



Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill

Report No. 3, 57th Parliament
Housing, Big Build and Manufacturing Committee
April 2024

Housing, Big Build and Manufacturing Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Housing, Big Build and Manufacturing Committee's examination of the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The committee has recommended that the Bill be passed.

The enacted Bill will strengthen the project trust account framework, a framework which in turn strengthens the whole Queensland building and construction industry.

The framework complements the housing and construction actions being driven by the Homes for Queenslanders plan, and will play an important role in meeting the housing construction targets of the Queensland government.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and appeared at the public hearings. I also thank our committee secretariat and Parliamentary Service staff supporting the inquiry.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendations

Recommendation 1

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The committee recommends the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024 (the Bill) seeks to build on reforms implemented under the Queensland Building Plan 2017 and its update in 2021 to create a safer, fairer and more sustainable building and construction industry.¹

Policy objectives

According to the explanatory notes, the Bill:

- **amends the *Building Industry Fairness (Security of Payment) Act 2017* to clarify and simplify:**
 - who is a ‘subcontractor beneficiary’ of a project trust
 - trust account ledger and record keeping requirements
 - retention amount deposits must include GST
 - independent review requirements for trust accounts
 - transitional application of project trust account and retention trust account eligibility.
- **implements recommendations of the Queensland Building and Construction Commission (QBCC) Governance Review Report to:**
 - reduce the Queensland Building and Construction Board from 10 to 7 members and publish a conflict-of-interest register for the Board
 - transfer the responsibility for prescribing technical qualification requirements for licensing under the *Plumbing and Drainage Act 2018* and the *Building Act 1975* from the QBCC to the Department of Housing, Local Government, Planning and Public Works (the department).
- **makes minor amendments to clarify existing provisions, improve registration and regulatory processes and facilitate QBCC’s ability to share information with the department.**

The explanatory notes foreshadow accompanying amendments to the Building Industry Fairness (Security of Payment) Regulation 2018 (the Regulation) which are to commence at the same time as the Bill, if passed.

The amendments to the Regulation are expected to simplify and clarify trust record keeping requirements, the types of subcontractors that are covered by the trust protections, and the trust account review engagement and report requirements.² The committee has not examined proposed amendments to the Regulation.

1.2 Government consultation

The explanatory notes list various consultation activities undertaken with industry and relevant stakeholders in relation to the Bill.³

Officials from the department advised that stakeholder consultation on the Bill has been occurring since early 2023. This included engagement with the Ministerial Construction Council (which comprises key building and construction industry representatives) which generally raised no concerns.

¹ Ms Ainslie Barron, Assistant Director-General, Department of Housing, Local Government, Planning and Public Works (DHLGPPW), Public briefing transcript, 26 February 2024, Brisbane, p 1.

² Explanatory notes, p 2.

³ Explanatory notes, pp 10-11.

The department also advised that auditing and accounting bodies and software providers were consulted regarding the trust record-keeping requirements and supported the clarifications of record-keeping, auditing and reporting provisions of the Building Industry Fairness Act.⁴

1.3 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.3.1 Legislative Standards Act 1992

No significant issues of fundamental legislative principle were identified. The committee was satisfied that the Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Explanatory notes were tabled with the Bill contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.3.2 Human Rights Act 2019

The committee's assessment of the Bill's compatibility with the HRA included consideration of the following human rights:

- the right to privacy
- the right to a fair hearing.

The committee was satisfied that the Bill was compatible with the Human Rights Act and that any potential limitations on human rights proposed by the Bill are demonstrably justified.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA and provided a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill be passed.

⁴ Ms Ainslie Barron, Assistant Director-General, Department of Housing, Local Government, Planning and Public Works, Public briefing transcript, 26 February 2024, Brisbane, p 3.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Amendments to the Building Industry Fairness (Security of Payment) Act 2017

2.1.1 Background

The project trust account framework (the framework) is designed to strengthen the security of payments to subcontractors in Queensland's building and construction industry. The framework is intended to protect 'subcontractor' payments, encourage prompt payment by the trustee of subcontractor entitlements, and reduce the severity of insolvency impacts to subcontractors who have little form of legal protection.⁵

Under trust account framework there are two types of trust accounts, project trust accounts and retention trust accounts. These trust accounts are used to hold progress payments and retention amounts on behalf of the parties entitled to them.

