



PUBLIC WORKS AND UTILITIES COMMITTEE

Members present:

Mr SR King MP (Chair)
Mr SA Bennett 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 BRIEFING—INQUIRY INTO THE BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) BILL 2017

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 6 SEPTEMBER 2017

Brisbane

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Committee met at 9.59 am

CHAIR: Good morning. I declare open this public departmental briefing for the committee's inquiry into the Building Industry Fairness (Security of Payment) Bill 2017, commonly known as the BIF bill because it is easier to say. Thank you for your interest and your attendance here today. I would like to acknowledge the traditional owners of the land on which our parliament stands. My name is Shane King, member for Kallangur and chair of this committee. With me here today are Mr Rob Molhoek MP, member for Southport, deputy chair; and we will be having Mr Stephen Bennett MP, member for Burnett, who is on his way; Ms Joan Pease MP, member for Lytton; and Mr Chris Whiting MP, the member for Murrumba.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. 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 it is possible you might be filmed or photographed during these proceedings. I ask everyone present to turn mobile phones off or on to silent mode. Only the committee and invited departmental officers 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.

On 22 August 2017 the Minister for Housing and Public Works and Minister for Sport introduced the bill into the Queensland parliament. The parliament has referred the bill to the Public Works and Utilities Committee for examination with a reporting date of 13 October 2017. The purpose of today is to assist the committee with its examination of the bill. I remind committee members that officers from the department are here to provide factual or technical information. Any questions about government or opposition policy should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. I also ask that if departmental officers take a question on notice they provide the information to the committee by 4 pm Friday, 8 September 2017.

Welcome. The program for today has been published on the committee's web page and there are hard copies available from committee staff. I welcome officially Mr Stephen Bennett MP, member for Burnett. I welcome the witnesses from the Department of Housing and Public Works and the Queensland Building and Construction Commission who will be providing a briefing on the proposed legislation.

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

CARROLL, Ms Liza, Director-General, Department of Housing and Public Works

COOPER, Ms Danielle, Acting Director, Strategic Policy (Building), 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

CHAIR: Would you like to commence your briefing?

Ms Carroll: I would like to also start by acknowledging the traditional owners on whose land we meet and pay respect to elders past and present. The Building Industry Fairness (Security of Payment) Bill 2017 includes a range of reforms to promote fairness to the building and construction industry and to help subcontractors get paid for the work they do. The Department of Housing and Public Works undertook two rounds of consultation across the state. The first round was specifically in relation to security of payments and occurred from December 2015 to March 2016. Further consultation on proposals occurred as part of the Queensland Building Plan process from November 2016 to March 2017.

The bill focuses on measures to improve the system to better ensure security of payments. One of the changes in the bill is the introduction of project bank accounts. In the event of head contractor insolvency, money in the PBA will be protected from other creditors of the head contractor. The bill also combines all security of payment legislation into one act. A new chapter in this bill replaces the Building and Construction Industry Payments Act 2004. New provisions are intended to make the progress claims process easier. Claimants will be given a longer time to make an adjudication application. The second chance notice will be abolished where a payment schedule has not been served and adjudication application can be made without further notice. However, a warning notice must be provided to the respondent before court proceedings are commenced regarding the claimed amount. This is to protect against a judgement potentially being set aside due to lack of notice. It will also no longer be possible for a respondent to a complex claim to provide new reasons in an adjudication response.

The bill will also simplify the adjudication process by enabling a regulation to specify what documents can be presented in an adjudication and the length of the submissions. To improve the behaviour of parties to the adjudication process, the bill provides that an adjudicator must—instead of 'may'—consider the conduct of the parties when making a decision about fees and expenses.

The bill also repeals the Subcontractors' Charges Act 1974 and replaces it with a chapter that modernises the provisions that are in the current act. The bill provides that important policies such as minimum financial requirements policies must now be prescribed by a regulation. Under the MFR policy, licensees have particular reporting requirements based on their annual turnover. The bill provides that a regulation may prescribe increased financial reporting by QBCC contractor licensees to enable more effective monitoring by the QBCC.

The bill also increases penalties for unlicensed work under the QBCC Act. Currently, the offence provisions of the QBCC Act relating to unlicensed work attract a maximum penalty of 250 penalty units. The bill has a new range of penalties: first offence, maximum of 250 penalty units; second offence, maximum of 300 penalty units; third and subsequent offences, maximum of 350 penalty units, or one year imprisonment.

An important amendment in the bill is the increased rigour around the excluded individual provisions so that the person who was involved in a company failure in other jurisdictions or who was the director of a company up to two years prior to the failure will be excluded from obtaining a QBCC licence. Also the definition of 'influential persons' in the bill is intended to capture a person in a position to substantially influence or control the company's affairs but who does not hold an official position in the company such as a director or secretary of the company. In summary, the bill covers a very broad range of reforms to support the changes within the industry.

