



## SUBCONTRACTORS ALLIANCE

---

Committee Secretary  
Transport and Public Works Committee  
Parliament House  
George Street  
Brisbane Qld 4000

26 February 2020

By email: [tpwc@parliament.qld.gov.au](mailto:tpwc@parliament.qld.gov.au)

Submitted by: Les Williams  
For: Subcontractors Alliance  
Mobile: [REDACTED]  
Email: [admin@wkcivil.com.au](mailto:admin@wkcivil.com.au)

### Comments on 05 February 2020 Bill (BIF)

#### Amendments to BIF

##### Section 63 which amends Chapter 2 (PBA)

##### Section 10A

This section does not include de facto relationships which can be used just as effectively so far as related entities are concerned.

##### Section 14

In general, the exclusions set out in this section are most objectionable.

In effect, they deprive some of the most vulnerable from the very protections that the legislation is intended to provide.

The exclusions are artificial and arbitrary.

To the extent that there is any assertion that builders need to be weened off reliance on monies in transit such a progress payments and retention monies:

- 1) The fact that project bank accounts are to be introduced has been in the public domain since 2017;
- 2) Project bank accounts for certain government projects were introduced on 1 March 2018 with a view to extending them to the rest of the industry after a year;

Subcontractors Alliance

- 3) On 1 January 2019 the current Minimum Financial Requirements (“the MFR”) regulation came into effect;
- 4) Fundamental planks of the MFR are that items such as progress claims in transit and retentions owed or to become payable to trade contractors are excluded as an asset for the purposes of the current ratio and offset by a liability for the purposes of the Net Tangible Assets calculation;
- 5) Both calculations are an indicator of a builder’s ability to function and meet its obligations without reliance on retentions belonging to trade contractors and progress payments;
- 6) Therefore:
  - a) Builders have had 3 years notice that the PBA system is on the way;
  - b) The system has been underway for 2 years since the first PBA was introduced;
  - c) There has been a full calendar year where the MFR has weeded reliance on monies that will be subject to a PBA out of builder financials;
  - d) Given that licences are renewed annually all builders will have been through the process;
  - e) There will have been a full 18 months once the current provisions are introduced;
  - f) There will have been a full financial year once these provisions are introduced
  - g) Any builder that is still reliant on progress claims in transit or retentions belonging to trade contractors is:
    - i) Insolvent;
    - ii) lying with respect to its MFR report; and
    - iii) going to fail on the grounds of insolvency upon the introduction of PBA no matter when they are introduced.

Therefore, there is no reason for excluding any section of the industry from the introduction of a PBA upon the assent of the current provisions in the bill.

Any argument that maintaining Project Bank Accounts in such circumstances is not cost effective is hogwash given that builders are deriving payment from the interest on PBA accounts.

Given that interest on solicitors’ trust account funds legal aid, it is a falsehood that builders will suffer financial burdens by having to maintain the PBA accounts.

That reality is that while there are some additional forms to be completed (the burden of which is insignificant given the opportunity for automation in this day and age) there is no additional work as money is still being deposited into and paid out of a bank account.

## Subcontractors Alliance

That is the same process undertaken by the builder prior to the introduction of Project Bank Accounts.

The consequences for small trade contractors on small projects are just as significant as the consequences for larger trade contractors on larger projects.

The exclusion of State Authority projects removes a significant proportion of the construction industry from the protection of the legislation.

Any assertion that a PQC system operates to protect trade contractors is hogwash. The most significant examples being the collapse of both JM Kelly companies and the wide sweep of Ri-con which did a lot of work for local government.

To that end all project work, irrespective of value, the nature of the client/developer or the percentage of the contract that is project work, should be subject to a PBA now.

### **Section 14A**

The exclusions in this section should be deleted for the reasons outlined above.

The 30% factor will simply result in a builder awarding a contract for a value that is marginally below the threshold and then promptly adding a variation.

The exclusions are artificial and arbitrary.

### **Section 15C**

This is an artificial and arbitrary exclusion of trade contractors from the benefit of the legislation.

The financial harm that can be inflicted on a trade contractor by builders that engage trade contractors on so called "small scale residential work" is just the same as any commercial builder.

A notable example of situations where this exclusion would result in the same degree of carnage that this legislation is intended to protect trade contractors is the Bloomer insolvency. Over 40% of insolvencies occur in this sector.

There is no sound reason for this exclusion and it should be deleted.

### **Section 15D**

There is a flaw in the definition of "Maintenance Work".

While there has been an attempt to exclude significant work from the exclusion in subsection 15D(2)(b), the reality is that a financial limit needs to be placed on items (A), (B) and (C) as those items can become significant and of long duration such that the potential losses to trade contractors can be crippling.

## Subcontractors Alliance

A significant flaw in the provisions of 15D(2)(b) is that there can be significant refurbishments that have nothing to do with extending the life of a building.

The words “that extends the life of the building” should be deleted.

### **Section 15F**

This is an artificial and arbitrary exclusion of trade contractors from the benefit of the legislation.

The financial harm that can be inflicted on a trade contractor in three months is just the same as any greater period.

On projects with considerable or expensive materials the bills can be just as high.

There are current examples of short term projects that would be exempt from the PBA regime under this section and the trade contractors have lost significant sums of money because PBA are not in place.

There is no sound reason for this exclusion and it should be deleted.

### **Section 41**

The trust account system is not that difficult.

It does not include the intricacies of solicitors or real estate agents trust accounts.

The costs and time delay are unnecessary.

This section should be deleted.

### **Section 65 which amends section 75 (making a payment claim)**

This proposed amendment requires the claimant to provide a so called “Supporting Statement”.

The information to be supplied in the supporting statement:

- has nothing to do with the claimant’s right to make a progress claim;
- does not in any way assist in the progression of the progress claim; and
- has nothing to do with the relationship between the claimant and the respondent concerning the respondent’s obligations to pay.

The information required weaponises the act in favour of the Respondent. The Respondent is provided with information about the financial status of the claimant. This enables the Respondent to determine whether or not to starve the claimant out.

## Subcontractors Alliance

There are also examples where the information to be provided in the Supporting Statement has been used by a Respondent to both:

- starve out a Claimant and
- enable the Respondent to induce and support a supplier of the Claimant to take action against the Claimant resulting in the Claimant being wound up before it can finalise its claim against the Respondent.

The Supplier gets the benefit of its insurance claim.

The Respondent only has to fend off a resource starved liquidator.

The Respondent wins by default.

The requirement to provide a Supporting Statement is a major derogation from the intent and purpose of the act that can only be regarded as a step backward to the bad old days.

### **Amendments to QBCC Act**

#### **Section 131 amending section 67U**

The proposed inclusion of the period from 22 December to 10 January provides a payment holiday for the builder over the Christmas period.

Those providing goods and services to the builder are still required to pay their suppliers and staff in the meantime.

The proposed amendment weaponises the legislation in favour of the builder and the developer against the subcontractors.

The proposed subsections (b) and (c) should be deleted.

#### **Section 132 amending section 67W**

The comments with respect to section 131 apply equally to section 132.

**End**