



# Developer Review Panel – Discussion Paper

November 2022



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## Foreword

The *Queensland Building Plan 2017* and its 2021 update (QBP) outline the Queensland government's vision for creating a safer, fairer and more sustainable construction industry. Recognising the important role of developers, the QBP committed to an independent review of their role in the state's building and construction industry.

Consequently, in late 2021, the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, appointed myself and my fellow Panel members to complete this review. The Panel draws together our extensive experience in the development, legal and construction sectors and I would like to thank my fellow Panel members for their insights and support to date. Our task is to review the role of developers in the industry and compile a report on our findings, including any improvement recommendations.

Since being appointed, we have collectively conducted over 50 hours of consultation with key industry, union, community and government representatives and received several preliminary written submissions as a result. I would like to thank those who have participated in the review for taking the time to share their experiences and for providing information on this important topic. This consultation has helped the Panel to crystallise its thinking and has informed the development of this discussion paper.

First, it has helped define the scope of the review. Development activity is broad, it spans a project's life, from acquisition to settlement and occupation, and includes all categories of property - residential, commercial, retail, industrial and health to name a few. However, the focus of our review is squarely on the industry's interface with the construction sector, in particular security of payment for contractors and building quality and safety.

Second, we have heard about the breadth of professionalism displayed by developers in Queensland. Some developers value safety, deliver quality products to customers and are preferred construction industry partners. However, we have also heard about poor behaviour by developers that can delay or prevent payment, alter risk profiles beyond what is reasonable or appropriate, contribute to substandard building practices and cause a reduction in safety during construction. While these issues do not arise in relation to all developers, they nonetheless appear to have settled in the public consciousness and now inform the public perception of developers. Further, it may be that the public struggles to see the difference between developers and head contractors (builders).

Ultimately, our preliminary consultation suggests developers have the primary role in setting the tone of a project and influencing payment security, as well as building quality and safety throughout a project's life. Queenslanders should be confident that when they contract with a developer, they can expect legislative compliance, competence, transparency and propriety. It has become clear to the Panel that to discharge our task, we need to review the business practices of 'professional' developers and consider the best-practice processes as a recommended framework for the industry to ensure security of payment for contractors and building quality and safety.

This discussion paper outlines developer behaviours that can influence a project, as raised with the Panel, and canvasses a range of potential options to promote high standards within the industry. Some of these options appear more than once in the discussion paper because they have the potential to address several of the issues and concerns that have been raised with us. The Panel seeks comment on what we've heard so far and whether there are any issues that have not yet been raised, whether the options put to us are workable and any other alternatives that may be available. I also encourage all stakeholders to consider the potential advantages and disadvantages of the options presented.

Your views are valuable and, on behalf of myself and the Panel, we encourage you to participate in this important conversation as we enter this exciting phase of the review.

**Alison Quinn**



**Independent Developer Review Panel Chair**

## Have your say

Your comments and suggestions will help the Panel consider and refine potential issues and improvement recommendations for its final report that will be presented to government.

### **Submissions close at 5pm, Friday 16 December 2022.**

1. Attend an information session about the discussion paper.  
Further details about these sessions, including how to register, can be found at <https://www.epw.qld.gov.au/about/initiatives/review-developers-building>
2. Complete the survey <https://yoursayhpw.engagementhq.com/developer-review>
3. Prepare a written response. You are welcome to prepare your own submission and can submit it electronically or by post. Where possible, submissions should be sent electronically, preferably in Microsoft Word or using other text-based formats.

To submit your submission, visit <https://yoursayhpw.engagementhq.com/developer-review>

Alternatively, you can post your submission to:

Developer Review  
Building Policy  
Public Works Division  
Department of Energy and Public Works  
GPO Box 2457  
CITY EAST BRISBANE QLD 4001

### **Your submission**

The Panel is interested in your views on the issues and options raised in the discussion paper and whether there is anything else to consider e.g. if there are any issues that have not yet been raised, if the options put forward are workable, advantages and disadvantages of any options and if there are any alternatives. When submitting feedback, please include examples so we can continue to build an evidence base to be included in the final report to be presented to government.

### **Next steps**

Submissions received as a result of this discussion paper may inform further stakeholder consultation. The Panel will provide a final report, including any recommendations, to the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement for the government's consideration.

### **Privacy and confidentiality**

All personal information collected will be treated in accordance with the *Information Privacy Act 2009*. The Panel and the Department of Energy and Public Works may contact you for further consultation regarding the review. The department may disclose some, or all, information (excluding personal information) gathered to other Queensland government agencies to inform the development of policy and legislative options as part of the review process. The department may collate the information received through this process and publicly release or publish data in an aggregate and non-identifiable form. The department will not otherwise disclose or publish, in full or part, any submissions in response to this discussion paper except as required under the *Right to Information Act 2009*.

### **Disclaimer**

This discussion paper has been released to seek feedback and does not represent legal advice. The State of Queensland makes no statement, representation, or warranty about the accuracy or completeness of any information contained in this discussion paper. The State of Queensland disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages and costs any person might incur as a result of the information being inaccurate or incomplete in any way, for any reason.

# Introduction

In 2020-21, Queensland’s building and construction industry contributed approximately \$47 billion to Queensland’s economy and, as the state’s third largest employment sector, supported around 230,000 jobs.

The Panel has consistently heard that, as key participants in this industry, developers can help set the tone of a project and influence both security of payment and building quality and safety.

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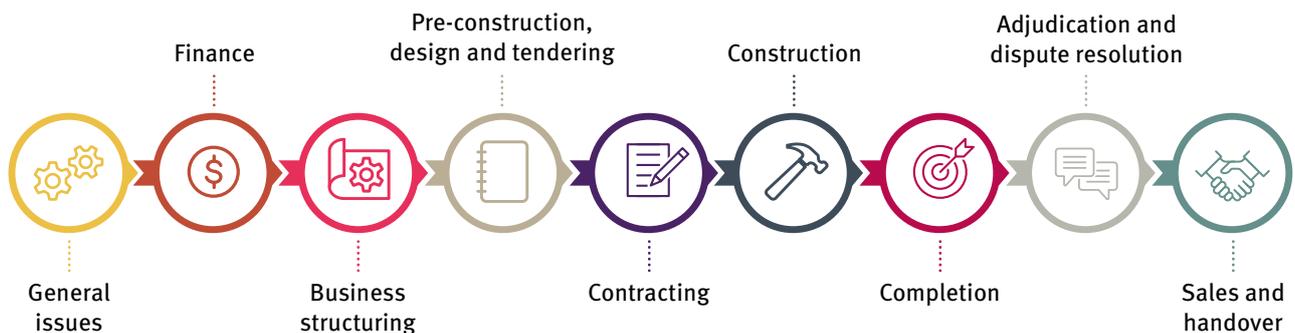
“No other part of the building and construction industry plays a more critical role than developers when it comes to setting the standards for all other parties in and associated with the industry – particularly when it comes to industrial relations, work health and safety, security of payment and even the viability of a given construction project.” – Union representative.

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The purpose of this review is to examine the role of developers in this context (i.e. their interface with the construction industry). The Panel recognises that developers operate in a complex industrial environment and that their work begins before construction commences and ends well after the project is completed. It is also aware that developers work with, are influenced by and impact a myriad of parties outside the construction industry. The Panel’s task has been to focus on the Terms of Reference (ToR), which relate to security of payment and building quality and safety in the building and construction industry.

With this in mind, this discussion paper will trace developer behaviour through the contractual chain as it relates to construction (e.g. from obtaining finance through to handover, sale, occupation or commencement of use). The Panel has structured this discussion paper with the intent of grouping issues in this way by mapping them to the contractual chain. Within each of these segments, the paper will outline what the Panel has heard to date, including issues and potential improvements offered by stakeholders, to provide an opportunity for all parties to respond.

**Figure 1 – Issues Explored**



## Background

The [Queensland Building Plan](#) (QBP), released in 2017, along with its 2021 Update, seeks to guide policy and legislative changes to create a safer, fairer and more sustainable construction industry in Queensland. The QBP has several foci, including:

- security of payment, primarily for subcontractors
- building quality and safety, and
- implementation of the national [Building Confidence Report](#) (BCR).

Action 1.8 of the QBP Update is to conduct a review of the role of developers in the Queensland building and construction industry.

This followed submissions from the building and construction industry stakeholders to the former Transport and Public Works Parliamentary Committee (Committee), in its examination of the [Building Industry Fairness \(Security of Payment\) and Other Legislation Amendment Act 2020](#). The Committee noted that, while property developers play a critical role in the industry, they are not subject to the same requirements as other participants, such as contractors and subcontractors, in terms of licensing, security of payment (e.g. project trust account obligations) and building quality and safety (e.g. [non-conforming building product \(NCBP\) legislation](#)).

Consequently, the Committee recommended that the Minister consider undertaking a review of property developers in the Queensland building and construction industry, taking into consideration the impact of their financial and operational capacity, ethical behaviour and work practices. This recommendation was accepted by the Queensland government and section 115D of the [Queensland Building and Construction Commission Act 1991 \(QBCC Act\)](#) provides that a review of the role of developers must be undertaken.

On 13 November 2021, the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement appointed Ms Alison Quinn as Chair and Ms Gina Patrick, Mr John Payne and Mr Adrian Pozzo as members of the independent Developer Review Panel. Mr Pozzo resigned in early 2022, in accordance with the Panel's operating procedures relating to potential conflicts of interest. Detailed biographies of each Panel member can be found in **Appendix 2**.

The Panel is guided by [ToR](#), which provide that the Panel is to:

- advance the work already done by the Queensland government to support security of payment in the building and construction industry by identifying practices and behaviours of developers that contribute to non-payment and insolvency in the industry, and
- consider the impact developers have on the quality and safety of design, construction and certification of buildings and other work practices, including the incidence of defective works and the role and influence they have on the contractual chain, including accountability for work practices and project standards.

## Scope

Developers operate in a highly regulated environment and must comply with a range of legislative frameworks (refer to **Appendix 3**). However, previous licensing requirements that applied to some developers were effectively repealed through the introduction of additional licensing exemptions in 2013. As a result, developers are not presently licensed (like building contractors and subcontractors are), nor are they a clearly defined group (e.g. a profession).

Further, even though developers are subject to some legal requirements across state and federal statutes, their role is not currently defined in Queensland construction legislation. As a result, limited information is collected regarding developers and there is a paucity of readily-available quantitative data about them and their interactions with third-parties. Any available information is often aggregated across the whole sector, collected by industry or found only with prior knowledge of structure or operations.

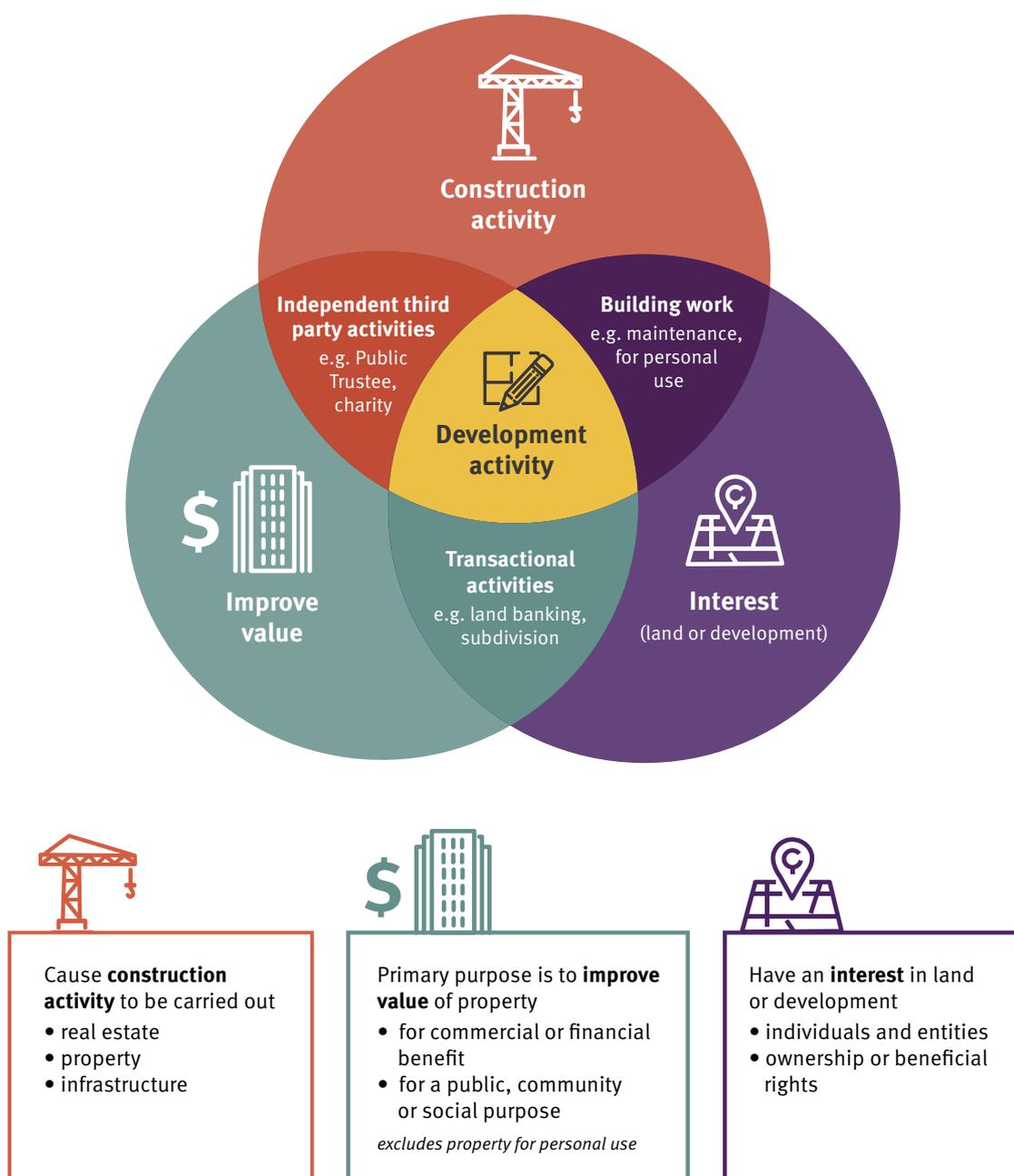
The Panel has heard that it is common practice for developers to use special purpose vehicles (SPVs) to undertake individual developments, thereby making it more difficult to consistently identify a developer.

Accordingly, the Panel has decided to focus its review and this discussion paper on ‘development activity’. **Figure 2** outlines the Panel’s proposed ‘development activity’ profile, which sets out the core characteristics of development activity. This profile allows the Panel to consider developments each and every time they occur, regardless of the corporate structure used.

Importantly, ‘development activity’ specifically excludes owners who develop property for their own personal use, such as renovating their own home. Further, while ‘development activity’ in the traditional sense is broad, the Panel’s scope is limited by its ToR to only those activities that involve some element of construction.

N.B. References to the term ‘developer’ in this document mean a person or entity who undertakes ‘development activity’, regardless of value or frequency.

**Figure 2 – Development activity profile**



## Approach

Since the Panel was convened in November 2021, it has conducted over 50-hours of consultation with key industry stakeholders, which has informed the issues outlined in this discussion paper (refer to **Appendix 4**).

Throughout this consultation, stakeholders provided the Panel with recommendations for potential improvements that are described as options here for your feedback. These options span the full-spectrum of policy levers, ranging from non-regulatory approaches (such as education and industry-led initiatives) to regulatory-based proposals (such as licensing or registration). Some options appear more than once across several sections, as they could potentially address multiple issues or concerns that have been raised with the Panel. It is important to note the options are not necessarily mutually exclusive and are potentially complementary.

Importantly, the issues and options raised in this discussion paper reflect matters that have been raised with the Panel to date. They do not represent government policy or the Panel's views. However, based on feedback to date, the Panel considers that some of the options in this discussion paper may well be business as usual for many developers and recognise work already undertaken and invested in.

The Panel also notes that, while some of the matters raised in this discussion paper may be outside the scope of the review, there is value in putting them forward for discussion as they may form observations for government consideration in the Panel's final report.

In considering feedback received on this discussion paper and developing any recommendations for the final report, the Panel will seek to present options that will be effective in improving security of payment and building quality and safety for the whole sector. Furthermore, the consequences of any options will need to be considered and balanced with the effectiveness of the outcomes to be achieved. For example, in relation to residential development, any potential options that will impact housing affordability will need to be considered in this context. Similarly, noting that market conditions may fluctuate over time, the Panel's recommendations will look to establish practices that are sustainable throughout these fluctuations.

The Panel will be considering the advantages and disadvantages of the following approaches to address the identified issues.

### 1. **Industry-led change**

This could include industry associations providing professional development and education to their members or a code of practice being implemented and enforced by peak bodies.

### 2. **Enhanced market management mechanisms and information**

This could include information disclosure approaches and rating tools such as a developer rating system.

### 3. **Government-led change including use of regulation and licensing approaches**

This could include consideration of various regulatory approaches (e.g. prescriptive versus principles-based regulation).

## Other bodies of work

The Panel would like to acknowledge that several other reviews and bodies of work are underway or have recently been completed in Queensland and other states that interface with the Panel's ToRs.

### Queensland

- The [QBP](#), including a staged approach to reforming Queensland's certification process, which seeks to improve consumer confidence in the building and construction industry by enhancing the strength of the building certification and inspection process.
- Implementation of the recommendations of the [independent review into the governance arrangements of the Queensland Building and Construction Commission \(QBCC governance review\)](#). The government supports, or supports in-principle, all 17 recommendations, noting that further analysis is needed for some recommendations before deciding the best approach. The Queensland government is prioritising actions that strengthen the conflicts-of-interest framework and improve transparency and impartiality in the QBCC's decision-making processes. A 90-day action plan outlines the next steps for implementation as the government moves towards a three year change program.