CHAIR: Before I throw to the member for Burnett, who I imagine will have some questions, I ask: are there any provisions currently in the Building and Construction Industry Payments Act 2004 and the Subcontractors' Charges Act 1974 that will not be included or will be deleted from this new bill? There is a lot for us to have to go through and match up every clause. Is there anything we need to be looking for?

Mr Timms: There is not a deletion. If you go through the explanatory notes you will see we have tried to be clear. We have said that this provision is based substantially on the previous section of the Subcontractors' Act, but there are a couple of changes and expansions and we are happy to speak to those.

Mr BENNETT: Ms Carroll, you mentioned the minimum financial requirements, and I understand they are going to be amended—the 2014 ones. Is it now going to be under the QBCC Act where the minimum financial requirements will be administered and reported?

Ms Carroll: I might hand over to Mr Bassett in a minute to explain how it currently works. Effectively, at the moment while minimum financial requirements are required, they are made through the QBCC rather than a regulation. This creates a regulation which stipulates what the minimum financial requirements are required to be.

Mr BENNETT: In essence, the board set the minimum financial requirements in 2014 and the QBCC are now going to effectively lose that control and it is going to be under regulation set by government. Is my understanding correct? Would you be able to expand on that for us?

Mr Bassett: If I break your question down into the relevant parts, the first part of the question was around the board setting the current minimum financial requirements policy from October 2014. That is correct. With the proposed changes, that policy in effect becomes a part of the QBCC Act via

a regulation. At an operational level that means that according to the policy at the moment there is some discretion as to if and when the QBCC actually administers that policy versus bringing it into a regulation and prescribing, in effect, the requirement for the QBCC to administer it thereby removing a lack of discretion that currently exists within the QBCC.

Mr BENNETT: You said that the QBCC board sets the minimum financial requirements and we are now proposing to put it into a regulation. The discretion that the board had—was I clear that you said you were not able to administer the changes or to set new boundaries? I assume that if you want to change the financial requirement levels that builders can operate under you can still do that until this comes in?

Mr Bassett: I thank the member for the question. Under the current policy, we administer the policy as it was set by the board at the time. The board policy of October 2014 is still in existence, so we still administer the policy as it sits from when the board made that decision of October 2014.

Ms PEASE: I have been going through the explanatory notes—and this might just be down to interpretation. It says that in phase 1 the PBAs will apply to government building and construction projects between \$1 million to \$10 million excluding engineering projects, and those engineering projects include things like bridges, roads and those sorts of things. It does not go on to talk about whether they will be included in phase 2. It just says that phase 2 will implement PBAs in all building and construction projects, but does that include engineering projects?

Ms Carroll: No. The engineering projects stay outside of the project.

Ms PEASE: They are excluded?

Ms Carroll: Yes.

Ms PEASE: It sounded like it was only in phase 1 that they were not going to be included. Thank you. Were there any issues raised during the consultation process or discussion papers that have not been addressed in the bill that you are aware of?

Ms Carroll: As you would expect, we got a lot of feedback through that process from a range of different stakeholders, and some changes have been made to the policy. The consultation, especially in relation to the building plan, had quite specific models of what might change. Certainly the feedback was taken on board as we went through. We got a lot of feedback about minimum financial requirements that that needed to change—the current model. There was a lot of feedback about that. There was a lot of feedback about unlicensed work. Overall, the feedback was taken on, but every individual piece of feedback would not have been. Also government made a decision about the policy that it was taking and different people had different points of view.

Mr MOLHOEK: I am wrestling to understand the process. How is the project bank account different to what is in place now? I went through a renovation about two years ago and I think I had to pay about a \$3½ thousand premium to someone as insurance or protection for everyone. What happens to that money and what is the difference now that we are setting up project bank accounts?

Ms Carroll: I might get Mr Timms to unpack that. Certainly one of the things I have learned along the way is the complexity of how the different pieces interact. For example, the premium that you would have paid would have been the home warranty insurance. The home warranty insurance continues through the project bank accounts. The project bank accounts are primarily a mechanism by which the principals—the person commissioning. In the case of, say, a school building that is being commissioned for education, the principal would either be BAS or the department of education. They have a head contractor who has the contract with them, and the head contractor will have some subcontractors that they utilise.

What the project bank account does is create a trust account around how the moneys flow from the principal to the head contractor and are disbursed to the subcontractors. The focus of that is actually how the payments flow and how they are made. Rather than the money all going to the head contractor and then the head contractor passing it on, the project bank account creates a mechanism by which the money goes into the project bank account and, based on instructions from the head contractor, it is automatically disbursed by the bank to the subcontractors as well as the head contractor.

