PUBLIC WORKS AND UTILITIES COMMITTEE

Members present:

Mr SR King MP (Chair)
Mr MJ McEachan MP
Mr R Molhoek MP
Ms JE Pease MP
Mr CG Whiting MP

Staff present:

Ms K McGuckin (Committee Secretary)
Ms R Stacey (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) BILL 2017

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 20 SEPTEMBER 2017

Brisbane

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Committee met at 10.00 am

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Building Industry Fairness (Security of Payment) Bill 2017. Thank you for your interest and for your attendance here today. I would like to acknowledge the traditional owners of the land on which we meet today. On 22 August 2017, the Hon. Mick de Brenni MP, Minister for Housing and Public Works and Minister for Sport, introduced the bill to the parliament and it was referred to the Public Works and Utilities Committee for examination, with a report date of 13 October 2017.

My name is Shane King, member for Kallangur and chair of the committee. With me here today are: Mr Rob Molhoek MP, the member for Southport and deputy chair; Mr Matt McEachan MP, the member for Redlands; Ms Joan Pease MP, the member for Lytton; and Mr Chris Whiting MP, the member for Murrumba. Absent today is Mr Jason Costigan MP, the member for Whitsunday, who sends his apologies.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The committee will not require evidence to be given under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses, so we will take those as read.

Only the committee and invited witnesses may participate in the proceedings. As parliamentary proceedings, under the standing orders, any person may be excluded from the hearing at the discretion of the chair or by order of the committee. The proceedings are being recorded by Hansard. I therefore ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace. Witnesses will be provided with a transcript.

Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone present to turn mobiles phones off or switch to silent mode.

The purpose of today is to assist the committee with its examination of the bill. Witnesses at today's public hearing will appear in the order outlined on the public hearing program. The program has been published on the committee's webpage, and there are hard copies available from committee staff.

I would like to welcome all the witnesses who are appearing today and would like to thank those of you who have made a submission to our inquiry. We have had the opportunity to read the submissions and familiarise ourselves with the issues raised. At today's hearing, we would like to further explore aspects of the issues you have raised in your submissions.

Given the full schedule today, I ask that you keep your introductory statement to a couple of minutes to allow sufficient time for the committee to discuss issues with you. We do not want anyone to miss out. The department has provided the committee with a written response to issues raised in submissions and copies are available.

BIDWELL, Mr Paul, Deputy Chief Executive Officer, Master Builders Queensland

GALVIN, Mr Grant, Chief Executive Officer, Master Builders Queensland

QUINN, Mr Greg, Managing Director, Hutchinson Builders

VALMADRE, Owen, Finance Director, Hutchinson Builders

WOOD, Ms Tracey, Manager of Contracts, Master Builders Queensland

CHAIR: I welcome, from Master Builders Queensland, Grant Galvin, CEO; Paul Bidwell, Deputy CEO; and Tracey Wood, Manager of Contracts; and, from Hutchinson Builders, Greg Quinn, Managing Director, and Owen Valmadre, Finance Director. Good morning. Would one of you like to start by making a brief opening statement?

Mr Quinn: I am not, and Hutchies is not, intimately close to the entire bill, but we have looked at, in particular, the project bank accounts and how that aspect is going to impact on Hutchies' business. I think we are a good model to look at. We are financially stable with a $286 million debt free balance sheet, $300 million of free cash and a reputation for paying on time every time. We do projects as small as a $50,000 project to a $300 million or $400 million project. We are probably a good test case.

We are concerned with clause 32 and would like some clarity on the intention. Our advice is that clause 32 infers that moneys payable into the trust account would be the entire contract amount owing to the subcontractor. That would be extremely prohibitive for the entire industry. I would like to explain why in Hutchies' business. To be honest, we have assumed that this cannot possibly be the intention or the outcome because we will be out of business, despite our strength, within three months. I would like some clarity on that. Overnight, we did a snapshot of Hutchies' business—a simple one-page matrix, if you will allow me to distribute that.

CHAIR: Is leave granted to table that? There being no objection, leave is granted.

Mr Quinn: It is not particularly complex despite first appearances. The dot points at the top give you an idea of our business. We have a $2.4 billion annual turnover. We have transactions—in other words, payments—of circa $200 million a month. In the last month it was about $25 million more than that. We have a debt free balance sheet, as I indicated, of $286 million; we have free cash of $300 million; and we do about 300 projects a year.

Moving to the box on the left-hand side, the current situation for Hutchies' business is this: we have no overdraft facility. We pay our subbies on time. In fact, we pay at seven days, 14 days and 30 days. To put that in perspective, for the payments in August, $90 million of $225 million was paid at seven days and 14 days without the need for trust accounts. We release our retentions proactively on time. We still have free-flowing cash of $300 million. It is a successful business structure. We fully meet all of our financial obligations under the current regime.

Moving to the middle box, this is the paid-in-full proposal—the interpretation of clause 32 which requires clarity as to whether the entire contract value owing to the subcontractor needs to deposited into the project bank account or not. With exactly the same business that we have now, Hutchies would have to introduce an overdraft facility of $520 million; we currently have a zero overdraft facility. Interest costs on that overdraft facility over a year would be $13.65 million; we do not currently have that cost. We would require about 12 additional accounting staff at a cost of $910,000 per annum. We would need 30 relatively junior contract administrators for processing at a cost of $1.65 million. The loss of interest on our current cash reserves would be $2.5 million per annum. In fact, we would have zero cash reserves with a paid-in-full model. I genuinely say that we would be out of business within three months. If Hutchies is out of business within three months, there would not be too many left in the marketplace.

Moving to the box on the right-hand side, which is what I am hoping is the intent of the proposed bill—that is, the principal payment into the trust account—is the amount owing to the subcontractor at any given time. Let us call it a progress claim amount. Under that proposal, Hutchies would not need an overdraft facility, which is supporting your position. We would still need the 12 additional accounting staff at a cost of $910,000 and we would still need the additional 30 cadet contract administrators for processing at a cost of $1.65 million. The loss of interest on our free cash would be about $1.25 million, because we would be using about $100 million of our existing $300 million that we currently do not use. Overall, that would increase our offsite overheads by about $3.8 million in our Queensland business. It seems to be an unnecessary intrusion, but we understand the motive and agree that subcontractors ought to be paid every time and on time.

The point I make is that, if this is the impact on Hutchies' business, it is going to have an enormous downward impact on less substantial businesses and less capable businesses. Whilst we acknowledge that the bill in its current form, or some clone of it, looks like it will advance, the themes that are coming through on our assessment sit with financial capacity of billers and subcontractors. Yes, we see that the QBCC is going to reintroduce financial statements on a 12-monthly basis. The other is the intention. Our intention and mantra at Hutchies is to pay people, to be fair and decent. We acknowledge that that does not happen right across the entire industry, but we really struggle to see how the introduction of project bank accounts actually changes that in any form. I will leave it to other experts, such as the MBA, to go down that path.

Our interpretation or advice is that the strict payment regime in the bill could restrict our subcontractors from receiving those payments that they currently receive on seven and 14-day terms if for no other reason than the additional administrative burden that comes with the entire system. We

genuinely go out and help our subbies across the line—about a third of our monthly turnover gets paid on the better than 30-day terms. If that is what plays out as a result of this process, our subbies will be actually worse off.

The bill seems to require a trust account for every project and then three bank accounts sitting under that trust account. I am a carpenter and builder, so I am not a banker or a financier. For the life of me I cannot imagine why, when we put man on the moon 40 years ago, we cannot have a system that provides for one trust account, with the three separate bank accounts, with some sort of journal support which says what attaches to the project, what attaches to the particular subbie and the actual dollar value. It seems to work in a lot of other industries. That is what has me most worried. We are the Bank of Queensland's oldest customer and, I think, the largest or pretty close to the largest. They have told us that they cannot service our business on this basis, not because of our size or because of our transactional operations with BOQ. They said, 'We cannot service what is being advocated here if that is what is intended.' Sure, we can go to CBA or somewhere else, but we should not have to do that if that is the way it is going to play out.

We agree that retentions should be paid to subbies and they should be paid in a proactive way, not if the subbie comes back or does not come back. When the retention is due, it ought to be paid. We do not take retentions from some subbies. For form workers, for example, we do not hold the retention for the entire defects liability period because the form work might have been finished halfway through the construction process and there is seriously not going to be anything go wrong with form work. We work with our subcontractors. The strict interpretation of the new legislation will restrict our capacity to do that. Again, so many subbies will be worse off when dealing with companies. There are many companies like Hutchinsons—in fact, the majority—who try to do the right thing and the decent thing every time. I am thinking there are a few gaps there that we need to fill in and sort out.

CHAIR: I might have to get you to wind up because we do want to get some questions in as well.

Mr Quinn: I have two more points. The principal's capacity to pay seems to have been overlooked. That is number one in our business. That is why we are financially successful, because we make sure that the principal has the capacity to pay, where the money is coming from and including for variations. It seems to be missed here. If the builder does not get paid by the principal, there is pressure all the way downstream. It is the number one rule at Hutchies—make sure the principal can actually pay. We put a lot of work in up-front and then we put the contract in the bottom draw and we do not call on it. Of course financial capacity for builders and subbies is just so crucial. Free cash is so crucial.

Mr Bidwell: I would like to touch very briefly on the eight significant initiatives that are in the bill. Greg has already talked about project bank accounts. We strongly believe that the costs far outweigh any benefits. In terms of the BCIPA adjudication process, we do not support those changes. We think that they will add time to resolve payment disputes. The third element is the subcontractor's charges. We are generally supportive, although we think there are a couple of amendments which would improve the effectiveness of those provisions.

In terms of retentions, like Hutchies, we are generally supportive of those changes. In terms of changes to contracts, it is very difficult to support the inclusion of mandatory and prohibited contract provisions without seeing them. In principle it makes sense, but until we see the detail it is very difficult. In terms of directions to rectify, the proposed new penalty of four demerit points when a direction is issued is completely unreasonable and will create an enormous amount of angst across the industry.

In relation to minimum financial requirements, we strongly support re-introducing the requirement that contractors report on meeting their minimum financial requirements. That is a good thing; we support that strongly. We support measures to stamp out unlicensed building. That is a scourge on the industry, although the jail offences are disproportionate. Lastly, we support measures to stamp out corporate phoenixing.

Mr Galvin: I have a quick statement to read because I have been told that I gibber on too much, so for the sake of the committee I will quickly read through that. If you have any technical questions Tracey is here to answer them.

We have 8,500 members at Master Builders and half of them are subcontractors. We are in an interesting position because, although our name is Master Builders, half of our members are subbies and half are builders, so we bring an interesting perspective to the debate. On the face of it we agree that project bank accounts look sensible to deal with the problem of slow and/or non-payments; however, given the complexity of contractual arrangements from principal through to supplier, and

despite what the minister says, PBAs physically cannot secure payment for subcontractors. That is just a fact. Our major concern is with the government's proposal for PBAs and their introduction into the private sector on 1 January 2019 for projects over $1 million. I have said this to the minister before on several occasions and I will say it again today because it is absolutely true: if PBAs worked the way we have been told they would there is no doubt that we would support them, because it would change the culture of the industry. The fact is that they do not. Under the new system the builder still retains control over the payment process in many different ways; therefore, even with the best of intentions the subbies will not be any more secure tomorrow than they are today. That is one of the key points.

We have two overarching requests of the committee. The first is to require a comprehensive independent review of the impacts of PBAs on government jobs after 12 months. There should be no plans or dates to introduce PBAs beyond the trial period until this review has been completed and assessed, because ultimately we say they cannot work. But if this trial can prove it and we can get a group of people—builders, subbies and probably everyone in this room—to review it collectively, at the end if it can work, then happy days. We want to make sure there is an independent review because we do not think it can work. We think it is going to tie up the industry and, along with some other changes in there, probably make it very difficult for small and medium sized builders and subbies.

Secondly, there are a range of major legislative flaws that are not just related to PBAs which must be addressed so the industry does not come to a grinding halt. Tracey can speak to these if the committee wishes. We strongly suggest that the amendments be made before enactment of the legislation because it is not just about PBAs. The bill is actually far broader than that, but PBAs tend to get most of the attention.

In summary, we respectfully request that the bill be amended to give effect to both of the suggested overarching recommendations. If you have any questions regarding the technical side of things, we are more than happy to answer those now.

Mr MOLHOEK: Grant, can you talk a little bit more about what those amendments might look like?

Mr Galvin: Absolutely. I might ask Tracey to address that question.

Ms Wood: There are a number of issues here where the system itself does not allow a lot of things to happen. There are changes around the release of retentions, for example. There is a provision in here that the builder is allowed to take the retentions out in full because they are to secure the performance of a subbie. It is obviously an unintended consequence. Surely that is not what is intended. There are amendments such as those and with regard to payment schedules regardless of whether you are going to make the payment on time and in full, for example. Another issue is there is no ability to transfer funds between the PBAs at the moment. As Greg mentioned, there is a lack of clarity as to what is to be paid out of the PBA. There are nine different instances where they refer to whether you are liable for payment or it is an amount that the subbie is entitled to. Those sorts of things really will stop it from being able to be used effectively except in cases going through litigation. They are real fundamentals that go to the function of the act.

Mr MOLHOEK: Are these documented in this submission?

Ms Wood: Yes, a number of them are.

Mr MOLHOEK: I had trouble finding that.

Ms Wood: In our submission we have suggested amendments to different sections of the act and we have raised issues around what changes should be made to make it work. It is in section B of our submission.

Mr Galvin: It is probably worth saying they are changes just to make the bill function, not necessarily to make it work. It will at least function if those changes are considered.

Mr MOLHOEK: I am sorry, I did not see the attachment to the submission. I would like to ask a question of Mr Quinn. I asked the Parliamentary Library to do some research for me and they came up short. How many collapses have there been in the last decade in Queensland? What knowledge do you have of collapses where subcontractors have pulled up short?

Mr Quinn: I do not know in numerical terms, but plenty. Enough to cause some hurt downstream, which means that there is a need to do something about the protection of payments at every level of the contractual chain. It would be wrong to suggest—even though I do hear it from time to time—that we are no different to any other industry. I reckon it is a little bit different in our industry,

but I am just not certain if the approach being adopted here really hits at the heart of it. We know that in Queensland there are about 80,000 licensed contractors. Not all of them are operating. If you say that half of them are, that is the figure we work on: 40,000 licensed contractors. The QBCC annual report talks about the number of financial failures, and it is generally 200 to 300. As Greg said, that is a significant number. If you are in the supply chain then that is a world of pain. It is a combination of builders and subbies that fail financially and lose their licences.

Mr McEACHAN: I have a question for Greg. You talked about the principal—and I cannot even read my own writing here—and the legislation was silent on that. Can you expand on that?

Mr Quinn: It is whether the principal needs to pay the full contract value into the PBAs as opposed to the amount due and owing to the subcontractor at any given time, which makes the difference between Hutchings having to organise a $520 million bond facility versus we can manage the process at a cost of $3.8 million per annum.

Mr McEACHAN: From my perspective that is a massive number. It is a huge proportion of your business, but that proportionally would be the same for any business.

Mr Quinn: Correct. Certainly proportionately but possibly worse, because not every business is in the cash position that we are or the financial position.

Mr Galvin: That probably goes to the heart of the issue. We have raised this with the minister. If the principal does not pay—and that happens on a regular basis—or does not pay the full amount, the builder has to tip the money in, and the question is how much money do you have to do that?

CHAIR: Which lends itself to what you said, which I wrote down, about the review after the trial period, because the government—

Mr Galvin: The government is generally slow at paying, but good at paying.

CHAIR: Yes, and we would hope that they are not going to renege. That is the trial period that you mentioned. I wrote that down because it is a good point. The point you raise about having to put the whole amount in is very valid. We will ask that question. The department said they are considering that issue now, because my belief was that it was not the total amount. The document that has just been handed to you states that—

... 'an amount a subcontractor beneficiary is entitled to be paid under its subcontract' is intended to catch amounts due and owing.

Ms Wood: This is one of the examples. There are nine different areas where they talk about—aside from the intention of the minister—what is due and owing. It does not say that as it is at the moment. If this legislation is passed as it is presently worded, we are all headed to court because to determine an entitlement under a contract requires litigation, and that is expensive litigation for 12 months or more. We really need to have those changes to the wording to make it very clear and consistent that it is the amount that is due and owing. That would also then align with the payment instruction so that, if the builder does go under at some point, the subbies can at least access the money that is written against their name on the instruction. The way it is currently worded, if someone went down they would all have to go to court first to prove an entitlement before they could access anything.

CHAIR: That is a valid point. That will no doubt be included in our deliberations.

Mr Galvin: In terms of the review process, we have all talked about making BCIPA or the dispute process shorter. The proposed legislation makes it longer and more complex and it will have the opposite effect. If you make it shorter, people are more willing to participate in the process. If you make it longer and more complex, you go back to the heart of cultural issues in our industry. I think we have addressed that in our submission, but it is probably worth understanding the issue of BCIPA.

Ms PEASE: Greg, you said that your bank indicated they would not be capable of accommodating changes to the PBAs. Can you elaborate on that?

Mr Quinn: I will ask Owen to elaborate on that because he has made the inquiries.

Mr Valmadre: Greg tabled information in relation to having one control account with many subcontracts. The Bank of Queensland, our bank, does not do subaccounts. They do not have the ability to pay into one control account and then channel or funnel the funds into respective accounts. They are a one is to one relationship. The principal pays into one account and one account only, not to be redistributed anywhere else.

Mr Quinn: What about the aspect of multiple accounts? On 1 January 2019, on today's book we will have to set up 420 bank accounts.

Mr Valmadre: Our next restriction here is that when you do payments via EFT—they are requesting everything to be done by EFT—you only have a certain number of accounts where you can pay as a multiple payment, and that is restricted to five. Of those 420 accounts, we will need to set up so many different customers' user names under the one name because the banks do not have the facility and they are restricted by numbers. Some have 100, some have five. We are at 420, so either way you look at it with any bank we will be restricted regardless of our size.

CHAIR: I agree with Greg. I am an electrician, not a banker.

