

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

**Submission No:** 7  
**Submitted by:** Property Council of Australia  
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**Submitter Comments:**

8 March 2024

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

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

Thank you for the opportunity to provide feedback on the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024

The Property Council is the leading advocate for Australia's property industry. Here in Queensland, over 400 companies are members of the Property Council of Australia. Our members represent a cross-section of the property sector and are spread across all real property asset classes, including, but not limited to, build-to-rent, residential, purpose-built student accommodation, commercial, office, and industrial.

Our members invest in, design, build and manage places that matter to Australians. They have a long-term interest in the future of our places and spaces, and are committed to creating great cities, strong economies, and sustainable communities.

Since it was introduced the Property Council has raised concerns around the Trust Account Framework (formerly Project Bank Accounts) and its potential to add administrative cost and complexity to projects.

As per our previous submissions, you will be aware that the Property Council opposes the Trust Account Framework and as such welcome any improvements that will render the framework more efficient and reduce cost and complexity for the businesses administering it.

However, the Property Council is concerned with the amendments that seek to clarify when retention amount deposits must include GST.

While this may seem reasonable it risks placing an unwelcome financial burden on the party paying the retention amounts into the retention trust account.

Currently, the *Goods and Services Tax: (Particular Attribution Rules for Retention Payments) Determination 2017* outlines rules that determine when GST becomes payable and claimable on retention payments.

Due to this, the party paying the retention amount will not be able to recover the GST component 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.

Furthermore, the obligation to pay GST on contract sums is a creature of contract. The parties need to agree a GST clause which requires the contractor to pay an amount reflecting the GST liability of the subcontractor. The timing of payment of that GST liability is provided for in the GST clause.

In agreeing that clause, the parties are able to manage the effects of the GST ruling mentioned above. More often than not, the contract will provide that GST is only paid when the progress payment is paid to the subcontractor. This reflects the fact, the retention monies may never be paid to the subcontractor if an event occurs whereby the contractor can call on the retention monies.

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.

Please do not hesitate to contact me on [REDACTED] if you have any further questions.

Yours sincerely

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**Jess Caire**  
Queensland Executive Director