Mr MOLHOEK: Who actually administers that bank account? Is it the bank? Is it a lawyer's trust fund? Is it a QBCC trust account? Where does this money actually sit and what are the processes?

Mr Timms: I am happy to answer that question. In terms of your first question, I just wanted to clarify the application, particularly for the first year. The renovation that you undertook is not part of the rollout. In terms of residential construction, for mums and dads what you have described would not apply. The Queensland Home Warranty Scheme would apply as you have described. That is an important distinction because they operate very differently.

However, if you had to say in one word what the difference is in terms of how it operates for a bigger project—for example, rebuilding a classroom that costs around half a million dollars—it is cash flow. In the Deloitte report—if I can seek your indulgence to read one of the paragraphs—it states—

As the building and construction industry traditionally uses a system of cascading payments from a head contractor down the contractual chain to all subcontractors ...

...

The QBCC Act also places a requirement on principals to pay head contractors within 15 business days ... for head contractors or other contractors to pay subcontractors within 25 business days ...

However, there remains an incentive for head contractors to delay subbie payments to supplement their own business's cash flow and working capital. This deferred payment system, and initiated cash flow, is particularly prevalent when—in a bad situation—the head contractor may be nearing insolvency.

The project bank account will be a trust account administered and established by the head contractor. There is an oversight mechanism in the view of the government. The principal has oversight and visibility in terms of what is paid out of that account. If and when it is applied to the broader sector, as a result of that evaluation, the QBCC will have an active oversight role to ensure that the payments are in accordance with what is expected. There are heavy penalties for people who do not comply. It is definitely incumbent upon the head contractor to establish it and administer it. There are interactions with subbies, with the principal and with the QBCC as the regulator.

Mr MOLHOEK: I am going to ask you to dumb it down a bit for me. If I engage builder A to build a block of factories for me, because I am going to invest in that, the builder sets up a project trust account. What is that? Is that a new bank account with, say, Westpac or is it an account that sits with QBCC and Treasury administer, for example?

Ms Carroll: No, it is a new bank account with whichever bank and it is a trust account. It is effectively a bank trust account that is established by the head contractor.

Mr MOLHOEK: In terms of the head contractor or the builder whom I have engaged to build my factory or whatever, who has the signing authority and who gets to release the funds out of that account? Who administers that account?

Ms Carroll: The head contractor sets up the trust account and then the head contractor needs to provide to the principal what are called payment instructions. There is a set of payment instructions, effectively at the beginning, that says, 'These are the subcontractors that I have engaged'—and they can be added to over time because often not all of the subcontractors are on right at the beginning—'and this is the payment instruction mechanism.'

What would happen now is that the head contractor would say to the principal, 'We are up to this stage; this is the amount of money that should go into the account.' The payment instructions say, 'This much is due to him or her as the head contractor and to these three subcontractors'—the electrician has done this much work, the plumber has done this much work, the roofer or concreter has done a certain amount of work. There is then a set of payment instructions. The money flows. The principal pays into the trust account and that money is automatically disbursed as per those payment instruments.

CHAIR: I would just like to interrupt for a moment and acknowledge the Speaker of the House, Mr Peter Wellington MP, the member for Nicklin, who is present. Thank you for coming.

Mr MOLHOEK: How is that different to what happens now? Does it just go into the builder's account? If he has 10 projects going on, he is juggling between all of them?

Ms Carroll: The comments that Mr Timms read from the Deloitte report showed that for builders who do all the right things effectively that is what they do. At the moment the principal just pays into the builder's account. If they are doing all the right things they would automatically pay as per the QBCC Act or the prescribed times. The feedback from subcontractors time and time again has been that that is actually not what happens and in particular that the timing of those payments is often delayed. That then gives the subcontractors a cash flow problem. They should have been paid within 15 days or 25 days but instead they have been paid at 90 days.

Mr MOLHOEK: How is that different to what happens with a home renovation and people engage a project builder? What is the difference between a project bank account and the Queensland Home Warranty Scheme? What ensures those subbies are going to get paid? It seems to me that a lot of those subbies are not being paid.

Ms Carroll: I think the Home Warranty Scheme does a different thing. Mr Bassett may be able to explain that in a minute. In terms of the issue that you raised about subbies on smaller home jobs, we looked at that as part of considering project bank accounts. We considered how far they needed to go. Part of the advice from Deloitte was that once you went under a million dollars the capacity to do things like set up the project bank account, monitor and all those things started to cost the builder too much. Once you have projects over a million dollars you have the scale.