Ms Wood: We have had similar discussions with NAB, who are in the process of trying to work out whether it is a service they are able to offer or whether they even want to offer because of its complexities and how much extra work is going to be required for them to process these accounts. As Owen said, the 'from' account is the issue. You can obviously have multiple transfers in one process to many others, but it is the fact that it has to come from so many other accounts out. The model in Queensland is different to WA. Under this proposed legislation it is more complex for the banks. While CBA, for example, can do it in WA—and some other banks are considering whether they can—that is an easier model than this one. That is the advice that we have been given by the banks.

Mr Galvin: The department has told us that based on the WA model the Commonwealth Bank can do it, but this is a considerably different process. That is one of the key issues probably worth considering, that this is not the WA model.

CHAIR: Thank you all very much for that. It is much appreciated.

GOTTARDO, Ms Joanne, Owner, G & G Quality Homes

HUMPHREY, Mr David, Senior Executive Director—Business, Compliance and Contracting, Housing Industry Association

ROBERT, Mr Michael, Acting Executive Director—Queensland, Housing Industry Association

TEMBY, Mr Warwick, Acting Chief Economist, Housing Industry Association

Mr Temby: On behalf of HIA I would like to thank the committee for giving us the opportunity to give evidence on this bill. It has the potential to reshape the building industry in Queensland but not for the better. I have had the pleasure of over four decades of experience in working on housing industry policy matters and this piece of legislation is among the most ill-conceived and poorly drafted of any that I have seen. Persecuting the overall majority of Queensland head contractors who pay their contractors in a business-like manner is an inept and will ultimately prove to be an ineffective way to try to catch the tiny minority who do the wrong thing. In its paternalistic attempt achieve the laudable objective of improving security of payment, albeit only to one select group in the industry's contractual chain, the drafting of the bill reveals the absence of any contribution of somebody with even a passing knowledge of the workings of the building industry.

HIA's submission points to the introduction of around 17 million additional administrative processes being introduced every year into the day-to-day operations of the Queensland building industry should the bill be enacted. Even if each of these processes costs a conservative $20 to administer, that represents almost $350 million a year in additional and ineffective regulatory burden on the industry. HIA's submission, like many of the submissions to the committee, even from those who support its measures, points to its poor drafting and administrative cost. The bill is riddled with inconsistency, uncertainty and takes the production of totally unnecessary red tape to a whole new level.

There is absolutely no reason beyond government marketing for the project bank account component of this bill to be introduced at this time before their trial on government projects has even begun. HIA urges the committee in the strongest possible terms to recommend that this section of the bill not be considered until an independent review of the trial is complete. How this trial can be conducted on jobs that will not be starting until 2018, be completed, be evaluated and any legislative changes made by 1 January 2019 defies belief.

HIA would also urge the committee to reconsider the dispute resolution components of the bill. Contrary to the advice that the committee has received in the public departmental briefing and in the department's subsequent corrections, there are many important sections of the former BCIPA that have been removed or, as the department would say, not replicated. At the very least, HIA would ask the committee to recommend that the requirement to include a notice on a claim for payment be reinstated. Queensland should learn from the New South Wales experience with dropping this requirement. It will also save millions of unnecessary payment schedules being produced, even where a contractor has already been paid.

Imprisoning builders for paying their subcontractors out of the wrong bank account is not the answer to improving security of payment in this important industry. Unless Queensland wishes to become known as the red-tape state, unless Queensland wishes to dramatically increase the costs of construction, unless Queensland wishes to reduce competition and make the building industry unviable, the bill should not proceed. HIA supports the objective of the bill in terms of securing payment for people in the contractual chain, but beyond that it needs to be scrapped.

CHAIR: Thank you. Did you wish to add to that?

Ms Gottardo: Thank you for having me. My name is Joanne Gottardo. Together with my husband, we run a small residential building company based in Aspley. We have over 30 years experience in the industry and, having been on both sides of this issue, we do not believe that PBAs are the answer. Firstly, with the amount of time and paperwork required to set up, maintain and reconcile three accounts per job and the fees from the banks and the processing of all these requests, we are looking at substantial increases in operating costs which would have to be passed on to owners. Currently our subbies are paid on receipt of invoice. The PBA system would have their payments delayed by at least two weeks as in our experience with the banks they are quite slow to release funds. Also given that the head contractor issues a directive to the bank it still does not guarantee full payment of the invoice. Expecting small business to top up these accounts and not being able to draw moneys until potentially the end of the job will have a serious impact on cash flow.

As a small business we operate on small profit margins in order to stay competitive. Within this small margin we are to cover material price rises—I received advice only yesterday that steel prices are increasing by nine per cent—along with the admin costs. Burdening small business with yet more paperwork and expenses can in no way help our industry. As HIA stated, the proposed jail times are not only unfair, but are extreme and completely unworkable. Jailing a builder who pays a contractor from an account other than a PBA is absurd. It could lead to the closing down of businesses and good tradespeople out of work.

Whilst we are only one of many thousands of small businesses in Queensland, our contribution to the economy should be taken into account. Not everybody has the ability to apply such expectations and the flow-on could be vast and substantial. Thank you for the opportunity to speak.

CHAIR: Thank you very much for that, Joanne. I will pass down to the member for Southport to start questioning.

Mr MOLHOEK: I am not sure where to start. I thought perhaps we should ask Mr Temby to tell us what he really feels about the legislation.

Mr Temby: I will assume that that is a rhetoric question.

CHAIR: Yes, remembering we are a parliamentary process.

Mr MOLHOEK: Yes, so no unparliamentary language permitted. I am fine for the moment.

CHAIR: Any questions from the other side?

Mr WHITING: Not at this moment, Mr Chair.

Ms PEASE: Mr Temby, you spoke in your submission that you felt that some of the information that was given to us with regards to BCIPA was not accurate. Could you elaborate on that, please?

Mr Temby: David may be best placed to do that, Ms Pease.

Mr Humphrey: There are a couple of elements to that. One is the briefing that was given by the department a fortnight ago. I was not in attendance at that, but the general thrust of the briefing was that BCIPA was unchanged and that nothing was being removed. That was actually not correct. There are quite a number of elements of BCIPA that have been changed, including some of the amendments that were made in 2015 have now been reversed. There might be merit behind making these changes but we do believe that there has to be some transparency about what is being changed and what is not there.

The most considerable change with respect to BCIPA, and that is the legislation at the moment, is the requirement now for a payment schedule to be given with respect to every progress payment claim from a subcontractor from a builder to a client. At the moment you would only need to give that schedule if there was an express claim made under BCIPA, whereas now it will be deemed to be a claim underneath the legislation.

Mr Temby: There is one other very important change that, to use the department's language, has not been replicated in the bill and that is the opportunity for a respondent to add more information to the dispute once they get the payment claim. There is also some new provisions being introduced which are grossly unfair where the respondent will have a page limit on how long their response can be and the adjudicator in looking at that response has to stop at the end of that page limit irrespective of what information is after that, but they do not have the same obligation on the applicant. There is a whole lot of things that have changed in that. Sir Humphrey Appleby would be proud of the department's approach to turning 'not removing things' into 'things not being replicated'. I think it is a gross misleading of the committee.

Mr McEACHAN: My question is to Joanne. If the bill were to progress through parliament without much in the way of changes, what would that mean for small businesses like yours into the future?

Ms Gottardo: For us personally it would increase our expenses. I believe these are trust accounts they are talking about so it is not something that can just be easily set up. It needs legal people to help set up a trust account so there would be the ongoing costs of that. If we were to do five jobs a year, you have got 15 accounts that you are then having to manage and reconcile. It just becomes a paperwork nightmare. We have enough paperwork to deal with with contracts, with the bits and pieces that go along with the contracts—with variations, with subcontractors payments—without then adding the burden of having more paperwork just to have three accounts. As I said, we operate on small profit margins as it is, there is not the room there to be adding more expenses for this. Obviously it will only be passed on to clients. The biggest feedback we get from our clients is why does everything cost so much.

CHAIR: If I could just follow up on that. Obviously I am not asking any private secrets about the way you operate your business. Please feel free to not answer. It is obviously a big difference to the model that you use now for payment of subcontractors—the banking side of it I am talking about.

Ms Gottardo: Currently we have our one business account. We have an overdraft account to cover when the progress payments have not come in from owners so that we can pay subbies and suppliers. Currently we receive an invoice from a contractor and as soon as I receive it, it is paid that day. They are not waiting for their money. Under this proposed new system I would receive their invoice, I would then have to fill out paperwork and send that to the bank. I can assure you the banks are not fast. It can take us anywhere up to a month to get a progress payment out of the banks even when the owners have authorised payment. I do not see how it is going to make payments any faster by us authorising the bank to then make the payment. It is not going to work. I read somewhere that somebody thinks that subbies are going to drop their prices because they are guaranteed they are going to get paid. I am sorry, but I do not know any subcontractor who is in a position to be dropping their prices because they are guaranteed they are going to get paid. People are working on what it costs to live now.

CHAIR: Thank you for fleshing that out. I appreciate that.

Mr MOLHOEK: I have a couple of questions, probably to David Humphrey. The proposed payment schedules that have been referred to, how workable are they and how onerous is the administration around them given that the timeliness of work completed is not always going to run to schedule? Is there a whole other layer of administration in terms of trying to constantly adjust the payment schedules because works have or have not been completed? Can you talk a bit more about that?

Mr Humphrey: On the payment schedule requirements the legislation caps it at a maximum of 10 days to provide your schedule. It contemplates the parties could potentially agree to less than 10 days to provide a payment schedule. With the way that invoices are issued, they can either be issued on the completion of work or otherwise at the end of the month. You could conceivably have, which is the example that we put in our submission, a batch of invoices that come in at the end of the month and then you have 10 days to essentially determine whether or not the work performed under the invoice is to be paid: the work has been completed and whether or not any of that work is defective. That is 10 days to make all those determinations. At the end of the day, with a majority of these invoices being paid anyway, why would you need to generate a schedule? It needs to be done in maybe not a prescribed form but certainly there needs to be prescribed material in terms of that schedule. One of the elements of the bill is that if you don't issue the schedule there is the potential for the QBCC to issue a fine of $12,000 for not issuing the schedule even though you had every intention of paying your subcontractor within the time for payment as due.

On top of that, it does not change what is currently the law with BCIPA, which is, if there is a payment dispute using BCIPA, if you do not put in a payment schedule you are essentially fairly limited in what you can do to then later object to having to make a payment to that subcontractor. You get a chance to put in a schedule in response to a claim. If you have missed that opportunity, there is very limited capacity at a later point in time to object to the amount of the invoice or the nature of the invoice. That does not really change, but this means that you have to put that schedule into every single invoice that you receive. As we have estimated in our submission, that is millions of payment schedules.

Mr Temby: Under the current arrangements, in 2015-16 there were 702—I think it was—claims under the BCIPA act, where somebody who had not been paid said, 'I'm making a claim under this act' and the adjudication process started. Our estimates are that, across the commercial building and residential building sectors that would be captured by this legislation, the legislation would generate the need for nearly 16 million of these payment schedules in Queensland every year. That is a huge administrative burden compared to the burden that is there now, which is, where there is a genuine dispute, there were 700 bits of paper produced. We are now going to produce nearly 16 million bits of paper for no apparent gain, from our perspective.

Mr MOLHOEK: Of those 700 that were generated last year, how many of them were not paid, or fell into dispute and did not end up being honoured?

Mr Temby: They were all in dispute.

Mr MOLHOEK: How many resulted in a nonpayment to a subcontractor?

Mr Temby: The disputes normally arose from the nonpayment of a subcontractor or not a complete payment of a subcontractor. I do not have the numbers in my head, but they are certainly in the building commission's annual report about the proportions of claims that get paid as a result of that process.

Mr MOLHOEK: I will have to get a copy of that report, I think. Mr Temby, in your general comments you say—

The PBA model in the Bill is not a security of payment panacea. It provides no protection to subcontractors or suppliers 'lower' down the supply chain, as it only applies to Tier 1 subcontractors.

Can you explain what that commentary means and what your concerns are?

Mr Temby: It adds to the comments that Greg Quinn was making earlier about the importance of the principal not paying, or paying. The way the bill is structured is that the only link in that payment chain is between the builder and the first tier of subcontractors. Any subcontractors, suppliers or consultants that those subcontractors have or the builder has are excluded from this system. There is nothing in the system that guarantees the payment from the principal, either.

The other reality of the way that these things will operate is that it is very unlikely that there is going to be any significant balance in these project bank accounts. A builder would typically pay the money to himself, or herself, and the subcontractors almost as soon as the money from the principal hit the project bank account—they would be mad if they did not—if the banks are willing and can operate that quickly. That is why we see this being a very, very poor way of protecting subcontractors in security of payment.

There are plenty of security of payment measures out there for subcontractors right now. There is trade credit insurance that subcontractors can buy. Very few do. We see this is a very blunt instrument to try to catch a small proportion of people who are doing the wrong thing.

Mr MOLHOEK: Has there been any discussion with the banks around what the transaction costs might be for having to administer these payments and ensure that these payments are made in accordance with the schedules? I would imagine that they are not going to do that for free.

Mr Temby: The advice that we have had is that, yes, in Western Australia, the Commonwealth Bank says that it will set up an account for $15 and charge 15 cents a transaction. Again, as Greg Quinn and Owen were pointing out, some of the banks are not just geared up for the kind of trust structures that this bill demands: three trusts for every project, on every job. A typical job would have 50 subcontractors making multiple claims. Subcontractors make claims across more than one project. Somebody is going to have to work out which account these things are coming out of and if you get it wrong you can end up spending time at Her Majesty's pleasure.

Mr MOLHOEK: Can you explain the three accounts? Why three accounts for every project?

Mr Temby: Again, this came up in the departmental briefing when the department told you that there was one trust, but there is really three. The legislation demands three: one for general progress payments, one for disputed funds and one for retentions.

Mr MOLHOEK: Okay.

Mr Temby: Even if you are not holding retentions, the legislation obliges you to set up a retention trust fund. Why?

CHAIR: I have a follow-up question. Hutchies had a concern about the total amount having to be in the account. You are saying that it is not the intent—that it would be just smaller amounts of progress payments?

Mr Temby: The principal definitely does not have to put all of the money into the account. I think the issue, which I think the Master Builders also touched on, is that it is really unclear whether the builder can take any money out of the project bank account until all of the subcontractor obligations have been met, which means that, at the end of the job—which was Joanne's point and also Greg's point about what that would mean to the financial situation of a company of their size—

CHAIR: That will aid in our deliberations.

Mr MOLHOEK: To continue on that, you are saying that, if it is not a requirement to put in all the money and it is fed in through the course of the project, based on this comment here it does not guarantee that the money will be there to meet all the payment requirements later, anyway. It is almost self-defeating, is it not?

Mr Temby: Yes, absolutely. I would encourage your children to get into bookkeeping.

CHAIR: The obligation is on the principal to make sure that they put it in. That is what we need to talk about.

Mr MOLHOEK: There is an obligation on the principal to pay the bills now. That is regardless.

CHAIR: That is what I am saying. We need to be looking at that. That is food for thought for our deliberations.

Mr Temby: The legislation is very poorly drafted in that area.

Mr WHITING: Ms Gottardo, you mentioned that you do about six projects a year; is that correct?

Ms Gottardo: Yes. It depends on the size of them. My husband is on the tools. He is the builder.

Mr WHITING: What is a typical sized project for you? What would be involved?

Ms Gottardo: The majority of our work—probably 80 per cent of our work—is renovations. The average contract price is around $700,000. We just completed one in May that was over $1 million.

Mr WHITING: It is not very common for you to have those projects over that $1 million mark?

Ms Gottardo: Every job seems to be creeping closer to that mark now. I do not know if that is because the jobs are getting bigger, or the materials are getting more expensive.

CHAIR: Steel is.

Ms Gottardo: Definitely.

Mr WHITING: Certainly, for those projects that are over that $1 million threshold where you need to implement those accounts, that would be not an everyday one for you? There would be only a couple of projects a year that would reach that threshold where you would need to implement those accounts?

Ms Gottardo: At this stage, yes, but, as we have seen with other things, once it comes in it becomes a blanket thing and it is applied to everything.

CHAIR: This only seeks it for over $1 million. As you said, you are getting closer.

Mr WHITING: I just have a further question. For builders and home builders of your size, having that one account with an overdraft attached, is that the most common business model that you have with regard to finance?

Ms Gottardo: For us, that is how we have always operated. I cannot speak for other businesses, but I would assume that that would be how they would operate.

Mr Temby: Mr Whiting, that raises another interesting problem with the introduction of these accounts. All of the standard accounting software that businesses like Joanne's and probably businesses like Greg's use are not set up for this sort of thing. Many of these millions of processes that I have been talking about will have to be done manually until those systems can be brought up to speed with the requirements of this legislation. If my IT experience is any guide, that is not going to happen by 1 January 2019.

CHAIR: Some software people out there will be rubbing their hands.

Mr WHITING: Is that fairly common among the industry? Are there still folk who use manual entries—pencil and paper—instead of transitioning across to comprehensive software suites?

Mr Temby: Joanne would probably know better than I would. We have surveyed members about these things and overwhelmingly they use some kind of automated accounting software. Sometimes it is linked into their estimating and project management software as well.

Mr WHITING: I see what you mean, yes.

Mr Temby: It is almost impossible to run a building business these days without that kind of support.

Mr Humphrey: Particularly given the ATO requirements now as well. There is an ATO requirement that builders have to report annually the amounts paid to subcontractors, which, in effect, has forced many employers who previously may still have been doing things manually to use Excel, or to adopt software that is compliant, or talks to the ATO system. I do not think that we would be making a claim that members are not using modern software, or modern approaches to bookkeeping.

Mr WHITING: Many would use Excel and then connect that up to the various other—

Mr Humphrey: Excel is manual data as opposed to using MYOB or something like that.

Mr WHITING: Thank you. I appreciate that.

Mr MOLHOEK: Mr Temby, is it fair to say that this proposed legislation—

CHAIR: Are you asking for an opinion there? Be careful.

Mr MOLHOEK: Am I allowed to ask for an opinion?

