

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

## Explanatory Notes

### Short title

The short title of the Bill is the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024.

### Policy objectives and the reasons for them

The Queensland Building Plan (QBP) and QBP 2021 Update (QBP Update) promote a safer, fairer and more sustainable building and construction industry, which is a key economic driver for the state. The government continues to deliver on the QBP and monitor the implementation of key reforms. A key focus of the QBP and the QBP Update is improving security of payment protections for subcontractors.

The Queensland Building and Construction Commission (QBCC) Governance Review 2022 Report (Review Report) was established to ensure the QBCC's governance arrangements reflect best practice for a building and construction industry regulator and are fit-for-purpose to deliver on the objectives of the *QBCC Act 1991* (QBCC Act). The Review Report included recommendations to improve the effectiveness and accountability of the QBCC's strategic and advisory body, the Queensland Building and Construction (QBC) Board. The Queensland Government's published response to the Review Report supported these recommendations. The Review Report also included a recommendation to refocus the QBCC's regulatory role to licensing and compliance of the industry which was supported in-principle.

The objectives of the Bill are to:

- Clarify and simplify the following matters (*Building Industry Fairness (Security of Payment) Act 2017*):
  - who is a 'subcontractor beneficiary' of a project trust
  - trust account ledger and record keeping requirements
  - retention amount deposits must include GST
  - independent review requirements for trust accounts
  - transitional application of project trust account and retention trust account eligibility
  - QBCC's ability to share information with the Department of Housing, Local Government, Planning and Public Works (the department) for the purposes of assessing the efficacy of policy.
- Implement Review Report recommendations to:
  - reduce the Queensland Building and Construction Board to seven members and publish a conflict-of-interest register for the Board (QBCC Act)
  - transfer the responsibility for prescribing technical qualification requirements for licensing under the *Plumbing and Drainage Act 2018* (Plumbing and Drainage Act) and the *Building Act 1975* (Building Act), from the QBCC to the department.
- Progress minor amendments to clarify existing provisions, improve registration and regulatory processes, facilitate QBCC's ability to share information with the department,

and support industry and consumers (*Building Industry Fairness (Security of Payment) Act 2017*, QBCC Act, *Architects Act 2002* (Architects Act) and *Professional Engineers Act 2002* (PE Act)).

It is intended to progress complementary amendments to the Building Industry Fairness (Security of Payment) Regulation 2018 to commence at the same time as the Bill. The amendments to the regulation are intended to simplify and clarify trust record keeping requirements, including how to record beneficial interest in a trust ledger, the types of subcontractors that are covered by the trust protections, and the trust account review engagement and report requirements.

#### Amendments of *Architects Act 2002* and *Professional Engineers Act 2002*

The Architects Act establishes the Board of Architects of Queensland (BOAQ) as an independent statutory body and a registration framework for architects in Queensland. The PE Act is similar in operation and establishes the Board of Professional Engineers of Queensland (BPEQ) and a registration framework for professional engineers in Queensland. Collectively, these two boards are referred to as 'the Boards.' These Acts seek to promote public safety by ensuring that architectural and professional engineering services are only provided by qualified, registered practitioners and that these services are to a high standard.

The registration framework under both Acts involves professional organisations assessing the qualifications, experience and competency of architects and professional engineers on behalf of the Boards. These organisations include the Architects Accreditation Council of Australia (AACAA) and assessment entities approved by the Minister to assess professional engineering applicants. The Boards then consider the external assessment and fitness to practice before granting registration to an applicant.

Section 31A was inserted in the Architects Act and PE Act in 2020 to clarify that existing false and misleading information offences extended to these professional organisations involved in the registration process. However, review has indicated the provision would benefit from further clarification.

The BOAQ is a small regulator with limited resources, and it can be costly for the BOAQ to investigate and take matters to the Queensland Civil and Administrative Tribunal (QCAT) or the courts. However, when the BOAQ brings legal action and is successful, the Architects Act contains no guidance if reasonable investigation and legal costs should be considered. This can impact the BOAQ's ability to prosecute matters in the public interest. Review has indicated that guidance will be of benefit to all involved.

#### Amendments of *Building Act 1975*

Recommendation 1 of the Review Report is to refocus the QBCC's regulatory role to licensing and compliance of the industry. Supporting action 1.3, is to transfer responsibility for prescribing technical qualification requirements issued under the Plumbing and Drainage Act and Building Act to the department.

The department is currently responsible for developing policy (and legislation) for the QBCC, while the QBCC has operational regulatory responsibilities. The Review Report noted that the distinction between the policy role of the department and the regulatory role of the QBCC is not always clear in relation to setting technical qualifications for licences. To clarify and distinguish the policy and regulatory responsibilities, the review recommended this function sit with the Department.

The Queensland Government supported this review recommendation.

The Building Act provides for the approval of technical qualification requirements for pool safety inspectors (requirements that apply where the applicant is not a building certifier) to be set by the QBCC Commissioner (the commissioner). Transferring authority from the QBCC to the department requires the Building Act to be amended.

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

#### Security of payment

Late or non-payment to subcontractors can have a significant financial and personal impact for subcontractors, can contribute to insolvency along the contracting chain and have an adverse impact for the wider community and economy.

To address the ongoing security of payment issues, the Queensland Government introduced nation-leading reforms in 2017 through the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act). The centrepiece of the reforms was the introduction of Project Bank Accounts (now Project Trust Accounts) which required money to be held in trust for subcontractors.

Queensland continues to lead the nation with a suite of payment protections under the BIF Act to ensure that everybody in the building industry gets paid for the work that they do. Examples of these protections include adjudication, supporting statements, payment withholding requests and charge over property.

Since commencement in 2018, trust accounts have secured funds in more than 1200 contracts to the value of more than \$20.7 billion, providing payment security for industry, primarily subcontractors.

The Trust framework (the framework) currently applies to eligible Queensland Government contracts of \$1 million or more, and private sector contracts of \$10 million or more. Commencement of the remaining two phases has been extended by up to two years to 1 March 2025 (Phase 3 – private sector contracts of \$3 million or more); and 1 October 2025 (Phase 4 – private sector contracts of \$1 million or more, as well as extending retention trusts throughout the contractual chain).

In late 2022, an independent assessment found industry has successfully adapted to the fundamental requirements of the framework, however the lack of software capability and differing levels of understanding of the trust record keeping requirements and benefits of the reforms was impacting industry readiness.

The independent review of the framework also identified opportunities to clarify and simplify the legislative framework to ease the compliance burden for industry and support development of a range of software solutions that facilitate industry compliance. An enhanced education and change program will also be designed to drive cultural change and support industry to transition to Phases 3 and 4 of the framework.

### Amendments of *Plumbing and Drainage Act 2018*

The Plumbing and Drainage Act assigns the responsibility for deciding the qualifications and practical experience that an individual must have to be granted a licence or endorsement on a licence under the Plumbing and Drainage Act. This has been the responsibility of the commissioner.

To support Recommendation 1 of the Review Report (as outlined above, amendment of the *Building Act 1975*), these powers require amendment to transfer responsibility for approving technical qualifications and practical experience for licences and endorsements to the department.

### Amendments of Queensland Building and Construction Commission Act 1991

#### QBCC Governance Review

The QBCC Act addresses the functions, membership and business arrangements for the QBC Board. The Review Report included an action to reduce the size of the QBC Board from 10 persons to seven persons, including the Chair, to improve board effectiveness (Action 3.1, Recommendation 3). Although this action was delivered with the recent appointment of a new seven-person board, QBCC Act amendments to reduce the board size will formalise this arrangement.