We are recognising there is a group that is not covered, but the important thing is to get this started. If once this is in place there is a recognition that it is working really well and the overhead costs for individual builders are not considerable, it could be applied. That would be a decision for government. Effectively what the Deloitte report said was that a million dollars gave you a threshold.

Mr MOLHOEK: I am going to be asking some questions on notice.

CHAIR: I want to go back to the payment of subbies and the way that rolls out, having come from that world. A subbie may feel that he should be paid because he has reached a certain project milestone but he is not being paid because maybe he needs the plumber to come in and do X before he can complete the last 10 per cent of his work. You said the QBCC has oversight. Is there to be an appeals mechanism for this guy to get his payment because he could go belly up because of that? That is what currently happens. That is my understanding of the way it is. Will this end that process? Will there be an appeal? Will he be able to get his payment, knowing that he still has a portion to do but he cannot do it right now?

Ms Carroll: In the project bank accounts there are also retention funds and disputed fund accounts that exist. The idea is that there is a suite of measures which go to BCIPA and subbies charges et cetera. I might get Ms Cooper or Mr Timms to explain a bit more.

Mr Timms: In terms of the question about hurrying up the payment, there are a suite of reforms within the bill generally and then there are the PBAs as well. The first thing about the PBAs is that there is a disputed funds account. In the situation that you have described where the subbie puts in a claim for payment and the head contractor says, 'This has not been done yet,' there might be a situation where the difference between the principal's view of the world and subbie's view of the world will involve that money going into the disputed funds account. That is then protected. The BIF bill includes the Subcontractors Charges Act and the BCIPA. Those avenues are still available to them. There are a few different avenues there.

CHAIR: I can think of dozens of examples where the concreter contractor does the foundations and they cannot do the grouting around the foundations until another contractor comes in and lays the steel work or whatever.

Mr BENNETT: The committee needs to be aware that this is creating three PBAs on every project. Is it fair to say that if the general trust is short for any reason—for example, the client has not paid the principal—the builder is required to top up that PBA to meet the requirements of payments?

Ms Carroll: Just as they are required to now make their payments, if a subcontractor has done work and the principal has not paid the head contractor that same position retains. Yes, they are required to pay the subcontractor if it is due and payable, but that is actually technically how it is supposed to work now.

Mr BENNETT: I suppose the concern is that the head contractor then takes the responsibility. Say there is insolvency up the line—the client or the developer is not paying—the builder then takes that on. Can I also ask about the costs identified in the explanatory notes. I did not see that there was a cost for the implementation of the PBAs. Has there been an estimate of what it is expected to cost the head contractors to administer the three PBAs during the process that the PBAs are set up?

Mr Timms: For the initial rollout to government it is between \$1 million and \$10 million. Agencies will be absorbing that. The goal as part of that evaluation piece that is referred to in the explanatory notes is that that will inform the ongoing rollout of the scheme. Initially it is all for government. We will absorb any costs and then we will include those in the evaluation.

Mr BENNETT: The head contractor is engaged by government to build the school building, I think in Ms Carroll's example. They have to administer the PBA. My assumption is that there will be an administrative element within that principal's construction. Is there an estimate of what we are anticipating that would cost the head contractor?

Mr Timms: Currently we have estimated four to five hours per month of extra administration. That is based on an extrapolation of the Western Australian example. That is what we have at the moment. The cost of establishing the trust account is about \$15 and it is about 15 cents per transaction. That is our initial advice.

Mr WHITING: I certainly congratulate you on the extent of those consultations. Obviously November-December through to March is quite substantial. I think it says a lot about the preparation that has gone into this. Going into this we have been looking at what has been done around Australia in terms of project bank accounts. Obviously it has been done in other places. Are you aware whether there have been any issues with project bank accounts in New South Wales, Western Australia and the Northern Territory?

Ms Carroll: Certainly in Western Australia, which is the most sophisticated extensive example—they have been operating now for a number of years—they have had an internal evaluation done which found them to be quite successful. I have met with the Western Australian officials and they have talked about how it has certainly assisted in their sector and they have not had any very negative kinds of repercussions.

CHAIR: We have talked about the private sector and the million dollar threshold. Is there an estimation of the timing of the rollout of PBAs to the private sector and over what time period that could occur?

Ms Carroll: As is indicated, the government sector would start from 1 January 2018, with the private sector starting a year later, on 1 January 2019, but that will be dependent on an evaluation we are doing as part of the initial rollout and obviously it will be back to government to make that final decision.

Ms PEASE: You spoke earlier about prescribed periods or dates where progress payments have to be made. Has that changed? Has that period of time altered?

Ms Carroll: No.

