# *HOUSING, BIG BUILD AND MANUFACTURING COMMITTEE*

**Members present:**
Mr CG Whiting MP—Chair
Mr JJ McDonald MP
Mr DJ Brown MP
Mr MJ Hart MP
Mr RI Katter MP (virtual)
Mr TJ Smith MP

**Staff present:**
Ms S Galbraith—Committee Secretary
Ms V Lowik—Assistant Committee Secretary

# PUBLIC HEARING—INQUIRY INTO THE BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) AND OTHER LEGISLATION AMENDMENT BILL 2024

## TRANSCRIPT OF PROCEEDINGS

**Monday, 18 March 2024**

**Brisbane**

# MONDAY, 18 MARCH 2024

**The committee met at 10.22 am.**

**CHAIR:** Good morning. I declare open this public hearing for the committee's inquiry into the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024. My name is Chris Whiting. I am the member for Bancroft and chair of the committee. I want to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share. Other committee members here with me today are Jim McDonald, member for Lockyer and deputy chair; Don Brown, member for Capalaba; Michael Hart, member for Burleigh; Robbie Katter, member for Traeger, who is appearing via teleconference; and Tom Smith, member for Bundaberg.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages.

## BIDWELL, Mr Paul, Chief Executive Officer, Master Builders Queensland

## RAYMOND, Ms Kate, General Manager, Advocacy and Policy, Master Builders Queensland

**CHAIR:** I welcome representatives from Master Builders Queensland. Good morning. I invite you to make an opening statement and after that we will have questions for you.

**Mr Bidwell:** Thank you, Chair. Good morning. Master Builders represents almost 10,000 members across Queensland—5½ thousand builders and over 3,300 trade contractors, many of whom are subcontractors, and the vast majority are small businesses. We agree wholeheartedly that timely payments are essential for all parties in the building industry, but we have not altered our view one bit since responding to the state government's 2015 discussion paper that project bank accounts, now project trust accounts, are not the solution to security of payment. Project trust accounts add an enormous administrative burden and cost to comply with the complex maze of legislative obligations requiring additional staff hours and costly software systems. For small builders, that could kill their business.

We cannot stress enough the chaos that will ensue when project trust accounts are required for contracts down to $3 million and then $1 million next year. They are an unnecessary and complex overlay on top of the many security of payment measures already in Queensland legislation and there is no evidence that they have made a scrap of difference over the past six years. In fact, there have been recent builder insolvencies and, despite there being project trust accounts, the subcontractor had not been paid for their work. There are alternatives but the government at every turn has chosen to ignore the industry's input and continue down this path, overlooking the fact that their claims that Queensland's security of payment regime will ensure subcontractors are paid on time, in full, every time do not stand up to scrutiny. There is no demonstrated benefit.

Notwithstanding this long held position, we support amendments that reduce the administrative burden on head contractors, noting that there is still nothing in the regime that protects a head contractor from late or non-payment by the principal or developer. Unfortunately, we believe some of the proposed amendments will not achieve this purpose, including the amendment to GST and retentions; the change to when a head contractor cannot withdraw amounts; and the definition of 'beneficiary'. Finally, we note that, while having compliant software is an improvement, it will come at

a cost to builders, especially the smaller businesses, and will not take away the obligation of a trustee or the need for mum and dad builders to understand entirely new systems and the complexities that go with trust ledgers and trust records. Thank you.

**CHAIR:** I was looking at the issue regarding GST. From what I see here obviously the GST equivalent amount needs to be transferred into that trust account, but you are looking to be able to claim that input tax credit for that. Can you explain a bit more about that process and describe precisely what are input tax credits?

**Ms Raymond:** At present there are ATO tax rulings in relation to retention and GST.

**CHAIR:** A very long one.

**Ms Raymond:** Yes. The tax office recognised that holding retention amounts for long periods and having to hold GST for long periods would not be a good outcome so came to the view that the GST is payable on the transaction—the payment to the subcontractor at practical or final completion. With the payment into the retention trust account of GST, unless there is a change to a tax ruling, that means that the GST will sit there in that retention account and the head contractor will not be able to claim an input tax credit, which is essentially the quid pro quo. They receive the GST from the developer—that is great—and they pay that GST to the tax office within either one month or three months, depending on the size of their business. Similarly, if they pay GST out, they claim an input tax credit. The whole workings of the GST system rely on this and the tax rulings with retention throw that out of kilter, so our view is that if this change is to be made—which still must be acknowledged does require a change of accounting, a change of practices for business—the input tax credit must be able to be obtained at the time of payment into the retention trust account and that would require an ATO tax ruling in our view.

**CHAIR:** So the input tax credits are obviously very important when it comes to the end of the financial year. You need to be able to claim those credits; is that right? I am taking a very layman's view of this.

**Ms Raymond:** Yes, and I believe more frequently than that.

**CHAIR:** Okay, of course; every three months, I think it would be, wouldn't it?

**Mr HART:** The BAS.

**CHAIR:** The BAS, yes.

**Mr Bidwell:** But the cost to the builder over time can be massive, and that is money that is there.

**CHAIR:** I understand.

**Mr McDONALD:** Thank you very much for your submission, Paul and Kate. In your opening statement, Paul, you said this will not assist; it will be a cost to business. I note in your submission you talk about how the solution may be at a federal level in terms of having subcontractors placed higher in the order of creditor priority. I respect that. Is there anything we can do at a state level, as opposed to this, that your industry would like to see?

