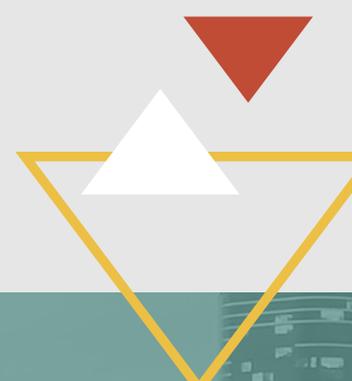




Setting the tone

The role of developers
in Queensland's building
and construction industry



Final report of the independent
Developer Review Panel

April 2023

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Foreword

Minister,

It is my pleasure to provide you with the final report of the independent Panel appointed to review the role of developers in the Queensland building and construction industry (the review). This report includes recommendations to build on the Queensland Government's reform program, particularly with respect to improving security of payment, solvency and building quality and safety.

These recommendations follow extensive consultation across industry. I thank the stakeholders who contributed to the review. Their thoughts, views and experiences are reflected in the following pages.

Their feedback revealed that views varied widely across the building and construction industry, and many stakeholders had strongly held perspectives about issues facing the industry and potential solutions.

The Panel deliberated on these issues and sought to find a balanced position, particularly in the context of a well-recognised paucity of data relating to developers in the building and construction industry.

The Panel determined there was sufficient qualitative evidence to warrant a case for change. Developers have a primary role in setting the tone of projects, and they influence security of payment, solvency and building quality and safety in several ways. This influence can be both positive and negative.

The Panel has developed a suite of recommendations that seek to resolve identified issues, minimise regulatory burden, and provide the Queensland Government with additional data insights to inform future policy development.

The recommendations are a package of complementary measures that seek to position the Queensland Government to have both a line of sight of the industry and the ability to assess the ongoing appropriateness of any regulatory response.

The centrepiece of these recommendations is a proposed accreditation, disclosure and registration framework for developers in the building and construction industry. The framework is the foundation stone of the package, with subsequent recommendations building upon it. It proposes a bespoke, right-sized approach that will benefit the development industry and the construction industry as a whole.

In preparing this report, the Panel has been conscious of current economic conditions, the impact this has on industry participants, and the impending increased level of construction to meet the State's needs over coming years. The Panel has carefully devised a package of recommendations and observations that will work together to bring about lasting cultural change and embed best practice throughout the industry, providing a greater level of sustainability in the sector for all participants.

The Panel stresses that the proposed reforms are not the 'high-water mark', but rather minimum standards on which to build the future of the role of developers in the building and construction industry. It is likely that many professional developers will already exceed these minimum standards.

The Panel has also included observations on matters that are either out of the scope of the review or on topics where another body is undertaking a targeted review. These observations will assist government and other reform programs in achieving complementary objectives for the building and construction industry.

Ultimately, the review has confirmed the interrelated nature of the building and construction industry. When all parties work together, everybody benefits.

Queensland is about to undergo an extensive period of development and growth. The issues identified in this report are unlikely to recede. The Panel encourages all parties – government, industry and consumers – to work together to consider the outcomes of this report promptly.

Finally, I thank my fellow Panel members, John Payne and Gina Patrick, for sharing their expertise and for their collaborative and collegiate approach to the review. I also thank the Department of Energy and Public Works (DEPW) for providing secretariat support.

I commend this report to the Queensland Government.

Kind regards,



Alison Quinn
Panel Chair

Executive summary

In 2020, Queensland's Parliamentary Transport and Public Works Committee recommended there be further consideration of the role of developers in the Queensland building and construction industry. As a result, the *Queensland Building and Construction Act 1991* was amended to require the review.

In late 2021, the Developer Review Panel (the Panel) was appointed to conduct the review. The Panel's terms of reference encompass advancing security of payment by addressing developer behaviours that contribute to non-payment and insolvency. Further, the Panel was asked to consider the impact developers have on the quality and safety of building work and work practices.

The Panel embarked on an extensive program of consultation, starting with targeted stakeholder meetings and culminating in the release of a discussion paper for approximately three months of public consultation.

Based on feedback received, the Panel concluded that developers are a key influence on the building and construction industry and that their behaviours help set the tone of a project and have flow on effects for security of payment, solvency and building quality and safety.

As a result, the Panel has developed a suite of recommendations and observations that present a proposition for the future: a benchmark for a better standard for developers in Queensland.

The recommendations are founded on an accreditation system (**Recommendation 1**), which seeks to ensure accredited developers meet minimum standards, including 'fit and proper' person thresholds and educational requirements (**Recommendation 2**). Accredited developers will then be subject to several obligations, including pre-contractual disclosure and the registration of certain development activity (**Recommendation 1**). The recommendations also specifically incorporate two existing legislative frameworks into the conduct expectations of accredited developers. Specifically, a breach of Queensland's non-conforming building product (**Recommendation 3**) and fairness in contracting (**Recommendation 4**) laws will each be grounds for disciplinary action against accredited developers.

Additionally, the Panel has included several observations on matters that were raised in consultation, but are either out of the scope of the review or on topics where another body is undertaking a targeted review. These observations seek to assist government and other reform programs in achieving complementary reform objectives for the building and construction industry.

Summary of recommendations and observations

Recommendations



Recommendation 1: Establish an accreditation, disclosure and registration framework



Recommendation 2: Improve industry education



Recommendation 3: Clarify developer responsibilities in relation to non-conforming building products



Recommendation 4: Clarify developer responsibilities in relation to fairness in contracting in Queensland



Recommendation 5: Promote the uptake of digital tools for recording design and construction information

Observations



Observation 1: The benefits of requiring developer accreditation earlier in the development process



Observation 2: The role of financiers



Observation 3: Existing and emerging consumer and industry protections



Observation 4: The importance of supporting robust contracting practices



Observation 5: The role of building certifiers



Observation 6: Reform of mediation processes



Observation 7: Body Corporate and property law reform

Introduction

Panel establishment and purpose

The quality and safety of buildings has been a consistent focus for the Queensland Government and nationally. On 13 November 2021, the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, appointed the Panel (refer to Appendix 1) to conduct a review of the role of developers in Queensland's building and construction industry (the review).

The review delivers on a Queensland Government commitment under the Queensland Building Plan and is in accordance with section 115D of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

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 further consideration of developers' financial and operational capacity, ethical behaviour and work practices in achieving the Queensland Government's security of payment objectives.

Terms of reference

The terms of reference (refer to Appendix 2) task the Panel with:

- advancing work already done by the Queensland Government to support security of payment in the building and construction industry, by identifying practices and behaviours of developers that contribute to non-payment and insolvency in the industry, and
- considering the impact developers have on the quality and safety of design, construction and the certification of buildings and other work practices, including the incidence of defective works and the role and influence developers have on the contractual chain, including accountability for work practices and project standards.

Consultation

The Panel embarked on an extensive program of consultation, initially undertaking more than 50 hours of targeted consultation with its Industry Reference Group and key industry stakeholders. The Industry Reference Group comprised of the following members:

- Australian Institute of Architects
- Australian Institute of Building Surveyors
- 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
- The Royal Institution of Chartered Surveyors, and
- Urban Development Institute of Australia.

This consultation informed the development of the Panel's discussion paper, which was released in November 2022 for approximately three months of public consultation. The discussion paper outlined a range of issues raised during initial consultation, as well as 38 potential solutions (refer to Appendix 3).

The response to this discussion paper was exceptional – the Panel received more than 120 written submissions and more than 120 responses to an accompanying online survey.

Submissions were received from a wide variety of sources, including the development (large and small), design, construction, finance and legal sectors. Specifically, the Panel heard from representatives of financial institutions, insolvency practitioners, construction lawyers, unions, project managers, quantity surveyors, architects, building certifiers, builders, and developers.

This consultation identified that developers often hold substantial commercial and informational advantages over head contractors, can help set the ‘tone’ of a project and influence security of payment and building quality and safety throughout the project’s life.

Several stakeholders supported outcomes that would promote accountability and fairness throughout the industry. Conversely, some sections of industry expressed a strong preference for further work on problem identification and consideration of non-regulatory solutions to any identified issues.

Final report

As a result, the Panel has developed a suite of recommendations that seek to create a more level playing field for the industry, while also minimising unnecessary regulatory burden and importantly, providing the Queensland Government with additional data-insights to inform future policy development.

This final report focuses on, and makes recommendations for, issues that sit squarely within the Panel’s terms of reference. It also makes a series of observations that detail feedback from consultation on other matters raised in the discussion paper. The Panel considers these observations may be useful, particularly in light of ongoing Queensland Government work across a spectrum of issues.

Terminology

Throughout this report, references are made to both *developers* and *accredited developers*.

For the purposes of the review, the Panel defined a developer as an entity that:

- causes construction activity to be carried out
- for the primary purpose of improving the value of property, and
- in which the entity has an interest.

However, the Panel recognised from the outset that, while this definition is broad and captures a wide range of activity of all values and types, not all values and types of activity would be subject to the Panel’s recommendations.

As a result, the Panel has chosen to target several of its recommendations towards *accredited developers* (i.e. those developers who would require an accreditation under the Panel’s proposed accreditation and registration framework). Refer to [Recommendation 1](#) for more information.

A list of abbreviations used throughout the report is also provided (refer to Appendix 4).

Background and trends

Insolvencies

Australian Securities and Investments Commission (ASIC) data indicates that the construction industry has the most insolvencies of any industry across the Australian economy.

For the past decade, Queensland has consistently had the third highest rate of insolvencies in the construction industry (refer to Table 1), which is consistent with Queensland's proportion of the national population. In 2021–22, Queensland's building and construction industry employed about 235,000 people and contributed approximately \$50 billion to the State's economy. Given the size and importance of Queensland's building and construction industry, and its impact on employment and Queensland's economy, this high rate of insolvencies challenges the sustainability of the sector.

Table 1: ASIC data

		Financial year								
		13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22
Insolvencies across all industries	AUS	9822	9177	9848	8031	7747	8105	7362	4235	4911
Insolvencies in the construction industry, as a percentage of all insolvencies	AUS	1802 (18%)	1591 (17%)	1647 (17%)	1511 (19%)	1354 (17%)	1515 (19%)	1447 (20%)	963 (23%)	1282 (26%)
Insolvencies in the construction industry by jurisdiction	NSW	671	611	606	518	457	556	498	351	494
	VIC	541	434	446	416	366	406	496	359	383
	QLD	309 (17%)	281 (18%)	328 (20%)	304 (20%)	262 (19%)	280 (18%)	252 (17%)	120 (12%)	227 (18%)
	SA	64	47	55	39	57	52	47	26	32
	WA	150	161	159	185	162	170	108	66	94
	TAS	16	11	11	10	6	6	5	2	10
	NT	5	12	13	11	16	12	8	2	13
	ACT	46	34	29	28	28	33	33	27	29

The Panel's online survey revealed that 88.9 per cent of consumers and 52.5 per cent of industry respondents considered that changes were needed to improve the role or behaviour of developers in the building and construction industry. It is the Panel's view that enhancing the role and improving the behaviours of developers will help reduce these statistics and work to enhance the sustainability of the sector.

The Panel is aware that the review has occurred in a landscape characterised by high-profile building and construction industry insolvencies. A perfect storm of factors, including COVID-19 and supply and labour shortages, has placed additional pressure on the sector. Along with the well understood risks of time, cost and quality, building activity is increasingly affected by external factors such as the growing complexity and fragility of global supply chains. Building and construction supply chains are not singular, simple or linear pathways. Each project depends on multiple supply chains with numerous contractual arrangements. This results in multiple possible failure points by a wide range of parties. Consultation showed late payments and misalignment of payment timeframes caused real cash flow issues across the contractual chain. The ability to mitigate or reduce these issues would have a direct positive impact on cash flow and therefore on liquidity and solvency.

Defects

The quality and safety of buildings has been a consistent focus for the Queensland Government and nationally. Queensland is widely recognised as having highly robust building quality and safety systems in place. However, the experience of other jurisdictions has highlighted the need for continuous improvement in this regard. High-profile building fires in Melbourne and London and extensive defects in high-density buildings in greater Sydney, highlight the need for a diligent focus on building quality and safety.

Building Confidence Report

The Building Confidence Report (BCR) was commissioned by the then Building Ministers' Forum (BMF) to assess the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. The BCR made 22 recommendations in this regard. It also made observations about the risks associated with developers engaging builders including in design and construct projects. The BCR indicated that this practice may lead to cost-cutting, lower quality and unsafe practices. For this reason, the Panel's terms of reference task it with considering the impact of developers on building quality and safety.

The Building Confidence National Framework agreed by Building Ministers provides a roadmap for the delivery of the recommendations of the BCR. For most recommendations, nationally agreed model guidance has been developed by the Australian Building Codes Board.

Queensland Building Plan

The Queensland Building Plan 2017 (QBP) and QBP Update 2021 seek to guide policy and legislative changes to create a safer, fairer and more sustainable construction industry in Queensland. The QBP and QBP Update have a particular focus on security of payment, primarily for subcontractors, building quality and safety, and implementation of the BCR. Action 1.8 of the QBP Update is to conduct the review.

