



HOUSING INDUSTRY ASSOCIATION



Submission to the  
Transport and Public Works Committee  
[tpwc@parliament.qld.gov.au](mailto:tpwc@parliament.qld.gov.au)

**Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020**

26 February 2020

HOUSING INDUSTRY ASSOCIATION

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## ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. HIA members are involved in land development, detached home building, home renovations, low & medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diverse mix of companies including residential volume builders, small to medium builders and renovators, residential developers, trade contractors, building product manufacturers and suppliers and allied building professionals that support the industry.

HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

*"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The Association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services, and products for members including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

## 1. INTRODUCTION

On 5 February 2020, the Hon Mick de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport, introduced the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020* ('Bill') into the Queensland Parliament. The Bill was referred to the Transport and Public Works Committee for detailed consideration.

The Housing Industry Association (HIA) takes this opportunity to provide a submission to the Transport and Public Works Committee.

Over the last five years the Queensland building industry has seen significant reform. These reforms have included the introduction of Project Bank Accounts (PBA), and changes to security of payments laws and minimum financial requirements. The industry is now faced with further change largely as a result of earlier initiatives not operating as intended.

HIA acknowledges that, in some areas, the Bill takes positive steps. However, while the Bill makes many common sense amendments to the trust account model, overwhelmingly the implementation of these legislative provisions will simply increase cost, red tape and risk, undermining any beneficial outcomes resulting from the Bills implementation. Further, while a number of proposals reflect the recommendations of the *Building Fairness: An Evaluation of Queensland's Building Industry Fairness Reforms Report*<sup>1</sup> (the Panel Report), problematically many changes go well beyond that which was recommended.

HIA is also concerned that the constrained timeframes for consultation coupled with the lack of any cost/benefit analysis has the potential to (again) lead to a need for further amendments in the future.

The majority of projects affected by this legislation will fall within the \$1-3million category.<sup>2</sup> This is typically the price category that mum-and-dad builders (micro businesses) operate. Disappointingly, the little analysis that has occurred to date has only reviewed what large commercial builders are doing and how PBAs have impacted them. No analysis has occurred regarding the impact on small businesses.

HIA is confident that the Bill, as drafted, will act as a deterrent for small business to take on any project that requires a Project Trust Account (PTA) as the administrative requirements are a burden that cannot be absorbed by this part of the industry. This will have ramifications for housing supply.

## 2. AMENDMENT OF BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) ACT 2017

HIA remains opposed to the PTA as an effective means of securing money for contractors. There is simply no evidence to indicate that the legislation will achieve its stated purpose of securing money for subcontractors.<sup>3</sup>

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<sup>1</sup> Building Fairness: An Evaluation of Queensland's Building Industry Fairness Reforms' page 22:  
<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T2165.pdf>

<sup>2</sup> Building Fairness: An Evaluation of Queensland's Building Industry Fairness Reforms' page 1 and page 22:  
<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T2165.pdf>

<sup>3</sup> Building Fairness: An Evaluation of Queensland's Building Industry Fairness Reforms' see comments at bottom of page 22:  
<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T2165.pdf>





HIA acknowledges that many of the amendments to the BIFA proposed by the Bill are an improvement on what is currently contained in the legislation and we note that many of these improvements are derived from the recommendations of the Panel's Report.

For example, HIA supports the exclusion of GST from the contract price and the reduction of three compulsory PBAs per project to one PTA per project (and one for all retention amounts held by the contractor).

HIA makes the following comments regarding areas where the Bill will be unworkable or could be improved.

## 2.1 DEFINED TERMS

HIA notes that the Panel Report recommended standardising definitions in an effort to simplify the legislation. HIA supports this approach.

One advantage of aligning definitions to existing terms is that there is a body of existing case law that clarifies the meaning of certain terms.<sup>4</sup> HIA encourages the adoption of consistent terms wherever possible.

While this has occurred in some cases, for example, with the definition of 'building' and 'building contract' the approach has not been consistent, for example 'Project trust work' is a new term, which is meant to align with 'building work' under the QBCC Act but does not.