**Ms Raymond:** Our view is that there have been enormous changes in the space of security of payment in Queensland in the past, say, 10 or even 20 years. Not only do we have a system of rapid adjudication like other states; we also have a number of other provisions to assist in terms of payment. We have offence provisions in the BIF act itself, requiring payment to be made on time and the scheduled amount that is due or the full amount if there is no schedule. We also have a unique situation in Queensland, as far as I am aware, that it is a requirement of the licence for those builders who hold a QBCC licence, which all of them should, that they pay their subcontractors and suppliers. A subcontractor who is not paid by a licensed builder can simply contact the QBCC and make a complaint known as a 'moneys owed' complaint. This is a fairly swift and free process by which the QBCC will determine, through its moneys owed complaint team, whether or not the amount is in fact an undisputed debt. If it is, they will then proceed to take licensing action if necessary. We understand anecdotally from the regulator that the majority of complaints of non-payment are in fact resolved through this free and simple process.

**Mr Bidwell:** The thing that we have seen over the years is the lack of understanding of what people's rights are and their responsibilities. We have said all along that this is a big education piece and that, if the government had introduced compulsory CPD—continuing professional development—for all contractors, we may not be dealing with the size of the issue that we currently are.

**CHAIR:** I refer to the amendment to section 20A that replaces the reference to 'liable to pay' with the phrase 'entitled to be paid', which is quite an interesting and specific one. Can you expand on that? We have read through it but certainly for people reading the transcript and listening today it would be great to hear your point of view on that one.

**Ms Raymond:** We do not dispute that the phrase 'liable to pay' and the workings of section 20A are complex, difficult to interpret and uncertain. However, the replacement of the phrase with the term 'entitled to be paid' confuses us, because that phrase is not defined and it is used in differing contexts in the legislation. It is not a well understood term at common law and it is not defined in the legislation. We believe it will lead to greater confusion than what is currently the case. We are very confused by this proposed amendment.

**Mr HART:** Paul, pbank accounts have been in since 2017-ish. You said that a number of builders had gone broke and subbies did not get paid. The government said subbies would be paid on time, every time if the project bank accounts were in place. Do you know what went wrong? Why did the subbies not get paid if the money were in a project bank account?

**Mr Bidwell:** I will give you the simple answer and Kate will give you probably the legal, correct answer. Hopefully there is not much difference between the two. With the way it is set up, the builder is quite entitled to take the money out of that account until the day it is due to be paid. That is about who is the beneficiary. The builder might be paid; they can put it in. I know that I am repeating myself. They can take it out as long as it goes back in on the day that it needs to be paid.

**Ms Raymond:** I would like to add to that, if I could. This goes to the heart of our submission, I suppose, that project trust accounts simply do not work and that it is a square peg in a round hole. A builder has a fixed price contract and out of that contract needs to pay all sorts of things—subcontractors, suppliers, their own employees, their business costs, their overheads, their tax, everything. When a certain part of that amount needs to be hived off in trust and held in trust but not all of it, we suddenly face a very unique situation that does not exist with other trust accounts such as legal trust accounts or real estate trust accounts or, in fact, retention trust accounts which are quite simple by comparison. The builder must be able to take money out of that project trust account as the builder goes in order to keep the business running. That is a necessary part of business. The rules are simply unable to mean that the money must sit and stay there the minute it gets paid in by a client or every single builder operating a project trust account will instantly become insolvent, in our view. In our view, the system simply and fundamentally does not work for that reason.

The other aspect is that money does not simply appear in the account. If a builder is already perhaps facing a point where the developer or client has not paid what the builder claims is due—and the client may well have a legal reason to do this—but if that money has not been paid in the builder cannot simply magic the money if he or she does not have it available through other funds to top up. If the money is not there, the money is simply not there.

**Mr HART:** Stepping around the fact that you do not think this whole system works, the money was in there, it was taken out and the subbies were not paid. Is there anything in this legislation that fixes that problem?

**Ms Raymond:** Not in our view, no.

**Mr HART:** With regard to the GST, it has been suggested that that is put aside. You may not be able to answer this question, but is there any legal impediment from the ATO side of things that stops that money from shifting from the person who is ultimately responsible into a project bank account?

**Ms Raymond:** Can I clarify the question? Are you asking: if the money is paid into the account, is there anything to stop that money being paid elsewhere?

**Mr HART:** You said that there was a need for an ATO ruling as far as the input credit went. Is there anything else that the ATO specifies that you cannot take that GST money and put it somewhere else; that this legislation is forcing that move?

**Ms Raymond:** Not that I am aware of. I do not believe that the ATO would particularly worry about where the money was provided it was paid at the point of the transaction, which is payment to the subcontractor at practical completion.

**Mr HART:** Was Master Builders consulted about this change?

**Ms Raymond:** It is a very good question that you ask. We have gone back to the department to understand how the decision was made. We were aware that a question was raised around whether GST was in or out. We were told that there was a slide presented at one of the committee meetings.

Unfortunately, neither Paul nor I were in attendance; a colleague was. There was nothing in the minutes or in writing that we could find to suggest that this change was coming so we felt unaware of the change when we read the bill.

**Mr HART:** Paul, with regard to software, the system has been in place since 2017. Is there any software that works yet?

**Mr Bidwell:** My understanding is that there is one system that is compliant. There have been a lot of efforts made and the department has been working with groups like MYOB and others because there are lots of business software systems in place, but none of them can deal with the Queensland project trust account regime.

**Mr HART:** Can you guess how much GST a company that presently has a project bank account may have to put into the project bank account to cover GST? Are we talking hundreds of thousands, millions, tens of millions?

**Ms Raymond:** It will depend on the—

**CHAIR:** That is fairly speculative.

**Mr HART:** It is 10 per cent, isn't it?

**CHAIR:** Yes, 10 per cent of everything, but in terms of the amounts that are expected and what size.

**Ms Raymond:** If I could add one point about the software: the one that we believe is compliant has a manual handling aspect to it so a dual input/dual entry. Just to clarify, it is not an automated system.