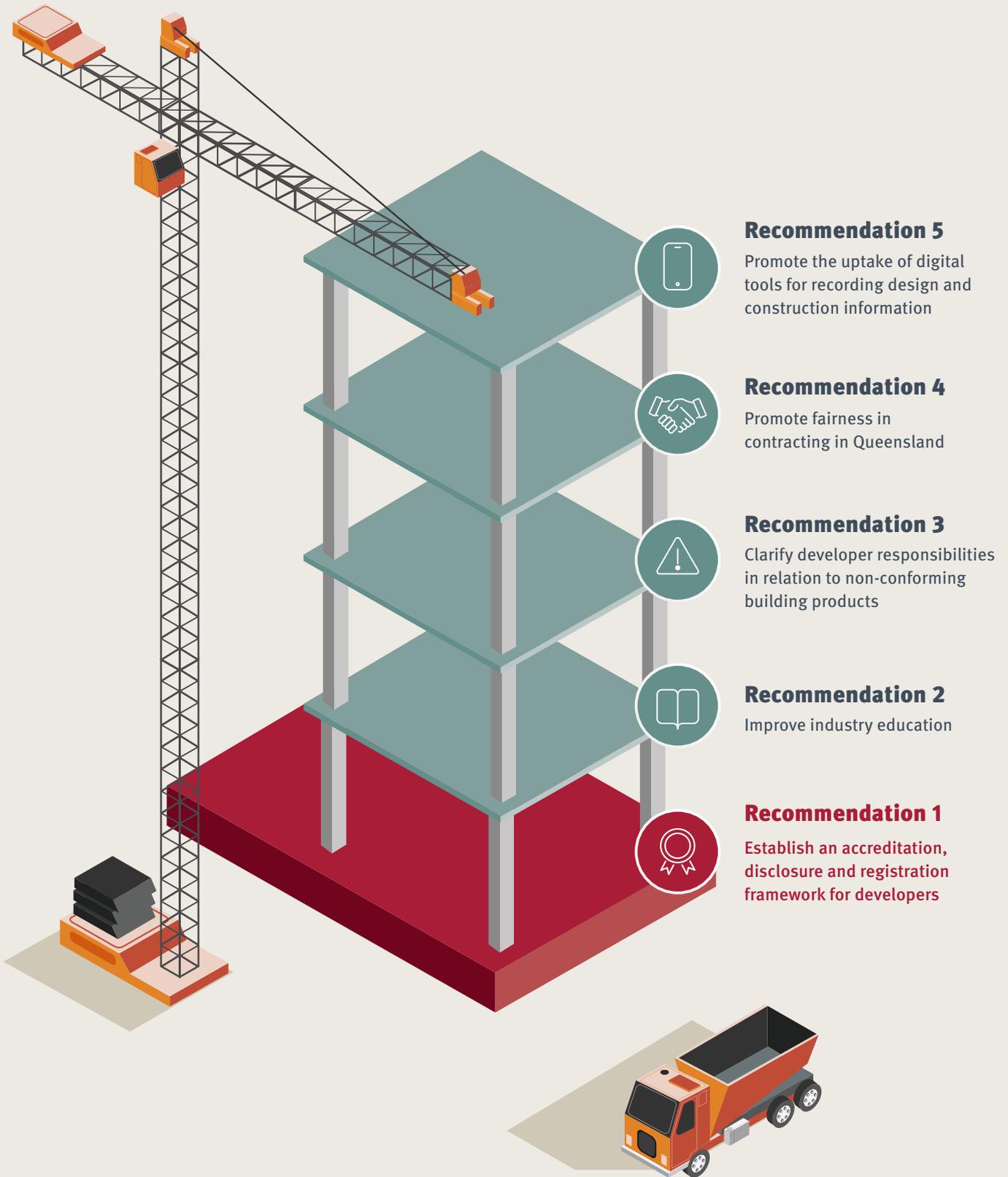
Outlook

Queensland, and particularly South-East Queensland, has started a period of significant development and growth, both from a rising population, and in the lead up to the 2032 Olympic Games. Consequently, the issues identified in this report are likely to intensify, rather than recede, without prompt action.

Housing

The Panel recognises the important role of developers in delivering housing for Queenslanders, particularly during the current housing crisis. The Queensland Government's 2022 Housing Summit revealed that 97 per cent of housing in the State was built by developers. In response, the Panel has sought to focus its recommendations and observations on enhancing the overall performance of the development process and, as a result, improve the sustainability of the sector. The Panel's recommendations do not seek to impose barriers to entry for developers, nor burdensome regulation.

Recommendations





Recommendation 1: Establish an accreditation, disclosure and registration framework for developers

The Panel recommends the Queensland Government introduce an accreditation, disclosure and registration framework (the framework) for developers in the building and construction industry. Primarily, a developer should be prevented from entering into a contract that will require a project trust account unless they obtain and maintain an accreditation. The requirements for accreditation are proposed to include:

1. Minimum requirements to obtain and maintain accreditation, including:
 - a. ensuring Persons of Influence (POIs) are fit and proper
 - b. having one POI who meets minimum educational requirements (both initial and continuing), and
 - c. complying with a code of conduct and legislative requirements
2. Disclosure obligations on accredited developers, prior to entering a relevant contract, to affirm that:
 - a. they have appropriate finance to complete a proposed contract, and
 - b. their accreditation is current
3. Registration of each development activity undertaken by an accredited developer, including relevant identifying information (e.g. its real property description, development application number etc), and
4. Public register/s of accredited developers and registered development activity.

The framework is intended to be supported by a regulator with effective compliance and enforcement powers. Whether this takes the form of a stand-alone organisation or is incorporated into the functions of an existing statutory authority will require further government consideration.

This builds on recommendations 1, 2, 6 and 7 of the Building Confidence Report (BCR):

- recommendation 1: the registration of building practitioners
- recommendation 2: consistent requirements for registration
- recommendation 6: effective regulatory powers for regulators, and
- recommendation 7: strategies for the proactive regulation of commercial buildings.

The purpose of the framework is to provide minimum standards for developers in the building and construction industry and to offer greater certainty and transparency to head contractors, subcontractors, workers, financiers, investors, consumers and the public. The framework seeks to set minimum expectations for the work of developers and provide information to enable more informed decisions about accredited developers and registered development activity. This information can also be used by government to combat the well-recognised lack of building and construction industry data and provide data-insights into whether regulatory controls are satisfactory.

By ensuring that the system of regulation of the building industry is cohesive and aligned ... the longevity and reputation of the industry is ensured, together with its contribution to the economy and as an investment opportunity. – industry organisation





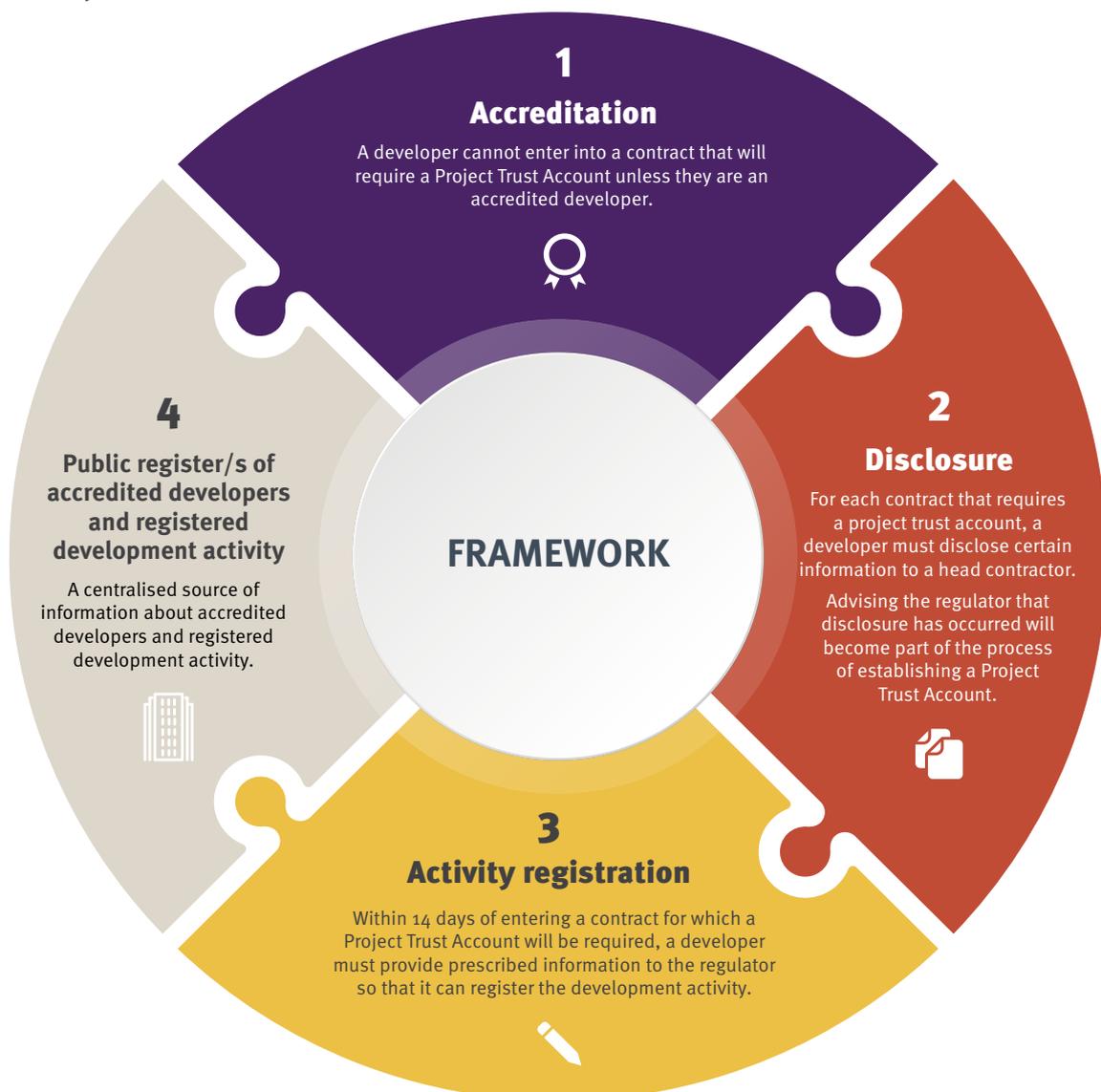
The framework is intended to bring developers into the same ‘ecosystem’ as other parties in the building and construction industry. However, it is intentionally different from the regulation that exists for other building and construction industry participants, such as head contractors and subcontractors. Financial capability requirements for developers and contractors differ, hence the terms ‘accreditation’ and ‘registration’ are used in this report to mark this difference and use different language for developers. Use of the term ‘licensing’ would create confusion with the current Queensland Building and Construction Commission (QBCC) licensing framework. This potential confusion was clear to the Panel following consultation.

The Panel recommends that the framework for accredited developers be supported by a regulator responsible for the accreditation and registration process, and for publishing register/s of both accredited developers and registered development activity. These register/s will build over time and form a database that links development activity with accredited developers, enabling visibility of their behaviours – a line of sight that currently does not exist.

Figure 1 summarises the proposed operation of the framework. Each of the framework’s constituent elements is then considered in detail below.

...and then, once you’ve got it [a licence], you feel proud that you’ve obtained it and feel proud that you’ve held onto it for years... and a developer could feel the same way.
– building contractor

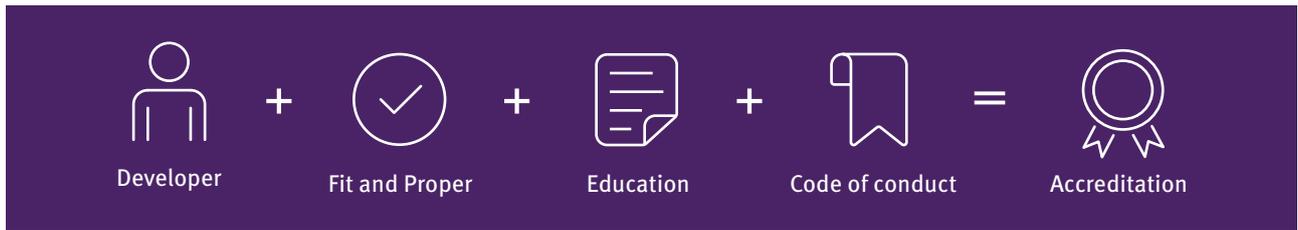
Figure 1: Proposed framework





1. Accreditation

Figure 2: Accreditation



Who would require accreditation?

I am concerned about the entry requirements... I have been working in small scale subdivision ... for 6 years. What would this mean for me?

What happens when an investor purchases land and contracts a builder to construct a house or duplex, or 4 townhouses? – small developers

Under the framework, an individual or a corporate entity would be required to hold an accreditation before entering a contract for work requiring a Project Trust Account (PTA) as per the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act).

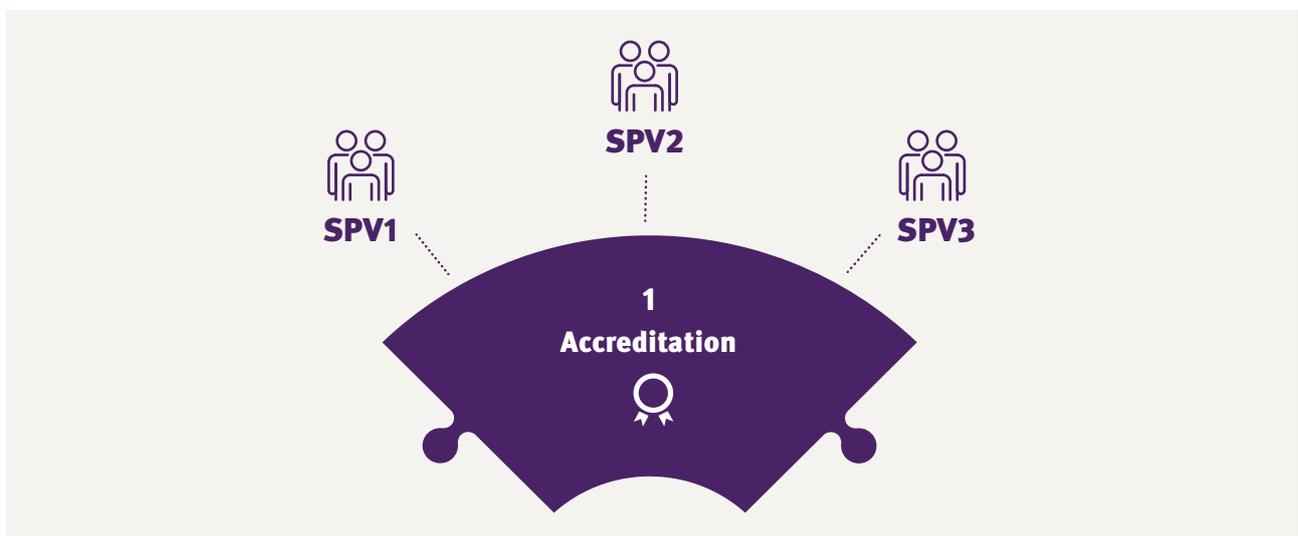
The Queensland Government has undertaken extensive work determining thresholds at which PTA protections should apply. This includes contracts where at least 50 per cent of the work is “building work” (as defined in the QBCC Act). It also includes work performed by architects, engineers or surveyors; electrical work; and associated civil work. There are also exclusions for lower-risk work, such as small scale residential construction work, as prescribed by the BIF Act.

To allow industry time to adjust to trust accounts, the requirements are being phased in gradually, starting with higher-value projects. PTAs currently apply to eligible contracts for project trust work valued at \$10 million or more. It is intended that the Panel’s proposed framework be introduced in line with the trust account phases, starting with the current threshold of \$10 million or more.

Additionally, the prevalence of Special Purpose Vehicles (SPVs) means it is desirable that several associated entities should be ‘covered’ by a single accreditation of parent/holding entities. Further, accredited developers should be required to notify the regulator of any changes to these associated entities.

The Panel’s view is that an associated entity could be appropriately defined based on Section 50AAA of the *Corporations Act 2001* (Cth), and should include entities with control over another entity through, for example, the appointment of directors, share ownership or investment.

Figure 3: Application of accreditation to associated entities



The Panel proposes that it should be an offence for an unaccredited developer to enter into a contract for work that will require a PTA.

Under the proposed framework, developers should only need to apply for accreditation once, with an accreditation remaining in effect until it is surrendered or cancelled. It should not be permissible for an accreditation to be surrendered while a relevant contract is under way. The Panel’s view is that developers should remain subject to disciplinary action for their behaviour throughout the life of a contract, even if their accreditation is cancelled.