Similarly a new phrase, 'protected work', has been inserted in lieu of 'construction work' with a new definition adopted instead of simply referring to the relevant provision of the existing BIFA which already defines what construction work is.<sup>5</sup> The same can be said of the terms 'contracted party', 'contracted work' or 'contracting party' in lieu of 'head contractor', 'head contract' and 'principal' respectively. A number of the provisions have to be read a several times to determine whether 'contracted work' refers to the contract the head contractor has with the principle or the contract the head contractor has with their subcontractor (or both). Even the explanatory notes have to include, in brackets, who they are referring to. For example:

*Section 25 requires a contracted party (i.e. the head contractor)....*

This cherry-picking:

- will result in confusion and inconsistencies;
- is contrary to the Panel Report's recommendation to simplify the BIFA framework; and
- has the potential to lead to an expansion of the application of the PTA framework by way of the definition of a 'building' for the purposes of the BIFA. For example, a \$1 million fence will require a PTA under the proposed Bill whereas currently it does not fall into the definition of 'building'.

## 2.2 COMMENCEMENT

HIA supports the phased roll-out of PTAs. HIA remains concerned that any problems with the legislation, as it applies to the private sector, will only become apparent once it is in operation. Such problems should be fixed before they apply to the small PTA projects of \$1- \$3 million.

HIA suggests that the legislation should provide the government with the ability to delay the rollout of a subsequent phase should errors or problems occur in earlier phases.

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<sup>4</sup> Some cases that have examined the definition of 'building work' include *Ooralea Developments Pty Ltd v Civil Contractors (Australia) Pty Ltd* [2015] 1 Qd R 311 or *Cheshire Contractors Pty Ltd v Everett* [2017] QSC 287

<sup>5</sup> Building Industry Fairness (Security of Payment Act) 2017 s65

## 2.3 INFORMATION SHARING

The Panel Report noted that it intended to simplify the framework and reduce administration costs.

A number of the proposed changes fail to achieve this.

For example, section 23A of the Bill ('Subcontractor beneficiary to be informed of particular withdrawals') provides an example where the head contractor is obligated to inform the subcontractor beneficiary that they have been paid (s23A (1) (a)). This is unnecessary.

A subcontractor beneficiary will be well-aware when they have been paid as they will be in possession of the money. Receiving a separate notice (with information to be prescribed by regulation) does not appear to serve any useful purpose. Further, the excessive fine for non-compliance by the head contractor is unjustifiable and disproportionate to any harm that may be suffered by a contractor as a result of such non-compliance.

Additionally, HIA has significant concerns with proposed section 23B ('Subcontractor beneficiary may request particular information') of the Bill. At any time, a subcontractor may request information about the project trust. A head contractor must comply or else be subject to a penalty.

This proposed requirement has the potential to compromise other subcontractor's privacy as the head contractor will have to carefully filter the information provided to ensure that other subcontractor beneficiaries' details are not divulged. This process will by necessity be administratively burdensome and, without any disincentive could lead to, or encourage, vexatious behaviour by subcontractors who may repeatedly, and without the need for justification, make multiple requests for information.

## 2.4 RETENTION TRUST TRAINING

HIA would suggest that training in relation to retention amounts and trust accounts is quite pointless if undertaken in isolation. If someone does not have detailed knowledge of the entire security of payment regime nor have an adequate understanding of the complex contract requirements that apply generally to commercial contracts as well as trust account requirements, then retentions training may be more likely to confuse than clarify.

## 2.5 COVERING SHORTFALLS

Section 51 of the Bill highlights the lack of understanding for how different sectors of the industry work. In the residential construction sector it is not uncommon for head contractors to make payments to subcontractors (as due to them) before the head contractor has received any payment from the principal. It is also common in this sector for payments from head contractors to subcontractors to be small in dollars but frequent. It is also common for payments from principals to head contractors to be larger but less frequent. Under section 51 of the Bill such a situation will be captured by the 'shortfall' provisions leaving the head contractor potentially exposed to QBCC investigation.

