

~~actions of bad Liberal National governments. These are the actions of Liberal National governments doing what they fundamentally believe in. This Palaszczuk Labor government will ensure that Queenslanders always come first.>~~

~~Mr DEPUTY SPEAKER (Mr Elmes): The time for matters of public interest has expired.~~

<BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) BILL

Message from Deputy Governor



Hon. MC de BRENNI (Springwood—ALP) (Minister for Housing and Public Works and Minister for Sport) (3.46 pm): <I present a message from the Deputy Governor>.

Mr DEPUTY SPEAKER (Mr Elmes): The message from the Deputy Governor recommends the Building Industry Fairness (Security of Payment) Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT)

BILL 2017

Constitution of Queensland 2001, section 68

I, CATHERINE ENA HOLMES, Deputy Governor, recommend to the Legislative Assembly a Bill intituled—

A Bill for an Act to provide for the security of payment in the building and construction industry by providing for effective, efficient, and fair processes for securing payment, and to amend this Act, the Building Act 1975, the Judicial Review Act 1991, the Plumbing and Drainage Act 2002 and the Queensland Building and Construction Commission Act 1991 for particular purposes, and to repeal the Building and Construction Industry Payments Act 2004 and the Subcontractors' Charges Act 19 74

(sgd)

DEPUTY GOVERNOR

Date: 22 AUG 2017

Tabled paper: Message, dated 22 August 2017, from the Deputy Governor recommending the Building Industry Fairness (Security of Payment) Bill 2017.

Introduction

Hon. MC de BRENNI (Springwood—ALP) (Minister for Housing and Public Works and Minister for Sport) (3.46 pm): I present a bill for an act to provide for the security of payment in the building and construction industry by providing for effective, efficient, and fair processes for securing payment, and to amend this act, the Building Act 1975, the Judicial Review Act 1991, the Plumbing and Drainage Act 2002 and the Queensland Building and Construction Commission Act 1991 for particular purposes, and to repeal the Building and Construction Industry Payments Act 2004 and the Subcontractors' Charges Act 1974. I table the bill and the explanatory notes. I nominate the Public Works and Utilities Committee to consider the bill.

Tabled paper: Building Industry Fairness (Security of Payment) Bill 2017.

Tabled paper: Building Industry Fairness (Security of Payment) Bill 2017, explanatory notes.

I am proud to rise today to present this bill to the House. This is an historic bill that will usher in an era of fairness in the building and construction industry that we have never seen before in this state or in this nation.

The central tenet of this bill is one that I and my colleagues on this side of the House feel very strongly about: if you do the work you should get paid. For far too long subcontractors have suffered an unreasonably high level of risk and burden of financial loss associated with the building and construction industry. The majority of the risk in a \$44 billion industry has been placed on the shoulders of those who have the least power, and the result has been a disaster for small and medium sized subcontracting businesses. Non-payment has busted apart families. It has made people homeless. It has been a mental health disaster.

It has been put to me that this is just the way the industry is and that there is no point in trying to change it. I am not someone who is willing to accept something just because that is the way it has always been. When I consulted on this issue across the state I heard too many stories about the strain that late payment is placing on subcontractors and the devastation that financial loss associated with

non-payment causes. This is a very real issue that is affecting far too many Queenslanders. In just the last week we have seen two more construction industry insolvencies on the Gold Coast that have left subcontractors out in the cold.

It is clear that what would normally be considered poor business practice has become a standard operating model for some licensees in the industry. Higher contractors often delay or do not make payments to subcontractors in order to supplement their own cash flow, offset the costs of other projects or to siphon off funds for their own personal benefit. Builders who do the right thing are forced to compete with rogue players who do not pay their subcontractors. Our subcontractors and their families deserve better than this. Queensland's builders deserve better than this.

The bill will establish a framework for project bank accounts for both government and the private sector building and construction projects. Project bank accounts are trust accounts where progress payments, retention monies and disputed funds will be safely held in trust for the subcontractor. A project bank account will consist of three trust accounts: a general trust account for the management of progress payments; a retention account for amounts held as retention; and a disputed funds account for amounts that are the subject of a payment dispute.

030 The bill will require a head contractor to establish a PBA for a construction contract within 10 days of entering into the first subcontract. There will also be penalties for failure to comply with the project bank account requirements. For example, it will be an offence if a head contractor fails to open a PBA when required or if a principal fails to place money into a PBA.

One of the most important things about a PBA is that in the event of head contractor insolvency, money in the PBA will be protected from other creditors. This means that progress payments in the PBA are protected, retention monies in the PBA are protected and payments in dispute in the PBA are protected. PBAs will initially apply to government building and construction projects between \$1 million and \$10 million, excluding engineering projects tendered, from 1 January 2018. PBAs will then be rolled out to the private sector for building and construction projects valued at \$1 million or more, again excluding engineering projects. We have listened to industry and under our new laws we will also have the ability to expand PBAs down beyond the first tier of subcontractors to protect those subcontractors and suppliers further down the contractual chain.