The framework currently applies to eligible Queensland Government contracts of \$1m or more, and private sector contracts of \$10m or more. Commencement of the remaining phases is expected to occur in March 2025 (private sector contracts of \$3m or more) and October 2025 (private sector contracts of \$1m or more, as well as extending retention trusts throughout the contractual chain).⁶

The explanatory notes state that since establishment, trust accounts have secured funds in more than 1,200 contracts to the value of more than \$20.7 billion and that that has provided payment security for industry, primarily subcontractors.⁷

In 2022, the Department of Housing, Local Government, Planning and Public Works (the department) commissioned an independent assessment of the Project Trust Account framework. That assessment found that 'the industry has successfully adapted to the fundamental requirements of the framework'. However, 'existing accounting software packages could not readily be updated for the trust account record-keeping requirements, there were differing levels of industry understanding of the framework and what was needed to comply, and opportunities were identified to ease compliance for industry'.⁸

Based on this assessment, the Bill makes several amendments to the Building Industry Fairness Act with the aim of clarifying and simplifying provisions. The department advised that the amendments do not change the framework or existing policy.⁹

2.1.2 Defining a subcontractor beneficiary

The Bill seeks to simplify the approach used to determine which parties are protected by and paid through a project trust account. It does this by amending the Building Industry Fairness Act to clarify that parties contracted to carry out works and supply goods/or services for which a relevant licence or registration is required are beneficiaries of the trust account.¹⁰

⁵ Explanatory notes, p 5.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, p 3.

⁸ Ms Ainslie Barron, Assistant Director-General, Department of Housing, Local Government, Planning and Public Works (DHLGPPW), Public briefing transcript, 26 February 2024, Brisbane, p 2.

⁹ Ms Ainslie Barron, Assistant Director-General, DHLGPPW, Public briefing transcript, 26 February 2024, Brisbane, p 2.

¹⁰ Explanatory notes, p 6.

The Bill retains an existing head of power to prescribe additional types of work as being subcontracted work.¹¹

2.1.2.1 Stakeholder views

The Queensland Small Business Commissioner (QSBC) supported the amendment, submitting that the clarification will make it easier for small businesses in the construction industry to understand their rights and responsibilities and reduce the administrative effort for trustees in assessing whether a subcontractor payment must be held in trust or not.¹² The Housing Industry Association was also supportive of the greater clarity with respect to who a subcontractor beneficiary is.¹³

Master Builders Queensland (MBQ) agreed with the intent of the amendment. However, submitted that the new definition could create unintended complexities for head contractors in certain circumstances such as when a subcontractor company is not required to be licensed but the individual worker is.¹⁴

2.1.2.2 Department' response

In response, the department advised that the current approach uses a definition of 'protected work' that some consider to be ambiguous and difficult to apply in practice. To address this, the Bill proposes a simpler approach which generally captures parties contracted to carry out work and services for which a relevant licence or registration is required.¹⁵

The department advised that the approach aligns with established industry practices and is intended to reduce administrative effort for trustees and avoid the need for detailed and complex technical assessments of the type of work to be carried out under each subcontract.¹⁶

The department also advised that the Bill includes a provision allowing for the making of a guideline about compliance with the Building Industry Fairness Act which will provide an opportunity to respond, if necessary, to emerging issues relating to application.¹⁷

2.1.3 Trust account ledger and record keeping requirements

Trust account records are intended to support transparency and provide assurance outcomes for trust amounts and administration. Trustees are responsible for keeping certain trust records and copies of related documents in accordance with statutory requirements.¹⁸

Currently, the Building Industry Fairness Act specifies the records that must be kept. The explanatory notes state that the level of prescriptiveness in the Act limits flexibility for industry and software to respond with automated and streamlined solutions.¹⁹

To address this, the Bill provides a regulation-making power to prescribe simplified record-keeping requirements for industry. It also introduces a head of power to make guidelines about these matters.

¹¹ DHLGPPW, correspondence, 15 March 2024, p 8.

¹² Queensland Small Business Commissioner, submission 8, p 2.

¹³ Housing Industry Association, submission 5, p 3.

¹⁴ Master Builders Queensland, submission 3, p 2.

¹⁵ Ms Ainslie Barron, Assistant Director-General, DHLGPPW, Public briefing transcript, 26 February 2024, Brisbane, p 1.

¹⁶ DHLGPPW, correspondence, 15 March 2024, p 8.