HIA finds the requirement that the head contractor will be required to inform the QBCC Commissioner of the shortfall particularly problematic. As a matter of course, in the residential construction industry a builder may be required to top up the trust account to pay a subcontractor simply because most of the sector operates under a negative cash flow model. Under these arrangements a builder effectively funds the construction projects. In circumstances in which the aim is to ensure a subcontractor is paid on time and in the right amount, the notification process would seem unnecessary. The prospect that such a notification could trigger a QBCC audit or involvement from the regulator should send a shiver down the spine of QBCC management given the impact this will have on resources as this provision will generate hundreds of notifications annually.

## 2.6 TRUST RECORDS

The Bill proposes to impose trust record keeping provisions.

HIA opposes the introduction of bank reconciliations and trust ledgers as a blanket requirement for all PTAs. According to the Panel Report approximately 63 percent of the projects ultimately expected to be subject to PTAs will be small residential developments of between \$1-3 million.<sup>6</sup> HIA would question the clear assumption that the small builders who dominate this portion of the sector have any understanding of a trust ledger or bank reconciliation.

The requirement to provide monthly bank reconciliations in the residential building industry sits at odds with the payment practices in the sector. At the smaller end of the residential building industry payment claims (from head contractors to clients or subcontractors to builders) are generally not time-based (i.e. on a specified date in the month) but are progress based and based on the completion of a particular stage of construction work. The description under a subcontract for a progress claim will not, by its very nature, marry-up to a progress claim under the head contract.

Of concern is that the model chosen appears to replicate what is required by a solicitor for their trust accounts under the *Legal Profession Act 2007*. Of interest the Queensland Law Society 2018-2019 annual report notes:

*“The trust account information service answered 6319 requests for assistance during the year, up from 4973 last year. This equates to 2768 requests for each law practice with a trust account in Queensland...”*

HIA would contend that, if solicitors who are arguably better educated and more accustomed to the complexities of legislation and administration struggle and require so much assistance, it is unrealistic and unreasonable to expect builders to be able to comply with same or similar requirements.

These proposals will impose a significant administrative burden and cost on (small) businesses. Any administrative improvements made by the Bill will be undone by the introduction of these record keeping requirements.

HIA urges the Committee to consider recommending that the trust accounting records (specifically the bank reconciliation and trust ledger requirements) be removed from the Bill as a blanket requirement but that the QBCC, through the approved audit program or via some other mechanism, be allowed to impose such accounting requirements on specific licensee's or for specific projects. This would allow for these onerous accounting requirements to be imposed when, but only if, required.

Existing arrangements through obligations to comply with minimum financial requirements already provide the QBCC adequate opportunity to monitor the financial health of residential building businesses. This does not need to be replicated at a project level. The level of difficulty QBCC licensees have had, particularly small businesses, in complying with the QBCC MFR annual reporting alone should give the government ample reason to pause on imposing such strict accounting requirements.

### **Auditing of trust accounts**

The number of times the trust accounts will be required to be audited is unknown as this will be fixed by regulation.

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<sup>6</sup> Building Fairness: An Evaluation of Queensland's Building Industry Fairness Reforms' page 1: <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T2165.pdf>

<sup>7</sup> QLS 2018-2019 [Annual Report](#) (page 58).

HIA understands that typically audits only analyse a sample size of transactions contained in a trust account and certainly not all transactions will be examined. Further, there is no guarantee that irregularities will be discovered. What can be determined is that the cost of such audits will not be small.

HIA submits that external auditing will be many thousands of dollars per audit. We base this on the following:

- The average minimum financial requirement (MFR) audit report conducted by accountants (in response to a QBCC MFR audit) is between \$7,500 - \$50,000 (this is as per HIA member feedback and the Governments MFR discussion paper released in late 2018).<sup>8</sup>
- HIA would expect an audit of a trust account would be equally complex (depending on the sample size of transactions analysed).
- If the estimated 2200 PTA projects are required to be audited at an audit cost of \$7,500 per project (assuming only one audit is done per project) equals \$16,500,000 in audit fees to be imposed on the building industry (assuming one audit is required for every PTA).

## 2.7 INCREASED QBCC POWERS

The Bill contains significantly increased powers for the QBCC in its expanded role in the regulation of PTAs.

