Memorandum of Understanding between
the Queensland Building and Construction Commission
and
the Office of Industrial Relations,
Queensland Treasury

August 2017
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Part 1 - Introduction

Purpose

1.1 The purpose of this Memorandum of Understanding (MOU) is:
(a) to confirm the desire of both organisations to build and maintain a professional relationship based on effective administrative practices and open communication between the Queensland Building and Construction Commission (QBCC) and the Office of Industrial Relations (OIR); and
(b) to establish and implement administrative processes for the QBCC and the OIR to share information. This information will relate to notifiable incidents\(^1\) and serious electrical incidents\(^2\) associated with persons who the regulator\(^3\) reasonably believes to be licensed by the QBCC.

1.2 This MOU is not intended to:
(a) be legally binding. An alleged or real breach of any provision of this agreement is not intended to give rise to a legally enforceable cause of action;
(b) entitle or require a person to disclose information that is the subject of legal professional privilege or affect the law or practice relating to legal professional privilege; or
(c) restrict the statutory duties, directions and powers available to the QBCC and OIR.

Legislative scope

1.3 The relevant legislation that applies to this MOU is the:
(a) Electrical Safety Act 2002 (ES Act)
(b) Plumbing and Drainage Act 2002 (PD Act)
(c) Queensland Building and Construction Commission Act 1991 (QBCC Act)
(d) Work Health and Safety Act 2011 (WHS Act)

Part 2 - Responsible agencies for this MOU

2.1 At the commencement of this MOU, the agencies responsible for its administration are:
(a) the Queensland Building and Construction Commission (QBCC), and
(b) the Office of Industrial Relations, through the agencies of Workplace Health and Safety Queensland (WHSQ), and the Electrical Safety Office (ESO).

2.2 A reference to an agency in this MOU may be extended to include the responsible department\(^4\).

2.3 This MOU has been developed at the agency level. If there is a change to the department responsible for an agency due to portfolio reassignment or redistribution, or there is a change to the name of a department or agency, there should be negligible effect on the operation of the MOU. That is, machinery of government changes or changes to the name of agencies will not void the MOU or automatically necessitate renegotiation.

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\(^1\) s35 WHS Act
\(^2\) s11 ES Act
\(^3\) The regulator for work health and safety and electrical safety is the public service officer appointed by the Governor in Council
\(^4\) Queensland Treasury for OIR; Department of Housing and Public Works for QBCC.
2.4 The application of this MOU will not be limited by an amendment or replacement of legislation administered by the agencies, to the extent that the new legislation has consistent objects to the original. Any such machinery of government or legislative changes will be incorporated at the time of the scheduled review.

Queensland Building and Construction Commission

2.5 The QBCC is a self-funded statutory body established under the QBCC Act. The object of the QBCC is to regulate the building industry in Queensland by:
(a) ensuring the maintenance of proper standards in the industry;
(b) achieving a reasonable balance between the interests of building contractors and consumers;
(c) providing remedies for defective building work;
(d) providing support, education and advice for those who undertake building work and consumers; and
(e) regulating domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners.

2.6 The QBCC also has responsibilities pursuant to the PD Act. In particular, the Commissioner has the following functions:
(a) administering the licensing system;
(b) monitoring the operation of the licensing system;
(c) promoting acceptable standards of competence for the trade;
(d) receiving and investigating complaints about work for which a licence is required; and
(e) approving audit programs and auditing licensees to monitor and enforce compliance with the PD Act.

Office of Industrial Relations

2.7 As part of Queensland Treasury, the OIR contributes to the government’s employment and economic objectives in the areas of work health and safety, electrical safety, workers’ compensation and industrial relations. We seek to improve work health and safety, electrical safety and workers’ compensation performance through regulatory and policy frameworks and the provision of, evidenced-based services and advice. The OIR includes agencies of Workplace Health and Safety Queensland and the Electrical Safety Office.

2.8 WHSQ’s goal is to foster safe and healthy work environments for all workers in Queensland. The key outcome is a reduction in work-related fatalities, injuries and illnesses in Queensland. WHSQ collaborates with all stakeholders to improve work health and safety performance by:
(a) delivering education and awareness activities to improve the ability of workplace participants to identify and manage risks to work health and safety;
(b) implementing targeted compliance programs at state and local levels and participating in national compliance activities;
(c) undertaking enforcement activities;
(d) managing the registration, licensing and approval regimes under the WHS Act; and
(e) working cooperatively with other states, territories and the Commonwealth Government to improve national consistency in work health and safety.
2.9 The ESO’s goal is to make Queensland industry, homes and communities safe from the risk of electrical harm. The key outcome is a reduction in electricity-related fatalities, injuries, and property damage in Queensland. The ESO collaborates with all stakeholders to improve electrical safety by:
(a) promoting compliance with electrical safety laws and standards across industry and the community, and enforcing standards when non-compliance is evident;
(b) influencing and developing legislation and standards for electrical safety;
(c) managing registration, licensing, approval (electrical equipment) and accreditation regimes required under legislation;
(d) providing information, education and training activities to help industry employees and the community manage electrical safety risks;
(e) providing advice to the Minister and statutory bodies, including the Commissioner for Electrical Safety, the Electrical Safety Board and its three committees; and
(f) working cooperatively with other states, territories and the Commonwealth Government to improve electrical safety outcomes.