¹⁷ DHLGPPW, correspondence, 15 March 2024, p 8.

¹⁸ Explanatory notes, p 6.

¹⁹ Explanatory notes, p 6.

2.1.3.1 Stakeholder views

The QSBC supported the amendments and submitted that they will help reduce the time and cost imposts on small business. The QSBC also submitted that moving the record keeping prescriptions to regulation will allow for more timely future amendments should they be needed.²⁰

The QSBC recommended that small business and industry associations be thoroughly consulted in drafting the regulation amendments and supporting materials to ensure that the regulation is practical and effective for industry.²¹

Master Builders Queensland outlined its support for any amendment that will simplify record keeping and audit requirements which reduce the administrative and costs for head contractors.²²

The Housing Industry Association was supportive of the development of a supplementary guideline and asked that there be clarity with respect to how it should be used from a compliance and enforcement perspective.²³

Master Electricians Australia noted that there is potential that software may replace the need for bank reconciliations but does not support its removal until appropriate software is in place.

2.1.3.2 Departmental response

The department acknowledged the current complexities relating to the keeping of trust records. The department advised that the proposed amendments in the Bill respond directly to these matters and seek to remove the current legislative prescriptiveness that was preventing the development of software solutions.²⁴

The department advised that an amendment to the Building Industry Fairness Regulation will provide simplified record keeping requirements that align to standard accounting practice. These are being drafted in consultation with accounting practitioners and software providers to ensure ease of compliance for industry.²⁵

The department also advised that it is intended that consultation will take place with stakeholders during the drafting of these regulation amendments. Engagement is also continuing with more than 30 software providers to support the development of a range of fit-for-purpose software solutions that will help to automate industry compliance.²⁶

2.1.4 Treatment of GST for retention accounts

A retention trust account is intended to protect cash retentions until they are due to be paid in accordance with a contract at practical completion and/or the end of a defects liability period. The Bill clarifies that trust protections apply to the full retention amount including GST and that the GST-inclusive amount must be held in a retention trust account.²⁷

²⁰ QSBC, submission 8, p 2.

²¹ QSBC, submission 8, p 2.

²² Master Builders Queensland, submission 3, p 3.

²³ HIA, submission 5, p 3.

²⁴ DHLGPPW, correspondence, dated 15 March 2024, p 9.

²⁵ DHLGPPW, correspondence, dated 15 March 2024, p 9.

²⁶ DHLGPPW, correspondence, dated 15 March 2024, p 9.

²⁷ Ms Ainslie Barron, Assistant Director-General, DHLGPWPW, Public briefing transcript, 26 February 2024, Brisbane, p 2.

The department advised that this has been previously communicated to industry through QBCC guidance material and is consistent with the original policy intent of the Building Industry Fairness Act.²⁸

2.1.4.1 Stakeholder views

Inquiry stakeholders submitted mixed responses on this amendment.

The Queensland Small Business Commissioner supported the amendment submitting that it will help ensure the correct cash retention amounts are retained by trustees, which reduces the risk of shortfall for contractors in the event of insolvency.²⁹ The National Fire Industry Association supported the amendment for similar reasons.³⁰

Master Builders Queensland submitted that the amendment does not reflect Australian Tax Office (ATO) rulings on retention and GST and provided a 2009 tax ruling from the ATO to support this position. MBQ submitted that the proposed amendment imposes unnecessary costs on business without commensurate benefit as it would require the trustees to set aside GST amounts for lengthy periods without the ability to claim an input tax credit for those until the end of the project, due to the operation of existing Tax Rulings.³¹

Master Builders Queensland recommended that amendments do not commence until an ATO Tax Ruling be obtained by the government to the effect the trustee of the retention trust account can claim an input tax credit for the GST paid into the retention trust account at the time of payment into the trust account.³²

The UDIA expressed a similar view submitting that retention money paid into a retention account should be GST exclusive. The UDIA submitted that the proposed amendment could have a cost impact on the retention holder, and would require changes to administrative procedures at a further cost to business. The UDIA also recommended that the GST should not be required to be retained for retention amounts until a further ATO Tax Ruling is received.³³

The Property Council of Australia agreed also noting that the obligation to pay GST on contract sums is typically included within contracts and the timing of payment of that GST liability is provided for in the GST clause.³⁴ The Property Council contended that the proposed amendments confuse this issue and are at risk of mandating a GST liability which the parties otherwise have not agreed by the terms of the contract.³⁵ Housing Industry Australia (HIA) expressed similar views and submitted that additional clarification and education on this amendment is necessary.³⁶

2.1.4.2 Departmental response

The department advised that the amendment makes clear that the full retention amount is protected and reduces the risk to subcontractors of shortfalls in the event of a head contractor insolvency. The department explained that the amendment will also provide clarity for head contractors and will mean

²⁸ Ms Ainslie Barron, Assistant Director-General, DHLGPWPW, Public briefing transcript, 26 February 2024, Brisbane, p 2.