For example, it is proposed that the QBCC Commissioner have the ability to give written direction to a financial institution or a trustee to stop all withdrawals or direct certain matters regarding a trust account for a stated period of time (section 53B or 55C of the Bill).

HIA has a number of concerns with this proposal. It is unclear under what circumstances the Commission can exercise this power. The Bill provides, amongst other reasons, that the power to issue direction can apply when *“the commissioner reasonably suspects a trust account is not being used as required under this Act or is being used in a way that is inconsistent with this Act.”*

HIA has concerns regarding the absence of specific triggers or circumstances where the power of the QBCC is triggered. The risk of unintended consequences from QBCC involvement in what is often complex commercial arrangements is fraught with difficulty. This is particularly so where QBCC does not have a history of involvement in large commercial arrangements.

There must be clear and defined reasons before the QBCC Commissioner can utilise such powers, notices must be issued and a right of reply afforded prior to any such direction being issued.

## 2.8 SUPPORTING STATEMENT

Section 65 of the Bill (which amends s75 of the BIFA) proposes to introduce a new obligation to include a supporting statement.

HIA is opposed to the imposition of this obligation. It is unreasonable, uncommercial and impractical. HIA is not aware of any other industry subject to such requirements.

HIA contends there is a risk that this proposed requirement could have unintended consequences. For example, a claim from a subcontractor against the head contractor may have a due date for payment of 20 business days. If the head contractor puts in a claim against the client/principal before that due date is reached, despite intending

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<sup>8</sup> The proposed improvements to the Minimum Financial Requirements for licensing in the building and construction industry' [Discussion Paper, proposal 6.](#)



to make payment in full to the subcontractor, they would be required to specify in the supporting statement (given to the principal) that not all subcontractors have been paid what is owed. This, at a minimum, may raise conflict between the head contractor and their client when it is not necessary. The explanatory notes do not make clear that this will not be the situation.

HIA believes that if this requirement is going to be imposed it should be imposed for all parties able to make a payment claim instead of focusing on only one particular link in the contractual chain.

## 2.9 RESPONDING TO PAYMENT CLAIM

HIA opposes the proposal in the Bill to create an offence where a respondent pays less than the amount that was proposed to be paid under the scheduled provided.

The provision reads:

*...If the respondent gives the claimant a payment schedule, the respondent must pay the claimant the amount proposed in the payment schedule no later than the due date for the progress payment to which the payment schedule relates.*

Unfortunately the legislative drafting may encourage subcontracts that have lengthy due dates for payment and disadvantages subcontractors.

The (default) due date for payment under BIFA is 10 business days (unless the contract specifies otherwise; see section 73(2) of BIFA) but a respondent has 15 business days under BIFA to provide a payment schedule (see section 76 BIFA). The effect of this is that a respondent who provides a payment schedule within 15 business days (in accordance with Act) but has a due date for payment of less than 15 business days will have breached this proposed section of the Bill.

Those that are not paid an amount specified in a payment schedule are not without recourse. A claimant can continue with their adjudication claim (which includes claiming the entire amount they believe they are owed) or they can make a QBCC monies owed complaint claiming that the amount specified in the payment schedule is an 'undisputed debt'.

The provision is unnecessary and will cause confusion.

## 3. AMENDMENT OF QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION ACT 1991

### 3.1 MINIMUM FINANCIAL REQUIREMENTS

HIA notes that the Bill seeks to introduce a 'due diligence' requirement on contractors for compliance with the Minimum Financial Requirements (MFR). The Bill also seeks to introduce jail terms for multiple breaches of the due diligence requirements.

HIA opposes these proposals.

The 'due diligence' provision as it is currently worded is unnecessary. The QBCC already regulates financial requirements to a high-level and the consequences of failure for a licensee are significant.

The MFR is highly regulated by the QBCC. A single failure can result in a licensee's licence being suspended, resulting in all work stopping and a downward spiral for the business.

The 2018-2019 QBCC annual report highlights that the QBCC undertook 630 financial audits of licensees resulting in 123 licence cancellations and 267 licences being suspended.<sup>9</sup>

The MFR requirements are not simple or easy to understand and it is difficult to get adequate assistance from the QBCC.