CHAIR: Probably not. I think Mr Temby has let his views be well known.

Mr MOLHOEK: I am trying to think how I can rephrase it.

CHAIR: Be careful is all I am saying.

Mr MOLHOEK: I might leave it go then.

CHAIR: I think you have fleshed out the opinion in the submission quite well.

Mr MOLHOEK: But I do have a question.

CHAIR: If you have a question—

Mr MOLHOEK: Has the industry done any sort of cost assessment—and I note that Hutchies have? Overall, what would this proposed scheme add to the average cost of a project in percentage terms?

Mr Temby: I saw in the Master Builders submission that their estimates were three per cent to the cost of every project that was captured by the project bank account requirement. I think that is probably a bit of an underestimate because, in addition to the project bank account requirement, there is also all of this other red tape tangle that comes with the changes to payment schedules and dealing with progress payments. It is not just between the builder and the contractor. Every time a builder wants to pay a subcontractor they have to notify the principal. As soon as the principal gets notified that this subcontractor is going to get this amount and that other subcontractor is going to get another amount, they are going to start asking questions inevitably and the banks will start asking questions. That is just going to slow down the whole process as well.

Mr MOLHOEK: I note that we have from Hutchinsons a schedule of the cost impacts across-the-board. Am I allowed to direct a question to Mr Quinn? In percentage terms, would you agree with that three per cent?

Mr Quinn: In our business we are estimating that it will have an impact of just under 15 per cent on offsite overheads, and those overheads are close enough to $40 million a year. In our overall business, based on turnover, it is less than one per cent, but I think that is because of the size of the business.

CHAIR: You submitted a document which further emphasises the point that you are making. We are out of time in this session.

Mr MOLHOEK: I think Mr Temby said it is in the Master Builders submission. I am just wondering where in the submission I would find that calculation.

CHAIR: It is on the first page.

Mr MOLHOEK: The actual amount though?

CHAIR: If it is in the submission I am sure in our deliberations we will find it.

Mr MOLHOEK: You can perhaps point it out to me later on.

CHAIR: We will do that. I just do not want anyone to miss out on an opportunity to speak. Thank you very much for your time.

LEWIS, Mr Troy, Partner, Construction and Infrastructure, Holding Redlich

PETTERSSON, Mr Scott, Adjudicate Today

SUNDERCOME, Mr Robert, President, Adjudication Forum; Adjudicate Today

CHAIR: I welcome Mr Robert Sundercome, President of the Adjudication Forum, and Mr Scott Pettersson from Adjudicate Today, and Mr Troy Lewis, Partner, Construction and Infrastructure, Holding Redlich, Brisbane. Would one of you like to make a brief opening statement?

Mr Sundercome: I am here on behalf of Adjudicate Today and the Adjudication Forum. The Adjudication Forum is an industry body that represents adjudicators. Its members include other industry bodies, ANAs and adjudicators. You raised a question earlier about the number of construction companies that have entered into external administration. The number is there in answer to question on notice No. 5, which was distributed with the documents I got. It says—

... 912 construction companies in Queensland have entered into external administration between 1 July 2014 and 30 June 2017.

It is there in your own documents. That will give you an idea of the size of the issue that we are speaking about.

I would like to thank you for the opportunity to speak today. The changes that you have attempted to make to these two acts have obviously involved a lot of work and they have created a document that is very complex and that is going to have a series of unintended consequences. The drafters have altered defined terms that have been set in law for over 12 years. If you push forward with this bill in its unamended form, you are going to find a lot more unintended consequences that certainly are not going to help claimants. They might help the lawyers—they will do a good job of that—but I do not think they are going to help the parties.

One of the initial issues we have with the changes is the removal of the endorsement. This is a payment claim made under the Building and Construction Industry Payments Act. This is a retrograde step. I have been speaking to the New South Wales government. They are going to replace it. To take away the endorsement of a payment claim is, as I said, a retrograde step. If it was included to limit or prevent harassment from respondents to claimants, it will have exactly the opposite effect as the claimants start to take their entitlements under the act. Imagine if we submit a payment claim that has nothing on it—it is just a tax invoice. All of a sudden we do not get a payment schedule. The due date for payment lapses. We are entitled to stop work with three days notice, or two days notice in Queensland. We can send off a notice and stop work. We have just sent in a tax invoice. We have not been paid. We can stop work. That can happen at any stage in the contract. If we want to talk about intimidation and upsetting people, that is certainly going to do it.

By having documents called payment claims we allow claimants to get an elevated entitlement that they can contract in and out of if they want to. They can, for want of a better word, keep their powder dry. They can submit a tax invoice that is not a payment claim. When they want to they can elevate themselves to this additional entitlement that they get under BCIPA. I think that removing the endorsement is a retrograde step.

The drafters have also changed what was a reasonably structured regime where we submit our payment claim; 10 business days later, if we want to, a respondent can submit their payment schedule and then 10 business days after that an adjudication application can be made if we dispute the payment schedule. Now we will have these payment claims that are not identified as such. Then we will have a period to provide our payment schedule. After the payment schedule has been provided, there will be up to 30 business days—instead of the nice neat 10 business days—to make an adjudication application. This is going to create a lot of complexity. Once again, while you have this removal of the endorsement on the payment claims, you are going to create a lot of administrative work. I think the man from Hutchinson was being very conservative when he was talking about the additional work that this is going to create for respondents if they are going to deal with this properly, noting that it is an offence not to provide a payment schedule.

Talking about not providing a payment schedule—Shane, you said you were an electrician. You used to go to the wholesaler?

CHAIR: I have been to wholesalers. I will just say that I am not here to answer questions but to help you flesh out your statement—

Mr Sundercome: I was trying to put this into context. Every time the electrician goes down to the wholesaler, under the way the law works now after Class Electrical Services v Go Electrical, every purchase order he provides forms a new contract with the wholesaler. As he forms that new contract

on that new purchase order and he has provided his invoice, even if he is going to pay it, he is supposed to provide a payment schedule. That is the way this reads. Not only is that the case after he has gone to the wholesalers; but it is the same thing when he goes to Bunnings because an invoice from Bunnings indicates the goods that have been sold and provides a claimed amount. It is a payment claim and it requires response with a payment schedule. I think you are creating an unnecessary administrative nightmare that does not exist at the moment.

The removal of the requirement to make a notice under section 22 of the act is another issue that has not been thought through. We have two basic fundamental regimes to go to adjudication at the moment—that is, one with the payment schedule and then 10 business days later, as I described earlier. Presently you have another regime where, if there is no payment schedule and there is no payment by the due date for payment, the claimant can lodge a notice under section 22 of the act and then within five business days the respondent has the opportunity to provide their payment schedule. They were the 720-odd matters that Mr Temby spoke of before. That is what he was talking about. They were adjudication applications made after there had been a notice provided under section 22 of the act.

By removing that obligation we are now in a situation where our claimants have made a payment claim and they have not been paid. They now have one alternative—that is, to go to adjudication. We have denied them the opportunity of providing a notice under section 17(2) in New South Wales or section 22 in Queensland. We have denied them the opportunity of being able to put in their notice, receive a payment schedule, get an idea about what the dispute is, if there is one, and possibly have that resolved without the cost of going to adjudication. I think that is another retrograde step.

I think project bank accounts have had a pretty good run so far. I think you are going to a very complex place. They are probably not required. In New South Wales I understand they are looking at deemed trusts, which possibly do the same thing in a simpler way. There has been enough said about project bank accounts.

I note that there is one thing that this legislation does not address. It does not address the fact that there has been nothing done to assist suppliers of small items. We had a case called Class Electrical Services v Go Electrical. What happened in that case was that the electrical wholesaler had an ongoing account with a contractor. They ended up with roughly $1 million worth that had accumulated over a while. They took it to adjudication and it was decided that every purchase order created a new contract. That meant that people with those sorts of businesses—plumbing suppliers, wholesalers, small hardware suppliers—are not in a position where this act works properly for them. It just does not assist them because of that business model of not being able to roll up these composite claims into one claim. I think that is all I have to discuss. Thank you for letting me speak today.

CHAIR: It is much appreciated. Thank you for your time.

Mr Lewis: I am the national head of construction and infrastructure at Holding Redlich and have been running our security of payment practice since 2008 here in Queensland. We also specialise in security of payment matters all around Australia. I am conscious of the limited time frames we have, so I will keep my statement pretty brief. I am happy to take any questions.

When you are looking at any sort of legislative reform you have to look at the policy behind it and the implementation. I think it is incontrovertible that the policy behind what everybody is looking to achieve through this legislation or this reform is good policy and a good thing to do for the industry. I do not think there is any dispute about that. I have not been here for all of the morning session, but I suspect that would be pretty uniform.

CHAIR: I think everyone agreed with the intent.

Mr Lewis: In relation to the implementation, that is always something which reasonable minds may differ on from time to time. There is no doubt about that. I will look at it from two perspectives, focusing on the security of payment amendments themselves and also briefly touching on PBAs, although noting that PBAs have been talked about at some length already.

One of the things to always remember in any sort of reform of this nature is what it is intended to do—and what you want to do is drive the right behaviours in the industry on any view of the world. Legislation dealing with disputes in the construction industry will invariably drive the way people might manage their business and do things. Unfortunately, some of the amendments that came in in 2015 have driven some of the wrong behaviours in a portion of the industry.

I have seen innumerable numbers of matters where as a result of the addition of this second-chance notice period—if you get a payment claim and no payment schedule—primarily principals in my experience, not necessarily the head contractors in our industry, have introduced a practice of simply issuing no payment schedule to the first payment claim. How can they do that? There is simply no consequence for doing so. Pre the amendments that came in in 2015 it was a case of issuing a payment claim and no payment schedule. I could apply for judgement—they could argue the payment claim was invalid or something like that—or I could elect to go to adjudication and then I would have to issue the second-chance notice that Mr Sundercome speaks about.

The problem with the alteration of that in 2015 is that if there is going to be a dispute—and unsurprisingly I see it most of the time when things are starting to go wrong on projects one way or another—we are seeing a real practice of people intentionally not putting in the first payment schedule within the 10 business days or 15 business days. What does that do? It delays the matter considerably given the way the second-chance notice operates. Not only that, all of the statistics I have seen suggest there is about a 60 per cent rate of people when they try to issue the second-chance notice of getting it wrong. Then all of a sudden they have to go all the way back to the start and try again next month. I think the amendments in relation to that part of the legislation are very good and I think they are going to drive the right behaviours.

I also think the amendments that have been brought in which somewhat unwind the previous amendments in 2015 in relation to what you have to put into the payment schedule are also good. Why? Because under the current regime as we have it, if it is a complex claim, and as we all know that is just defined by a value sum, $750,000, if it is over that sum all I have to do is put in one reason in my payment schedule and the claimant then lodges their adjudication application. I can then put a plethora of new arguments and whatnot in my adjudication response and the claimant gets a chance to reply absolutely. Again it is elongating the process by a very significant period of time to the point where if everyone applied for the various extensions they are entitled to and got them, the process starts ending up somewhere at about 100 business days, give or take. That is a disaster, in my view. If you are talking about a January progress claim it might actually end up getting determined somewhere in May, give or take.

I think all of those proposed amendments in my view are very good. They drive the right behaviours in the industry. Because at the end of the day what we want is a claim goes in, response, so everybody then knows either now what the dispute is about, knows how much is involved and then can take the appropriate steps, or they know they are going to get paid in full. I do have some sympathy, can I say, to Mr Sundercome's comments and I suspect, although I was not here, they will be similar to Mr Quinn's in relation to the 'you must serve a payment schedule each and every time if you are going to pay in full'. I can see that that can be adding some cost and whatnot. I would have hoped, and what we hear is, that that happens anyway. Maybe the schedule is not issued but somebody just gets on the phone and makes the call so the subcontractor or the person down the line knows they going to be getting paid that money and there is no dispute about it. I have some sympathy to that argument. Otherwise I think all the amendments in relation to the security of payment legislation are good amendments for the industry. I think they drive the right behaviours as well.

In relation to the PBAs, again I do not think there is any doubt, as everybody has said, that the policy is right and everybody is trying to achieve the right outcome. I think it is a very sensible approach to have this staged implementation. What we will have for the first 12 months is a very discrete group of projects and contracts to which it will apply. A lot of the things that I suspect have been talked about earlier this morning and will get talked about as we move through this, I think there will be a good opportunity to iron them out during that 12-month period before the PBAs are applied holus-bolus to the industry as a whole.

CHAIR: Thank you very much. Do you have any questions, member for Southport?

Mr MOLHOEK: No, I am fine, thank you, Mr Chair.

CHAIR: Member for Redlands?

Mr McEACHAN: Not at this stage.

Ms PEASE: Thank you very much for coming in. I have a question for Adjudicate Today. Both parties can approach you to adjudicate so you act as a mediator?

Mr Pettersson: I am not actually here representing Adjudicate Today though I provided some of the documents that went into their submissions. No, the process is only that a claimant, a person who is a subordinate contractor, can make an application against the person who is in a superior

contracting party. That is because they have entered a contract where they have undertaken to do work. So, no, only the subordinate contractor can make a claim under the legislation in the Australian model. There is a different model which operates in Western Australia and the Northern Territory.

CHAIR: My apologies, I did not ask you if you wanted to add anything by way of an opening statement.

Mr Pettersson: Mr Chair, I would love to add something. I have a number of concerns, possibly less fiercely held than Mr Temby, but nonetheless serious concerns, about the legislation. I am not sure it provides actually security for payment given that the two disparate parts of the principal structure, one being the adoption and the absorption of the Subcontractors' Charges Act and the second being the adoption of the BCIPA, are actually elective. They do not work collectively together. If you make an adjudication application under what was the BCIPA you cannot use the Subcontractors' Charges Act. The security element of securing your payment through the Subcontractors' Charges Act is actually not available if you use adjudication. It is an interesting conundrum that they have been joined together.

I have some broad concerns. I have really serious concerns about minor changes to language which have appeared consistently through this document. I noted in the paper which was provided today that they are reconsidering the use of the word 'undertaken' which was in the existing legislation but is removed in the new draft. I also note that reference dates, which has been raised in a couple of submissions, talk about it being 'for' a reference date rather than 'from' a reference date. These sound like really small matters, but in the state of Queensland there have been in excess of 400 cases which have gone to the Supreme Court since the original legislation. In those 400-plus cases the court has decided what those words mean. They have decided whether it has a particular meaning or does not have a particular meaning. I am sure you do not want to invite to have all of those things relitigated.

To give you an example, it was well understood under the analogue legislation in New South Wales that a payment schedule had to indicate a sum that was payable. When it was passed in Queensland in 2004, and I was part of the committee that made representations to the registrar and was invited up, the drafter decided that it would be more appropriate to use the word 'state'. It took three years for that to get to court. A vast number of adjudicators puzzled over it and made decisions merely on whether 'indicate' was a broader term than 'state' and if you said in a payment schedule, 'I don't think you've done enough work and there won't be any money appearing in your account', was that a statement of the value that they were scheduling. It took several years before that went to court. These minor changes are potentially disastrous for the industry. That is a broad principle. To revert to the word 'undertaken', that was specifically considered by the only High Court case which has applied the security of payment legislation from any of the jurisdictions around Australia—they considered and applied emphasis to the word 'undertaken'—but we have now removed it in this bill. The only bit of clarity we had from the highest judicial body in the country has been removed by a parliamentary draftsman.

I have specific concerns. I have concerns about the penalties which, it seems to me, are unenforceable and unfair. Other people have spoken about that at some length. The removal of the endorsement on the payment claim, Robert spoke of it being changed in New South Wales. It was ludicrous in New South Wales and it will be ludicrous here if you proceed with it. What it means is that a subcontractor, an electrician or a plumber, if they are instructed to do some variation work and they send in a note to the contractor, their superior contracting party, saying that it cost $400 to change some piping, potentially they have just now issued a payment claim, because they have described the work, they have said how much the money was. That falls within those broad parameters. 'Not requiring an endorsement' now means two possible things. Firstly, the person who receives it will now have to provide a payment schedule or they face the consequences of potentially 100 penalty units, which would seem grossly unfair. Secondly, for the claimant, they will have used an available reference date so they will not be able to claim again until the next entire payment cycle goes through, which is probably going to be another month even though they were only claiming for a few hundred dollars worth of work, but intended to claim for $30,000 at the end of the month.

The time lines have lengthened. There are serious issues around the new draft clause 165 with regard to training. These are vast changes. The amount of industry training which no-one has spoken about and the training of adjudicators and the training of lawyers are really significant and if you add to that the uncertainty through minor changes in the language it is a disaster. Clause 89(3) in the bill has a most interesting provision. Clause 89 is what you would call the slip rule provision: an adjudicator can correct a small clerical error. Subclause (3) says the registrar can direct the adjudicator and they must undertake the change, which is a bizarre concept given that the registrar

has no power to actually make any of the decisions that the adjudicator is not only empowered to make but is obligated to make under the bill. That is very strange. If you tie that together with the interesting concept that they now have a statutory immunity under this new draft bill, it is a strange and powerful change to the way the legislation would operate.

Final points, because I appreciate time is going. In just a few months a federal review called the Murray review will be complete. It is reviewing the legislative structures for security of payment in every jurisdiction in Australia. John Murray is a very experienced person who is a previous CEO of Master Builders Australia and a very sound lawyer. I wonder why we would look to rush through legislation and, adopting the language of Mr Temby, ill-thought-through and unprepared legislation, when you are going to have a review which will be complete in a couple of months.

I would like to record that I broadly agree with some submissions. I broadly agree with what the Queensland Law Society said, most of the points of the Resolution Institute and specifically what Helen Durham said with regard to training and CPD. She seemed to raise some valid points about a serious issue in this legislation. I am sorry for speaking fast and long.

CHAIR: That is all right.

Mr Lewis: If I could add one thing. In relation to Mr Pettersson's comments regarding slight alterations of words, certainly in relation to the reference date point at the now clause 70, the use of the word 'for' instead of 'from' which is what appeared in the old section 12. Everybody knows what 'from' means. It has been litigated up hill and down dale, can I say. The best evidence of the use of the word 'for' being somewhat uncertain is that in some of the written submissions before you there are two different arguments raised as to what it means. I think it would be very sensible if we were to leave it at 'from'. In my view, that is just a slight tinker that could be particularly useful.