Accredited developers should also have an ongoing obligation to immediately update the regulator of relevant changes affecting their accreditation (e.g. a change in POI, or the addition or removal of an associated entity/ SPV). Similar to existing regulatory frameworks, these requirements should be backed by legislated notification provisions, with associated offences.

Application process

The Panel recommends that applications for accreditation be submitted to the regulator for assessment and be granted, granted with conditions, or refused.

Applications should be in the approved form and be accompanied by satisfactory evidence of the applicant’s eligibility for accreditation. The evidence will primarily be self declaratory, with appropriate verification by the regulator occurring on a risk-assessed basis.

The regulator should be able to seek further information as necessary in making this assessment.

Eligibility for accreditation

The Panel recommends the framework requires an applicant (individual or corporate entity) to be both fit and proper and qualified to obtain accreditation as a developer.

An individual should be considered fit and proper if they have not, within the past five years:

- entered into insolvency or administration
- committed a serious criminal or other offence (e.g. under an Australian taxation, health and safety, building or planning law)
- been refused a QBCC contractor or occupational licence for not being a fit and proper person, or
- had a QBCC contractor or occupational licence cancelled.

Similarly, a corporate entity should be considered fit and proper where each person in a position to control or substantially influence the entity’s conduct (i.e. a POI) meets the above thresholds.

An individual should also be required to meet the minimum educational requirements outlined in [Recommendation 2](#) in order to obtain accreditation. A corporate entity should be considered qualified to hold an accreditation provided one of the entity’s POIs (the *nominee*) meets these requirements. While corporate entities may have multiple POIs who are qualified, they should be required to nominate a single nominee for the purpose of meeting educational requirements.

Accredited developers should be required to ensure the POIs of each SPV operating under the accreditation are fit and proper. It should be an offence and grounds for disciplinary action for an accredited developer to allow one of its associated entities to enter into a contract for which a PTA will be required if that entity has POIs who are not fit and proper.

If a POI is no longer fit and proper or a nominee is no longer qualified, they should cease to be a POI or nominee as soon as practicable. An accredited developer should not be able to enter into further relevant contracts without a nominee or with a POI who is no longer fit and proper after a nominated (reasonable) period. In implementing these proposed timeframes, the Panel suggests the government have regard to similar provisions in existing legislative frameworks, such as those applied to QBCC licensees.

Accreditation requirements

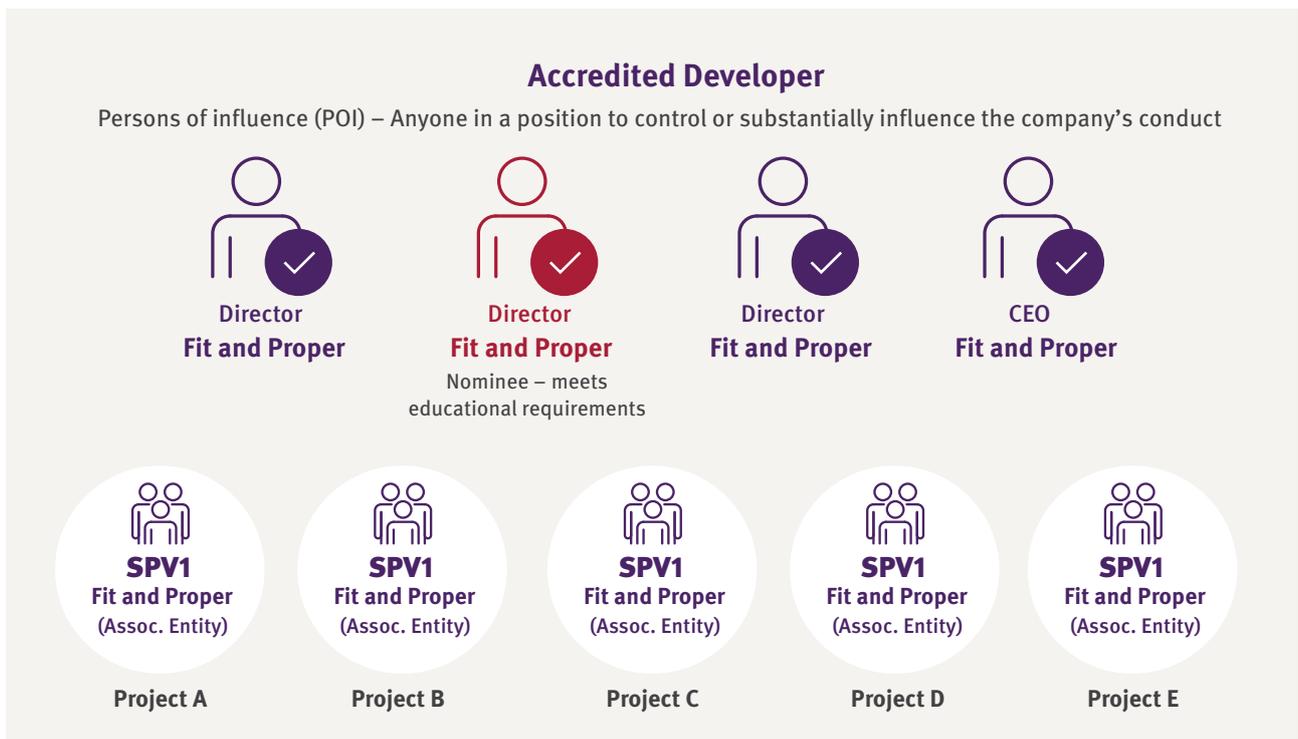
Figure 4: Small Developer (partnership or individual)



Figure 5: Medium Developer (e.g. Pty Ltd company, other corporate entity, family trust, or a Self-Managed Super Fund)



Figure 6: Large Developer (e.g. listed company)



Maintenance of accreditation

[A] licensing regime ... would ensure that developers are approved and bound to the industry standards. – building contractor

Accredited developers should be required to maintain their fit and proper status and meet conduct standards to operate.

Individual accredited developers and nominees should also be required to undertake an appropriate amount of continuing professional development (e.g. risk and financial management, procurement best practices) each year (refer to [Recommendation 2](#)).

Compliance and enforcement

Accredited developers who do not meet ongoing requirements should be subject to disciplinary action, culminating in accreditation cancellation in cases of serious or repeated breaches.

It is intended that the regulator be empowered to conduct audits to ensure compliance with the framework and promote high standards of conduct among accredited developers, and be empowered to respond to complaints and suspicions of non-compliance. Audits could be informed by a range of factors, but it is intended that existing legislative frameworks and data points should be used to assess risk for auditing purposes. For example, QBCC-issued directions to rectify (which may currently be issued to principals) and adjudication dispute information could be used.

In a similar manner to other existing compliance and enforcement frameworks, the regulator could be empowered to:

- investigate complaints and suspicions about unsatisfactory conduct on the part of accredited developers and/or their POIs, and/or associated entities and their POIs (i.e. relevant legislative breaches, code of conduct breaches and matters that affect eligibility for accreditation)
- investigate complaints and suspicions against unaccredited persons 'holding out' as accredited developer or entering into relevant contracts without an accreditation
- immediately suspend an accreditation in urgent circumstances
- begin prosecutions and/or issue penalty infringement notices in response to legislative breaches
- take disciplinary action following an investigation/audit and relevant show cause process
- enter into enforceable undertakings
- allocate demerit points to manage repeated instances of substandard conduct
- require an accredited developer to pay compensation to another party
- impose conditions on an accreditation, and/or
- dismiss complaints reasonably considered frivolous, trivial, vexatious, misconceived or lacking in substance.

Consequences of substandard conduct

The Panel's proposed framework has been designed to ensure that there are appropriate consequences for accredited developers (and their POIs) who engage in substandard conduct. The Panel has designed the framework so that relevant activities by any associated entity impact the principal accreditation. The regulator should be empowered to investigate accredited developers, associated entities and/or their POIs to establish if there are grounds for disciplinary action. Such grounds could include:

- the accredited developer was accredited because of a materially false or misleading representation or document
- the accredited developer or its POIs is/are no longer appropriately qualified or fit and proper
- the accredited developer and/or its POIs fail to comply with legislative obligations, such as in relation to disclosure (refer [Disclosure](#)), non-conforming building product duties (refer [Recommendation 3](#)) and unfair contract terms (refer [Recommendation 4](#)), or
- the accredited developer and/or its POIs engage in unsatisfactory conduct, with reference to the code of conduct (refer [Code of conduct](#)).

Such investigations should be subject to the principles of natural justice and include, for example, an appropriate show cause process, except in exceptional circumstances. Where certain POIs are no longer considered fit and proper, an accredited developer should be afforded the opportunity to remove those people, to maintain their accreditation without interruption.

The disciplinary action available to the regulator is intended to be broad enough to accommodate a range of contraventions, from minor to severe, so proportionate action can be taken on a case by case basis. This could be based on existing disciplinary frameworks, which include:

- taking no further action
- issuing a caution or reprimand
- entering into enforceable undertakings
- issuing demerit points
- imposing a condition on a developer’s accreditation
- imposing monetary penalties
- requiring an accredited developer to pay compensation to another party, and/or
- suspending or cancelling an accreditation.

It is also intended that an accredited developer’s accreditation could be cancelled following a serious breach. This should preclude the entity, its associated entities or its POIs from being accredited again (and therefore entering subsequent contracts) for five years.

The Panel has determined that, in the case of a serious breach, steps should be taken to avoid disadvantaging head contractors and subcontractors. This could involve the regulator being required to consider if an accredited developer should be permitted to complete contracts that are in progress. If the regulator approves, this would mean those on the project could continue to work and be paid, with an assurance of security of payment.

The Panel is of the view that industry participants, financiers, consumers and indeed all counterparties should be able to ensure adequate contractual provisions are in place to protect their rights and interests if a developer’s accreditation is revoked. For example, a party entering a contract with a developer might ensure the contract has compensation provisions, or is able to be terminated, if the developer’s accreditation is cancelled.

The objective is for accredited developers and associated POIs to value their accreditation and to take all appropriate steps to preserve their accreditation.

Code of conduct

The Panel proposes that accredited developers be subject to a code of conduct, which is to be drafted and endorsed by government in collaboration with industry stakeholders within 12 months of the framework’s commencement.

The code of conduct should comply with Australian Securities and Investment Commission guidelines, for example ensuring it is the subject of adequate consultation and comprehensively written, effectively enforced and regularly reviewed.

The Panel considers that the code could cover principles such as:

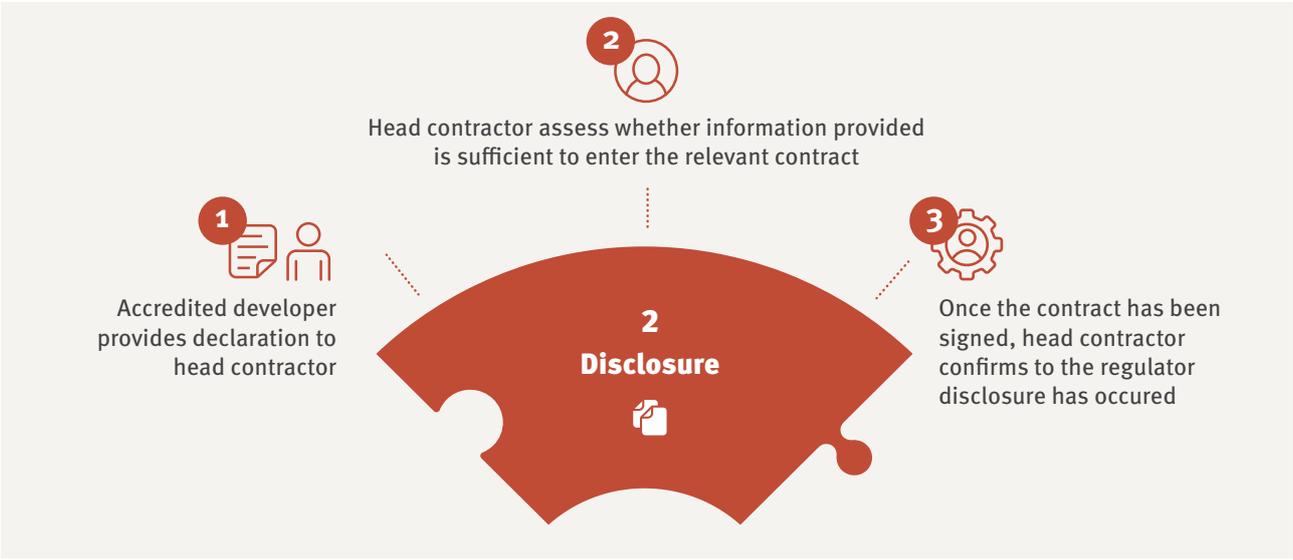
- promoting trust and confidence in the development industry
- demonstrating integrity, appropriateness and professionalism
- communicating and consulting with consumers, colleagues and other industry participants
- providing sound professional advice to consumers, colleagues and other industry participants
- complying with all duties and requirements established under legislation, and
- best practice principles and minimum guidelines for certain matters.

The code of conduct presents an opportunity to address specific issues raised during the Panel’s consultation. For example, the Panel heard industry concerns around the imposition of unreasonable tendering and project timeframes, poor documentation practices during procurement, and inappropriate value engineering. Each of these matters was identified as reducing security of payment, solvency and building quality and safety. A code that articulated minimum standards in relation to such matters would mean developers who demonstrated inappropriate behaviour may be subject to disciplinary action.

The adoption of the code could be achieved in several ways. Some industry codes of practice have been established and enforced independently of government. If this were to be the case, accredited developers would be required to subscribe to the code and enter contractual arrangements with an entity established to administer and enforce it. Alternatively, the code could be adopted and administered by a regulator.

2. Disclosure

Figure 7: Application of disclosure obligations



The Panel recommends the introduction of disclosure obligations for accredited developers and associated entities before they enter relevant contracts with a head contractor. Only contracts that require a PTA should be subject to these disclosure requirements.

The accredited developer should be required to provide a declaration to the head contractor that:

- they have the appropriate financial capacity to complete the project
- if the head contractor’s counterparty is an SPV, that all POIs over the SPV are fit and proper, and
- all requirements of accreditation are current.

This requirement is intended to be included in legislation, so investigations and disciplinary action may be taken against an accredited developer for serious or repeated breaches (e.g. failing to disclose, providing a misleading or false disclosure).

Once disclosure has occurred, the head contractor can assess whether the information provided by the developer is sufficient to enter the relevant contract. If not, they should be able to ask for more information, such as more detail about the financing of a project or equity sources. The head contractor may choose not to enter the contract, based on the information disclosed.

Once a contract has been signed, the head contractor should be required to confirm to the regulator that disclosure has occurred. To minimise any additional compliance burden on head contractors, it is proposed that this obligation be incorporated into existing notification requirements relating to the opening of PTAs and in a way that it is clear that the head contractor is not warranting the truth of the accredited developers’ declaration.

