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

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

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Michael Roberts
Executive Director
Hous ng ndustry Assoc at on
14 Edmonstone Street
South Br sbane
[redacted]

Introduction

On 24 February, the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024* ('the Bill') was introduced into Parliament and referred to the Housing, Big Build and Manufacturing Committee for inquiry and report. HIA makes this submission in response to the inquiry.

HIA's comments are confined to the provisions of the Bill that deal with project trust accounts under the *Building Industry Fairness (Security of Payment) Act 2017* ('BIF Act').

Continued opposition to project trust accounts

HIA has regularly expressed concerns regarding the potential ramifications of implementing the project trust regime within the construction industry. HIA maintains its stance that the introduction of the regime will exacerbate the financial fragility already prevalent within the industry and further strain the financial resources of construction businesses, hindering their ability to come out of the survival mode that many have been operating in over the past two years and do very little to protect subcontractors.

Lack of consultation

We understand there has been a trust account working group, however, there has been no opportunity to engage in detailed consultation with HIA members. This is a missed opportunity for a broader analysis of the scheme. It appears that the consultation process was used to plug holes rather than to make the overall scheme more effective.

Amendments don't go far enough

Given the challenges those already subject to the project trust account scheme have faced are known, for example, the administrative burden imposed and the lack of third party engagement to facilitate the prescribed payment arrangements, this Bill provided an opportunity to make a more tangible impact on the practical aspects of the arrangements.

These general comments stand notwithstanding the views expressed in respect of particular amendments set out below.

Amendments to the BIF Act

Clarify who is a 'subcontractor beneficiary' of the project trust account

HIA acknowledges that the fundamental purpose of the project trust framework is to safeguard subcontractor payments. However, there is a recognised ambiguity within the current wording of the legislation, leading to potential confusion regarding its scope. This ambiguity may inadvertently imply that not only subcontractors but also suppliers, manufacturers, and civil works contractors fall under the umbrella of project trust account beneficiaries.

The proposed amendments simplify the definition of a subcontractor beneficiary and the language of the legislation and enable the section to be interpreted sequentially, without the need for constant cross-referencing or understanding of other legislative provisions. The amendments also clarify the legislative intent behind the project trust framework while also ensuring better alignment with Queensland's existing licensing framework.

HIA is supportive of the greater clarity with respect to who a subcontractor beneficiary is.

Clarify trust account ledger and other record keeping requirements

HIA is concerned that despite the assertion that the proposed amendment will clarify these obligations, all that is proposed is to relocate these requirements from the Act to the Regulations. There is a lack of indication regarding any intention to revise or streamline the existing, rigid requirements, which posed challenges for both compliance and software providers during the assessment of industry readiness in early 2023.

HIA acknowledges the proposal to introduce the ability for a guideline to be made describing how to meet these requirements. While supportive of such supplementary materials, there must also be clarity with respect to how they will be used from a compliance and enforcement perspective.

Clarify the treatment of GST for retention amounts

While the proposed amendment clarifies the treatment of GST for retention amounts, HIA remains concerned regarding the impact of the project trust account regime on cash flow as it relates to the payment of GST and the lodging of Business Activity Statements. Additional clarification and education on this is necessary. Addressing these concerns comprehensively will contribute to a better understanding and smoother implementation of the project trust account regime.

Simplify the independent trust account review requirements

Of particular concern are the stringent record keeping requirements mandated by the current legislation.

These requirements are overly burdensome, and consequently, financially prohibitive, especially for small businesses that make up a significant proportion of the residential construction industry. The overhead costs associated with navigating the complex compliance obligations present significant challenges for businesses and hinder the potential for growth and sustainability.

Despite these challenges, HIA acknowledges certain positive aspects of the proposed amendments. Particularly, the recognition of accountants as authorised auditors within the project trust framework. It is expected that this will streamline the auditing process making it more accessible and ultimately, more cost effective. By leveraging the expertise of accountants, construction businesses will be able to better comply with record keeping obligations and mitigate some of the financial burdens associated with the project trust regime.

Section 57A(1) of the Act provides that the engagement of the auditor must comply with the requirements prescribed by regulation. The proposed amendments to this requirement, to allow for a more flexible approach to the appointment of the auditor is supported. This will alleviate the intensity, time commitment, and financial strain associated with the auditing process, particularly during its infancy and as the QBCC work towards identifying compliance gaps.

Clarify transitional application for PTA and RTA eligibility criteria

While HIA acknowledges the amendments' role in clarifying the transitional application of project trust accounts, we vehemently oppose any retrospective effect of the legislation. Altering the regulatory landscape after contracts have been signed unfairly shifts the goalposts, adding cost and risk, and creating instability within the broader industry.

HIA highlights the additional administrative and time burdens associated with implementing and complying with project trust requirements post contract signing. These costs, which were not factored into the original contract, present unreasonable challenges for head contractors.

Information sharing

HIA recognises the vital role of the Department in formulating and overseeing the legislation, particularly during the initial stages of the regime to ensure alignment with the framework's policy objectives.

HIA acknowledges that the amendment aims to clarify that the department may require access to information the QBCC collects under the BIF Act or the *Queensland Building and Construction Commission Act 1991*, however, it is worth noting that this authority is already outlined in section 200E(3)(c)(i) of the Act, thus rendering the proposed amendment a redundant reaffirmation of existing provisions.