In relation to the endorsement on the bottom in relation to payment claims, I should just record that the information I am receiving in relation to New South Wales is entirely consistent with Mr Pettersson and Mr Sundercome that they are looking to put the endorsement back on as a requirement. Again none of my comments here change my views that they are all very good amendments, there is just a couple of slight minor things.

CHAIR: I appreciate that. Thank you very much for your time. We appreciate it. We will now take a break until 12 pm.

Proceedings suspended from 11.29 am to 12.00 pm

COYNE, Mr Christopher, Vice President, Queensland Law Society

GIBSON, Ms Juanita, Founding Member, Subcontractors Alliance

REARDON, Ms Karyn, Member, Queensland Law Society Alternative Dispute Resolution Committee, Queensland Law Society

REID, Ms Fionna, Director, Aitchison Reid Building and Construction Lawyers

WILLIAMS, Mr Les, Chairman, Subcontractors Alliance

WILLIAMS, Mr Ross, Chair, Queensland Law Society Construction and Infrastructure Law Committee, Queensland Law Society

CHAIR: Welcome back everyone. We will start with the Queensland Law Society.

Mr Coyne: Thank you, chair, for inviting the Queensland Law Society to appear today. Also, I congratulate the minister for the preparation of the bill. In relation to the bill, the society agrees with the policy objectives, but you would have seen from its written detailed submission of 8 September that there are a number of aspects about which the society has raised some concern.

As you would be aware, the Law Society represents approximately 12,000 solicitors. Those solicitors practise in all aspects of the law and, in particular, represent all parties involved in the building industry. That would be from the developers, to the principal contractors, to the subcontractors. The society has the ability to draw upon a wealth of experience gained by its members in acting in these matters over many years.

The society has a substantial policy and practice committee structure, where we draw upon members on a voluntary basis to assist the society and assist our in-house policy solicitors in preparing commentaries on bills such as this. Today, as you have mentioned, we have Ross Williams, who is the chair of the construction and infrastructure law group, and Karyn Reardon, who is involved in the alternative disputes resolution group. They will speak to some aspects of the bill that are dealt with in more detail within the written submission. I will pass to Ross.

Mr R Williams: The members have all had an opportunity to read our submission?

CHAIR: Yes.

Mr R Williams: Would you like me to make some summary comments or would you like to ask questions?

CHAIR: No, we will just get some opening statements and comments that may add to your submission, noting that we have your submission. Do you have anything to add to it before we go to questions?

Mr R Williams: Certainly. Very briefly, our collective committees think that the objective identified by the legislation and what it is trying to achieve is appropriate for the industry, noting that there are a number of pieces of legislation already in existence—some of which have been amended by this legislation and some of which remain unamended by the legislation—that are there for the industry and the industry regulator, the QBCC, to use. That is an important thing to continue to observe in the way that this is rolled out.

A number of the initiatives and the way in which the legislation has been positioned are quite effective and admirable, in particular, the capping of an adjudicator's fees in regard to security payment legislation. However, there are a number of areas that the bill, in our view, does not quite match the explanatory objective and the way in which the legislation will affect the industry. It is really those issues on which our submission has been focused.

CHAIR: Sure. Thank you. Karyn, did you wish to add anything at this stage, or wait for questions?

Ms Reardon: I am happy to wait for questions. I am happy to speak about some of the respects about which there seems to be a misalignment between the policy objectives.

CHAIR: Certainly, now is your time.

Ms Reardon: There are two primary respects in which there seems to be a discrepancy between the objectives and the bill. The first, as discussed in the Law Society's submission, is a range of what may be typographical errors, but it is not clear that they are. Would you like me to speak to any of those, or are they sufficiently explained in the society's memorandum?

CHAIR: If they are in your submission, yes, thank you.

Ms Reardon: That was a yes or no to speak to them?

CHAIR: Thank you. We have those.

Ms Reardon: Primarily, one that creates quite a bit of confusion is the provision that relates to payment disputes. That is because, typically, particularly in the context of what used to be BCIPA but is now chapter 3 of the bill, in the context of fast-track adjudications, payment disputes are generally understood to arise when there is a difference between the amount claimed by typically a subcontractor and the scheduled amount that the contractor agrees is payable. It is in those circumstances that payment disputes are referred to fast-track adjudication.

In the context of project bank accounts, though, one of the elements of the proposed project bank accounts regime is to establish, as I am sure you are aware, three trust accounts, one of which is a trust account for disputed payments. It is not clear from the bill the object of that particular trust or how it is designed to work. That is because clauses 35 and 36, in the context of project bank accounts, defines a payment dispute differently from how it would ordinarily be understood to be a difference between the amount to be paid and the scheduled amount. Firstly, it creates a question of whether that is some sort of typographical error or is it, in fact, the case that that is the object of the bill. If it is, it is really not clear what the purpose of having the disputed trust account is.

CHAIR: Sure.

Ms Reardon: The other three substantive issues that arise in that context—and this is addressed in the submissions—are also the gap that appears to exist, in the context of chapter 3, between the date when the existing Building and Construction Industry Payments Act will be repealed and when the new provisions of chapter 3 will commence. In particular, the issue is that it is not clear what will be the status of payment claims made after chapter 3 commences, but pursuant to contracts that were made before chapter 3 commences? There is clearly a gap that needs to be addressed one way or another. Similarly, the issue of whether there will be a two-phase rollout is not clear from the way the bill is currently written.

The thing that has attracted the attention of many in the Law Society is the proposed penalties in the bill. By way of example, there are several provisions of the bill, particularly in the project bank account part of the bill, that prescribe penalties for offences that some might see as administrative errors. For example, clause 24 of the bill attracts 500 penalty units for failing to use electronic funds transfers to deposit or withdraw funds from accounts and also anticipates a regulation directed to payment instructions governing how amounts will be transferred between accounts. That penalty of 500 penalty units is comparable to other legislation. For example, the dangerous operation of a vehicle while adversely affected by an intoxicating substance attracts a similar penalty. A person participating in a criminal organisation recruiting or attempting to recruit another person attracts a similar penalty. Employers failing to notify of events that cause or threaten serious or material environmental harm attracts a similar penalty.

CHAIR: The same as not using an EFT payment?

Ms Reardon: Correct. I could go on with other examples of penalties that appear to be disproportionate to the offence.

CHAIR: Thank you.

Mr R Williams: Following on from the point that Karyn was making, when there is a dispute and there is an amount disputed, it is not clear, for example, when there is a determination by an adjudicator as to the mechanism in which money might be paid out—who would give the direction or how it would be given. Funds could remain in limbo, or inadvertently be paid out incorrectly. There is the mechanics around tracing that process through which, again, goes to the drafting.

Leaving that aside, however, in relation to the bank accounts themselves and that part of the bill, there is likely to be some confusion, because in one instance the bill is drafted as such that there is to be a bank account established, but it prescribes it as a trust. Is it just a bank account, or is it an amount of money held in trust, or is it a trust account? On one reading of the bill you could potentially think, 'I need to establish three trust accounts: one for my general funds, one for retention moneys, one for moneys in dispute. Or is it just three bank accounts that I operate as a trustee? If I have to operate them as a trustee, to what do I have to have regard in order to discharge my duty as a trustee? As a corporate identity, is that consistent with me being a public officer, or a director of a company, whether it is a private company, or a publicly listed company? Can I remain a director of that company

and still be a trustee?' There is a genuine conflict with those obligations. It may require people to seriously consider whether they remain directors of those companies, because you cannot serve two masters. From a fundamental legal perspective, there is a tension there.

CHAIR: Okay. Thank you for that. We will move on to Les or Juanita from the Subcontractors Alliance for an opening statement.

Mr L Williams: Thank you for letting us address the committee today. I would say that we are probably the catalyst for a lot of this. Going back before the last state election we approached the now government about looking at amendments to BCIPA in 2014. That is why we are here.

Earlier today, we heard that there were 900 or something insolvencies in the industry in Queensland. If that is the case, the majority of those would probably be subcontractors forced into insolvency because of nonpayment. We never heard too much about the nonpayment issue from those who were here before us, but I can tell you that, since Walton collapsed in 2013, 4,000 small businesses have lost $300 million just to insolvency alone. That does not allow for the amounts wrongfully withheld by builders. This nonsense that has been paraded this morning that we all pay on time is, as I said, nonsense.

From our perspective, the amendments to BCIPA in 2014 removing the penalty for not providing a payment schedule opened the door to the wrongful withholding of money. Subcontractors never really knew whether they were going to be paid, partly paid, or not paid at all until the due date for payment. It also opened the door for illegal phoenix transactions along with the amended policy that the QBCC introduced at the same time.

All I can tell you is that, since the Cullen Group went into liquidation in December just past, there have been 27 insolvencies in the Queensland construction industry that have cost probably $250 million of the amount I just gave you and probably 3,000 small businesses have been impacted. Some have been impacted multiple times. I can relate to you the story of a company called Total BLOX, who from six insolvencies in recent times has lost $3.5 million and a further $2.7 million for money just not paid.

We continue to hear the term 'security of payment', but it does not exist. It is just a name, as far as I am concerned. It is a bit like calling me Tom Cruise. Anyone looking at me would know that I am not Tom Cruise, so it is only a name. From our perspective, neither Juanita nor I are lawyers, so we cannot speak to you about the ins and outs of the wording of the legislation. We cannot speak to you about reference dates and froms and tos and all the rest of it, but we support this legislation. It is what we want and it has to happen. The reason as far as I am aware that the original BCIPA was brought into being was to guarantee subcontractors a progress payment. The amendments in 2014 in our opinion were appalling and the statistics support that. Once again, thank you for having us.

CHAIR: Did you wish to add anything, Juanita?

Ms Gibson: I do. I want to add a few things in reference to what has been said earlier today. I have managed a construction company for 18 years. I am in a unique position of being a builder as well as a subcontractor, so I have to abide by all sides of the legislation and always have. I have been training since 2004. Troy Lewis, who was here previously, has been one of my main trainers. I have never had any problem putting in payment claims under the act and getting discriminated against. I have never had any problem putting in payment claims with schedules. The schedules I provide are done on a percentage breakdown which is part of the act. All the respondent had to do was respond to my schedules that I had already provided. It was not a big red tape issue for them. I had already done the breakdown for them. They just had to agree or disagree within the 10 days or they automatically had to pay me under the original penalty. That made it very clear that, if they provided a schedule and disagreed, I could go to adjudication or if they did not I was going to get paid. None of that has ever been a problem for me.

I have proforma documents. I keep track of things et cetera. We heard this morning that it is hard to keep track of things. Every building site is supposed to have site supervisors. They should know from day to day what is going on on that site. If they do not, there is a problem. They should be keeping a check on that. It is not the subcontractor's role to work and organise everyone else on site. It is their job to get on with their job. We have seen penalties brought in that completely discriminate against the subcontractor in this industry. They have been getting penalised by demerit points consistently since the changes in 2015, but we do not see the same penalties being projected on to the builders in any way, shape or form. I did an adjudication pre changes with the assistance of adjudicators and other parties who were there at the time. I would not do an adjudication under the current regime because it is a mess. I would not trust it. It would be stretched out so far. Those are just a few of my comments. I prefer to save other responses for questions.

Ms Reid: The reason I made a submission is that we predominantly act for subcontractors. We also act for owners and developers. So that we do not have conflicts, we will now not act for builders at all. Compared to probably a lot of the solicitors whom you have heard from today, we actually act for the group that this legislation was intended for. When I was looking through this legislation, those were the things I was thinking about: how am I going to explain to the subcontractors how this is going to work but also how am I going to help them re-engage with BCIPA. When we were talking about BCIPA previously, I would say that 70 per cent of subcontractors had no idea that it existed and 90 per cent did not know how to use it. That is especially after the 2014 changes. We were often in a position where we would have subcontractors come to us and we would not be able to help them unless we suggested going to court. That was an extremely long process.

Also, in working out what I call the section 20A notices—they used to be the second-chance payment schedules—they caused subcontractors to not know that they were not going to get paid probably for about two months. If you think that a subcontractor will generally not seek legal advice or any help with non-payment for three months, you can suddenly see that the time frames previously were just impossible in terms of when we were seeing subcontractors arrive in our office. By that stage, remember, they had not been paid for three months. You may think that is okay, but that subcontractor has already paid everyone already for that work. They have funded that project. They have paid for their labour—generally they pay for that on a weekly basis. They have paid their suppliers—usually they are paid on a monthly account. They have paid for everything and they are waiting to be paid three months later.

I know subcontractors who know that they have to have at least $500,000 in their bank account to survive. They need to have that cash just to survive because they are funding the projects. That is exactly what BCIPA was intended to come in and help. The whole idea of BCIPA and security of payment was an acknowledgement that subcontractors funded the construction industry. They fund it and pay for it. They were being used and manipulated by builders and developers at that time, because at that time when it first came in we had 'pay when paid' clauses. They were used to fund these projects for as long as possible.

The changes that were made in December 2014 were completely manipulated. I could ask any subcontractor, 'Pre-2014 did you get a payment schedule?' They would say, 'Yes, we got lots of paperwork 10 days after.' Then I could ask the same question referring to after 2014 and they would say, 'Suddenly we don't get paperwork anymore.' The reason was that they could play on the situation of the builder did not need to send a payment schedule. In fact, they were waiting to receive that section 20A notice, which 90 per cent of subbies did not know about, so they did not need to pay. That subbie would work two to three months before it would click that something was going wrong.

In my very long way of explaining it, I am very much in support of this legislation. However, the issues I am bringing up, from my experience of being a subcontractor lawyer, are about clarity. I think the Law Society talked about clarity also. In 2002 I was involved—you can tell from my accent that I am from New Zealand—in educating subcontractors about the Construction Contracts Act in New Zealand. Since 2002 I have been involved in educating subbies. One of the biggest things you need with educating subbies about security of payment is clarity. I can see that we need more clarity in the legislation to help explain it to subcontractors, for them to be connected with us and to want to be involved with it. I think that is part of the issue as well.

CHAIR: We have heard several times about the changes to BCIPA—we have heard December 2014 and 2015. Forgive my naivety, when were the changes?

Ms Reid: It was 15 December 2014.

CHAIR: So they were not in 2015?

Ms Reid: No, they were not.

CHAIR: They were in 2014.

Mr L Williams: There were probably some policy changes made in 2015.

Mr MOLHOEK: Mr Williams, I missed some statistics that you went through earlier. I was trying to jot them down. I think you said there were 4,000 small businesses that had collapsed—

Mr L Williams: No—had been affected by insolvencies. Since 2014 there have been 30 major, I would say, insolvencies in the industry. Every one of them have been phoenix transactions and nothing has been done about it. Some 4,000 small businesses have lost money in those illegal transactions.

Mr MOLHOEK: When you say 4,000 businesses, do you mean subcontractors?

Mr L Williams: They are small businesses.

Mr MOLHOEK: Do you mean suppliers?

Mr L Williams: Yes, the whole lot.

Mr MOLHOEK: What other businesses would be affected?

Mr L Williams: They would mainly be subcontractors and suppliers, but there are also the suppliers and the flow-on chain from the subcontractor who are not on the creditors list. The flow-on effect would be greater than 4,000. You get the 4,000 from the creditors report. People ask me, 'Where did you get these numbers?' That is where I get them. That is insolvency. Then there is just the wrongful withholding of money. In my terms that is called stealing.

CHAIR: Fair enough.

Mr L Williams: It is.

Mr MOLHOEK: In respect of this legislation, it is proposing essentially a 12-month trial of government contracts from $1 million to $10 million. Then commercial contracts after the trial from $1 million to $10 million. Are you concerned that this legislation does not capture the larger ones you referred to? You mentioned the Cullen Group. I think you said it was a $250 million collapse.

Mr L Williams: They were $30 million. Subcontractors have incurred $250 million to $300 million in losses since then.

CHAIR: That is in total.

Mr L Williams: Yes. Twenty-seven of those have occurred since Christmas 2016. So in a seven or eight-month period there have been 27 and probably three-quarters of that amount of money would be in that period. At the moment that is one a week. Everyone says, 'It is market forces.' It is not market forces. If you refer to the Senate inquiry from 2015, they would say it is not market forces. Australia-wide we are talking about $3 billion a year. That is a lot of money out of the pockets of small business.

The man from HIA said that it was a small select group of people in Queensland. We are a small select group of people who fund this industry, as Fionna just said. We have 80,000 registered trade contractors. We employ 250,000 people in Queensland. That is a large part of the industry who are vulnerable every time they get out of bed. I sat down and listened to the HIA and the MBA. It was all par for the course. They have been saying that since 1996 when we tried to get some legislation in. None of them have ever had to get out of bed and go to their businesses and find out that they are not going to get paid $200,000 or $300,000 or $500,000 that is secured by their homes, their families, their property. It just should not happen. It is as simple as that.

With the insolvency aspect of what is occurring at the moment—the Law Society might be able to correct me on this—as far as I am concerned, if you enter into arrangements such as moving assets prior to going into liquidation with the intention of defeating your creditors and that is what happens, then that should be fraud, shouldn't it? If we look around Queensland, there is not one company director since 2013 who has been prosecuted for anything. They get a pat on the back and they say, 'Well done,' and they are back in the industry the next day. It is true. When Carmichael Builders went down in 2015, they started again as New State Builders and they are doing government work. You spoke about the use of EFT and the penalties for EFT. I can tell you about a contractor who—can I name him?

Mr MOLHOEK: What is EFT?

Mr L Williams: Electronic funds transfer.

CHAIR: It is probably best that you do not name him, Les.

Mr L Williams: Okay, I will not name him. He went into liquidation owing a significant amount of money to subcontractors and everybody else. He is still working in the industry by a name that is pretty similar to the other one. You have to supply statutory declarations to your client to say that you have paid the contractual chain below you. He has obviously issued statutory declarations to say that he has paid in order to get money. That is straightaway getting money by false pretences. It is a mechanism to commit fraud. He does not pay by EFT; he pays by cheque. The cheque comes 140 days later, if you are lucky enough to get it, but it is backdated to the day it should be paid. That is how he gets away with it, so EFT is crucial because you can track when the payments are made.