The Panel notes the importance of maintaining this business to business relationship and confirms that matters disclosed should remain commercial in confidence between the contractor and accredited developer. However, if a head contractor considers that disclosure has been misleading or false, they may choose to report this to the regulator.

One thing they do in Europe quite a lot, which is unheard of here but very common over there, is for the builder to request for security from the principal about their ability to deliver the project. – lawyer



3. Activity registration

Figure 8: Application of registration obligations



The Panel recommends that an accredited developer be required to provide the regulator with the following development activity information after entering into a contract for work that requires a PTA:

- developer’s current accreditation number
- development approval number
- PTA number
- proposed location of the development activity (real property description)
- typology of development (e.g., residential, commercial, industrial etc.), and
- head contractor details.

The Panel is conscious that as technology evolves, particularly noting [Recommendation 5](#), there may not be a need to proactively disclose this information, as it may be captured by relevant systems.

4. Public Register/s of Accredited Developers and Registered Development Activity

Figure 9: Public register/s



The Panel recommends that a publicly available register or registers of accredited developers be kept by the regulator. It would have a broader scope and different purpose than the developer register currently required by the QBCC (which requires a register of principals who have been issued directions to rectify). The new register/s could include:

- the accredited developer’s accreditation number
- the name and business address of the accredited developer
- conditions imposed on accreditation
- directions to rectify issued to the accredited developer by the QBCC

- adjudication decisions in which the accredited developer has been a respondent
- information about associated entities
- changes to POIs
- registered development activity of the accredited developer, and
- disciplinary action taken against accredited developers and associated POIs (including former POIs), noting each breach of the:
 - » enabling and other relevant legislation, and
 - » code of conduct.

The register or registers should provide information similar to that currently available through a search of a licensee’s record.

As identified earlier, it is intended that this information be published on the regulator’s website to provide industry and the public with information about the projects an accredited developer is and has been involved with.

The registration of activity will, over time, develop critical data and provide information publicly about the activities a developer has undertaken. This will address the current lack of data around developers and their activities in Queensland. The information will support improvements in the policy review of existing regulations as the government will be able to track and trace the performance and behaviours of accredited developers and their associated entities.

Issues identified and rationale

Influence and professionalism

The Panel’s core finding was that developers, along with financiers (refer to **Observation 2**), have a primary role in setting the tone of a project and influencing payment security, solvency and building quality and safety.

This influence can be positive or negative and is largely reliant on the ‘professionalism’ of the developer. Some developers identified themselves as members of a profession and sought to position themselves as leaders in terms of behaviours, product and relationships with industry. The behaviours of more professional developers tended to positively impact a project across the contractual chain. Conversely, the Panel heard that poor behaviour by developers often affected security of payment, increased solvency risks in the contractual chain, unreasonably altered risk profiles by pushing risk down the contractual chain, contributed to substandard building practices, and caused a reduction in safety during construction. This behaviour was often attributed to either inexperience on the part of a developer or a primary focus on profit, with each primarily manifesting in an unbalanced allocation of reward/return and risk.

Ultimately, the Panel identified that there is a lack of consistency in the approach of developers and limited means of encouraging more professional behaviours. Although some individual developers have sought to lead by example and operate in a highly professional manner, there is a general lack of industry wide uptake of these behaviours. While the industry is serviced and represented by several peak organisations, consultation has indicated that these organisations do not reflect the views of all developers across the sector, as they have distinct memberships, values and purposes. This means that there is limited opportunity for an individual organisation to take on the role of promoting standards across the industry as a whole.

As a result, the Panel’s accreditation model seeks to assign value to professional behaviour among developers. This is intended to promote a baseline level of professional behaviour and protect the industry’s contribution by removing those whose conduct brings it into disrepute. The proposed framework hinges on the imposition of minimum requirements to obtain and maintain accreditation, including requirements for POIs to be fit and proper and for nominees to be qualified.

It is anticipated that the Panel’s framework will relieve some of the pressure placed on security of payment, solvency and building quality and safety issues identified during consultation. As developers operate high up in the contractual chain, these benefits are likely to be felt across the entire building and construction industry. The Panel anticipates a positive outcome being that industry will take ownership of minimum behaviours that will be outlined in the code of conduct and embrace best practice standards, thereby lifting the high-water mark for the behaviours and action for all accredited developers.

Ultimately, through these mechanisms, the framework will improve certainty, trust and confidence in accredited developers and the building and construction industry more broadly by ensuring accredited developers meet and maintain minimum standards to be able to operate in the industry.

Lack of information and differentiation

The Panel recognises that the activities of developers currently must comply with several legislative frameworks but, because developers are not presently subject to any licensing or accreditation requirements themselves, limited information is collected about them in a consistent, accessible and quantitative format. It is also common for developers to use several different business structures to undertake development activity, making it difficult to consistently identify a developer and their development activities.

This lack of information prevents industry and consumers from making informed decisions about developers, limits government’s access to lead indicators for government policy, and hinders developers in positively and independently differentiating themselves to potential customers and industry partners.

As the Panel’s proposed framework matures, it will provide a clear and comprehensive point of information and differentiation. Professional developers would be able to easily direct potential customers to their accreditation history and the registered development activity they have been involved in. This should be accessible through a public record of their accreditation as a developer and of the development activity they have undertaken. Further, it will build a data profile on all developers that will help consumers and industry make informed decisions about whether to engage with a particular developer, based on accreditation and registration history, including that of associated SPVs.

During consultation, several key industry organisations raised concerns about the lack of a clearly identified policy ‘problem’ and a lack of information in relation to any such problem’s size and scale. The Panel is satisfied there is sufficient qualitative evidence to justify the recommendations in this report, but it also recognises the desirability of quantitative data. The proposed framework facilitates data gathering to inform further policy development, and should, over time, provide government with both lead and lag indicators of performance and associated trends.

Transparency

The Panel consistently heard that clearly understanding the counterparty risk presented by a developer was essential to a head contractor’s ability to effectively manage risk. For example, it is good practice for a head contractor to trace the ownership of an SPV and understand the financial capacity of both the SPV and its parent entity before deciding whether to enter a contract.

However, unlike QBCC licensees, developers are not subject to minimum financial requirements and, given the lack of easily accessible information about developers, it can often be difficult for a head contractor to obtain essential information. Even during the negotiation process, the negotiation window for head contractors may be too narrow to seek the information from various fragmented sources. Further, the Panel heard on multiple occasions that information requested by head contractors for due diligence purposes was not always provided. Head contractors reported that they would often proceed with a contract in these circumstances, despite having little information to support their decision, for fear of jeopardising ongoing work.

The Panel heard that it can be difficult for parties in the contractual chain to know if a developer has appropriate funding for a project, and to obtain other key due diligence information, particularly in the case of first engagement. This can go to the heart of the issue of security of payment for contractors and subcontractors, and place pressure on building quality and safety.

The Panel acknowledges that the financial capacity of a developer is project driven, and as such differs from the more cashflow driven requirements of licensed contractors. The Panel’s recommendations seek to provide head contractors with the ability to make informed decisions about whether to contract with a particular accredited developer where they need further information to make this decision. The accreditation, disclosure and registration elements of the framework work together to promote a better understanding of counterparty risk among head contractors and subcontractors and allow them to make informed contractual decisions.

The Panel recognises that contracting between developers and head contractors is a business to business transaction, and has sought to promote productive, informed and confidential contractual negotiations between the two parties, rather than prescribing specific disclosure requirements.

Accountability and social licence

Under its terms of reference, the Panel is required to consider the appropriate distribution of risk, liability and regulatory intervention across building and construction industry participants. Throughout consultation, the Panel consistently heard calls for developers to have greater accountability, as well as a more appropriate balance of risk allocation. The Panel’s recommended framework seeks to address these calls for accountability and fairness, while also recognising the distinct role developers play.

Concerns about additional regulation

Several stakeholders raised concerns about the additional administrative and compliance burden (including associated costs) involved in a comprehensive licensing regime, such as that administered by the QBCC for construction industry contractors. These stakeholders identified that licensing models could create barriers to entry and may have flow on effects including reduced investment and competition, ultimately leading to reduced supply and higher costs.

The Panel recognises these concerns and has been particularly conscious of them in the development of its recommendations. It seeks to recommend a streamlined, cost-effective framework commensurate with issues identified with respect to developers. Specifically, accredited developers should only need to become accredited once and should only need to update their accreditation information in response to significant changes in circumstance.

The Panel is conscious of the quantum of broader costs to industry from late and non-payments, contractor insolvencies, and building defects more generally. For this reason, the Panel has elected to seek improved outcomes through its proposed framework.

Building Confidence Report

The BCR suggests that each jurisdiction:

- recommendation 1 – require the registration of building practitioners involved in the design, construction and maintenance of buildings
- recommendation 2 – prescribe consistent requirements for the registration of building practitioners including competency and experience, insurance, financial viability and integrity
- recommendation 6 – give regulators a broad suite of powers so that they can take strong compliance and enforcement action, and
- recommendation 7 – publish audit strategies for the construction of commercial buildings.

The Panel’s recommendation builds on the BCR by:

- accrediting further participants in the design and construction process
- proposing fit and proper standards for accreditation of developers
- imposing educational and conduct requirements, and
- allowing a regulator to take a range of actions (including audits) in response to identified or suspected misconduct.

Next steps

The Panel is of the view that this recommendation should be implemented promptly so that the benefits of the system can be harnessed to align with the projected growth of activity in Queensland. This will have the supplementary benefit of rapidly maturing the system as more developers are accredited and more activities are registered.

The Panel suggests that the Queensland Government drive the development of a code of conduct within 12 months from the accreditation, disclosure and registration framework’s commencement.

The Panel recommends that the proposed legislation should include transitional provisions that allow a 12 month grace period for developers to undertake relevant education. This means there would be no barrier to parties entering the framework during the first 12 months of its establishment, other than being considered fit and proper. Once this 12 month period expires, the educational requirements will apply, as will the code of conduct.

A review of the framework’s initial implementation is recommended approximately two years after its commencement and again once sufficient data is collected. These implementation reviews should determine if amendments to the framework are necessary and consider if:

- the amount or type of information accredited developers are required to disclose is adequate
- there has been sufficient progress towards the achievement of standards that comply with the industry code of conduct
- other bodies of government work (e.g. the Department of Justice and Attorney General’s review of property and body corporate laws) should align with the framework
- developer accreditation should apply earlier in the development process ([Observation 1](#)), and
- the alignment of the PTA thresholds for accreditation is appropriate.

Impact analysis

Table 2: Recommendation 1 impact analysis

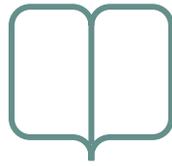
+ Benefits/advantages	- Costs/disadvantages
Improves the quality of services provided by developers through minimum entry requirements, conduct standards and a compliance and enforcement framework that prevents the re-entry of operators who do not comply.	Involves certain direct costs, including accreditation fees (set at cost recovery levels) and training costs. These costs may be passed on to contractors and, in turn, consumers. This is not expected to be significant in terms of property transactions.
Establishes a register of developers, allowing head contractors, subcontractors, consumers and other parties to make more informed economic decisions.	Additional time spent on education, administration, and compliance processes.
Improves accountability and fairness across the industry.	Creates costs to government in establishing, monitoring, and enforcing the system (this may be subject to cost recovery fees).
Provides a point of differentiation for developers and may reduce advertising costs.	Potentially reduces the number of people operating in the industry, restricting consumer choice, however, as potential profit will likely still outweigh estimated costs, the Panel’s view is that this is unlikely to be significant.

Alternatives

The framework aims to create minimum standards in the development industry and transform it into a profession. As there is currently no regulation of developers in the building and construction industry, the Panel does not consider that maintaining the status quo is a viable option to address issues identified during consultation.

Given the proliferation of issues identified above, the Panel has concerns about the uptake of professional behaviours among developers in the absence of a legislatively backed accreditation, disclosure and registration framework.

The framework has been structured to have minimal barriers to entry, and minimal cost impacts on industry, to enable rapid, wide-scale uptake to occur and to build professionalism over time. It has the oversight of a regulator to oversee enforcement and compliance.



Recommendation 2: Improve industry education

The Panel recommends that the Queensland Government implement minimum educational requirements for developers, including continuing professional development (CPD), as part of the accreditation framework outlined in [Recommendation 1](#).

The Panel notes and endorses recommendation 12.2 of the QBCC Governance Review 2022 to 'introduce a compulsory continuing professional development framework for all of industry'. The Panel notes the work being undertaken to implement this recommendation.

The Panel's recommendation builds on recommendation 3 of the Building Confidence Report (BCR), which relates to compulsory continuing professional development

Required knowledge and skills

Developers are not currently subject to any educational requirements, which has been linked to many of the issues identified in [Recommendation 1](#). Consequently, implementing minimum educational requirements has the potential to support higher standards of developer conduct in several key areas.

Education for accredited developers (for both their initial training and CPD) could cover the following topics:

- risk management – including an understanding of the triggers for project failure, market fluctuations, and project timing, as well as associated strategies for managing these risks
- procurement practices – including an awareness of various procurement options (e.g. early contractor involvement) and good tendering practice
- financial management – including budget and cashflow management and an understanding of legislative payment cycles and timeframes in comparison to financier payment timeframes
- contractual terms – including risk awareness and risk allocation in contracts, fairness in contractual negotiations, and unfair contract terms
- dispute resolution and prevention processes – including an understanding of the existing mechanisms available through government agencies and the private sector
- safety – including health and safety obligations across the contractual chain
- legislative requirements – including security of payment, non-conforming building products, and PTA legislation, and/or
- ethics requirements.

CPD

Similar to other professions, the Panel recommends that accredited developers must keep a record of CPD courses and hours undertaken. However, they should not need to provide this information to the regulator. Instead, the regulator may audit accredited developers to ensure they (or their nominees) are complying with education requirements. Breaches of requirements to undertake or record CPD will constitute a breach of the developer's code of conduct and render them liable to disciplinary action.



Transitional arrangements

The Panel recommends a transition process to the introduction and enforcement of education requirements, to ensure there is no initial educational barrier to entry for developers. Accredited developers and nominees should have 12 months from the introduction of the proposed framework to meet the initial education requirements. Following this 12-month transition period, all accredited developers and nominees will need to produce satisfactory evidence that they have completed the minimum training requirements of accreditation. They would also then be subject to all ongoing CPD requirements.

A key theme of the Panel’s consultation was that education must be fit for purpose, accommodating varying levels of experience and professionalism. The Panel recommends that the government should actively monitor the implementation of the framework to ensure there are sufficient education providers and offerings to meet demand. Further, these offerings need to be of sufficient quality to meet relevant criteria. During consultation, several industry organisations noted their existing capacity to deliver a broad range of education and training to industry, as well as a willingness to offer further education and training, as necessary. The Panel observed strong capacity from existing parties, including industry organisations, to provide this education. The Panel recognises that accredited developers and nominees should be empowered to draw from a full range of educational offerings, not just those focused on construction and development. Organisations who specialise in legal, business, ethics, leadership and dispute resolution training will also be an integral component of ensuring appropriate training is available.

