Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024

Submission No: 4

Submitted by: UDIA Queensland

Publication:

Attachments:

Submitter Comments:

7 March 2024

Committee Secretary
Housing, Big Build and Manufacturing Committee
Parliament House
George Street
BRISBANE QLD 4000

BY EMAIL – hbbmc@parliament.qld.gov.au

Dear Committee Secretary,

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024

The Urban Development Institute of Australia Queensland (the Institute) appreciates the opportunity to provide comment on the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024 (the Bill).

General

The property industry is a major contributor to the Queensland economy. As the second largest industry of employment within the state, it directly employs 10 percent of the Queensland workforce, and indirectly supports a further 12 percent. Underlining its importance to the state's economy, the property industry directly contributed $31.7 billion to the Queensland economy in 2021, or 9 percent of Queensland's GSP, and a further $39.8 billion through indirect economic impacts (11 percent of GSP). [1]

The Bill seeks to reinforce the Project Trust Account framework that adds costs and complexity to the construction process in Queensland. It is the Institute's view that the Project Trust Account framework has not improved payment times for subcontractors or increased certainty of payment. It has, however, created complexities that continue and require regular redress and subsequent amendments since the *Building Industry Fairness (Security of Payment) Act* of 2017.

The Bill proposes to address issues with the Project Trust Account framework however, the Institute notes that the overall regime faces the possibility of being unable to cope when all projects valued at $1 million or more from 1 October 2025 are forced through the system. Presently, the arrangements are not working smoothly or efficiently. The difficulties are likely to be even more problematic from next year when small projects operated by smaller contractors with less financial and accounting support are required to comply.

The present Queensland construction environment is one in which a range of factors have created the conditions for the state's housing shortage. Queensland is facing a severe housing affordability crisis that involves insufficient housing to meet the needs of the community, extremely low rental vacancy rates, increasing homelessness, and rising housing prices.

[1] The Contribution of the Development Industry to Queensland, Urbis, November 2022

In this context, the Institute is focussed on advocating for new housing supply and assessing all policy and regulatory changes in the light of this present crisis. The cumulative effect of various state and local government decisions, including additional requirements around construction code requirements, waterway barriers controls, sunset clauses for land sales, environmental, flooding risk, subtropical design, planning scheme, and civil works constraints, is increased costs to deliver housing. Higher density residential development which is more likely to be captured by the Project Trust Account framework, is particularly challenged by the lack of builders and skilled staff shortages.

The Institute's view is that in order to meet the housing needs of our community, additional government costs and restrictions that will further stall or prevent the flow of new homes for Queenslanders should not be added at this time. We recommend the **Bill be amended to delay the expansion to smaller projects**.

Application of GST on retention accounts – Clause 36

The Institute considers that retention money paid into a retention trust account should be GST exclusive.

This aligns with rulings of the Australian Tax Office (ATO), overriding the basic attribution rules and deferring attribution of GST payable and input tax credits to the extent related to the retention amount. That is, GST is only payable on receipt (or invoicing) of retention money to the contractor/subcontractor at practical or final completion. An impact of the ATO tax rulings is that a GST input tax credit is not available to the principal or head contractor until the retention money is paid (with the GST) at the end of the project.

Contractors/subcontractors typically invoice such that the amount payable has already deducted a retention amount, and the GST on the invoice applies to the retention-exclusive amount (i.e. GST on retention is not invoiced in progress payments). It is not current practice to pay or withhold GST in relation to withheld retention amounts, and contractors' administrative systems are not set up to do this.

Requiring the payment of GST into the retention trust account with each transfer can result in substantial sums being held in an account for potential lengthy periods, when ordinarily these GST amounts are not required to be withheld. Not only that, but an input tax credit cannot be claimed until the end of the project when GST is paid to the contractor/subcontractor.

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. The Institute recommends that GST should not be required to be retained for retention amounts unless and until the Queensland Government has obtained a further ATO Tax Ruling 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.

Failure to provide an improved arrangement for retention funds creates additional cashflow problems for projects, if you cannot claim the GST credits on the retention amount until it is paid (up to 24 months or greater) from when the GST was put aside in the retention fund. The GST on five percent retention could easily represent over $300,000 for a 100 apartment project and ties up funds that add cost the housing delivery project, and limit a builder's ability to undertake other work. It is also duplicative as when it is paid in the future, if it is relevant, GST would be applied and would be credited. The accounting for retention accounts is already complex depending on how retention calculations, invoicing, and payment schedules work between contracts.

If a company is unable to complete the project and receivers take over the trust account, it is possible not all subcontractors could be satisfied immediately from the funds in retention. However, staging of payments from the account is more likely, with final payment on finalisation of the project where returns to the project or accounting for GST on the project will resolve if GST is still liable.

Conclusion

A comprehensive housing affordability and rental availability disaster is well underway in Queensland and is showing no sign of easing. In fact, it is likely this crisis will get worse before it gets better. Despite the complexity and range of factors which are driving the crisis, the fundamental problem is that there is simply insufficient housing supply. Boosting supply is the key criteria against which we have assessed this Bill.

Our analysis is that this Bill does not make a significant contribution to the supply of new housing in Queensland. Further, requiring GST on all retention funds is also a cost impost on housing.

The Institute recommends the Bill be amended to delay the expansion to smaller projects, and not require GST be added to the cost of retention funds.

Thank you for considering this submission. Please contact Manager of Policy, Martin Zaltron [redacted] on [redacted] should you have any questions or would like to discuss any matter.

Yours sincerely,
Urban Development Institute of Australia Queensland

[redacted]

Kirsty Chessher-Brown
Chief Executive Officer