You would probably be aware of Ware Building, who just went down on the Gold Coast. They were involved in the Commonwealth Games village. If you look very closely at what has happened there, that will fit into the category that I am speaking about. You have to consider that inside of every builder's bank account—

Mr MOLHOEK: In the case of Ware Building—that is a $400 million or $500 million project. They would be outside of this legislation that is being proposed.

Mr L Williams: Why are they outside of it? Because it is a major infrastructure project?

Mr MOLHOEK: The legislation covers projects from $1 million to $10 million.

Mr L Williams: Yes, you are talking about the trial, or what is going to be implemented later? We would be of the opinion that it should be open later.

Mr MOLHOEK: The trial is $1 million to $10 million for government contracts and then it goes to commercial contracts. I think it is the same amount. It would not have covered them in that instance.

Mr L Williams: I should have answered your question. It should be. I do not know why Minister De Brenni is bringing it in for $1 million to $10 million. He may have a reason but I would hope that, when it comes in properly, it is open to all contracts of all values.

CHAIR: We will ask the department that later.

Mr L Williams: You cannot have a $1 million to $10 million. It is just preferential then.

Mr MOLHOEK: What about contracts under $1 million? Would there be many collapses?

Mr L Williams: Yes, there are home builders running off with the cash all the time.

CHAIR: For clarity, the second phase is valued over $1 million. It is not $1 million to $10 million.

Mr MOLHOEK: It is over $1 million.

CHAIR: It is over $1 million. It is not $1 million to $10 million.

Mr MOLHOEK: The trial is $1 million to $10 million, the phase-in? My apologies.

Mr L Williams: I think they have left out major infrastructure projects, or major engineering projects. I do not understand that, because there are as many people getting burnt there as there is anywhere else.

One of the other interesting aspects is we talk about dispute resolution all the time. With all due respect, it is probably a bit of a goldmine for lawyers. Most disputes happen on site. If it is a conforming dispute. It starts there. It is something minor. I do not understand why we cannot have a referee appointed to a job, like a dispute resolution person. That makes sense to me. I do not know what other people think about that.

CHAIR: Thank you. Are there any more questions?

Mr McEACHAN: I want to get a sense of how many subcontractors would come in under the $1 million mark where this legislation starts.

Mr L Williams: Probably all of them, because they work in the residential market, or they work in the commercial area. If they are tilers, they are tilers. If they are renderers, they are renderers. If they are waterproofers, they are waterproofers. They will probably work in all aspects.

Mr McEACHAN: Do you have any idea of how many subcontractors would not be captured out of the numbers that you said were affected through insolvencies?

Mr L Williams: I would not have a clue about the numbers, I am sorry. If it is under $1 million, as soon as you go there, you are not covered, are you?

Mr McEACHAN: I want to get a sense of how many subcontractors would not be covered by the legislation in its current form.

Mr MOLHOEK: The better question would be what proportion of subcontractors who are affected are covered by the $1 million mark?

CHAIR: It is for projects over $1 million, not just the subcontractor's component of it.

Ms Gibson: In the housing sector, I think they were going to look at capturing multiple houses to capture that problem, from my understanding of it. If they are doing five houses a year, then you are over the $1 million.

Mr L Williams: There are probably subcontractors who just work in the residential market. To give you an idea of the market, I am sorry, I would not know. I would say a third. It is a big area.

CHAIR: If the contract was to build a development of 10 houses, they are over the $1 million. Someone who spoke earlier did refurbishments and they are generally up to $700,000. She is not captured by the bank accounts.

Mr L Williams: One of the other issues that I would like to raise is what the Master Builders spoke about. It is about the only thing we agreed with. The money in the industry starts with the client, yet they have to provide no security whatsoever to fund projects. If you look around the unit development market in Brisbane at the moment, and probably Queensland, there are any number of

developers, any number of clients, or principals, or whatever you want to call them, who are using insolvency right at the end of their projects to get out of paying. I think it is crucial that, if we are going to secure the industry—and we have to—we have to start with where the money starts, with the client.

CHAIR: Karyn, did you have anything to add to that to that?

Ms Reardon: I was just to make the observation that I think there is a bit of confusion about the way the bill is proposed to apply. As I read the bill, it will apply only to residential work—and I am sorry, I am going by memory now—that is, at least two dwellings in one contract or more for the bill to apply. The mere fact that you do six houses a year will not attract these provisions.

CHAIR: It is the contract itself.

Ms Reardon: Correct. Les referred to the exclusion for major infrastructure work. The project bank account provisions will apply only to building work. You may recall that one of the issues raised in the Law Society's submission is the potential confusion that arises from multiple definitions of 'building work'. There is a slightly different definition of 'building work' for project bank accounts than there is for the QBCC provisions, which I think is rife for confusion.

CHAIR: It might need some clarification.

Ms Reardon: Yes. It will apply only if at least 50 per cent of a major project is building work. The bigger infrastructure projects in Queensland will not attract these provisions.

Mr R Williams: It is particularly in circumstances where the QBCC licensing regime and the action they can take in respect of a licence is tied to their definition of 'building work'.

CHAIR: I think we have a question on notice seeking further clarification on that particular issue.

Mr WHITING: Ms Gibson, thank you for coming along today. You mentioned briefly the penalties being levied unfairly against subcontractors. Can you flesh that out a little bit?

Ms Gibson: Under the legislation the QBCC, including contracts, can have defects penalties put on them and so forth that have changed over the past couple of years that are transferred down to them. We do tilt panels. We cannot control the earthworks, the footings, or whatever. If those panels start cracking, or moving, it is a sliding scale down. We can be penalised for something that should have been supervised previously. Engineers are signing off on all their stuff on every level, but the QBCC legislation has put in demerit points on subcontractors making them responsible for something that the head contractor should be responsible for. It has also opened the door to bring in disputed claims on a much broader level, which has become rife. It has opened the door for disputed claims, nearly wiping out some claims, even though the work has been done, because they can falsify defects. We have heard of the falsification of defects.

They wait until the end of the job to suddenly come up with these defects, even though they have been supervising the project at every stage. They say, 'Yes, but, we are going to back charge you.' Some of these have liquidator damages of $1,000 a day. I do not even know why we need retentions, because that is in contracts. There are subcontractors being hit twice. It has opened up the door for a whole raft of differences in power play just by little movements all over the place, whether it is the BCIPA, or the penalties, and so forth. It has created a landslide effect that has impacted subcontractors incredibly.

Mr L Williams: Juanita spoke very well about it. It was a policy change by the QBCC. They tripled the demerit points for subcontractors in terms of defects, but they gave the subcontractor no right of reply. We may as well have moved to Russia when that happened. If you want to reply to a builder who says, 'Here's a whole list of defects for you,' and to go to QCAT or something—I believe that Fionna might know more about that than me—we do not have a right of reply. It opened the door for them to just give you a whole list of defects. It is probably more aimed at taking your retention money than anything else.

Mr WHITING: That is outlining some of the burdens you carry as a subcontractor.

Ms Gibson: Absolutely. They will even have clauses in contracts now where the subcontractor is responsible for the whole of the site—a subcontractor who was not even there at the beginning? These clauses are all in there. They open up the door for them to be wiped out. I have worked on jobs for shopping centres where we were the only subcontractors who survived based on clauses like that. This was a multimillion dollar shopping centre at Toowoomba. I know it happens and it happens all the time.

Mr L Williams: The heart-rending stuff at the start of this committee proceedings today was almost laughable. I do not know about Hutchinsons, but when they get paid 80 per cent to 85 per cent, let us say, it does not belong to them, anyway. They have to pay it to subcontractors. How does

it matter how they pay it to us? If it goes into a project bank account, would that not be better? They would still get their share. I do not understand that logic at all. I think that they are just muddying the water, to be honest with you.

Mr WHITING: I appreciate that. In December 2014 a few changes were made. Can you flesh out why that date is important? What happened at that time and the changes that have flowed from that?

Mr L Williams: You mean the changes to BCIPA?

Mr WHITING: Yes. Would you like to outline that to the committee?

Mr L Williams: The first thing they did was abolish ANAs. They were a marketplace of authorised nominating authorities that helped subcontractors, or claimants, who wanted to go to adjudication. They destroyed that. The ANA then appointed the adjudicator. There was no real evidence, I do not think, for the excuses they used. That disadvantaged subcontractors to a degree where they could not get the advice and the support network to go to the adjudication process. That was taken over by the adjudication registry of the QBCC. The statistics that I look at—and today the adjudicator put those out—would tell you that it has been an abysmal failure. The invalid adjudication applications have risen by about a third. It is appalling. The applications are just not right, because you did not cross a t, or dot an i, or something. We seem to have got away from, 'Is it important that you get paid, or is it important that we cross a t?

The next thing was the removal of a penalty for providing a payment schedule. It opened the door for nonpayment for extended periods. If you know how illegal phoenix transactions work, they need time—`I am not paying you.' It opened that door there—the wrongful withholding of money. I think there was a reference date—or some date—that most subcontractors are not aware of. When the project comes to an end, there is a practical completion date issued. Subcontractors who were working on the site in the early days would not have a clue when that date was. I think you only had a month to get paid, or get your claim in. From our perspective, everything that was done was aimed at our money.

Then you go to the QBCC board. They abolished the old QBSA and brought in the QBCC and stacked it full of builders. Five out of the seven were builders or people who had a direct relationship with builders. Then the policy changes started—triple demerit points for a defects policy. Then they changed the minimum financial requirement for licencing to a self-reporting regime. All they had to do is look out the window and see the devastation that the Walton collapse caused. They changed the minimum financial requirements for licensing to a self-reporting regime. It is as though some bloke who is going to enter into an illegal phoenix transaction is going to write in and say, 'Look, we're done. Take my licence.' It has been described as a policy failure and it is an abysmal, bloody shocking policy failure. That opened the door to phoenix trading. The whole thing provided the time, or the six months or so, to get all of that in place.

What happens now? They enter into these illegal phoenix transactions. The liquidators do not report correctly. Nothing happens. The liquidator gets hold of the file and probably four or five months into the liquidation he or she will come back and say, 'This company was trading insolvent for a minimum 12 months'—some two years, some three years—but they have all had a builder's licence. There are one or two things here. They have either put in fraudulent financials in the first place or they are not insolvent. But it gets worse. The liquidator then goes to every subcontractor and reclaims, or recalls, progress payments made to them back six months as preferential payments, or insolvent payments. We are supposed to know that the company was insolvent, but they have a current builder's licence. So figure that one out.

CHAIR: Thanks, I appreciate that.

Ms Gibson: I was going to add that, in all the years I have been trading, I have never had a problem providing minimum financial requirement data because, if you are on top of your books and you have a good accountant, most of them are on monthly reporting, or three monthly, it should never be a problem. So the removal of red tape excuse was a furphy.

CHAIR: Juanita, you referred earlier to demerits and penalties against subcontractors for things that are completely beyond your control. For the benefit of the committee I want ask a question. Coming from that industry myself, the civils have been in and done all of their work and then you come in and put up your tilt slabs and they crack due to the previous work. Is that what you are saying? You are held liable?

Ms Gibson: Absolutely.

CHAIR: That was all I wanted to know.

Mr MOLHOEK: I have a quick question for Mr Williams. We heard about the number of collapses. What percentage would collapses be of the total of the industry? Is it one per cent of projects that fall over? I know it is a broad question.

Mr L Williams: I think somebody said there were 900 insolvencies in the industry in the last year. If there were, then I would say to you that probably 27 from 912 would be small subcontractors going over probably through non-payment because of bad management, but usually because of non-payment or late payment.

Mr MOLHOEK: What does that represent as a proportion of all the contracting work done?

Mr L Williams: It would be about an eighth, I suppose, or a tenth. Insolvency is one thing; the bigger losses occur through the wrongful withholding of money. There is no statistic.

Mr MOLHOEK: It is not non-payment: it is the wrongful withholding.

Mr L Williams: Yes, it is non-payment and late payment. We think it is somewhere about eight per cent of all subcontract value that is written off, so that is a lot of money.

CHAIR: Thank you for your time. You have given us a lot to think about.

Mr L Williams: Just do not let the HIH talk you out of it.

CHAIR: We have heard a very diverse range of views today, I must say.

CORNAH, Ms Penny, Executive Director, Master Plumbers' Association of Queensland

MacKRILL, Mr Graham, Executive Director, Air-conditioning and Mechanical Contractors' Association

SMITH, Mr Wayne, Chief Executive Officer, National Fire Industry Association Australia

Mr Smith: Thank you for the opportunity to attend today. I am the CEO of the National Fire Industry Association. We work with our members at the front line of commercial fire protection in Australia. In Queensland we represent over 70 fire protection contractors who undertake a significant proportion of fire protection and construction service work in Queensland. I have a fairly extensive 20-year background in national and state based fire protection industry leadership, and I have led significant fire protection industry achievements in policy, licensing, training and professionalism across Australia.

The NFIA strongly supports the proposed Building Industry Fairness (Security of Payment) Bill 2017. For many years we have fought for comprehensive reform to improve payment security for subcontractors as delivered by this legislation. I would personally like to congratulate the Queensland government for delivering what I feel is the best solution I have experienced in my 20 years to address payment fairness problems, and I congratulate it for having the courage to advocate for such meaningful change.

In relation to project bank accounts, they do not apply to projects under $1 million or renovations unless the cost is over $1 million to a domestic housing project unless the building is three or more houses for the same principal and is worth more than $1 million. That issue has been raised a couple of times today with varying degrees of accuracy, so that is the correct answer. A lot of the cost and red tape estimates submitted by some of the stakeholders have included those projects in them, and therefore it is off the mark to include them.

I heard some comments earlier in relation to the impact on the banking system of project bank accounts. The Commonwealth Bank is currently worth $131 billion, Westpac is worth $100 billion and the Bank of Queensland is worth more than $5 billion. We live in a world where banks make up 50 per cent of the entire Australian stock market, microtrading every nanosecond with complex security, hybrids, options, insurance, financial advice and the rest, yet some would say that banks cannot afford or offer a trust account structure for a $44 billion industry. We do not think that is a correct assessment of the potential for project bank accounts.

NFIA Queensland has been an advocate for improvement to security of payment and fairness in payment and contracts since the early 2000s. We have proactively lobbied successive state governments—not just this one—since those days for improvement. Ourselves, along with my colleagues Master Plumbers and the ANCA, have been at the front line for advocating these changes that culminated in the 2005 BCIPA legislation. I think it is important to reflect on the fact that when we sit here in 2017 we are talking about improvements that have been the subject of conversation and discussion for 20 years and more. Even in the days of advocacy for the BCIPA legislation many of the industry stakeholders were reluctant to participate in improvement to payment conditions. The services trade sector was required to studiously collect 12 months' worth of survey data and other information before the government and the BSA, as it was then, would take any notice of our concerns about payments and the unfairness wrought upon subcontractors by 'the system'. In those days we approached the BSA about the continuing problem of subcontractors being paid 90 and 120 days after submission of their claim. BSA went to Master Builders first of all and asked them if there was a problem. They were told there was not a problem. They came back to us and said, 'There's not a problem. What are you complaining about?' We were told that we had to produce evidence that could verify those payment issues, so we spent 12 months collecting very detailed data that we submitted to the state government as well as a number of submissions. Out of that process came BCIPA.

As I said, in 2017 we still have poor payment to subcontractors; an unfair power equation that forces subcontractors to accept unfair payment and contract conditions; onerous contract provisions; subcontractors simply not getting paid for the work they perform; subcontractors being put out of business by the builder going bust; and the Dutch auction that occurs at the end of the job when payments, final payments and retentions are withheld, disputed and simply not paid by builders. Those issues continue on and on and on.

While many builders are first class professional operations who enjoy great relationships with trade contractors, the reality is that too many abuse the current system. The industry simply cannot maintain these abusive behaviours. We cannot continue to tolerate a biased system which favours one party over another. We cannot continue to turn a blind eye to the red tape—I have heard that term used so many times—that would occur through project bank accounts and the security of payment. What about the red tape that occurs when it comes to subcontractors who are trying to be paid—the red tape that is family distress, business distress, unreturned phone calls, unanswered emails, unanswered correspondence and the unwillingness to meet to hammer out some sort of result in terms of payments not made. When we talk about red tape and bureaucracy, no-one has shone a light on the red tape that we call the distress to subcontractors. That far outweighs any conception of the red tape that would occur—and we say there is very little—in terms of implementing this new legislation.

We say that we need a fundamental paradigm shift in the payment process and fairness in Queensland. To summarise, we put on the table 10 non-negotiable aspects of the bill. With your indulgence I will list them (1) the creation of project bank accounts. Subcontractors are not an overdraft facility. Everyone should meet their willingly entered into formal commitments; (2) nonnegotiable formal release of retention fund provisions including security, not just cash; (3) a statutory defects liability period; (4) a nonnegotiable longer time to make an adjudication application; (5) no new reasons able to be provided during a complex claim process; (6) adjudicators must—not may—consider the conduct of the parties; (7) clear and transparent minimum financial requirements must be enforced; (8) increased penalties for unlicensed work; (9) beefed up excluded individual provisions; and (10) an expanded definition of 'influential persons'. You have our detailed submission and I would welcome any questions, but perhaps I can pass over to one of my colleagues.

Ms Cornah: On behalf of the Master Plumbers' Association we would like to thank you for giving us the opportunity to present to the committee today following the submission we provided for the Building Industry Fairness (Security of Payment) Bill 2017. Across Queensland subcontractors are eagerly watching the parliament's action on this bill. This is the single biggest issue faced by every plumber, gasfitter, painter, electrician, bricklayer, carpenter, plasterer, fire protection worker, air-conditioning installer, shopfitter, tiler and roofer as well as every other trade across this state. This is because there is not a single plumber in Queensland who has not been impacted by non-payment or extremely late payment.

