

Developer Review Panel

Work plan and stakeholder engagement plan

March 2022



**Queensland
Government**

Introduction

In accordance with section 115D of the *Queensland Building and Construction Act 1991*, the Developer Review Panel has been appointed to conduct a review of the role of developers in the building and construction industry.

The review follows submissions to the Queensland Parliament's Transport and Public Works Committee about the important role developers play in the industry. The Committee recommended that there be further consideration of developers' financial and operational capacity, ethical behaviour and work practices.

The Terms of Reference for the review require the Panel to prepare and publish governance documentation, including a **work plan** and a **stakeholder engagement plan**.

The plans will assist the Panel in meeting its overarching deliverable of providing the Minister with a report detailing its findings and any relevant recommendations within 12 months of appointment (i.e. by November 2022). While it is intended that the Panel will be guided by these plans, they are subject to change, and the Panel will tailor its activities to address emerging issues.

Work plan

This work plan seeks to assist the Panel in achieving its key deliverables under the Terms of Reference for the review by establishing work streams to focus the Panel's work and a timeline for its activities.

Indicative timeline

As stated, the Panel is to deliver its report within 12 months of being appointed. To optimise the use of the Panel's time and resources, the following timeline of key deliverables has been developed.

Deliverable	Completion timeframe
Governance documentation published	March 2022
Targeted industry consultation	January – May 2022
Discussion paper developed	May – June 2022
Discussion paper finalised and released	July 2022
Public consultation undertaken	July – August 2022
Consultation feedback analysis and draft report developed	August – September 2022
Final report provided to Minister	October 2022

Work streams

The work of the review can be channelled into four broad work streams, as outlined below.

1. Defining 'development activity': understanding the core characteristics of development activity and whether, within this broad spectrum of activity, any activity leads to delays in payments of funds to principal contractors¹ and deficiencies in building quality and safety
2. Security of payment: identifying any developer practices or behaviours that may contribute to late or non-payment or insolvency in the industry
3. Building quality and safety: assessing the influence and impact developers have on building outcomes as a result of current common procurement practices and identifying any risks associated with developers engaging third parties.
4. Effective responses: considering whether current regulatory and non-regulatory avenues effectively respond to any issues identified through work streams (2) and (3) and if further responses would reduce, limit or mitigate less favourable financial or operational outcomes.

These work streams have been used to structure the remainder of the work plan, which, for each stream, sets out:

- key questions to be answered by the review
- evidence and other information needed to answer these questions
- stakeholders and other resources that may assist the Panel to obtain relevant information.

While each of the work streams and associated questions will inform the Panel's final report, the Panel will not necessarily make findings or observations about each question in its final report. The Panel is also able to pass comment or make recommendations about other behaviours, practices, trends or responses relevant to the matters in the Terms of Reference.

¹ References to a principal contractor mean the party engaged by the person or entity who undertakes development activity

