separate Ministerial offices. Construction of major infrastructure, such as hospitals, likewise involve the relevant Department (Health). As such, cross-government executive leadership is needed for effective regulation. An important question, then, is the extent to which this kind of leadership is established in organisational structures and governed by appropriate terms of reference and skill matrices. This sectoral crossover places additional leadership demands upon the Commissioner in terms of capability to consultation and exercise of authority. In Queensland, *QBuild*

¹²⁴ D. John Graham (2010), "Why Governments Need Guidelines for Risk Assessment and Management", in OECD (2010), as above

has been established to facilitate the multi-agency and multi-sector demands of construction. Consideration of how the Commissioner is supported through *QBuild* is beyond the scope of this paper.

Internal leadership

82. An expert commissioner must rely upon the structures and people supporting the regulator’s mission. The capabilities framework identifies features, skills and dispositions that are outward facing and others that are to benefit the regulatory agency itself. In other words, the significant responsibility invested in a commissioner or similar regulatory executive leader must be underpinned by the capabilities and shared purpose of the agency. Organisational training, or professional learning, is central to this. Unsurprisingly, a core capability set for regulatory leaders is building and retaining a professional workforce (Table 11). This includes fostering both domain specific knowledge and broader professional capabilities and competencies. It also presupposes a learning-oriented workplace culture.
83. Cherney’s research surveying almost 300 Australian regulators highlighted that professional leadership development in the regulatory domain is lacking and does not meet reported levels of demand. Only one third of respondents in that survey agreed with the statement “*My regulator provides all the professional development required for me to advance as a professional regulator*”. The quality and opportunity for relevant learning programs was also questioned by survey respondents.¹²⁵
84. The QBCC strategic plan states explicitly that staffing is a priority in fulfilling its mission. Priority 3 in its current strategic plan is *Put our people first, and support and value them*. This is elaborated in Table 13, below:

¹²⁵ Cherney (2021), as above

Table 13: QBCC values embodied in staffing

| <i>Put our People First</i> | KPIs |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> Recruit and develop great people – we attract and retain a diverse workforce with the right skills to deliver our mandate Performance matters – we recognise and reward high performance and seek continuous improvement Culture – we celebrate shared values that promote a positive and productive working environment Wellness – we support and mentor our staff | <ul style="list-style-type: none"> Agency participation rate in the Working for Queensland survey Percentage of staff turnover Overall QBCC gender diversity Gender Parity – SLT and Directors Gender pay gap Loss time injury frequency rate Average days lost due to absenteeism |

85. On this view, the QBCC exhibits a level of responsibility and consistency with stated national and international best practice norms in terms of staff development and workplace culture to support its mission, efficacy and efficiency. It reflects the guidelines for state regulators set out by the 2021 Queensland Audit Office under the rubric *Plan-Act-Report-Learn*.¹²⁶

86. QBCC reports against staffing and leadership KPIs in its Annual Report. It indicates a commitment to ongoing performance improvement, as well as specific development leadership support. However, it should be noted that none of the KPIs listed in Table 12 go directly to the kinds of regulatory leadership or regulatory craft skills relevant to risk-based regulation as captured in Table 11. Stated initiatives for 2020-21 reporting period included: introducing a capability development program to support leaders in managing organisational change in the workplace; changing the Human Resources Service delivery model to better support our leadership teams; introducing a specific program of workplace training and support for Domestic and Family Violence; introducing journey mapping and developing the employee experience for staff members.¹²⁷

¹²⁶ Queensland Audit Office (2021), *Better practice guide – insights for regulators*, Queensland Government. Available here: <https://www.qao.qld.gov.au/sites/default/files/2021-11/Better%20practice%20guide%E2%80%94Insights%20for%20regulators.pdf> (accessed 5 April 2022)

¹²⁷ Cherney (2021), as above, and as cited in ANZSOG et al (2021), as above, p45

Values

87. Along with capabilities, there is an expectation that institutions like regulators represent values of public service and that these inform a regulator's operations. Values function by being incorporated into the everyday working of an institution – they become its culture by prescribing certain behaviours and norms that support the mission of the institution. It has been argued that stipulating in law or public policy that certain standards of behaviour are expected encourages officials within institutions to internalise those standards, rather than merely avoiding proscribed, punishable acts.¹²⁸ For regulators, it has also been argued that values are part of building a professional culture, which, because of its high standards, reinforces the independence of the regulators and reduces the risk of undue influence.¹²⁹ Values, then, are a key input into the performance of a regulator because they inform not only the leadership but the whole workforce, influencing a wide range of decisions that impact the regulator and the regulatory environment.
88. The QBCC outlines its model “behaviours” as part of its strategic plan. These behaviours are shown in Table 14, below, along with the Queensland public service values. Taken together, these could be viewed as a set of value statements about QBCC operations.

¹²⁸ Arie Freiberg (2015) *The tools of regulation*, Sydney: The Federation Press, p. 203

¹²⁹ OECD (2016b), as above, pp. 29-30; p. 68

Table 14: Behaviours and values

| QBCC 'Our behaviours' ¹³⁰ | Queensland public service values ¹³¹ |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Professionalism – we act with professionalism in all we do</p> <p>Integrity – we act impartially and with honesty</p> <p>Accountability – we do what we say, we are accountable for our actions, we mitigate risk</p> <p>Teamwork – we think about others and how our decisions or behaviours impact them</p> <p>Customer Focus – we treat all of our customers, including our colleagues, with respect, compassion and empathy</p> | <p>Customers first</p> <ul style="list-style-type: none"> • Know your customers • Deliver what matters • Make decisions with empathy <p>Ideas into action</p> <ul style="list-style-type: none"> • Challenge the norm and suggest solutions • Encourage and embrace new ideas • Work across boundaries <p>Unleash potential</p> <ul style="list-style-type: none"> • Expect greatness • Lead and set clear expectations • Seek, provide and act on feedback <p>Be courageous</p> <ul style="list-style-type: none"> • Own your actions, successes and mistakes • Take calculated risks • Act with transparency <p>Empower people</p> <ul style="list-style-type: none"> • Lead, empower and trust • Play to everyone's strengths • Develop yourself and those around you |

89. For a regulator like the QBCC that operates within a complex regulatory environment with a strategy that empowers decision-makers with considerable discretion, it is important that its institutional values encourage professionalism and accountability, and that these are included in the QBCC's stated behaviours.