**Mr SMITH:** Paul, you mentioned CPD, continuing professional development. Could you elaborate on that further? How do you believe that would be of greater benefit?

**Mr Bidwell:** The qualifications that builders and trade contractors need are mostly technical. To become a contractor, you need to do a business management course where the rules are set. There is not enough in there about financial management and running a business. For many years, we have been offering that course to our members who are both trade contractors as well as builders. The reality is that these people are small businesses. They are very good at the technical side of what they do, but when it comes to running the business they are not so great. It just defies belief that people will continue to work with builders—this is the trade contractors. We have heard it so often: 'I've been working with this person for many years. They have always looked after me.' It always works until it does not. If they knew their rights and responsibilities, CPD would be one way to help make sure that happens.

**Mr SMITH:** When Master Builders provides some of that training and professional development, they are certified trainers through Master Builders; is that correct?

**Mr Bidwell:** Yes. At the moment, we are relying on an accountant to do most of the training in Brisbane who does nothing but deal with our industry.

**Mr SMITH:** Are there other industries, peak bodies, organisations or training operators that do the same or does Master Builders almost exclusively run these?

**Mr Bidwell:** I am sure they do although I could not speak for how much Master Electricians or Master Plumbers would be providing to their members on this particular issue.

**Mr SMITH:** Does Master Builders charge a fee?

**Mr Bidwell:** A fee to become a member of Master Builders, but a lot of our training is free.

**CHAIR:** Thank you very much for your time today, Paul and Kate. I now welcome representatives from the Master Electricians Australia.

## HOLMES, Ms Georgia, Advisor, Policy and Communications, Master Electricians Australia

## PEARSON, Mr Robert, General Manager of Operations, Master Electricians Australia

**CHAIR:** Would you like to make a brief opening statement after which we will have a couple of questions?

**Mr Pearson:** Good morning, Chair and members of the committee. Firstly, I thank you for giving us the opportunity to appear here today and provide feedback on the bill. Master Electricians Australia is the leading national trade association representing electrical contractors and the largest electrical industry association in Queensland. Our membership base in Queensland consists of 2,000 mainly small and medium electrical contractor businesses that support tens of thousands of Queenslanders. The Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill has a direct impact on our members, their families and the workers they employ as they often secure work through subcontractors on large construction projects.

For our members, cash flow is the lifeblood of their operations. When payments are delayed or missed, the repercussions can be far-reaching. Such instances lead to suppliers either receiving payments late or not at all, and subcontractor employees may experience delays or missed income payments thereby impacting their employees' disposable income and ability to pay their personal bills. We then start to see the risk of a domino effect where subcontractors eventually enter liquidation and suppliers and other debtors are not receiving payments for receivables, causing widespread financial and personal devastation to our macro economy.

Small and medium contractors are arguably the backbone of the construction industry—but also the wider economy—and thus merit protection against financial imbalances when dealing with larger principal contractors. There must be a prohibition against principal contractors essentially using our members as financiers and contractors essentially using our members for unrelated projects which, unfortunately, is what happens quite often in the construction industry. In effect, the moneys that are not paid to the principal contractors on a job need to be spent on that job. If that occurs, security of payment would largely disappear.

We commend the Queensland government for its proactive response towards security-of-payment issues. It is a matter we have grappled with for many years. Despite the Murray review being released in 2018, which was six years ago, Queensland is the only jurisdiction, at both a state and federal level, to have decisive legislation action to genuinely prioritise the welfare of construction subcontractors. Queensland has become a national leader in security-of-payment laws, setting a commendable precedent for other Australian states to draw upon as we refine and develop security-of-payment laws.

We focus on several of the bill's objectives. For the clauses relevant to those objectives, the MEA supports many amendments proposed in the bill. However, we did provide a recommendation for redrafting specific clauses for clarity and understandability. We further highlight that the Building Industry Fairness (Security of Payments) Act 2017 has been a pillar for improvement in the construction industry. There is a continued need to improve unfair contract terms, especially regarding payment terms. We thank you for the opportunity and look forward to any questions.

**CHAIR:** Thank you, Robert. We appreciate your submission. As you have outlined, we have become a leader in security-of-payment laws throughout Australia. For your members, have you found that it has led to people being paid on time and in full?

**Mr Pearson:** For the most part, yes. Anything that does push the needle forward we have seen effects in the market from a positive perspective. However, there is still a number of gaps in terms of the increasing number of liquidations amongst builders, as highlighted before. Unfortunately, subcontractors are generally the last at the booths in terms of being able to receive payment. We seek further definition under the bill in terms of specifically highlighting contractors, specifically our members' electrical contractors, in the definition for payment.

**CHAIR:** In general, do you think that this will help advance the cause so that those loopholes are closed and more of your people and subcontractors get what they deserve?

**Mr Pearson:** Correct. I was looking back through some archive notes at Master Electricians and some of our first committee meeting notes from 1938 specifically cover off on this clause. As I highlighted before, anything that we can actually do to be able to push that needle forward in securing our members' financial stability and being able to better refine the definitions under the bill and the act to help payments we will certainly support.

**CHAIR:** I have a couple of other questions, but I will let others ask questions.

**Mr McDONALD:** I appreciate the submission by Chris and Georgia, *Protecting the little guys*, which is a great statement. In your submission you talk about clause 32, the limited purposes for which money may be withdrawn from the accounts. I believe I just heard you say that if somebody goes into liquidation these changes still will not protect them. What sort of protections would you be looking for?

**Ms Holmes:** Could you rephrase that?

**Mr McDONALD:** Robert just said that these changes will not actually protect your subcontractors if somebody does go into liquidation. What are the changes that you would like to see on behalf of your members included in this bill?