Recommendation 6 of the Review Report is to enhance the transparency and accountability of the conflict of interest framework and includes action 6.1, which is to establish a public-facing conflict of interest register for the Board. A conflict of interest register for the Board was published on the QBCC's website in late 2022. The amendments to the QBCC Act are proposed to formalise an ongoing requirement to maintain a conflict of interest register for the Board, and to publish the register. This will enhance transparency and accountability of board members.

#### Miscellaneous

Minor amendments to the QBCC Act are also proposed to improve regulatory processes, clarify existing provisions and support industry and consumers.

Currently, QBCC licensees cannot surrender a specific licence class held under a primary licence. This means that if a licensee wishes to reduce the scope of work of their licence, they must surrender their whole licence and apply for a new licence in only the classes in which they wish to work. As it would be a new licence application, the person must pay a new licence application fee and meet current licencing requirements to be approved for the licence classes they previously held (including technical qualifications).

The QBCC Act also provides requirements for internal review processes of certain QBCC decisions. However, it has been identified that applicants for internal review frequently do not provide sufficient information for the reviewer to commence the review process. This can disadvantage applicants as part of the 28-day review timeframe is used to gather information, with further disadvantage if this review period occurs over a public holiday period.

It has also been identified that some 2017 QBCC Act amendments to improve building workplace safety may benefit from clarification. These amendments allow the QBCC to investigate and cancel or suspend a licence where building or other work on a building site under the licensee's control may have caused the death of, or grievous bodily harm to, a person, or involved a serious risk to the health or safety of a person. However, review has indicated the provision would benefit from clarification around whether it relates to the licensee who carried out the work or the licensee who is in control of the building site.

## **Achievement of policy objectives**

The Bill achieves its objectives by amending the following legislation:

- *Architects Act 2002*
- *Building Act 1975*
- *Building Industry Fairness (Security of Payment) Act 2017*
- *Plumbing and Drainage Act 2018*
- *Professional Engineers Act 2002*
- *Queensland Building and Construction Commission Act 1991*

#### Amendments of *Architects Act 2002* and *Professional Engineers Act 2002*

The policy objectives of the Bill are achieved by amending both Acts to put beyond doubt that existing offences regarding providing false and misleading information also includes information provided to a professional organisation as part of the registration process. This will ensure the Boards are adequately supported by their legislation and can effectively regulate their respective professions.

Further, the Architects Act is amended to provide guidance to the QCAT and Courts in relation to recovering reasonable investigation and legal costs if the BOAQ is successful in legal action. As it can be costly for the BOAQ to investigate and take matters to the QCAT or the Courts, it is considered appropriate for the regulator to be granted reasonable investigation and legal costs, if the QCAT or Courts deem it reasonable. This supports compliance and enforcement outcomes for the BOAQ and aligns with similar provisions in the PE Act and *Surveyors Act 2003*, both which provide guidance in relation to cost orders.

#### Amendments of *Building Act 1975*

The policy objectives of the Bill in relation to implementing the Review Report recommendation to transfer the responsibility for prescribing technical qualification requirements are met by amending the Building Act to allow the chief executive of the department, rather than the commissioner, to approve a course that an individual who is not a building certifier must successfully complete to be eligible to be licensed as a pool safety inspector. The amendments will also allow the chief executive to publish a description of a relevant course on the department's website.

Further, the Bill will allow the chief executive, rather than the commissioner, to approve a pool safety inspector test that an individual who is not a building certifier, must pass to be eligible to be licensed as a pool safety inspector.

By transferring the approval of qualifications from the commissioner to the department, the amendments will align with existing policy functions performed by the department and provide greater separation between the functions performed by the QBCC and the department.

Minor additional amendments to improve the existing framework for these approvals (i.e. ability to amend or replace an approval, terminology regarding approved requirements) and provide transitional provisions for existing approvals, are also included in the Bill.

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

##### *Clarify who is a 'subcontractor beneficiary' of the project trust account*

The framework is intended to protect "subcontractor" payments, encourage prompt payment by the trustee of subcontractor entitlements, and reduce the severity of insolvency impacts to subcontractors (who have little other form of legal protection). Suppliers and manufacturers of building materials and civil work were not intended to be protected through the framework.

The Bill amends the BIF Act to clarify that parties contracted to carry out works and supply goods and/or services for which a relevant licence or registration is required are beneficiaries of the trust account. By aligning the trust framework to the long established and well understood licencing requirements the amendment will assist industry to understand which subcontractors are beneficiaries and protected by the trust framework (and which subcontractor payments must be paid from a trust account).

The amendments will reduce administrative effort for trustees and avoid the need for detailed and complex technical assessment of the type of work to be carried out for each subcontract, particularly where the subcontract includes different types of work.

A head of power to prescribe additional types of work and subcontractors is retained.

The amendments maintain the framework's original policy intent.

#### *Clarify trust account ledger and other record keeping requirements*

Trust account records are intended to support transparency and provide assurance outcomes for trust amounts and administration. This includes keeping document records related to the creation and administration of the trust (e.g. contracts, payment claims and schedules and trust account notices) and accounting reports (e.g. ledger accounts, trial balances and reconciliations prepared for the trust).

The Bill amends the BIF Act to provide that a trustee must keep records as prescribed by regulation, and omits provisions that specify in prescriptive detail the records that must be kept. This level of prescriptiveness currently limits flexibility for industry and software to respond with automated and streamlined solutions.

The Bill also introduces a head of power for a guideline to be made describing how to meet compliance requirements. This will enable greater flexibility, as well as acknowledging there are different software approaches. It will also provide guidance on how to achieve the intended policy outcomes.

The amendments maintain the framework's original policy intent.

#### *Clarify the treatment of GST for retention amounts*

A retention trust account is intended to protect cash retentions until they are due to be paid, in accordance with the contract at practical completion and/or the end of the defects liability period.

The Bill clarifies that the retention trust applies to cash retention amounts inclusive of any GST amount applicable for the amount under the contract (i.e. the full amount that may become due). This will clarify that where GST is applicable to amounts paid under the contract:

- the statutory charge applies to the GST inclusive retention amount, and
- the GST inclusive retention amount must be deposited into the retention trust account.

The amendment clarifies for industry (and software developers) the application of the retention trust and addresses the risk of retention trust shortfall for contractors in the event of an insolvency.

The amendments maintain the framework's original policy intent.

*Simplify the independent trust account review requirements*

An independent party must review the trustee's compliance with the account's record keeping requirements. These requirements are important for ensuring integrity and compliance with the trust account requirements.

The Bill amends the BIF Act to provide that, in addition to registered auditors under the Corporations Act, an account review may be carried out by another person prescribed by regulation to be an auditor. It is intended to prescribe in the BIF Regulation that a registered accountant (a member registered with either the Institute of Chartered Accountants Australia and New Zealand or a Certified Practising Accountants Australia Independent Practising Accountant is also an auditor for the purposes of carrying out a trust account review. This amendment will address constraints due to the limited availability of registered auditors nationally and is also expected to reduce the cost of the engagement.