Part 3 - Co-operation between agencies

3.1 The parties agree to observe and comply with this MOU. Each party will:
(a) ensure that agency officers affected by the MOU are provided with appropriate training and resources to enable them to give effect to the MOU; and
(b) develop mechanisms to enable each agency to give effect to, and monitor the implementation of the MOU within the respective agencies.

3.2 The agencies acknowledge that general information sharing, where it is considered practical and appropriate, will minimise duplication of government resources. The agencies agree that information available to one agency, which is relevant to the responsibilities of the other agency will be shared in accordance with the terms of this MOU and in accordance with relevant legislative confidentiality and privacy provisions relating to the disclosure of information.

Confidentiality of information

3.3 Section 271 of the WHS Act and s193 of the ES Act impose a duty of confidentiality regarding information and documents obtained in exercising any power or function under the respective Act. A person must not disclose the information to anyone else, unless an exception applies.

3.4 There are a range of exceptions, including s271(3)(c)(iii) of the WHS Act and s193(3)(c)(iii) of the ES Act, which allow for disclosure of information if the regulator reasonably believes:
(a) the disclosure is necessary for the administration or enforcement of another Act or law, and
(b) if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety.

3.5 The regulator may also disclose information if they reasonably believe the disclosure is necessary for the administration or enforcement of another Act prescribed under a regulation. The QBCC Act is a prescribed Act for the purposes of disclosing information under s271(3)(c)(ii) of the WHS Act and s193(3)(c)(ii) of the ES Act.

5s271(3)(c)(ii) WHS Act, s193(3)(c)(ii) ES Act

3.6 Disclosure of information of under the ES Act will be determined on a case by case basis, and limited to circumstances where there is a connection between building work carried out under the QBCC Act and plumbing and drainage work under the PD Act and a matter under the ES Act before information can be disclosed. As an example, a builder sub-contracting with an electrician would not be enough to authorise the disclosure.

3.7 The disclosure of information by OIR to the QBCC under this MOU must only be used by the QBCC for the purpose of regulating the building industry to ensure the maintenance of proper standards in the industry.

3.8 Disclosure of information about the involvement of QBCC licence holders in notifiable incidents, particularly if it appears that a licence holder has failed to carry out a statutory obligation under the WHS Act is considered necessary for the QBCC’s function of being satisfied that a person is a fit and proper person to hold a licence. The QBCC is able to impose conditions on, cancel or suspend a licence in circumstances where the QBCC considers the licensee may no longer be a “fit and proper” person to hold the licence. In addition, QBCC can take disciplinary action against a licensee.

3.9 In addition, under the PD Act, the QBCC may impose conditions on a plumber and drainer licence or take disciplinary action against plumber and drainer licensees.

Disclosure of certain information

3.10 OIR will notify the QBCC of any construction work\(^7\)-related notifiable incident\(^6\) in the State that:
(a) results in a death or serious injury/illness to a person; and
(b) where OIR reasonably believes the incident involves a licence holder under the QBCC Act or the PB Act.

This notification is termed a Significant Incident Notification (SIN) for the purposes of this MOU. Notification of the SIN will occur as soon as reasonably practicable, but usually within seven days of OIR becoming aware or notified of the incident.

3.11 In addition, OIR will notify the QBCC of any other construction work-related incidents, such as a dangerous incident\(^6\) that did not result in the death or serious injury to a person. Notification will be made where OIR reasonably believes the incident involves a licence holder under the QBCC Act or the PB Act and where OIR considers the disclosure is permitted under section 271 of the WHS (see sections 3.4 and 3.5 of this MOU).