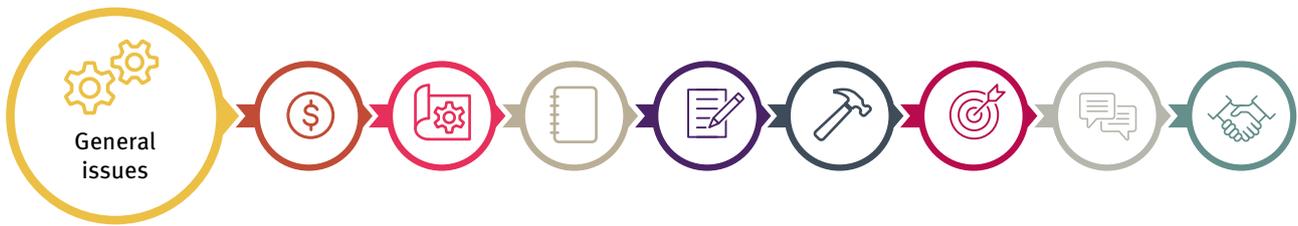
- The Queensland Housing Summit took place on 20 October 2022 to address the housing challenges facing Queenslanders. At the Summit, industry stakeholders discussed innovative strategies to support improved housing outcomes. As a result, the Queensland Government committed to investing an additional \$1 billion in the Housing Investment Fund, which will help with the construction of more than 5600 new homes.
- The Ministerial Construction Council (MCC) has established several subcommittees to provide advice and make recommendations on key issues facing the building and construction industry.
  - » Fairness in Contracting Subcommittee – resumed work in early 2022. This subcommittee is considering prohibited and mandatory conditions for building contracts that could be prescribed under the Queensland Building and Construction Commission Regulation 2018, as well as advice about similar work being undertaken by the Commonwealth.
  - » [Queensland Home Warranty Scheme \(Scheme\) Subcommittee](#) – established in 2021. This subcommittee is looking at options to strengthen the Scheme and promote certainty, equity, fairness and transparency in its operation. This review includes an investigation into consumer protection for high-rise residential buildings.
  - » Project Leadership and Governance Subcommittee – commenced work in 2021. This subcommittee is considering proposed improvements relating to project management including options for changes to licensing requirements.
- A review of Queensland’s property laws has examined issues arising under legislation governing ownership, use and dealings in real property, including the *Body Corporate and Community Management Act 1997*. This work is being implemented in stages, with current reforms being progressed by the Community Titles Legislation Working Group. This group was established in early 2021 to advise on several issues, including certain outstanding recommendations of the property law review (e.g. issues relating to management rights and caretaking services). The Department of Justice and Attorney-General (DJAG) is also considering a proposal to implement a statutory seller disclosure scheme in Queensland.
- DJAG is also considering ‘off the plan’ residential sales contracts, including in relation to: the use of sunset clauses by sellers (developers) to terminate contracts; and the early release of deposits to sellers (developers) prior to settlement, termination or another finalisation of the contract. The Panel notes DJAG is consulting with interested and impacted stakeholders, including impacted buyers, property developers, and relevant peak bodies.

The Panel will endeavour to ensure its recommendations are consistent with this work, wherever possible, and minimise any potential overlap.

#### **Other jurisdictions:**

The Panel would also like to acknowledge the work being undertaken by several other jurisdictions in relation to security of payment and building quality and safety (refer to **Appendix 5**).

- [Construct NSW](#) (New South Wales), seeks to improve consumer confidence and reform the state’s building and construction industry
- [Security of payment reforms](#) (Western Australia), seek to provide better payment protections to all contractors (e.g. by speeding up payment timeframes, improving dispute resolution processes, voiding pay when paid provisions and empowering the industry regulator)
- [Enhancements to unfair contract term protections](#) (Commonwealth Government), seek to strengthen protections for consumers and small businesses against unfair contract terms
- [Options to improve the accountability of property developers](#) (Australian Capital Territory)
- [A Review of Victoria’s building system](#) (Victoria), with an expert panel appointed to identify issues impacting on efficiency in the state’s building industry.



## 1. General issues

The diversity of projects undertaken by developers is matched by the diverse make up of developers themselves. For example, developments can span the residential, commercial, industrial and government sectors. Further, developers can be international conglomerates, nationally listed or unlisted entities, superannuation funds, governments, universities, health groups, private companies, sole traders, part time operators and charities.

However, early in the process, it became evident to the Panel there is a paucity of data in relation to the direct and indirect impacts of developers and development activity. Notwithstanding the significant size of Queensland's property and construction sector as a proportion of the Australian economy, there is negligible specific data on developers. Developers are not clearly recognised in any jurisdiction and, as a result, their behaviour and actions are not identified, captured or analysed.

For example, the Panel is aware that there are no formal mechanisms or metrics to assess, compare and contrast developers when looking to invest in property. Consumers instead rely on self-driven market research or sales and marketing material provided by the developer. In fact, home buyers are often advised to google 'developers' when buying a home.

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"Check out what people are saying ... you'll see reputable developers have a lot of positive reviews and industry awards, while the dodgy operators will have class actions and bad reviews. It's not a guarantee ... but it's a good start." – Developer.

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This not only highlights the lack of data around developers, but it also articulates the role they play in the industry, as well as in the public's consciousness. Similarly, it also demonstrates the opportunities that exist in establishing a framework that permits people to discern 'professional' developers from unprofessional ones.

Another key recurring theme of the Panel's consultation was the level of influence developers have on the building and construction industry and their ability to set the tone of a project. This influence, which can be both positive and negative, manifests in several ways and can often have far-reaching impacts across the construction industry.

The Panel heard from developers who appeared to have high levels of professionalism and sophisticated business practices. These developers stated that they invest significantly in ensuring quality outcomes for their clients (owners) and construction industry partners.

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"There's aspects in our industry that can be improved [but] everything we're doing is about ... legacy and brand .... because that's the reason people do business with us, from financiers, to owners, to consultants and subcontractors." – Developer.

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## Case study

In 2022, a builder carrying out a multi-million-dollar residential project went into liquidation. However, the developer was proactive in reaching out to affected parties and resolving outstanding issues to make sure those involved in the project were not financially impacted (e.g. kept their jobs and contracts). Ultimately, the project resumed with the developer helping to transition the new builder.

The Panel also repeatedly heard that developers use commercial mechanisms to unreasonably allocate risk and responsibility across the sector, including to contractors and subcontractors.

## Case study

In 2018, work ceased on a high profile Gold Coast residential development when the offshore developer sought to alter the contractual scope of the project, including construction schedules and previously designated contractor work. While the project recommenced following a concerted campaign, the costs and uncertainty from the delay were shouldered by contractors and subcontractors.

Some stakeholders disputed whether developers are actually at ‘the top’ of the contractual chain.

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“Developers [are] one party in a multi-faceted process. Developers [are] preceded by banks and financiers who set payment terms [and] followed by builders [and] subcontractors who control quality.” – Industry peak body.

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Some developers seek to abrogate any responsibility for building quality and safety. They also assert that financial institutions and contracts already provide for sufficient checks about fiscal sustainability for all parties to the building agreement. However, as developers primarily deal with other businesses, these transactions are often covered by bespoke contracts, which are not regulated to the same extent as transactions between businesses and consumers.

It is evident that the levels of professionalism and sophistication in the development sector vary significantly. Professionalism does not appear to be linked to operational size but is instead related to a combination of the company’s attitude, approach, culture and experience.

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“[Our] objectives are aligned to one key objective and it is to do the right thing by all key stakeholders and that includes our clients...It’s making sure people understand what is actually involved in being a successful developer for a long period of time because it’s a lot more involved than most people understand or appreciate...” – Developer.

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Consequently, the Panel has heard calls for developers to have greater ‘accountability’ in the building and construction industry and a more appropriate balance when it comes to roles and responsibilities. This has led to the Panel considering what is the ‘social licence’ given, or that should be given, to developers and the utility of various regulatory approaches.

## Social licence

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“There’s no question our industry gets a bad rap...” – Developer.

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In 2018, the Australian Institute of Company Directors (AICD) recognised that the ‘social licence to operate’ was becoming increasingly important, particularly as “*Australia, like many other nations around the world, is facing a crisis of trust in institutions.*” Social licence is defined, in its simplest terms, as the acceptance granted to a company or organisation to operate by the community. While this is relevant for all industries, it is particularly significant for the building and construction industry due to the industry’s significant impact on Queenslanders and their communities, as well as increasing levels of public interest and scrutiny across the sector.

Unscrupulous industry behaviours reduce community and investor confidence and can have serious financial and social impacts for businesses, workers and the community. Company collapses show how devastating the consequences can be for all participants in the contractual chain, rippling from a company’s owners, directors and investors, through to employees and subcontractors and as well to consumers (e.g. homeowners when it occurs in the residential market). Conversely, when the industry works together, everyone benefits. As prominent participants in the construction industry observed, a developers’ social licence is linked to promoting the long-term sustainability and prosperity of the industry and maintaining the trust of consumers and the community.

Quantifying a social licence is a complex, emerging field, with several indices tracking corporate responsibility standards e.g. the [FTSE4Good Index](#) identifies which companies have positive reputations for corporate responsibility. Further, the level of trust and credibility held by different organisations can be measured by surveys like the [Edelman Trust Barometer](#).

## Regulatory Approaches

Jurisdictions across the country use different regulatory frameworks and approaches.

### Queensland

The Panel often heard from industry that Queensland’s building regulatory framework is robust.

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“[When compared to other states] Queensland’s regulatory outcomes provide more robust oversight, in particular, the certification system.” – Restructuring expert.

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Queensland’s regulatory framework includes minimum requirements for buildings and a comprehensive licensing regime for building trades and professions (including construction, fire protection, mechanical services, architects and professional engineers). These include minimum financial requirements to operate, ‘fit and proper’ person requirements and minimum standards for qualifications and experience. Further, Queensland’s legislation provides for excluded individuals and companies, which seek to prevent those responsible for poor financial management from holding a licence or running a business in the industry. In terms of developers, there are existing building legislative provisions that can apply, for example contractual requirements under the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act). General legislative provisions may also apply to developers e.g. requirements relating to company structures, taxation and consumer protection (refer to **Appendix 3**).

The Panel also heard strong support for the QBCC in promoting security of payment and maintaining building quality and safety standards across the industry. However, the same stakeholders noted the QBCC must be appropriately resourced to be an effective regulator and carry out its functions and responsibilities in a rapidly changing and increasingly complex environment. The recent, independent QBCC Governance Review identified similar concerns and made several recommendations to support the QBCC in becoming a more customer and outcomes-focused and insight-driven regulator.

## New South Wales

In 2020, following extensive media coverage, the New South Wales government developed the Construct NSW strategy in response to several notorious defects occurring in high-density residential buildings in greater Sydney. The strategy aims to improve transparency for consumers and restore confidence in the residential construction sector particularly high-rise buildings. The Panel has met with the NSW Building Commissioner and been briefed on their work, which includes:

- a tool to benchmark developer trustworthiness called the independent Construction Industry Rating Tool, or iCIRT
- the provision of additional information disclosure to end-purchasers to improve transparency and promote informed decision-making
- enhanced capture of construction documentation
- enhanced legislation that protects the rights of owners
- a Building Commissioner with the remit of improving the quality of construction and restoring trust in the industry
- the establishment of a panel to consider the introduction of decennial liability insurance for the benefit of unit owners
- a risk-based strategy to proactively audit compliance of new residential construction activity, and
- targeted occupational certificate audits.

The Panel notes that, by applying a similar, risk-based, insights-driven approach to auditing residential activity in medium and high-density projects, the enforcement burden could be readily managed in the Queensland context.

### Options being considered by the Panel

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To promote the examples of professionalism demonstrated to the Panel by industry during its initial consultation, the Panel is considering the following options:

#### 1. **Licensing**

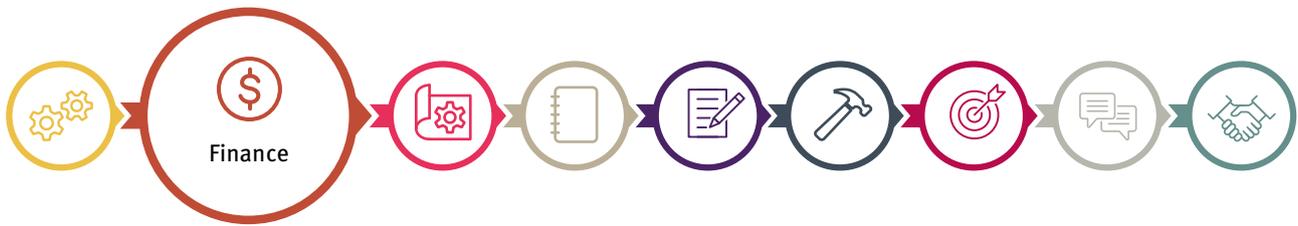
A licensing scheme for individuals/corporations carrying out development activity could be introduced. This scheme could have similar entry requirements to the QBCC licensing framework for contractors, including qualification, experience and fitness to practice considerations. Further, a licensing regime would allow for standards of conduct and competence to be monitored and enforced in the industry and ensure licensees have a financially sustainable business and appropriate (during the life of the project) level of working capital (through minimum financial requirements). It could also assess, as part of the fit and proper propositions, a developer's prior history in security of payment issues.

#### 2. **Industry standards**

An industry code of conduct, a code of practice (either voluntary or compulsory) or professional standards for developers to undertake development activity could be introduced. This could be monitored and enforced by the government (for example, in the way Registered Professional Engineers of Queensland are regulated by the Board of Professional Engineers of Queensland), an independent body (such as the Legal Services Commission for legal professionals) or by the industry themselves (such as the Quality Tourism Accreditation administered by the Queensland Tourism Industry Council).

#### 3. **Developer ranking system**

This option could involve the introduction of a developer ranking system. This could rank developers on a prescribed list of principles or behaviours and be available for industry and public review. The iCIRT rating system is a similar mechanism recently introduced in New South Wales for medium-high density residential developers and managed by ratings agency Equifax on behalf of the Office of Fair Trading. There is potential for this to be industry-led in its establishment.



## 2. Finance

Australian businesses secured over \$24.5 billion<sup>1</sup> in new loan commitments related to construction in the year to June 2022. As participants in the contractual chain, the Panel has heard that financiers play a key role in setting the tone of a project and promoting security of payment and building quality standards. Specifically, the practices and requirements of financiers are often repeated by developers in contracting with head contractors, which are then, in turn, passed down to subcontractors and other parties in the contractual chain, either directly or indirectly. The prevalence of tripartite or multi-party agreements between developers, head contractors and financiers across the industry was also noted by the Panel.

Data provided by a developer peak body (albeit using a small sample<sup>2</sup>) suggests that:

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Over a third of developers surveyed believe that banks and financiers were the key party in determining a project's payment schedule.

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Given this important role, the Panel notes several issues relating to the financing of projects and how these flow-on effects can positively or negatively impact industry. The Panel note that financiers are regulated at a Commonwealth level and operate extensively outside the building and construction sectors and across jurisdictions. Given this, the Panel invites stakeholders from the finance sector to participate further in this review and encourages the development sector to ensure they are involved, so the Panel can comprehensively assess issues and options raised in this paper and whether there is anything else to consider.

### Due diligence

The Panel received feedback about the importance of robust lending practices relating to developers, including:

- undertaking an appropriate level of due diligence on developers, although this process may take up to 12-months for a developer not known to the financier
- considering the developer's balance sheet to see if any risks exist and determine what can be done to mitigate these risks, and
- encouraging developers that might be new to a financial institution to engage a builder who is suitably experienced and known to the financier.

The Panel also heard that properly understanding, from the beginning, the counter party risk<sup>3</sup> a developer presents helps all parties, including head contractors, to manage risk. For instance, it would give head contractors certainty and a clear understanding of a developer's financial capacity at the point of entering into a contractual agreement. It can be difficult for the head contractor to obtain this information during the negotiation process, because the information may not be readily available and for fear of jeopardising ongoing work if they ask. Also refer to **Section 5 – Contracting**.

1. Australian Bureau of Statistics, Business Finance, Fixed term loans, construction, new loan commitments, June 2022

2. Approximately 40 participants

3. Counter party risk is the probability that the other party in an investment, credit or trading transaction may not fulfil its part of the deal and may default on contractual obligations.

## Securing appropriate finance

Appropriate finance is a pre-requisite to on time, in full payments between developers and head contractors. Therefore, this is a key pre-requisite for a head contractor to properly discharge their payment obligations to subcontractors and, therefore, of a developer's social licence to operate (refer to **Section 1 – General issues**). Appropriate finance, including lending agreement terms, is quite distinct from adequate finance, given lending restrictions may be imposed by financiers. For instance, funds may be available but unable to be applied to costs, such as variations or extension of time costs. Alternatively, some financiers may refuse to release funds to a developer to pay the head contractor even after works are completed and certified, unless other pre-conditions of finance are met which may be unrelated to construction, while others may elect to pay the head contractor directly.

Consequently, several developers and head contractors identified that financier lending practices can lead to late payment or non-payment between developers, head contractors and subcontractors. Also refer to **Section 5 – Contracting** and **Section 6 – Construction**. Notwithstanding issues of finance, it is noted by the Panel that, contractually, the developer is the entity responsible for timely payments to the head contractor.

## Contracting practices

The Panel heard that several contractual issues, including a tendency to transfer risk down the contractual chain, can often be traced back to financier lending requirements or contractual terms. Also refer to **Section 5 – Contracting**. There was significant feedback about fixed-price contractual arrangements being handed down from a financier to a developer to a head contractor, along with contracts that unreasonably limit or bar payment claims.

Although financiers benefit from the certainty of fixed prices in construction contracts, head contractors and other downstream participants can end up bearing the greatest risk from these contracting practices and may not be able to withstand the impact of these risks as they play out through the construction program. For further exploration on the role of tendering in the contractual process refer to **Section 4 – Pre-construction, design and tendering**.

## Role of quantity surveyors

The Panel heard about the importance of using a quantity surveyor to act as an intermediary, provide a firm view of costs and verify a developer's cost estimates for the project, including construction costs and adequate contingency allocations. These quantity surveyors are often drawn from panels of surveyors trusted by a financial institution.

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“A major role of a quantity surveyor is to provide accurate and timely cost advice throughout the planning and construction phases in a building project.”  
– Financial institution representative.

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The Panel heard the appointment of, and instructions given to, a quantity surveyor by a financier or developer can set the tone of a project. Also refer to **Section 6 – Construction**.