Mr MOLHOEK: I have some questions on notice but there are a couple of things I want to ask now. In terms of the oversight, oftentimes, as I understand it, a major project is undertaken and then the banks also play a very active role in the timing of payments. There might be a \$30 million project and the bank does advances over time. What impact does this legislation have on the banks and the relationship between them and the developer and the builder? Does the chain of responsibility take everyone into account? What if the builder is sitting there saying, 'We have ticked all these benchmarks but the bank is now holding us back because they are waiting on a certification.'? What do all those relationships look like and how deep does this legislation go as far as the bank's obligations as well as the project builder?

Mr Timms: If banks want to provide the project bank account service they have to comply with the legislative obligations. We are happy to further look at the specific question about the \$30 million example, but currently if they are part of this process they will have to pay. I cannot think of reasons they would not, initially.

Ms Carroll: I think what you might be describing is the kind of cash flow that the head contractor or the principal might have from their bank. We certainly have had some initial conversations with the Commonwealth Bank about project bank accounts, and Deloitte also kind of looked at how banks provide finance and all of those sorts of things as it goes. Clearly, the really important thing is for the banks to understand that, as Mr Timms said, once the job is started and they are providing finance to the principal then they will need to ensure that flow of funds meets the requirements of the project bank accounts.

Mr MOLHOEK: There is an obligation on the banks to continue funding as well?

Ms Carroll: Not an obligation, but they will need to understand that the principal will need to, as they set up the contract, understand how their loan from the bank works to ensure that what does not happen, which is what Mr Bennett described, is the right amount of funds not flowing across to the head contractor. Just as it is now, it is the responsibility of the principal and the bank to ensure there are appropriate levels of funding flowing from the bank. This particular act does not require anything of the banks, but obviously if a head contractor or a principal is interacting with the bank they will take that into account.

CHAIR: With your questions on notice, ask the questions and if they cannot be answered we will place them on notice. That will make it simpler.

Mr MOLHOEK: Sure. Do these project bank accounts cover things like where there is a subdivision being developed? In that sort of project, where there are earthworks, roads and infrastructure going in, do the same rules apply or is it only on buildings and structures?

Ms Carroll: The engineering work and that sort of work is excluded, but the building work is included.

Mr Timms: Over \$1 million in 2019.

CHAIR: I may be able to flesh that out with another question. This is for government works. Coming from where I come from, which is building substations, there are substantial civil works that would be covered by this, I would imagine. That would answer your question.

Mr WHITING: I have a follow-up from Mr Molhoek's questions regarding how the banking system finances and copes with the PBAs. Am I right in saying that the banking system has experience already with the PBA system in New South Wales and Western Australia in particular and the Northern Territory? They have already developed the experience and expertise to deal with this system.

Ms Carroll: Certainly, because it already exists. The modelling that we have put forward is similar to the Western Australian model, so certainly banks are used to and have had experience in this area. Certainly New South Wales has had some project bank accounts as well. The initial discussions that we have had with Deloitte and the Commonwealth Bank are that they do not see a problem with it.

Mr BENNETT: Clauses 28, 31 and 32 of the bill talk about how in practice the PBAs are intended to work. I have two questions around undefined issues in the bill and one is about prescribed payments that are mentioned in those clauses. The clauses are relatively clear about how the PBAs are intended to work, but they do talk about payments to be prescribed by regulation which is not yet defined in the bill and I would ask you to comment on that. I am referring to 28, 31 and 32 about how the project bank accounts will work under the head contractors. As I said before—I do not want to repeat myself, but I am trying to help Mr Timms—they are relatively clear about how the PBAs are intended to work but they talk about prescribed by regulation prescribed payments. I am wondering if you are able to help me with what is an undefined category of payments in the bill.

Mr Timms: I am sorry, I will have to take that on notice. It was clause 28?

Mr BENNETT: Clauses 28, 31 and 32 deal with the purposes of payments around project bank accounts and essentially how they are going to work under the head contractors.

CHAIR: Limited purposes for which money may be withdrawn.

Mr BENNETT: Yes. It talks about prescribed payments. They are not defined in the bill and I am curious going forward, when we are talking about bringing it into the private sector, how that could be addressed.

Mr Timms: Sorry, my mistake. The initial policy intent behind this was the cash payment piece. That was raised a lot during consultation. That is why, for example, the project bank account is predicated on an electronic payment system—so that that can be audited more effectively. According to feedback, there was a fair bit of concern around being offered cash and how comes into the PBA. That was the initial driver. That also allows a bit of future proofing there. We are happy to come back with more examples.