90. The credibility of a regulator is also an important part of its capability. The regulatory environment becomes more difficult if a regulator's performance is perceived to decline. Institutional values are part of this dynamic in two ways: first, values influence performance and so in part determine its overall capability; and secondly, values affect the perception of the regulator's credibility which in turn affects the regulatory environment. So, it is important that a regulator's values, and their enactment as behaviours by staff and leaders, reflects the expectations of the regulated community. In short, to

¹³⁰ QBCC (2022), "Our mandate, purpose, vision and behaviours," accessed 5 April 2022.

<<https://www.qbcc.qld.gov.au/about-us/our-mandate-purpose-vision-behaviours>>

¹³¹ Queensland Government (2022), "Public service values," accessed 5 April 2022.

<<https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/public-service-values-and-conduct/public-service-values>>

the extent that they influence staff behaviour and the credibility of the agency, the values of a regulator are part of its capability.

Conclusion to Part E

91. The QBCC requires that its leaders and workforce have certain capabilities specific to the regulatory profession, and which reflect the complexity and discretion inherent in its risk-based regulatory approach. To this end, it is important to recognise that regulation is increasingly understood as a distinct profession involving distinct capabilities. This fact should influence how regulators like the QBCC understand the capability mix required for the fulfilment of their mandates. Similarly, the values of a regulator like the QBCC should reflect the desirability of decision-makers at all levels being empowered to develop their understanding of the regulatory environment and exercise the discretion inherent in their roles in furtherance of the regulator's mission. This is vital for protecting the regulator's credibility and shaping the regulatory environment.

Conclusion

92. The purpose of this report has been to illuminate certain identifiable features of the QBCC's model and thereby to assist the independent review, rather than to recommend changes to the regulator or even to suggest that change is necessary, which is a question for the reviewer. The analysis has sought to provide a baseline description of the QBCC, especially in relation to comparable regulators, and to elaborate using the best available evidence what its model and approach entail for its operations.
93. To this end, this report has undertaken five related tasks: an analysis of the QBCC's governance model, a comparison of that model with OECD best practice guidelines for regulators, a comparison between building and construction industry regulators in Australia's mainland states, a discussion of the QBCC's interpretation of Queensland's risk-based regulatory approach in light of some of the relevant literature, and finally, a consideration of the capabilities and values appropriate for a regulator like the QBCC with that kind of regulatory approach. It has also acknowledged the sectoral context and noted the high demands facing building regulation.
94. The overarching point that emerges from these tasks is that the QBCC has a difficult mission: it performs a wide range of functions within an increasingly complex regulatory environment in which regulated entities are facing growing economic challenges, and it is pursuing a regulatory approach that also requires a high level of capability. For these reasons, it is important to recognise the emerging understanding of regulation as a distinct profession requiring a unique set of capabilities, and the connection between those capabilities and the values that determine how they are deployed.
95. Materially, there is a deficit in operating funds that has been offset by other grants and savings, and payments to administer the insurance fund. However, offsets are tactical measures while the reforms required in recent years appear to have put the QBCC's revenue stream under greater pressure. Levies exist and are being introduced in other jurisdictions to mitigate recent sectoral reforms.

96. As the OECD notes, questions about regulatory governance and approaches can be answered in many ways, and what matters most is the effectiveness of a regulator against the mandate given it by government. But effective regulators tend to have a coherent understanding of their missions, their strategies, the roles of leaders and staff in carrying those out, and the results they want to achieve for the regulated community. This report has presented some of the opportunities and challenges of realising this idea of regulatory best practice.

Appendix A: REVIEW TERMS OF REFERENCE

Scope In undertaking the review, advice and recommendations will be provided on whether:

1. the QBCC's structure and governance arrangements reflect best practice for similar regulatory bodies in Queensland or other jurisdictions, including whether all current functions should continue, or continue in their current form, in particular dispute resolution, and any proposed adjustments to ensure best practice
2. the roles and responsibilities of the QBCC and the QBC Board are sufficiently clear and support good governance
3. any legislative amendments or administrative changes required to give effect to any potential improvements identified from 1 and 2
4. any other relevant matters exist that should be further examined to ensure the QBCC is well positioned to deliver on government commitments and reforms.

In making recommendations, the report should:

- clearly identify what elements of the QBCC's work were considered, findings, and the reasoning behind recommendations
- clearly identify whether each of the recommendations can be implemented immediately, or requires longer term consideration, with a focus on workable and pragmatic solutions
- if recommending changes in structures or functions, outline the changes proposed, with reference to legislative schemes in Queensland and other jurisdictions
- if relevant, recommend what alternatives to legislative change could be considered by government, for example, administrative options
- if relevant, recommend a combination of legislative and administrative change and detail how these might interact
- what further action may be necessary to implement a recommendation
- if no further action is required, specify why.

APPENDIX B: QBCC Organisational Chart

Cite org chart: https://www.qbcc.qld.gov.au/sites/default/files/QBCC_Organisational_Chart.pdf