**Ms Holmes:** Basically what we are looking for is to make sure the money that goes into that project is specifically for that project. We are seeing too often external financing basically of other contracts. We are just wanting to maintain as much as we can for that.

**Mr McDONALD:** You heard the Master Builders say that there are some processes and training that would assist in terms of the recovery of payments from people. In fact, they have been more successful. Do you have any thoughts on that?

**Ms Holmes:** Absolutely. I think anything to help out. I think this is more a statutory mechanism; we want legislative action to help protect. Training can only go so far and you are relying on people actually actioning what they are being taught.

**Mr McDONALD:** In your submission you also talk about having $1 million levels for some of the smaller contractors. Can you expand on that?

**Ms Holmes:** Is that the one where it was split below the million?

**Mr McDONALD:** Yes.

**Ms Holmes:** It is essentially a loophole we have identified. If you have a subcontractor who works multiple subcontracts all below a million but once it hits that $1 million target, when we do reach that threshold, there is an opportunity for that to be taken advantage of.

**CHAIR:** In relation to clause 32, the limited purposes for which money may be withdrawn from the project trust account, you have proposed that we need to keep the original phrasing. Did you want to expand on that a little bit more?

**Ms Holmes:** I have actually re-read that. I do not know if it is necessarily any more confusing, but I do not know that it adds anything substantially either.

**Mr HART:** Project bank accounts are in place to assist subcontractors if a company goes broke. I guess at the end of the day if they survive and the project is viable then the money will be paid. What is your experience of your subcontractors or your members around projects that have gone into liquidation? Did they get paid?

**Mr Pearson:** Just last week alone I fielded calls from three members across the country, one of them here in Queensland. Keep in mind that most of these subcontractors are men or women in vans and naturally when they hit the brakes on their car their front office falls on the floor. Building on from the member for Bundaberg's point about CPD and training, they are experts in their field and subject matter experts about the electrical industry. However, when comes to anything that is a more substantial business process or an administrative process they do get lost in the proverbial red tape as such so securing those payments is very difficult for them. Without reaching forward to associations like us or through to their accountants, they do have very limited avenues. Naturally, with the stress of the situation of being able to put food on the table for their families, they will either look at taking the course of least resistance, taking an immediate payment if liquidators are appointed and they can recoup any of their funds and/or walk away from the situation, just in terms of being able to take that opportunity to continue with other works.

**Mr HART:** That is on a liquidation basis, but what about on a project bank account process? If any of these builders that went into liquidation in the last couple of years had subcontracting electrical companies, do you know whether they got paid from those project bank accounts?

**Mr Pearson:** Generally, no. They were last in line to be able to take that. In terms of being able to get the payments processed through, it is on a very subjective basis, case by case, but there were a large number of them that were not paid.

**Mr HART:** How does that reconcile with what you were saying before, that Queensland has the most leading-edge legislation, if your members are not being paid when someone goes into liquidation?

**Mr Pearson:** I was referring more towards the national perspective. My apologies. Certainly here in Queensland it is much more progressive. There were payments coming through, but there were still one or two instances, which I cannot quote off the top of my head, where payments have not been received.

**Mr HART:** Simply, is the system working or is it not working?

**Mr Pearson:** Largely, yes, it is working.

**Mr HART:** So they are not being paid, but it is working?

**Mr Pearson:** Overall the system is working, correct, but we still do get one or two contractors where they do not get paid on a specific basis.

**Mr HART:** How is it working?

**CHAIR:** Money is going in, money comes out.

**Mr BROWN:** I have a question on that point. Not to put words in the mouth of the Master Electricians, in situations in the past, before this progressive legislation came through, taking away the liquidation part, members were not getting their money on time and in full from head contractors that were not going into liquidation. Therefore, the progressive legislation is now benefiting your members who are now receiving it on time and in full; is that correct?

**Mr Pearson:** Yes, that is correct.

**Mr SMITH:** In relation to where you are wanting to amend the way in which the legislation is actually written, Clause 38 amends section 32, 'When retention trust required'. You have taken section 32(5) and made it 32(1) around definition and then you have turned (1)(a) into a new section 32(2). Can I ask why? In what way does it make it more concise if you just take it from the bottom and put it up the top?

**Ms Holmes:** To me personally, and other people I know, it is easier if you have a definition up the top instead of going through, and then section (1)(a) and (1) I have combined. There possibly should have been an 'or' instead of an 'and' after (2)(a) but it looks like there are a lot of additional subsections. The more subsections there are the more confusing it can be.

**CHAIR:** Thank you. We have no further questions.

## BLAKE, Ms Morgan, Manager, Workplace Services, Housing Industry Association Queensland

## LEVEN, Mr Paul, Deputy Executive Director, Housing Industry Association Queensland

**CHAIR:** Welcome. Would you like to make an opening statement and after that we will have some questions for you?

**Mr Leven:** Chair and members of the committee, thank you on behalf of HIA members for the opportunity to appear at today's public hearing. The Housing Industry Association is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals and suppliers and manufacturers of building products. As the voice of the residential building industry, HIA represents a membership of around 60,000 across Australia. Our members are involved in land development, detached home building, home renovations, low and medium density housing, high-rise apartment buildings and building product manufacturing, to name just a few. HIA members comprise a diverse mix of companies, including residential home builders, small to medium builders and renovators, residential developers, trade contractors, building product manufacturers and suppliers and allied building professionals that support our industry. HIA members construct over 85 per cent of the nation's new building stock. HIA's executive director in Queensland, Michael Roberts, wrote the following in the introduction of an HIA submission in December 2019. He said—

Over the last five years the Queensland building industry has witnessed significant reform. These reforms have included the introduction of Project Bank Accounts (PBA) and changes to security of payments laws and minimum financial requirements. The industry is now faced with further change largely as a result of earlier measures not operating as intended. HIA takes this opportunity to provide feedback in relation to those proposed changes.