## Misalignment of financial cycle

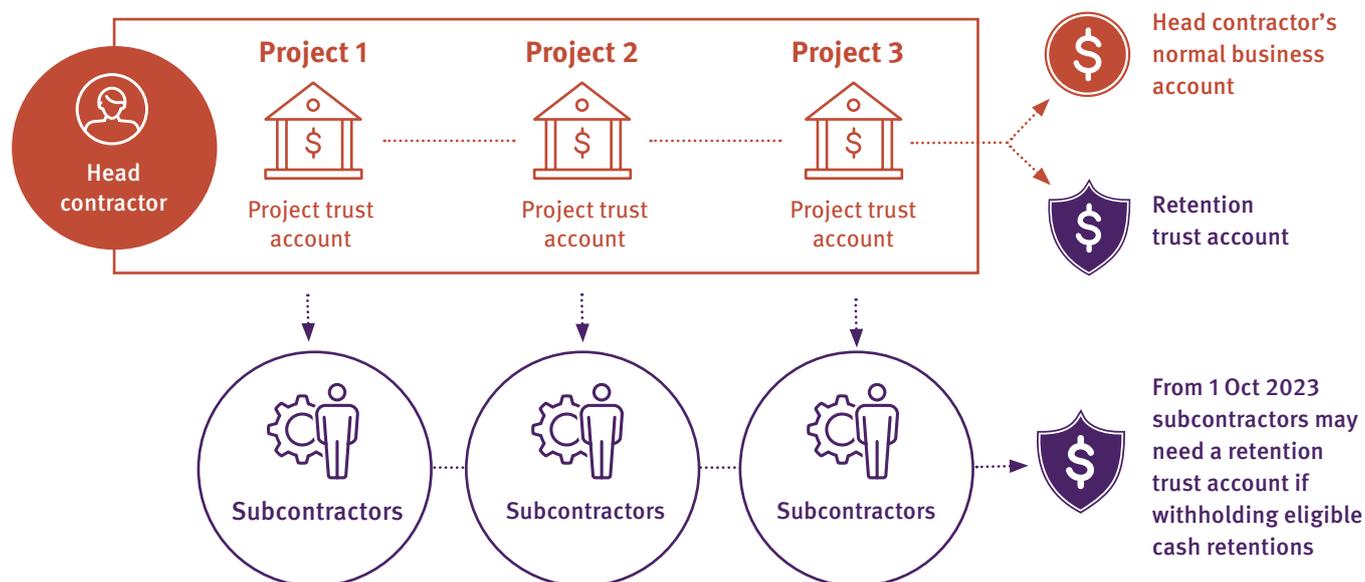
The Panel heard instances about the misalignment of payment timeframes where developers must pay head contractors within a contracted timeframe, even if the financier has not yet paid the developer. This can lead to late payment where the cashflow risk is transferred to head contractors unless the developer can manage these risks themselves. Also see the issue of payment in **Section 6 – Construction**.

## Trust account framework

The Panel recognises this review is taking place while the [trust account](#) framework is being progressively [rolled out](#) to the private sector, therefore feedback regarding the security of payment between head contractors and subcontractors may change as the industry adapts to the new framework. The application of the trust account framework to key players in the contractual chain, including developers, is summarised in **Figure 3**.

For further information about the obligation on developers to establish a retention trust account for retention amounts withheld from head contractors see **Section 6 – Construction**.

**Figure 3 – Operation of trust accounts**



The Panel heard the application of project trust account requirements to developers, in certain circumstances (or the application of project trust account protections to monies paid by financiers), could provide greater transparency and certainty for head contractors and other participants in the contractual chain. Stakeholders suggested that quarantining funds for projects could ensure certainty of head contractor payments and reduce the opportunity for developers to use these funds for other purposes. The Panel also heard this would potentially have the effect of limiting the downside financial exposure of counter parties to the developer if appropriate oversight was maintained and could ensure all participants who operate a trust are subject to minimum requirements.

“Where a project trust obligation is imposed on a head contractor, the developer [should be] required to operate through a project trust arrangement for the protection of the head contractor...If developers were made subject to project trust obligations, it may be possible to build in ...oversight into the project trust process. For example, developers could be restricted from opening a project trust account for the head contract unless they hold a QBCC contractor’s licence or otherwise hold an endorsement from the QBCC.” – Industry body representative.

Some developers who are also licensed builders, are probably familiar with the trust account framework and may already receive information and advice from the QBCC to understand how to discharge their obligations. If project trust accounts were introduced for developers who are not currently licensed by the QBCC (e.g. developers who are not also licensed builders), training and education would need to be provided to them.

### Options being considered by the Panel

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel’s views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To promote improvement in financing terms and approaches, the Panel is considering these approaches.

1. **Disclosure arrangements**

This would involve improving the level of disclosure from a principal to a head contractor before entering a contract for development activity. This may include:

- land ownership and other assets
- finance arrangements, and
- compliance with health and safety and other legislation.

Due to privacy reasons, there may need to be limits on who could access this information.

2. **Expand project trust accounts**

This would involve applying the requirements of project trust accounts to developers. It would quarantine monies for particular projects and reduce the ability for developers to use project funds for alternative purposes. This could provide transparency and certainty for head contractors and other participants in the contractual chain. For example, it could protect head contractor funds supplied by the financier, regardless of the business structure used by the developer and, potentially, introduce minimum requirements to operate a project trust.

3. **Developer ranking system**

For further details, refer to **Section 1 – Option 3**.

4. **Education**

Education programs could be developed for all industry participants, including head contractors and other contractors, to support awareness and understanding about:

- the essential aspects of construction contracting and effective business management including risk, risk amelioration, pricing and understanding the inherent trade-offs
- various business structures, their operations and any associated risks, which could include the need for appropriate security in contracting with third party entities (e.g. SPVs) that are not attached to any valuable assets (e.g. land) as there are significant risks in the event of payment issues (refer to **Section 3 – Business Structuring**), and
- existing rights, obligations and avenues (available to contractors) for redress in their dealings with developers.

These programs could be mandatory or voluntary and industry-led (e.g. leveraging industry associations to provide professional development) or administered by government (e.g. as a component of licensing/registration).



### 3. Business structuring

While developers may use several business structures, feedback to the Panel focussed particularly on SPVs. Commonly used in Australia’s building and construction sector, SPVs are independent subsidiaries created by a parent entity to undertake specific business purposes or projects and can be used to isolate financial or other types of risk.

SPVs are used frequently as a legitimate business tool, across sectors including government, for a range of purposes including project finance, risk capture and allocation, business collaboration and taxation purposes. They can also be used to undertake projects that hold significant risks and to limit negative financial and other impacts on the parent entity.

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“The use of a corporate structure with defined and limited liability is a fundamental feature of business in Australia.” – Industry peak body representative.

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Further, SPVs tend to be commonly used in both small and large, complex projects, including private-public partnerships (PPP) or similar joint venture arrangements where there are typically two or more parties who agree to partner or pool their resources for a specific project.

The risk to downstream participants may be reduced if other issues, identified by the Panel, are dealt with. Yet, the model of corporate arrangement where it is only designed for the purpose of reducing security of other participants, remains a matter of concern.

#### Ongoing accountability

Throughout the Panel’s consultation, multiple industry stakeholders raised issues about the use of SPVs, with the strongest concerns reserved for instances when the land being developed is not held as an asset.

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“...having a ‘middle’ company between the landowner/developer and the head contractor [of the project] can lead to a ‘lack of ownership or risk’ approach by the entity that contracts with the builder.” – Industry peak body representative.

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The Panel heard concerns that there may be fewer assets available for creditors, with little or no recourse, if the SPV or parent entity becomes insolvent where it’s not the landowner.

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“SPVs used by developers can give rise to the practice of developers ‘sinking’ the SPV at the end of the project, meaning the rights and remedies for issues/defects that arise in the new property are virtually null and void.” – Union representative.

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Some stakeholders suggested SPVs should be made to remain operating until relevant statutory periods end (e.g. warranties) although this obligation does not apply to any other participant in the industry.

The Panel also heard that head contractors were concerned when subcontractors requested assignment of current contracts to new corporate entities, as this too may reduce financial certainty of payment to individuals.

## Understanding of counter party risk

The Panel heard there is a general lack of knowledge or information about why a developer decides to use an SPV for a project. The head contractor may not understand how SPVs operate, who they are contracting with (including the identity of the parent company) or the SPVs ongoing financial position, which due to its limited nature may be less secure than the parent entity. It can take significant resources and legal literacy to trace the ownership of SPVs and understand the financial capacity of it and its parent entity, which may skew the power imbalance further towards developers when negotiating contracts with other parties.

## International arrangements

The multinational nature of organisations can impact operations in Australia, particularly if there is a reliance on overseas capital and if circumstances change. Specific examples were provided to the Panel where offshore financial support is removed, leading to early termination of projects and subsequent non-payment. Of concern, was that some of these cases involved actors residing outside Queensland or Australia. The Panel is aware any recommendations made in its final report should seek to be sufficiently robust to encourage behavioural change both locally and more broadly for developers seeking to operate in Queensland.

## Illegal phoenixing

The Panel has heard that the use of SPVs can be similar to the practice of illegal phoenixing, where a company is deliberately liquidated, wound up or abandoned to avoid paying liabilities and a new company is created to continue the same business activities without the debt.

There are significant negative impacts associated with this practice, as tax and employee entitlements are generally unpaid, as well as debts to creditors such as suppliers and subcontractors. A [2018 Price Waterhouse Coopers report](#) estimates the cost to Australian business from unpaid trade creditors alone is between \$1.162 billion to \$3.171 billion annually.

Several existing laws aim to combat illegal phoenix activity e.g. under the *Corporations Act 2001*, company directors and officers can be held accountable if they engage in illegal phoenix activity. Further, company directors are required to verify their identity by applying for a director identification number to help prevent the use of false or fraudulent director identities.

## Options being considered by the Panel

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To assist head contractors to make informed contractual decisions, the Panel is considering these options:

- 1. Disclosure arrangements**  
For further details, refer to **Section 2 – Option 1.**
- 2. Developer ranking system**  
For further details, refer to **Section 1 – Option 3.**
- 3. Education**  
For further details refer to **Section 2 – Option 4.**
- 4. Expand project trust accounts**  
For further details, refer to **Section 2 – Option 2.**
- 5. Licensing**  
For further details, refer to **Section 1 – Option 1.**



## 4. Pre-construction, design and tendering

The Panel has heard that developers can influence a construction project’s build quality and payment flow through pricing and contracting practices that can occur even before construction commences.

### Tendering practices

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“Developers actively use shoddy tendering practices that have a devastating effect on the financial viability of building industry stakeholders.” – Union representative.

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Stakeholders outlined several issues that occurred in the tendering process.

#### 1. Short tendering and project timeframes

The Panel heard that shortened timeframes for tendering limit the ability of head contractors to spend time researching a project and drafting tender documentation, which can impact timeliness and quality of work delivered. This is explored further in **Section 5 – Contracting**.

#### 2. Highly competitive tender processes

The Panel heard that established head contractors often operate on a successful tender conversion rate of 25 per cent. Consequently, these contractors often do not fully consider the scope of works and the risk they are taking on and often submit overly competitive pricing which, if they are successful, has a direct impact on subcontractors. The competitive market has been identified as a fundamental driver of ‘under-quoting’ by head contractors and subcontractors and, whilst market circumstances may change over time, the need to establish sustainable practices is key.

#### 3. Tender selection

The Panel heard that developers are often required by financiers to have budgets completed and approved by quantity surveyors against which tenders are assessed. As a result, developers may review all tenders submitted, take the cheapest price from each of the trades and then present this back to potential head contractors as a suggested price. Taken a step further, a developer may take a value saving, suggested by one tenderer, and enforce it on all quotes or otherwise use quotes to price-match or bid down other tenderers to seek lower prices.

#### 4. Poor documentation packages being released for tender

The quality of materials provided to head contractors to determine pricing has a direct connection to the ability of head contractors and subcontractors to appropriately price works. The Panel also heard from several stakeholders that it is becoming increasingly less common for developers to fully design and document a project before going out to tender. This impacts the ability of head and subcontractors to properly price for work and can lead to various issues on site around construction methods. The Panel further heard that when design and documentation is not progressed before the developer goes to tender, the risk of these issues generally increases, except, perhaps in highly-specialised projects.

#### 5. Inconsistency between tender and contracting approaches

The Panel heard that the contracting models chosen may not be reflective of the documentation package and construction brief tendered. For example, the Panel heard that developers may provide fully designed documents under a fixed-price tender arrangement, while also requiring tender parties to retain responsibility (and the risk) for design outcomes and delivering a ‘fit for purpose’ product, in line with a ‘design and construct’ contract model. These examples came from both small and large projects, often with government entities involved. The issue of risk transfer is explored further in **Section 5 – Contracting**.

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“It is as if the lawyers have drafted the tender package, not a project owner.” – Contractor.

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As a practice, competitive tendering highlights the importance of a developer having appropriate budget and scope of works for a project, matched by tender documentation, robust tender processes and selection criteria. This criteria includes the consideration of relevant experience, capability, financial capacity, past performance, payment history and an understanding of non-financial metrics such as safety.

The Panel has also heard about best-practice standards used by some commercial developers to carry appropriate contingencies, such as having a contingency of 5 per cent of the project value during the construction phase. These developers also encourage head contractors to include an appropriate contingency in their pricing for unforeseen events.

In its [Queensland Procurement Policy](#) for goods and services, the Queensland government has published best-practice principles that apply to major state government projects (e.g. valued at more than \$100 million) and declared projects. These principles provide a set of criteria that applicants must address in responding to tenders for building and construction projects. The Panel has heard that similar guidelines could be developed to assist industry to assess tenders.

This is consistent with the expectations of industry that governments lead by example and implement best practice on projects where they have significant influence, such as Priority Development Areas.

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“[The] Queensland government must uphold a standard of work in order for the private sector to follow.” – Consultant.

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## Consultants and other professional parties

As the industry has evolved, the approach to the design and construction of buildings has become less linear and the role architects, engineers, head contractors and subcontractors play in design has also evolved. For instance, the Panel heard that designers may work for the developer initially and then be novated to the head contractor as the project progresses. The Panel also heard that designers, including subcontractors, may not necessarily be compensated for substantial design work undertaken as part of a tender and their design is then nonetheless used to ‘shop around’ with other subcontractors during the tender process.

The quality and status of documentation can also vary significantly across the sector and sub-standard or incomplete design documentation can impact subtrades, as they can be required to ‘fill in the gaps’ in the design to complete the work, often without compensation. The development industry acknowledges the role that developers play in design decisions, with over 57 per cent of respondents in a development peak body survey<sup>4</sup> saying they have a high, or very-high, level of control in building design decisions.

Appropriate budgets and parameters are vital in ensuring fairness in the tendering process and should go hand-in-hand with quality documentation and scope of works, so that significant risk is not inappropriately shifted from developers to head contractors and other project participants. Qualified quantity surveyors are integral to this process. However, stakeholders have raised concerns about:

- the general quality of service provided by quantity surveyors in Queensland, and
- their ability to influence the tone of a project through the budget parameters they set, which are usually based on instructions from the developer, which are not transparent.

The same stakeholders advocated for professional standards for quantity surveyors to be improved, particularly around costing, forecasting, transparency and for them to have a better understanding of the important role they play.

The Panel also heard concerns about the limited number of qualified, experienced consultants available to provide services to the building and construction industry.

4. Albeit using a small sample.

## Contractual models and documentation

Depending on current economic and project circumstances, the industry uses several contractual models, the prevalence of which can change over time. Early in the Panel's consultation, several stakeholders raised the prevalence of 'design and construct' contracts and how these can influence the prevalence of project scope changes and disputes and create a fluidity in the role between designers and constructors. This lack of clarity about roles and responsibilities increases risk around the project.

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"Partly-designed projects going out to tender as lump sum contracts or detailed design and construction contracts are resulting in disputes, scope of work changes and a lack of understanding between parties." – Industry body representative.

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Further, stakeholders identified the quality of documentation as the key issue in such concerns.

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"As the design is not often fully developed or coordinated at the time of tender, the quality of the documentation is typically quite poor compared to what is ultimately required in order for the work to be constructed." – Industry body representative.

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## Alignment of design and compliance

Through consultation, the Panel held discussions with design professionals including architects and local government stakeholders, regarding their views on the construction process. These stakeholders noted the challenge of local governments in ensuring the alignment of a development approval with the completed product. It was suggested that the siloed nature of Queensland's current compliance structures can lead to a disconnect between commitments made by a developer at the approval stage and what is delivered by a developer at completion.

Consequently, the Panel is considering the efficacy of these compliance structures to ensure they are fit-for-purpose and deliver the outcomes required.

## Inappropriate value engineering

Value engineering is a process of analysing designs, equipment and product material selections, aimed at eliminating unnecessary cost while still achieving the required performance, quality and safety. It can occur at several stages of a building project, including the pre-construction, specification and tendering phases. If managed correctly, the process can successfully identify cost-effective and appropriate solutions. However, it can also be mismanaged, leading to poor design elements and product substitutions in the pursuit of cost-savings.

### Options being considered by the Panel

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To address issues identified during the pre-construction and tendering process, the Panel noted that market conditions may fluctuate over time and options should be considered to establish practices that are sustainable through such fluctuations.

1. **Tendering standards**

This would involve introducing minimum standard requirements for tendering and the evaluation of responses. These could be developed and maintained by industry or government. It would provide additional probity, transparency and accountability to tendering across the sector and support ethical behaviours. It would also likely support a levelling of the comprehension of risk being taken on during any subsequent negotiations.

2. **Promote alternatives to hard tendering**

Hard tendering is when tendering is only done on design and other limited information. Alternatives could include early contractor and subcontractor involvement in the design process, supported by the industry, including financiers. Promoting the benefits of these alternatives would allow head contractors, subcontractors and design professionals to collaborate on what is appropriate to build, encourage payment for designs and help avoid defects and variations.

3. **Cooling-off periods**

Appropriate cooling-off periods could be introduced for both parties once tenders are submitted. This would allow both parties more time to consider the impacts of tendering after submission and provide a suitable cooling-off period for parties to withdraw from tenders that are unsustainable. It may give contractors the opportunity to reprice when market shocks or severe weather events have occurred or to take into account the impact of the COVID-19 pandemic on supply chains.

4. **Improving documentation**

Consistent with BCR recommendation 13, improvements to documentation requirements might require designs to adequately demonstrate compliance with the National Construction Code or include any relevant certificates of conformity, accreditation etc. This increased transparency should benefit participants through the construction process and post completion through certainty of documentation.

5. **Education**

For further details refer to **Section 2 – Option 4**.



## 5. Contracting

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“In a balanced system, parties can pick and choose where they push risk... the problem is, [the system’s] not really balanced.” – Development sector representative.

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Stakeholder feedback suggests it is in the best interests of developers and head contractors to operate safely and efficiently, as the impacts of failure (safety, financial and otherwise) are felt throughout the entire contractual chain. The Panel also heard there are varying degrees of sophistication and experience amongst developers and head contractors, which can impact contractual negotiations.

The Panel heard that some developers rely heavily on the experience of their head contractors. A developer peak body noted developers focus on certain factors as predictors of likely success including head contractor competency, clarity of arrangements and genuine working relationships between parties. Once appointed, the head contractor must also meet several legislative (refer to **Appendix 3**) and contractual obligations. They assume control of the construction site and are responsible for matters such as safety, payment of subcontractors and compliance with relevant codes and standards.

The Panel’s consultation crystallised that contractual risk for all downstream payments stems from the financier and the developer. This is because the financier and developer are always the initial payers and set both the contractual scene and risk ‘appetite’. Also refer to **Section 2 – Finance** and **Section 6 – Construction**.

Most head contractors operate within narrow margins and are reliant on cashflow and continuing commercial relationships for future work. This means head contractors may consider negotiating aggressively with a developer about a contract, particularly with one that holds a significant market share, may not be in their best long-term interests.