The Bill also amends the BIF Act to provide that the engagement of the auditor must comply with requirements prescribed by regulation. It is intended to prescribe in the BIF Regulation that the review will be carried out as an 'agreed upon procedures' engagement (under the AUASB auditing standard) that is approved and published by the chief executive. An 'agreed upon procedures' audit is considered less intensive and requires less time for the auditing professional to complete. This will result in lower costs for the trustee, while still maintaining a rigorous and appropriate level of independent oversight of the administration and record keeping requirements of the retention trust account. The agreed upon procedures approach will allow the department and/or QBCC to focus the review on priority areas of compliance and for it to be complementary to the QBCC's audit program. It also provides flexibility to adjust the program over time as the trust framework is normalised in industry

The Bill makes further amendments to the BIF Act to allow for additional circumstances when a trustee may apply for an exemption from providing an account review report. The amendments provide that these circumstances include where there have been no new transactions or changes to the account during the review period. This will help manage costs for trustees, as currently the exemption only applies if the account held no funds during the review period.

The amendments maintain the framework's original policy intent.

*Clarify transitional application for Project Trust Account and Retention Trust Account eligibility criteria*

The trust account framework was not intended to apply retrospectively upon the implementation of new phases to projects/contracts entered earlier. As currently drafted in the BIF Act, this distinction was considered unclear, resulting in some ambiguity and industry concern.

The Bill amends the BIF Act to state that a project trust account is required for a contract only if an amendment, together with any earlier amendments of the contract, increases the original contract price or the percentage of the project trust work, or both, by 30% or more.

The Bill also clarifies that where a contract amendment occurs, the eligibility for a project trust account remains the same as that in force at the time of tender or entering the contract.

Further, amendments include a new complementary provision to clarify retention amounts withheld prior to the commencement of the relevant phase are subject to the eligibility in force at the time the amount was withheld.

The amendments maintain the framework's original policy intent.

#### *Information sharing*

It is the department's role to develop and monitor security of payment legislation to ensure the framework's policy intent is being achieved. To do this, the department may require access to information the QBCC collects under the BIF Act and the QBCC Act. There would be benefit in clarifying this is permitted.

The Bill amends the BIF Act and QBCC Act to clarify QBCC may disclose information to the department to facilitate assessment of the security of payment legislation.

#### Amendments of *Plumbing and Drainage Act 2018*

The policy objectives of the Bill in relation to implementing the Review Report recommendations to transfer the responsibility for prescribing technical qualification requirements are met by amending the Plumbing and Drainage Act to allow the Chief Executive of the department, rather than the commissioner, to decide and approve the qualifications and practical experience requirements for licenses under the Plumbing and Drainage Act.

The amendments will also transfer responsibility for deciding the qualifications and practical experience that an individual must have for an endorsement to be made on the individual's licence, from the commissioner to the chief executive.

Further, the Bill will transfer the responsibility for publishing the required qualifications and practical experience for each licence or endorsement, from the commissioner to the chief executive of the department.

Minor additional transitional provisions are also included in the Bill to clarify that previous decisions regarding these requirements remain current upon commencement of this Act.

Transferring these powers to the chief executive will align with existing policy functions performed by the department and clarify the separation of functions performed by the QBCC and the department.

#### Amendments of *Queensland Building and Construction Commission Act 1991*

##### *QBCC Governance Review*

Amending the QBCC Act so the QBC Board consists of no more than seven members, will formalise existing arrangements for the Board to operate with less members to enhance its efficiency and effectiveness.

The amendments will also require that a register of QBC Board conflict of interest disclosures is formally recorded and made publicly available. QBC Board members are required to disclose conflicts of interest in QBC Board meetings, and this amendment will enhance transparency and accountability by requiring details of these disclosures recorded in meeting minutes to be published in a register. The amendments also enable the register to contain disclosures from former members and other information as the commission considers appropriate.



### *Miscellaneous amendments*

The Bill also provides the following amendments to improve regulatory processes and support industry and consumers:

- allow licensees to surrender a specific licence class held under a primary licence
- require applicants to provide an application for internal review in an approved form
- extend the internal review timeframe from 28 days to 28 business days
- 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.

Improving internal review processes will support applicants in providing relevant information at the outset to give the internal reviewer enough information to make a decision. Extending the timeframe to 28 business days will also allow the internal reviewer to have sufficient time to make a decision on an application. If the review is not completed within the required timeframe, the review decision is automatically deemed to be the same as the original decision.

Clarifying the QBCC can investigate and act against both a licensee that carried out the work on a building site and a licensee in charge of the site is also important to ensure licensees are accountable and work is carried out to appropriate standards and legislative requirements. For example, a licensee directly performing the work as well as a licensee in control of the site are both responsible for ensuring building work meets required standards and codes as well as safety responsibilities. Existing QBCC Act provisions, such as show cause and review processes, will ensure action is only taken against the appropriate licensee, depending on the circumstances.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than by legislative amendment. The legislative reform will be supported by communication to industry and consumers, which will occur on implementation.

## **Estimated cost for government implementation**

Amendments of the BIF Act are not expected to result in any material cost to government, including QBCC.

Amendments to the Building Act, Plumbing and Drainage Act and QBCC Act relevant to the Review Report recommendations are not expected to result in significant costs to government, including the QBCC. Any implementation costs associated with the department overseeing the technical qualifications for licenses under the Plumbing and Drainage Act and Building Act will be absorbed from existing resources.

Miscellaneous amendments of the QBCC Act aim to clarify legislative provisions, improve regulatory processes and support industry and consumers, and are expected to have very minimal resourcing impact on the QBCC, with any costs absorbed from existing resources.

Amendments of the Architects Act and the PE Act aim to clarify existing legislative provisions and improve regulatory processes, with minimal resourcing impacts for the Boards, if any. Providing legislative clarification is also considered to support the QCAT and Courts, e.g. in considering if legal and investigation costs are appropriate to be awarded to the BOAQ.

Amendments of the Building Act, PE Act, and Plumbing and Drainage Act are not expected to present significant additional administrative or capital costs for government, including QBCC. Any implementation costs will be absorbed from existing resources.

## Consistency with fundamental legislative principles

The Bill has been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA). The principles require legislation has sufficient regard to—

- rights and liberties of individuals; and
- the institution of Parliament.

## Consultation

### Amendments of *Architects Act 2002* and *Professional Engineers Act 2002*

Consultation with the respective Boards was undertaken during drafting of amendments relating to these Acts. As the amendments are generally minor and technical in nature, broader consultation was not considered necessary.

### Amendments of *Building Act 1975*

Community consultation occurred during the QBCC Governance Review through a range of stakeholder engagement methods. The findings from consultation informed the 17 recommendations (and 77 supporting actions) made in the Review Report. The government response to the Review Report supported or supported in principle the 17 recommendations.

As noted above, the QBCC was also consulted regarding the transfer of technical qualifications for licensing.

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

Broad industry consultation occurred in relation to the amendments to the BIF Act, including the following organisations:

- Australian Institute of Architects
- Board of Architects of Queensland
- Certified Practising Accountants Australia
- Chartered Accountants Australia and New Zealand
- Institute of Public Accountants
- Local Government Association of Queensland
- Master Builders Queensland
- Master Electricians Australia
- Master Plumbers Association of Queensland
- National Fire Industry Association
- Property Council of Australia, Queensland Division
- Queensland Law Society
- Urban Development Institute of Australia Queensland

There was general support for continuing to clarify and simplify BIF Act requirements.

