

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

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Committee Secretary
Housing, Big Build and Manufacturing Committee
Parliament House
George Street
BRISBANE QLD 4000
(via email: HBBMC@parliament.qld.gov.au)

8 March 2024

To the Committee Secretary,

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

The Queensland Small Business Commissioner (QSBC), including the Small Business Commissioner and supporting office, welcomes the opportunity to provide feedback to the Housing, Big Build and Manufacturing Committee in relation to the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024 (the Bill).

The QSBC is established under the *Small Business Commissioner Act 2022*, and one of the main objectives is to enhance the operating environment for the almost 483,000 small businesses in Queensland¹. This includes advocating on behalf of the 84,040 small businesses in the construction industry, the largest small business industry in Queensland, making up over 17.4% of all small businesses².

We know that compliance can be challenging and burdensome on small businesses. A recent report from Business Chamber Queensland found that 80% of Queensland businesses reported a moderate to major negative impact of government regulatory burden, with 43% spending six or more hours per week on compliance activities³. The same report ranked the Queensland Building and Construction Commission (QBCC) as having the highest regulatory compliance burden on small businesses of all state agencies⁴.

This Bill is a positive step in reducing this compliance burden and in addressing feedback from industry about the operation of the security of payment reforms and other construction-related legislation. The QSBC encourages all state agencies to do more to streamline their policies and practices to enhance the operating environment for small businesses. This is critical to reducing the time and costs of running a business and crucial to creating a thriving economy across Queensland.

¹ Australian Bureau of Statistics. (2023). *ABS 8165 Counts of Australian Business, including entries and exits as of 30 June 2023*. ABS. Canberra.

² Ibid.

³ Business Chamber Queensland. (2023). *Efficient Regulation Report 2023: Measuring the red tape burden on Queensland business*, 5-7. BCQ. Brisbane.

⁴ Ibid, 19.



The QSBC provides the following feedback on the Bill for the Committee's consideration:

Amendments of *Building Industry Fairness (Security of Payment) Act 2017 (BIF Act)*

The QSBC supports the proposed amendments to the BIF Act, which seek to provide clarification and streamline processes for Project Trust Accounts. The QSBC considers these amendments particularly timely, as the remaining two phases of the trust framework (due to commence in March 2025 and October 2025), are more likely to capture small construction businesses as they relate to smaller contract sizes and are extended throughout the contractual chain. Late payments and non-payments also disproportionately impact small businesses, as they are less likely to have the cash flow to offset late/non-payments and are therefore at a greater risk of insolvency.

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

The QSBC supports the proposed amendment which clarifies that parties contracted to carry out works and supply goods or services for which a relevant licence or registration is required are a 'subcontractor beneficiary' of the project trust account. This clarification will make it easier for small businesses in the construction industry to understand their rights and responsibilities under the trust framework and reduce the administrative effort for trustees in assessing whether a subcontractor payment must be held in trust or not—ultimately reducing the time and costs to small businesses.

Clarify trust account ledger and other record keeping requirements AND simplify the independent trust account review requirements

The QSBC supports the proposed amendments which will prescribe, via regulation, simplified record-keeping requirements in relation to project trust accounts. The amendments also provide that, in addition to registered auditors, reviews of trust accounts may also be carried out by a registered accountant, and that the review will be carried out using an 'agreed upon procedures' audit approach prescribed in regulation.

The QSBC has received feedback from small businesses and industry associations that the current record-keeping arrangements and audit review requirements are onerous and costly due to mainstream accounting software's incompatibility with the trust framework and the cost and limited availability of registered auditors. The proposed amendments will help to address these industry concerns and reduce the time and cost imposts of small businesses. Moving the record-keeping prescriptions and agreed upon procedures audit approach into regulation will also allow for more timely future amendments in response to technology changes and/or further industry feedback.

The QSBC recommends that small businesses and relevant industry associations be thoroughly consulted in the drafting of the regulation amendments and the development of supporting policies and practices (along with any future amendments) to ensure that the regulation is practical and effective for all industry participants, especially small businesses.

Clarify the treatment of GST for retention amounts

The QSBC supports the proposed amendments to clarify that the retention trust applies to cash retention amounts inclusive of any GST for the contracted amount. This clarification will help ensure that trustees retain the correct cash retention amounts and reduces the risk of retention trust shortfall for contractors in the event of an insolvency—providing security for both small business trustees and subcontractors.