HIA takes this opportunity to provide feedback in relation to those proposed changes.

In 2024 we are coming up to 10 years of uncertainty and change for home builders and we are now in the middle of an acknowledged housing crisis in our state. There is broad agreement that we need to construct more than 45,000 homes per year in Queensland over the next decade and beyond in order to catch up with and meet urgent demand for housing. Everyone supports fair payment for tradespeople and subcontractors, there is no dispute, and in the vast majority of cases this is what our industry provides with or without this intervention from government. HIA simply submits that project trust accounts in any form cannot achieve the outcome they promised to subcontractors, namely, payment in full, on time, every time.

HIA strongly opposes Queensland's project trust account framework. It is a hindrance to the smooth running of our industry and businesses. It adds to the weight of current overregulation on builders. It is not, and we believe it cannot, achieve its promised outcomes. You cannot successfully legislate against all painful business failures or prevent all ramifications. It does not work and we have seen examples to demonstrate this. The regime should not be extended beyond its current cohort as currently planned in 2025.

We are concerned about the lack of promised consultation in the development of this bill. We are part of an industry consultation group that has been discussing the planned extended implementation since late 2023, but we did not receive an opportunity to provide input to the content of the legislation now under consideration. We are instead consulted on esoteric issues such as marketing campaigns and government progress in producing software that is compatible with small business accounting software to help manage project trust accounts, but not on the content of proposed amendments prior to their tabling in parliament. Once again HIA welcomes the opportunity to appear at today's hearing to discuss the legislation. Thank you again, Chair and committee, for allowing us to appear today and we welcome your questions.

**CHAIR:** One of the things that you have touched on in your submission, and I note that this was in the Master Builders submission as well, is the need to clarify who is a subcontractor beneficiary—who benefits from these changes. You have talked a bit about this being clarified in the bill. Can you perhaps talk a bit more about the ambiguities that have existed and how, as you have said, this bill helps clarify this particular issue?

**Mr Leven:** I am not a lawyer, Chair, but in layman's terms it was unclear which subcontractors were eligible to receive payments from those accounts. We think this helps to make it a little clearer in terms of the language that is used in the legislation.

**CHAIR:** I have a few questions there but I will go around the table.

**Mr McDONALD:** I want to pick up on the fact that you guys were not consulted through the development of this bill. Obviously, your submission outlines a number of opportunities that you would like to see. I am interested to know and I have asked this of others: what is the solution you would like to see in lieu of project bank accounts?

**Mr Leven:** Existing legislation covers payments to subcontractors and there are rules and processes in place already, one through the QBCC, to enable those payments to take place. The best solution is strong contracts between builders and subcontractors, including terms of payment and regular invoicing and that follow-up through that process to ensure that payment is made. That is what happens in the vast majority of cases, with or without this legislation.

**Mr McDONALD:** The success of systems is something that I really like looking at. If a success for this is the payment of a contract or payment from the head contractor, would those contracts be paid anyway without this? It is only when somebody goes bad that there is a problem, but all the successes of this system would have been paid anyway because there was no problem; is that right?

**Mr Leven:** Yes. We are very much supportive of our members paying their contractors on time and the vast majority of them do that. Wherever there is a payment required, our members make those payments. We are very proud of the people we have as members who are making those business decisions. At the end of the day, a payment is a business decision. In the vast majority of cases, those payments are made under the current regulation.

**Mr McDONALD:** I am sorry but I am not actually talking about payment into the system. I am talking about a business transaction in the normal world, the ordinary world, that is occurring. Does this system help or hinder that? Does it help those who are not going to get paid anyway?

**CHAIR:** We are getting into some speculation on that.

**Mr HART:** It is not speculation, Chair.

**CHAIR:** Hang on, I am talking here. I ask that questions focus on the facts.

**Mr McDONALD:** I can simplify it, if you like, Chair. If a business is going well and bills are being paid, do you need this system?

**Mr Leven:** In HIA's view, no.

**Mr McDONALD:** So the success of this is actually capturing those bills that would be paid anyway; it is not capturing all of those that are not being paid?

**Mr Leven:** There are certainly examples of companies that have, sadly, gone into liquidation where those payments have not taken place even where the project trust account system is in place for those contractors.

**Mr BROWN:** Going back a couple of years, HIA pushed with the federal government for the HomeBuilder grant, didn't they?

**Mr Leven:** No, not that I am aware of. I am sorry, member: it was before my time at HIA.

**Mr BROWN:** Now that a couple of years have passed, what are your thoughts on the HomeBuilder grant for the industry?

**Mr Leven:** It certainly increased activity in the industry. It was a difficult time. A lot of those contracts came into place just before COVID and the increase in the cost of inputs as a result of the COVID pandemic and other world issues. There were a lot of homes built in that project. The end of it was difficult for our members who had fixed-price contracts in place and very high input costs.

**Mr BROWN:** So, at the end, it had a negative effect on the industry in your opinion?

**Mr Leven:** A lot of homes were built under that program. I guess it is for others to speculate whether or not it was a success. We saw a lot of homes built under HomeBuilder.

**Mr BROWN:** You are talking to your members. After the success of it, has there been a bubble-and-bust effect?

**Mr HART:** Chair, point of order. What does this have to do with the bill? This is not relevant to the bill in any way.