### Amendments of *Plumbing and Drainage Act 2018*

Community consultation occurred during the QBCC Governance Review through a range of stakeholder engagement methods. The findings from consultation informed the 17 recommendations (and 77 supporting actions) made in the Review Report. The government response to the Review Report supported or supported in principle the 17 recommendations.

The QBCC was also consulted regarding the transfer of technical qualifications for licensing.

### Amendments of *Queensland Building and Construction Commission Act 1991*

The QBCC and MCC were also consulted on the miscellaneous amendments relating to the QBCC Act. No concerns were identified.

Community consultation occurred during the QBCC Governance Review through a range of stakeholder engagement methods. The findings from consultation informed the 17 recommendations (and 77 supporting actions) made in the Review Report. The government response to the Review Report supported or supported in principle the 17 recommendations.

## **Consistency with legislation of other jurisdictions**

### Amendments of *Architects Act 2002* and *Professional Engineers Act 2002*

Amendments to the Bill relating to the Architects Act and PE Act are specific to the legislative framework of the State of Queensland and relate to Queensland statutory bodies. These are also primarily minor and technical legislative amendments.

Each Australian State and Territory regulates the profession of architecture, with the aim of ensuring public safety by ensuring that architectural services are only provided by registered practitioners and to a high standard. Queensland, New South Wales and Victoria regulate professional engineering through legislation. As such, the minor amendments in the Bill are complementary and align with other jurisdictions that regulate these professions.

### Amendments of *Building Act 1975*

Queensland legislation relating to the governance of qualification requirements for pool safety inspectors is specific to the regulatory model in Queensland including the role and functions of the QBCC and the department.

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

Queensland is the only Australian jurisdiction to have legislated project and retention trust accounts for the building and construction industry.

Other Australian jurisdictions have implemented similar frameworks for retention trusts only (e.g. NSW and Western Australia) and project trust requirements through contractual conditions on government projects (e.g. Western Australia). Jurisdictions abroad including Canada, New Zealand, the United States of America and the United Kingdom have security of payment legislation that requires some monies to be held in trust, tailored to individual legislative frameworks.

It is important that Queensland continues to protect payments in the building and construction industry through the framework, and as such the Bill is state-specific.

Amendments of *Plumbing and Drainage Act 2018*

Queensland legislation relating to the governance of qualifications for plumbing and drainage licensees is specific to the regulatory model in Queensland, including the role and functions of the QBCC and the department.

Amendments of *Queensland Building and Construction Commission Act 1991*

No two States or Territories employ the same building and construction regulatory model. While all jurisdictions administer a building licensing framework and are equipped with monitoring and compliance powers to regulate the industry, the type and value of work that is regulated varies. Therefore, while there may be similarities across jurisdictions' security of payment and building quality and safety frameworks, the context in which they operate may differ. This is noted by the national Building Confidence Report published in 2018.

As such, while the amendments in the Bill relating to the QBCC Act could be seen as consistent with other jurisdictions, as each jurisdiction has a building licensing and regulatory framework, the amendments relate to Queensland's specific licensing and regulatory framework.

Similarly, the amendments in support of the Review Report are specific to administrative arrangements in effect for Queensland's building regulator the QBCC and the QBC Board.

## Notes on provisions

### Part 1 Preliminary

#### Clause 1 Short title

Clause 1 provides that the Act may be cited as the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2024*.

#### Clause 2 Commencement

Clause 2 provides that this Act commences on a day to be fixed by proclamation.

### Part 2 Amendment of Architects Act 2002

#### Clause 3 Act amended

Clause 3 provides that Part 2 of the Bill amends the *Architects Act 2002*.

#### Clause 4 Amendment of s 30 (False or misleading statement)

Clause 4 amends section 30 (False or misleading statement) to replace 'state anything to the board' with 'make a statement'.

#### Clause 5 Amendment of s 31 (False or misleading document)

Clause 5 amends section 31 (False or misleading document) to replace 'the board' with 'entity' in section 31(1) and section 31(2)(a).

#### Clause 6 Replacement of section 31A (Proof of giving false and misleading statements and documents)

Clause 6 amends existing section 31A (Proof of giving false and misleading statements and documents). Section 31A was inserted in 2020 to clarify that the existing offences of providing false and misleading information to the Board also applies if an applicant provides false or misleading information to a third party as part of all processes related to registration (whether conducted by the Board or another person or body). This clause, combined with clauses 4 and 5, further clarifies the existing policy intent. The clause also amends the section 31A heading.

#### Clause 7 Amendment of s 130 (Orders relating to architect)

Clause 7 amends section 130 (Orders relating to architect). Section 130 provides guidance relating to the orders the tribunal may make if it decides that a disciplinary ground is established. The clause provides that the orders the tribunal may make include requiring the architect to pay an amount to the Board as compensation for all, or a part of, the reasonable costs of any investigation about the matter the subject of the proceeding, including the costs of preparing for the proceeding. However, it is intended that new subsection 130(3)(d) will not limit the powers of the tribunal under the *Queensland Civil and Administrative Tribunal Act 2009*, chapter 2, part 6, division 6.

**Clause 8 Insertion of new s 139A (Costs of investigation)**

Clause 8 inserts new section 139A (Costs of investigation) to clarify that if a court finds a person guilty of an offence against the *Architects Act 2002*, the court may make orders on the finding of guilt requiring the person to pay an amount to the Board as compensation for all, or a part of, the reasonable costs of any investigation by the Board about the offence, including the costs of preparing for the prosecution. This section does not limit the orders for costs the court may make on the finding of guilt.

## **Part 3 Amendment of Building Act 1975**

**Clause 9 Act amended**

Clause 9 provides that Part 3 of the Bill amends the *Building Act 1975*.

**Clause 10 Amendment of s 246BH (Who may apply)**

Clause 10 replaces section 246BH(2) (Who may apply) to provide that an individual (who is not a building certifier) may only apply for the pool safety inspector licence if they have met the approved requirements for pool safety inspectors. This amendment removes specific mention to requirement such as holding qualifications and passing tests, and instead refers to the 'approved requirements'.

**Clause 11 Amendment of s 246BI (Requirements for application)**

Clause 11 omits section 246BI(1)(c)(iv) and (v) (Requirements for application) and replaces with section 246BI(1)(c)(iv) to clarify that an application for a pool safety inspector licence (where the applicant is not a building certifier) must be accompanied by evidence that they have met the approved requirements for pool safety inspectors. This removes specific mention to evidence of qualifications or having passed a test, with requirements relating specifically to the 'approved requirements for pool safety inspectors'.

Clause 11 also renumbers section 246BI(1)(c)(vi) to section 246BI(1)(c)(v) to account for the above amendment.

**Clause 12 Replacement of ch 8, pt 8 (Approval of training courses for pool safety inspectors)**

Clause 12 replaces chapter 8, part 8 (previously titled Approval of training courses for pool safety inspectors) to address the requirements for pool safety inspectors to meet approved requirements established by the chief executive. Clause 12 (in new section 246DG) provides that the chief executive (and no longer the commissioner) may approve requirements for pool safety inspectors who are not building certifiers.

Clause 12 provides for the chief executive's ability to approve the requirement to successfully complete a training course (i.e. acquiring a relevant qualification or statement of attainment) and test (i.e. passing the test). Clause 12 includes the chief executive's ability to amend or replace an approval, and the requirement to publish a notice of an approval on the department's website (including stating the day the approval, amendment or replacement of the approval, takes effect).