Mr BENNETT: Still, my point is that it is to be defined by regulation that has not been defined yet. The second one is about the mandatory and prohibited contract clauses, where we are going to insert section 67GA and 67GB into the act. This is about the prevalence of unconscionable and unfair activities. The clause about 'pay when paid' is again to be defined in regulation, not yet defined. I just make a point that I think it would be a fair expectation that that be clarified. During the second reading debate I suspect would be appropriate, but I raise that with you. There are a lot of questions in that space.

Mr Timms: It is good to be able to have those questions. 'Pay when paid' specifically is when you have a contract but, despite the contract, the head contractor will not pay the subcontractor—this applies to other relationships as well—until they get paid initially. That defeats having a contract. That is what 'pay when paid' means. As far as the other terms that could be prescribed under regulation, that could be broad and it would include, for example, a contract that has been submitted to us where all liability for virtually the entire project is included in the primary contract with the subcontractor and when you do not have much leverage to say no, for example, if work is tight or whatever, people are having to sign these contracts and the amount of liability and risk they are taking is unconscionable so it is terms like that that are within scope.

Mr BENNETT: To be clear: yet to be defined, to be defined during the process of regulation, but they are not defined in the bill just yet?

Mr Timms: That is correct.

Mr BENNETT: I want to make that point for the committee's benefit.

Ms PEASE: I am just wanting to clarify—I am sorry that I do not understand this—with regard to that particular section about engineering works. If there were a subdivision which would, from my understanding, require some engineering of some description—civil works in terms of moving dirt around and then roads being built in that subdivision—if it was the same contractor and the same principal doing that, would it be cut, would it be split or would it be included under this?

Mr Timms: There are a few questions there as well. We will get some specific advice with some scenarios around the subdivision question. However, you have your \$1 million threshold which kicks in as well. The definition of 'building work' means, amongst other things, any site work including the construction of retaining structures related to the work of the client referred to above. We will definitely get advice on how it applies in those circumstances. However, to get to your first question, we have anti-avoidance provisions in the bill that are designed to make sure that the system is not gamed by breaking down the total quantum of work to get around establishing a PBA. Does that answer that question?

Ms PEASE: I guess that goes to the root of my question, thank you. It would be good if you could get some more information about that. Is that possible, Mr Chair?

CHAIR: Yes. We have that question on notice already. The member for Southport had some more questions.

Mr MOLHOEK: I am a bit curious as to why we are having a phase 1 and a phase 2 rollout. I have to be careful I do not get into opinion here. I am wondering about the proposed timing of phase 2. Phase 1 is government projects. It seems to me that all of the problems are more likely in phase 2. What is the likely timing of phase 2 being introduced?

CHAIR: We just went through that. You were writing down your other questions. It was a year later but depending on how the trial of phase 1 goes.

Mr Timms: January 2019.

Mr MOLHOEK: Is there a drop-dead date for that or can the review just go on forever?

Ms Carroll: The private rollout is proposed from January 2019, but obviously one of the things the government has committed to is looking at how the implementation of phase 1 went. The reason for the two phases is very clear. This is a significant change. In terms of having the project bank accounts occur on government projects first, the government is actually quite close to ascertaining if there are simpler ways: are there things that are occurring in how the project bank accounts are being set up, the administration of them, what the principal asks for et cetera? It is that oversight that we have talked about, which allows all of those things to be sorted out through government projects before it is applied more broadly. The idea of the sequencing is simply to make sure we do it in a systematic way, that there is not a big interruption to the industry. We want to make sure that it occurs smoothly and that adjustments can occur as we go.

Mr MOLHOEK: I am after some more information, really. Can the department provide us with a flow chart of the current scheme, how it works and how the proposed project bank accounts will work, right from the financier all the way through to how the subbies get paid, the time frames and what the process is for getting their payments and money?

CHAIR: That would simplify it.

Mr MOLHOEK: I would like to see a visual representation of what it currently is and what is proposed.

CHAIR: We need a whiteboard.

Mr MOLHOEK: Maybe. Can the department provide a written overview on how the Queensland Home Warranty Scheme operates and who administers the scheme?

CHAIR: Is that part of—

Mr MOLHOEK: I think there is some relevance because it is a project bank of sorts as well, is it not?

Ms Carroll: Perhaps I will get Mr Bassett to explain how the Home Warranty Scheme works. There is certainly information on the QBCC website.

Mr MOLHOEK: Is the QBCC the administrator of the Home Warranty Scheme?

Mr Bassett: Yes. I thank the member for the question. The Home Warranty Scheme has been set up to make sure that any residential building is completed in time if the builder who was previously constructing that dwelling goes into insolvency and cannot complete, if the builder who was previously

constructing that dwelling passes on, or if they fail to rectify the building as a result of a direction to rectify from us. We have a specific insurance fund. The way that the scheme currently works, to return to your earlier example, is that you would engage a builder and the builder would engage with you in a borrower contract. As part of that, you then have to take out home warranty insurance and that is done directly with the QBCC. You do that directly via an online mechanism, and the funds for the policy that you pay are deposited into the Queensland Home Warranty Scheme insurance account which is, in effect, a QBCC account.