Issues identified and rationale

Almost all industry stakeholders advocated for a strong and sustainable education framework for developers. Many submissions highlighted that developers were not currently required to undertake any education about development processes, which was linked to issues including substandard procurement practices, unfair contracting and the unreasonable allocation of risk across the contractual chain.

The Panel heard consistent industry concern about:

- unreasonable tendering, contract and project timeframes
- poor documentation practices during tender and contract negotiations
- contracts being drafted to shift risk and liability downstream to head contractors without sufficient reward
- a lack of understanding of legislative requirements, and
- poor handover practices to owners/occupies post completion.

The absence of educational requirements contributes to the inconsistency and adverse results identified in [Recommendation 1](#), particularly for newer entrants to the property development industry who do not have the benefit of industry experience.

The Panel considers education will improve these issues by expanding and consolidating developers’ skills, knowledge and understanding of their role across the contractual chain, as well as the broader building and construction industry. It will also improve standards and compliance with legislative requirements, including those related to security of payment, and building quality and safety.

The Panel notes that minimum educational and CPD requirements apply for other building industry participants, including, for example, architects, engineers and building certifiers.

Building Confidence Report

Recommendation 3 of the BCR suggests that each jurisdiction require practitioners to undertake compulsory CPD. The Panel’s recommendations build on this by incorporating CPD as a key element of its accreditation framework.

Next steps

In addition to the next steps outlined in [Recommendation 1](#), the Panel recommends that the government work closely with relevant industry and training organisations to ensure appropriate, fit for purpose courses can be offered to developers. The Panel recommends this should be timed to align with introduction of a code of conduct. Similarly, the number of annual CPD hours will need to be determined in consultation with industry bodies. The Panel recommends that this is no less than two hours and no more than 10 hours. Importantly, it is recommended that the quantum of CPD hours be reviewed in step with the review of [Recommendation 1](#) so as to determine its appropriateness.



Impact analysis

Table 3: Recommendation 2 impact analysis

⊕ Benefits/advantages	⊖ Costs/disadvantages
Improves knowledge, standards and skills of developers.	Involves direct costs including education fees.
Improves consumer confidence.	Involves indirect costs to accredited developers, including time spent on education, record keeping etc.
Ensures only suitably educated developers can be accredited.	
Addresses knowledge gaps.	
Leverages existing education providers (industry, universities, TAFE), promoting accessibility and cost effectiveness.	

Alternatives

Status quo

Maintaining the status quo is not a viable alternative. Currently, developers are not required to complete any training or CPD. Retaining the status quo for developers would not resolve the issues identified during consultation, which currently have a negative cost impact across the industry.

Voluntary education

A voluntary education framework is not considered viable. Developers already have access to resources to improve their knowledge and skills, but consultation indicates these are not widely or consistently used.



Recommendation 3: Clarify developer responsibilities in relation to non-conforming building products

The Panel recommends that the Government consider amending the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to remove any doubt that developers are included in the chain of responsibility for non-conforming building products (NCBPs). This will alleviate concerns from some stakeholders that the legislation is not sufficiently clear in this regard.

This recommendation builds on recommendation 21 of the Building Confidence Report (BCR), which relates to building product safety.

If the developer has been involved in the selection of the non-conforming building products, then it should be included in the chain of responsibility for building products. – industry body

The Panel considers it is important to clearly identify that developers are included in the chain of responsibility for NCBPs. It recommends further investigation into whether existing QBCC Act executive officer liability provisions are sufficient to ensure any NCBP offence committed by POIs in a corporate entity could be prosecuted, even if the entity or the SPV no longer exists.

The Panel notes that the developer's accreditation framework ([Recommendation 1](#)) will establish breaches against NCBP provisions as grounds for disciplinary actions affecting an accreditation. If a developer or its executive officer(s) commit an offence, they may be subject to disciplinary action ranging from reprimand to cancellation of accreditation, subject to appropriate show cause processes.

If legislative change is not found to be necessary, additional education around the operation of NCBP laws should be included in educational offerings outlined in [Recommendation 2](#).

Issues identified and rationale

During consultation, the Panel heard that developers contribute to or hold some control over decisions about building design and building work. However, risks can be directly passed on to other parties through contractual arrangements.

A survey conducted by a developer peak body showed that:

- 57 per cent of respondents indicated they had a very high or high level of influence and control in building design decisions
- at least 62 per cent of respondents believed they had some control in construction decisions, and
- 67 per cent of respondents believed they had a very high or high level of control in 'finishes'.





Recommendation 3



The Panel’s public survey aligns with these results from the developer peak body survey with 64.3 per cent of industry respondents indicating that developers had a very high or high level of influence over building quality and safety during the design stage.

They [developers] get involved in the decisions... they demand...that overseas products should be brought in on different types of projects. – union

Building and building product safety have been a key reform area in Australia over recent years. Queensland has introduced legislative requirements in relation to NCBPs, along with a combustible cladding checklist for certain building types.

The QBCC Act was amended in 2017 to establish a chain of responsibility for building products. Duties were introduced for supply chain participants to ensure building products are safe and fit for purpose and to enable the QBCC to effectively respond to incidents involving NCBPs. This followed several high-profile building incidents, such as the 2014 Melbourne Lacrosse building fire.

Several stakeholders have commented that developers are not subject to the same legislative requirements as other building industry participants. For example, they are not directly licensed or accredited, and some stakeholders suggested it was unclear whether developers could be held responsible for NCBPs where they had directed that they be used, leading to an incidence of defective work.

Some stakeholders suggested that developers could play a direct role in choosing or directing building products to be used in project construction. For example, the Panel heard that developers could sometimes arrange for builders to use a particular product in construction.

Developers play a key role in choosing relevant building products. – legal stakeholder

It is often the case that it is the developer who initiates and/or approves the change in a product specification, design or the like. – industry body

The Panel heard some concerns that developers may not be captured in the building product supply chain established in the QBCC Act. This would mean that developers may not be sufficiently accountable if an NCBP was used in a building.

The NCBP legislation places duties on a range of participants in the building product supply chain. Duties include ensuring a building product is safe and fit for purpose and providing sufficient product information. This places accountability on all building product supply chain participants by requiring reasonable actions to ensure products used in a building are safe, fit for purpose and compliant. For example, this may include developers influencing and directing the use of certain products against the advice of professional consultants such as engineers, architects or head contractors.

The QBCC Act defines a person in the chain of responsibility for a building product as including someone who installs a product in a building or, in designing a building, specifies the product to be associated with the building (if the person is an architect or engineer).

An ‘installer’ is defined as someone who:

- personally installs the product in the building; or
- supervises the installation of the product in the building; or
- carries out the relevant work in relation to which product is installed in the building; or
- engages a person to do an activity mentioned in paragraph (a), (b) or (c).



Recommendation 3



Ultimately, while the QBCC Act places duties on a range of participants in the building product supply chain, some stakeholders identified that developers are not specifically captured in the ambit of the QBCC Act. This can contribute to a power imbalance, or a perceived power imbalance, between head contractors and developers.

Some stakeholders, particularly from the larger scale development sector, indicated that they considered themselves to be part of the chain of responsibility under the broad definition of ‘installer’, but this approach was not universal. Many smaller scale developers indicated that they were comfortable with being included in the supply chain, provided they were only held accountable for taking reasonable steps within their control.

The Panel suggests the legislation should be clarified to promote a consistent approach across the development industry.

This will address concerns that current NCBP requirements are not sufficiently clear when developers are involved in stipulating particular building products to be used in construction. This recommendation will give effect to penalties being prescribed for developer breaches of NCBP requirements, which will help improve standards in quality of work and reduce the incidence of defective work.

Next steps

Amendments to the QBCC Act may be required to implement this recommendation. The Panel recommends the Department of Energy and Public Works (DEPW) consider this matter and, if no legislative amendment is deemed necessary, incorporate any appropriate educational requirements into the implementation of [Recommendations 1](#) and [2](#).

Impact analysis

Table 4: Recommendation 3 impact analysis

⊕ Benefits/advantages	⊖ Costs/disadvantages
Improved consumer protection and building quality and safety.	Increased liability for developers.
Encourages developers to undertake due diligence if they are involved in decisions about building product use.	
Ensures developers are accountable.	
Assists QBCC in investigating NCBPs where a developer has been involved in decisions about building products.	
Clarifies QBCC can take action against developers for NCBPs.	
Supports proportionate liability and fairness across the industry in relation to NCBPs.	
Minimal costs for developers.	
No additional costs to the community.	

Alternatives

Status quo

If this recommendation is not implemented, the question of whether a developer is captured in NCBP legislation will not be resolved and industry understanding will likely remain poor, including for those actively involved in decisions about building products. The identified issues arise from current legislative drafting, so limited non-legislative options exist to achieve the required clarification.



Recommendation 4: Clarify developer responsibilities in relation to fairness in contracting in Queensland

The Panel notes the work of the Ministerial Construction Council's *Fairness in Contracting* Subcommittee. The Panel recommends that the Government consider amending the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to remove any doubt that developers are included in fairness in contracting provisions. This will alleviate concerns from some stakeholders that the legislation is not sufficiently clear in this regard.

Sections 67GA and 67GB of the QBCC Act, enable mandatory and prohibited building contract conditions to be prescribed by regulation. This means prohibited conditions are automatically void and it is an offence to enter a contract that includes such conditions. Mandatory conditions for building contracts can be prescribed by regulation, and it is an offence to enter a contract that does not include such conditions.

Issues identified and rationale

The Panel was told that the position of developers at the top of the contractual chain enables them to control contract terms and conditions. This can mean developers use the power imbalance in the contractual chain in their favour, to apply commercial pressure and require short turnarounds during negotiation processes so counterparties may not have the time or resources to adequately review contracts. The length and complexity involved in construction contracts, and the high costs in seeking legal advice, often mean head contractors enter contracts without fully comprehending the risks. The alternative would be to forgo work entirely.

The Panel heard of the practice of reallocating or passing risk down the chain, via burdensome contractual terms, to parties with little control over that particular risk.

The extent of [the] 'transfer of risk practice' has become unreasonable, and many terms included in contracts are potentially unfair term. – industry body

To address issues relating to risk transfer, the Panel considers it necessary to make clear that developers are included in the fairness in contracting provisions of the QBCC Act. Consultation indicated examples of some provisions that are considered unfair, such as:

- time bars that are too onerous
- unreasonable indemnity clauses, or
- unreasonable preconditions to practical completion.

Stakeholders indicated that the United Kingdom's Society of Construction Law's Delay and Disruption Protocol had been effective in providing a mathematical method for parties to quantify associated costs. The Panel consider that this illustrates that industry could potentially work together to devise additional protocols for the resolution of other complex issues. If these were considered effective, the protocols, by way of example, could potentially be included as mandatory terms in the future.



Next steps

Amendments to the QBCC Act may be required to implement this recommendation. The Panel notes the work of the Fairness in Contracting Subcommittee of the Ministerial Construction Council (MCC). The Panel recommends the Department of Energy and Public Works (DEPW) consider this matter and, if no legislative amendment is deemed necessary, incorporate any appropriate educational requirements into the implementation of [Recommendations 1](#) and [2](#).

Impact analysis

Table 5: Recommendation 4 impact analysis

⊕ Benefits/advantages	⊖ Costs/disadvantages
Promotes fairness by bringing developers into the same ecosystem of fair contracting rules as all other parties in the contractual chain.	Given the complexity of contracts and the diversity of players, unfair terms may still exist.
Potential mandatory and prohibited terms can reduce/eliminate late and non-payment. Such contract terms act to balance power relations and engender contract integrity and trust.	
Potentially limits unfair risk transfer to parties down the contractual chain.	
May enhance solvency.	

Alternatives

Status quo

If this recommendation is not implemented, the question of whether a developer is captured in fairness in contracting provisions of the QBCC Act will not be resolved and industry understanding will likely remain poor. The identified issues arise from current legislative drafting, so limited non-legislative options exist to achieve the required clarification.



Recommendation 5: Promote the uptake of digital tools for recording design and construction information

The Panel recommends the Queensland Government lead by example and consider implementing a robust scheme for capturing building and construction related information in a centralised, accessible digital format. The uptake of digital tools and systems for this purpose presents a range of opportunities and insights for government, industry, and consumers. This includes the ability to track variations from an original design, trace the age and origin of building products, plan and find efficiencies in asset maintenance.

This recommendation builds on recommendations 12 and 20 of the Building Confidence Report (BCR), which relate to:

- recommendation 12: Collecting and sharing building information and intelligence, and
- recommendation 20: Post construction information management.

The Panel recommends the Queensland Government continues to take a leadership role in government projects establishing and promoting digital platforms that capture building and construction data, and that it reviews emerging opportunities for digital tools to help assess the quality and safety of buildings. These tools could be incorporated in existing programs designed to promote the use of digital tools. They would give a ‘line of sight’ to parties in the contractual chain by informing end users and consumers, and providing useful data for regulators and government.

The Panel notes Queensland Government’s work, for example, in applying Building Information Modelling (BIM) to all major infrastructure projects in its annual capital program, and the publication of principles to support the effective use of BIM.

While this approach is commendable, during its consultation, the Panel became aware of the need for a wider class of innovative tools to capture information and to improve data insight, transparency and accountability. Such suggestions are expected to lead to improved outcomes for consumers, industry, the insurance sector and government.

The Panel notes the work of the New South Wales Government in developing and piloting its Building Assurance Solution to help consumers and investors by measuring the quality of buildings and assisting insurers to assess a building’s insurance risk. It also helps regulators focus their efforts on buildings that pose the most risk.

It is proposed that these tools be reviewed and their benefits harnessed to offer a centralised and accessible ‘point of truth’ for building and construction industry data in Queensland.

The data captured could include information collected during and after construction, such as:

- a description of the proposed building work
- details of the head contractor, subcontractors, appointed building certifier and other practitioners
- details of design certificates and any third party inspections
- materials and methods used in the building, as well as the supply chain history of products





- final approval certificate, including details of fire safety and any other maintenance schedules
- design documentation that must be maintained or considered in future changes to the building, and
- details of compliance in inspections/certificates issued in relation to ongoing maintenance obligations through the life of the building.

The Panel recognises that the process of digital enablement is a work in progress, and that material data will be brought together in an iterative, evolving manner. Any regime will have costs and benefits. The digital tool should be fit for purpose for all intended audiences, such as consumers, body corporates, local governments, regulators and other government jurisdictions. It is critical that the relevant information is easily available to appropriate parties but that the privacy, security and safety of those using the building is not compromised.