Clause 12 also clarifies which approved requirements apply during the relevant period after an amendment or replacement of an approval under section 246DG occurs. This includes the approved requirements, as in effect immediately before the amendment or replacement takes effect, or the approved requirements as amended or replaced (noting that both are considered

approved requirements during this period). Clause 12 clarifies that reference to the relevant period in section 246DG(7) means either the period stated in the notice of the amendment or replacement of the approval, or otherwise 6 months after the day the notice is published.

**Clause 13 Amendment of s 246F (Pool safety functions performed by QBCC commissioner)**

Clause 13 omits section 246F(g) which referred to the training courses under section 246DG for individuals proposing to become pool safety inspectors. This omission accounts for the removal of the commissioner's authority to approve courses. Clause 13 also provides for the necessary renumbering under section 246F to account for the removal of section 246F(g).

**Clause 14 Insertion of new ch 11, pt 23 - Transitional provision for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2024**

Clause 14 provides a new chapter 11 part 23 (and section 358) to clarify that a relevant pool safety inspector course or test approved by the QBCC commissioner, that was in effect immediately before the commencement, continues to apply after commencement, as if it were approved by the chief executive of the department (and thus remaining current).

**Clause 15 Amendment of sch 2 (Dictionary)**

Clause 15 inserts a new definition for *approved requirements* which refers back to the requirements for pool safety inspectors referenced in section 246DG. Noting approval of a relevant course or test is accounted for under the new section 246DG, Clause 15 also removes the definitions for *approved training course* and *pool safety inspector test*.

## **Part 4 Amendment of Building Industry Fairness (Security of Payment) Act 2017**

**Clause 16 Act amended**

Clause 16 provides that Part 4 of the Bill amends the Building Industry Fairness (Security of Payment) Act 2017.

**Clause 17 Amendment of s 8 (Definitions for chapter)**

Clause 17 amends section 8 (Definitions for chapter) to insert three definitions to clarify the meaning of 'amendment', 'project trust contract' and 'project trust subcontract'. Clause 17 also omits the definition of 'protected work' as a consequential amendment to support the introduction of clause 19 to insert new section 9A.

**Clause 18 Omission of s 8B (Meaning of *protected work*)**

Clause 18 omits section 8B (Meaning of protected work) as a consequential amendment to support the introduction of clause 19 to insert new section 9A.

**Clause 19 Insertion of new of s 9A (Meaning of *project trust subcontract*)**

Clause 19 inserts new section 9A which provides a definition specifying the meaning of 'project trust subcontract'. Section 9A (1) provides that a subcontract for a project trust contract is a first-tier subcontract for 1 or more of architectural services, contractor or trade work, a professional engineering service, and prescribed work, and is not excluded by regulation from being a project trust subcontract.

New section 9A (2) states that a subcontract does not cease to be a project trust subcontract because of an amendment of the subcontract, or an amendment of subsection (1), or a regulation made for subsection (1).

New section 9A (3) provides that if a contract becomes a project trust contract after it is entered, any subcontracts of the contract then in existence become project trust subcontracts if they meet the project trust subcontracts requirements when the contract became a project trust contract.

New section 9A (4) states that a subcontract that was not a project trust subcontract when it was made, becomes a project trust subcontract if the subcontract is amended; and the subcontract would have been a project trust subcontract had it been entered into in its amended form at the time it was amended.

New section 9A (5) provides definitions for architectural services, contractor or trade work, and professional engineering service.

It provides that architectural services mean services provided by a person registered as a practising architect under the *Architects Act 2002*.

Contractor or trade work means work for which the subcontractor holds, or is required to hold, a licence under any of the *Building Act 1975*, *Electrical Safety Act 2002*, *Plumbing and Drainage Act 2018*, *Queensland Building and Construction Commission Act 1991*, a regulation made under the *Work Health and Safety Act 2011*, or work of a kind prescribed by regulation.

New section 9A (5) also states that a professional engineering service means a service provided by a person registered as a practising professional engineer under the *Professional Engineers Act 2002*.

#### **Clause 20 Amendment of s 10 (Definitions for this part)**

Clause 20 amends section 10 to omit the definition of ‘minimum contract price’ and ‘related services’. Clause 20 also inserts a consequential amendment to reference section 11A, instead of ‘section 11A(4) in the definition of the subcontractor beneficiary.

#### **Clause 21 Amendment of s 10C (References to particular terms in this part)**

Clause 21 omits the reference to ‘contract for which a project trust is required’ and in its place inserts the reference to ‘project trust contract’. This is a consequential amendment as clause 17 amends section 8 and inserts a definition for project trust contract.

#### **Clause 22 Amendment of s 11 (What is a *project trust*)**

Clause 22 amends section 11 to replace subsection 11(a) with new subsections (a)(i) and (a)(ii). Section 11(a) provides that a project trust is a trust over amounts (i) payable in connection with a project trust contract or project trust subcontract and (ii) that are required to be deposited in the project trust account under Chapter 2 of the Act.

#### **Clause 23 Replacement of 11A (Who are the trustee and beneficiaries of a project trust)**

Clause 23 omits the current section 11A and replace it with new section 11A under the heading of ‘Trustees and beneficiaries of project trust’. Section 11A(1) provides that the contracted party for a project trust contract is both the trustee and a beneficiary of the project trust. Section 11A(2) states that the contracted party becomes the trustee and a beneficiary of the project trust when the trust is established, and ceases to be the trustee and a beneficiary of the project trust when the trust is lawfully dissolved.



Section 11A(3) provides that the subcontractor for a project trust subcontract for a project trust contract is a beneficiary of the project trust. Subsection (4) clarifies that the subcontractor becomes a beneficiary of the project trust when a project trust subcontract is entered into with the subcontractor, or a subcontract of the subcontractor becomes a project trust subcontract. It also states that the subcontractor ceases to be a beneficiary of the project trust when paid all amounts the subcontractor is entitled to be paid in connection with all of the subcontractor's project trust subcontracts, or the trust is lawfully dissolved. These amendments are consequential to new section 9A, meaning of project trust subcontract, and section 11a is largely unchanged other than for the removal of existing subsections (4)(a)-(c) which are now captured within the meaning of project trust subcontract.

**Clause 24 Amendment of s 11B (What are the beneficial interest in a project trust)**

Clause 24 makes a consequential amendment to section 11B to omit the reference to 'an amount the subcontractor is entitled to be paid under its subcontract' in section 11B(1)(a) and replace it with 'all amounts the subcontractor is entitled to be paid in connection with project trust subcontracts' to more accurately reflect the application of contractual arrangements. It also omits the reference to 'their subcontracts' from the definition of 'remainder' in section 11B(2) and replace it with 'project trust subcontracts' for consistency with other sections of the Act.

**Clause 25 Amendment of s 14 (Particular contracts for project trust work)**

Clause 25 replaces the section 14 heading with a new heading 'Eligibility of contract for project trust when contract entered into' to better reflect the purpose of the section. It also inserts new subsection 2A to clarify for transitional purposes that a contract's eligibility for a project trust is that which applied at the time the contract was entered.

**Clause 26 Replacement of s 14A (Amendments of contracts requiring project trusts)**

Clause 26 replaces section 14A with a new section 14A under the heading of 'Eligibility of contract for project trust when contract amended'. Section 14A (1) states that a contract does not cease to be eligible for a project trust because of an amendment of the contract.