The building and construction industry employs 220,000 people directly and supports hundreds of thousands more indirectly. It is worth $44 billion per year to the state's economy and for every single person within the biggest section of this sector, subcontractors, is impacted by our current system, which is broken. I cannot understate the need for urgent reform. The matter of payment security impacts every single business, worker and family within the building and construction industry. It seems that every time you turn around you hear more tales of heartbreak. It is not an exaggeration to say that the effects of a subcontractor not being paid flow from the business straight into the family home. Subcontracting businesses are overwhelmingly small family based operations and often use the home as security. The business puts food on the table, it puts uniforms on the kids and it is the cause of stress, anxiety and sleepless nights when money is owed.

Subbies are a proud bunch. I have been around them all of my life, having been born into the plumbing trade. They do not often complain. They work in an industry based on relationships. I hear stories all the time where plumbers don't get paid for the work they have performed and I will share a story from one of our members who was impacted by two dodgy operators not paying them. Suicide was one of the options this member considered. A member was forced to sell their home and when all this was over his family was left with a broken-down ute. Both of these dodgy operators were up and running within a couple of weeks of their liquidation and were untouchable and arrogant in their behaviour towards those who were caught out. Both of these happenings cost this member a lot of money. He will never be able to catch up on these losses and he is still feeling the effects of what has happened.

I am hesitant to tell these stories, but suicide is something that does cross the minds of these people every day and it is a real issue. We believe this bill is groundbreaking for the Queensland building and construction industry and I urge you all to support it. It is simply not unreasonable to say that if you enter into a contract then you should honour it, that if you complete work then you should be paid for it. We would not expect a nurse to work seven shifts and only get paid for two. This is what is happening to subcontractors in Queensland every day.

We have asked for reform that respects five key points: people who do the work should get paid for the work; if a business goes bankrupt they should not be able to take other businesses with them; contracts should be fair and reasonable; builders should be paid at the same time as

subcontractors; and one small aspect of the work should not hold up payment for the overwhelming amount of work that has been properly completed on time. The bill clearly meets these principles. The problem is now one that has expanded to a $3 billion problem nationwide. It is disappointing that we have to justify that there is indeed an issue here. A recent report by Deloitte has found that the building and construction industry is eight to 10 per cent of GDP but 20 to 25 per cent of insolvencies. As I said, there is currently $3 billion in unpaid debts across Australia within this sector.

I would like to point out that it is unfair on builders who do the right thing to have to compete with those who are taking a competitive advantage out of doing the wrong thing and not paying. I note that we are going to have a year-long implementation within the public system prior to the program being rolled out into the private system. This means that every single builder working on a government contract will have the opportunity to take part in this trial. While we understand that this is occurring, we stress to the committee—to all members of parliament—that Queensland subcontracting businesses need this reform and they need it now.

CHAIR: Thank you very much. We will now go to Graham.

Mr MacKrill: Thank you for the opportunity to present as a witness before the committee today. The Air Conditioning and Mechanical Contractors' Association is a nationwide trade association representing several commercial professional trade subcontractors and businesses in the areas of air conditioning and mechanical services and we have been doing this since 1961. AMCA strongly supports the bill that is currently being considered by your committee.

The title of the bill already infers a strong need to address fairness in our industry. Fairness is a significant aspect in achieving a win-win relationship and outcome for all. It suggests too that there is a power imbalance in current contractual arrangements which all too often results in a win-lose or, worst of all, a lose-lose scenario. While government seeks to set a table based on fairness, industry has an opportunity to deliver a meal which can be beneficial for all. This is one of the primary reasons why we are supportive of this bill.

Payment disputes are often an outcome of an imbalance of power of the parties to a construction contract. It is the root cause of disputes that I wish to focus my attention on in this presentation today. My statements will draw heavily upon a recent research report, which I have brought along with me for you to read during your spare time. It is evidence based research that was developed in 2014 by the University of Melbourne where they undertook substantial evidence based in-depth research into construction industry contracts. The research by Professor John Sharkey AM entitled *Standard forms of contract in the Australian construction industry* consulted with Master Builders Australia, Property Council of Australia, Civil Contractors Federation, Australian Construction Industry Forum, Melbourne Law School Master of Construction Law program, as well as others.

The report specifically focused on standard form contracts and where they are being used and whether they are being amended, reviewing 379 projects of various size and scale. Standard form contracts are generally Australian Standard contracts like AS4000, AS4902 for design and construct delivery and AS2124. Research found that the Australian Standard contracts dominated the landscape with around 70 per cent of projects using them. However, it found that over 90 per cent of these standard form contracts are being amended and it found that the single biggest reason for these amendments was a need to shift risk. Please note the reasons listed were not generally as a consequence of a need to equitably allocate risk, but rather a need to shift risk. This report also sites an observation that inappropriate risk allocation was perceived to lead to detrimental project outcomes and hence the root cause of many of the disputes that occur through the payment arrangements that are in place today.

The detail for the relative sectors of the changes that were taking place in amending contracts were that 92 per cent of the contracts were amended in relation to delayed damages, 86 per cent of them were amended around payments and 78 per cent of them were amended around variations. When interviewed, 295 of them were asked to rank the amendments in importance. The need to shift risk was rated as very important, while the need to increase the ease of contract administration was rated significantly lower, just meeting the important rung of the scale. The need to shift risk was also rated substantially higher than the need to reflect regulatory requirements. Mr Chairman, that is the evidence of this survey which I am happy to table here today. This risk shifting mindset has led to onerous contractual provisions which transfer risk to subcontractors away from the head contractor. These contract provisions contain matters such as termination for convenience clauses, time frames in which extension of time delays can be made, obligation to accelerate without compensation, variation claims, delay claims, indemnities, set offs and compulsory dispute resolution before payment

claims can be considered. Due to the imbalance in power as well as the small number of head contractors operating in Queensland, subcontractors often have no option but to sign the agreement to secure work. This action is widely accepted as fact within the industry.

We support the regulation power created within this bill to address these issues and we strongly urge the government to consult our industries, the services trades contractors, when drafting these reforms to ensure they all capture the required elements. We support the instructed amounts in relation to project bank accounts being defined clearly as the difference between scheduled amounts due and amount paid. It is important to note that insecurity within the building and construction industry is also a symptom of inadequate transparency within the supply chain. That is why AMCA supports creating project bank accounts as well as a strong proactive audit and compliance regime operated by the QBCC.

It is simply not possible to rely on trade contractors to report their clients for non-payment. I am not aware or AMCA is not aware of any other area of law enforcement or compliance where complaints are exclusively relied upon. Trade contractors must be afforded the protection of a proactive audit program so that head contractors do not know if an investigation is occurring due to formal complaint or an audit program.

In relation to BCIPA and QBCC act elements, we strongly support the contract termination date becoming the reference date, clarification and simplification of claims that are pursuant to the act, clarification and simplification of payment acts, the delivery of payment schedules along with associated penalties, extension of time to file an adjudication application, the reversal of changes to the complex claim process that allows new reasons why payments should not be made, the shortening of time frames for information provisions to a person pursuing a charge, the expansion of influential persons, the stated penalties for persons who without a reasonable excuse cause another party to a building contract to suffer financial loss, the stated penalties for refusal to release retention moneys without a reasonable excuse and, finally, the provision relating to misleading advertisements and we encourage a strong enforcement provision in relation to this issue which is one of increasing importance to subcontractors.

In closing, we have a great industry which has provided good lifestyles for many and we have every confidence that when government sets the regulatory table to achieve a win-win outcome, it provides the opportunity for all Queenslanders to benefit from it by creating the right meal.

CHAIR: We will now go to those members to my left to ask questions.

Mr MOLHOEK: I am not quite sure where to start.

CHAIR: If you are thinking about it we can go to the other side.

Mr MOLHOEK: I might direct my question to Master Plumbers to start with. I am trying to understand the quantum of failures and collapses in the context of the entire industry. We have heard a lot about the $44 billion and the 220,000 people. I am not trying to minimalise the detrimental impact of non-payments, but as a proportion of the total industry, if $100 million of payments get made, how many did not get paid?

Ms Cornah: I have not memorised the actual figures, but the Deloitte report and the Senate report detail the figures so you probably could have a look in those reports. It is more around a cultural change and a drive within the industry. It will benefit everybody in the long run. As I said before, there is not a single plumber, fire protection worker, air-conditioning or mechanical contractor that has not been impacted by non-payment or extremely late payment. If you wanted to add anything, Wayne?

Mr Smith: May I?

CHAIR: You certainly can.

Mr Smith: Could I go from a live example in terms of answering your question about the frequency or the percentage of payment issues? This is a submission that has been lodged, but for the purpose of this I will withhold the name of the contractor, except to say that this contractor is 62 years of age, started as an electrical apprentice at age 15 and went on to own one of the largest subcontracting businesses in Queensland up until quite recently. I will just read this, it is very short, and I will not refer to the builder. It is in the last two years.

On the building project in Brisbane the subcontract company that I was managing was late paid or short paid every month. There were 22 progress claims issued and every one of them was part paid or late paid or both. For instance, a claim of $649,705 for September 2015 was part paid on 29 October 2015 for $411,850. The remainder of the claim was held and mixed in with later claims.

I will just finish off, and this is important—

At the time of retention, the reality is that the builder would wait until the final claim was to be wrapped up and then would not release any retention money and use it as a bargaining chip in trading off the final amount that they would pay.

That is not the amount that was owed, the amount that they would pay.

This allowed the builder greater leverage over my unpaid variations and the outstanding retention to bargain with.

That is a snapshot.

Mr MOLHOEK: I think that is appalling but it does not answer my question. In life there is always someone who is going to rort the system or do the wrong thing. My question is: of a hundred people who should be paying, what proportion of them do the right thing and how many do the wrong thing?

CHAIR: It is pretty much a moveable feast.

Mr MOLHOEK: I have been trying to get to the nub of this question.

Mr Smith: The Deloitte report said that the building and construction industry is eight to 10 per cent of GDP but sustains 20 to 25 per cent insolvencies.

CHAIR: There you go—20 to 25 per cent.

Mr Smith: If the current system were working, we would not be sitting here.

Mr WHITING: We have heard testimony—Mr MacKrill, you have written about this—that subbies have to accept changes or alterations to the contract and some of them choose not to take up disputes. In both cases the reason is to keep the flow of work moving to them. Is that common within your industry, not taking up disputes to make sure you keep getting work or accepting alterations to contracts to make sure you keep getting work?

Mr MacKrill: Our members value their relationship with their client and are willing to work to ensure that there is cash flow and that the project deadline is met at the end. What tends to happen with some of these onerous arrangements in contracts where time bars are in place where you have to provide a detailed response to a variation is that, when you cannot meet the requirements of that time bar, many of those variations get pushed down towards that final payment. As Wayne alluded to, it is in that final payment when the client would be saying to our members, 'If you are prepared to take a discounted rate for all of these variations, we will agree to make some form of payment to you.' It is systemic within the whole system around who really has the greatest amount of power under that contract.

Mr WHITING: Obviously that is not a good position to be in if you are facing that kind of push back at the end of the contract.

Mr MacKrill: There can be some inducement at the end. There is no transparency in the arrangements between the parties. It is unknown at that point in time whether those variations were as a result of the client missing something out in the scope or whether it was the principal saying, 'We need to expand on this,' but you have not included it in your scope. Therefore, the financial risk gets pushed further down the chain.

Mr WHITING: Wayne and Penny, you have examples of that imbalance of power.

Mr Smith: Absolutely. If you do not mind, I will quote a short explanation from the same trade contractor. Again, back to that particular project, he states—

One of the clauses in the site instructions stated that the instruction did not constitute a variation and that this was typical of the site instructions issued by most builders. At the end of this project—

that is the one I was speaking about before—

There were $660,000 in unpaid variations which the builder then disputed but which we considered to be legitimate because they had been approved during the course of the contract. The builder's response was, 'We've not made any allowance for these costs and you need to withdraw them.' An agreement was eventually reached between the senior people in the building company and our company owner only after litigation was threatened.

This is important and it goes to your issue—

The owner, as an experienced contractor, had the experience to understand what was required to finalise the contract and, importantly, the company—

the trade contractor company—

had sufficient working capital to carry the debt and finalise through and continue to trade. For anyone with less experience, these would have been hurdles too great to get over.

It was not a subcontractor initiated position that put the subcontractor in the position that they were in. It was the way that the builder dealt with the outstanding payments that were due.

Ms Cornah: It is vital for the subcontractors to maintain a positive relationship with the head contractor in order to be able to continue to successfully tender work. These relationships often come at a financial cost to subcontractors. They are regularly requested to accept lower payments, particularly at the final payment stage—which is what Wayne touched on before—in order to maintain that favourable relationship and to secure additional work on the next project with that same head contractor.

Ms PEASE: My question follows on from what the member for Murrumba was asking. As subcontractors, you talked about employing other people under you as subcontracting to your work. If the head contractor fails to meet the payment schedule, you are often left to carry that burden. That is part of the evidence we have heard today—that the head contractors are concerned that they are going to be left to foot the bill if the money is not there, yet this is already happening to subcontractors who are already having to foot the bill when they are not getting the money from the head contractors. Is that correct?

Ms Cornah: Yes. It is happening every day. That is why these laws need to come in and there needs to be change. It is not fair that subcontractors are being used as overdraft facilities. There are builders out there who are doing the right thing but there are dodgy operators out there in the industry who are doing the wrong thing. This is what we are trying to change. We are trying change the culture and the behaviour for the industry.

Mr McEACHAN: There is no doubt that this has been an ongoing problem for a very long time. I wanted to get a sense from each of your associations how many subbies in those associations would be engaged in projects under the $1 million mark and therefore not captured by this legislation?

Mr Smith: From a commercial fire protection contractor perspective, as I said before, our members represent the vast majority who undertake the construction and service work in Queensland. Most of that work is in the commercial sector—therefore, greater than $1 million contracts. Easily 90 per cent of our members in that sector are impacted by the fairness legislation.

Mr MacKrill: I would be in a similar situation to NFIA. We represent primarily commercial contractors. Virtually all of our members would be impacted by and would be supportive of project bank accounts because it is in that category of $1 million plus.

Ms Cornah: From the Master Plumbers' perspective, we have a broad spectrum of members, so we do have the mum-and-dad businesses and then we also have the major plumbing contractors in Queensland. We do represent a broad range. My comment would be that just because this legislation does not cater for everyone does not mean we should stop it going through. We need to start somewhere. It needs to improve. Hopefully, the culture will change and therefore it will be opened up to other sectors within the industry in terms of the mum-and-dad and smaller operators.

Mr McEACHAN: It is about industry fairness. I am not sure why it starts at a particular point.

CHAIR: That is the idea we have heard today. A lot of people are embracing the trial period with the government contracts.

Mr MOLHOEK: We have strayed into a different issue. You have touched on this issue of imbalance of power, which I understand. How do project bank accounts address the issue of imbalance of power?

Mr MacKrill: For one of our members in Western Australia who has been actively involved in a substantial project—$50 million plus—the project bank account provided certainty between the parties at that tier 1 level.

Mr MOLHOEK: Of payment?

Mr MacKrill: It provided certainty of payment because the trust was in place. That level of certainty did not attract any additional cost but it did allow a project to operate in a very smooth manner because of that structure being in place. It is more around certainty between the parties.

Mr MOLHOEK: We heard from Master Plumbers' that there is still nothing stopping the builder from actually saying to the subcontractor after that job is done, 'Mate, if you want this next job, you are going to have to sharpen your pencil a bit,' and so on. Then it just becomes a different amount that is negotiated as part of the payment schedule. With that kind of wheeling and dealing that goes on, they will just find another way around it, won't they?

CHAIR: That is asking for an opinion.

Mr MOLHOEK: I am wanting to be convinced. I understand that a project bank account theoretically provides security of payment, although the Law Society in their submission says it does not necessarily do so. How does it actually address this imbalance of power issue? It is a negotiation that goes on at the pub or behind closed doors.

CHAIR: You have asked the question. We have run out of time, so I would love it to be answered.

Mr Smith: I would like to reflect on the example I gave about the payment of the outstanding variations that had been approved and authorised by the builder and the retention money dispute in terms of its release date and its payment in full or otherwise. The example I gave was where the fire protection contractor had $660,000 that he was owed for work completed and approved by the builder, plus 2.5 per cent of the contract value being held by the builder, and then that total amount being used as leverage in discounting the final payment to the trade contractor. With respect—

Mr MOLHOEK: So a project bank account would fix that. They would get the money from the project bank account.

Mr Smith: In this new environment, remember there are three aspects to the project bank account: there is the progress payment, there is the disputed payment and there is the retention payment. Each of those elements are secured in this new legislation. In that old paradigm it is not secured. Like you said, with great respect, it is able to be negotiated in the pub. In this day and age, from my point of view—this is not an opinion: with the tragedies that have happened in fire across the world, the fire protection industry in Australia is expected to be world-leading and we deliver. It is unfair to ask that the world-leading fire protection industry accepts an 1800s payment system. That is where the balance of power issue needs to be resolved.

CHAIR: Thanks, Wayne. We appreciate that.

Ms PEASE: I was going to tease that out a little bit more about the project bank accounts. I think you have answered that in that the security will be that you are not going to be pressured into having to accept less because the money is there up-front.

Ms Cornah: Yes, because it would be secured.

Mr MOLHOEK: Except that in the disputed account there would still be some negotiation that would go on.

CHAIR: Is that a statement or a question?

Mr Smith: At least that is in the context of adjudication.

Mr MOLHOEK: I am actually asking.

CHAIR: Thank you very much. We appreciate your time. Is leave granted to table that document? There being no objection, leave is granted. I welcome the next witnesses to the table: from Master Electricians, Mr Malcolm Richards, CEO, and Mr Gary Veenstra, State Manager; from the Queensland Council of Unions, Dr John Martin, Research and Policy Officer; and, from the Electrical Trades Union, Mr Keith McKenzie, Assistant Secretary.

MARTIN, Dr John, Research and Policy Officer, Queensland Council of Unions

McKENZIE, Mr Keith, Assistant Secretary, Electrical Trades Union

RICHARDS, Mr Malcolm, Chief Executive Officer, Master Electricians Australia

VEENSTRA, Mr Gary, State Manager, Master Electricians Australia

CHAIR: Good morning. If one of you would like to start with an opening statement.