Clarify transitional application of project trust account and retention trust account eligibility criteria

The QSBC supports the proposed amendments which clarify that where a contract amendment occurs the eligibility for the trust account remains the same as in force at the time of entering into the contract. This clarification will help address the ambiguity in the current BIF Act and simplify administration for small business trustees and subcontractors.

Information sharing

The QSBC supports the proposed amendment which clarifies that the QBCC may disclose information with the Department of Housing, Local Government, Planning and Public Works (the department) regarding the security of payment legislation. This information sharing will help facilitate the monitoring, review, and evaluation of the security of payment legislation, ensuring it is meeting its policy objectives and allowing the department to be promptly alerted to, and address, any arising challenges.

Amendments of the *Queensland Building and Construction Commission Act 1991 (QBCC Act)* QBCC Governance Review

The QSBC supports the proposed amendments of the QBCC Act to reduce the size of the Queensland Building and Construction Board (the board) and to require that a register of the board's conflict of interest disclosures are recorded and made publicly available. These amendments should enhance the efficiency and effectiveness of the board and ensure full transparency and accountability.

To further improve the board's effectiveness, the QSBC recommends that small businesses are represented on the board, alongside representatives from larger industry players. As noted above, the construction industry is the largest industry of small businesses in Queensland, and it is imperative that their perspectives are considered in the shaping of policies and decisions that affect the building and construction industry. Having a diverse range of voices on the board will lead to more balanced and inclusive governance, benefiting the entire industry.

Miscellaneous amendments

The QSBC supports the following proposed amendments to the QBCC Act, which aim to improve regulatory processes and clarify existing provisions:

- *Allow licensees to surrender a specific licence class held under a primary licence*

This amendment will allow licensees to reduce the scope of work of their licence by surrendering specific license classes without having to surrender the whole licence and reapply for a new licence. The QSBC supports this amendment which will help streamline regulatory administration and will reduce application time and costs for small businesses and allow them to amend the scope of their business model as required without financial penalty.

- *Require applications to provide an application for internal review in an approved form AND extend the internal review timeframe from 28 days to 28 business days*

These amendments will ensure that applicants provide all required information to inform an internal review of a QBCC decision at the outset and allow the reviewer the full timeframe to sufficiently assess the application. The QSBC supports these amendments as they will ensure that small business applicants are supported to provide sufficient information upfront, and that their access to justice is not disadvantaged due to insufficient information being supplied and / or public holidays occurring during the review timeframe. The QSBC also recommends that, wherever possible, the approved forms be provided in a digital format (or as online forms) and that only necessary information is gathered to help reduce the time and cost burdens for small businesses.

- *Clarify that a licence of a person responsible for building work or a licensee in control of the building work can be cancelled or suspended if work causes death or grievous bodily harm of a person or poses a serious risk to health and safety*

This amendment will help clarify that the QBCC can investigate both the licensee responsible for the work and the licensee responsible for the building site. The QSBC supports this amendment as it will provide small business licensees with clarity and reduce confusion in the event of an investigation and encourage all licence holders to carry work to appropriate standards and legislative requirements, reducing the risk of incidents. The QSBC also encourages the QBCC to work closely with WorkSafe Queensland to ensure collaborative processes that streamline and avoid overlapping investigations related to building workplace safety. Collaboration between regulators is essential to avoid duplication of effort which ultimately enhances efficiency, reduces costs, and improves outcomes for all parties.

Amendments of the *Building Act 1975 (Building Act)* and the *Plumbing and Drainage Act 2018 (Plumbing Act)*

The QSBC supports the proposed amendments to the Building Act and the Plumbing Act to transfer certain responsibilities from the QBCC to the department. These amendments will help provide a clear separation of the department's policy functions from the QBCC's regulatory functions, allowing the QBCC to refocus on delivering best regulatory practice, and ultimately help reduce the time and costs for small business regulatory compliance. The QSBC adds that this change must be followed by both the QBCC and department reviewing policies and practices to ensure the main object of these Acts are met in the simplest way streamlining the time and cost impact on small business.

Thank you for the opportunity to provide this feedback. If you have any further questions, please contact Rebekah Godbold, Principal Policy Officer, Strategy and Engagement on [REDACTED] or email [REDACTED].

Yours sincerely

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Dominique Lamb
Small Business Commissioner