As with any contractual arrangement, parties are responsible for conducting due diligence. However, the varying degrees of sophistication in the industry and the cost of access to lawyers can see parties entering into contracts and accepting terms without fully appreciating the risks they have assumed. This situation can be compounded by aggressive parties applying commercial pressure and expecting short turnarounds during the negotiation process. As a result, the Panel is considering the nature of these relationships and how they may be improved.

### Due diligence and transparency

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“It’s up to us to undertake our due diligence ... has the builder got adequate capability? Has it got the relevant experience? Has it got an adequate balance sheet to support its financial obligations?” – Developer.

“Contractors may be unwilling to ask for due diligence related information due to the power imbalance in their relationship with the developer, including the risk of losing the tender/job.” – Industry peak body representative.

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The Panel heard consistently that there is a lack of available data (both financial and otherwise) on developers prior to entering into a contract. This can mean the head contractor has difficulty undertaking adequate due diligence and determining counter party risk even when dealing with a repeat client. This can be further compounded by the competitive market and power imbalances that can exist between parties during negotiations.

The Panel heard that understanding the counter party risk of a developer from the outset would improve the ability of a head contractor to manage payment risk. This includes, for example, an understanding of whether the counter party is a SPV or other relevant information such as land ownership and other assets, finance arrangements and/or compliance with workplace health and safety and other legislation. The Panel was advised that obtaining this information can be difficult during the negotiation process.

The same cannot be said for head contractors who, as QBCC licensees, are required to meet minimum financial requirements and have public disciplinary records. Consequently, the Panel is considering ways to encourage and facilitate head contractors to be more selective and engage with developers who demonstrate financial and operational capacity and display a commitment to ethical behaviour including discharging their social licence.

## Contracting practices

### Risk transfer

Industry participants noted that contracts are often drafted to shift risk downstream to head contractors or to avoid liability and create obligations for counter parties. There are concerns that the extent of this practice has become unreasonable and that many terms included in contracts are ‘unfair.’

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“[Developers are] trying to avoid uncertainty, [so they] adjust their contractual terms...  
[From the head contractor’s perspective, these can be] categorised as...no risk,  
low risk, high risk and critical. And if it’s critical...don’t sign that contract!”  
– Construction industry legal representative.

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The Queensland government is currently examining this issue in the context of construction contracts between head contractors and subcontractors.

The QBCC Act, sections 67GA and 67GB, provide for mandatory and prohibited building contract conditions to be prescribed by regulation. Essentially, once a term is prescribed as mandatory, it is applied to all building contracts and it is an offence for a building contractor (excluding principals and contracted parties for a subcontract) to enter a contract that does not include the term. Similarly, prohibited terms are automatically void and it is an offence to enter a contract that includes such a term. A subcommittee established by the MCC, which resumed work in 2022, is considering a list of terms that could be prescribed by regulation. The Panel would encourage the subcommittee to consider elements raised in this discussion paper.

It has been noted by the building and construction industry and the Panel, that several terms used in contracts can create unfair conditions or circumstances, including:

- contractual arrangements that unreasonably limit or bar payment claims, despite the industry being subject to a myriad of external factors than can influence timeframes i.e. unreasonable time bars
- indemnity clauses or entitlements that excessively extend liability to a contractor or subcontractor to factors outside of their control, which could include clauses such as indemnity for the principal of any breach of contract, loss of pre-sale income from delays caused by weather or the COVID-19 pandemic
- clauses which confer a power to assign and/or novate contracts to the detriment of other parties or without consent
- defect rectification powers provided to third-parties, other than those relating to urgent rectification due to workplace health and safety issues or repeated non-attendance of a nominated contractor
- obligations to accelerate without compensation

- unreasonable project timeframes which do not allow head contractors sufficient time to adequately complete work in a competent and safe manner, therefore placing downward pressure on building quality and safety and a safe work environment, and
- unreasonable extensions of time allowed for acts of the principal, superintendent and/or agents of the principal.

Further, several potential mandatory terms have been identified by the building and construction industry, including:

- clause 41.2 of AS4000 General Conditions of Contract, where, if a party does not meet a certain timeframe, they do not lose their right to claim for payment, but the counter party may claim damages
- a provision for ‘rise and fall’ or ‘point in time’ pricing in contracts, and
- warranties are dependent on the information available to a head contractor at the time and limited to the budget the contractor has allowed to carry out the works.

Other jurisdictions have recently undergone significant legislative changes aimed at balancing contractual fairness across the building and construction industry. In September 2021, the Western Australian government began implementing a [three-year action plan](#) for reform, which includes voiding ‘unfair’ time bars. Specifically, a notice-based time bar provision of a construction contract may be declared to be unfair by an adjudicator, court, arbitrator or an expert appointed under the contract. The provision may be declared void after consideration of several matters such as the relative bargaining power of each party.

### Contract complexity

Concerns have been raised by industry stakeholders about the length and complexity of some contracts. This, coupled with the power imbalances skewed to developers, shortened timeframes and the cost of obtaining legal and financial advice, means that it can be considered too costly and difficult for head contractors to completely understand the contract. Head contractors may therefore be entering contracts with terms and associated risks they do not fully understand, notwithstanding that they have been in commercial negotiation.

Further, while it is common practice in the construction industry to use standard or template contracts, stakeholders observed several issues with this in relation to development activity. Firstly, the Australian Standard General Conditions of Contract, which was last amended in 2005, has been described as being outdated by market participants. Secondly, stakeholders raised concerns about a lack of transparency when using deviated standard or template contracts when negotiating with developers. It is not always clear what changes have been made by the developer and what risks a head contractor may be accepting, particularly if the contract purports to be using the standard form or template.

### Timeframes

Several stakeholders noted that truncated project timeframes can place downward pressure on building quality and safety. Building certifiers, for example, have identified that such timeframes can increase pressure on their capacity to assess the proposed works and decide if it is appropriate to issue a building development approval to enable works to commence.

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“Any time taken to do this ... is time that is ‘lost’ within the construction program.”  
– Industry body representative.

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Further, the Panel heard that if developers seek to impose ‘unreasonable’ timeframes on a project, this can have a follow-on effect and manifest in unsafe work practices and poor building quality outcomes.

## Rights, obligations and services

Stakeholders from across the sector noted concerns about financial and legal literacy in the building and construction industry. This concern not only applies to key financial and legal terms used in contracts, but also important concepts such as volatility in commodity and labour markets and counter party risk. These issues are compounded by the cost of obtaining advice, which can be prohibitive.

The Panel was made aware of a variety of commercially available tools and services which can be used by head contractors and subcontractors to provide greater insight into the financial performance of head contractors and developers. These due diligence and support services are available from the private sector, although they can represent further costs to a business and some market participants may be unaware that they exist.

### Options being considered by the Panel

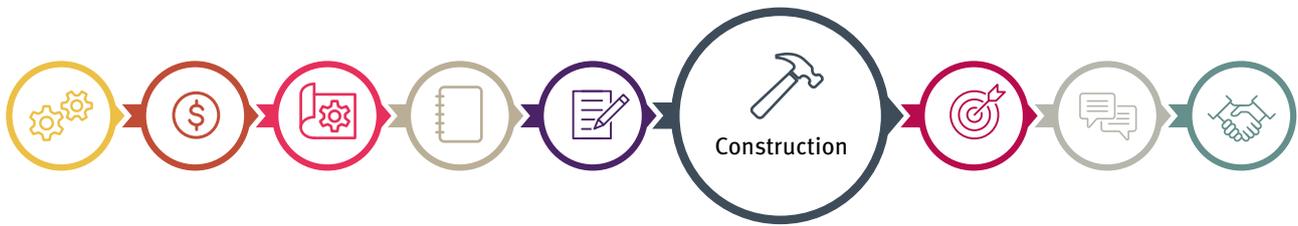
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Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To improve contractual practices, the Panel is considering these options.

- 1. Disclosure arrangements**  
For further details, refer to **Section 2 – Option 1**.
- 2. Expand 'fairness in contracting' laws**  
Queensland's mandatory and/or prohibited contract terms legislation could be extended to comprehensively apply to developers. This would ensure that the prescribed requirements, restrictions and penalties also apply.
- 3. Contemporary standard contracts**  
This would involve reviewing General Conditions of Contract, in the Queensland context, to ensure they are contemporary and fit-for-purpose.
- 4. Improved transparency in amendments**  
This option would require parties to clearly identify what changes have been made to standard contracts and help parties to better identify the proposed changes and their impacts.
- 5. Education**  
For further details refer to **Section 2 – Option 4**.



## 6. Construction

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“You can tell, as soon as you set foot on the site, what sort of developer you’re dealing with.” – Union representative.

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A frequent theme of the Panel’s consultation was the level of influence developers have in the industry and their ability to set the tone of a project. Developers with appropriate finance arrangements, high-levels of professionalism and sophisticated business practices generally enable safer construction sites and better conditions for contractors.

### Payment practices

#### Late and non-payment

Feedback received by the Panel suggested late payment was more common than non-payment by developers. However, there were different views about the extent of this issue.

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“Late payment practices [are] routinely adopted by many developers ... Non-payment by developers is less common.” – Industry body representative.

“[We receive] negligible if any complaints from builders about non-payment, withholding of payment or slow payment of invoices by developers.”  
– Industry body representative.

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Data provided by a developer peak body suggests up to one in five developers believe they are the key party in determining a project’s payment schedule. It was also put to the Panel that late payment by developers was often linked to a misalignment of payment timeframes through the contractual chain. The Panel heard that it is common for head contractors, financiers and developers to negotiate payment schedules in the contract, with these often misaligned with the payment schedules negotiated with subcontractors and/or as required to adhere to legislative requirements.

Parties to a building contract must comply with all relevant legislative and contractual requirements, including the requirement to pay within prescribed timeframes. Further, parties cannot withhold payment on the basis they themselves have not yet been paid and head contractors are, or will be, required to ‘top-up’ project trust accounts in the event payments are due before they are paid themselves.

The Panel initially heard that non-payment by developers was relatively rare in a commercial context. Rather, they heard non-payment was more common in contracts with individual property owners in the residential/domestic sector or in instances of developer insolvency.

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“A regular topic of complaint ... is non-payment, late payment and delayed payments by home buyers.” – Industry body representative.

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The Panel also heard about the ramifications for subcontractors following a project collapse. Once a head contractor enters liquidation, subcontractors will often attempt to secure their personal property by trying to recover materials, tools or machinery from a building site. Often, the developer will have terminated the head contract and an administrator will have been appointed. Consequently, subcontractors no longer have rights to access the land to claim their plant, equipment and materials.

Further, the Panel heard about several practices that constitute non-payment, even if they are not described in this way. These primarily relate to disputes arising at the conclusion of a project.

Disputed variations, for example, may involve a subcontractor undertaking work on a proposed variation in good faith prior to confirmation of a contract variation, but the work is then only partially paid, or not paid at all, if the developer and head contractor do not agree on the variation.

Alternatively, works may be completed by a head contractor and progress payment claims are submitted which are then disputed by the developer. Payment may be withheld until the dispute is resolved and the full amount of the progress claim may not be certified.

There was a view that ‘downstream’ parties may not wish to pursue the matter through avenues such as adjudication due to cost or time or fear of not receiving work in the future. These issues are explored further in **Section 8 – Adjudication and dispute resolution**.

Developers (as principals) are required to open a retention trust account when holding any cash retentions on a project trust account. It was put to the Panel several times that project trust account requirements should also be applied to developers. It was suggested by some stakeholders that this would provide greater transparency and certainty for head contractors and other participants in the contractual chain. It would also reduce the opportunity for developers to use project funds for alternative purposes as monies would be quarantined.

## Defects

Over the past several years, there has been widespread media coverage of significant building defects, particularly in Victoria and New South Wales. However, there is a general acceptance that the licensing and compliance framework in Queensland has resulted in fewer instances of significant building issues when compared to other states.

The Panel heard that the most common defects in multi-residential buildings include fire protection, waterproofing and building fabric and cladding issues. Although there is limited data in this area, the Panel is aware of research that supports this, including work by the Centre for International Economics, Deakin and Griffith Universities and the University of New South Wales.

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“The issue of building defects in medium and high-density buildings will increase given the shift to higher density living.” – Government stakeholder.

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Given their contractual commitments to end-users, the Panel heard that developers need to be aware of defects, as well as any changes during construction that may cause them. However, the Panel also heard that the industry is heavily reliant on building certifiers to ensure the compliance of buildings. The Panel was told some responsible developers take this issue seriously and have internal processes to identify defects (e.g. paying for additional inspections or employing third party defects inspectors) in addition to responding to any feedback from certifiers.

The Panel heard that many developers generally favour contractual arrangements that allocate responsibility for building work and any associated defects to head contractors.

While the head contractor is generally considered the best-qualified party to manage building quality and safety, the Panel heard developers may direct head contractors to use certain building products or subcontractors to reduce overall costs. A survey conducted by a developer peak body showed most developers are aware of their influence over construction decisions.

A peak developer membership body survey found that:

- 62 per cent of developer respondents believe they have at least some control in building construction decisions
- 67 per cent of developer respondents felt they have a high to very high level of control of the ‘finishes’ used in developments.

The QBCC Act allows the QBCC to direct parties, including contractors and developers, to rectify building work that is either defective or incomplete.

In 2017, Queensland introduced legislation to ensure building products used are safe and fit-for-purpose, imposing these obligations on parties in the ‘chain of responsibility’. While this does not include developers, the Panel heard a suggestion to amend the legislation to extend these obligations to developers. Consultation with legal stakeholders also revealed that the Court of Appeal has found developers are liable to buyers for using NCBPs.

## Consultants and other professionals

### Superintendents

Most projects appoint a superintendent to administer contracts and provide independent third-party advice during the construction process. They are also required to ensure contractual obligations are met (e.g. processing payment and variation claims).

Stakeholders said superintendents will often act as an agent for the developer, particularly if a pre-existing relationship exists, despite legitimate expectations that this person must act in a reasonable, fair and impartial manner.

In Queensland, under a building contract, a person must generally be licensed to perform the functions of a superintendent. It was suggested to the Panel there is a lack of suitably qualified and experienced superintendents and this can impact all aspects of the project, including payment disputes, quality and safety.

### Building certifiers

Broadly, building certifiers manage the building approval and inspection process to ensure work complies with the approved plans and meets minimum health, safety, amenity and sustainability standards. The Panel heard that the industry is very reliant on building certifiers to ensure the compliance of buildings.

Despite legislative obligations for building certifiers to act in the public interest, the Panel heard concerns about their perceived lack of independence and lack of ability to accurately monitor changes during the construction process. This may be further impacted by the fact that certifiers may initially be engaged by the developer during a design and construct contract, but then they are novated to the head contractor. Further, under any contractual arrangements, the number of inspections undertaken is directly linked to the negotiated fee payable to the certifier.

The Panel heard there are currently no strong legislative requirements in place regarding the circumstances under which a certifier may be removed from a project by the developer or head contractor. The existing process requires a form to be completed and lodged with the relevant local government. Concerns were raised that this may not be effective in discouraging unreasonable disengagements, for example the disengaged certifier does not need to outline reasons for their departure to the incoming certifier. This form is rarely referenced by third parties in property searches during conveyancing.

The Panel also heard concerns about the quality of appropriate documentation maintained during construction e.g. recording of variations. Concerns were shared about the minimum number of inspections a building certifier is required to perform, with calls for additional mandatory inspections to ensure compliance measures are met.

The Panel notes the Queensland government is in the process of staged building certification reform under the QBP, which seeks to enhance the strength of the certification and inspection process. Currently, a certifier is required to sign a certificate of inspection for houses covering several stages of work to check minimum standards have been met.

Recent amendments to the Building Regulation 2021 clarify a certifier's inspection requirements. A guideline is also available to help building certifiers meet their responsibilities for inspections of class 2-9 buildings (e.g. multi-storey residential buildings and commercial buildings). This is a risk-based approach with the certifier determining the inspection schedule, noting there are currently no mandatory inspection requirements for these building classes.

### Quantity surveyors

Quantity surveyors play a key role across many stages of a project, including estimating and monitoring costs, coordinating projects, advising on finance requirements, tender submissions and controlling expenditure. They are often employed or contracted to act on behalf of a developer and, in this capacity, play a key role in certifying the payment of claims. They can also act on behalf of a trustee and perform tasks such as monthly bank reconciliations for trust accounts.

The Panel heard quantity surveyors can have a significant influence on payment, budget and other instructions and will often be influenced by parameters set by their employer whether this is a developer or financier. The Panel did not hear any explanation of the process of how quantity surveyors determine inputs for the value of labour, the rise and fall in material costs and the provision of amenities and safety.

### Regional considerations

The Panel heard there are additional complexities that must be considered in relation to building work carried out in regional areas.

Due to differing supply and demand profiles, the Panel has heard the costs of building materials are higher in regional areas when compared to the same building materials used in metropolitan areas. This is partly because of additional costs, such as transportation costs being added to the price. This issue may become more significant as tight supply chains continue across the global economy.

Workforce capacity issues can also be exacerbated in regional areas, compared to metropolitan areas, placing more pressure on construction costs and the number of available contractors.

The Panel heard that, in regional Queensland, businesses tend to have a greater reliance on informal networks, trust and loyalty in contractual arrangements. Consequently, in the regions, it is vital for businesses to maintain their reputation.

### Potential options being considered by the Panel

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To address these significant issues raised during consultation, the Panel is considering the following options.

#### Payment practices

1. **Expand project trust accounts**

For further details, refer to **Section 2 – Option 2**.

2. **Streamlined responses**

The ability for head contractors to suspend construction work could be streamlined and improved.

Head contractors could be granted the authority to suspend construction if there has been non-payment of progress claims by a developer.

### 3. **Property protections**

This would involve ensuring head contractors and subcontractors maintain access to their equipment and building materials. This is particularly relevant following the collapse of a project and would minimise potential losses suffered by project participants and may assist in reducing administrative burden associated with cataloguing relevant assets.

### 4. **Enhanced reporting obligations**

This option would require relevant parties to report incidences, including suspicions, of late and non-payment to the QBCC. For example, quantity surveyors who receive further claims for payments already certified or superintendents who repeatedly hear about subcontractor non-payment. This option could also extend to parties appointed to administer trusts. While trust administrators must already be notified to, and trained by, the QBCC, there is not currently any positive obligation on them to report suspected breaches. These reporting obligations could be enhanced through working with relevant membership bodies to amend their codes of conduct (or equivalent) to improve reporting rates of late and on-payment.