Mr Richards: We are a Queensland registered industrial organisation representing over 1,800 electrical contractors across Queensland, including many small mum-and-dad businesses through to major contractors participating in this state. We have prepared a joint opening statement and I will defer to Gary Veenstra, my Queensland state manager, to deliver that statement.

Mr Veenstra: Good afternoon, chair and committee members. We appreciate your time and thank you for the opportunity to give evidence. In our submission we have two case studies. The companies referred to in those case studies will be here this afternoon for the private hearing. MEA supports the bill to address the facts in the building industry. Industry cash flow is crucial to all participants, not just some. The cost of insolvencies in Queensland in 2013-14 was approximately $285 million. We can only assume it is considerably more now when we see what has happened in the last few years. According to ASIC, the average liquidation in the construction industry results in almost a $1 million gap between assets and liability. The behaviour in the industry needs to change. Previous iterations of enforcement legislation and education have not changed industry attitudes. The industry culture has not improved.

We have reviewed many of the submissions made by varying stakeholders, particularly those from licensed builders and their relevant member associations. We respect their views. However, we disagree with their view that PBAs are not the solution. What is evidenced from their submissions is that many stakeholders do not want PBAs. Their common arguments are that the cost of the bank account is too much, the time will be too slow for payment, it only protects one level of subcontractor and they should not be required to pay subbies in full even though they enter into a contract for payment upon work completion. Somehow they believe it is unfair for them to be held accountable for or pay the moneys they owe. None have addressed or proposed a workable solution to secure payments for all parties. I have to ask why.

If we may pose a hypothetical scenario. We acknowledge and applaud Hutchinson Builders. They do have a good reputation in the industry and they appear to be a well run business. Mr Quinn holds the company up as a shining example, stating in his submission the company has a debt free balance sheet. Hutcinsons own capability statement on their website in 2016 proudly states 'nationally 1,500 people of which 250 are in Queensland; 14,000 people work on their sites nationally every day; 10,000 subcontractors are engaged with; net tangible assets of $251 million.' Does this include the retentions money or possibly even the progress payments? Is it an asset or is it a liability or a debt? They have $1.596 billion worth of turnover. Let us look at the statement. The question is, is Mr Quinn including in that debt free statement the almost $80 million in retentions money that the company likely holds based on five per cent of his total $1.596 billion book of work in 2016? MEA would suggest that the public and many subcontractors would consider that retentions moneys owed at the end of a defects period is a debt. The building and accounting profession may not.

Mr Quinn and Hutcinsons are a reputable business. However, do their words subconsciously demonstrate the nature and the conditioning attitude in the broader building industry? We know that companies are never too big to fail with what we have seen in recent years. If the unthinkable happened and Hutcinsons suffered a catastrophic failure, based on their $1.596 billion turnover it is likely that secured creditors may get about 15 cents in the dollar. As it stands, the building industry subbies and workers—unsecured creditors nationwide—may take a $1.35 billion hit.

A recent example of the attitude of the building industry: on 28 June myself, minister de Brenni, shadow minister Steve Bennett, Master Builders Queensland, Worrells, Michael McNab representing the Urban Development Institute of Australia Queensland chapter and representing McNab Constructions sat on a panel to put forward our views and face questions from the audience regarding security of payment and project bank accounts. Michael McNab provided clear evidence that builders and developers are using subbies' unpaid progress payments and retentions money to prop up their businesses, saying, 'If we have to put money aside into project bank accounts to pay subcontractors we won't be able to finance or convince the banks to provide finance for projects.' It is very clear these

moneys have been accounted for as assets and not debts. Subcontractors are not financial institutions or the builders' or developers' bankers. The industry has had enough and must do more to protect subcontractors and their employees. I will hand over to Malcolm to close for us.

Mr Richards: In summary, the proposed bill achieves a cultural change in the industry to correct the biggest issue plaguing contractors for 80 years. It denies the ability of a builder to be rewarded financially for withholding payment from a subcontractor. It limits the ability of a builder to reference subcontractors' funds as their own for financial assessment. The bill is aimed at a key area of improvement in the industry. It corrects the process for retentions to be held in escrow, it clarifies the process for claiming variations and enables the easier lodging of disputes for unpaid contractor charges.

MEA supports the intent of the legislation and the impact it may have on the industry. While we will leave the legal detail to the lawyers to argue about, we fully support the bill and commend the minister for introducing it. Thank you.

CHAIR: Dr Martin?

Dr Martin: Our submission is brief, as you can see. From our perspective, we were consulted with respect to this bill. That occurred at a ministerial level: the ministerial construction council of 17 August most recently. The public benefit of this bill was discussed there and we believe the argument was made that the public benefit outweighs any cost associated with it. Our interest obviously is looking for secure employment for members of unions. The greater the financial security, it follows there is greater employment security. As a general principle, the union movement thoroughly believes that people should be paid for the work that they perform. That would be our opening statement at this stage.

Mr McKenzie: We commend the bill. Is fairness the right word or just the right thing to do? We see in our industry—the electrical industry—where employers, mainly of the Master Electricians, the majority of them do the right thing, but when companies go into liquidation and they go belly up generally on most occasions it is because builders are holding money on them. It might be a lot of money held on this particular building or this particular building. Whilst I have not been to the whole hearing and you guys have, from listening to the comments of the witnesses before us it is quite common that they hold these progress payments. I will give an example. If the electrical contractor is meant to get paid a couple of hundred thousand dollars to finish off this level and there are only 10 lights left to do they don't pay up 97 per cent of it because the wall is not finished. They will hold that payment. They might hold it for 30 days, 60 days. That affects the cash flow. Workers get paid weekly, and rightfully so, and it then forces those companies to go into some form of administration or liquidation.

Being an official now for nearly 18 years I have helped quite a lot of workers out when they have gone belly up because once they do they lose their entitlements. They can apply to the federal government under the FEG scheme or before that it was the GEERS scheme. Whilst it takes quite a long time to get their entitlements it certainly does not pick up their superannuation entitlements. While the builders and the contractors hustle between should they get paid or should they not, I have heard stories, whilst this is hearsay from contractors, where if they don't want to receive a progress claim or their final payment they will never work a job again. You will hear direct evidence from contractors later today. This bill hopefully, obviously depending on what the regulations say that go along with the bill, will protect these contractors which ultimately will protect the payment of workers wages when it comes to it. Thanks.

CHAIR: I will move to my left to start questioning.

Mr MOLHOEK: I have one question I want to ask but it is the same one I keep asking. I think it is one I have to go back to the department with.

CHAIR: You are looking for figures?

Mr MOLHOEK: Yes.

Mr Veenstra: How about page 2 of our submission? Figures in Queensland for the last five years. You want a percentage? 17.1 per cent insolvencies in the industry.

CHAIR: There it is in the third paragraph. Question answered. I will move to member for Murrumba.

Mr MOLHOEK: It is actually not the same question, but that is okay.

Mr Veenstra: What we are concerned about is that project payments help pay as the job is going along. It is the insolvencies. If you look at the number of insolvencies that people don't get paid, it is incredible. That is how you fix that problem, but you also get people paid on ordinary jobs and it

is not a cost. The eventual result of that will be projects will be cheaper. People will be able to do jobs for a lower cost because they will not have to factor it in when they get paid, they are not running overdrafts behind them to support the builder.

CHAIR: To refer to something that was said earlier, what is the benefit? I am not here to answer questions, but how does it benefit the overall job? When you know you are going to get paid or compared to being paid three quarters of it, sometimes the quality of work will be affected and the quality of work in the end. That is not a question, that is a statement.

Mr Veenstra: To pass it on, it is a non-conforming product which we have made submissions on. We have an issue with that. Where do you go looking for products that are cheaper which are non-conforming and what are we suffering from?

CHAIR: If you could continue.

Mr MOLHOEK: It is a question I will take up with the department. They have not actually answered it on my questions on notice. All I am simply trying to understand is as a percentage of the entire industry, what is the percentage of people who are not paying their bills versus the percentage that should. I want to more deeply understand the impact. Not all insolvencies are because people did not get paid. Some of them are because they are not good business operators as well. It happens at the Gold Coast. I am not sure of the latest stats, but if you start a business in any given year you have about a one-in-three chance of still being in business at the end of the year. It is not necessarily because the Gold Coast is a bad place, it is just because there are a lot of people who buy a job and open a shop and people make bad decisions. I know at the last collapse there were a lot of subcontractors who went under not necessarily because they did not get paid but the work dried up and some of them had taken on financial commitments that were beyond them. I am just trying to understand how many of the insolvencies are as a result of unscrupulous head contractors not paying versus that.

CHAIR: One is too many is my answer

Ms PEASE: That is exactly my point. One is too many.

Mr Richards: If I can provide some level of answer, there are two sides to that question. The first question is about late payment because late payment causes business stress. Unfortunately, late and reduced payment, as you have heard from our previous witnesses, is more common than not. It is actually a cultural issue. I am talking the majority.

Mr MOLHOEK: I want to—

CHAIR: Order! Let the question be answered.

Mr Richards: I am saying the majority of payments in this state in this industry are late or part payments. Very few builders, reported from our subcontractors, actually pay the due amount on the due date in this size bracket of over $1 million projects. It is a constant negotiation and chasing of funds. It is a cultural issue in the industry. A portion of that leads through to insolvencies, which we have the figures there of 17 per cent results in insolvencies. The lesser amount results in a lot of business stress and an increased cost to do business. It is actually a preventer of small contractors playing in a major construction project because they do not have be able to afford to do the job, they have to be able to afford the retention money, the late payments, the part payments and the lawyer on staff to negotiate payments before they can start a job of this size. It is a small field of contractors who can actually participate at high risk in this sector of the market. If that helps.

CHAIR: You had an interjection and a question there?

Mr MOLHOEK: The struggle I am having with the answers—and I am not unsympathetic to what you are saying—is that more, less or the majority of them are great terms. In the past I could not run a business if my sales manager came to me and said, 'Look, we think we will get budget, we have the majority of it.' I would want to know whether we have 70, 80, 90 per cent because the actual figures are important.

Mr Richards: The information we run off is conversations we have with our membership. Every member I speak with to a tee says this is an issue and they have been subject to late or partial payments and problems with retention monies in that time. I have not spoken to one of my members who said to me, 'I have never had an issue in this space, everything works wonderful.'

Mr MOLHOEK: I appreciate that. I am just trying to quantify.

Mr Richards: It is a big problem, I think, is the answer.

Mr MOLHOEK: I get that it is a big problem. I am just trying to quantify it.

Mr McKenzie: Whilst it might be one builder holding back a progress payment or are delayed by 30 days, when these contractors are now working for three or four builders, they are going to miss that one, then it all snowballs. If it was just the one rogue builder, they can sorted out. It is a snowballing effect.

Mr MOLHOEK: I understand that.

CHAIR: In part way to answer your question—and I do not think you will be satisfied—in relation to what Malcolm said and to what Penny said earlier, not one of their members has not been affected by this. Anyway, we will move to the member for Murrumba.

Mr Veenstra: Can I just interject on the insolvency bit? There are clear figures here. In 2013-2014, 309 Queensland construction companies went insolvent. That year that cost subcontractors $285 million. That is a high percentage. If you look at that, there is 281, and the next year, 328. There is no reason to believe that the number of subcontractors and their value just alone in insolvencies were not affected. I know you are looking for the companies that are still here and are late paying. I guess that will be something that be held up to research through unis and whatever.

Mr MOLHOEK: With your indulgence, Mr Chair—

CHAIR: And I have been indulging you all day, so now I am going to the member for Murrumba to ask the question.

Mr WHITING: To Mr Veenstra and Mr Richards, I appreciate that one thing in your submission talks about those examples of what happened as well. You also dealt with the issue being proposed, I think by Master Builders, about an insurance company that would take on the risk. Can you flesh that out a bit more?

Mr Veenstra: They are proposing that we insure ourselves against the builder not paying us. Really? That is like me working for Malcolm and saying that I have to insure myself that he may not decide to pay me one week, so I have to cover that out of my insurance. Really logical. When you look at a lot of these builders, if you try and get insurance on them, you will not.

Mr WHITING: You are saying that getting that insurance would be prohibitive, or difficult?

Mr Veenstra: I think it should be the other way around. The builder should get insurance to ensure they can pay us.

Mr WHITING: Okay. I appreciate that.

Ms PEASE: I wanted to talk about the cost impact on subcontractors trying to continually chase the dollar, the coin, that is not coming to them. There has been much discussion to date before about the impost for the head contractor with the PBAs. I imagine there would be a fairly prohibitive cost factor for the subbies trying to chase the outstanding defaults constantly?

Mr Veenstra: Our cases and our witnesses will attest to what has occurred in their businesses. It is a huge cost and you do not have the money behind you to employ the legal people you require. Also, if you do try to start the process, you are frightened to start the process if you do want to work with the builder, accepting that you will miss out on a certain amount of money and it is to be transferred the next month. 'I will pay you next time and I will pay you next time.' If you want to continue work at which you need to employ people, you do not take the up the action because you get black-banned.

Ms PEASE: There is a potential of being black-banned but you still have to continue working and you still have fight to get the money that is outstanding.

Mr Veenstra: Which means you have to get an overdraft, if you can, at 20 per cent which will you hear about from one of our witnesses. You become the financier for the builder because they will not pay you.

Ms PEASE: As well as the emotional toll.

Mr Veenstra: There are a lot of losses that occur.

Mr McEACHAN: I certainly appreciate the difficulty in getting insurance. As a former motorcycle riding instructor trying to get insurance for personal injuries, it was somewhat difficult. Can I get the benefit of your collective wisdom on subbies who fall into that category of jobs under $1 million? The legislation post review still does not make any provision to go underneath $1 million per project. I foresee some unintended consequences where builders doing projects over $1 million might look at splitting up projects so they come in under that $1 million. They will be the ones with whom we will have problems. What I am trying to tease out through this is process is why do we start at $1 million? Why does it not cover the industry?

Mr Richards: From my perspective, the million dollar mark is where a lot of pain is felt. Eighty-five per cent of our industry has fewer than five employees. There is a lot of mum and dad contractors who do not directly plan these fields except as a sub-subcontractor, but they get affected in that circumstance when the primary subcontractor is unpaid. That puts stress on them paying all their sub-subcontractors to deliver. They do get affected secondly. From what we have seen in the data we have looked at, it is certainly in that bigger end of town when the builder goes down or does not pay that the pain is felt throughout and ripples through the industry and late payments from that perspective. What we understand through the development of the legislation and part of our original submission is that aggregation should deal with a builder trying to break up a project into small pieces and multiple projects to the same principal. They should be aggregated and fall into the project bank account scenario should a builder be trying to avoid the project bank account system through that mechanism.

Mr McEACHAN: That is not currently part of the legislation?

Mr Richards: I understand that is in the bill, that the aggregation of multiple projects for the same principal, totalling over $1 million, would be included.

Mr McEACHAN: We got advice that was not the case.

CHAIR: No, that was residential. We did get a clarification earlier. I believed it was multiples that are over $1 million that were included. But we were going to clarify.

Mr McEACHAN: There is some more investigation for us on that part.

Mr Richards: Like I said earlier, we support the bank accounts but trust the legal and the parliament to sort out some of this detail to close the loopholes and ensure it works. We are prepared to work through this first year as a good trial to trial the system to find some of these loopholes, to fix them over time and expect that there will be minor problems and hiccups along the way.

CHAIR: A small builder said earlier that this would not work at all and was very much against it. With your membership—and I know you consult with all your membership regularly—would that be the exception? We are here because the majority of both your memberships are for this.

Mr McKenzie: We have seen the majority of contractors get a lot more professional in the recent years around how they run their business with the adoption of electronic project management systems, electronic accounting systems. We see this sort of bank account as a very minor impost. If there is a gap in the market and the provision of a suitable electronic package to manage a PBA, I imagine that within months it will be developed and sold for a very economic cost.

Mr Richards: We are seeing something similar, but the same with the building industry and the virtual contractors issue, there are trust funds out there where the employers pay workers' entitlements to offset the redundancy in severance entitlements. Whilst employers do that, whether it be the electrical industry or the building industry, they are putting money into these redundancy funds. When a worker is made redundant, they will then go and collect their funds. This is really no different to putting money in there so when it is due it can be paid and collected. I think it has changed recently, but there was an ability in the state system for attachment notices. If we believed that someone were not getting paid, we would apply an attachment notice and the builder would put that money into the court system where it was held in terms of a challenge. Years ago when the Howard government made all the corporations go in the federal system that was obviously limited to the old process for the attachment notice, but that was there to protect workers owed money. We can then get that building payment put there. In terms of the project bank accounts and whether it is $1 million or less or whatever, we will get that sorted out. Ultimately, with the big end of town the bigger the risk is in that million dollars issue. For me to spend $100 at the casino as opposed to Kerry Packer spending $20 million at the casino, it is a different view. For a small company which has five employees, it is $300,000 too. We have to get it sorted. I commend the bill.

CHAIR: Thank you.

Mr MOLHOEK: It would be interesting to see why the builder said it would not work. A lot of them say it will not work but do not stipulate why. The only reason I can see they say it will not work is because they are counting debts as assets to get finance. If that is the case, does that mean they are actually trading as insolvent if they are using someone's debts and turning them into their assets? They do not have the financial backing to do the projects.

CHAIR: At this stage they fall under $1 million anyway.

Mr MOLHOEK: Even so, in that area that means that they do not get finance from the banks. They are using the subbies' monies, which means are they trading insolvent? If you take those debts they call assets, it makes them true debts.

Mr McEACHAN: That was precisely my next question. Under the Corporations Act, if you have incurred a debt and you have no capacity to pay it, you are trading insolvent. It is a crime under the Corporations Act. Is there some consideration for us as a committee on how the Corporations Act works with this bill to iron out any crinkles.

CHAIR: That would be one for the department.

Mr Veenstra: There are plenty of examples in the submissions. We brought up the Walton's one as well. They were definitely trading insolvent but transferring things around to be able to cover that. Without a doubt, it has to be looked into very clearly.