²⁹ QBSC, submission 8.

³⁰ National Fire Industry Association, submission 6, p 2; QSBC, submission 8, p 2.

³¹ Master Builders Queensland, submission 3, p 4.

³² Master Builders Queensland, submission 3, p 4.

³³ UDIA, submission 4, p 2.

³⁴ Property Council of Australia, submission 7, p 2.

³⁵ Property Council of Australia, submission 7, p 2.

³⁶ Housing Industry Association, submission 5, p 3.

they do not need to find additional funds to cover a potentially large amount of GST when the time comes to pay retentions.³⁷

The department noted that tax GST attribution and timing rulings provided by submitters were provided at a time prior to the introduction of trust accounts and therefore do not contemplate this scenario. The department advised that it has engaged an independent taxation expert to provide advice and engage with the ATO on this matter.³⁸

The department stated that it is aware of the need to support implementation of the Bill, if passed, with targeted education stating that it is intended the amendments will commence by proclamation to ensure sufficient time for industry awareness and transition.³⁹

2.1.5 Independent trust account reviews

Currently, trustees of retention trusts are required to engage a registered company auditor each year to review their record keeping and general compliance with the trust account framework.

The Bill seeks to simplify this requirement by providing that an account review maybe carried out by another person prescribed by regulation, in addition to registered auditors. The explanatory notes state that it is intended to prescribe in the Building Industry Fairness Regulation that a registered accountant is also an auditor for the purpose of carrying out trust account reviews.⁴⁰

The Bill also amends the Building Industry Fairness Act to provide that the engagement of the auditor must comply with requirements outlined in the amended Building Fairness Regulation. It is intended that the regulation will prescribe an 'agreed upon procedures' audit approach that is approved and published by the chief executive.⁴¹ The notes state that these types of audits are considered less intensive, thereby lowering costs for the trustee while maintaining an appropriate level of oversight.⁴²

The Bill also extends the circumstances in which a trustee may apply for an exemption from providing an account review report. This includes circumstances where there have been no new transactions or changes to the account during the review period.⁴³

The department advised that collectively, these amendments are expected to reduce costs for industry and will address constraints due to the limited availability of registered auditors nationally.⁴⁴ The department also confirmed that it will continue to engage with the accounting industry to ensure appropriate guidance materials are provided.⁴⁵

2.1.5.1 Stakeholder views

There was broad support from inquiry participants who noted that the amendments will streamline the process and make it more cost effective for business.⁴⁶

³⁷ Ms Ainslie Barron, Assistant Director-General, DHLGPPW, Public briefing transcript, 26 February 2024, Brisbane, p 2.

³⁸ DHLGPPW, correspondence, 15 March 2024, p 10.

³⁹ DHLGPPW, correspondence, 15 March 2024, p 11.

⁴⁰ Explanatory notes, p 7.

⁴¹ Explanatory notes, p 7.

⁴² Explanatory notes, p 7.

⁴³ Explanatory notes, p 7.

⁴⁴ Ms Ainslie Barron, Assistant Director-General, Department of Housing, Local Government, Planning and Public Works, Public briefing transcript, 26 February 2024, Brisbane, p 2.

⁴⁵ Department of Housing, Local Government, Planning and Public Works, correspondence, dated 15 March 2024, p 12.

⁴⁶ HIA, submission 5, p 4.

Committee comment

The Project Trust Account Framework is an important mechanism to strengthen the security of payments to subcontractors in Queensland's building and construction industry. The Bill implements a range of measures to clarify and simplify the framework following an independent review.

For the most part, inquiry participants supported the amendments proposed by the Bill. Measures which clarified who is a subcontractor and simplified record keeping and audit requirements were particularly welcomed.