Section 14A(2) provides that a contract that was not eligible for a project trust may become eligible for a project trust on the amendment of the contract, but only to the extent it would have been eligible for a project trust had it been in its amended form at the time it was entered into. This amendment seeks to clarify for transitional purposes that a contract's eligibility is that which applies at the time the contract is entered. It also provides that an amendment does not make the contract eligible for a project trust if it does not increase the original percentage of the contract price that is for project trust work, or original contract price by 30% or more.

**Clause 27 Amendment of s 15F (Contracts with less than 90 days until practical completion))**

Clause 27 amends section 15F (3) to omit the definition of amendment. This is a consequential amendment as Clause 54 has moved this definition to Schedule 2 (Dictionary)a.

**Clause 28 Amendment of s 18C (Change of financial institution)**

Clause 28 amends section 18C (2) to clarify that when transferring the project trust account to an alternative financial institution, the trustee may withdraw the amounts of interest credited to the account by a financial institution as authorised under section 51D.

**Clause 29 Amendment to s 19 (All payments from contracting party to be deposited in project trust account)**

Clause 29 makes a consequential amendment to section 19(1) to omit the reference to 'contract for which a project trust is required' and replace it with 'project trust contract' as per new reference at section 8.

**Clause 30 Amendment to s 19A (Limited purposes for which money may be deposited in project trust account)**

Clause 30 amends section 19A to clarify the purposes for which money may be deposited in project trust account. It amends section 19A(1)(a) to replace the reference to 'section 19(2)' with the broader reference of 'section 19'. This clarifies that amounts may be deposited into the trust account for all of the circumstances referenced in section 19.

Clause 30 also amends section 19A(1)(b) to omit reference to 'the contracted party is liable to pay the beneficiary in connection with its subcontract', and replaces it with 'the subcontractor is entitled, or may become entitled, to be paid in connection with a project trust subcontract'. This clarifies that amounts may be deposited into the trust account for all circumstances related to a current or future entitlement of the subcontractor rather than being limited to only amounts liable to be paid.

**Clause 31 Amendment to s 20 (All payments to subcontractor beneficiaries to be paid from project trust account)**

Clause 31 amends section 20 to omit subsection 20(1) as it is no longer required. It replaces 'may only pay the amount to the subcontractor beneficiary' in subsection 20(2) with 'for a project trust contract may only pay an amount to a subcontractor beneficiary of the project trust. These amendments are consequential to the new definitions at section 8.

Clause 31 replaces the reference to 'subsection (2) (b)' in subsection (4) with 'subsection (1)(b)' as a consequential amendment to reflect the numbering changes under section 20, and provides for the necessary renumbering under section 20 to account for the removal of section 20(1).

**Clause 32 Amendment to s 20A (Limited purposes for which money may be withdrawn from project trust account)**

Clause 32 amends section 20A(1)(b) to clarify the purposes for which money may be withdrawn from project trust account. It omits the reference to 'the contracted party is not also liable to pay a subcontractor beneficiary for the same work' and replaces it with 'a subcontractor beneficiary is not entitled to be paid for the same work' for consistency with other provisions in the chapter. It also omits the reference to section 18C(2) from section 20A(4)(a) and replaces it with the correct reference which is section 51D.

**Clause 33 Amendment to s 20C (Insufficient amounts available for payments)**

Clause 33 replaces the reference to 'the party is liable to pay each subcontractor beneficiary' at section 20C(5) with 'the subcontractor beneficiaries are entitled to be paid in connection with project trust subcontracts for consistency with other provisions in the chapter. In circumstances where the contracted party is unable to top up the trust account, making proportional payments to subcontract beneficiaries does not replace the obligation to pay the remaining amounts that subcontractors are entitled to be paid.

**Clause 34 Amendment to s 21 (Ending project trust)**

Clause 34 amends section 21(1)(a) to omit the note under this section (regarding when subcontractor beneficiary ceases to be a beneficiary). This note is no longer required as it is now covered by section 11A replaced by clause 23 of the Bill.

**Clause 35 Amendment to s 23 (Notice of project trust before entering subcontracts)**

Clause 35 makes consequential amendments to section 23(1). It omits 'If a project trust is required for a contract under section 12, the contracted party' and replace it with 'The contracted party for a project trust contract'. These amendments are consequential to the new definitions at section 8.

**Clause 36 Amendment to s 31 (What is a retention trust)**

Clause 36 amends section 31 to clarify that a retention trust is a trust over retention amounts withheld in the form of cash and is inclusive of any GST amount applicable for the amount under the contract. The policy intent was always that the amount held would be the full amount that may become payable at practical completion and/or defects liability period (i.e. inclusive of GST, if provided for under the contract).

**Clause 37 Amendment to s 31A (Who are the trustee and beneficiaries of a retention trust)**

Clause 37 amends section 31A(5)(b) to clarify that a beneficiary of a retention trust account ceases to be a beneficiary of the retention trust when paid all retention amounts it has a beneficial interest in, and the trust is lawfully dissolved.

**Clause 38 Amendment to s 32 (When retention trust required)**

Clause 38 amends section 32 to clarify when a retention trust is required for transitional purposes. Section 32 provides that a retention trust is required if a contract is withholding contract at the time the amount is withheld.

The Bill also inserts subsection 32(1A) to clarify that a retention trust is however required for a retention amount withheld under a first tier subcontract where it was not a withholding contract at the time the retention amount was withheld, but since became a withholding contract. This circumstance is most likely to occur in the situation of a head contract becoming a project trust contract (i.e. requiring a project trust to be established) in accordance with s14A of the BIF Act, due to contract amendments or variations.

A consequential amendment is made to section 32(2) to clarify that in relation to the establishment of a retention trust for amounts previously withheld, the requirement starts or is taken to have started on the first day the contracting party withholds the retention amount from payment.

The amendment replaces current section 32(5) with a new subsection which provides the definition for a withholding contract. It clarifies that a withholding contract means a project trust contract that is a head contract; or a subcontract that is eligible for a project trust under section 14C or 14D, or project trust subcontract for a project trust contract. These amendments are consequential to the new definitions at section 8.

Clause 38 also provides for the necessary renumbering under the amended section 32 to account for the insertion of a new subsection.

**Clause 39 Amendment to s 33A (Charge over retention amounts held in retention trust)**

Clause 39 inserts new subsection 33A(7) to clarify that the charge over retention amounts held in retention trust is inclusive of any GST related to the amount. This is consistent with the related amendment of the same effect at clause 36 of the Bill.

**Clause 40 Amendment to s 34 (Contracting party withholding retention amount must open retention trust account)**

Clause 40 makes a consequential amendment to section 34 to clarify the timeframe in which a retention trust account must be opened after a contract becomes a withholding contract under amended section 32. If a contract was not a withholding contract at the time it was entered or when the retention amount was originally withheld - the trust must be opened within 20 business days after the contract becomes a withholding contract. In all other circumstances, the retention trust account must be opened before a retention amount is first withheld. The amendment retains the current maximum 500 penalty units for this offence.