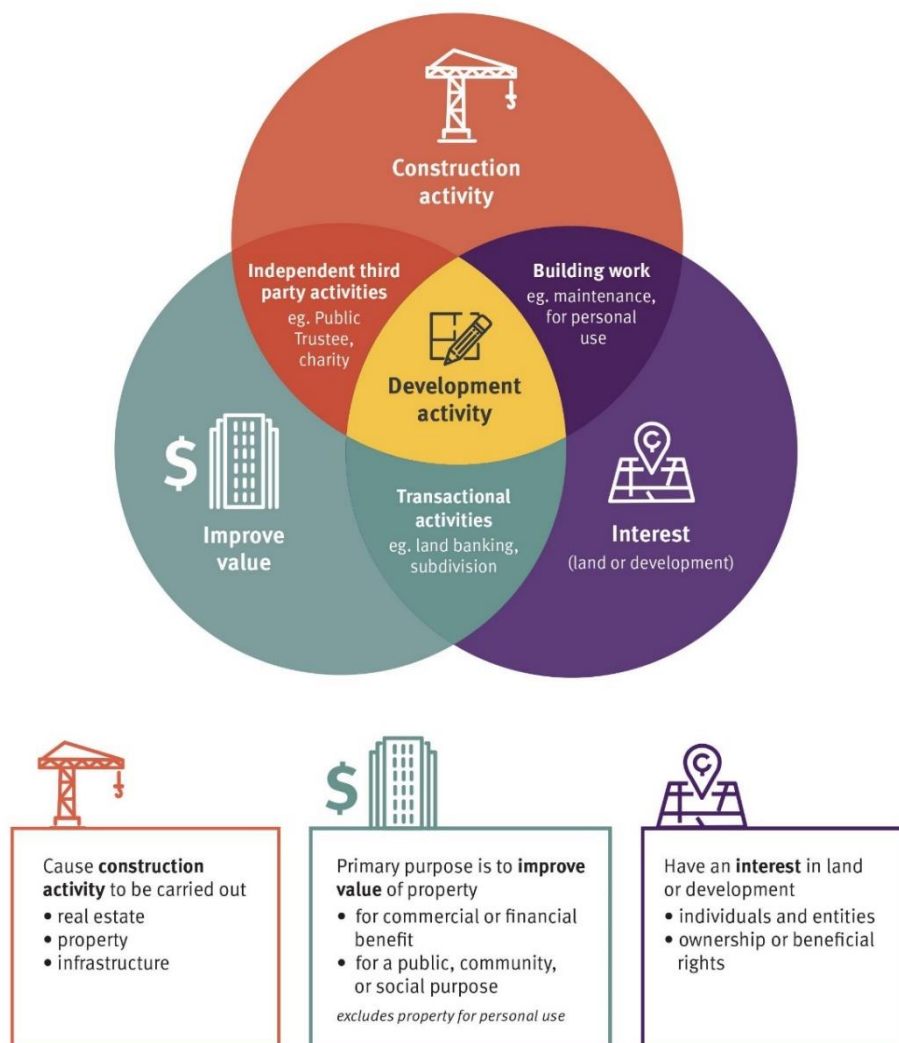
Work stream 1: Defining ‘development activity’

The Panel’s early work identified that the term ‘developer’ had been defined in various ways in State and Commonwealth statutes and extrinsic materials, by industry and in literature. Rather than attempt to redefine this term, the Panel has chosen to look at ‘development activity’ to inform the scope of the review and the matters to be considered under the Terms of Reference.

The Panel has developed a preliminary development activity profile (refer to **Figure 1**) which sets out the core characteristics of development activity. References to the term ‘developer’ in this document means a person or entity who undertakes development activity, regardless of value or frequency. The Panel has used the development activity profile as the basis of its consideration of work streams 2 and 3, which are the focus of its work.

These subsequent work streams will help inform whether the development activity profile captures all activities of relevance or interest and identify trends and whether there are any trends or particular subsets of development activity that are worthy of further investigation.

Figure 1 – Core characteristics of development activity²



² ‘Development activity’ for the purposes of the review requires all three core characteristics. Development activity is not constituted by two or fewer characteristics, as indicated by the examples of building work and transactional activities.

Work stream 2: Security of payment

Key questions	Evidence/information required	Key stakeholders
<ul style="list-style-type: none"> • What is the prevalence of late/non-payment by developers to principal contractors and what are the impacts? • Are there any behaviours or practices by developers or other parties (e.g., business models, contracting practices, illegal phoenixing, advertising) that influence or impact security of payment outcomes? • What is the prevalence of these behaviours/practices? • Are these behaviours/practices concentrated in particular areas of the industry? • Will recent security of payment legislation impact or alter these behaviours/practices? 	<ul style="list-style-type: none"> • Consultation feedback about behaviours/practices, causes and impacts • Case study analysis of submissions to previous security of payment inquiries • Details of causes of insolvencies e.g. liquidator/regulator reports • Data on individuals involved in development activities excluded by the Queensland Building and Construction Commission (QBCC) or banned or disqualified by ASIC • QBCC data regarding payment disputes 	<ul style="list-style-type: none"> • IRG • Industry participants • Lending institutions • Insolvency practitioners • General public • Regulators and government agencies

