

From: [Transport and Public Works Committee](#)
To: [Transport and Public Works Committee](#)
Subject: RE: Call for submissions on the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020
Date: Wednesday, 26 February 2020 3:28:15 PM
Attachments: [image002.png](#)
[Table of proposed changes to definitions re BIFSOPA amendments.docx](#)

Dear Committee Secretary

From a review of the proposed amendments we have the following comments. Certain of the definitions have been revised and we agree there is a benefit in aligning the definitions used in the BIF Act and the QBCC Act, however, feel that in some areas, rather than provide clarity and certainty for industry, the revised definitions may introduce ambiguity by being too loose and open to interpretation. We have produced a table showing the current and proposed definitions and annotated comments below each of them explaining our concerns and proposing alternative wording.

Jon Davies
CEO
QMCA

via



Lorelei Broadbent

Secretariat

P: (07) 3211 4900

GPO Box 3254

Brisbane QLD 4001

www.qmca.com.au

Provisions in current Building Industry Fairness (Security of Payment) Act 2017	Amended provisions in proposed Building Industry Fairness (Security of Payment) Act 2017
<p>Chapter 2 Project Bank Accounts Part 1 Preliminary – Clause 8 Definitions for Chapter</p> <p>building means a fixed structure that is wholly or partly enclosed by walls or is roofed.</p>	<p>Chapter 2 – Statutory Trusts – Part 1 Preliminary – Clause 8 Definition for Chapter</p> <p>building includes a fixed structure. <i>Examples of a fixed structure—</i></p> <ul style="list-style-type: none"> • a fence other than a temporary fence • a water tank connected to the stormwater system for a building • an in-ground swimming pool or an above-ground pool fixed to the ground
<p>Within any project such as</p> <ol style="list-style-type: none"> 1. construction of an airport runway and terminal building or 2. construction of a water treatment works and control buildings, or 3. any road project which also includes a building. <p>the definitions should give clarity as to which elements of the construction should be used to determine the 50% of the Contract price threshold.</p> <p>The new definition is open to interpretation where “Examples of a fixed structure” are given, for instance is perimeter fencing on an airport or road interpreted as a fixed structure. Are precast concrete noise walls alongside a carriageway interpreted as a “fence” We propose that the original definition is retained and the examples are</p> <p>building means a fixed structure that is wholly or partly enclosed by walls or is roofed and includes other fixed structures directly associated with the functioning of the building.</p> <p><i>Examples of other fixed structure—</i></p> <ul style="list-style-type: none"> • a fence other than a temporary fence erected to exclude persons from, or define the extent of the building premises • a water tank connected to the stormwater system for a building • an in-ground swimming pool or an above-ground swimming pool fixed to the ground. 	
<p>Chapter 2 Project bank Accounts Part 1 Preliminary – Clause 8 Definitions for Chapter</p> <p>building work—</p> <p>(a) means—</p> <ol style="list-style-type: none"> (i) the erection or construction of a building; or (ii) the renovation, alteration, extension, improvement or repair of a building; or (iii) the provision of lighting, heating, ventilation, air-conditioning, water supply, sewerage or drainage in connection with a building; or (iv) any site work (including the construction of retaining structures) related to work of a kind referred to above; or (v) the preparation of plans or specifications for the performance of building work; or (vi) contract administration carried out by a person in relation to the construction of a building designed by the person; or (vii) fire protection work; or (viii) carrying out a completed building inspection; or (ix) the inspection or investigation of a building, and the provision of advice or a report, for termite management systems for the building or for termite infestation in the building; and <p>(b) includes work prescribed by regulation; and</p> <p>(c) does not include work prescribed by regulation.</p>	<p>Chapter 2 – Statutory Trusts – Part 1 Preliminary – Clause 8A Meaning of Project Trust Work</p> <p>8A Meaning of project trust work</p> <p>(1) Project trust work means any of the following work—</p> <ol style="list-style-type: none"> (a) the erection or construction of a building; (b) the renovation, alteration, extension, improvement or repair of a building; (c) the provision of lighting, heating, ventilation, air conditioning, water supply, sewerage or drainage in connection with a building; (d) any site work (including the construction of retaining structures) related to work of a kind mentioned in paragraph (a), (b) or (c); (e) the preparation of plans or specifications for the performance of any other work mentioned in this subsection; (f) contract administration if carried out by a person for the construction of a building designed by the person; (g) fire protection work within the meaning of the <i>Queensland Building and Construction Commission Act 1991</i>, schedule 2; (h) site testing within the meaning of the <i>Queensland Building and Construction Commission Act 1991</i>, schedule 2 and classification carried out in preparation for the erection or construction of a building on the site; (i) the carrying out of a building inspection; (j) the inspection or investigation of a building, and the provision of advice or a report, for the following— <ol style="list-style-type: none"> (i) termite management systems for the building; (ii) termite infestation in the building;