Contractors are not accountants. The annual reporting requirement imposed since 2019 has highlighted to industry that, despite contractor's best endeavours, full compliance in every aspect is difficult to achieve. Last year a number of large contractors failed the MFR. It is a reasonable conclusion then that many small trade contractors will not comply with the MFR.

Further, the specific requirements of the MFR regulations put many contractors in a position where they cannot comply. For example, those businesses that operate through a trust structure must rely upon a deed of covenant in order to meet the MFR. Even the QBCC website notes:

*Usually, the only way the trustee company can meet the NTA test is to rely upon a Deed from a director, beneficiary or associated company.<sup>10</sup>*

However, under the same MFR regulations those licensees who are in the self-certifying category (under \$800,000 maximum revenue) are unable to rely upon a deed to meet the MFR.<sup>11</sup> The result is that self-certifying licensees who are trusts are highly unlikely to demonstrate compliance with the MFR through no fault of their own.

At a minimum, such a provision should be delayed until the full results of the QBCC annual reporting provisions are known.

If the Bill proceeds more defences should be incorporated into the Bill including that:

- if a contractor relies on information provided by the QBCC relating to MFR compliance, and that information turns out to be incorrect, a contractor cannot be prosecuted (noting that their licence can still be suspended when this occurs); and
- where a contractor, in good faith, relies upon an accountant to provide MFR details to the QBCC a contractor cannot be prosecuted for a breach of the due diligence requirements.

HIA has not seen any demonstrated need to change the legislation relating to the supply of financial documents. A contractor who supplies false information will, in due course, have their licence suspended (if QBCC take appropriate action). Further, they are unlikely to be a 'fit and proper person' if they are supplying false information. There is already adequate provision under the existing legislation dealing with this situation.

### **3.2 DELAYING OR OBSTRUCTING COMPLIANCE WITH DIRECTION TO RECTIFY**

The explanatory memoranda notes that this provision:

*'... will benefit consumers by providing a deterrent to those who may seek to prevent work from being rectified effectively and in an expeditious manner. The penalty amount is consistent with the existing penalty for failing to comply with a direction to rectify building work.'*

HIA would argue that this section does not benefit consumers. Contractors generally have 28 days to comply with a Direction to Rectify (DTR). A failure to comply will generally result in the work being referred to the QBCC

<sup>9</sup> QBCC 2018-2019 Annual report, page 23: <https://www.qbcc.qld.gov.au/qbcc-annual-report-2018-2019>

<sup>10</sup> <https://www.qbcc.qld.gov.au/information-accountants/trust-structures>

<sup>11</sup> s17B Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018.

insurance scheme (if such work is covered by the scheme) and the non-compliance being noted on the contractors licensing record (which adversely affect their reputation). In addition, fines and demerit points are applied as a normal consequence of failing to comply with a DTR.

The utility of section 72AA is questionable. HIA understands that QBCC inspectors do not know how this section is intended to operate as, in practice the failure to comply with a direction is significant by itself. Attempting to make an assessment of whether someone is breaching this provision, and then subject to a penalty, within the short time period they have to comply with the DTR itself, is fraught with difficulty.

Further, it is HIA's experience that it is generally home owners who obstruct rectification work being carried out. Contractors are well-aware of the consequences of failing to comply with a direction which serve as a direct incentive to fix defective work. However there is little to no detriment when a home owner delays or obstructs a contractor's access to rectify. Whilst technically QBCC retains the ability to close a complaint matter where access has been denied it is HIA's experience that this is not often the case.

### 3.3 SITE SUPERVISORS LICENCE

Currently an excluded person or permanently excluded individual is allowed to apply for a site supervisor's licence. This allows a holder to carry out personal supervision of building work on a construction site.

The Minister noted:

*'Currently, excluded individuals and permanently excluded individuals are only prevented from holding a contractor or nominee supervisor licence. Site supervisors exercise significant influence and have multiple legal responsibilities on construction sites. Given these responsibilities it is not fit or proper for someone who is involved in a bankruptcy or collapse to be able to hold a site supervisor licence. A transitional provision ensures these amendments are not retrospective. This means that existing site supervisors who are excluded individuals or permanently excluded individuals will not be impacted. However, once these amendments come into effect, an existing site supervisor who becomes an excluded individual or permanently excluded individual due to bankruptcies or collapses will lose their site supervisor licence.'*<sup>12</sup>

The Minister is describing an individual who is an influential person within a QBCC licenced business. As the law currently stands an excluded person cannot be an 'influential person' within a QBCC licenced entity. The QBCC currently have power to take action against that QBCC licenced entity if they are engaging an excluded person who is an influential person within that business (including suspension of the QBCC licence).