**CHAIR:** I think that the member is just about to get to his point.

**Mr BROWN:** It is a line of questioning in regards to what has been affecting foreclosures and liquidations.

**Mr HART:** Project bank accounts.

**Mr BROWN:** I think this also leads to where the industry is at.

**CHAIR:** I think you have made your point.

**Mr BROWN:** I want to put that question to him.

**CHAIR:** Do you want to rephrase the question?

**Mr BROWN:** Basically, in the opinion of your members, since the HomeBuilder grant was rolled out has that had—

**Mr McDONALD:** Relevance.

**CHAIR:** I am listening.

**Mr McDONALD:** The HomeBuilder grant is not subject to this—

**CHAIR:** I am listening to this.

**Mr BROWN:** We do not get an opportunity that many times to talk to people in the know, in the industry. Overall, for your members, has it had a negative effect since the implementation of that HomeBuilder grant?

**CHAIR:** Obviously, you are relating that to the project accounts. Has that had an effect on this particular system; is that what you are saying?

**Mr BROWN:** That is correct.

**Mr Leven:** I think most of the homes that were built under HomeBuilder were not covered under project trust accounts so the two are not interrelated in that way.

**Mr HART:** On the beneficiaries interpretation, is there an issue with subcontractors maybe not being licensed or having appropriate qualifications that leave them off that beneficiary list? Is that what is trying to be solved here? Are you aware of any of these sorts of issues?

**Mr Leven:** Largely, subcontractors that perform work, particularly for our members, are properly licensed. Of course, there would be cases but I am not aware of any particular cases.

**Mr HART:** At the moment, are the people who are covered only licensed with the QBCC, do you know?

**Mr Leven:** My understanding is that that is the case. It is licensed contractors.

**Mr HART:** And this will extend it to people who are not licensed with the QBCC?

**Mr Leven:** I do not believe that is the case.

**Mr HART:** We will watch that with interest.

**Mr SMITH:** In your submission you talk about the administrative burdens that go along with this legislation. Can you give a detailed outline of what administrative burdens would be facing head contractors, please?

**Mr Leven:** Member, it is additional accounting requirements within the business. As the cohorts come down from that larger $10 million contract to the $3 million and the $1 million, you catch more smaller businesses. You are going to catch, in some cases, businesses that do not have accounting departments and that certainly do not have software at this stage to account for the project trust accounts. The administrative burden is in additional work to ensure the business records are provided as required under the regulation of the legislation.

**CHAIR:** You mentioned before that generally the payment is a business decision. Is that the payment of subcontractors under the general operation of the system?

**Mr Leven:** Chair, I think that was a misstatement by myself. It is obviously a requirement that bills are paid. It is not a business decision; it is a requirement. Someone has to press the button to make the payment.

**CHAIR:** Previously, before the security of payments, essentially it often came down to a business decision in some cases about who got paid, would that be correct, previous to this system?

**Mr Leven:** It is the same decision that is made now that would have been made previously on when payments are made and from what account.

**CHAIR:** But now we have a legal overlay that obviously affects how your members would decide who and when they get paid; would that be correct?

**Mr Leven:** The overlay creates an additional level of check and an additional level of administrative burden, but the decision is the same decision.

**Mr HART:** On that subject, your members would contract out to subcontractors so they are obliged to make a payment under a contract?

**Mr Leven:** Under the existing legislation, yes.

**CHAIR:** There being no further questions, I thank you very much, Paul and Morgan. I now welcome representatives from the Australian Institute of Architects.

**DEGENHART, Ms Amy, Immediate past president, Queensland Chapter, Australian Institute of Architects**

**SVENSDOTTER, Dr Anna, Executive Director, Queensland Chapter, Australian Institute of Architects**

**ZANATTA, Mr Paul, National Manager, Advocacy and Policy, Australian Institute of Architects (via teleconference)**

**CHAIR:** Would you like to make an opening statement?

**Dr Svensdotter:** Thank you, Chair and committee, for the opportunity to respond to the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024. We are here today representing 2,300 Queensland architects. The Australian Institute of Architects recognises the unceded sovereign lands and rights of Aboriginal and Torres Strait Islander peoples as the first peoples of these lands and waters.

Our sole purpose today is to oppose the bill's proposed amendments to the Architects Act 2002, specifically an amendment to section 130 and the introduction of new section 139A. A proposed new subsection 130(3)(d) would permit QCAT to make an order requiring an architect to pay an amount to the Board of Architects Queensland as compensation for all or part of the reasonable cost of an investigation by the board, including the cost of preparation for the proceeding.

**Mr Zanatta:** Hello.

**CHAIR:** Hello, Paul. This is Chris Whiting, the chair of the committee. Amy and Anna are making an opening statement.

**Dr Svensdotter:** This is an addition to existing subsection 130(2) which already permits QCAT to order the architects to pay an amount of no more than 200 penalty units, which is currently $30,960. Only one other state, Tasmania, has a similar provision, and this is only for the cost of carrying out the investigation. The next highest penalties and fines orders are in New South Wales, at a total of $23,650, and for individuals in other states and territories this varies between $5,000 and $10,000.

In addition, under proposed section 139A, this bill would enable courts to award similar uncapped cost recovery orders against an individual for offences against the act. This would not limit the orders for costs the court may make on the finding of guilt. While we support investigations to protect customers and address misconduct, we caution against excessive cost recovery that could disproportionately penalise individuals. The very proposal of uncapped costs is unfair and unjust. They are unfair because cost recovery orders would be on top of a penalty order or another court order, as well as legal representation costs. They are unfair because there are no rules for what constitutes reasonable costs in QCAT, and courts only have guidance on costs of representation, not investigation. They are unfair because there are no limits or controls on the expenditure that the board or QCAT may incur in undertaking investigations and preparing for proceedings, especially when outsourced. They are unfair because, as the explanatory notes describe, the board is a small regulator. This suggests, by implication, that larger regulators do not need to recover investigation costs. They are unjust insofar as someone being asked to pay for the cost of an investigation against themselves. The cost should be borne as a cost of the regulator within the total financial model.