## **Defects**

### 5. **Extend the chain of responsibility to developers**

Queensland's NCBP legislation (Part 6AA of the QBCC Act) could be expanded to include developers. Presently, a person is in the 'chain of responsibility' for building products if they design, manufacture, import, supply or install the building product. Architects and engineers are also included if they specify a product is used during the design stage of a building. Developers could be included in the 'chain of responsibility'.

### 6. **'Whistleblower' protections**

This option would involve strengthening 'whistleblower' type protections for the reporting of non-conforming/non-compliant work. Currently, those in the 'chain of responsibility' for NCBPs must notify the QBCC if they become aware of an NCBP, or a safety incident involving an NCBP, providing an element of protection for employees. However, there are no specific 'whistleblower' type protections available, although the QBCC seeks to maintain confidentiality, particularly of personal information, of the complaint.

### 7. **Promote alternatives to hard tendering**

For further details refer to **Section 4 – Option 2**.

### 8. **Extend the chain of responsibility to certifiers**

This option would involve introducing obligations for building certifiers to report any NCBPs or non-conforming/non-compliant building processes to the QBCC. Currently, certifiers are encouraged to report any NCBPs to the QBCC, however it is not a specific obligation or requirement. This could be achieved through an amendment to legislation or the current code of conduct for building certifiers.

## **Consultants and other professionals**

### 9. **Superintendents**

Requirements to ensure superintendents act in a fair and reasonable manner could be introduced. This would ensure superintendents remain impartial through the contract process and would preclude them from acting as an agent of the principal. While Queensland requires a licence to carry out the prescribed functions of a superintendent, the requirements underpinning this licence could be reviewed to ensure all elements of a superintendent's role are licensed. A code of conduct could also be considered to promote increased accountability.

### 10. **Documentation of amendments**

This option would involve regulating the documentation of amendments made during construction. In New South Wales, registered design practitioners must lodge designs for certain buildings (e.g. class 2 buildings) on a government portal, including any variations (e.g. to avoid significant amendments made after design documents have been completed/certified). The efficacy of digital documentation standards may also need to be reviewed.

11. **Third-party quality assurance**

A requirement for genuine third-party quality assurance assessments could be introduced. This would further lift the quality of construction and is consistent with recommendation 17 contained in the BCR. It could be industry-led e.g. undertaken as peer review/learning sessions by professional bodies post completion as part of continuing professional development (CPD) programs in the sector.

12. **Certifier disengagement**

This would involve reviewing the legislative requirements around disengaging a building certifier and could support greater confidence in the process of certification.

13. **Further mandatory inspections**

The number of mandatory inspections required during construction could be increased. This is in line with recommendation 18 of the BCR and could enhance the oversight surrounding the construction of class 2 – 9 buildings (which include multi-storey residential and commercial buildings), as well as class 1a and 10 buildings (homes and non-habitable buildings such as garages).

14. **Quantity surveyors and building certifiers**

To encourage the continued growth in the pool of qualified industry professionals, this option would involve ensuring CPD programs are modern and fit-for-purpose.

**General**

15. **Education**

For further details refer to **Section 2 – Option 4**.



## 7. Completion

The Panel heard about several issues that can arise in the lead up to, and during, the completion stage of a project.

### Defects

Issues related to defects identified during the construction stage are discussed in detail at **Section 6 – Construction**. However, further issues have been raised with the Panel for defects identified after the work is completed.

### Insurance

The Panel has heard there are particular difficulties with addressing defects in high-rise residential developments, as they are not currently covered by existing insurances. The Panel has been informed about the potential utility of insurance products, such as decennial liability insurance, which can cover rectification of major structural issues for 10-years following the completion of a project. This product is not currently used in Australia and if considered, it would need to reflect the conditions of defects most commonly seen in jurisdictions.

The Panel acknowledges that work is underway in both Queensland and New South Wales in relation to this issue. For example, the Queensland government is currently reviewing the QHWS, which presently does not cover residential buildings over three storeys.

### Alignment with design

The New South Wales Building Commissioner now has the ability to conduct an audit before an occupation certificate (called a ‘certificate of occupancy’ in Queensland) is granted. These audits review designs and documents (including contracts) and mandates an onsite inspection, focusing on structure, waterproofing, fire rating systems, building services and external enclosures of the building. Prohibition, stop work or rectification orders can be made if serious defects are found.

### Disputes

The Panel has heard that there may be a misalignment between a developer’s contractual commitments to an end-user and the construction contract with the head contractor. As the head contractor is not party to the sale agreement, they may not be aware of undertakings made about particular elements. This could mean these elements are not constructed or installed, which can lead to disputes.

### Retentions

A ‘retention’ provides financial protection for the correction of defects or the performance of work under a contract. Retention amounts and securities are typically released following practical completion and/or after the end of a defects liability period (DLP), in accordance with the contract. The QBCC Act regulates retentions, including limits on the amount that can be withheld (e.g. a maximum of 5 per cent of the total contract value, reducing to 2.5 per cent after practical completion).

The Panel has heard that building contractors quite often operate on profit margins of 5 per cent or less. As such, the amount held in retention can often equal a contractor’s profit margin and so non-payment or even reduced payment can impact the profitability of such businesses.

To seek payment of their retentions, contractors are required to submit a payment claim within a specified timeframe after the end of the DLP. However, the Panel heard the timeframes and processes for claiming retentions can be unclear, thus creating difficulties to claim and pay retentions. This can be particularly true for larger and staged projects, because of the progressive nature of completing these works. Stakeholders also noted difficulties that can operate around DLPs under a head contract due to the same issues.

Contractual arrangements and disputes, including complex risk-limiting clauses such as warranties/indemnities which may be considered unreasonable (refer to **Section 5 – Contracting**), may also impede, delay or prevent retention claims.

### Options being considered by the Panel:

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

The Panel is considering these options to address the issues identified at the completion stage.

#### 1. **Additional insurance**

This option would involve the introduction of insurance for consumers. This would aim to limit the exposure of owners/occupiers in residential apartment buildings that have experienced certain defects post-completion (e.g. where decennial liability insurance could be useful). Such a scheme would give buyers more confidence when considering the purchase of a new unit or apartment, noting the need for the insurance to be fit-for-purpose in the Australian context.

#### 2. **Audits**

The QBCC could be empowered to conduct 'certificate of occupancy' audits. This could be based on a similar process used in New South Wales to assess building work before a certificate of occupancy is granted, in certain circumstances.

#### 3. **Education**

For further details refer to **Section 2 – Option 4**.



## 8. Adjudication and dispute resolution

Disputes relating to construction can arise because of payment, contract terms and the performance of building work. The Panel frequently heard that resolving disputes through the Queensland Civil and Administrative Tribunal (QCAT) and the courts can be costly, lengthy and often disadvantageous to smaller parties.

Consequently, Queensland legislation provides alternative dispute resolution mechanisms, including adjudication.

Adjudication allows a person who has not been paid, or who disagrees with the amount proposed and/or paid, to have the matter heard by an independent adjudicator.

While most adjudication applications relate to payment claims between head contractors and subcontractors, head contractors may use the process to resolve payment disputes with developers.

### Under-utilisation

The Panel heard different views about the current adjudication process.

In the 21 and 22 financial year, the QBCC received **571** adjudication applications

- Of those, **44** were identified as involving a developer at a total value of **\$27.9 million** in claims.

Of these:

- **36 per cent** related to non-payment disputes due an absence of a payment schedule
- **24 per cent** related to disputes related to variations
- **8 per cent** related to insolvency (respondent in liquidation)
- **32 per cent** related to other disputes including invalid contract, material price increase and defects.

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“The industry needs a dispute resolution process that properly assists head contractors to receive payments, so that those payments can flow down the contractual chain.” – Industry body representative.

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The specific concerns raised by stakeholders regarding the current adjudication framework included:

- the technical complexity of the current progress payment framework, including uncertainty around eligibility and the requirements for a payment claim made properly
- using adjudication to resolve conflicts can negatively impact relationships and subsequent commercial negotiations between parties, which deters many claimants from considering the process
- short and specific timeframes for making applications and responding to adjudication applications
- costs associated with adjudication
- perceptions the system is biased towards certain parties, which reduces confidence in the system and may also deter parties, particularly if they have had a past experience of a decision going against them, and
- adjudication cannot be used for contracts where a consumer is the other party to the contract.

The Panel heard these concerns, coupled with contractual obligations, ultimately mean parties in the building and construction industry primarily seek to resolve differences through commercial negotiations, rather than through adjudication. While this may be an appropriate mechanism in certain circumstances, existing imbalances of power in contractual relationships, financial difficulties and fears of negative effects on ongoing or potential future work can impact outcomes.

The Panel notes the Queensland government's intention to implement the 17 recommendations made in the QBCC Governance Review. Specifically, the review recommended the establishment of an independent unit to separate and enhance the mediation and dispute resolution functions of the QBCC and promote consumer and industry confidence. As a result, the Panel notes the feedback regarding dispute resolution may change as the review recommendations are implemented.

### Options being considered by the Panel:

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To address the issues raised regarding dispute resolution and adjudication processes, the Panel is considering the following options.

1. **Review current services**

This would involve reviewing current dispute resolution services to identify opportunities for improvement, in particular, opportunities to clarify valid payment claims and adjudication applications. It could also consider measures to reduce the perception that dispute resolution services negatively impact relationships and the prospects of future work.

2. **Investigate alternative services**

The Panel heard a suggestion to develop a dispute resolution process to address issues on an interim basis while a contract is on foot and limited to disputed monies under a certain value of work. This model could ensure parties are not forced into adversarial positions and foster a more collaborative approach, which could reduce the volume of harsh or adversarial terms used in building contracts.

3. **Promote mediation**

To resolve disputes and minimise costs to participants, a comprehensive mediation framework could be developed and administered that is separate to government. This could encourage negotiations in good faith and reduce reliance on adjudication and review processes such as QCAT.

4. **Additional protections**

Similar to workplace laws that protect persons exercising workplace rights, additional legislative protections could be introduced to protect entities from experiencing retaliation if they have used adjudication to resolve disputes.

5. **Promote security of payment in domestic contracts**

This would involve expanding the application of adjudication to contracts for domestic building work with consumers. The Panel welcomes feedback regarding this option, particularly any experiences of people dealing with the *Building and Construction Industry Security of Payment Act 1999* (NSW) and related reforms that now apply to domestic building work in New South Wales.



## 9. Sales and handover

Although sales and leasing commitments may occur before, during and after completion of a project, developers will hand over the property to end-users following construction and the satisfaction of any other contractual obligations. In higher-density residential and commercial developments, this usually involves establishing bodies corporate to manage communal property and issues and transferring title to buyers.

The Panel has heard that during the period prior to settlement and handover, the developer is compelled to undertake certain activities which can give rise to potential conflicts of interest.

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“While developers have considerable unfettered authority to make decisions during the transition phase, this phase coincides with opportunities for developers to further their commercial interests. The lure of these opportunities highlights a tension between a developer’s interest in maximising commercial gain and their ... governance responsibilities.” – Academic.

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### Documentation

The Panel heard that off-the-plan residential sale contracts may not provide sufficient information to purchasers about the head contractors or subcontractors that worked on the project.

Under the *Body Corporate and Community Management Act 1997* (BCCM Act), developers are required to provide particular documents for a community titles scheme once the body corporate has been established. The Panel has heard that planning and construction documentation provided by developers is often incomplete. This makes it difficult for bodies corporate to proactively manage and rectify defects and to carry out ongoing maintenance.

The issue is compounded by the fact that owners and bodies corporate are not necessarily building industry professionals and may not always possess the skills and knowledge required to successfully identify and seek rectification of defects. The Panel has heard that, in some cases, minimal guidance is provided to owners, committees, onsite managers and body corporate managers about their rights and responsibilities and how to address defects.

The BCR made similar observations about inadequate documentation and record keeping maintained during the construction process, including records of variations that depart from the original building approval and the proposed recommendations to address them.

Recommendation 14 of the BCR proposed that jurisdictions should set out the information which must be included in performance solutions and specified in occupancy certificates (also known as ‘certificates of occupancy’ in Queensland) the circumstances in which performance solutions have been used, and for what purpose.

The Panel heard there are several emerging technologies that can create a ‘digital footprint’ of a building, which can help industry and owners make informed decisions about the purchase and maintenance of these buildings. Such technology may also help developers to provide relevant documentation to bodies corporate.

This approach aligns with recommendation 20 of the BCR, which states that a comprehensive digital building manual should be given to commercial building owners and include all relevant documents relating to the ongoing management and maintenance of the building. This manual could include built construction documentation, fire safety system details and maintenance requirements.

The Panel also considered an approach being taken by the New South Wales government for digital platforms across the industry. It will include a Building Assurance Solution that will create a ‘digital fingerprint’ of buildings and show which products were used, who made them, what testing certifications are held and who installed and certified the building work. The tool will be useful to insurers and consumers and may help improve transparency and accountability in the industry.

## Transition to bodies corporate

The Panel has heard that once a project is completed, developers may retain control over bodies corporate either directly or indirectly for a period through several methods, such as:

- sale contract clauses that provide the developer with power of attorney to act for the buyer in certain circumstances for up to one year, which means the developer can vote in body corporate meetings for this period
- ongoing relationships between the developer and body corporate managers
- contracts entered into before handover that bind the body corporate into certain contractual arrangements after handover for significant periods of time, and
- retaining a certain percentage of lots.

The Panel also heard that given the ongoing financial and professional arrangements that may exist between developers and bodies corporate in relation to management rights, the latter may not always act in the owners’ best interests.

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“They really work for the developer, because they’re getting future work from the developer.” – Academic.

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These practices make it difficult for owners and bodies corporate to pursue defect rectification and can lead to increased maintenance, misalignment between owners expectations and contracted services and ongoing costs, which ultimately affect the affordability of the body corporate. To combat this, the New South Wales government has introduced amendments to ensure developers cannot vote or exercise any proxy on body corporate decisions involving defects.

Developers are also responsible for establishing the body corporate budget and during this process may engage or contract with parties that bind the body corporate for terms which may extend over many years. Such practices may prevent terms of engagement being reviewed or prices renegotiated by a body corporate, causing a mis-match between cost and the expectations of owners and occupiers over time.

### Options being considered by the Panel:

The options below reflect suggestions that have been raised with the Panel to date. They do not represent government policy or the Panel’s views.

You are invited to provide feedback on these options and whether there is anything else to consider e.g. if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

Please note that several options appear more than once in this discussion paper – this is because they have the potential to address several issues that arise throughout the contractual chain.

To address these handover issues, the Panel is considering several options.

## Documentation

### 1. **Line of sight to contractors**

This option would ensure owners are provided with, or have access to, information about the head contractor and subcontractors who worked on the building before sale or as part of the sale contract.

### 2. **Documentation at handover**

This option seeks to ensure documentation provided to bodies corporate and consumers is adequate and fit-for-purpose. This could involve ensuring existing legislation effectively supports a comprehensive suite of documents being provided at handover and could consider specific requirements for fire engineering and other trade reports, manufacturer's specifications and building certification documentation. Alternatively, this could be achieved as a condition on sale contracts between developers and purchasers requiring this information to be provided or developing guidance material or standards for developers. This would be consistent with recommendation 20 of the BCR, which calls for a comprehensive digital building manual to be provided to owners of commercial buildings.

### 3. **Digital tools**

This option would involve investigating the greater use of digital tools to provide improved data insights for industry, consumers and government. New South Wales has developed a suite of digital platforms, including a construction assurance tool to help consumers and government agencies easily find relevant information, while delivering increased transparency and accountability across the industry. This is also consistent with recommendation 12 of the BCR, which recommends establishing a centralised, digital repository of information to ensure access to documentation.

## Transition to bodies corporate

### 4. **Voting restrictions**

This option would limit developers from being able to vote on a body corporate decision relating to defects for a certain period (e.g. six-months) after the establishment of a body corporate. This would be applicable where developers have retained an active interest in a development, whether this is through voting rights or owning lots.

### 5. **Address conflicts of interest**

To address potential conflicts of interest, an option could be to further investigate developers' influence on defect rectification, including the composition of a body corporate or promoting the independence of bodies corporate and building management services from the developer.

### 6. **Enhanced disclosure of budget projections**

This option would require the developer to prepare and disclose budget projections to a body corporate for a minimum period (e.g. three-years), based on standardised accounting principles.

# Appendix 1: List of options

The Panel is interested in your views on the issues and options raised in this discussion paper, which reflect the matters that have been raised with the Panel to date. They do not represent government policy or the Panel's views.

You are invited to provide feedback on these issues and options and whether there is anything else to consider e.g. if there are any issues that have not yet been raised, if the options put forward are workable, advantages and disadvantages of the options and if there are any alternatives.

## 1. Licensing

A licensing scheme for individuals/corporations carrying out development activity could be introduced. This scheme could have similar entry requirements to the QBCC licensing framework for contractors, including qualification, experience and fitness to practice considerations. Further, a licensing regime would allow for standards of conduct and competence to be monitored and enforced in the industry and ensure licensees have a financially sustainable business and appropriate (during the life of the project) level of working capital (through minimum financial requirements). It could also assess, as part of the fit and proper propositions, a developer's prior history in security of payment issues.

## 2. Industry standards

An industry code of conduct, a code of practice (either voluntary or compulsory) or professional standards for developers to undertake development activity could be introduced. This could be monitored and enforced by the government (for example, in the way Registered Professional Engineers of Queensland are regulated by the Board of Professional Engineers of Queensland), an independent body (such as the Legal Services Commission for legal professionals) or by the industry themselves (such as the Quality Tourism Accreditation administered by the Queensland Tourism Industry Council).

## 3. Developer ranking system

This option would involve the introduction of a developer ranking system. This could rank developers based on a prescribed list of principles or behaviours and be available for industry and public review. The iCIRT rating system is a similar mechanism recently introduced in New South Wales for medium-high density residential developers and managed by ratings agency Equifax on behalf of the Office of Fair Trading. There is potential for this to be industry-led in its establishment.

## 4. Disclosure arrangements

This would involve improving the level of disclosure from a principal to a head contractor before entering a contract for development activity. This may involve:

- land ownership and other assets
- finance arrangements, and
- compliance with health and safety and other legislation.

Due to privacy reasons, there would need to be limits around who could access this information.

## 5. Expand project trust accounts

This would involve applying the requirements of project trust accounts to developers. It would quarantine monies for particular projects and reduce the ability for developers to use project funds for alternative purposes. This could provide transparency and certainty for head contractors and other participants in the contractual chain. For example, it could protect head contractor funds supplied by the financier, regardless of the business structure used by the developer, and potentially introduce minimum requirements to operate a project trust.