- (k) work performed by an architect in the architect’s professional practice, including, for example, carrying out a building inspection;
 - (l) work performed by an engineer in the engineer’s professional practice;
 - (m) work performed by a licensed surveyor in the surveyor’s professional practice;
 - (n) electrical work under the *Electrical Safety Act 2002*;
 - (o) the erection of scaffolding;
 - (p) the installation of manufacturing equipment or equipment for hoisting, conveying or transporting materials or products, including luggage, mail or primary produce, but not including the installation of fixed structures providing shelter for the equipment;
 - (q) earthmoving and excavating;
 - (r) certification work performed by a building certifier under the *Building Act 1975* in the certifier’s professional practice;
 - (s) the assessment of energy efficiency of a building;
 - (t) work performed by a fire safety adviser under the *Building Fire Safety Regulation 2008*;
 - (u) the laying of wet pour rubber, including the laying of a blended mix of graded rubber particles and binder to provide a continuous surface;
 - (v) the installation of prefabricated components of a building or other works;
 - (w) other work prescribed by regulation.
- (2) However, **project trust work** does not include work prescribed by regulation not to be project trust work.

The definition of building work has been replaced with a new definition for project trust work, the additional items added to the definition are items (h) and items (k) to (v) inclusive.
The definition of project trust work should give clarity as to which elements of the of the works should be used to determine the 50% of the Contract price threshold
Whereas items (a) to (g) and items (i) and (k) mirror the previous definition and specifically refer to “of a building” or “in connection with a building” or “for the construction of a building”, certain of the additional items have no similar reference. These items are (l), (m), (n), (o), (q), (u) and (v)
For instance item (q) *earthmoving and excavating*, in relation to a project for the construction of an airport runway and terminal should not include the earthworks associated with the runway.
Item (o) –*the erection of scaffolding*, should only relate to scaffolding associated with the construction of the building.
Item (v) *the installation of prefabricated components of a building or other works*, is ill defined in respect of other works.

We propose all such definition include, or the 8A Meaning of project trust work is prefaced by words such as “carried out in preparation for the erection or construction of a building on the site;” such that project trust work is clearly defined as only applying to works associated with the erection or construction of a building.

Chapter 3 – Progress Payments – Division 2 Interpretation – Clause 65

65 Meaning of Construction Work

(1) **Construction work** means any of the following work—

- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;
- (c) the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
- (d) the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;
- (e) any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph (a), (b) or (c), including—
 - (i) site clearance, earthmoving, excavation, tunnelling and boring; and
 - (ii) the laying of foundations; and
 - (iii) the erection, maintenance or dismantling of scaffolding; and
 - (iv) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site; and
 - (v) site restoration, landscaping and the provision of roadways and other access works;
- (f) the painting or decorating of the internal or external surfaces of any building, structure or works;
- (g) carrying out the testing of soils and road making materials during the construction and maintenance of roads;
- (h) any other work of a kind prescribed by regulation.

(2) To remove doubt, it is declared that **construction work** includes building work within the meaning of the *Queensland Building and Construction Commission Act 1991*.

(3) However, **construction work** does not include any of the following work—

- (a) the drilling for, or extraction of, oil or natural gas;
- (b) the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose.

Chapter 2 – Statutory Trusts – Part 1 Preliminary – Clause 8B Meaning of protected work

NOTE – the definition of protected work’ is provided to give more clarity about the beneficiaries that are intended to be protected under the trust framework.

8B Meaning of protected work

(1) **Protected work** means any of the following work—

- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings, whether permanent or not, forming, or to form, part of land;
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;
- (c) the installation in any building or other works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
- (d) the external or internal cleaning of buildings and other works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;
- (e) any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph (a), (b) or (c), including—
 - (i) site clearance, earthmoving, excavation, tunnelling and boring; and
 - (ii) the laying of foundations; and
 - (iii) the erection, maintenance or dismantling of scaffolding; and
 - (iv) the prefabrication of components to form part of any building or other works, whether carried out on-site or off-site; and
 - (v) site restoration, landscaping and the provision of roadways and other access works;
- (f) the painting or decorating of the internal or external surfaces of any building or other works;
- (g) the testing of soils and road making materials during the construction and maintenance of roads;
- (h) the prefabrication of complete buildings or components of a building or other works, whether carried out on-site or off-site;
- (i) any other work of a kind prescribed by regulation.

(2) **Protected work** includes project trust work.

(3) However, **protected work** does not include any of the following work—

- (a) the drilling for, or extraction of, oil or natural gas;
- (b) the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose;
- (c) work prescribed by regulation not to be protected work.

From the Explanatory notes:

Section 8B defines the meaning of protected work. Protected work is used to determine the possible beneficiaries of the project trust. The Panel recommended casting the definition to align with the definition of “construction work” in Chapter 3 of the BIF Act.

However the trust framework is intended to protect participants in projects where more than 50% of the Contract Price is associated with the construction alteration renovations etc. of buildings.

Construction Work from Chapter 3 of the BIF Act relates to Progress Payments defining the extent of possible elements of different Construction Work to which the Progress Payments provisions of the BIF Act apply.

To give clarity to the intent of the definition of Protected Work we propose 8B (1) should be amended to:

(1) **Protected work** means any of the following work **which may be included in a project where more than 50% of the Contract price is defined as project trust work**—