




Speech By
Hon. Tim Mander

MEMBER FOR EVERTON

Record of Proceedings, 21 May 2014

BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS AMENDMENT BILL

Introduction

 **Hon. TL MANDER** (Everton—LNP) (Minister for Housing and Public Works) (3.31 pm): I present a bill for an act to amend the Building and Construction Industry Payments Act 2004 for particular purposes. I table the bill and explanatory notes. I nominate the Transport, Housing and Local Government Committee to consider the bill.

Tabled paper: Building and Construction Industry Payments Amendment Bill 2014 [\[5147\]](#).

Tabled paper: Building and Construction Industry Payments Amendment Bill 2014, explanatory notes [\[5148\]](#).

When this can-do government came to office, business was hogtied in so much red tape and regulations by those opposite that it was sapping the growth of the Queensland economy. Industry had lost confidence and was not investing in the future. Queensland business and the economy needed a strong plan for growth, and this is exactly what they got with the election of this government. We have a strong plan for a brighter future for this state. This plan includes growing a four-pillar economy based on tourism, agriculture, resources and of course construction. As one of the four pillars, the government is committed to building confidence and facilitating growth in the building and construction industry. We are delivering on our plan by cutting red tape and reducing the regulatory requirements on business. Initiatives such as the introduction of notifiable works for plumbers, cutting the mandatory requirement to install rainwater tanks and solar hot water systems make it easier for industry to do business and reduce the costs of doing business. Reforms like the removal of the Queensland Building Services Authority and establishing the Queensland Building and Construction Commission, or the QBCC, are already helping to grow industry confidence.

Through this bill, the Queensland government is taking the next step in its plan to boost confidence in the industry. We are responding to concerns raised by the building and construction industry that while the intent of the original Building and Construction Industry Payments Act 2004, the BCIPA act, was sound and worthwhile there were some unintended consequences that undermined the industry's confidence in the act. The intent is to ensure that a person is entitled to receive and is able to recover progress payments when they undertake construction work under a contract or to supply related goods and services under a construction contract. BCIPA establishes a system of rapid adjudication for the interim resolution of payment disputes involving building and construction work contracts. It is an act where on one contract a person might be the claimant but on another they may become the respondent.

To have a better understanding of this concern and to hear what industry thought the best solutions might be, a discussion paper was released for public consultation. This discussion paper asked 19 questions covering a broad range of items across the act. Mr Andrew Wallace, a barrister with industry experience as an adjudicator, was appointed to assess the submissions received in response to the discussion paper, consult with relevant stakeholders and prepare a report for consideration by the government. As part of this consultation, 128 written submissions were received and 86 one-on-one interviews were conducted to further drill down into the industry's concerns and

proposed solutions. These submissions and interviews were received and conducted with a very broad range of stakeholders including authorised nominating authorities or ANAs, adjudicators, builders, contractors, lawyers, resource industry representatives and relevant government agencies. The consultation process identified three key areas of concern that the industry had about the act. These were the process of appointing adjudicators to a claim, the skills of an adjudicator to hear a particular claim, and the inequity in time frames between those who lodge a claim and those who have a claim lodged on them.

The Wallace report was delivered to me on 24 May 2013 and contained 49 recommendations for consideration. In developing the government's response to the recommendations, my department worked collaboratively with other agencies including the Department of State Development, Infrastructure and Planning, the Department of Natural Resources and Mines and the Department of Transport and Main Roads, as well as the Australian Institute of Building and the Queensland Building and Construction Commission. In response to the Wallace report, the government has agreed to accept the majority of the recommendations which provide a suite of reforms to address issues that had been raised by stakeholders from all sectors within the building and construction industry.

The bill covers three areas of reform designed to address the issues raised by stakeholders. Firstly, the bill addresses the appointment of adjudicators and the adjudication process. The bill establishes a single adjudication registry within the QBCC, which administers the act, to appoint adjudicators based on their skills, knowledge and experience. The QBCC will also monitor the performance of adjudicators. Currently, the QBCC is the adjudication registry for BCIPA. As part of this function, it registers ANAs and suitably qualified adjudicators, nominates training organisations responsible for delivering courses to people seeking to be adjudicators, manages a public register of the registration status of ANAs and adjudicators, and also manages a public register of adjudication decisions. The bill changes the role of ANAs, which will no longer appoint adjudicators. This removes the perception of conflicts of interest in the appointment process raised in response to the discussion paper. ANAs will continue to offer their services as a document service agent. Adjudicators will now be required to determine if they have jurisdiction to make a decision. Claimants will also have the ability to withdraw an adjudication application during the adjudication process if they so choose, which cannot be done under the present legislation.

The second key area of reform is to introduce a fairer system for payment claims between claimants and respondents and to address complex claims. To expedite the resolution of claims, the time to serve a payment claim will be reduced from 12 months to six months after the construction work was last carried out, unless the contract provides for a later time. The time to serve a final payment claim will be six months after the work was last carried out, unless the contract provides for a later time. Where the contract contains a defects liability period, the time for a final payment claim will be 28 days after the end of this period. To ensure a fairer system, the bill makes separate provision for standard payment claims and complex payment claims. A complex claim is where the payment claim is for more than \$750,000 or is for a latent condition or a time related cost.

For complex claims, respondents will be given more time to provide a payment schedule in response to a payment claim. Time frames will be further extended if the payment claim for a progress payment is served more than 90 days after the date in the contract which a claim for progress payment may be made.

The definition of business days will also be amended to exclude the three business days before Christmas through to 10 business days after New Year's Day to reflect industry shutdown. This change will remove the possibility of ambush claims—claims lodged on Christmas Eve or New Year's Eve but still had to be progressed within the mandated number of days.

The third main area of reform addresses the concern raised by industry that a payment schedule must be compiled and served within five business days after receiving the payment claim even though payment claims may have been prepared over extended periods of time. This response time will be extended to 10 business days for standard payment claims.

For complex claims, respondents will have longer to respond to the adjudication application and will also now be able to provide additional information to the appointed adjudicator to support their adjudication response.

The reforms outlined in the bill ensure a fairer and more equitable system for appointing adjudicators. The reforms will also provide a better balance between the interests of claimants and respondents and reduce the instance of late claims, which will ensure a fairer system for all parties. To ensure the reforms address the concerns expressed by all stakeholders, a review of the impacts will be undertaken 12 months after implementation of the reforms. I commend the bill to the House.

First Reading

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (3.41 pm): I move—

That the bill be now read a first time.

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

Motion agreed to.

Bill read a first time.

Referral to the Transport, Housing and Local Government Committee

Mr DEPUTY SPEAKER (Mr Ruthenberg): Order! In accordance with standing order 131, the bill is now referred to the Transport, Housing and Local Government Committee.

Portfolio Committee, Reporting Date

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (3.41 pm), by leave, without notice: I move—

That under the provisions of standing order 136, the Transport, Housing and Local Government Committee report to the House on the Building and Construction Industry Payments Amendment Bill by 18 August 2014.

Question put—That the motion be agreed to.

Motion agreed to