Mr MOLHOEK: It is not outsourced to private insurance companies? It is managed by the state, held by the state and owned by the state?

Mr Bassett: It is administered and managed by the QBCC. We have five underwriters who provide some reinsurance to us. We have an insurance manager, which is a legislative requirement. In effect, we are the insurer for those works.

Mr MOLHOEK: Is that underwriting arrangement a bit like a captive cell? You are self-insured to a certain level of claims and then the larger claims get passed on to the insurers?

Mr Bassett: It is not a captive cell. It is about making sure that we mitigate the risk for what can often be, for example, some very large claims and some claims that may have a long tail. That is what that is about.

Mr MOLHOEK: As a question on notice, I would like a more detailed overview on how that works, and I would like to know the dollar value of the premiums that are collected each year versus the total payouts.

CHAIR: That is not really relevant to this bill, though, is it?

Mr MOLHOEK: It is because—

CHAIR: I do not think it is relevant to this bill.

Mr MOLHOEK: If I can finish, Mr Chair, the whole focus of this bill is about providing subcontractors with a sense of security that they will be paid, and it is subcontractors from all walks of life, whether they be working on home renovations, building new houses or building government projects. It is highly relevant because there is a relationship between all these different channels of payment.

CHAIR: I dispute that because of the million dollar threshold. We are delving into stuff that this bill does not cover, but the first part of your question is quite relevant.

Mr MOLHOEK: Mr Chair, it is the subcontractors on the smaller projects that are not being paid.

Mr Timms: Mr Chair, whether it is within the scope of the bill is a call for you. I am not going to comment on that. What I will comment on, though, is that under the existing regime, and it is maintained, a sub-subcontractor can use the Subcontractors' Charges Act—it will become part of BIF—to lodge a claim, so he or she has that avenue available. A sub-subcontractor can use the adjudication process. A sub-subcontractor can use the moneys owed complaint through the QBCC.

We have not forgotten those subbies working on projects under a million dollars. That is the point about the suite of reforms. It also goes to the minimum financial requirements. Like what happened with the product disclosure statement for the Home Warranty Scheme that was pulled into a regulation to give it more weight, more consistency and more clarity, it is the same thing with the minimum financial requirements. If we get that right and we are much more active in ensuring the bigger head contractors are solvent, we therefore look after the subbies as well. The whole suite of reforms in that bill do not forget the sub-subcontractors and the projects under a million dollars.

CHAIR: Thanks for that. My understanding was that the Home Warranty Scheme was to protect the home owner, not the subcontractors.

Ms Carroll: That is right.

CHAIR: You wanted some more flesh on the first part of the question—

Mr MOLHOEK: I want to completely understand what is the difference between the Home Warranty Scheme—

CHAIR: It is to protect the home owner.

Mr MOLHOEK:—and what is essentially an insurance scheme through project bank accounts for subbies. They are both a form of assurance or insurance.

CHAIR: One is for a home owner and one is for a subcontractor.

Mr MOLHOEK: I just want to understand what the fundamental differences are.

Ms Carroll: We can take that on notice and provide a description of how the two things interact or do not interact.

Mr MOLHOEK: To clarify, Mr Chair, I am wondering why we do not just have a warranty insurance scheme across-the-board rather than project bank accounts. A project bank account does not necessarily ensure that the money will be there to pay people. It is just a much more accountable and transparent process. The real issue is that we want people who did the work to have some assurance or insurance that they will get paid regardless of whether the contractor, the builder or the construction company goes broke or the bank refuses finance. What I am exploring is: is it possible to expand the other?

Ms Carroll: I would not want to comment on policy.

Mr MOLHOEK: No, I understand. That is why I am asking for comparative information—

CHAIR: One is for home owners and one is for subcontractors, but I am not here to answer your questions.

Ms Carroll: We can put this in writing for you to explain it further, but the Home Warranty Scheme is protecting the home owner and the provisions in this bill are to help protect the payments to subcontractors. If it is under a million dollars, as Mr Timms said, all of the things in the bill that were part of the old Subcontractors' Charges Act and BCIPA apply. Once you go above a million dollars, you also have project bank accounts, so you have a big range of things.

Mr MOLHOEK: I would like the QBCC to provide an overview of what extra costs will be involved in taking on these additional responsibilities.