## 6. Education

Education programs could be developed for all industry participants, including head contractors and other contractors, to support awareness and understanding about:

- the essential aspects of construction contracting and effective business management including risk, risk amelioration, pricing and understanding the inherent trade-offs
- various business structures, their operations and any associated risks, which could include the need for appropriate security in contracting with third party entities (e.g. SPVs) that are not attached to any valuable assets (e.g. land) as there are significant risks in the event of payment issues (refer to **Section 3 – Business Structuring**), and
- existing rights, obligations and avenues (available to contractors) for redress in their dealings with developers.

These programs could be mandatory or voluntary and industry-led (e.g. leveraging industry associations to provide professional development) or administered by government (e.g. as a component of licensing/registration).

## 7. Tendering standards

This would involve introducing minimum standard requirements for tendering and the evaluation of responses. These could be developed and maintained by industry or government. It would provide additional probity, transparency and accountability to tendering across the sector and support ethical behaviours. It would also likely support a levelling of the comprehension of risk being taken on during any subsequent negotiations.

## 8. Promote alternatives to hard tendering

Hard tendering is tendering only on design and other limited information. Alternatives could include early contractor and subcontractor involvement in the design process, supported by the industry, including financiers. Promoting the benefits of these alternatives would allow head contractors, subcontractors and design professionals to collaborate on what is appropriate to build, encourage payment for designs and help avoid defects and variations.

## 9. Cooling-off periods

Appropriate cooling-off periods could be introduced for both parties once tenders are submitted. This would allow both parties more time to consider the impacts of tendering after submission and provide a suitable cooling-off period for parties to withdraw from tenders that are unsustainable. It may give contractors the opportunity to reprice when market shocks or severe weather events have occurred or to take into account the impact of the COVID-19 pandemic on supply chains.

## 10. Improving documentation

Consistent with BCR recommendation 13, improvements to documentation requirements might require designs to adequately demonstrate compliance with the National Construction Code or include any relevant certificates of conformity, accreditation etc. This increased transparency should benefit participants through the construction process and post completion through certainty of documentation.

## 11. Expand 'fairness in contracting' laws

Queensland's mandatory and/or prohibited contract terms legislation could be extended to comprehensively apply to developers. This would ensure that the prescribed requirements, restrictions and penalties also apply.

## 12. Contemporary standard contracts

This would involve reviewing General Conditions of Contract, in the Queensland context, to ensure they are contemporary and fit-for-purpose.

### **13. Improved transparency in amendments**

This option would require parties to clearly identify what changes have been made to standard contracts and help parties to better identify the proposed changes and their impacts.

### **14. Streamlined responses**

The ability for head contractors to suspend construction work could be streamlined and improved. Head contractors could be given the authority to suspend construction if there has been non-payment of progress claims by a developer.

### **15. Property protections**

This would involve ensuring head contractors and subcontractors maintain access to their equipment and building materials. This is particularly relevant following the collapse of a project and could minimise potential losses suffered by project participants and may assist in reducing administrative burden associated with cataloguing relevant assets.

### **16. Enhanced reporting obligations**

This option would require relevant parties to report incidences, including suspicions, of late and non-payment to the QBCC. For example, quantity surveyors who receive further claims for payments already certified or superintendents who repeatedly hear about subcontractor non-payment. This option could also extend to parties appointed to administer trusts. While trust administrators must already be notified to, and trained by, the QBCC, there is not currently any positive obligation on them to report suspected breaches. These reporting obligations could be enhanced through working with relevant membership bodies to amend their codes of conduct (or equivalent) to improve reporting rates of late and non-payment.

### **17. Extend the chain of responsibility to developers**

Queensland's NCBP legislation (Part 6AA of the QBCC Act) could be expanded to include developers. Presently, a person is in the 'chain of responsibility' for building products if they design, manufacture, import, supply or install the building product. Architects and engineers are also included if they specify a product is used during the design stage of a building. Developers could be included in the 'chain of responsibility'.

### **18. 'Whistleblower' protections**

This option would involve strengthening 'whistleblower' type protections for the reporting of non-conforming/non-compliant work. Currently, those in the 'chain of responsibility' for NCBPs must notify the QBCC if they become aware of an NCBP, or a safety incident involving an NCBP, providing an element of protection for employees. However, there are no specific 'whistleblower' type protections available, although the QBCC seeks to maintain confidentiality, particularly of personal information, of the complaint.

### **19. Extend the chain of responsibility to certifiers**

This option would involve introducing obligations for building certifiers to report any NCBPs or non-conforming/non-compliant building processes to the QBCC. Currently, certifiers are encouraged to report any NCBPs to the QBCC, however it is not a specific obligation or requirement. This could be achieved through an amendment to legislation or the current code of conduct for building certifiers.

### **20. Superintendents**

Requirements to ensure superintendents act in a fair and reasonable manner could be introduced. This would ensure superintendents remain impartial through the contract process and would preclude them from acting as an agent of the principal. While Queensland requires a licence to carry out prescribed functions of a superintendent, the requirements underpinning this licence could be reviewed to ensure all elements of this role are licensed. Alternatively, a code of conduct could be one way to promote increased accountability.

## **21. Documentation of amendments**

This option would involve regulating the documentation of amendments made during construction. In New South Wales, registered design practitioners must lodge designs for certain buildings (e.g. class 2 buildings) on a government portal, including any variations (e.g. to avoid significant amendments made after design documents have been completed/certified). The efficacy of digital documentation standards may also need to be reviewed.

## **22. Third-party quality assurance**

A requirement for genuine third-party quality assurance assessments could be introduced. This would further lift the quality of construction and is consistent with recommendation 17 contained in the BCR. It could be industry-led e.g. undertaken as peer review/learning sessions by professional bodies post completion as part of ongoing CPD for the sector.

## **23. Certifier disengagement**

This would involve reviewing the legislative requirements around disengaging a building certifier and could support greater confidence in the process of certification.

## **24. Further mandatory inspections**

The number of mandatory inspections during construction could be increased. This is in line with recommendation 18 of the BCR and could enhance the oversight surrounding the construction of class 2–9 buildings (which include multi-storey residential and commercial buildings), as well as class 1a and 10 buildings (homes and non-habitable buildings such as garages).

## **25. Quantity surveyors and building certifiers**

To encourage the continued growth in the pool of qualified industry professionals, this option would involve ensuring CPD programs are modern and fit-for-purpose.

## **26. Additional insurance**

This option would involve the introduction of insurance for consumers. This would aim to limit the exposure of owners/occupiers in residential apartment buildings that have experienced certain defects post-completion (e.g. where decennial liability insurance could be useful). Such a scheme would give buyers more confidence when considering the purchase of a new unit or apartment, noting the need for the insurance to be fit-for-purpose in the Australian context.

## **27. Audits**

The QBCC could be empowered to conduct ‘certificate of occupancy’ audits. This could be based on a similar process used in New South Wales to assess building work before a certificate of occupancy is granted, in certain circumstances.

## **28. Review current services**

This would involve reviewing current dispute resolution services to identify opportunities for improvement, in particular, opportunities to clarify valid payment claims and adjudication applications. It could also consider measures to reduce the perception that dispute resolution services negatively impact relationships and the prospects of future work.

## **29. Investigate alternative services**

The Panel heard a suggestion to develop a dispute resolution process to address issues on an interim basis while a contract is on foot and limited to disputed monies under a certain value of work. This model could ensure parties are not forced into adversarial positions and foster a more collaborative approach, which could reduce the volume of harsh or adversarial terms used in building contracts.

### **30. Promote mediation**

To resolve disputes and minimise costs to participants, a comprehensive mediation framework could be developed and administered separate to government. This could encourage negotiation in good faith and reduce reliance on adjudication and review processes such as QCAT.

### **31. Additional protections**

Similar to workplace laws that protect persons exercising workplace rights, additional legislative protections could be introduced to protect entities from experiencing retaliation if they have used adjudication to resolve a dispute.

### **32. Promote security of payment in domestic contracts**

This would involve expanding the application of adjudication to contracts for domestic building work with consumers. The Panel welcomes feedback regarding this option, particularly any experiences of people dealing with the *Building and Construction Industry Security of Payment Act 1999* (NSW) and related reforms that now apply to domestic building work in New South Wales.

### **33. Line of sight to contractors**

This option would ensure owners are provided with, or have access to, information about the head contractor and subcontractors who worked on the building before sale or as part of the sale contract.

### **34. Documentation at handover**

This option seeks to ensure documentation provided to bodies corporate and consumers is adequate and fit-for-purpose. This could involve ensuring existing legislation effectively supports a comprehensive suite of documents being provided at handover and could consider specific requirements for fire engineering and other trade reports, manufacturer's specifications and building certification documentation. Alternatively, this could be achieved through a condition on sale contracts between developers and purchasers requiring this information to be provided or developing guidance material or standards for developers. This would be consistent with recommendation 20 of the BCR, which calls for a comprehensive digital building manual to be provided to owners of commercial buildings.

### **35. Digital tools**

This option would involve investigating the greater use of digital tools to provide improved data insights for industry, consumers and government. New South Wales has developed a suite of digital platforms, including a construction assurance tool to help consumers and government agencies easily find relevant information, while delivering increased transparency and accountability across the industry. This is also consistent with recommendation 12 of the BCR, which recommends establishing a centralised, digital repository of information to ensure access to documentation.

### **36. Voting restrictions**

This option would limit developers from being able to vote on a body corporate decision relating to defects for a certain period (e.g. six-months) after the establishment of a body corporate. This would be applicable where developers have retained an active interest in a development, whether this is through voting rights or owning lots.

### **37. Address conflicts of interest**

To address potential conflicts of interest, an option could be to further investigate developers' influence on defect rectification, including the composition of a body corporate or promoting the independence of bodies corporate and building management services from the developer.

### **38. Enhanced disclosure of budget projections**

This option would require the developer to prepare and disclose budget projections to a body corporate for a minimum period (e.g. three-years), based on standardised accounting principles.

## Appendix 2: Panel biographies



### **Ms Alison Quinn – Chair**

Alison is a professional non-executive director with more than 25 years' experience as a chief executive officer and senior executive in the property development and aged care and seniors' sectors.

Through her roles with public, private and government organisations, Alison has developed valuable operational and commercial expertise in the areas of property investment, funding, infrastructure and development. Alison has significant expertise on the impacts and challenges of Australia's ageing population and has been at the forefront of thought leadership regarding meeting the housing, care and other service needs of the baby boomer generation.



### **Ms Gina Patrick – Member**

Gina is Managing Director of Plus Systems and Plus Technologies and is passionate about raising the level of innovation, professionalism and the quality of workmanship in the construction industry to provide better quality buildings, reducing risk and rectification costs for both industry and consumers.

Having enjoyed a career in construction, manufacturing and advising to businesses in many industries, Gina brings a wealth of knowledge particularly around the areas of strategy, business performance, industry change, financial performance and legislation.

In addition to being a representative to multiple industry bodies, Gina was previously a board member of the Fire Protection Association of Australia.



### **Mr John Payne – Member**

John was a founding partner of Hall Payne in 1991 and is one of Queensland's most experienced and respected industrial relations lawyers. John has spent 39 years assisting unions and community organisations with their diverse legal needs.

John is experienced at drafting sophisticated employment instruments, contracts, merger agreements and operating agreements. He has also previously lectured in workplace health and safety law at QUT.

He is currently a director for the Alzheimer's Association of Queensland, Byron Aged Care Ltd and a board member of the Prostate Awareness Association, Queensland.

## Appendix 3: Current and previous regulatory framework for developers

### Definition of developer

The term ‘developer’ is cited in various pieces of legislation in Queensland, although, it is not specifically defined in building-related legislation (i.e. the *Queensland Building and Construction Commission Act 1991* (QBCC Act), *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) and the *Building Act 1975*).

However, section 273 of the *Electoral Act 1992* states that a property developer (in the context of a prohibited donor) is defined as:

- a. a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of a corporation
  - i. in connection with the residential or commercial development of land; and
  - ii. with the ultimate purpose of the sale or lease of the land for profit
- b. a close associate of a corporation mentioned in paragraph (a).

In the absence of a statutory definition in building-related legislation, the common dictionary definition applies, being: ‘a person or company that makes money by building houses or renovating existing properties for sale’. This definition captures a wide range of people and entities, for example a developer could be a boutique property developer or a large company involved in large-scale residential apartment developments. In recent times, ‘mum and dad investors’ have also emerged into the field. For example, a homeowner may renovate multiple properties and choose to rent or sell those properties.

As mentioned earlier in this discussion paper, the Panel has decided to focus its review on ‘development activity’, rather than defining the term developer. **Figure 2** outlines the Panel’s ‘development activity’ profile, which sets out the core characteristics of development activity. This has assisted the Panel to focus on these core characteristics to shape this review.

### Current regulatory framework for developers under Queensland and Australian Commonwealth legislation

Developers and development companies, like other individuals and businesses, are subject to a range of legislative frameworks which regulate certain aspects of their business activities.

- Companies and corporations – the Australian Securities and Investments Commission (ASIC) governs the majority of company structures in Australia and it administers the *Corporations Act 2001*. ASIC requires company directors to be bound by general principles such as director duties. Recently, ASIC introduced a requirement for all company directors to hold a unique director identification number (director ID). The director ID aims to prevent illegal phoenixing activities by reducing the use of fraudulent identities. These laws apply to developers whose business are incorporated (noting some individuals or unincorporated small businesses may also carry out development activity)
- Taxation – the Australian Taxation Office administers taxation law and other related elements such as GST or superannuation for companies and individuals. This also captures developers and development companies
- Consumers – the Australian Consumer Law provided under *Competition and Consumer Act 2010* provides consumer protections for contracts (i.e. unfair contract terms) and consumer guarantees (i.e. acceptable quality)
- Safety of workers – the *Work Health and Safety Act 2011* seeks to protect health and safety of individuals involved in workplaces (i.e. building and construction) and provides an obligation on persons conducting/undertaking to conduct business to ensure so far as is reasonably practicable, the health and safety of workers at the workplace, and
- Employment rights – the *Fair Work Act 2009* and the Fair Work Commission seek to protect individual’s employment rights such as wages.

## QBCC Act

While developers operate in the highly regulated environment of the building and construction industry, they are not currently regulated to the same extent as other building professionals within the building industry (e.g. building contractors, occupational trades and building certifiers). As a result, they are not required to be licensed or to meet the associated educational, experience and financial requirements.

There are a range of areas in Queensland's building and construction legislation that do apply broadly to all entities contracting for and/or carrying out building work. The QBCC Act imposes obligations that apply to developers when acting as a 'principal' for a building contract. Section 67A of the QBCC Act, defines 'principal' as a person who is the contracting party for a building contract and who is not a building contractor, or is a building contractor, but did not enter into the building contract in the course of carrying on business as a building contractor. There are also a number of general provisions which apply to any entity who is a contracting party, defined as a party to a contract for whom the work is to be carried out, for a building contract.

The following legislative requirements apply either specifically to 'principals' or generally to 'contracting parties' under the QBCC Act:

- section 67K – provides limits for retention amounts and securities that are held under a building contract other than subcontracts with a contracting party who is a principal or a special purpose vehicle
- section 67M – provides limits on retention amounts
- section 67N – provides limits for retention amounts that may be held after practical completion
- section 67NB – provides an offence which applies to any contracting party for failing to release retention amounts without a reasonable excuse (penalty of up to \$27,570 or 1 year of imprisonment applies)
- section 67NC – requires a contracting party provide a written notice of the end of the defect liability period (penalty of \$13,785 applies)
- section 67P – provides for the payment of interest on a progress payment that is not paid after the due date
- section 67V – provides that it is an offence for the contracting party not to include a warning statement in a construction management trade contract and if that warning statement is not initialled by the contracted party (penalty of \$11,028 applies)
- section 67W – provides that any payment term of more than 15 business days in a commercial building contract is void
- section 68H(4)(c) – requires the principal to pay the QBCC's insurance premium as a debt under certain circumstances
- section 71 and 72 – provides an obligation for the principal to rectify defective building work or remedy consequential damage if directed by the QBCC (sections 72C and 73 provide that it is an offence for a person given a direction to delay or fail to comply with a direction to rectify or remedy), and
- section 103B – provides that the QBCC may keep a register containing details about each principal (the relevant developer) who has been directed by the QBCC to rectify damages under s71 or 72 of the QBCC Act (as above).

There are other provisions under the QBCC Act which provide ways for contractors or subcontractors to dispute a non-payment against other contracting parties (i.e. the principal/developer). For example, section 67O of the QBCC Act provides the head contractor a right to suspend the work if the other contracting party fails to comply with an order of a court or tribunal to make a payment to the contractor in relation to a contract for building work. The contractor may suspend works after giving a written notice and at least 7 days have passed.

### Head contractor licensing exemption – QBCC Act

The QBCC Act generally provides that a person must not carry out, or undertake to carry out, building work unless they hold an appropriate contractor licence (s42 of the QBCC Act). However, Section 8 under Schedule 1A of the QBCC Act facilitates commercial contracting in Queensland by allowing unlicensed head contractors (who are often developers) to contract to procure commercial building work, provided that work is carried out by licensed contractors. This has also been known as the head contractor licensing exemption.

The exemption sought to facilitate commercial contracting in Queensland by enabling unlicensed entities to contract for major projects, such as the Gladstone LNG Project and the Commonwealth Games Village, provided all building work was carried out by licensed contractors. The exemption also helped implement a recommendation of the then Transport, Housing and Local Government Parliamentary Committee's inquiry into the operation and performance of the former Queensland Building Services Authority. The Committee heard of instances where licensed electrical contractors had been fined for taking on jobs that required an element of work to be subcontracted to other licensed tradespeople, such as plumbing works in a substation refit. At the time, this was seen as an unintended consequence of section 42 and the Committee recommended amendments to make it clear that there is no breach of the QBCC Act, provided an appropriately licensed person carries out the building work itself.

The head contractor licensing exemption was set to be repealed in 2022, as some industry stakeholders had identified concerns about its potential to be used to undermine existing frameworks around security of payment and building quality and safety. However, in consultation with industry, the *Building and Other Legislation Amendment Act 2022* was enacted on 10 June, which retained the exemption, subject to key amendments to address those concerns. The amendments provide the Government with flexibility to ensure that emerging security of payment and building quality and safety issues can be addressed. The amended exemption allows a regulation to require head contractors to obtain a licence, in particular circumstances, when procuring commercial building work. The Department of Energy and Public Works has undertaken to engage with industry in developing any proposed regulation.

### ***Building Industry fairness (Security of Payment) Act 2017 (BIF Act)***

The *Building Industry Fairness (Security of Payment) Act 2017* (the BIF Act) establishes several measures to support security of payment in the industry. For example, the BIF Act establishes project and retention trust accounts (trust accounts), which are designed to protect progress payments and retention amounts for beneficiaries (i.e. subcontractors). Currently, a project trust account is required for eligible private sector contracts where the contract value is \$10 million or more.