While mixed feedback was received on amendments relating to how GST should be treated in retention accounts, the department explained that the approach is intended to ensure the full amount of retention monies is protected to reduce the risk to subcontractors of shortfalls in the event of a head contractor insolvency. This is a laudable aim and understood by the committee to be the original intent of the framework. The department also confirmed that it has engaged a tax expert to engage with the Australian Tax Office on this provision and intends to implement a targeted education program should the Bill be passed.

Accordingly, the committee is satisfied that the amendments to the Building Industry Fairness Act are appropriate.

2.2 Queensland Building Construction Commission (QBCC) Governance Review

The Bill implements two recommendations from the QBCC Governance Review Report which was completed in 2022 with the aim of ensuring that QBCC governance arrangements reflect best practice and are fit-for-purpose.⁴⁷

2.2.1 Board and conflict of interest requirements

The Bill amends the QBCC Act to reduce the size of the Queensland Building and Construction Board from 10 persons to 7 persons, including the chair, to improve board effectiveness.⁴⁸ The department advised that this action was delivered with the appointment of a 7 person board in late 2022 and that the Bill's amendments will formalise this arrangement.⁴⁹

The Bill also provides that a register of QBC Board conflict of interest disclosures is formally recorded and made publicly available. According to the explanatory notes, this amendment will enhance transparency and accountability by requiring details of these disclosures recorded in meeting minutes to be published in a register. The amendments also enable the register to contain disclosures from former members and other information as the commission considers appropriate.⁵⁰

2.2.1.1 Stakeholder views

The QSBC supported the proposed amendments, and also recommended that small businesses be represented on the board, alongside representatives from larger industry players as having a diverse range of experience on the board would lead to more balanced and inclusive governance benefiting the entire industry.⁵¹

2.2.1.2 Departmental response

In response, the department advised that members are appointed by the Governor in Council as part of a significant appointment process in accordance with the QBCC Act and relevant government

⁴⁷ Explanatory notes, p 1.

⁴⁸ Explanatory notes, p 8.

⁴⁹ Ms Ainslie Barron, Assistant Director-General, Department of Housing, Local Government, Planning and Public Works, Public briefing transcript, 26 February 2024, Brisbane, p 2.

⁵⁰ Explanatory notes p 8.

⁵¹ QSBC, submission 8, p 3.

guidelines. The department stated that nominees are sought from a wide range of sectors and backgrounds to ensure an appropriate mix of skills, diversity and experience, as required by the QBCC Act, and that appointments are ultimately a decision for the responsible Minister and the Governor in Council.⁵²

The department also advised that QBCC is informed by an Industry Advisory Group (IAG) which was established following the QBCC Governance Review, to allow the QBCC Board to effectively engage with the sector. The IAG currently includes representation from building and construction industry businesses of varying sizes.⁵³

2.2.2 Transfer of technical qualification requirements to department

The QBCC Governance Review also recommended that the QBCC refocus its regulatory role on licensing and compliance of the industry.⁵⁴ Accordingly, the Bill includes amendments to transfer responsibility for prescribing technical qualification requirements issued under *the Plumbing and Drainage Act 1975* and the *Building Act 1975* to the department.

2.2.2.1 Stakeholder views

The Queensland Small Business Commissioner (QSBC) supported the proposed amendments. The QSBC suggested that this change be followed by both the QBCC and the department reviewing policies and practices to ensure the main object of the Acts are met in the simplest way streamlining the time and cost impact on small business.⁵⁵

2.2.2.2 Departmental response

In response, the department confirmed that it is working closely with QBCC to transition the approval of technical qualifications under the *Building Act 1975* and *Plumbing and Drainage Act 2018*, and that this transition will include a review of the relevant policies and practices by the department to ensure that the intended outcomes are delivered in an effective and efficient manner.⁵⁶

Committee comment

The committee is satisfied that amendments relating to the governance of the QBCC and the transfer of technical qualification requirements from the QBCC to the department are appropriate.

2.3 Amendments of *Architects Act 2002* and *Professional Engineers Act 2002*

2.3.1 Operational amendments

The Bill includes technical amendments to the *Architects Act 2002* and the *Professional Engineers Act 2002* which are primarily operational. According to the explanatory notes, the Bill seeks to ensure that information provided during registration processes for architects and professional engineers is accurate and reliable.⁵⁷

The Bill also provides guidance to the Queensland Civil and Administrative Tribunal (QCAT) and the courts about awarding reasonable legal and investigation costs if a person is found guilty of breaching the *Architects Act*. The notes state that the changes in the *Architects Act* for awarding reasonable costs align with similar provisions of the *Professional Engineers Act*.⁵⁸

⁵² DHLGPPW, correspondence, 15 March 2024, p 6

⁵³ DHLGPPW, correspondence, dated 15 March 2024, p 7.