Work stream 3: Building quality and safety³

Key questions	Evidence/information required	Key stakeholders
<ul style="list-style-type: none"> • What is the prevalence of building quality and safety issues in projects involving developers? • What are the typical contractual arrangements between developers and those responsible for the design, construction and certification of buildings? • What level of influence do developers have in decisions about the design, construction and certification of buildings e.g., design changes, the use of particular building products or inspection regimes? • How do current regulations and practices manage the relationship between the developer and principal contractor? • What is the level of compliance by developers with these regulations and practices (e.g. legislative and contractual)? • Are there any other behaviours or practices by developers or other parties that influence or impact building quality and safety outcomes, and what is the prevalence of these behaviours/practices? • What is the cause or contributing factors of these behaviours/practices? • Are these behaviours/practices concentrated in particular sections of the industry? 	<ul style="list-style-type: none"> • Local government and private certifier data on enforcement action relating to building and development breaches • Consultation feedback about behaviours/practices, causes and impacts 	<ul style="list-style-type: none"> • IRG • Industry participants • Royal Institute of Chartered Surveyors • General public • Regulators and government agencies

³ Safety also includes work health and safety during the construction process, as well as the safety for the end-users.

Key questions	Evidence/information required	Key stakeholders
<ul style="list-style-type: none">Who is impacted by building quality and safety issues and what are the impacts?		

Work stream 4: Effective responses

Key questions	Evidence/information required	Key stakeholders
<ul style="list-style-type: none"> • What are the current avenues for governing developer conduct? • How are these given effect? • Are these avenues accessible and are they being utilised? • Are there any gaps in responding to issues identified relating to security of payment or building quality and safety? • What are the regulatory and non-regulatory options to respond to the identified issues and, in relation to these: <ul style="list-style-type: none"> ○ how does this compare to the approach, if any, taken by other jurisdictions? ○ is there an option that offers the greatest net benefit? ○ what further action is required to implement the option/s? 	<ul style="list-style-type: none"> • Inter and intra jurisdictional analysis of regulatory and non-regulatory responses and gap analysis • Consultation feedback • Options analysis, including consideration of both regulatory and non-regulatory approaches • Assessment of benefits and costs of proposed options 	<ul style="list-style-type: none"> • IRG • Industry participants • General public • Regulators and government agencies

Stakeholder engagement plan

Developers are thought to operate at the top of the contractual chain and so their behaviour and practices can have wide-reaching implications for industry, consumers and the community. For this reason, the Panel recognises that engagement with a broad range of stakeholders, including developers is essential to the success of the review. The Panel's stakeholder engagement plan, as set out below, seeks to ensure all relevant stakeholders are identified and have a range of opportunities to access and provide input into the review. It also seeks to build upon the guidance in the Terms of Reference for the review, which provide for the establishment of the IRG and includes a preliminary list of key stakeholders.

Industry stakeholders

The Minister has appointed the following members to the IRG:

- Australian Institute of Building Surveyors
- Australian Institute of Architects
- Housing Industry Association
- Insurance Council of Australia
- Local Government Association of Queensland
- Master Builders Queensland
- Property Council of Australia
- Queensland Building and Construction Commission
- Queensland Council of Unions
- Queensland Law Society
- Urban Development Institute of Australia—Queensland.

The IRG will act as a key forum of industry engagement for the Panel, as well as contribute to the strategies and materials to be used by the Panel in its work and facilitate broader industry feedback.

Several members of the IRG have been drawn from the Ministerial Construction Council (MCC), which is the Minister's peak building and construction industry consultative group for the development of government policy. Consequently, the Panel may also consult with, or provide updates on its work to, the broader MCC from time to time.

The Panel has also identified other industry groups (representing, among others, developers, head contractors, the real estate sector, employees and the financial and insurance sector) that it intends to make aware of the review.

Further, individual industry participants will have access to the public consultation tools that will be used by the Panel.

Consumer and community stakeholders

The Panel will promote the review to, and consult with, groups representing consumer and community interests, such as:

- the Strata Community Association and Australian Apartment Advocacy, both of which represent apartment owners
- holders of a Queensland Home Warranty Scheme policy, who may have dealt with a developer with respect to the insured residential construction work
- the Queensland public, particularly targeting those who have had experience with developers.

Government stakeholders

There are several Queensland and interstate agencies, at various levels of government, which have a role in regulating developers or undertake development activities themselves.

Stakeholder list

A comprehensive stakeholder list is provided at **Appendix 1**. The Panel may also consult with additional stakeholders as they are identified, for example, on the recommendation of the IRG.