Issues identified and rationale

Consultation results showed strong support for the use of digital tools to capture building and construction data. The Panel heard that emerging technologies could assist owners/occupiers make informed decisions about building maintenance. Such technology could help owners, body corporates and developers to have a comprehensive record of their building and to track variations. Digital data will resolve some of the challenges the Panel heard involving missing important documentation (such as fire safety system installations) at the handover of a building.

Some industry representatives stated that digital tools could aid the handover process and makes maintenance and management of building easier and more efficient for owners and body corporates (e.g. through access to product warranties and specifications). Such tools could be a way of collating data to measure compliance with design and construction standards. This information could enable investors and consumers to make informed decisions about what is often one of the most significant purchases of their life.

Building Confidence Report

Recommendations 12 and 20 of the BCR suggest that each Australian jurisdiction should:

- establish a building information database that provides a centralised source of building design and construction documentation, and
- establish a comprehensive building manual for commercial buildings that should be lodged with building owners and made available to successive purchasers.

Encouraging the uptake of digital tools will give the Queensland Government an opportunity to build on each of these recommendations.

Some of the capabilities and opportunities of a digital database for building and construction include:

- access to real time data about existing and upcoming building and construction projects (noting this is partially achieved by the Panel's [Recommendation 1](#))
- creating asset history, including original and subsequent design plans, certification documents, and design and construction team details
- tracking variations from original design plans, and
- tracing the age, warranties and origin of building products.

Next steps

The Panel recommends that the Queensland Government review the current available tools, and those being used in other jurisdictions, to establish an accessible 'point of truth' for building and construction industry data in Queensland. The Panel considers current initiatives in Queensland are narrowly focused and that a roadmap for the delivery of the digital tool/s is needed. This recommendation should be considered in line with the review proposed in [Recommendation 1](#).

Impact analysis

Table 6: Recommendation 5 impact analysis

⊕ Benefits/advantages	⊖ Costs/disadvantages
Provides a centralised source of data for the building's life.	Cost of design and implementation of the digital tool.
Provides an effective tool for managing building maintenance and management costs.	Threat to privacy and security (design and specifications) in event of data leak.
Provides the potential for information sharing with regulators.	Long term solution with potential initial low rate of compliance.
Potentially improves consumer confidence around building quality.	It is unclear exactly the degree of centralisation required. A totally centralised scheme is potentially a high cost solution, noting the building data held by disparate local governments in different formats across Queensland.
The rectification of defects is costly, so if better systems are available to provide information which may avoid potential defects before they occur in a build, this will have positive price implications.	



Recommendation 5





Observations

Observation 1: The benefits of requiring developer accreditation earlier in the development process

The Panel acknowledges that development activity is broad and spans a project's life from acquisition to settlement and occupation. While the review focuses on the development industry's interface with the construction sector, the Panel recognises that developers have a much broader role than this. Consequently, while the Panel has structured its accreditation framework to apply immediately before the construction of a relevant project, there may be enhanced benefits if the government were to require accreditation earlier, such as before the lodgement of a planning approval application.

Issues identified

The Panel heard that substantial information about development projects is provided by local governments free of charge, but there is limited centralised, easily accessible information available for consumers to compare and contrast developers at that point in time.

When the public becomes aware of a development, they must 'cobble together' information on the applicant or developer, and much of this information is behind a pay wall and only of limited use for the public's purposes. This is despite the fact a developer may be seeking to make substantial changes to the character of a street or neighbourhood. The public is forced to rely on self-driven market research or sales and marketing material provided by a developer.

Next steps

The Panel notes there are potential significant complexities that would have to be overcome in linking accreditation to the planning law framework. The Queensland Government could consider engaging with local governments to apply the accreditation requirement at an earlier stage. For example, accreditation could apply at the point of lodging a development application. This would capture the important earlier stage of a development activity, which has critical consequences for security of payment, solvency in the contractual chain, and building quality and safety due to design development. This extended accreditation framework would create a centralised means of comparing and contrasting accredited developers, even if the developers were not currently involved in construction. The additional data collected would assist government in determining if current regulatory controls are fit for purpose in a broader context, including a developer's influence over consumer protection issues and, in particular, building quality.

Critically, this would capture the important design stage, which can have a crucial impact on building quality and safety, and security of payment in the contractual chain. It would enhance the 'line of sight' and data collection about developers and their activities, benefiting all stakeholders, including local government. The Panel consistently heard that data collection could be improved regarding all areas of development activity.





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Observation 2

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Observation 2: The role of financiers

Financial institutions play an important role in the contractual chain. They help set the tone of a project, impact payment timing, and set risk appetites. The Panel recognises that financial institutions are regulated by federal legislation. The Panel observes that Queensland Government could engage with the federal government to consider introducing a legislative reporting obligation for financial institutions.

The Panel proposes that financial institutions should be required to inform the relevant State or Territory building and construction industry regulator if a financial institution participating in a project trust regime becomes aware of a default by an accredited developer or associated entity. This reporting obligation could prompt an investigation by the relevant regulator, which could potentially curtail further trading and curb further losses. The following case study notes the prior consideration of this idea by a Senate Committee, regarding a reporting obligation on financiers.

The reporting obligation would also highlight to financial institutions their critical role with respect to security of payment and insolvency prevention in the building and construction industry.

The Panel observes that financiers must understand and take a more proactive role in assisting developers to meet legislative time frames for payment in accordance with the BIF Act. Feedback to the Panel suggests that the activities of both developers and financiers need to be coordinated to ensure legislated payment timeframes are not compromised. Consultation revealed that late payments due to bank requirements were common and, despite legislative obligations to the contrary, were largely accepted as funds would eventually arrive.

Lastly, the Panel notes the importance of tripartite agreements between financiers, developers and head contractors. These agreements allow a financial institution to step into the shoes of a developer in certain circumstances, predominantly in the case of default. Strengthening of tripartite agreements may help ensure greater security of timely payment in the contractual chain, and improved building quality and safety. Improvements to these agreements may also result in appropriate risk allocations in contracts and prevent late payments, which would have benefits throughout the contractual chain.

Issues identified

Payment timeframes

The Panel repeatedly heard that financiers and developers play a key role in setting the tone of a project, including promoting security of payment. Some developer stakeholders argue that financiers precede developers as the top of the contractual chain as they control and set the terms for payment timeframes and risk allocation.

More than 73 per cent of respondents to the online survey said financiers had significant influence over security of payment in the building and construction industry. This is particularly evident when payment terms stipulated in loan agreements between financiers and developers do not accord with the payment terms in contracts between developers and head contractors.

It is not surprising that parties have different views of when a payment is 'late'. –
industry association.

Industry strongly advocated for a realignment of financier payment schedules with the contractual and legislative requirements of the rest of the contractual chain.

Risk identification

Stakeholders told the Panel that banks and financiers conduct thorough due diligence of a developer before providing funding arrangements. This includes:

- reviewing the developer's balance sheet and financial capacity
- ascertaining the project's feasibility
- analysing project strengths, weaknesses, opportunities and threats
- reviewing project consultants, including their insurances and track records, and
- ensuring any design or specification relevant to the development is certified.

This allows the financier to have unique oversight of a project. The Panel notes that this view provides the financier an opportunity to identify unique risks and take appropriate remedial early action to preserve their position, which can have consequential negative impacts to parties further down the contractual chain.

Figure 9: Case Study

Case Study

In 2015, the Senate Economics References Committee (the committee) held an inquiry into Insolvency in the Australian Construction Industry. The committee considered in detail the collapse of Walton Constructions in Queensland. In particular, it considered the role of the National Australia Bank, including what it knew, and what actions it ought to have taken to promote security of payment.

Below is an extract from the committee's report:

Submissions and witnesses before the committee suggested that NAB could have—or should have—done more to prevent Walton Constructions (Qld) from operating long before it collapsed. *In the minds of these witnesses, NAB knew, or should have known, the precarious financial situation facing Walton's. NAB's failure to appoint a receiver at an early stage meant more unsuspecting subcontractors contracted with Walton's and were caught up in the eventual collapse...* [emphasis added]

What did the National Australia Bank know?

Walton Constructions entered administration on 3 October 2013. ... NAB was in possession of a report prepared by Deloitte on 25 March 2013, indicating that Walton's was experiencing liquidity problems. Many witnesses contended that NAB must have known the true scale of Walton's financial problems, and introduced Walton's to Mawson in order to protect NAB's interests...

What should the National Australia Bank have done?

Witnesses before the committee contended that NAB should have done two things in order to protect the interests of subcontractors subsequently caught up in Walton's collapse: first, place Walton's into administration; and second, inform the regulator of their suspicions. Witnesses argued that, instead, NAB acted to protect its own interests.

Informing the regulator

In light of NAB's relationship with Walton Constructions, a question was raised as to whether NAB should have informed the regulator (the Queensland Building and Construction Commission—QBCC) of Walton's precarious financial situation. As the following section will address, it is not clear whether the QBCC was ever informed that Walton was in financial difficulty. Whether the Corporations Act should be amended to create a legal obligation on banks to inform the regulator on this point will be addressed in more detail in chapter 12.

The committee appreciates the difficult decision that a bank has in determining whether to appoint an administrator to a company in financial stress. Doing so may doom a business that had a real prospect of turning things around. Nonetheless, *the committee considers that in making this decision, financial institutions should pay more attention to the danger that innocent individuals will be caught up in the eventual collapse of a company that should have been placed in external administration at an earlier date.* [emphasis added]

Economists recognise the importance of overcoming information asymmetries to ensure the proper functioning of markets. This understanding underpins the requirement that public companies lodge their financial reports with ASIC each year. *The committee notes that in this case, an information asymmetry existed between NAB and subcontractors engaged with Walton's, which allowed NAB time to protect their interests. It may be the case that imposing an obligation on financial institutions to inform the relevant regulators, or the market more broadly of the financial situation of companies that they are involved with, will create a more efficient market.* [emphasis added]



Next steps

The Panel considers that it is timely for the federal government to consider a legislative reporting obligation on financial institutions. Such an obligation could require such institutions to inform the relevant construction industry regulator when they issue a default notice to an entity licensed by that regulator and where a PTA arrangement is being used. With the proposed implementation of [Recommendation 1](#), this will be much easier in Queensland and financial institutions could be compelled to advise the regulator of default notices issued to entities associated with a developer accreditation.

The Panel observes that the federal government could work with financiers to educate them about their important role in the timing of payments in the building and construction industry, the statutory obligations associated with timing, and the impacts on the parties involved.

The Panel also considers that financiers, developers and head contractors could work together to strengthen tripartite agreements to promote greater security of payment in the building and construction industry, ensure appropriate risk allocations, and improve building quality and safety.



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Observation 2

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Observation 3: Existing and emerging consumer and industry protections

Defects

It is imperative that developers are held accountable for the work they do. Queenslanders have legitimate expectations around building quality and safety, including the rectification of defects. The Panel acknowledges the work of the MCC subcommittee that is reviewing the Queensland Home Warranty Scheme (QHWS). The QHWS review includes options such as providing greater consumer protection in relation to high-rise buildings. The Panel notes the need for, and importance, of consumer protection options for defects for occupiers.

Other consumer protection mechanisms

The Panel notes the existence of several commercially available resources, including:

- organisations that conduct ongoing financial analyses of potential counterparties
- developer rating tools, and
- decennial liability insurance.

These can improve consumer protection and confidence by allowing an understanding of the financial capacity and track record of a particular developer.

The Panel supports these market led tools, and notes the combination of these with the public register/s of accredited developers outlined in [Recommendation 1](#) would provide significant improvements to consumer protections and confidence. However, these market led tools are relatively new and are offered by a limited number of entities. A medium to long-term performance evaluation of these tools would be beneficial.

It is anticipated that, over time, there may be a diverse range of companies offering these tools, creating healthy market competition. This could inspire potential optimisation of the products on offer, including competitive pricing for the benefit of consumers.

Issues identified

Defects

The QHWS provides insurance coverage for defect rectification in buildings of less than three storeys. The Panel heard that there are issues with addressing defects in high-rise buildings after sale and handover. Consumers rely on body corporates to act against a builder or developer, but this requires that party to be solvent and in business. Complexities exist with shared liability between a developer, builder and others such as certifiers.

More than 60 per cent of respondents to the online survey had experienced structural and non-structural defects in buildings constructed by a developer. The survey indicated the defect rectification process was difficult and time consuming.

With high-density living being increasingly the norm, significant scrutiny must be placed on construction of these kinds of properties. – consumer association

The Panel notes that, as more people move into high-density housing, a clear defects rectification approach for these buildings is increasingly necessary. Publicity surrounding the Opal Towers and Mascot Tower apartment buildings in New South Wales (NSW) has shone a light on the need for greater accountability for defects. The NSW Government has undertaken significant work to respond to defects in high-density residential buildings. Initiatives such as a rating tool to benchmark developer credibility and reliability and the establishment of a 10 year (decennial) liability insurance scheme for the benefit of unit owners, instead of the existing strata building bond scheme, have each been discussed.

Similarly, the United Kingdom’s *Building Safety Act 2022* (BSA) is an important reform intended to address regulatory weaknesses exposed by the Grenfell Tower fire tragedy. The BSA redistributes accountability to the developer for high-rise building safety.



It increases developers' liability under the UK *Defective Premises Act 1972* (DPA) by extending the period in which a claimant can make a claim, from six years from dwelling completion to 30 years for dwellings completed before 28 June 2022, or 15 years for dwellings completed after 28 June 2022. This retrospectivity widens the scope for potential liability, permitting claims that would previously have been barred by the six year limitation period.

The BSA also introduced a prospective right of action under the DPA against any person who 'takes on work in relation to any part' of a dwelling after 28 June 2022, subject to the 15 year limitation period. This captures existing build refurbishment and remedial works. While the DPA amendments were introduced under a building safety umbrella, case law has established that the scope for potential claims under the DPA is broad, and includes any defects that make a dwelling unfit for habitation.

Ultimately, the Panel heard that insurance tools could incentivise the quality of construction in high-rise buildings as insurance companies may not provide coverage to developers with a high rate of defects claims. In the case of a defect following construction, there could be a defined pathway for the issue to be remedied via insurance.

The Panel considers a no-fault liability scheme for defects in buildings above three storeys is necessary in Queensland.



Observation 4: The importance of supporting robust contracting practices

The Panel notes that several industry organisations publish standard form contracts. Industry feedback suggests some of these standard form contracts require updating to accommodate contemporary practices. The Panel encourages industry organisations to make these updates, to ensure contracts are contemporary and fit for purpose, noting it is essential for standard contracts to be flexible and accommodating, depending on complexity and value.

The Panel observes it may be beneficial to have a standard form contract for developers that could have a suite of associated special conditions. Such a contract could be established to suit lower value or less complex activities.

Further, it could be required that any amendments made to a standard form contract be made clear, with the variations to the standard form provisions detailed. This may improve transparency in fast paced contracting environments.