The PBA provisions are supported by a range of strong measures to help make a progress claim easier to make and to deter poor behaviour. We will also be making the claims process much easier. A payment schedule will be required first time every time and we are removing the second chance payment schedule. Also to simplify the claims process, the bill provides that additional reasons cannot be provided for a complex claim—claims of \$750,000 or more. The bill will also establish tough new penalties for people who fail to comply with an adjudication decision. To improve the behaviour of parties to the adjudication process, the bill also provides that the adjudicator must consider the conduct of the parties when making a decision about fees and expenses.

The bill repeals the Subcontractors' Charges Act 1974 and replaces it with a chapter that modernises the provisions that are in the current act. To provide more information to the subcontractor about the likelihood of payment, the bill also provides that the higher contractor must notify the subcontractor about whether they accept liability to pay, in whole, in part, or not at all. Failure to do so will also be an offence.

The bill will restore tougher minimum financial requirements. This provides the Queensland Building and Construction Commission with an insight into a company's financial position and allows it to act on any potential problems. The bill provides that a regulation may prescribe increased financial reporting by QBCC contractor licensees.

The bill also increases penalties for acting unlicensed under the QBCC Act. The current offence provisions attract a maximum penalty of 250 penalty units. Amendments to the QBCC Act in the bill will provide for a graduated penalty regime, which includes:

- first offence—maximum 250 penalty units
- second offence—maximum 300 penalty units
- third and subsequent offences—maximum 350 penalty units or one year imprisonment.

The bill also provides a penalty for undertaking reckless building work that results in significant financial loss because the person deliberately avoids complying with, or failing to comply with, the contract.

An important amendment in the bill is increased rigour around the 'excluded individual' provisions, so that a person who was involved in a company failure in other jurisdictions, or who was the director of a company up to two years prior to a failure, will be excluded from obtaining a QBCC licence. Also the definition 'influential person' in the bill is intended to capture a person in a position to substantially influence or control the company's affairs but who is not a director or secretary of the company. In short, our new laws will allow a ban on anyone who has been secretly involved in running a construction company that goes bankrupt or has its building licence revoked.

Anyone who receives a ban under these new laws will face major penalties if they try to run another building company, either in their own name or by, once again, giving secret directions from behind the scenes. The new regime will allow someone to be declared an 'influential person' even if they have no obvious paid role in a company or even if they are given a job title which is a disguise designed to provide false reassurance that the person is not actually in charge. As I said in the House this morning, people should not be running a dud business under their nanna's name or under anyone else's name. They should not get away with running under the radar. Lumping others with their debts, deliberately sinking their old company and then slinking away to a new business is disgraceful, base behaviour and it is a low act.

Retentions have been a consistent frustration for subcontractors. Too often they are blind to the time frames for accessing retentions, especially for early stage trades. In order that subcontractors are aware of the end of the defects liability period, and the right to receive retention money, the bill provides that a head contractor must notify all subcontractors in the contractual chain about the start and the end of the defects liability period, the amount of retention money due to be paid and the proposed date of payment.

Addressing security of payment in the building and construction industry will deliver economic returns through reduced project delays, fewer disruptions and disputes, the subcontractors having more money to invest in their businesses and, importantly, jobs growth. I have no doubt that it will also see less divorce, less mental illness and less of the other devastating impacts that we are currently seeing in the industry. These are reforms whose time has come. I commend the bill to the House.

First Reading

Hon. MC de BRENNI (Springwood—ALP) (Minister for Housing and Public Works and Minister for Sport) (3.56 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Public Works and Utilities Committee

Mr DEPUTY SPEAKER (Mr Elmes): Order! In accordance with standing order 131, the bill is now referred to the Public Works and Utilities Committee >

<HOSPITAL FOUNDATIONS BILL

Introduction

 **Hon. CR DICK** (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (3.56 pm): I present a bill for an act to provide for the establishment, administration and oversight of entities to hold and manage property for particular objects to benefit public health in Queensland, and to amend this act, the Drugs Misuse Act 1986, the Drugs Misuse Regulation 1987 and the Fair Work (Commonwealth Powers) and Other Provisions Act 2009 for particular purposes. I table the bill and the explanatory notes. I nominate the Health, Communities, Disabilities Services and Domestic and Family Violence Prevention Committee to consider the bill.

Tabled paper: Hospital Foundations Bill 2017.

Tabled paper: Hospital Foundations Bill 2017, explanatory notes.

This bill will ensure the continuing success of hospital foundations in Queensland to support local health services and improve health outcomes for Queenslanders generally. The bill also amends the Drugs Misuse Act 1986 to support Queensland's industrial cannabis industry.