Ms PEASE: I note that in the bill there is an increase in the number of persons on the QBC Board and that the bill makes it more representative of the building and construction industry. What sorts of people are you looking for? Is the diversity or range of people that you are looking for commented on?

Ms Carroll: The idea of increasing the possible number of people on the board is exactly that—to make sure that there is a good cross-section and representation of different sectors. People are on the board for the skills that they bring to the board. Often what happens is that you might want people who have building industry skills, legal skills and financial/banking skills, but with a limited number on the board often you do not have as broad a representation. This allows that in any mix on the board you do not have to fill all the positions but it allows additional positions if for whatever reason at different times the people on the board do not cover a couple of different sectors.

Ms PEASE: What is the current membership?

Ms Carroll: Seven.

Ms PEASE: What is the extension going to be to?

Ms Carroll: Ten.

Mr Timms: Mr Chair, may I clarify an earlier question regarding the regulation-making power. We definitely know about the transfer of the risk. We know that we have to put that in a regulation. Obviously other issues will arise in the future so we want to make sure we can deal with that. Also, a regulation-making power was switching on phase 2. To answer your question about the time frame, further to what Ms Carroll said about the evaluation process, there is a formal mechanism through a regulation-making process to enliven phase 2.

CHAIR: With the time remaining, I might go through the questions on notice that we have so that everyone is on the same page. The first one is a question from the member for Burnett which contains two parts. How do project bank accounts work in practice as an overview? While clauses 28, 31 and 32 of the bill provide a relatively clear idea of how the clauses are intended to work in practice, each of the proposed sections also enable payments to be made as prescribed by regulation. I know that you just touched on that, Mr Timms. This opens up an undefined category of payments or prescribed payments, as the fairness bill defines it, without any idea of what these payments would be for. Can the department define these prescribed payments? That is all on notice.

Part 2: mandatory and prohibited contract clauses, proposed insertion of section 67GA and 67GB to the QBCC Act—amendments to the QBCC Act by including mandatory and prohibited clauses into building contracts while including fines for noncompliant commercial building contracts. These are not defined. Without any indication of the type and wording of the proposed mandatory or prohibited clauses it leaves great uncertainty. What is the question?

Mr BENNETT: Again, we would like those defined.

CHAIR: Just a definition.

Mr BENNETT: We are talking about undefined clauses to be included in a commercial contract building. Again, I think it would pose uncertainty to the sector in not having any definition of what those prohibited clauses are. Are we able to define those clauses? Can that be taken on notice?

CHAIR: That is what I am reading out—the questions we are placing on notice. I am just clarifying the questions on notice—it is probably a new and trendy thing to do—so that we are all on the same page. The third question on notice is for a visual representation of the current scheme and how it works compared to the existing scheme, so a flow chart. Could you also describe how the Home Warranty Scheme works for the protection of home owners—

Mr MOLHOEK: I actually have the question written out.

CHAIR: Okay. Could you provide an overview of the Queensland Home Warranty Scheme, how it operates, who administers the scheme and how it interacts with this bill? I will not go into the values because we decided not to do that. What are the extra costs to the QBCC in taking on these responsibilities? They are the questions on notice.

Mr MOLHOEK: I have three other things I want to ask for. One, can the department provide us with a list of recent collapses over the last three years? In the bill it talks about 'following a series of high-profile collapses'. I would like to know if the department has a list of what collapses have occurred and if we can have some detail on them for the last three years. Two, can we have a copy of the Senate Economics References Committee inquiry that was referred to? I have not seen that. Three, could the department provide some information or a summary of any issues that were raised during the consultation on the security of payments discussion paper, and can we have a copy of the discussion paper?

CHAIR: We already have that.

Mr MOLHOEK: Okay. Can we have a summary of any issues raised during consultation on the security of payments discussion paper?

Ms Carroll: We will be able to provide you with what is on the public record such as the discussion paper or anything that the government has made a decision to release around the consultation process.

CHAIR: If something is not able to be disclosed, we will certainly accept that. There is also the member for Lytton's question on the breakdown. Mr Timms, I remember that you replied—

Ms PEASE: That you would get some information about the subdivisions.

CHAIR: There was the break-up of the civil parts of it. You also said that there were clauses to stop people using that as an excuse. We would like some clarity around that. We will get this list to you, obviously.

Mr Timms: There was one comment I think Mr Bennett made and perhaps I might have misheard it. I think he said that the principle was to establish three separate accounts. The head contractor will establish one trust account and there will be some subaccounts in there.

Mr BENNETT: But, in essence, there are three PBAs for every project. That was my point.

Mr Timms: There is one project bank account made up of a trust account, the disputed funds account and the retention trust account.

CHAIR: Thank you all very much. I declare this public briefing closed.

Committee adjourned at 11.01 am