3.12 Further OIR will notify the QBCC, as soon as reasonably practicable, if:
(a) during the course of an investigation of a QBCC licence holder who is a person carrying out construction work is subsequently identified as a relevant duty

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\(^6\) See section 48(j) QBCC Act with reference to s31(1)(a), s31(2)(a), s32(1)(g), s32AA(1)(d) or s32AB(1)(d)
\(^7\) s289 Work Health and Safety Regulation 2011
\(^6\) s35(a) and (b) WHS Act
\(^3\) s37 WHS Act
holder under the ES Act or WHS Act. This information will be provided usually within seven days of OIR identifying the licence holder; and
(b) prosecution proceedings are commenced against a QBCC licence holder who is a person carrying out construction work. This information will be provided usually within 14 days of execution of a complaint and summons.

3.13 Information being disclosed under the sections above will include:
(a) the name and licence number of the licensee (if known)
(b) the location of the incident
(c) a brief summary of the incident/relevant matter.

3.14 Disclosure of information will occur by email to the delegated contact person in Schedule 1 of this MOU.

3.15 As noted in section 3.6 the disclosure of information under the ES Act including a serious electrical incident or dangerous electrical event is to be determined on a case by case basis, and will be limited to circumstances where a licence holder under the QBCC Act caused or contributed to a serious electrical incident. Information to be disclosed regarding a serious electrical incident or dangerous electrical event will be provided as soon as reasonably practicable following investigation to determine the circumstances in relation to the QBCC licence holder.

Disclosure of matters subject to prohibition notices and electrical safety protection notices

3.16 Where a prohibition notice or electrical safety protection notice is issued by OIR to a QBCC licence holder, OIR will notify QBCC generally within 48 hours of the issue of the notice. The following information will disclosed by OIR:
(a) the name and licence number of the licensee (if known);
(b) the location where the work was performed which led to the issue of the notice; and
(c) the type of notice issued (e.g. prohibition notice under the WHS Act)
However, no further detail (e.g. nature of alleged offence or notice conditions) will be disclosed.

3.17 In addition, each quarter, OIR (through the delegate in Schedule 1) will provide the QBCC with a summary of electrical safety protection notices under the ES Act and prohibition notices under the WHS Act issued to any QBCC licence holders.

3.18 To facilitate this disclosure the QBCC will supply OIR with an up-to-date list of QBCC licence holders on a quarterly basis to ensure the most current information is supplied.

3.19 Generally the disclosure of this information is considered necessary as the licence holder has allegedly failed to carry out a statutory obligation under the ES Act or WHS Act which is relevant to the QBCC’s function in determining whether a licence holder is a fit and proper person to hold a licence.

3.20 This information will be provided as soon as is reasonably practicable, but usually within two weeks of the end of each quarter.

3.21 Disclosure of information will occur by email to the delegated contact person in Schedule 1 of this MOU.
Part 4 - Governance

4.1 This MOU will commence and be effective from the date of execution by both parties and will continue in force until terminated by either party.

4.2 If there is an issue regarding the application of the MOU, the agencies will use their best endeavors and act in good faith to resolve the issue in a timely manner.

4.3 This MOU may be varied or withdrawn at any time by an agreement in writing executed by the agencies.

4.4 Minor information updates which do not affect the operation or validity of the MOU may be undertaken at any time with the updated information forwarded to the other agencies and appended to this MOU (e.g. updating the contact details listed in Schedule 1).

4.5 The agencies agree to review the MOU within three years of commencement, or within a shorter period if either agency considers a review is required.

4.6 The agencies agree to publish the signed MOU on their respective websites.

4.7 This MOU replaces the MOU between the QBCC and the Department of Justice and Attorney-General dated 23 December 2013.
Signatories

Signed for and on behalf of the:
Queensland Building and Construction Commission
by Mr Brett Bassett, Commissioner

Dated this 14th day of August 2017

Signed for and on behalf of the:
Office of Industrial Relations
by Dr Simon Blackwood, Deputy Director-General

Dated this 24th day of August 2017
## Schedule 1

<table>
<thead>
<tr>
<th>Agency</th>
<th>Contact Officer</th>
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<tbody>
<tr>
<td>Queensland Building and Construction Commission</td>
<td>Director – Compliance and Enforcement</td>
</tr>
<tr>
<td><a href="http://www.qbcc.qld.gov.au">www.qbcc.qld.gov.au</a></td>
<td>Email: <a href="mailto:OIRreports@qbcc.qld.gov.au">OIRreports@qbcc.qld.gov.au</a></td>
</tr>
<tr>
<td>Office of Industrial Relations (including the Electrical Safety Office and Workplace Health and Safety Queensland)</td>
<td>Director - Director Construction Strategy &amp; Compliance</td>
</tr>
<tr>
<td><a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a></td>
<td>Email: <a href="mailto:Daryl.Brooker@oir.qld.gov.au">Daryl.Brooker@oir.qld.gov.au</a></td>
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