The Queensland Legislative Standards Act 1992 sets out fundamental legislative principles that include the requirement that legislation has sufficient regard to the rights and liberties of individuals and the institution of parliament. Subsection (3) sets out a range of examples. In terms of costs, this is defined as including burdens and disadvantages and direct or indirect economic, environmental and social costs. We believe that the recovery of costs set out in the amendment does not take sufficient regard to the rights and liberties of individuals. The proposed amendments, which are the subject of our concern, should not be supported. Thank you for the opportunity to make a submission on this important bill.

**CHAIR:** Essentially, the crux of it is, as you have described in your submission, against the potential for excessive cost recovery, and you have noted new subsection 130(3)(d) and new section 139A, in addition to the existing subsection 130(2). In terms of potential excessive cost recovery—this might be something you know about, Amy—have there been cases where this has been applied already? Has your organisation needed to go through this process and been subject to that cost recovery process?

**Ms Degenhart:** Anna or Paul can correct me, but I do not think that has happened yet because the legislation has not been enacted. Would that be a correct answer or do we take it on advisement? I refer to Paul.

**Mr Zanatta (**Inaudible). In Tasmania, it is said that that provision sits there. Since an information review of their act in 2020, there had not been any cases on the investigations that had been brought before the Tasmanian board, so we have never seen evidence of how this would impact housing. I would like to further add that what will not be provided here is any information as to what the current costs of investigation actually are. We have had a look at the Board of Architects of Queensland's annual report and we have noted that they conducted all up a grand total of (inaudible) investigations in 2022-23, and they also include, as a line mark in their financial report, that they have about $169,000 of investigations and legal costs. They also had strong investigations into the prior financial year, but the total costs were $87,185, so it is not clear as to why their costs have increased so rapidly. We also note that the administration costs of the board have increased from $153,000 for 2019-20 and 2021 to around $235,000 in the 2021-22 and 2022-23 financial years. In the last financial year, they actually (inaudible) benefits. It feels like they are actually shifting their financial problem back onto poor individual people being brought before the board rather than looking at what is actually happening with their financial operations and the efficiency of those operations.

**Ms Degenhart:** I would like to add, in specific reference to the question, that the evidence that Paul kindly put forward, which is what I was going to respond with, goes to show how unpredictable those costs would be and how they might rise in a very unpredictable and unreasonable way, and yet we do not know how to determine what is reasonable.

**CHAIR:** A large part of those costs could be actions, investigations and compliance around exactly these kinds of questions. That could be a big part of your budget; would that be correct?

**Ms Degenhart:** Yes, that may be correct, but the point I was making is that even the costs of the investigation seem to have risen considerably and without any particular explanation.

**Mr McDONALD:** In your submission, you outline that on a number of occasions you wanted to have some input into different things and those suggestions have not been taken up. Do you have any feedback as to why they have not been taken up?

**Dr Svensdotter:** We meet regularly with the board and try to talk things through so that we arrive at conclusions that can be supported by everyone. We have raised the issue as it has been coming through and we have seen it come through parliament. It has consistently been told to us that there was nothing major to report and so forth. We have asked the question and we have not really met with anything affirmative or concrete to respond to, even though the opportunity was there.

**Mr McDONALD:** Before the implementation of this system, there were millions of transactions occurring between contractors and subcontractors. Since the implementation, there are still millions of transactions occurring. Success is being measured by the number of successful transactions that are being handed over. Do you believe this system has helped those transactions when things have gone bad?

**Ms Degenhart:** I am not sure I understand the question.

**CHAIR:** I think that is a general comment on the bill about security of payment.

**Mr McDONALD:** In terms of project bank accounts?

**Ms Degenhart:** That is not so relevant to our concerns. It is possibly a detail that is not so relevant to the architectural industry. Project bank accounts are not something that are often engaged with. Could I then also put a disclaimer on the context of that reply and make an important point that a lot of architects are very small practices. What you are referring to could in fact be a legitimate circumstance in a larger practice, but a lot of the concern of this legislation is in fact from our smaller practices. It creates an unfair power balance between the architect and the client when the penalties for a minor complaint could be so exaggerated and so disproportionate.

**Mr Zanatta:** I am sorry but the sound quality is not very good and I cannot see any movement that is happening. This was an omnibus piece of legislation and it has put the vegetables in with the mashed potato, so to speak, in terms of the amendment being made to the architect stats—and I also notice to your engineer's registration legislation—that are unrelated to the main purpose of the bill, which is the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill. Today, we have submitted just in relation to that other legislation in respect of the amendment proposed to the architects that relates in no way to the BIF security of payments. However, for the record, we were pleased to see that architects are included as subcontractors in terms of the subcontractor trusts. For example, if it was a novated or a design-and-construct procurement model

and the architect is being contracted as a consultant by the contractor, they would stand to benefit, if required, with the trust payment system. We have not sought to submit on that today. We are really submitting about the amendments to the Architects Act which do not relate to the BIF and SOP legislation.

**Mr HART:** I will limit my questions to that. Paul, you talked about the board's annual report and the $169,000. Do you know if they were able to recover any of that from the other party to the QCAT investigation?

**Mr Zanatta:** Presently, none of that would involve cost recovery from an architect. We do not know anything about how or why that line item actually exists, whether there is a separate line item in QCAT from the undertaking of these investigations. We do not understand, I suppose, the accounting practices that happen in the back end between QCAT and the board, and the board being a statutory entity and QCAT within the Queensland justice system. We do not know what sort of back accounting procedures take place and if that is reflective of the full costs of undertaking those investigations or only partially reflective of the costs of undertaking those investigations.

**Ms Degenhart:** In relation to that, I think Anna did try to make the point earlier that the penalty points, of course, which occur in the case of guilt do go towards recovery.