**Clause 41      Amendment to s 35 (All retention amounts withheld must be deposited in retention trust account)**

Clause 41 makes a consequential amendment to section 35 to clarify the requirement and timeframe within which retention amounts withheld must be deposited in the retention trust account (the deposit obligation) after a contract becomes a withholding contract under amended section 32. If a contract was not a withholding contract at the time the retention amount was originally withheld and later becomes a withholding contract – if there is an existing retention trust account, the amount must be deposited into the account within 5 business days of the contract becoming a withholding contract. If there is no existing retention trust account, the amount must be deposited into the retention trust account when it is opened. In accordance with section 34, the account must be opened within 20 business days of the contract becoming a withholding contract. The current maximum penalty of 200 penalty units or 2 years imprisonment continue to apply.

Clause 41 also inserts a new subsection under section 35 to clarify that the deposit obligation is inclusive of any GST related to the amount.

Clause 41 also provides for the necessary renumbering under the amended section 35 to account for the omitted and inserted subsections.

**Clause 42      Amendment to s 50 (Definitions for part)**

Clause 42 amends section 50 to insert a new definition for auditor. An auditor is a person who may be engaged by a trustee to carry out an account review report under section 57. It provides that an auditor is a person registered as an auditor under the *Corporations Act*, part 9.2; or a person prescribed by regulation to be an auditor. It is proposed to prescribe in the BIF Regulation that an auditor will include a registered accountant.

Clause 42 omits the definition of registered company auditor as it is no longer required. It also makes a consequential amendment to the definition of 'account review report' to replace the reference to 'section 57A(2)' with 'section 57A(1)'.

**Clause 43      Replacement of s 52 (Trust records)**

Clause 43 omits section 52 and replaces it with a new section 52. The amendment provides that the trustee for a project trust or retention trust must keep records for the trust as prescribed by regulation. It also specifies the record must be retained for at least 7 years. Trust account records are intended to support transparency and provide assurance outcomes for trust amounts and administration in order to ensure subcontractor payments are protected.

The amendment retains the current maximum penalty of 300 penalty units or 1 year's imprisonment.

**Clause 44      Omission of s 52A (Monthly bank reconciliation)**

Clause 44 omits section 52A as it is no longer required.

**Clause 45      Amendment to s 53A (Power to require particular information)**

Clause 45 makes a minor consequential amendment to section 53A to replace the reference to registered company auditor with 'an auditor'.

**Clause 46      Amendment of s57 (engaging auditor for review of trust account)**

Clause 46 amends section 57 to reduce regulatory burden and costs for trustees, whilst balancing the policy objectives to ensure independent oversight of trust account compliance.

The amendment omits section 57(2) to require that the type of engagement for the account review must comply with requirements prescribed by regulation. It is proposed the BIF Regulation will provide for the account review to be an approved procedures engagement as approved and published by the chief executive of the department. This approach will allow for the account review to be targeted to the specific compliance and accounting requirements of the trust account framework and are expected to reduce costs for trustees.

Clause 46 amends subsection 57(8)(b) to include the additional circumstance of there being no transactions or changes for the account during the review period for when a trustee need not engage an auditor to carry out an account review report. The amendment retains the regulation-making power for prescribing additional circumstances at renumbered subsection 57(8)(c).

Clause 46 also makes several minor consequential amendments to section 57 to replace references to registered company auditor with 'an auditor' where required; and omits section 57(9) (definition of reasonable assurance engagement) as is no longer required.

#### **Clause 47      Amendment of s 57A (Account review report)**

Clause 47 amends section 57A(1) to omit 'an account review report for the account as required under this section' and provides that a regulation will specify the requirements for an account review report.

Clause 47 omits section 57A(2) to (4) as they are no longer required. It also provides for the necessary renumbering under the amended section 57A to account for the omitted and inserted subsections.

#### **Clause 48      Insertion of new ch 2, pt 5**

Clause 48 amends Chapter 2 of the BIF Act to inserts new Part 5- Guidelines for chapter.

Clause 48 inserts new section 59 which provides that the chief executive may issue guidelines to facilitate compliance with Chapter 2. The amendment also provides that the chief executive must consult on the proposed guidelines as the chief executive considers appropriate, and the guidelines must be published on the department's website. The ability to make guidelines will allow flexibility to provide compliance examples, detail software and compliance options and respond if necessary to any changes in technology or the market. In this way, the guidelines will facilitate more efficient and effective compliance by industry, particularly during the initial transition period. This amendment complies with s.7(3) 'Meaning of statutory instrument', *Statutory Instruments Act 1992* and mirrors similar provisions, such as the head of power provided at s.258 'Guidelines', BA, and s.104FD 'Guidelines for preparing fire safety management plans', *Fire and Emergency Services Act 1990*.

New section 59 also provides that in relation to any proceeding for compliance with chapter 2 requirements, it is a defence for a person to prove that the offence relates to conduct to which guidelines under this section apply, and the person complied with the guidelines in engaging in that conduct.

#### **Clause 49      Amendment of s 200E (Confidentiality of information)**

Clause 49 amends section 200E which specifies certain circumstances under which the QBCC may disclose information with another agency. The amendment clarifies that QBCC may disclose the information or give access to documents it receives to the chief executive for the purpose of monitoring the operation and effectiveness of the Act.

It is the role of the department to develop and monitor legislation to ensure that the intent of the legislation is achieved. To do this, the department may require access to some information or documents the QBCC receives under the Act. This amendment ensures that QBCC can share the information where necessary with the department without breaching the confidentiality requirements.

**Clause 50 Omission of s211D (Project trust and contracts entered into before the commencement of new phases)**

Clause 50 omits section 211D as it is no longer required as clause 26 now clarifies the application of project trust eligibility in circumstances of variations altering contract price and/or scope as later phases commence.

**Clause 51 Insertion of new ch 8C**

Clause 51 inserts new Chapter 8C (Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2024) into the BIF Act.

New section 215 provides definitions for the new chapter 8C. It provides that 'former' in a section of this Act means the section as was in force before the commencement of these amendments. It also provides that 'new', for a section in this Act means the section as in force from the commencement.

New section 215A clarifies that Section 32 as amended by the Bill applies to a retention amount withheld from payment whether before or after the commencement. This means that section 32 amendments should apply as if they have been in effect from 1 March 2021 when the framework first commenced. This is consistent with the original policy intent and existing communications to industry and therefore only seeks to correct a drafting error.

New section 215A also provides transitional provisions for application of amended sections 34 and 35. It specifies requirements for a retention amount that has been withheld from payment before the commencement, and the retention amount was not required to be deposited in a retention trust account before the commencement. If such amount on the commencement of this section will be required to be deposited in a retention trust account, a retention trust account must be opened, and the amount must be deposited in the retention trust account within 20 business days after commencement.

New section 215B provides transitional provisions for the changes affecting review of trust account. It states that if the trustee for a project trust or retention trust engaged an auditor to carry out a review of the trust account under section 57, and before the commencement the review had not been completed, or the account review report required under section 57A had not been given to the trustee, sections 57 and 57A continue to apply as if amendment of this Act had not been enacted. This will clarify that the amendments will apply to any review that has not been completed before commencement of this Act.

**Clause 52 Replacement of s 217 (Amendment of s14 (Particular contracts for project trust work))**

Clause 52 makes consequential amendment to replace section 217 with a new section 217. This is required as clause 25 amended section 14 and inserted new heading and clarified that section 14 applies to when contract entered.

**Clause 53 Replacement of s 218 (Amendment of s32 (When retention trust required))**

Clause 53 replaces section 218 with a new section 218. This is a consequential amendment as clause 38 has amended section 32 and included new definition for a withholding contract under section 32.

