



Speech by

Mr TIM MULHERIN

MEMBER FOR MACKAY

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QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT BILL

Mr MULHERIN (Mackay—ALP) (2.42 p.m.): It is with pleasure that I rise to speak in support of the Queensland Building Services Authority Amendment Bill. In her second-reading speech, the Minister outlined the reasons for the Bill. I wish to focus on how the Bill will rid the industry of phoenix builders. Phoenix builders are those who go bankrupt and emerge in a new guise shortly thereafter, leaving a trail of unpaid subcontractors and suppliers—and dissatisfied consumers—in their wake. In a broader sense, often the victims are ordinary working people who are left with unpaid wages, group tax, superannuation and long service leave entitlements. Many phoenix builders are serial offenders, and this has a great impact on public confidence in the industry.

Until now, it has not been possible to exclude these people from the industry. They have exploited loopholes and made their way back into the industry by becoming the manager—officially an employee—and not a director of a licensed building company of which they are in de facto control; by becoming the controlling shareholder of a licensed building company; or by using an arrangement under the laws of bankruptcy whereby the creditors agree to settle for, say, 10c in the dollar and are then granted a fresh licence.

This Bill will effectively put a stop to these practices by defining "excluded individuals" and "excluded company". The Bill defines as "excluded individuals" anyone who has personally, or who has been an influential person in a company that has, taken advantage of the laws of bankruptcy within the last five years. An "excluded company" is simply a company that has an excluded individual as an influential person or executive officer.

The Bill recognises that in some cases people go bankrupt through no fault of their own. In the building industry, a contractor may not be paid because of some action higher up in the contract chain. For example, a subcontractor could be contracted to another contractor on the same site who is a phoenix. When the phoenix contractor is liquidated, the subcontractor is not paid and is bankrupted through no fault of his or her own work. Another example is where personal circumstances such as a relationship breakdown could lead to substantial loss of movable assets. In such cases, there is provision to avoid exclusion by being categorised as a "permitted individual" for a bankruptcy event. The sole test for becoming a permitted person is that the person took all reasonable steps to avoid the bankruptcy event happening.

To avoid injustice or the arbitrary use of power by the BSA the Bill explicitly provides that decisions at each procedural step can be appealed to the Building Tribunal. Decisions of the tribunal can of course be further appealed to the District Court. At each significant procedural step a 28-day period is provided before further action is taken. Only when all periods have expired and reviews have been rejected will the BSA proceed to cancel an excluded individual's licence.

To remove the expense in the appeal process of repeated applications from the same person in respect of the same event, only one application for permitted individual status is allowed for any one bankruptcy event. For a company, because excluded status is tied to the presence of an excluded individual as an executive officer or influential person, the Bill sets up two separate procedures for having the status lifted. The company can either divest itself of the excluded individual or the individual concerned can apply for categorisation as a permitted person.

The same safeguards regarding review periods before cancellation action is taken are in place for companies as for individuals. A company may seek a review on the question of the Building

Services Authority's decision as to whether or not an excluded individual is an influential person within the company. For example, the size of a shareholding may be an issue depending on the ownership structure of a particular company. A shareholding of 5% may be significant in a company where another shareholder has 46% of the shares, but less significant where another shareholder has 80% of the shares. Because such cases will need to be determined on a case-by-case basis, the Bill leaves it to the tribunal and courts to make appropriate rulings.

These measures give a clear message that shonky and incompetent builders are not welcome in Queensland. They will go a long way towards giving this State the cleanest building industry in the nation and one in which all consumers can have confidence. I congratulate the Minister, the Honourable Judy Spence, and her departmental officers on this forward-looking legislation.