Issues identified

Contemporary standard form contracts

A construction industry contract embodies a project's legal, financial, and technical framework and is the main instrument of communication from the precontract business deal through to project implementation and completion.

The Panel heard that contemporary standard form contracts require updating. Some industry submissions suggested a systemic review of standard contracts is required to address potential power imbalances in contracting, as they tend to promote the interests of one party at the expense of another.

The Panel notes the benefits of using a standard form contract include:

- familiarity with the instrument
- reduced drafting time and cost
- provision of an itemised checklist to be agreed between parties
- provision of a negotiation benchmark, and
- known case law around particular terms.

The Panel heard some market participants have undertaken the role of reviewing standard contracts, but there may be a lack of leadership in ensuring the effectiveness of these reviews.

The Panel was told that contracts should reflect and accommodate the differing levels of complexity of development activity undertaken across the sector. Standard contracts need to be scalable in complexity of cost and context of work.

Need for enhanced transparency in contractual amendment

The Panel heard that amendments to standard form contracts often lack transparency. While standard form contracts can function without additional negotiation between contracting parties, it is unusual for major construction projects to be delivered using an original standard form contract.

More often, the standard form contract provides a base for amendment to reflect project specific needs. Such modifications are not necessarily problematic, but consultation identified it is difficult for a counterparty to identify which terms of a standard form contract have been amended.

The Panel considers it appropriate that a transparent and clear method be considered for recording amendments to standard form contract provisions.



Observation 5: The role of building certifiers

The Panel observes the important role of building certifiers in promoting and maintaining building quality and safety in Queensland, and supports the current review being undertaken by DEPW in this regard. It is suggested that the DEPW review consider the independence (both actual and perceived) of certifiers, and if the existing certification model continues to be a fit for purpose inspection regime. This could involve considering other methods of promoting consistency in decision making, such as prescribing mandatory fit for purpose inspections at various stages of a project or investigating the need for independent third party inspections.

The Panel suggests the DEPW review could consider the following options to ensure independence in the relationship of a certifier and a developer:

- random auditing
- appropriate CPD, and
- introducing rules to require regular rotation of certifiers, similar to ASIC’s rules for the use of auditors or a ‘cab rank’ system.

This suggestion is relevant to the following BCR recommendations:

- recommendation 4 – nationally consistent supervised training scheme for building surveyors
- recommendation 5 – improving collaboration between regulators and building surveyors
- recommendation 9 – setting minimum statutory controls to mitigate conflicts of interest and increase transparency of the engagement and responsibilities of private building surveyors
- recommendation 11 – improving the role of building surveyors in enforcement (i.e. power to issue direction to rectify) and reporting obligations
- recommendation 16 – approval of performance solutions for constructed building work by the building surveyor. Design development, variations and product substitutions should be approved by the building surveyor prior to associated work being carried out, and
- recommendation 18 – mandatory on site inspections at notification stages (inspection stages need to be proportionate to risk).

Issues identified

The Panel repeatedly heard Queensland is leading the way in setting and maintaining a robust regulatory regime for the building and construction industry. Multiple industry stakeholders encouraged government to take actions to improve the integrity and impartiality of the building certification process.

Government should take stronger action to ensure that commercial interests and other pressures do not prevent building certifiers from acting impartially and in the public interest. – consumer organisation

The Panel also heard that the building and construction industry is heavily reliant on building certifiers to ensure that buildings are compliant, and that additional inspections would be optimal.



Observation 6: Reform of mediation processes

The Panel notes DEPW’s work implementing the recommendations of the QBCC Governance Review 2022, and particularly endorses that review’s recommendation 2, which seeks to establish an independent, quarantined mediation, resolution and review unit in the QBCC. This will comprise the Adjudication Registry, Internal Review Unit and mediation services.

Given that the implementation of this recommendation is under way, the Panel makes no further recommendations on this matter.

Issues identified

Most industry stakeholders supported dispute resolution processes as an alternative to other forms of legal action. Some stakeholders suggested mediation should be a mandatory first step in dispute resolution. The Panel notes the need to address a shortage of dispute resolution adjudicators.

Some stakeholders expressed concerns about the current dispute resolution process, including:

- the technical complexity of the payment framework, including eligibility and claim requirements
- impacts on commercial relationships
- timeframes
- adjudication costs, and
- perceptions of contractual power imbalance and bias.

Observation 7: Body Corporate and property law reform

The Panel notes work by the Department of Justice and Attorney General (DJAG) around body corporate legislation and property law reform. Given this ongoing work, the Panel notes the important points it has heard through consultation.

Issues identified

The Panel heard that high-rise residential building property owners and body corporates generally do not receive comprehensive building documentation at the time of sale and handover. Without this crucial information, it is difficult to rectify defects or maintain buildings. Many industry representatives sought greater transparency in the disclosure of these documents to empower owners and prospective owners (including body corporates) to manage ongoing maintenance.

The Panel heard that some developers influence body corporates long after a building is complete. This can happen in many ways. For instance, a developer may keep ownership of enough properties to ensure they have a larger voice than others on the body corporate, allowing them to exert influence on the building's management; or they could sell management rights to another entity. Such management rights agreements can span decades, meaning the actual unit owners find it challenging to have a say in management of their own asset. Owners indicated they felt aggrieved by such practices. The Panel notes the need to allow owners not developers to control and manage body corporates once a reasonable period of time has passed from handover/occupation.



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Observation 7

Appendix 1: About the Panel



Ms Alison Quinn – Chair

Alison is a professional non-executive director with more than 25 years' experience as a chief executive officer and senior executive in the property development, aged care and seniors sectors.

Through her roles with public, private and government organisations, Alison has developed valuable operational and commercial expertise in the areas of property investment, funding, infrastructure and development.

Ms Quinn is currently a non-executive director of Ability First Australia Limited, Uniting Care Queensland, SunCentral Maroochydore and the responsible entity of BWP Trust. She is also an advisory board member of ADCO Constructions.



Ms Gina Patrick

Gina is Managing Director of Plus Systems and Plus Technologies, and is passionate about raising the level of innovation, professionalism and workmanship in the construction industry to provide better quality buildings, reduce risk and minimise rectification costs for both industry and consumers.

Having enjoyed a career in construction, manufacturing and businesses advice in many industries, Gina brings a wealth of knowledge, particularly in the areas of strategy, business performance, industry change, financial performance and legislation.

In addition to being a representative for multiple industry bodies, Gina was previously a Fire Protection Association of Australia board member.



Mr John Payne

John was a founding partner of Hall Payne Lawyers in 1991, and is one of Queensland's most experienced and respected industrial relations lawyers. John has spent 39 years advising unions and community organisations on their diverse legal needs.

He is experienced at drafting sophisticated employment instruments, contracts, merger agreements and operating agreements, and has previously lectured in workplace health and safety law at QUT.

John is currently a director of the Alzheimer's Association of Queensland and Byron Aged Care Ltd, and a member of the Prostate Awareness Association, Queensland (Ron Monaghan Foundation) Board.

Appendix 2: Terms of reference

Terms of Reference

Review of the role of developers within the Queensland building and construction industry

Introduction and purpose

In 2019-20, Queensland's building and construction industry employed around 240,000 people and contributed approximately \$45 billion to Queensland's economy. The industry is supported by a strong regulatory framework that is conducive to investment and public confidence. This is achieved through a robust licensing system that legislates the conduct and financial capacity of industry participants and by building codes which govern the design, construction and performance of buildings.

The regulatory framework comprises legislative requirements, including the *Building Act 1975*, the *Plumbing and Drainage Act 2018*, *Queensland Building and Construction Commission Act 1991* (QBCC Act) and the *Building Industry Fairness (Security of Payment) Act 2017*, associated subordinate legislation, building codes and standards and minimum contractual requirements.

The Queensland Government further strengthened this framework through the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act). The BIFOLA Act implements the government's responses to two independent reports into the building and construction industry: The Building Industry Fairness Reforms Implementation and Evaluation Panel (evaluation panel) report and the Special Joint Taskforce report. The reports made recommendations about how to further enhance Queensland's security of payment reforms, including the Project Bank Account (PBA) system, and how to address fraudulent practices that contribute to subcontractor non-payment. The BIFOLA Act also contains amendments to strengthen Queensland's building laws, as part of a continuing response to the Building Confidence Report (BCR), including by enhancing regulatory oversight capabilities.

In its examination of the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020, the Transport and Public Works Committee (Committee) heard submissions from industry stakeholders concerned that while property developers play a critical role in the industry, they are not held to the same standard as other participants, such as head contractors and subcontractors. Consequently, the Committee recommended that the Minister consider undertaking a review of property developers in the Queensland building and construction industry taking into consideration the impact of their financial and operational capacity, ethical behaviour, and work practices¹.

The BIFOLA Act then inserted new section 115D into the QBCC Act, which requires the Minister to undertake a review of developers in the building and construction industry. This provision also requires the Minister to appoint a Panel of up to four appropriately qualified people to undertake the review. The Minister must table the Panel's report in the Legislative Assembly as soon as practicable after the review is completed.

In addition, the BCR which was commissioned by the Building Ministers' Forum (BMF), made observations and recommendations about the risks associated with developers engaging builders including in design and construct projects. The BCR indicated that this practice may lead to cost-

¹ Refer to recommendations 11 and 12, page 81 -

<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T455.pdf>

cutting, lower quality and unsafe practices. For this reason, these Terms of Reference ask the independent Panel to consider the impact that developers have on the quality and safety of design, construction, certification of buildings and other work practices, including the incidence of defective works.

The work of the Panel should include:

1. Further advancing the work already done by the Queensland Government in obtaining security of payment in the building and construction industry to now examine the role of developers in this context.
2. Expanding on the work undertaken through the BCR about the risks associated with developers engaging builders, particularly in design and construct projects.

Security of payment

There has been a multi-layered approach to the security of payment reforms to date. This has included nation-leading trust account reforms, which have primarily focussed on head contractors, to secure payment for subcontractors. The Minimum Financial Requirements for licensing (MFR) have also sought to protect subcontractors by ensuring financial liquidity of head contractors. Charge on property and payment withholding request reforms (which were recommended by the evaluation panel) have given head contractors the opportunity to protect monies owed to them following adjudication, by entities who are above them in the contractual chain.

All of these reforms have been aimed at effecting change from a culture of late or non-payment, to a culture of on-time payment, mainly in relation to subcontractors. However, all levels of the contractual chain must be scrutinised to determine where issues of non-payment or insolvency are arising, and what can be done to address them. The role and influence of entities at the apex of the contractual chain i.e. developers, have not yet been examined. It is appropriate that this occur to ensure that there is a comprehensive and balanced approach to late or non-payment.

Small businesses experience the most insolvencies, though it is the larger contractors who are most at risk of becoming insolvent on a per capita basis and where the largest impact is felt across the industry and the community. Experience has shown that in relation to financial liquidity in particular, financial failure on a project has the potential to cause devastating effects for workers involved in the project, all the way down the contractual chain. This is particularly the case for a large-scale project.

Building and construction industry stakeholders have also asserted that developers will direct head contractors to use certain products, or subcontractors who are known to use certain products, that are suspected to be non-conforming, due to the reduced costs associated with them.

The Panel is being asked to identify the factors and activities at the top of the contractual chain that contribute to, or pose a risk of, contributing to project failure through for example, non-completion, delay or non-payment. It is being asked to identify the types of activities by developers that pose a risk of project failure and measures that may address this.

BCR

The BCR passed some commentary on the role of developers. It:

- noted it is common for developers to engage a builder to undertake a design and construct project for multi-storey buildings through contractual arrangements and that as the developer is not a builder, observed there is no requirement to be registered.
- indicated the builder takes responsibility for development of both the design and construction components of the building with architects and engineers often engaged as sub-contractors. As the builder is responsible for the delivery of a completed building at an agreed price, attempts at cost savings will often occur throughout the design and construction process.

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- observed many aspects of the design and construct project may change after initial building approval is obtained, meaning the as-designed building documentation may be significantly different from the as-built building and indicated this creates a number of issues, especially for purchasers of apartments 'off the plan' as they have no rights to oversee the construction process and instead generally assume that regulatory controls have delivered a compliant building.

In July 2019 the BMF (now Building Ministers' Meeting) made a commitment around design, construction and certification of complex buildings as part of the implementation of recommendations made in the BCR. The BCR recognised the importance of addressing design and documentation in construction as, often, documentation prepared and approved as part of the building approvals process is inadequate. The BCR suggested poor documentation is regularly accepted by building certifiers in the building approval stages, in part due to owners and developers endeavouring to minimise documentation costs. This can present particular maintenance challenges for the first purchaser and then subsequent owners.

The BCR also highlighted the importance of ensuring there is no perceived conflict of interest between those engaged in the certification of a building during construction and developers, builders and owners. This provides assurance people that performance standards are adhered to during the construction process without interference.

Composition

As required by the QBCC Act, the review will be led by an independent Panel consisting of up to four members, appointed by the Minister. The Panel will be appointed for a period of up to 17.5 months.

Members of the Panel will have extensive and diverse experience with, and understanding of, the operation of Queensland's building and construction industry, specifically in relation to development, contractual practices, construction law, work health and safety the planning and development framework and the applicable legislative framework. In addition, knowledge of finance practices and business models associated with development, as well as general business and management would be highly desirable. Experience in accounting, finance and cost/benefit analysis would also be highly desirable.

The Department of Energy and Public Works will provide secretariat support for the Panel as required, including:

- providing administrative support
- taking minutes of Panel meetings, circulation of minutes and other information for members
- providing technical support, policy advice and provide assistance with obtaining legal advice
- assisting the Panel in drafting its report.

Scope

In undertaking the review, the Panel will consider the role of entities at the top of the contractual chain in the building and construction industry (the industry) in urban, regional and rural Queensland, and respond to the matters outlined below:

1. identify who will be considered a developer for the purpose of this review
2. identify any practices and behaviours of developers that are contributing to non-payment and insolvency in the industry, in particular:

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- (a) how the financial and operating capacity of developers impacts on security of payment. This consideration should include the influence of financial institution lending requirements and project approval frameworks
 - (b) identify, by function or business model, developer behaviours and activities that contribute to contractor non-payment and insolvency
 - (c) further to (b) above, whether a distinction should be made between developers who engage in development activity as their primary activity as compared to developers who may undertake building and construction activity as part of a portfolio of activities (for example through superannuation funds or other investment)
 - (d) examine the prevalence and scale of, and contributing factors towards, non-payment and insolvency by developers. This could include consideration of developers' business models, contracting, ethical behaviour and advertising practices
 - (e) whether developers may be engaging in illegal phoenixing activity
3. determine any risks associated with developers engaging builders in building and construction projects, in particular the:
 - (a) role and influence developers have in the contractual chain, including accountability for work practices and standards on projects
 - (b) impact developers have on the quality and safety of design, construction, certification of buildings and other work practices, including incidence of defective works
 4. the ability of industry regulators (including local, state and commonwealth government authorities), both current and future, to address issues that arise from (2) and (3)
 5. any current or proposed regulation of developers under commonwealth, state, territory and international legislation
 6. any other relevant matters identified by the Panel or referred to the Panel by the Minister.