Additionally, head contractors and private sector principals (i.e. developers) are required to establish a retention trust account for all cash retentions if a project trust account is required for the head contract. The following provisions under the BIF Act provide avenues for head contractors (i.e. the claimant) if they have not been paid or have a payment dispute with other contracting parties (i.e. developer as the respondent) – note that these avenues apply broadly to all entities who engage a contractor to carry out building work (with the exception of homeowners for their principal place of residence):

- section 78 – provides for consequences for failing to pay the claimant including a right to suspend work or make an application to courts/adjudication
- section 92 – claimant may suspend work if the respondent fails to pay the adjudicated amount
- section 93 – allows for filing of adjudication certificate as judgement debt in the court
- section 97B – provides the claimant a right to provide a payment withholding request for an adjudicated amount to the higher party, which means that the claimant could request the higher party (i.e. the developer, or if the respondent is the principal, the respondent's financier for the project) to withhold the unpaid portion of the adjudicated amount from the respondent until payment is made to the contractor, and
- section 100B – allows the claimant (head contractors only) to register a charge over the respondent's property for unpaid adjudicated amount, with the charge registered with the registrar of titles.

### **Previous Queensland regulation**

In Queensland, property developers were previously regulated under the *Property Agents and Motor Dealers Act 2000* (PAMDA) for the sale of property (i.e. authorising them to enter into a contract of sale). It did not impose any licensing requirements in relation to the construction of the properties. In 2014, the PAMDA was repealed and replaced with the *Property Occupation Act 2014* (POA), which does not provide a licensing regime for property developers. The PAMDA was repealed to streamline processes and reduce regulatory burden for certain licensed industries.

Prior to its repeal, the PAMDA established a property developer's licence which authorised the holder to:

- a. sell more than six residential properties (in which the person had an interest) in any 12-month period, and
- b. market residential property in which the property developer has an interest of at least 15 per cent.

Under section 42 of the PAMDA, an individual was eligible to obtain a property developer's licence if they were at least 18 years of age. A corporation was eligible to obtain a property developer's licence only if the corporation satisfied the chief executive that a director of the corporation, or on the issue of the licence, would be a property developer director. The PAMDA placed various obligations on property developers, including disclosure requirements for sales and supervision of how the business was carried out (e.g. taking of, and holding, deposits). For example, the failure of a property developer to disclose any relationship they had with anyone to whom the property developer refers the buyer for professional service associated with the sale, carried a maximum penalty of 200 penalty units under section 368 of the PAMDA.

Section 82 of the PAMDA also established categories of employees, including a 'property developer salesperson', who was required to hold a registration certificate to enable them to carry out any activity that may be performed by the employing property developer. The PAMDA also provided for property developer accountability in their dealings with customers through the Property Developer Practice Code of Conduct (the Code) which:

- set conduct standards for property developers in relation to their selling of properties
- established principles for fair trading in property developer practice, and
- provided for a system of complaint resolution for complaints about property developer practice.

A breach of the code of conduct was a ground for starting disciplinary proceedings through QCAT.

The licensing requirements for property developers were rescinded when the PAMDA was repealed on 1 December 2014. Property developer salespersons transitioned to the real estate salesperson registration under the POA, which enables them to carry out any activity that may be performed by the employing real estate agent. Under section 26 of the POA, a real estate agent licence authorises the holder to:

- a. buy, sell (other than by auction), exchange or let real property or interests in real property
- b. buy, sell (other than by auction), exchange or let businesses or interests in businesses
- c. negotiate for the buying, selling, exchanging or letting of something mentioned in paragraph (a) or (b),  
and
- d. collect rents.

## Appendix 4: Work undertaken by the Panel to date

Since being appointed in November 2021, the Panel has met regularly and has undertaken extensive consultation with its Industry Reference Group and other industry participants. It has also developed and published a workplan and stakeholder engagement plan, which outline key areas of focus and timeframes for the review. The stakeholder engagement plan, in particular, seeks to ensure all relevant stakeholders are identified and have opportunities to access and provide input into the review.

### Industry Reference Group (IRG)

The Panel is supported by an IRG which comprises representatives from the following organisations (some of these organisations are the members of the Ministerial Construction Council (MCC)):

- Australian Institute of Building Surveyors\*
- Australian Institute of Architects\*
- Housing Industry Association\*
- Insurance Council of Australia
- Local Government Association of Queensland\*
- Master Builders Queensland\*
- Property Council of Australia\*
- Queensland Building and Construction Commission\*
- Queensland Council of Unions\*
- Queensland Law Society
- Royal Institution of Chartered Surveyors\*
- Urban Development Institute of Australia – Queensland\*

*\*denotes an MCC member*

The Panel convened the first meeting of the IRG in March 2022 and met individually with all IRG members. The IRG will continue to act as a key forum of industry engagement for the Panel throughout its appointment.

### Summary of the consultation undertaken

Since being appointed, the Panel has undertaken over 50 hours of consultation with the IRG and other industry participants. The Panel has also consulted with other key participants from the finance, legal and construction sectors, along with union representatives and selected developers.

The Panel's stakeholder engagement plan, seeks to ensure all relevant stakeholders are identified and have a range of opportunities to access and provide input into the review. The Panel has already received written submissions from IRG members and consultation participants.

Going forward, public consultation on this discussion paper will give all interested parties the opportunity to provide input to the review and comment on the key issues that have been raised with the Panel.

## Appendix 5: Jurisdictional analysis

### Security of Payment

	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Main local legislation</b>	<i>Building Industry Fairness (Security of Payment) Act 2017</i> Part 4A <i>Queensland Building and Construction Commission Act 1991</i>	<i>Building and Construction Industry Security of Payment Act 1999</i> (NSW)	<i>Building and Construction Industry Security of Payment Act 2002</i> (Vic)	<i>Building and Construction Industry (Security of Payment) Act 2021</i> (WA)	<i>Construction Contracts (Security of Payments) Act 2004</i> (NT)	<i>Building and Construction Industry Security of Payment Act 2009</i> (SA)	<i>Building and Construction Industry (Security of Payment) Act 2009</i> (ACT)	<i>Building and Construction Industry Security of Payment Act 2009</i> (Tas)
<b>What amount can be claimed?</b>	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract. Excludes most variations and claims for “excluded amounts”.	Amounts relating to the performance (or non-performance) by a contractor of obligations under a construction contract.	Amounts relating to the performance (or non-performance) by a contractor of obligations under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “building work or construction work” or the supply of related goods or services undertaken under a building or construction contract.
<b>Party that may make an adjudication application under the Act</b>	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Both parties up and down the contract chain (contractor and principal) (i.e., the party entitled to make a payment claim and the party that receives a payment claim).	Both parties up and down the contract chain (contractor and principal) (i.e., the party entitled to make a payment claim and the party that receives a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).

	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
Timing for service of payment claim	<p>Payment claims may be given from each reference date under the construction contract which is either:</p> <ul style="list-style-type: none"> <li>the date stated in the contract as the date on which a claim for a progress payment may be made; or</li> <li>if the contract does not state a reference date the last day of the month in which the work was first carried out/goods supplied; AND the last day of each later month.</li> </ul>	<p>Payment claims may be served on and from the earlier of:</p> <ul style="list-style-type: none"> <li>the last day of the named month in which the construction work was first carried out under the contract and on and from the last day of each subsequent month; or</li> <li>the date provided under the construction contract.</li> </ul> <p>The claim must be served by the later of:</p> <ul style="list-style-type: none"> <li>the period determined under the construction contract; or</li> <li>12-months after the construction work was last carried out (or related goods or services were last supplied).</li> </ul>	<p>A contractor is entitled to claim a progress payment on and from each “reference date” calculated under the construction contract. If the contract does not provide for such a date, the “reference date” will be 20 business days after the work was first carried out, and after that, 20 business days after the previous reference date.</p> <p>The claim must be served by the later of:</p> <ul style="list-style-type: none"> <li>the period determined under the construction contract; and</li> <li>3 months after the reference date applicable to the payment claim.</li> </ul>	<p>Within the period determined under the construction contract.</p> <p>If the contract does not include a written provision about how a party is to make a claim for payment:</p> <ul style="list-style-type: none"> <li>the implied provision provided by the Act will be applicable; and</li> <li>the contractor will be entitled to claim a progress payment at any time after it has performed any of its obligations.</li> </ul>	<p>Within the period determined under the construction contract.</p> <p>If the contract does not include a written provision about how a party is to make a claim for payment:</p> <ul style="list-style-type: none"> <li>the implied provision provided by the Act will be applicable; and</li> <li>the contractor will be entitled to claim a progress payment at any time after it has performed any of its obligations.</li> </ul>	<p>A contractor is entitled to claim a progress payment on and from each “reference date” calculated under the construction contract. If the contract does not provide for such a date, the “reference date” will be the last day of the named month in which the work was first carried out, and the last day of each subsequent named month.</p> <p>The claim must be served by the later of:</p> <ul style="list-style-type: none"> <li>the period determined under the construction contract; or</li> <li>six months after the construction work was last carried out (or related goods or services were last supplied).</li> </ul>	<p>A contractor is entitled to claim a progress payment on and from each “reference date” calculated under the construction contract. If the contract does not provide for such a date, the “reference date” will be the last day of the calendar month in which the work was first carried out, and the last day of each subsequent month.</p> <p>The claim must be served by the later of:</p> <ul style="list-style-type: none"> <li>the period determined under the construction contract; or</li> <li>12-months after the construction work was last carried out (or related goods or services were last supplied).</li> </ul>	<p>A contractor is entitled to claim a progress payment on and from each “reference date” calculated under the construction contract. If the contract does not provide for such a date, the “reference date” will be the last day of each calendar month in which works are carried out under the contract.</p> <p>The claim must be served by the later of:</p> <ul style="list-style-type: none"> <li>the period determined under the construction contract; or</li> <li>12-months after the building or construction work was last carried out (or related goods or services were last supplied).</li> </ul>

	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Effect of not serving a valid response to a payment claim</b>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount by the due date for payment.</p> <p>The claimant may bring an adjudication application seeking payment of the full claimed amount if they are not paid the same by the due date.</p> <p>Note, Queensland removed the “second chance” payment schedule as part of the security of payment reforms under the BIF Act which commenced in 2018.</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount by the due date for payment. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule.</p> <p>The claimant may also recover unpaid portion of claimed amount as a debt in court of competent jurisdiction.</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount by the due date for payment. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule.</p> <p>The claimant may also recover unpaid portion of claimed amount as a debt in court of competent jurisdiction.</p>	<p>The respondent may give a payment schedule to the claimant in response to a payment claim.</p> <p>If a respondent does not provide a payment schedule and has not paid the claimed amount in full by the date of payment, the claimant may provide the respondent with a notice to adjudicate. The respondent will then be provided a second opportunity to provide a payment schedule within 5 days.</p> <p>If a claimant makes a payment claim and the respondent does not pay the claimed or payment schedule amount in full, on or before the date for payment, the claimant may, as an alternative to seeking adjudication, recover the unpaid portion as a debt due in a court of competent jurisdiction.</p>	<p>This depends on the terms of the construction contract.</p> <p>If the contract does not include a written provision about how a party is to respond to a payment claim, the implied provision will apply, and a respondent will be liable to pay the full claimed amount if it does not serve a notice of dispute.</p> <p>However, even where this implied provision is applicable, it does not preclude a respondent from defending an adjudication application despite any failure to dispute the whole or part of a payment claim.</p> <p>An Adjudicator’s determination may be enforced as order of court.</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule.</p> <p>The claimant may also recover unpaid portions of claimed amounts as a debt in court of competent jurisdiction.</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule.</p> <p>The claimant may also recover unpaid portions of claimed amounts as a debt in court of competent jurisdiction.</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule.</p> <p>The claimant may also recover unpaid portions of claimed amounts as a debt in court of competent jurisdiction.</p>

	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
Maximum payment terms	<p>The due date for payment is the day stated in the contract; or if the contact is silent on a payment day – 10 business days after a payment claim is given*.</p> <p>However: a provision in a construction management trade contract or subcontract providing for payment of a progress payment later than 25 business days is void, and a provision in a commercial building contract providing for payment of a progress payment later than 15 business days is void.</p> <p>*Note, it was policy intent to require payment within shorter period (i.e. 10 business days) as a consequence for not stating/agreeing payment terms under the contract.</p>	<p>The maximum period for a progress payment to be payable in NSW is:</p> <ul style="list-style-type: none"> <li>for payments to head contractor, 15 business days after the service of a payment claim; and</li> <li>for payments to a subcontractor, 20 business days after the service of a payment claim.</li> </ul>	<p>No specific maximum period applicable, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 10 business days after the service of a payment claim.</p>	<p>No specific maximum period applicable, unless the construction contract does not provide written a term for when payment falls due. In that case, the implied provisions will apply and a progress payment will be payable within 28 days after the respondent receives a payment claim.</p>	<p>No specific maximum period applicable, unless the construction contract does not provide written a term for when payment falls due. In that case, the implied provisions will apply and a progress payment will be payable within 28 days after the respondent receives a payment claim.</p>	<p>No specific maximum period applicable, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 15 business days after the service of a payment claim.</p>	<p>No specific maximum period applicable, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 10 business days after the service of a payment claim.</p>	<p>No specific maximum period applicable, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 10 or 20 business days after the payment claim is served (the longer period applying to certain residential projects).</p>

	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Timeframe for serving adjudication application</b>	<p>The timeframe depends on the nature of the application:</p> <p>For application relating to a failure to give a payment schedule and pay the full amount stated in the payment claim – 30 business days after the later of:</p> <ul style="list-style-type: none"> <li>the due date for payment; or</li> <li>the last date the payment schedule could have been given.</li> </ul> <p>For an application relating to a failure to pay the full amount stated in the payment schedule – 20 business days after the due date.</p> <p>For an application to an amount stated in the payment schedule – 30 business days after the claimant receives the payment schedule.</p>	<p>The timeframe depends on the nature of the application:</p> <ul style="list-style-type: none"> <li>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or</li> <li>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</li> </ul>	<p>The timeframe depends on the nature of the application:</p> <ul style="list-style-type: none"> <li>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or</li> <li>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</li> </ul>	<p>A claimant may apply for adjudication within 20 business days after a payment schedule is given or after the expiry of the timeframe in the second chance notice.</p>	<p>An application for adjudication must be made within 65 working days of the payment dispute arising.</p>	<p>The timeframe depends on the nature of the application:</p> <ul style="list-style-type: none"> <li>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 15 business days after the payment schedule is served; or</li> <li>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</li> </ul>	<p>The timeframe depends on the nature of the application:</p> <ul style="list-style-type: none"> <li>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or</li> <li>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</li> </ul>	<p>The timeframe depends on the nature of the application:</p> <ul style="list-style-type: none"> <li>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or</li> <li>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</li> </ul>
<b>Can a respondent argue new reasons for non-payment in the adjudication response?</b>	<p>No. Limited to reasons already included in the payment schedule.</p> <p>The respondent is also not entitled to give an adjudication response if they had failed to originally give a payment schedule.</p>	<p>No. Limited to reasons already included in the payment schedule.</p>	<p>Yes. However, if new reasons are included, the claimant will be entitled to respond to those new reasons within two business days after being notified.</p>	<p>Yes.</p>	<p>Yes.</p>	<p>No. Limited to reasons already included in the payment schedule.</p>	<p>No. Limited to reasons already included in the payment schedule.</p>	<p>No. Limited to reasons already included in the payment schedule.</p>

	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Right to suspend for non-payment</b>	<p>If a respondent does not pay the amount owed to the claimant in full on or before the due date for payment, the claimant may give written notice of the claimant’s intention to suspend carrying out construction work; the notice must state that it is made under the BIF Act.</p>	<p>A right to suspend performance of the works arises where:</p> <ul style="list-style-type: none"> <li>• a respondent has failed to serve a payment schedule, and failed to pay all or part of amount due to the claimant;</li> <li>• a respondent has served a payment schedule, but failed to pay all or part of the scheduled amount;</li> <li>• an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</li> <li>• In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</li> </ul>	<p>A right to suspend performance of the works arises where:</p> <ul style="list-style-type: none"> <li>• a respondent has failed to serve a payment schedule, and failed to pay all or part of amount due to the claimant;</li> <li>• a respondent has served a payment schedule, but failed to pay all or part of the scheduled amount;</li> <li>• an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</li> </ul> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least three business days after the service of this notice.</p>	<p>A right to suspend performance of a contractor’s obligations arises where a respondent fails to pay an amount awarded under an adjudication determination.</p> <p>In such circumstances, the claimant must comply with the following procedure:</p> <ul style="list-style-type: none"> <li>• give a “notice of intention” to the respondent indicating that it intends to suspend the performance of its obligations;</li> <li>• state in the “notice of intention” the date on which the claimant intends to suspend performance;</li> <li>• serve the notice at least three business days before the date stated in the notice; and</li> <li>• if the amount remains unpaid by the date stated in the notice, a claimant may then suspend performance.</li> </ul>	<p>A right to suspend performance of a contractor’s obligations arises where a respondent fails to pay an amount awarded under an adjudication determination.</p> <p>In such circumstances, the claimant must comply with the following procedure:</p> <ul style="list-style-type: none"> <li>• give a “notice of intention” to the respondent indicating that it intends to suspend the performance of its obligations;</li> <li>• state in the “notice of intention” the date on which the claimant intends to suspend performance;</li> <li>• serve the notice at least three working days before the date stated in the notice; and</li> <li>• if the amount remains unpaid by the date stated in the notice, a claimant may then suspend performance.</li> </ul>	<p>A right to suspend performance of the works arises where:</p> <ul style="list-style-type: none"> <li>• a respondent has failed to serve a payment schedule and failed to pay all or part of amount due to the claimant;</li> <li>• a respondent has served a payment schedule but failed to pay all or part of the scheduled amount;</li> <li>• an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</li> </ul> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</p>	<p>A right to suspend performance of the works arises where:</p> <ul style="list-style-type: none"> <li>• a respondent has failed to serve a payment schedule and failed to pay all or part of amount due to the claimant;</li> <li>• a respondent has served a payment schedule but failed to pay all or part of the scheduled amount;</li> <li>• an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</li> </ul> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</p>	<p>A right to suspend performance of the works arises where:</p> <ul style="list-style-type: none"> <li>• a respondent has failed to serve a payment schedule and failed to pay all or part of amount due to the claimant;</li> <li>• a respondent has served a payment schedule but failed to pay all or part of the scheduled amount; or</li> <li>• an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</li> </ul> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least three business days after the service of this notice.</p>