**Mr HART:** Presently, is it the situation that the Board of Architects cannot recover anything from a QCAT investigation or a QCAT inquiry around an investigation? Is it zero at the moment or is there a lower figure that you are happy with?

**Ms Degenhart:** I stand to be corrected, but my understanding is that it is only the penalty points. They are probably fairer in our mind because they are only available in the case of guilt, but they do go into the general accounts which helps with the whole process, as opposed to being directly associated with recovery of direct costs. I believe this may be different to other organisations, which is a point that was very important to make.

**Mr Zanatta:** I want to note that one of the things that I discovered over the weekend is that there are—I knew this already—approximately 2,800 practising architects registered with the Board of Architects of Queensland—in fact, 2,747 as at 30 June 2023. On the other hand, I downloaded some data from the Queensland Government Open Data Portal that showed that at the beginning of March this year there were about 99,000 licensees with the Queensland Building and Construction Commission, so the order of magnitude is that there are about 36 times the number of licensees in the building system to architects in Queensland. However, the QBCC conducted 297 times the number of investigations that BOAQ conducted and the Queensland Building and Construction Commission does not make orders to recover costs from the builder for those investigations. They do make orders for penalties at the same order of scale as that made for architects being 200 penalty units, and currently that has a value of around $31,000. They can also make reparation orders obviously for the builders in relation to the client, but the QBCC does not actually recover costs for the investigations of the builder.

**Mr HART:** That is very interesting. We might ask some questions of the QBCC as to whether or not that is correct. Thanks, Paul.

**CHAIR:** Are there any further questions?

**Mr SMITH:** I want to clarify, Amy, where you talked about guilt. The new amendment that we are talking about only relates to if the architect is then found guilty the recovery costs would then be paid for the investigation. I am just confirming that that is accurate in your mind?

**Ms Degenhart:** Actually, I would like Paul to address that because I am not sure. Paul, could you address that one, or Anna?

**Mr Zanatta:** Matters of guilt are in reference to the proposed new section 139A because matters of guilt are matters of offending against the act itself, and that may not just involve architects. That may, for example, involve persons who hold out to be an architect when they are not actually an architect. Examples of that might be a building designer or draftsperson who is purporting to offer architectural services when they are not. Matters of guilt pertain to offences against the act itself and an architect is a protected term, so holding out to provide architectural services would be an example of such an offence. Matters in relation to hearings undergone by QCAT are disciplinary matters. Those disciplinary matters are actually matters relating to practising registered architects and they generally cover two areas, and one is the competency of the services provided or of the practice of the architect and practising according to the statutory code of conduct for architects. Let us not use the term ‘guilt’ loosely. In matters that are pertaining to section 131 of the act, we are talking about disciplinary hearings in relation to an architect and section 139A is in relation to court hearings, and

that is offending against the act itself. I think it is important to make those two distinctions, but what they are essentially trying to do in both instances is to give effect to cost recovery for the investigations and preparation for the proceedings. Is there a further question about that? If so, if the person closest to the microphone could actually ask the question for me, because your room is very echoey.

**Mr SMITH:** I will ask the question again. With clause 7, which is the amendment of section 30 which is introducing 130(3)(d), I am just confirming that we are aware that the requirement of the architect to pay an amount to the board as compensation is only when a disciplinary action is taken against the architect. I am just confirming that that is your understanding; yes or no?

**Mr Zanatta:** Yes, that is correct, when there has been disciplinary grounds. The important matter is that in the case of disciplinary grounds we still have to talk about the proportionate measures, and there are already severe penalties that can be imposed against an architect. We have to be aware of not trying to create some sort of hypothetical sense of the rogue or the terribly bad architect. In all professions, across medicine, nursing, law, building and architecture, there is always the possibility that anyone can make an error of judgement—a human mistake—that could lead to a complaint being brought before a board and then being investigated and then subsequently being found for disciplinary grounds. I think a high-profile example of this was last year in New South Wales when the celebrated New South Wales neurosurgeon Professor Charlie Teo was found by the—

**Mr SMITH:** Sorry, Paul, but I want to get to another question because we might go a little bit long on that one.

**Mr Zanatta:** Sorry. Okay.

**Mr SMITH:** This is probably just a simple yes or no question.

**CHAIR:** Did you have anything to add to that further, Paul, before we go to the next question? If not, that should be fine.

**Mr Zanatta:** I am ready for the next question, yes.

**Mr SMITH:** I will just surmise from your statement there. You were wanting us to ensure that we are reasonable in terms of the legislation moving forward, and I might just make that more as a comment and hand over for any other questions.

**Mr Zanatta:** And reasonable with the fines.

**CHAIR:** Amy, did you want to add anything to that?

**Ms Degenhart:** I might add that just in answer to that question we might take that on advisement and put it in writing, just to be absolutely clear. I think that is probably it from me.

**CHAIR:** We might send that as a question on notice, member for Bundaberg, if you wanted to—

**Mr SMITH:** I thought the question was answered.

**CHAIR:** Okay, so instead of a question on notice you can write to us just to clarify that if need be.

**Ms Degenhart:** I would like to have that option and also probably clarify that my use of the word 'guilt' was probably a little bit simplistic and I have found judgements found against it et cetera.

**CHAIR:** That is okay.

**Ms Degenhart:** Thank you.

**CHAIR:** As there are no further questions, I want to thank Anna, Amy and Paul for coming along and being a part of this today.

**Ms Degenhart:** Thank you, everyone, and thank you, Paul and Anna, for joining us.

**Mr Zanatta:** Thank you.

**CHAIR:** That concludes this public hearing. Thank you to everyone who has participated today. Thank you to our Hansard reporters and thank you to our secretariat. A transcript of these proceedings will be available on the committee's webpage in due course.

**The committee adjourned at 11.36 am.**