In addressing the scope of the review, the Panel should consider the following **objectives** when providing its recommendations:

- appropriately distributing risk, liability and the need for regulatory intervention across participants in the building and construction industry
- if a recommendation will impact on an industry regulator such as the Queensland Building and Construction Commission or local government, consider ways in which the regulatory burden and cost to the regulator could be minimised
- maintain or enhance security of payment, safety and industrial relations standards and consumer protection
- duplication of regulation or other regulatory activity should be avoided
- complement any regulation of developers under any relevant Commonwealth and state and territory legislation
- to the extent possible, align with the Queensland Government 's overarching policy framework – *Unite and Recover - Queensland's Economic Recovery Plan*, Priority Area 4, Building Queensland.

In making its recommendations, the Panel should:

- clearly identify how the evidence that was considered, the Panel's findings, and the reasoning behind its recommendations, support the recommendations
- if legislative change is recommended, how this is supported based on the Panel's findings, the evidence considered and legislative schemes in Queensland and other jurisdictions
- if legislative change is recommended, detail how the policy findings of the Panel should be reflected/represented in the recommended legislative provisions

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- 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
 - provide preliminary potential costs and benefits of a proposal, noting however that if Government accepts a recommendation a Regulatory Impact Statement may be undertaken as part of the Government's policy process
 - what further action may be necessary to implement a recommendation
 - if no further action is required, specify why this not appropriate.

Deliverables

The Panel will provide the Minister with a report detailing its findings and any relevant recommendations for the Minister's consideration. The Panel may also be required to report on its findings to date at particular milestones.

The Panel will be required to prepare and publish governance documentation including a workplan identifying key milestones and associated timeframes and a stakeholder engagement plan.

Timeframe

The Panel must deliver its report to the Minister within 17.5 months of being appointed.

The Minister must table the outcome of the review by the Panel in the Legislative Assembly as soon as practicable after the review is completed.

Industry Reference Group

An Industry Reference Group (IRG) will be appointed by the Minister. The IRG will be a key forum of industry engagement for the Panel. It will consist of Ministerial Construction Council members who express an interest in taking part, as well as peak industry bodies who represent developers, the finance and insurance sectors, building and construction unions, the legal profession and relevant industry regulators.

Stakeholder Engagement

The Panel will develop a stakeholder engagement plan to ensure stakeholder and community access and input into the review process. Key stakeholders will include:

- building and construction industry organisations, advocates and unions, representing—
 - developers
 - head contractors
 - subcontractors
 - suppliers
 - workers
 - real estate sector
 - insurance sector
 - legal sector
 - architects
 - engineers
- building certifiers

-
- consumer organisations and advocates
 - banking and financial institutions
 - representatives from regional Queensland
 - local government
 - not for profit housing sector
 - Queensland and interjurisdictional government agencies and regulators
 - individuals and businesses.

Appendix 3: Discussion paper options

The Panel's discussion paper presented 38 potential options for resolving issues raised during consultation. The ways in which this final report addresses these options is set out below.

Table 7: Discussion paper options compared to final report recommendations

No.	Option	Approach
1	<p>Licensing</p> <p>Introduce a licensing scheme for individuals/ corporations carrying out development activity.</p>	<p>Adopted in part</p> <p>Refer to Recommendation 1.</p> <p>The Panel has recommended an accreditation framework that is distinct from Queensland's existing licensing frameworks. However, the Panel's proposed framework ensures only fit and proper people who maintain appropriate standards of education and conduct are able to operate in the development industry.</p>
2	<p>Industry standards</p> <p>Introduce an industry code of conduct or practice (voluntary or compulsory) or professional standards for developers to undertake development activity.</p>	<p>Adopted</p> <p>Refer to Recommendation 1.</p>
3	<p>Developer ranking system</p> <p>This option could involve the introduction of a developer ranking system that could rank developers on a prescribed list of principles or behaviours and be available for industry and public review.</p>	<p>Alternative adopted</p> <p>Refer to Recommendation 1.</p> <p>While the recommended accreditation model adopts many of the benefits of a ranking system, there was limited support among stakeholders for adopting a ranking system in Queensland. A ranking system does not involve an active role for government enforcement and compliance.</p> <p>Many stakeholders cited concerns with the proposed operation of a ranking system in terms of cost, accuracy and fairness to new entrants.</p> <p>However, provided these concerns are addressed, the Panel believes that ranking systems may be adopted by industry, without government intervention, as a means of differentiating professional developers from less professional developers.</p>
4	<p>Disclosure arrangements</p> <p>This would involve improving the level of disclosure from a principal to a head contractor before entering a contract for development activity.</p>	<p>Adopted</p> <p>Refer to Recommendation 1.</p>
5	<p>Expand PTAs</p> <p>This would involve applying the requirements of PTAs to developers.</p>	<p>Not adopted</p> <p>The Panel has recommended several reforms designed to improve security of payment, including an accreditation, disclosure and registration framework and the further application of Queensland's fairness in contracting laws. For this reason, the Panel has not made a recommendation about expansion of PTA requirements.</p> <p>The Panel notes this option could be explored further if data yielded by the framework suggests further government action is necessary.</p>
6	<p>Education</p> <p>Involves the further education of industry participants on key matters, including contracting, business management, risk management etc.</p>	<p>Adopted</p> <p>Refer to Recommendations 1 and 2.</p>

No.	Option	Approach
7	<p>Tendering standards</p> <p>This would involve introducing minimum standard requirements for tendering and the evaluation of responses.</p>	<p>Adopted</p> <p>Refer to Recommendation 1.</p> <p>The Panel's accreditation framework contemplates a code of conduct in which these operational issues can be effectively addressed.</p>
8	<p>Promote alternatives to hard tendering</p> <p>Involves promoting the benefits of alternative tendering practices including early contractor and subcontractor involvement.</p>	<p>Adopted</p> <p>Refer to Recommendation 1.</p> <p>The Panel's accreditation framework contemplates a code of conduct in which these operational issues can be effectively addressed.</p>
9	<p>Cooling off periods</p> <p>Appropriate cooling off periods could be introduced for both parties after tenders are submitted.</p>	<p>Adopted</p> <p>Refer to Recommendation 1.</p> <p>The Panel's accreditation framework contemplates a code of conduct in which these operational issues can be effectively addressed.</p>
10	<p>Improving documentation</p> <p>Improvements to documentation requirements might require designs to adequately demonstrate compliance with the National Construction Code or include any relevant certificates of conformity, accreditation etc.</p>	<p>Out of scope</p> <p>Referred to DEPW for consideration.</p>
11	<p>Expand fairness in contracting laws</p> <p>Queensland's mandatory and/or prohibited contract terms legislation could be extended.</p>	<p>Adopted</p> <p>Refer to Recommendation 4.</p>
12	<p>Contemporary standard contracts</p> <p>This would involve reviewing General Conditions of Contract in Queensland to ensure they are contemporary and fit for purpose.</p>	<p>Endorsed</p> <p>Refer to Observation 4.</p>
13	<p>Improved transparency in amendments</p> <p>This option would require parties to clearly identify what changes have been made to standard contracts.</p>	<p>Endorsed</p> <p>Refer to Observation 4.</p>
14	<p>Streamlined responses</p> <p>The ability for head contractors to suspend construction work in response to non-payment could be streamlined and improved.</p>	<p>Alternative adopted</p> <p>Refer to Recommendations 1 and 2.</p> <p>The Panel has recommended several reforms designed to improve security of payment. This includes an accreditation, disclosure and registration framework which would allow head contractors to make informed decisions about who they contract with.</p> <p>The Panel notes that industry education should cover existing methods of remedying non-payment, such as registering a charge over property, to promote their uptake and use in the industry.</p> <p>For these reasons, the Panel has not made a recommendation in regard to this option.</p>
15	<p>Property protections</p> <p>This would involve ensuring head contractors and subcontractors maintain access to their equipment and building materials following the collapse of a project.</p>	<p>Out of scope</p> <p>Referred to DEPW for consideration.</p>
16	<p>Enhanced reporting obligations</p> <p>This option would require relevant parties to report incidences, including suspicions, of late and non-payment to the QBCC.</p>	<p>Out of scope</p> <p>Refer to Observation 2. Referred to DEPW for consideration.</p>

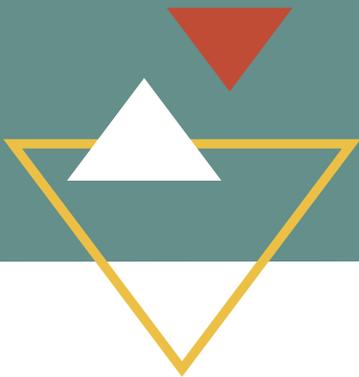
No.	Option	Approach
17	<p>Extend the chain of responsibility for non-conforming building products (NCBPs) to developers</p> <p>Queensland’s NCBP legislation could be expanded to include developers.</p>	<p>Adopted</p> <p>Refer to Recommendation 3.</p>
18	<p>‘Whistleblower’ protections</p> <p>This option would involve strengthening whistleblower type protections for the reporting of non-conforming/ non-compliant work.</p>	<p>Out of scope</p> <p>Referred to DEPW for consideration.</p>
19	<p>Extend the chain of responsibility for NCBPs to certifiers</p> <p>This option would involve introducing obligations for building certifiers to report any NCBPs or non-compliant building processes to the QBCC.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
20	<p>Superintendents</p> <p>Requirements to ensure superintendents act in a fair and reasonable manner could be introduced.</p>	<p>Out of scope</p> <p>Referred to DEPW for consideration.</p>
21	<p>Documentation of amendments</p> <p>This option would involve regulating the documentation of amendments made during construction.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
22	<p>Third party quality assurance</p> <p>A requirement for genuine third party quality assurance assessments could be introduced into Queensland’s certification system.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
23	<p>Certifier disengagement</p> <p>This would involve reviewing legislative requirements around disengaging a building certifier.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
24	<p>Further mandatory inspections</p> <p>The number of mandatory inspections during the construction certification process could be increased.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
25	<p>Quantity surveyors and building certifiers</p> <p>Ensure CPD programs are modern and fit for purpose for building industry professionals.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
26	<p>Additional insurance</p> <p>Involves the introduction of additional insurance for consumers.</p>	<p>Out of scope</p> <p>Refer to Observation 3. Referred to DEPW for consideration.</p>
27	<p>Audits</p> <p>QBCC could be empowered to conduct ‘certificate of occupancy’ audits.</p>	<p>Out of scope</p> <p>Refer to Observation 5. Referred to DEPW for consideration.</p>
28	<p>Review current dispute resolution services</p> <p>Involves identifying opportunities for improvement in current dispute resolution services.</p>	<p>Out of scope</p> <p>Refer to Observation 6. Referred to DEPW for consideration.</p>
29	<p>Investigate alternative resolution services</p> <p>Involves developing a dispute resolution process to address issues on an interim basis while a contract is in progress, limited to disputed funds under a certain value of work.</p>	<p>Out of scope</p> <p>Refer to Observation 6. Referred to DEPW for consideration.</p>
30	<p>Promote mediation</p> <p>A comprehensive mediation framework could be developed and administered separate to government.</p>	<p>Out of scope</p> <p>Refer to Observation 6. Referred to DEPW for consideration.</p>

No.	Option	Approach
31	<p>Additional protections from retaliation</p> <p>Additional legislative protections could be introduced to protect entities from retaliation if they have used adjudication to resolve a dispute.</p>	<p>Out of scope</p> <p>Refer to Observation 6. Referred to DEPW for consideration.</p>
32	<p>Promote security of payment in domestic contracts</p> <p>This would involve expanding the application of adjudication to contracts with consumers for domestic building work.</p>	<p>Not adopted</p> <p>The Queensland Government has done extensive work in determining the thresholds at which security of payment protections should apply. These thresholds seek to balance the need to promote security of payment, while also excluding small scale residential construction work as prescribed by the BIF Act. The Panel has adopted these thresholds to leverage the benefits of this work.</p>
33	<p>Line of sight to contractors</p> <p>This option would ensure owners are provided with, or have access to, information about the head contractor and subcontractors who worked on the building.</p>	<p>Adopted in part</p> <p>Refer to Recommendation 1.</p> <p>List of subcontractors was not recommended for inclusion in the registration process as this was considered too onerous.</p>
34	<p>Documentation at handover</p> <p>Involves ensuring existing legislation effectively supports a comprehensive suite of documents being provided at handover to body corporates and consumers.</p>	<p>Referred to DJAG</p> <p>Refer to Observation 7.</p>
35	<p>Digital tools</p> <p>This option would involve investigating greater use of digital tools to provide improved data insights for industry, consumers and government.</p>	<p>Adopted</p> <p>Refer to Recommendation 5.</p>
36	<p>Voting restrictions</p> <p>This option would limit developers from being able to vote on a body corporate decision relating to defects for a certain period (e.g. six months) after the establishment of a body corporate.</p>	<p>Referred to DJAG</p> <p>Refer to Observation 7.</p>
37	<p>Address conflicts of interest during handover</p> <p>An option could be to further investigate developers' influence on defect rectification, including the composition of a body corporate or promoting the independence of body corporates and building management services from the developer.</p>	<p>Referred to DJAG</p> <p>Refer to Observation 7.</p>
38	<p>Enhanced disclosure of budget projections during handover</p> <p>This option would require the developer to prepare and disclose budget projections to a body corporate for a minimum period (e.g. three years) based on standardised accounting principles.</p>	<p>Referred to DJAG</p> <p>Refer to Observation 7.</p>

Appendix 4: Abbreviations

Table 8: List of abbreviations

Abbreviation	Meaning
ASIC	Australian Securities and Investment Commission
BCR	Building Confidence Report
BIF Act	<i>Building Industry Fairness (Security of Payment) Act 2017</i>
BIM	Building Information Modelling
BSA	<i>Building Safety Act 2022</i> (UK)
CPD	Continuing professional development
DEPW	Department of Energy and Public Works
DJAG	Department of Justice and Attorney General
DPA	<i>Defective Premises Act 1972</i> (UK)
MCC	Ministerial Construction Council
NCBP	Non-conforming building product
POI	Person of influence
PTA	Project Trust Account
The framework	The Panel's proposed accreditation, disclosure and registration framework
The Panel	The Developer Review Panel
The review	The review of the role of developers in Queensland's building and construction industry
QBCC	Queensland Building and Construction Commission
QBCC Act	<i>Queensland Building and Construction Commission Act 1991</i>
QHWS	Queensland Home Warranty Scheme
SPV	Special purpose vehicle



Queensland
Government