**Clause 54 Amendment of sch 2 (Dictionary)**

Clause 54 amends Schedule 2 (Dictionary) and inserts definitions for **amendment**, **auditor**, **minimum contract price**, **project trust contract**, and **project trust subcontract**. It also omits the existing definitions of minimum contract price, protected work and registered company auditor as they are no longer required.

Clause 54 also makes minor amendments to the definitions of 'account review report' to replace reference to 'section 57A(2)' with 'section 57A(1)', 'subcontractor beneficiary' to replace the reference to 'section 8' with the correct reference 'section 10, and 'trust record' to replace the reference to 'section 52(1)' with 'section 8'.

## **Part 5 Amendment of Plumbing and Drainage Act 2018**

### **Clause 55 Act amended**

Clause 55 provides that Part 5 of the Bill amends the *Plumbing and Drainage Act 2018*.

### **Clause 56 Amendment of s 14 (Qualifications and practical experience required for licence)**

Clause 56 amends section 14 (Qualifications and practical experience required for licence) to remove reference to the commissioner to clarify that the section applies to powers of the chief executive. This includes the power under 14(a) to decide relevant qualifications and practical experience required for a licence and to publish this information under 14(b).

Clause 56 also amends section 14(b) to remove reference to the QBCC website and clarify that the required qualifications and practical experience for the licence are to be published on the department's website.

### **Clause 57 Amendment of s 26 (Qualifications and practical experience required for endorsement)**

Clause 57 amends section 26, (Qualifications and practical experience required for endorsement) to remove reference to the commissioner and clarifies that the section applies to powers of the chief executive. This includes the power under 26(a) to decide relevant qualifications and practical experience required for an endorsement to be made on an individual's licence and to publish this information under 26(b).

Clause 57 also amends section 26(b) to remove reference to the QBCC website and state that the required qualifications and practical experience for the endorsement are to be published on the department's website.

### **Clause 58 Insertion of new pt 8, div 3 - Transitional provision for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2024**

Clause 58 provides that a decision by the commissioner in effect before commencement regarding the qualifications and practical experience required for a licence or endorsement (under sections 14 and 26 respectively), continues to apply on commencement as if it were an approval by the chief executive. This clarifies that a new approval isn't required by the chief executive to give effect to the pre-existing practical experience and qualification requirements (those in effect immediately before commencement) previously approved by commissioner.

### **Clause 59 Schedule 1 (Dictionary)**

Clause 59 amends Schedule 1 (Dictionary) to clarify relevant powers of the chief executive under the definition of practical experience and qualifications.

Reference to the commissioner is omitted from the definition of practical experience to clarify that the practical experience required for a licence or endorsement is that which is decided by the chief executive under sections 14(a) or 26(a).

Similarly, reference to the commissioner is removed from the definition of qualifications to provide that for a licence or endorsement, the qualifications are decided by the chief executive under sections 14(a) or 26(a).

## **Part 6 Amendment of Professional Engineers Act 2002**

### **Clause 60 Act amended**

Clause 60 provides that Part 6 amends the *Professional Engineers Act 2002*.

### **Clause 61 Amendment of s 30 (False or misleading statement)**

Clause 61 amends section 30 (False or misleading statement) to replace 'state anything to the board' with 'make a statement'.

### **Clause 62 Amendment of s 31 (False or misleading document)**

Clause 62 amends section 31 (False or misleading statement) to replace 'the board' with 'an entity' in section 31(1) and section 31(2)(a).

### **Clause 63 Replacement of section 31A (Proof of giving false and misleading statements and documents)**

Clause 63 amends section 31A (Proof of giving false and misleading statements and documents). Section 31A was inserted in 2020 to clarify that the existing offences of providing false and misleading information to the Board also applies if an applicant provides false or misleading information to a third party as part of processes related to registration (whether conducted by the Board or another person or body). This clause, combined with clauses 61 and 62), further clarifies the existing policy intent. The clause also amends the section 31A heading.

## **Part 7 Amendment of Queensland Building and Construction Commission Act 1991**

### **Clause 64 Act amended**

Clause 64 provides that Part 7 amends the *Queensland Building and Construction Commission Act 1991*.

### **Clause 65 Amendment of s 12 (Appointment)**

Clause 65 amends section 12(1) (Appointment) to remove reference to 10 members and provide that the QBC Board consists of not more than seven members.

### **Clause 66 Insertion of new s 28AA (Public register of interests)**

Clause 66 inserts a new section 28AA to provide that the commission must publish a register of QBC Board members disclosure of interests (i.e. conflicts of interest) on the commission's website. Under section 20C of the Act, QBC board members are required to disclose the nature of an interest to the board meeting. Under Clause 664, the register is to include, for each member, the detail of each disclosure recorded in the board's minutes (under section 20C) as well as entries for former members as the commission considers appropriate. The register may contain other information about a member or former member, providing the member or former member's consent is obtained.



**Clause 67 Amendment of s 48 (Cancellation or suspension of licence)**

Clause 67 amends section 48(1)(g) to clarify the existing provision that a licence can be cancelled or suspended if building or other work on a building site under the licensee's control, or carried out under the licence, may have caused the death or grievous bodily harm to a person or involved a serious risk to the health or safety of a person. This provision was inserted in 2017 and provides that the QBCC can consider workplace health and safety issues associated with building work when deciding whether to cancel or suspend a licence.

**Clause 68 Amendment of s 50 (Surrender of licence)**

Clause 68 amends section 50 (Surrender of licence) to clarify the existing provision that a licensee can surrender a specific licence class held under a licence if the licence authorises the licensee to carry out more than 1 specified class of building work.

**Clause 69 Amendment of s 53 (Return of licence)**

Clause 69 amends section 53 (Return of licence) to provide that a person who has surrendered a licence must, within 14 days after receiving the QBCC's consent under section 50 to surrender a licence, return the licence or licence certificate to the QBCC. It is intended that if the person has only surrendered only some of the classes to which the licence is issued, the QBCC will provide a replacement licence or licence certificate.

**Clause 70 Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees)**

Clause 70 amends section 74B (Proper grounds for taking disciplinary action against a licensee and former licensees) to clarify the existing provision applies to a licensee or former licensee in relation to building or other work on a building site under the licensee's control, or carried out under the licence, may have caused the death or grievous bodily harm to a person or involved a serious risk to the health or safety of a person. This provision was inserted in 2017 and provides that the QBCC can consider workplace health and safety issues associated with building work in considering if proper grounds exist for taking disciplinary action against a licensee or former licensee.

**Clause 71 Amendment of s 86B (Requirements for making application)**

Clause 71 amends section 86B (Requirements for making application) to clarify that an application for internal review of a reviewable decision must be made using the approved form. Under section 115C, the chief executive or commissioner may approve forms for use under the Act.

**Clause 72 Amendment of s 86C (Internal review decision)**

Clause 72 amends section 86C (Internal review decision) to provide that an internal review decision must be made within 28 business days after the internal review application is made or a longer period agreed to by the applicant. This will ensure that non-business days such as public holidays, weekends and holiday office closures are not counted in the allowable review period.

**Clause 73    Amendment of s 110 (Confidentiality of information)**

Clause 73 amends section 110 (Confidentiality of information) to clarify that the QBCC may provide information to the department administering the QBCC Act. This supports the department in assessing the efficacy of policy that is in effect and that the objects of the Act are being achieved.

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