Mr Richards: If I could add, this project bank account should clarify those issues because currently we will argue about whether retention sitting on a builder's balance sheet is a debt or an asset. This legislation will take it completely off the balance sheet of the builder.

Mr McEACHAN: I would have thought it would have sat as a liability.

Mr Richards: So would I, but I am concerned it may sit as an asset when considered by the QBCC.

Mr MOLHOEK: The cash would sit as an asset. It would have no net effect on the bottom line of the balance sheet theoretically.

Mr Richards: One would hope.

Ms PEASE: Only if they are disclosing it.

Mr MOLHOEK: They would have to under ASIC.

CHAIR: Thank you for your time

Proceedings suspended from 1.58 pm to 2.13 pm

BASSETT, Mr Brett, Commissioner, Queensland Building and Construction Commission

RIVERS, Mr Don, Assistant Director-General, Building Industry and Policy, Department of Housing and Public Works

TIMMS, Mr Logan, Executive Director, Building Industry and Policy, Department of Housing and Public Works

McCAHON, Ms Catherine, Acting Director, Strategic Policy (Building), Building Industry and Policy, Department of Housing and Public Works

CHAIR: Welcome. If any questions on notice are taken today, the information should be provided to the committee by close of business on Friday, 22 September 2017. I know you have probably been watching with much interest today so if you do have any opening statements to start with we would love to hear them.

Mr Rivers: I thank the committee for the opportunity to meet with you again this afternoon. I would like to highlight just a few points before we begin. Firstly, I would like to clarify that project bank accounts are not just about improving security of payment in insolvency situations, but they are also intended to assist in addressing late and non-payment of subcontractors. That is a very important feature. There appears to be some confusion about how the bill is intended to operate. The first issue is the suggestion that the builder is required to put the entire value of the contract into the PBA and is then not allowed to withdraw any money for themselves until the end of the project. I would like to clarify that that is not the policy intent. The payments into a project bank account other than retentions will be based on regular progress payments that are due and payable under the contract. The money in the PBA will then be disbursed to subcontractors and the head contractor in accordance with a payment instruction prepared by the head contractor. So it is a regular payment.

In regard to the changes in terms of the payment claims and payment schedules under BCIPA, these changes were aimed at the need to instigate a cultural shift in the industry towards one where subcontractors do not have to chase the money that they are rightfully owed. There have been concerns raised about the mandatory requirement for a payment schedule to be provided for all payment claims. The department is aware of the points that have been raised by the submitters and is considering the advice received.

Finally, I would like to clarify that a PBA would only be required for residential projects if the work relates to three or more living units, for example, at least three detached houses or two duplexes and if the contract price for the contract is over $1 million. In wrapping up I would like to take the opportunity to thank everybody who took the time to put in a submission on the bill and those who have appeared at the hearing to share their views today and the panel would be happy to assist with any questions from the committee.

CHAIR: Thank you very much. I will go to my left first. My question was just answered then.

Mr MOLHOEK: Can I ask that that document that you read from be tabled?

CHAIR: Will there be any problem with that?

Mr Rivers: No, that is fine. It is just an opening speech.

CHAIR: It will be in the transcript exactly as that anyway.

Mr MOLHOEK: The transcripts are a bit slower to come.

CHAIR: There is nothing on there, no handwritten notes?

Mr Rivers: No.

Mr MOLHOEK: My question is to the Commissioner, Mr Bassett. We heard earlier today from the Master Builders. There was some discussion around failures within the industry. We were told that there are detailed reports on failures that the QBCC deals with in its annual reports. I had a quick look online at the annual report and I could not find it in there so I am wondering if you could direct me to that section of the QBCC's report that actually details the amount of failures that the QBCC deals with and what knowledge you have of failures.

Mr Bassett: I thank the member for the question. Just so I am clear, is the member asking specifically about the data in respect of the number of failures?

Mr MOLHOEK: The number of failures and the quantum of those failures.

Mr Bassett: I am actually not sure whether or not that is contained within the annual report. I would have to take some advice on that, if I may.

CHAIR: Just for clarity, the member has been asking all day, and correct me if I am wrong, for a percentage of the number of businesses that collapse over the total number of businesses.

Mr MOLHOEK: Yes.

CHAIR: We have received many different forms of that, but not in a format that the member requires to satisfy his interest; would that be a fair way to put it?

Mr MOLHOEK: Correct. I am looking for some quantitative data on the number of failures, the value of those failures and perhaps, if it is available, how much actually gets paid after there has been insolvency actions.

Mr Bassett: I thank the member for the question. In respect of once an insolvency action takes place and the company goes into liquidation, the QBCC will not have that data and the principal reason for that is that that data would be held by the liquidator. It may be that the Australian Securities and Investments Commission has that data through statutory reports that are provided by the liquidators, but the QBCC does not have access to that data. If I could I would be happy to take that question on notice and get some analysis done if it can be done within the time frame.

CHAIR: I will ask during this period of questioning if the member could write something to that effect so that we can clarify at the end we are all on the same page because there has been some confusion about the question and the answers over the period of the day.

Mr McEACHAN: In a similar vein, I have been asking along the lines of how many subcontractors in Queensland would fall into the projects under $1 million so that the legislation would not be enlivened in those cases. As a proportion of subcontractors engaged at any given time, how many are engaged in projects that are under that cap compared to how many would be engaged in projects which fall into the legislation?

Mr Rivers: That might also be fairly difficult to get because a subcontractor might actually be working on a project that is over $1 million but he might also be contracting with a contractor on projects under $1 million. That might be a fairly difficult response, but we are happy to take it on notice to see if we can get you any information. I think it would be very difficult to get because of that scenario.

Mr McEACHAN: I appreciate that. It goes to a question I have been asking. I think there is a general consensus that protection for subcontractors on security of payments has been the intent of the bill and is supported, but I just want to get an idea of how many subcontractors may not be captured by it at any given time.

CHAIR: I think your questions previously, and I do not want to put words in your mouth so please correct me, were you were wondering why the threshold of $1 million. You have asked that several times. There may be some just under who are not captured who are at a great deal of risk. We have had that answered a few times by several witnesses, but I understand your concern. That is the basis of the question, I think.

Mr McEACHAN: Thank you.

CHAIR: Did anyone want to add to that before I go to the member for Lytton?

Mr Timms: As far as the determination of the thresholds for immediate commencement, that one to 10 was on a risk based approach based on WA and New South Wales experiences. So, yes, there are assumptions and that is why.

Mr MOLHOEK: Is that contained in any of the reports that we have?

Mr Timms: I am sure it is.

CHAIR: It is now contained in the transcript from the department.

Ms PEASE: You gave some clarity around the $1 million cap and mentioned that it was three houses. What if one property is valued at over $1 million for the construction; is that captured?

Mr Rivers: No, it is not.

Ms PEASE: There is that limit.

Mr Rivers: There is that requirement for over three.

Ms PEASE: The other thing that I wanted to talk about was there was some wording in the briefing notes that you provided to us, and it is on page 7 of 52, with regards to the requirement for a head contractor to cover shortfalls. A number of submitters have expressed their concerns about the

requirement for head contractors to meet the shortfalls through payments into the PBA. You have actually said in the last paragraph there that the concerns were how the head contractor can comply with the requirement to top up the PBA and that you would consider this matter further. I am just wondering what does that mean? Could you flesh that out a bit for me?

Mr Timms: Currently there is an expectation that head contractors will pay subcontractors if the principal doesn't pay. That is common practice. I think that was discussed today. There was a couple of very specific questions posed in the submissions that we are working through to make sure that the implementation of that policy is correct as drafted.

Ms PEASE: What do you mean by that?

Mr Timms: If it looks like there is a barrier to enabling that top-up process then we will have to make sure that the drafting reflects the intent. I can't expand more.

Ms PEASE: I am just trying to get an understanding because I have read through the submissions and seen it and I would just like to try to understand it myself. In our last briefing I asked a question with regard to civil construction and the work that goes on in a development and I have not received a response to that, in terms of retaining walls, or if I did in the paperwork I did not understand it that it was actually an answer to my question.

CHAIR: It was in regard to civil construction.

Ms PEASE: It was civil construction. I know that engineering and those sorts of works are not included in this. If there are civil works such as the building of retaining walls, is there any capacity or have you got an answer as to whether that is going to be covered in this piece of legislation?

CHAIR: I remember we discussed that.

Ms PEASE: It is on page 8 of the transcript where I actually asked the question. At the end you gave a response to say that you would get some more information for me about it. I can just ask again what I am trying to ascertain. In the explanatory notes you talk about engineering work is not included, bridges and roads and those sorts of things. But if a property developer is developing a block of land, putting in roads and in those roads there has to be drainage and all of that, I understand that that is potentially not going to be covered, but if there are retaining walls and other types of civil works that are not major engineering works is that picked up in this piece of legislation?

CHAIR: We heard earlier from a submitter who does tilt slabs that the civil is done and they may come in and erect their tilt slaps and then they will crack and they as the subcontractor are held liable for the cracks in it yet it was the civil works. I think that is what you are saying. They let go the civils and that was one of the explanations.

Ms PEASE: What is the beginning and the end?

Mr Timms: This goes to that threshold piece where if 50 per cent of the total contract cost is building work then the PBA applies. Retaining walls are separate and they are building work. I think your question went to subdivision.

Ms PEASE: I am using that as an example. I am sure there are other examples. What do you mean by the 50 per cent? Fifty per cent of the work is building—50 per cent or above?

Mr Timms: That's right.

Ms PEASE: Then it would be picked up.

Mr Timms: Correct.

Ms PEASE: That answers that question with regard to a subdivision. If 50 per cent of the work—

Mr Timms: Is not building work.

Ms PEASE: No, it is. I have a site in my electorate at the moment where there are 60 townhouses going in. They have to put in roadworks, build the roads, but they are also building the townhouses. Is that going to be picked up because it is going to be over $1 million?

Mr Timms: From what you have described, yes.

CHAIR: It could potentially affect the quality of the building work if the civil work is not done properly.

Mr Timms: Yes.

Mr WHITING: One of the things we heard a bit about, and I have looked in our green paper on this, is the changes that date from I think November 24. I understand there were some changes to the QBCC board and I think there may have been some amendments to one of the acts.

CHAIR: That is December 2014 you are referring to?

Mr WHITING: Yes. Can we have a bit of an outline about what happened at that stage?

Mr Timms: In broad terms, from the question you have raised, the board was transferred from a representative style board to a governing style board. With respect to BCIPA—

Mr WHITING: That is the QBCC board?

Mr Timms: Yes. The one issue that has been raised a lot today was the removal of a penalty for the non-provision of a payment schedule after a payment claim. That is what has been raised today. Would you like a more detailed analysis?

Mr WHITING: Nothing too lengthy. I was not in parliament at that stage. Was it an amendment or a change of regulation?

Mr Timms: That was an amending bill that effected those changes.

Mr WHITING: Thank you. That is still in effect, clearly, until this passes.

Mr MOLHOEK: We heard Master Builders, HIA, Hutchinson and Adjudicate today express concerns over the cost impost of the maintenance, establishment and operating of these accounts on the industry and on housing affordability. Has the department or the QBCC done any analysis on what will be the potential extra cost in terms of the final project costs?

Mr Timms: The answer is 'Yes'. The Deloitte economic report which is available on the website did look at those matters. Obviously they make assumptions but they looked into those matters and that is how they ended up determining there was a net benefit that would result from this policy. There were a lot of matters raised today. For example, with the administration of the project bank accounts, I think we discussed and clarified last time that there will be three trust accounts per project. We know roughly what they will cost to set up and that there will be some administration of those. I think I said last time that that is four hours per month, and that is our estimate there. There was a lot of discussion around the administrative impost of the payment, claim and payment schedule. As Mr Rivers pointed out, that is something we will look at in greater detail because the intent behind the changes to the payment claim and the payment schedule is to reverse the business culture of some subcontractors having to follow up for the money. The intent was noble in terms of trying to make sure there was a reversal of that culture. Certainly the intent was not to impose such an administrative burden that it could not be complied with. The intent is very clear and we need to make sure we work through those issues raised by the submitters.

Mr MOLHOEK: Hutchinson left a one-page analysis with us or some assumptions. Can I ask that the department provide some sort of response to their assumptions?

CHAIR: I think the Master Electricians did as well. Can we provide a copy?

Mr Timms: We are happy to look at that.

CHAIR: I will add to that with a further question, because it was stated that no banks would even look at this style of setting up these accounts and everything like that.

Mr MOLHOEK: I think they said that their bank does not do it.

CHAIR: They named the Commonwealth and several other banks and said they did not think that they could accommodate setting up these accounts. Has there been any consultation with the banks in this regard?

Mr Timms: I do not want to get into a slinging match or anything like that. We have consulted with the government's bank and other banks and none of them said that there is a problem. In fact, because the Commonwealth Bank was previously involved with WA, it is a straightforward matter. The electronic processors are mature and work very quickly. We cannot see any of the time concerns being a problem, either.

Mr MOLHOEK: How about Queensland banks, Suncorp and Bank of Queensland? From what I heard from Hutchinson, the major banks can do it or have some ability for subaccounts but Bank of Queensland does not. It was alleged that the Bank of Queensland cannot or does not. I would have thought being our two major state-based banks it could be good to make sure they are not disadvantaged.

Mr Timms: I am not sure. We will check. I will get some advice back on who we would consult with respect to the banks.

Mr MOLHOEK: Do we need to put that as a question on notice?

CHAIR: I would be happy to take it on notice. I appreciate your answer to what was my question initially that you have consulted with banks, that is all I wanted to know, that there were banks out there because we were led to believe that there were none. Thank you for that. I will just clarify that

the member for Southport's previous question is to be taken on notice. Can the QBCC provide quantitative data of the number and value of known failures or insolvencies in context of the total value or turnover of the Queensland building and construction industry; is that too onerous? I think we clarified it earlier as a percentage.

Mr MOLHOEK: Percentage or a dollar value. I want to know in quantitative terms how many failures versus how many successes, what the value of those failures are as a percentage or as a dollar value out of the $44 billion that is expressed in the—

Mr Bassett: I am not sure that we would have all of that data. The Australian Securities and Investments Commission as part of their submission to the Senate inquiry into insolvency in the construction sector did undertake a significant amount of research in respect of the breakdown of insolvencies across Australia both on a national and a state-by-state basis, and it was even down to the level of individual sectors. If I remember correctly, the construction sector came third. That might be that information at a macro level. I am just not quite sure whether or not we have all of that data. I would be happy to take that away and advise what information we have and can undertake analysis on the information we have. I do not want to give the committee comfort that we will have all of that data.

CHAIR: Even that breakdown from the Senate.

Mr MOLHOEK: We heard in some submissions that 4,000 or 5,000 people were affected and that there have been thousands of insolvencies, but in Master Electrician's submission they quote from that ASIC report. They are saying there were about 300 a year. There is a big difference between 300 a year in the ASIC report and the thousands being alluded to. I want to see some factual data.

CHAIR: I just think that the thousands was also referring to late payments which we will stress is the bane of the industry as well.

Mr MOLHOEK: I think we heard both.

Mr Bassett: I have been given some documentation from my colleagues in respect of some data that we have in the 2016-17 year in respect of monies owed complaints and the amount of financial investigations that we currently take under the current minimum financial requirements policy. Would it be okay if I provided that information now? In the 2016-17 year I can advise the committee that we undertook 484 financial audits. There were 347 non-payment of debt investigations. We do not have the data in respect of number of insolvencies because, as I alluded to before, insolvencies are regulated by the Australian Securities and Investments Commission as opposed to the QBCC. They are the statistics that I have at this point in respect of the type of investigations that we undertake about our current minimum financial requirements policy. I would certainly be happy to take the question on notice and determine what data we have so that we can provide some feedback to the committee if that is suitable.

Mr Timms: In answer to the question as well—I do not know if this information is perhaps helpful—but ASIC data for financial year 2016-17 indicates that the construction industry had the most external administrations of any industry in the country, numbering 1,509. In total out of all the industries in Australia there were only 8,000 external administrations nationally. That means the construction industry represented 18.7 per cent of all companies entering external administration in 2016-17. Further, in financial year 2016-17, Queensland's construction industry had 303 external administrations, that is of the 1,500 nationally. That means Queensland's construction industry represents just over 20 per cent of the total of external administrators nationally. Is that the sort of detail in terms of the impact?

CHAIR: I think what he is asking for as well—I do not know if we can get an answer to it—is if the industry is worth X, what percentage of X goes insolvent as an overall component of the industry?

Mr MOLHOEK: I guess simply, yes, if there is $44 billion of money being paid to people, is it half a billion that did not get paid, $30 million, $1.6 billion?

Mr Bassett: We have certainly got data in respect of the 2016-17 year in respect of the amount of monies that we have recovered through our free monies owed service. We also have data in respect of our adjudication statistics for the same period. For the financial year 2016-17 we recovered $7,711,278.41 from people who raised a monies owed complaint with us. Predominantly, that is subcontractors, et cetera. In respect of adjudications registry decisions, the total value of claims for that period where a decision was released was $1,084,167,871. The total value of adjudicated amounts where a decision was released was $648,109,051. But once again that is different to insolvencies, if that makes sense to the committee.

Mr MOLHOEK: I might have to get those figures out of *Hansard*. Unless they are in a format that can be tabled?

Mr Bassett: I would not be able to table these at the moment. We have hand writing et cetera on them. I can certainly provide those.

CHAIR: Does that answer your question so we do not need to take it on notice?

Mr MOLHOEK: Perhaps you can provide that information in a written format?

Mr Bassett: We can certainly provide that in a written format.

CHAIR: We will take that as the question on notice. With that, thank you all. That will have to be provided by close of business Friday 22 September. That concludes the public hearings. I thank all the witnesses, including those no longer here, who have participated in this hearing. A transcript will be available on the committee's parliamentary web page in due course. We will now move to a private session which is not open to the public. It would be appreciated if witnesses and members of the public could leave the room as quickly as possible. I thank you all very much for your time.

Evidence was then taken in camera –

Committee adjourned at 3.08 pm