



Queensland Building and Construction Board

| Charter



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QUEENSLAND BUILDING AND CONSTRUCTION BOARD CHARTER

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Secretary	Executive Officer, Board

1. Introduction

This Charter sets out the roles, responsibilities, authorities and processes of the Queensland Building and Construction Board (QBC Board).

This Charter builds on the following legislation and instruments, which establish the QBC Board's powers, structure, composition, operations and accountabilities:

- *Queensland Building and Construction Commission Act 1991*;
- Queensland Building and Construction Commission Regulation 2018;
- *Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities*, Department of the Premier and Cabinet, Queensland;¹
- *Queensland Cabinet Handbook*, Department of the Premier and Cabinet, Queensland.²

2. Functions and Roles

2.1 The Queensland Building and Construction Commission:

The Queensland Building and Construction Commission (QBCC) is a body corporate established under the *Queensland Building and Construction Commission Act 1991 (QBCC Act)*³

The QBCC consists of the QBC Board, the QBCC Commissioner (the Commissioner), the organisational unit under the control of the Commissioner and the Service Trades Council.⁴

The QBCC has regulatory functions and responsibilities relevant to the Queensland building industry under the following legislation:

- *Queensland Building and Construction Commission Act 1991*;
- Queensland Building and Construction Commission Regulation 2018;
- Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018;
- *Building Act 1975*;
- Building Regulation 2021;
- *Plumbing and Drainage Act 2018*;
- Plumbing and Drainage Regulation 2019;
- *Building Industry Fairness (Security of Payment) Act 2017*; and
- Building Industry Fairness (Security of Payment) Regulation 2018

1. <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/welcome-board.aspx>
2. <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinethandbook.aspx>
3. Section 5, QBCC Act
4. Section 6, QBCC Act.

2.2 Functions of the QBC Board

The functions and general powers of the QBC Board are set out in section 11 of the QBCC Act. These functions are as follows:

- deciding the strategies and the operational, administrative and financial policies to be followed by the QBCC;
- ensuring the QBCC performs its functions and exercises its powers in a proper, effective and efficient way;
- providing guidance and leadership to the Commissioner;
- providing guidance and leadership to the Service Trades Council, other than in relation to its function of conferring on national policy and implementation for the plumbing and drainage trade under the *Plumbing and Drainage Act 2018*;
- advising the Minister on issues affecting-
 - the building industry; and
 - consumers; and
 - the administration of the QBCC Act; and
 - the administration of the QBCC;
- advising the Minister about unfair or unconscionable trading practices affecting security of payments to contractors and subcontractors; and
- consulting the building industry and its consumers and advancing their interests, consistently with the objects of the *QBCC Act*.

2.3 Executive Officer

The Executive Officer for the QBC Board is responsible for providing administrative support to the QBC Board. Subject to the QBC Board's discretion, the Executive Officer may also have coordination, policy advice or project management functions.⁵

The Executive Officer supports the effectiveness of the QBC Board by:

- monitoring and ensuring that QBC Board policies and procedures are followed and are consistent with Government policy;
- ensuring advice and services are provided to the QBC Board (and its committees) about legislation, general law, Government policy and procedure requirements relevant to the QBC Board's functions;
- managing and coordinating the completion and dispatch of QBC Board meeting agendas, briefing papers and minutes;
- ensuring accurate records of committee proceedings are made, including reporting committee minutes to the QBC Board; and
- ensuring policies made by the QBC Board are made and implemented consistent with statutory and Government procedural requirements.

The Executive Officer is responsible to the QBC Board, through the Commissioner, in performing the Executive Officer's functions.

2.4 QBC Board Committees

Under section 20B of the QBCC Act, the QBC Board or the Minister may appoint committees to advise the Minister, Commissioner or QBC Board on particular subjects.⁶

Section 20B of the QBCC Act also establishes the Building Products Advisory Committee, which:

- consists of the members prescribed by regulation;
- has the functions prescribed by regulation;
- has all powers necessary for performing its functions, including obtaining expert advice;
- has a primary function of giving the Minister, Commissioner and QBC Board advice about the following matters:
 - the suitability of particular building products for particular uses;
 - the safety of particular building products, whether or not they are associated with an existing building;

5. Welcome Aboard A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities (section 3.5).

6. 6 As at 1 December 2013, QBC Board committees have been established to advise the QBC Board on People, Culture and Change and Regulatory and Resolution

- the safety of buildings with which a non-conforming building product has been associated;
- how to promote the safe use of building products in the building industry;
- how to raise awareness of non-conforming building products; and
- action under the QBCC Act which may be appropriate for dealing with non-conforming building products.

