

1

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

Private Submission by

Les Mundt



Issues contained in this submission refer to the BIF Act and QBCC Act 67C

BIF Act

Queensland Parliament document item 2 of the objectives (non-payment in the building industry)

3 The main purpose of Act

- (1) The main purpose of this Act is to help people working in the building and construction industry in being paid for the work they do.
- (2) The main purpose of this Act is to be achieved primarily by—
 - (a) requiring the use of project bank accounts for particular building contracts; and
 - (b) granting an entitlement to progress payments, whether or not the relevant contract makes provision for progress payments; and
 - (c) establishing a procedure for—
 - (i) making payment claims; and
 - (ii) responding to payment claims; and
 - (iii) the adjudication of disputed payment claims; and
 - (iv) the recovery of amounts claimed; and
 - (d) enabling the use of a statutory charge in favour of subcontractors for payment of the work they do.

Evidence referring to non-payment

This statement is copied from an adjudicator's decision and is quoted

This information may indeed be incorporated in the documents provided but I have not been referred to it and I am unable to identify it.

Commented [Im1]: This will only happen when penalties are imposed when money is not paid. QBCC needs to be staffed and given authority to act within 7 days of receiving a complaint. After their assessment they should have authority to demand payment if they are satisfied all is in order with the claim. Call the parties together for 1 hour and let them sort it out in front of QBCC officer.

Commented [Im2]: Absolute compulsory to issue a Payment Schedule is needed. Here again, call the disputing parties together in front of a QBCC officer (With some authority to decide) all this needs to happen within 5 business days of the due date for the PS to find out why a PS was not issued. Issue an on-the-spot fine for non or late issuing a PS

Commented [Im3]: Adjudication is a joke. The reason why adjudication becomes necessary is:

- 1. because money owing (usually variations) are not paid. Then:
- 2. Spurious legal argument are brought into the equation costing subcontractors' money they usually don't have

Adjudication is not a LEGAL argument. Adjudication is about whether work was undertaken and why it was necessary, usually variations. If QBCC had a standard and set contract there would be no need to exchange lengthy documents at the signing. (see AS2545 for example) One page stating that both parties will be bound by the terms of the QBCC contract set in place by legislation is all that would be needed.

Workers in the specific industry are the best people to adjudicate. They know what they are talking about

Commented [Im4]: The BIF act does not even guarantee payment of retention on time and does not make available a simple and decisive method of recovering money

Commented [Im5]: This is an adjudicator's response to an adjudication application.

What wasn't said is "I don't know what I should look for either"

BIF Act needs to take the legal profession out of adjudication and put in place people from the industry who know what they are talking about.

2

105. I accept that if the work scope has changed due to revised drawings being issued then this *may* constitute a direction to carry out the revised work scope. As pointed out by the Respondent, the Subcontract sets out the following in mandatory language:

115. I accept that if the work scope has changed due to revised drawings being issued then this *may* constitute a direction to carry out the revised work scope.

126. I accept that if the work scope has changed due to revised drawings being issued then this *may* constitute a direction to carry out the revised work scope.

Commented [Im6]: When an adjudicator can't decide on whether a revised drawing constitutes a variation or not it points to non-qualification.

This response is saying that a tender document can show 1 level but after signing extra levels/extra work can be added!!!!!!but the contract price can't be amended

Commented [Im7]: SAME

Commented [Im8]: SAME and it goes on through the rest of the document

VARIATIONS

WHY DO SUB-CONTRACTOR'S NOT GET PAID?

From the Queensland Parliament document-

implement reforms arising from the Building Confidence Report such as enhancements to the regulation of architects and registered professional engineers

- A. The BIF Act does not specify what constitutes a variation to the contract. In my 12 years of handling paperwork, preparing claims, preparing paperwork for variation costings etc, I have never had a builder/contractor issue externally an identifying number for a variation. In other words, admit that there is a variation.
- B. For good reason – it immediately makes them liable for payment.
Builders/contractors will do anything in their power (legal or illegal) to avoid paying for a variation.
- C. A growing ploy is for architects to change a drawing, reissue it but fail to CLOUD THE CHANGES.

The BIF Act needs to be cleaned up in this area:

1. The variation work should never be outside the scope of the contract. (i.e asking a plumber or electrician to concrete or paint. Asking a concreter to lay a stormwater drain or repair a damaged sewer line)
2. The builder should be required to identify the person at fault who caused the variation to become necessary. Architects draw but who is responsible to ensure the drawings conform to standards set?

3

3. When errors or omission appear in drawings, responsibility must be made to go back to the 'engineer', who then pays for the error or omission to be rectified, and that is the only way non-qualified persons "engineers" will be removed from the construction industry.
4. A variation should be considered outside, but related to, the original contract scope.
 - a. It should carry its own unique identification based upon the original project number and issued by the builder, identified as to whom requested the variation.
 - b. It should be priced by quote only
 - i. Site Managers are not always avbl to sign off day sheets
 - ii. The price is fixed within its own separate scope
 - iii. Payment is made without waiting for practical completion which could be 12 months later
 - iv. No retention applies; but it forms part of the defect period
 - v. An automatic extension of time is granted without threats of delay charges.
 - vi. A time frame for start and finish (by negotiation) is set in place.
 - vii. Can be undertaken by others other than the original sub-contractor.
(Plumbing and electrical excluded because of regulations and signoffs)

RETENTION – QBCC 67C

QBCC ACT REQUIRES CONTRACTOR'S/BUILDERS TO NOTIFY SUB-
CONTRACTORS OF RETENTION AMOUNTS AND DATE OF PAYMENT.

SO WHY DON'T SUB-CONTRACTOR'S GET PAID?

Suggested solutions

1. Immediately move ALL retention money to a government-controlled trust fund where the money can be invested and profits used by QBCC to ensure honesty in the construction industry.

4

2. The current practise of using the sub-contractor's money to finance contractor's lifestyles must end. Too often builders take retentions with them when they go into receivership. (Bloomer Constructions)
3. The QBCC Act is simply ignored and it then becomes the responsibility of the sub-contractor to chase their money by issuing a MONEYS OWED COMPLAINT to QBCC for investigation without the QBCC having authority to issue penalties for non-compliance.