Engagement activities

The Panel will communicate and consult with stakeholders in accordance with the engagement plan below. In seeking feedback or other information, the Panel will have regard to the effort required by stakeholders to participate in consultation by:

- avoiding multiple requests for submissions on the same issues
- seeking advice from the IRG on the content of and processes of consultation
- making the content of consultation documents concise and clear
- providing a number of means by which stakeholders can provide their input to the consultation process
- giving stakeholders reasonable timeframes for responding to requests for submissions or information.

Given the potentially sensitive nature of submissions, and to alleviate concerns about the potential repercussions of providing feedback, **all submissions to the Panel will be treated as confidential unless express approval to publish the submission is provided**. Records will be kept of all consultation and engagement activities.

Schedule of engagement

Activity	Timeframe	Target stakeholders	Purpose
One-on-one meetings	January 2022 onwards	Stakeholders identified by Panel, IRG and through public consultation	Panel may meet with targeted stakeholders to seek their views on key issues that should be investigated as part of the review and how this can be achieved.
Establish and engage with IRG	February 2022 onwards	Peak industry bodies and advocates	Will act as a key forum for industry engagement and input into strategies and materials to be used by the Panel.
Targeted consultation (approximately 10 weeks)	March – May 2022	IRG and key industry participants	The Panel will meet regularly with the IRG—as a group and with members one-on-one—during this period to seek feedback on each of the work streams. The Panel will also invite IRG members to

Activity	Timeframe	Target stakeholders	Purpose
			provide written submissions and case studies relevant to the work streams, and to nominate key industry participants to contribute to the review.
Public consultation	July – August 2022	All	A discussion paper will be published online for four weeks public consultation. This will provide all interested parties the opportunity to provide input to the review and comment on the key issues that have arisen through targeted consultation.
Information and awareness materials including: <ul style="list-style-type: none"> • Web content • Correspondence to key stakeholders and QBCC licensees • Industry newsletters • Social media 	January 2022 onwards	All	To inform, and provide ongoing updates to, interested parties about the review, including planned public consultation. Peak industry bodies will be asked to distribute these materials to their members to extend the reach of the Panel's messaging.

Appendix 1 – Stakeholder list

*denotes an MCC member

Industry

Building and construction

- Air Conditioning and Mechanical Contractors' Association*
- Association of Wall and Ceiling Industries Queensland*
- Australian Constructors Association
- Australian Institute of Architects*
- Australian Institute of Building Surveyors*
- Australian Owned Contractors
- Building Products Industry Council
- Civil Contractors Federation Queensland
- Construction Skills Queensland
- Consult Australia
- Engineers Australia*
- Fire Protection Association of Australia
- Housing Industry Association*
- Landscape Queensland*
- Master Builders Queensland*
- Master Concreters Australia*
- Master Electricians Australia*
- Master Painters Queensland*
- Master Plumbers Association of Queensland*
- National Association of Women in Construction*
- National Fire Industry Association*
- Professionals Australia
- Queensland Major Contractors Association
- Royal Institution of Chartered Surveyors*
- Subcontractors Alliance*
- QBCC licensees, particularly in MFR categories 1–7

Employees

- Australian Manufacturing Workers' Union*
- Australian Workers Union
- Construction, Forestry, Mining and Energy Union*
- Electrical Trades Union*
- Plumbing and Pipe Trades Employees Union Queensland*
- Queensland Council of Unions*

Financial and insurance

- Australian Banking Association
- Customer Owned Banking Association
- Insurance Council of Australia
- CPA Australia
- Chartered Accountants Australia & New Zealand
- PricewaterhouseCoopers Australia
- Ernst & Young
- KPMG Australia
- Deloitte Australia
- SV Partners
- Menzies Advisory
- BRI Ferrier Brisbane
- Bentleys Queensland
- PKF Brisbane
- BDO Brisbane.

Legal

- Queensland Law Society

Property development

- Community Housing Industry Association
- Property Council of Australia*
- Real Estate Institute of Queensland
- Urban Development Institute of Australia*

Community

- The Queensland public, particularly those with experience with developers
- Australian Apartment Advocacy
- Strata Community Association*

Government

- Australian Taxation Office
- Australian Building Codes Board
- Department of State Development, Infrastructure, Local Government and Planning
- Local Government Association of Queensland*
- Australian Securities and Investments Commission
- Australian Competition and Consumer Commission
- Board of Architects of Queensland*
- Board of Professional Engineers of Queensland*
- Office of Fair Trading Queensland
- Queensland Building and Construction Commission*