




Speech By  
**Hon. Tim Mander**

**MEMBER FOR EVERTON**

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Record of Proceedings, 11 September 2014

**BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS AMENDMENT BILL**

 **Hon. TL MANDER** (Everton—LNP) (Minister for Housing and Public Works) (12.11 pm), in reply: I thank all honourable members for their interest and their contributions to the debate on what is a very important issue. In particular, once again I thank the members of the Transport, Housing and Local Government Committee for their diligence and the hard work that they put in to examining this legislation. Again I acknowledge all those who made submissions on the bill and took the time to present their arguments before the committee. I will address some of the issues raised by the various speakers.

The member for Redcliffe suggested that there has not been enough consultation on this legislation. With respect, on this bill there has been as much consultation as is humanly possible. In my time, the review of this act and the consultation process has been going for almost two years. If some parties are disappointed because they did not get their way, that does not mean there was not enough consultation. I note the member's comments about the 2002 Cole royal commission and its views on security of payment issues within the industry. My question to the member for Redcliffe and the Labor Party is this: what did they do about that? They had more than a decade in which time they introduced the current BCIPA regime, a regime that they are now complaining about as it does not do enough to protect subbies. Now they are saying that it ought to be expanded to include a complete overhaul of the building industry payment system. It is almost as though Labor's interest in the interests of subcontractors was born at roughly the same time they made the sad walk from this side of the chamber to the other.

Security of payment in the construction industry has been an issue for as long as there has been a construction industry. What did Labor do about it? Absolutely nothing! I have already told the House what this government is doing and will continue to do. Unlike those opposite who spent a decade sitting on their hands, we are committed to improving security of payment for contractors. However, you do not do that by expanding the scope of the BCIPA act so that it becomes a monolithic catch-all bill encompassing fraud, insolvency and phoenix activity. This bill is not the appropriate vehicle for bringing about that kind of change. The legislation before the House is about addressing specific issues around the probity and fairness of the current payment dispute resolution system.

I turn to the suggestion by the member for Redcliffe that there is no evidence of problems with the current process. Again I would direct her to the Wallace report and the litany of testimony questioning the probity of the current process and highlighting the potential for bias and conflicts of interest to prosper. If the member genuinely believes there is nothing wrong with a situation where vast sections of the industry have serious concerns about the probity of the process, then she is not on the same planet as the rest of us. I hark back to the examples I gave during my second reading speech of the mutual back scratching that allegedly goes on under the current system. Let us consider a situation where claim preparers, who are also adjudicators for a particular ANA, would allegedly recommend that the claimant use that ANA in exchange for the ANA providing the said

adjudicator with work on another claim. That is an inherent conflict of interest in the process and, therefore, needs to be addressed.

Finally, I turn to the farcical suggestion that the bill has limited industry support. The bill has almost universally been welcomed by industry. Just because the member can fill her speech with extensive quotes from those who have different views does not validate those views. The fact of the matter is that, by and large, the only people who have taken issue with these changes are people with a vested interest in preserving the status quo. I note the comments of the member for Redcliffe about the need for an exposure draft of the legislation. I am very reliably advised that no such exposure draft was provided by the ALP during their introduction of the original BCIPA legislation.

I now turn to the comments of the member for Warrego and chairman of the relevant committee. I thank him for his support and his stewardship of the committee as it went through this process in great detail. I thank him for recognising that the legislation put forward by the government will be a significant improvement on the current system. I thank him also for his recognition that there could be no more qualified person to review the act than Mr Andrew Wallace, a man who knows the industry backwards, having worked at every level from the construction site to the court room. He is a builder, a solicitor, a barrister and an adjudicator.

I refer to the contribution of the member for Yeerongpilly, which can only be described as rambling gibberish that was very difficult to understand. I do not doubt that he is genuine in his concern for subcontractors, but I fear he has wasted his time babbling on about fraud and insolvency issues rather than discussing the issue of the payment disputes, which is what this bill is all about. I also note that he expressed a great deal concern for the people of the Sunshine Coast. He said that the people of the Sunshine Coast are 'being failed'. Those were his exact words. I did not notice any concern for the people of Yeerongpilly. I wonder why that could be? The voters of Yeerongpilly must be delighted to have a member who has completely abandoned them halfway through his first term in order to pursue his own political interests.