3. Reporting Relationships and Delegation

3.1 Relationship between the QBC Board and the Commissioner

Section 20K of the *QBCC Act* states the relationship between the Commissioner and the QBC Board as follows:

- (1) In carrying out the Commissioner's responsibilities, other than performing an additional function, the Commissioner must give effect to any policy or direction of the board relevant to the responsibility.
- (2) However, the Commissioner must act independently of the board when making any of the following types of decisions giving effect to the board's policies:
 - a) a decision about the action to be taken about a licensee's licence;
 - b) a decision about rectification or completion of building work;
 - c) a decision relating to the statutory insurance scheme;
 - d) a decision to give information to a health and safety regulator under section 28A;
 - e) a decision to give a direction under section 74AN;
 - f) a decision about a building product undertaking under part 6AA, division 3;
 - g) a decision to issue a stop work notice under section 108AI.
- (3) The Commissioner must:
 - a) report regularly to the board on the administration of this Act; and
 - b) at the request of the board, provide the board with a special report on a particular subject.

An "additional function" is defined in section 20J(3) as any function the Commissioner is authorised by an Act, other than the QBCC Act, to carry out.

The Committee Secretary, if not the Board Secretary, is accountable to the Board Secretary and is the delegate of the Board Secretary.

Requests for professional advice

The Chairperson of the QBC Board may request the Commissioner to seek competent and independent professional advice, at the expense of the QBCC, if such advice is deemed necessary for the QBC Board or a Board Member to effectively discharge their duties.

If requests for advice are not made during QBC Board or committee meetings, they should be directed through the Executive Officer, Board..

3.2 Access to QBCC staff

A Board Member may make a special request to the Commissioner for access to appropriate QBCC staff for advice regarding matters relevant to the QBC Board's functions. Such requests may arise where there is a need for a detailed briefing or assistance to understand a technical issue.

3.3 Delegations

Section 115A of the QBCC Act provides that the QBC Board or Commissioner may delegate their functions or powers under an Act to an appropriately qualified relevant officer of the QBCC. The term "appropriately qualified" includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.

4. Board Meetings

4.1 Conduct of QBC Board Meetings

Under the QBCC Act, the QBC Board may conduct its business, including its meetings, in any way it considers appropriate.⁷

In the interests of planning and preparation, it is intended that matters to be considered by the QBC Board should be incorporated into the published QBC Board agenda. However, it is recognised that there are circumstances

where unforeseen issues may need to be discussed that are not scheduled for consideration. In these circumstances, Board Members may consent to the inclusion of the agenda item.

Where possible a QBC Board meeting is to be convened at least once every calendar month and each Board Member is to be given reasonable notice of the date and agenda of each meeting. To provide sufficient notice, Board Members will be advised at least seven (7) days prior to any QBC Board meeting.

The QBC Board may hold meetings or allow Board Members to take part in its meetings by using technology (for example, teleconferencing) that reasonably allows members to hear and take part in discussions as they happen.

At a meeting of the QBC Board, five (5) members constitute a quorum.⁸ Any question before the QBC Board is to be decided by a majority of votes of the members present and voting. Each member present has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has the casting vote.

The Chairperson is responsible for convening meetings of the QBC Board. The Chairperson has a statutory obligation to convene a meeting when requested by at least three (3) members to do so.⁹

4.2 Minutes of QBC Board Meetings

It is a duty of Board Members to ensure minutes are accurate and reflect a true and correct record of the procedures and decisions of meetings.¹⁰ Minutes provide evidence of attendance and participation in discussion as well as document the decision making process. This information can become legal evidence and be used to provide whether a member has acted diligently and conscientiously and/or whether the QBC Board has acted appropriately.

Minutes also provide a record of dissenting votes, establish that the QBC Board was advised of a conflict of interest, or that a member was absent as required during a vote on a matter of conflict of interest. Members take personal responsibility to ensure that their views, statements or decisions are reflected accurately in the minutes and should there be any discrepancies, ensure the minutes are amended accordingly.

The Executive Officer must ensure accurate records of committee proceedings are made, including reporting committee minutes to the QBC Board.¹¹

5. Ethical Responsibilities

5.1 Obligation of Board Members to Report Ethical Issues

In accordance with the Queensland Cabinet Handbook, to manage risks associated with appointments to the QBC Board, information on a person's suitability for appointment is obtained for all appointments to the QBC Board.

All candidates proposed for appointment to the QBC Board are requested to complete a personal particulars form to assist in assessing their suitability for nomination/appointment. It is noted on the form that candidates are responsible for advising the relevant Minister in writing of any changes to the information provided during their term of appointment.

Board Members must act ethically so as to support the continuation of public trust in the government and to observe the highest standards of behaviour and accountability. The obligations placed on Board Members are strict, particularly because in many cases members are responsible for spending taxpayers' money and the custody and control of public assets.