⁵⁴ Explanatory notes, p 1.

⁵⁵ QSBC, submission 8, p 4.

⁵⁶ DHLGPPW, correspondence, 15 March 2024, p 6.

⁵⁷ Explanatory notes, p 1.

⁵⁸ Explanatory notes, p 1.

The department advised that clarifying these provisions will support the boards in maintaining the integrity of Queensland's architecture and engineering professions and registration framework.⁵⁹

2.3.1.1 Stakeholder views

The Australian Institute of Architects (AIA) raised concerns about the clauses relating to the Queensland Civil and Administrative Tribunal (QCAT) and the Courts following a finding of guilt in relation to unsatisfactory professional conduct of architects or offences against the *Architects Act 2002*.⁶⁰

Specifically, AIA submitted that the awarding of costs in relation to an architect would create a disparity in the application of legislation and an unfair and unjust penalty, when compared to other regulated professions and practitioners across all registration and licensing bodies and authorities.⁶¹ AIA believed that the power to award costs may be disproportionate and insufficiently defined and, as such, had the potential to impose a greater penalty on an architect than was envisaged.⁶²

2.3.1.2 Departmental response

In response, the department advised that the proposed amendments do not confer additional powers to the QCAT or the Courts. Rather, the amendments are intended to clarify and provide guidance to the QCAT and the Courts that these matters may be considered, depending on the matter at hand.⁶³

The department advised that the QCAT and the Courts are already empowered in relation to orders about costs and pointed to various provisions in the *Justice Act 1886* as well as the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) which states that each party usually bears its own costs, although the QCAT may make orders relating to costs depending on the circumstances.⁶⁴

The Ministerial Construction Council (MCC) was consulted on the key amendments in the Bill and raised no concerns.⁶⁵

The department also noted that the *Professional Engineers Act 2002* (which extensively mirrors the Architects Act) contains similar guidance for the QCAT and the Courts in relation to investigation costs. The Ministerial Construction Council (MCC) was consulted on the key amendments in the Bill and raised no concerns.⁶⁶

Committee comment

The committee is satisfied that amendments to the Architects Act 2002 and the Professional Engineers Act 2002 are appropriate, noting that the proposed amendments do not confer additional powers to the QCAT or the Courts.

⁵⁹ Ms Ainslie Barron, Assistant Director-General, Department of Housing, Local Government, Planning and Public Works, Public briefing transcript, 26 February 2024, Brisbane, p 2.

⁶⁰ Australian Institute of Architects, submission 1, p 1.

⁶¹ Australian Institute of Architects, submission 1, p 1.

⁶² Australian Institute of Architects, submission 1, p 1.

⁶³ DHLGPPW, correspondence, 15 March 2024, p 5.

⁶⁴ DHLGPPW, correspondence, 15 March 2024, p 5.

⁶⁵ DHLGPPW, correspondence, 15 March 2024, p 5.

⁶⁶ DHLGPPW, correspondence, 15 March 2024, p 5.

Appendix A – Submitters

Sub #	Submitter
1	Australian Institute of Architects
2	Master Electricians Australia
3	Master Builders Queensland
4	UDIA Queensland
5	Housing Industry Association Ltd
6	National Fire Industry Association of Australia
7	Property Council of Australia
8	Queensland Small Business Commissioner
9	Queensland Law Society

Appendix B – Officials at public departmental briefing

Brisbane, 26 February 2024

Department of Housing, Local Government, Planning and Public Works

- Ainslie Barron, Assistant Director-General
- Michelle Hill, Executive Director
- Megan Johns, Director

Appendix C – Witnesses at public hearing

Brisbane, 18 March 2024

Master Builders Queensland

- Paul Bidwell, Chief Executive Officer
- Kate Raymond, General Manager Advocacy and Policy

Master Electricians Australia

- Robert Pearson, General Manager of Operations
- Georgia Holmes, Policy and Communications Advisor

Housing Industry Association

- Paul Leven, Queensland Deputy Executive Director
- Morgan Blake, Workplace Services Manager Queensland

Australian Institute of Architects

- Dr Anna Svendsdotter, Executive Director
- Amy Degenhart, Immediate Past President, Qld Chapter
- Paul Zanatta, National Manager, Advocacy and Policy

Brisbane, 22 March 2024

Queensland Small Business Commissioner

- Dominique Lamb, Small Business Commissioner

STATEMENT OF RESERVATIONS
BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) AND OTHER
LEGISLATION AMENDMENT BILL 2024
JIM MCDONALD MP (DEPUTY CHAIR) AND MICHAEL HART MP

As Opposition Members of the Committee, we place on the record our acknowledgement of the critical importance of the construction industry in the state.