## Developer's liability for building quality/defects

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Queensland Building and Construction Commission Act 1991 (QBCC Act)</i></li> <li>• <i>Building Act 1975</i></li> <li>• <i>Body Corporate and Community Management Act 1997</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)</i></li> <li>• <i>Design and Building Practitioners Act 2020</i></li> <li>• <i>Home Building Act 1989</i></li> <li>• <i>Strata Schemes Management Act 2015</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Domestic Building Contracts Act 1995</i></li> <li>• <i>Building Act 1993</i></li> <li>• <i>Owners Corporation Act 2006</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Building and Construction Industry (Security of Payment) Act 2021 (WA)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Building Act 1993</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Planning, Development, and Infrastructure Act 2016</i></li> <li>• <i>Building Work Contractors Act 1995</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Building Act 2004</i></li> <li>• <i>Unit Title (Management) Act 2011</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Building Act 2016</i></li> <li>• <i>Residential Building Work Contracts and Dispute Resolution 2016 (RBWCDR Act)</i></li> </ul>
<b>Regulator/ administrator</b>	Queensland Building and Construction Commission	Commissioner for Fair Trading, Department of Finance, Services, and Innovation (the Secretary)	Victorian Building Authority (VBA)	Building Services Board (the Board)	Director of Building Control (the Director) Building Practitioners Board (Practitioners Board)	Commissioner of Consumer Affairs	ACT Construction Occupations Registrar (the Registrar)	Administrator of Occupational Licensing (the Administrator)

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Statutory duty to prevent economic loss</b>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e., that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>	<p>A developer has a duty to exercise reasonable care to avoid economic loss caused by defects, <b>only if they carried out the construction work.</b></p> <p>The duty of care is owed to each owner of the land in relation to which the construction work is carried out and to each subsequent owner of land.</p> <p><i>Section 37 Design and Building Practitioners Act 2020</i></p> <p>An owner's corporation or an association is taken to suffer economic loss if the corporation or association bears the cost of rectifying defects (including damage caused by defects) that are the subject of a breach of the duty of care.</p> <p><i>Section 38 Design and Building Practitioners Act 2020</i></p> <p>If the developer did not carry out the construction work, the owner would have to try and sue the builder/ developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation).</p>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e. that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e. that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e. that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e. that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e. that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>	<p>Nil.</p> <p>For latent defects in buildings, a duty to prevent pure economic loss is only established in limited circumstances, as primacy is given to contract law (i.e. that the contractual relationship should contain provisions as to the quality and performance of work) (<i>Brookfield Multiplex v Owners Corp</i>).</p> <p>The owner would have to sue the builder/developer under a common law claim for breach of contract or a tortious claim (e.g. negligence or misrepresentation) to claim damages.</p>

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Owner's corporation responsibility to commence legal proceedings to rectify defect</b>	<p>If building work carried out for the owner of a lot included in the community titles scheme is defective, the body corporate may bring a proceeding under the Queensland Building and Construction Commission Act 1991 or another law to have the defect remedied.</p> <p>Section 213 Body Corporate and Community Management (Standard Module) Regulation 2020</p>	<p>The Owners Corporation may carry out work necessary to rectify defects.</p> <p><i>Section 119 Strata Schemes Management Act 2015</i></p>	<p>The Owners Corporation is responsible to manage and administer the common property and “to repair and maintain” the common property and the chattels, fixtures, fittings and services related to the common property or its enjoyment.</p> <p>The duty to repair and maintain the common property (as opposed to private property) that is held by the Owners Corporation may also include the need to commence legal proceedings for compensation to rectify defects in the common property.</p> <p><i>Section 4 Owners Corporation Act 2006</i></p>	<p>The functions of a community corporation include an obligation to keep in good and serviceable repair, properly maintain and renew and replace the common property as necessary because of damage or deterioration arising from fair wear and tear, inherent defects, or any other cause.</p> <p>A community corporation may sue or be sued for rights and liabilities related to the common property of its community titles scheme as if it were the owner and occupier of the common property.</p> <p><i>Section 75 Community Titles Act 2018</i></p>	Nil.	Nil.	<p>If a building, or the site of a building, that is part of the units or common property of a unit plan, has a structural defect that affects or is likely to affect, the support or shelter provided by that part of the building or site to another part of the building or site, the owners corporation may take legal action for the rectification of the structural defects if:</p> <ul style="list-style-type: none"> <li>• The legal action could be taken by a member of the corporation; and</li> <li>• The member does not take the legal action within a reasonable time after the defect becomes known</li> </ul> <p><i>Section 27 Unit Titles (Management) Act 2011</i></p>	<p>If building works was carried out for the developer under a registered scheme and the building work is defective, the body corporate is subrogated to the contractual rights of the developer to damages in respect of those defects.</p> <p>The body corporate may recover damages on its own behalf or on behalf of owners of lots affected by the defects.</p> <p><i>Section 85 Strata Titles Act 1998</i></p>

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Developer liability for building quality</b>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p> <p>However, implied warranties exist for a contract for the sale of a lot, with the seller (if the developer is a seller) warranting that to their knowledge, there are no latent or patent defects in the common property or body corporate assets, other than defects arising through fair wear and tear and defects disclosed in the contract.</p> <p><i>Section 223 BCCM Act</i></p>	<p>Developers are liable for the quality of <b>residential apartment buildings</b>.</p> <p>The Secretary may issue, including:</p> <ul style="list-style-type: none"> <li>• a prohibition order – which can prohibit the issue of an occupational certificate;</li> <li>• a stop work order – when the Secretary has formed the view that the continuation of the building work is, or is likely to be, carried out in a manner that could result in significant harm or loss to the public, the occupiers, or potential occupiers; and</li> <li>• a building work rectification order – where the Secretary has a reasonable belief that building work was or is being carried out in a manner that could result in a serious defect.</li> </ul> <p><i>Section 9, 23, 33 RAB Act</i></p>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p> <p><b>However, in relation to an owner’s corporation:</b> While the initial owner (this may be the developer) is in control of the majority of the owner’s corporation for ten years from the registration of the plan of subdivision, the initial owner must:</p> <ul style="list-style-type: none"> <li>• act honestly, in good faith and with due care and diligence in the interests of the owner’s corporation</li> <li>• take all reasonable steps to enforce any domestic building contract that affects the owner’s corporation.</li> </ul> <p><b>(continues over page)</b></p>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p> <p>However, if a developer (<b>if the developer is a seller of a unit title scheme</b>) enters into a contract with a buyer, the seller is taken to have warranted that the contract discloses all latent and patent defects of the common property and body corporate assets, other than defects arising through ordinary usage. The warranty has effect as part of the contract to the extent to which the seller knows, or ought reasonably to have known, of the matter to which the warranty relates.</p> <p><i>Section 47 Unit Title Schemes Act 2009</i></p> <p><b>(continues over page)</b></p>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p>	<p>Generally, the developer will have no residual liability to the owner of a residential apartment building. The builder, engaged by the developer, often carries the residual construction defect risk.</p>

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Developer liability for building quality</b> <i>(continued)</i>			<p>1. If the initial owner fails to do so:</p> <ul style="list-style-type: none"> <li>the owner's corporation can make a special resolution to authorise legal proceedings, for example, under the domestic building contract implied warranties</li> <li>independently of the owner's corporation, individual lot owners can apply to the VCAT for an order to make the developer meet the legal obligations.</li> </ul> <p><i>Owners Corporation Act 2006</i></p>		<p>Section 47 applies to a contract for the sale by a person (the seller) to another person (the buyer) of a unit that will come into existence when a scheme is formed or changed. Note: this definition could encompass a developer.</p> <p><i>Section 43 Unit Title Schemes Act 2009</i></p>			
<b>Developer failure to comply with the directions of an authorised officer regarding building quality</b>	<p>Section 72 of the QBCC Act provides that the QBCC may direct the person who carries out building work (including directly or indirectly causing the work to be carried out), to rectify the work that is defective or incomplete or remedy consequential damage of that work. This may apply to a developer if they carried out the building work.</p>	<p>Failure to comply with a direction from an authorised officer will incur additional daily penalties (1,000 penalty units (\$110,000) per day for a body corporate and 200 penalty units (\$22,000) per day otherwise)</p> <p><i>RAB Act</i></p>	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Developer failure to comply with court order regarding building quality</b>	Nil under building-related legislation.	<p>If a person is convicted by a court for failing to comply with an order or direction under the RAB Act or RAB Regulations, the court may issue a court order requiring the person to comply.</p> <p>Failure to comply with the court order constitutes an offence carrying a maximum penalty of 3,000 penalty units (\$330,000) and 300 penalty units (\$33,000) for each day the offence continues for a body corporate, and 1,000 penalty units (\$110,000) and 100 penalty units (\$11,000) for each day otherwise.</p> <p><i>RAB Act</i></p>	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Requirement for developer to pay levy for defects/rectification</b>	Nil. However, consumers must pay a premium and take out cover under the statutory Home Warranty Scheme for residential construction work (generally work over \$3,300 on homes up to two storeys, duplexes and townhouses).	Developers are required to pay a levy into the Home Building Administration Fund. The levy is intended to support the regulator's new schemes and is hoped to avoid defects and rectification costs during a project's life cycle. <i>Section 6A RAB Act</i>	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
<b>Statutory warranties available?</b>	Yes <i>Part 3 QBCC Act</i>	Yes. <i>Part 2C Home Buildings Act 1989</i>	Yes. <i>Part 2 Domestic Building Contracts Act 1995</i>	Nil.	Yes. <i>Part 5A Building Act 1993</i>	Yes. <i>Part 5 Building Work Contractors Act 1995</i>	Yes. <i>Part 6 Building Act 2004</i>	Yes. <i>Part 6 RBWCDR Act</i>
<b>Applicability of statutory warranties</b>	Domestic building work (e.g. construction or renovation) of: <ul style="list-style-type: none"> <li>• single detached dwelling</li> <li>• duplex</li> </ul> <i>Part 3 QBCC Act</i>	<ul style="list-style-type: none"> <li>• Homes</li> <li>• Apartments over three storeys</li> </ul> <i>Part 2C Home Buildings Act 1989</i>	<ul style="list-style-type: none"> <li>• Homes</li> <li>• Apartments over 3 storeys</li> </ul> <i>Part 2 Domestic Building Contracts Act 1995</i>	Nil.	All prescribed residential building work <i>Part 5A Building Act 1993</i>	<ul style="list-style-type: none"> <li>• Homes</li> <li>• Apartments over three storeys</li> </ul> <i>Part 5 Building Work Contractors Act 1995</i>	<ul style="list-style-type: none"> <li>• Homes</li> <li>• Apartments over three storeys</li> </ul> <i>Part 6 Building Act 2004</i>	<ul style="list-style-type: none"> <li>• Homes</li> </ul> <i>Part 6 RBWCDR Act</i>

Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>Statutory warranties deem to be provided by, and to whom?</b>	<p>Building owner of residential building work have rights <b>against the building contractor</b> for a breach of a range of statutory warranties.</p> <p><i>Building contractor is the person who, or the person who intends to, carry out or manage to carry out domestic building work.</i></p> <p><i>Part 3 QBCC Act</i></p>	<p>New apartment owners and homeowners (and subsequent purchasers) have rights <b>against both the developer and the builder</b> for breach of a range of statutory warranties.</p> <p><i>Part 2C Home Buildings Act 1989</i></p>	<p>New apartment owners and homeowners (and subsequent purchasers) have rights <b>against the builder</b> for a breach of a range of statutory authorities.</p> <p><i>Part 2 Domestic Building Contracts Act 1995</i></p>	Nil.	<p>New owners of residential building work (and subsequent purchasers) have rights <b>against the residential builder</b> for a breach of a range of statutory warranties.</p> <p><b>The definition of residential builder includes a developer.</b></p> <p><i>Part 5A Building Act 1993</i></p>	<p>New apartment owners and homeowners (and subsequent purchasers) have rights <b>against the builder</b> for a breach of a range of statutory authorities.</p> <p><i>Part 5 Building Work Contractors Act 1995</i></p>	<p>New apartment owners and homeowners (and subsequent purchasers) have rights <b>against the builder</b> for a breach of a range of statutory authorities.</p> <p><i>Part 6 Building Act 2004</i></p>	<p>New homeowners (and subsequent purchasers) have rights <b>against the builder</b> for a breach of a range of statutory authorities.</p> <p><i>Part 6 RBWCDR Act</i></p>
<b>Time limits?</b>	<ul style="list-style-type: none"> <li>• 6 years from completion for structural defect</li> <li>• 1 year in any other case</li> </ul> <p><i>Part 3 QBCC Act</i></p>	<ul style="list-style-type: none"> <li>• 6 years from completion for major defects</li> <li>• 2 years from completion for non-major defects</li> </ul> <p><i>Part 2C Home Buildings Act 1989</i></p>	<ul style="list-style-type: none"> <li>• 10 years from completion</li> </ul> <p><i>Part 2 Domestic Building Contracts Act 1995</i></p>	Nil.	<ul style="list-style-type: none"> <li>• 10 years from completion</li> </ul> <p><i>Part 5A Building Act 1993</i></p>	<ul style="list-style-type: none"> <li>• 5 years from completion</li> </ul> <p><i>Part 5 Building Work Contractors Act 1995</i></p>	<ul style="list-style-type: none"> <li>• 6 years from completion for structural defects</li> <li>• 2 years from completion for non-structural defects</li> </ul> <p><i>Part 6 Building Act 2004</i></p>	<ul style="list-style-type: none"> <li>• 6 years from practical completion</li> </ul> <p><i>Part 6 RBWCDR Act</i></p>

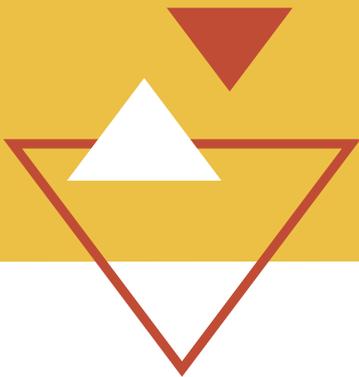
Power	Queensland	New South Wales	Victoria	Western Australia	Northern Territory	South Australia	Australian Capital Territory	Tasmania
<b>What warranties are guaranteed under the Act?</b>	<ul style="list-style-type: none"> <li>Supplied materials will be good and suitable for the intended purpose</li> <li>New materials (unless otherwise stated in the contract)</li> <li>Works comply with all laws</li> <li>Work will be carried out in an appropriate and skilful way</li> <li>Work will be carried out with reasonable care and skill</li> <li>Work will be carried out according to plans and specifications (if they form part of the contract), including with reasonable diligence</li> </ul> <p><i>Schedule 1B, QBCC Act</i></p>	<ul style="list-style-type: none"> <li>Work carried out with due care and skill</li> <li>In accordance with plans and specifications</li> <li>All materials will be good and suitable</li> <li>Works will comply with all laws</li> <li>Work to be completed with due diligence and on-time</li> <li>Fit for occupation</li> <li>Fit for purpose</li> </ul> <p><i>Part 2C Home Buildings Act 1989</i></p>	<ul style="list-style-type: none"> <li>Work carried out with reasonable care and skill</li> <li>Work carried out in a proper and workmanlike manner</li> <li>Work carried out in accordance with plans and specifications</li> <li>All materials will be good and suitable</li> <li>All materials new unless otherwise specified</li> <li>Works will comply with all laws</li> <li>Work to be completed by the date or period specified in the contract</li> <li>Fit for occupation</li> <li>Fit for purpose</li> </ul> <p><i>Part 2 Domestic Building Contracts Act 1995</i></p>	Nil.	<ul style="list-style-type: none"> <li>Work carried out in a proper manner in accordance with plans and specifications</li> <li>All materials will be suitable for purpose</li> <li>All materials new unless otherwise specified</li> <li>Work carried out with reasonable care and skill</li> <li>Work to be completed by the date or period specified in the contract</li> </ul> <p><i>Part 5A Building Act 1993</i></p>	<ul style="list-style-type: none"> <li>Work performed in a proper manner in accordance with accepted trade standards</li> <li>Work performed in accordance with plans and specifications</li> <li>All materials will be good and proper</li> <li>Works will be performed in accordance with all statutory requirements</li> <li>If no period specified in contract, work to be performed with reasonable diligence</li> <li>If a house, will be reasonably fit for human habitation</li> <li>Fit for purpose</li> </ul> <p><i>Part 5 Building Work Contractors Act 1995</i></p>	<ul style="list-style-type: none"> <li>Work will be performed in a proper and skilful way</li> <li>Work will be performed in accordance with approved plans</li> <li>If work involves asbestos, will be performed in accordance with compliant asbestos management plans</li> <li>All materials will be good and proper</li> <li>If no period specified in contract, work to be carried out with reasonable promptness</li> <li>Works will be performed in accordance with the Building Act 2004</li> <li>Fit for purpose</li> </ul> <p><i>Part 6 Building Act 2004</i></p>	<ul style="list-style-type: none"> <li>Work carried out with reasonable care and skill</li> <li>Work will be carried out in an appropriate and skilful way</li> <li>Work will be carried out in accordance with plans and specifications</li> <li>All materials will be good and suitable</li> <li>All materials will be new unless otherwise specified</li> <li>Works will comply with all laws</li> <li>Work to be completed with reasonable diligence</li> <li>Fit for occupation</li> </ul> <p><i>Part 6 RBWCDR Act</i></p>

## Abbreviations

<b>AICD</b>	Australian Institute of Company Directors
<b>BCR</b>	Building Confidence Report
<b>BCCM Act</b>	<i>Body Corporate and Community Management Act 1997</i>
<b>BIF Act</b>	<i>Building Industry Fairness (Security of Payment) Act 2017</i>
<b>Building Act</b>	<i>Building Act 1975</i>
<b>EPW</b>	Department of Energy and Public Works
<b>iCIRT</b>	independent Construction Industry Rating Tool
<b>MCC</b>	Ministerial Construction Council
<b>MFR</b>	Minimum Financial Requirements
<b>NCBPs</b>	Non-Conforming Building Products
<b>NCC</b>	National Construction Code
<b>PPP</b>	Public private partnership
<b>QBP</b>	Queensland Building Plan 2017
<b>QBCC Act</b>	<i>Queensland Building and Construction Commission Act 1991</i>
<b>QBCC</b>	Queensland Building and Construction Commission
<b>QCAT</b>	Queensland Civil and Administrative Tribunal
<b>QHWS / The Scheme</b>	Queensland Home Warranty Scheme
<b>SPVs</b>	Special Purpose Vehicles
<b>ToRs</b>	Terms of Reference

## Terminology and definitions

<b>Conflict of Interest</b>	Includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.
<b>Developer</b>	A person or entity who undertakes ‘development activity’, regardless of value or frequency.
<b>Licensee</b>	QBCC licence holders, including building and trade contractors, occupational (plumbing and drainage and fire protection), pool safety inspectors and certifiers.
<b>QBCC Review</b>	Independent review into QBCC Governance Framework



**Queensland**  
Government