However, in the residential building sector it is HIA's experience that site supervisors are not influential persons within a business. They are there for technical supervision to ensure buildings are constructed to meet required standards and timeframes. Current legislation already provides adequate protection to ensure that site supervisors are technically competent (s32AA (2) QBCC Act) taking into account their history.

The consequences of becoming an excluded person are already the most severe of any Australian jurisdiction.

HIA finds it deplorable that a contractor who knows nothing else other than building and who becomes insolvent because they have not been paid will, if this provision takes effect, have no option but to seek employment in a completely different industry as the ability to become a site supervisor is removed. HIA would suggest this is not in the best interests of individuals or contractors or the Queensland residential building industry more broadly.

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<sup>12</sup> Hansard, page 143: [https://www.parliament.qld.gov.au/documents/hansard/2020/2020\\_02\\_05\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/hansard/2020/2020_02_05_WEEKLY.pdf)

### 3.4 PUBLICATION OF DETAILS OF PARTICULAR EXCLUDED INDIVIDUALS

The current wording of the proposed amendments to the QBCC Act will have unintended consequences and will affect directors of businesses where the business is not QBCC licenced.

The excluded person regime applies to companies that are 'construction companies' and not just 'building companies'. For example, a HIA member became an excluded person because they ran a transport business and the transport business went into liquidation. The proposed amendments to the QBCC Act means that his details would be published for a period of 10 years on the QBCC website even though the relevant company event related to a non-QBCC licenced entity. We note that the legislation includes the words 'may', however this does not adequately address the concerns above.

HIA understands that the intention of the proposed amendment is to capture those directors/influential person who are part of a QBCC licenced business but are not licenced themselves. HIA submits that the provisions should therefore be drafted to ensure that only this intent is captured and suggest that a provision be inserted requiring the QBCC to consider whether it is appropriate to publish details of a non-licenced person, whether they have ever held a QBCC licence, ever intend to become QBCC licenced or any other relevant matters prior to their classification as an 'excluded person'.

### 3.5 REQUEST FOR LEGISLATIVE TRANSPARENCY

The QBCC, under section 50A of the QBCC Act, may create an approved audit program to monitor compliance with QBCC MFR.

Currently, there is no requirement for QBCC to publish what the approved audit program details. QBCC currently refuse to publish what the approved audit program is on the basis that the legislation does not require them to do so.

HIA requests that, similar to the provision within s189 (3) of the Bill that requires the Commissioner to publish the approved audit program for complaint with the BIFA, that a provision be inserted amending the QBCC Act so "If the commissioner approves an approved audit program, the commissioner must publish the program on the commission's website."

## 4. CONCLUSION

While the Bill makes a number of common sense amendments to the trust account model overwhelmingly the implementation of the additional legislative provisions will simply increase cost, red tape and undermine any benefits of the amendments.

The drafting of the legislation appears to need additional work. By simply following the legislation contractors will be offending different provisions of the legislation with significant penalties.

The insertion of new phrases is confusing. The definitions of the new phrases not aligning to existing definitions for known terms (with a body of existing case law to clarify what they mean in practise) is contrary to the intent of the Panel's recommendations of 'simplifying the framework'.

The requirements around bank reconciliations and trust ledgers imposes a significant additional administrative burden. Small builders are not solicitors who are accustomed to the complexities of trust accounting records. This Bill fails to acknowledge this.

A majority of PTAs will be in projects between \$1- \$3 million. HIA is confident that many contractors who currently operate in this space will not be able to cope with the additional responsibilities that this legislation imposes. Feedback to HIA indicates many will decide not to do undertake projects that attract the requirements of this legislation. Their withdrawal will impact housing supply.