Queensland is currently beset by a Housing Crisis leaving working families without a roof over their head. It is now well acknowledged the reason behind this is because of a critical lack of housing supply.

Similarly, much of the state's public infrastructure is groaning under the weight of a growing population coupled with a lack of adequate investment over the last decade. The state's roads, rail, hospitals and schools are increasingly under pressure.

It is important to note these issues in the context of this Bill. The legislative changes proposed in the Bill have a direct impact on how the construction industry functions. In order to address the state's housing crisis and ailing public infrastructure Queensland must have a fair and productive construction sector.

Project Trust Account Framework

All workers in Queensland's construction industry deserve protections to ensure that their worksite is safe, and that they are paid fairly for the work they do. If a tradie has done a job, they deserve to be paid fairly for it. They also deserve protections should financial issues impact on the project they are working on.

While project trust account framework might be well intentioned, the Committee quite clearly heard that there continue to be concerns around its practical application and implementation. These concerns still remain within the industry despite the modifications outlined in the Bill.

It is worth noting that the implementation of the framework has been repeatedly delayed, and changes continue to be made on the run. Given the prevailing conditions the industry continue to face, certainty is required, not instability.

Subcontractors are still not being paid

We received evidence from the Master Builders Queensland that at least four head contractor insolvencies involving project trust accounts have occurred, and no subcontractors have been paid from a trust account following the insolvency as at early March 2024.¹

Industry representatives made clear that the Queensland framework does not address consequences of late payment by principals (e.g. Government and developers). A 2023 survey of Master Builders members carrying out Government and Government-funded building contracts identified late payments were a common occurrence. Over 65 per cent of responses stated they were not always paid on time.²

¹ Master Builders Queensland, submission 3.

² Master Builders Queensland, submission 3.

The Report of the Building Industry Fairness Reforms Implementation and Evaluation Panel – the independent review of how the scheme was working – to section 200A of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Report) also noted the repeated calls for increased protection for head contractors when principals paid late.³ The Evaluation Panel heard:

*“...the few subcontractors being paid via PBAs the Panel heard from confirmed that nothing had changed in terms of payment times, but also that they had never had issues with late payment from the head contractor that was now paying them via a PBA.”*⁴

Treatment of GST

A significant issue raised industry stakeholders as part of the Committee’s inquiry was the proposed treatment of GST in the Bill which requires retention amount deposits to be inclusive of GST. Industry told the Committee that this places yet another financial burden on business.

Master Builders Queensland, Urban Development Institute Association Queensland and the Property Council of Australia all told the Committee that the party paying the retention amount will not be able to recover input tax credits until after the tax period in which it receives an invoice or pays the retention amount to the subcontractor. This could potentially be months later and hold up critical cashflow. This not only has a cost impact on the retention holder, but also requires comprehensive changes to administrative procedures, which also attracts a cost to business.

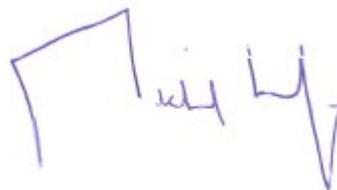
There is still a lack of software available to the industry

The lack of software available to industry to implement the framework is also worrying. While we acknowledge that steps are being taken to address this matter, industry stakeholders still remain concerned about the impact this will have on the sector.

It is for the abovementioned reasons that as members of the Committee, we hold reservations with the Bill in its current form, and wish to place them on the record.



Jim McDonald MP
Deputy Chair
Member for Lockyer



Michael Hart MP
Member for Burleigh

³ Building Industry Fairness, An Evaluation of Queensland’s Building Industry Fairness Reports, https://www.housing.qld.gov.au/_data/assets/pdf_file/0011/9200/buildingindustryfairnessreforms.pdf

⁴ *Ibid*, p 22.