7. Section 20, QBCC Act.
8. Section 20A(2), QBCC Act.
9. Section 20A(1), QBCC Act.
10. Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities (section 3.5).
11. Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory

These obligations include informing the relevant Minister of any changes to a Board Member's circumstances that could impact on the Board Member's suitability to continue to serve on the QBC Board.¹²

5.2 Ethical Obligations under the QBCC Act

Section 20C (Disclosure of interests) of the QBCC Act imposes the following obligations on Board Members with regard to a conflict of interest:

- (1) This section applies to a member if—
 - a) the member has an interest in an issue being considered, or about to be considered, by the board; and
 - b) the interest conflicts or may conflict with the proper performance of the member's duties about the consideration of the issue.
- (2) After the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a board meeting.
- (3) Unless the board otherwise directs, the member must not—
 - a) be present when the board considers the issue; or
 - b) take part in a decision of the board about the issue.
- (4) The member must not be present when the board is considering whether to give the direction.
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
 - a) be present when the board is considering whether to give the direction; or,
 - b) take part in making the decision about giving the direction.
- (6) Subsections (7) and (8) apply if—
 - a) because of this section, a member is not present at a board meeting for considering or deciding the issue, or for considering or deciding whether to give the direction; and
 - b) there would be a quorum if the member were present.
- (7) The remaining members present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (8) If there are no members who may remain present for considering or deciding the issue, the Minister may consider and decide the issue.
- (9) The disclosure must be recorded in the board's minutes.

The QBCC Act also makes provision for the disqualification of a member if a member becomes a relevant officer or contractor of the QBCC. A relevant officer of the QBCC includes an employee of the Queensland Building Construction Employing Office. On becoming a relevant officer or contractor of the QBCC, a Board Member is automatically disqualified as a member, regardless of whether an actual conflict of interest occurs.¹³

5.3 Ethical Obligations under the General Law

Fiduciary duties are obligations of trust and confidence owed by a fiduciary to another person. The law usually recognises certain relationships, including those of director and company and employer and employee, to be fiduciary relationships. The courts may also find other relationships to be fiduciary in nature, particularly where one party stands in a position of trust and confidence in relation to the other, and is bound to place the interest of the other before his or her own personal interests. As Board Members will often be in a similar position to a company director, they may be subject to fiduciary obligations.

Board Members acting in a fiduciary capacity have an obligation to do all of the following:

- act honestly and to exercise powers for their proper purposes;
- avoid conflicts of interests;
- act in good faith; and
- exercise diligence, care and skill.¹⁴

12. Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory

13. Section 13, QBCC Act.

14. Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities (section 7.2).

5.4 Members subject to QBCC Code of Conduct

The QBC Board is subject to the QBCC Code of Conduct which complies with the requirements of the *Public Sector Ethics Act 1994*.

5.5 Commissioner Must Report Conflicts of Interest

The Commissioner is required to declare any conflicts of interest to the QBC Board in performing the Commissioner's responsibilities as soon as practicable after the relevant facts come to the Commissioner's knowledge. The Commissioner must not take any further action concerning a matter that is, or may be, affected by the conflict unless authorised by the QBC Board.¹⁵

6. Operational and Other Policies

The QBC Board is authorised to decide the strategies and the operational, administrative and financial policies to be followed by the QBCC. Such policies include operational procedures manuals, public fact sheets regarding operational matters and delegations.

The QBC Board cannot make a policy that is inconsistent with requirements in the QBCC Act. For example, the QBC Board cannot make a policy that prevents the Commissioner acting independently when making a decision about the action to be taken regarding a licensee's licence.

Further, the QBC Board cannot make a policy about machinery of government matters, including the processes and procedures relevant to Cabinet, Government in Council or Parliament.

7. Performance Evaluation

7.1 QBC Board Performance

The QBC Board is to assess its performance, including performance of its committees, annually. This allows the QBC Board to consider their performance and to enhance the QBC Board's overall effectiveness. The QBC Board will determine the most appropriate method of assessment which may include an external review.

7.2 Commissioner's Performance

The QBC Board is to undertake regular evaluations (at least annually) of the effectiveness of the Commissioner in performing the Commissioner's functions under the QBCC Act. The evaluation is to be consistent with relevant conditions of the Commissioner appointment decided by the QBC Board under section 20D of the *QBCC Act*.

8. Indemnity of QBC Board Members

Board Members are to be indemnified for costs and expenses in defending criminal or civil proceedings, provided that:

- the liabilities relate to whilst they are/were a member of the QBC Board;
- the proceedings are not brought by the QBCC; and
- judgement is given in favour of the Board Member, or the Board Member is acquitted, or proceedings are withdrawn before judgement, or relief is otherwise granted to the Board Member.

QBCC is to maintain appropriate liability insurance for Board Members for the period of appointment and for a period after retirement sufficient to cover the term of any relevant limitation period. The cover is to underpin the above indemnity granted to Board Members.

9. General Matters

9.1 Publication of the Charter

This Charter will be published on the QBCC's website.

9.2 Review of the Charter

This Charter will be reviewed regularly and updated as required.

15. Section 20M, QBCC Act

9.3 Version Control

This Charter was adopted by the QBC Board on 25 July 2017.

This Charter was reviewed and updated by the QBC Board on 19 December 2017.

This Charter was reviewed and updated by the QBC Board on 28 August 2018.

The membership of this Charter was updated by the QBC Board on 29 August 2019.

This Charter was reviewed and updated by the QBC Board on 12 December 2019.

This Charter was reviewed by the QBC Board on 17 December 2020.

This Charter was reviewed and updated by the QBC Board on 27 January 2022.