One particularly ludicrous claim was made by the member for Yeerongpilly. Specifically, he said that the changes that we are proposing to this act will radically change the core purpose of the act. That is absolute nonsense. It just goes to show how little he understands the legislation he is trying to criticise. The changes under consideration do not at all change the purpose of the act. They simply ensure it can achieve that purpose without being subject to accusations of bias or conflicts of interest. I do not doubt the member's concern for people who do not get paid for services rendered. Who is not concerned about that? Not paying people when you owe them money is a low act and that is what he implied. On that topic, during his speech Mr Judge was very keen to read a number of newspaper articles and I thought I might do the same. I have one here, which I am happy to table, about the leader of the Palmer United Party, Clive Palmer, refusing to pay \$5,300 to a small country race club that hosted a calamari and chips night for his political party. I refer the member to this article and suggest that to avoid being labelled a hypocrite he should reassure the House that no similar bills have been left unpaid after PUP fundraisers in Yeerongpilly or on the Sunshine Coast or wherever this member might ultimately decide to pursue his self-interest.

*Tabled paper:* Bundle of media articles regarding Clive Palmer MP [\[5940\]](#).

I thank the member for Moggill for his common-sense contribution. He is a man who has had experience in this area. He is a man who was the Minister for Housing and Public Works. He knew about the uproar in the industry with regard to this particular act. Again, he brought some perspective to the debate. This is not about totally reconstructing—excuse the pun—the building and construction industry. It is a specific act that we are dealing with today. It deals with those who are involved in disputes in trying to get progress payments. I thank the member for Moggill for his contribution.

I thank the Minister for Local Government, Minister Crisafulli, for his contribution from a local government perspective.

I turn to the member for Nicklin's contribution. Like the member for Yeerongpilly, he focused his attention on things that are not within the remit of the bill being debated today. I refer the member to my previous speech about what we are doing to help protect subbies. I ask the member for Gladstone to listen to this too. There are two distinct things we are doing here. The first relates to BCIPA. We are making sure that disputes that come about in relation to progress payments are dealt with in a fair way.

The other issues about insolvency, companies falling over and the security of payments are totally separate issues. Those issues deserve attention. We remain committed to boosting the security of payments for subcontractors. We have begun investigating additional options to supplement BCIPA. Over the coming months we will be engaging with industry to develop a suite of initiatives that strike the right balance between the needs of all parties in the contracting chain.

The former leader of the Palmer United Party, the member for Gaven, made the same mistake as the current Leader of the Palmer United Party. He suggested that BCIPA can be a silver bullet to fix all the issues around security of payment in the construction industry, fraud, insolvency and phoenixing et cetera.

What these amendments can do is make the existing dispute resolution system fairer, more transparent and free from the conditions that lead to perceptions of bias. The member claims that the process is rushed. As I have already mentioned, it has been ongoing for almost two years. Precisely how long would he want this current situation to drag on for? I agree with the member's comments about the need to do something about the payment issues that have beset the construction industry for decades. That is why, unlike the former government, which did nothing for the best part of 20 years, we are doing it. I have mentioned what we will do.

I thank the member for Brisbane Central for his contribution. I wish him a happy birthday as well. I know he is not feeling the love today. He is a person who has had plenty of experience in the construction industry.

For the member for Gladstone's benefit, I want to reiterate some of the things I have said. When the member was talking about one of the committee reports she mentioned the Auditor-General. She said that it was important the Auditor-General was not only independent but also perceived to be independent. That is very relevant with regard to the adjudication process. We have a situation at the moment where claimants can go adjudicator shopping and try to find someone they think will give them favourable treatment.

There is an inherent conflict of interest in the way the system has been set up. I am not saying that there have been issues of impropriety but there is definitely the perception that that can occur. We have had plenty of anecdotal evidence that suggests that sometimes people did cross the line.

We are trying to address a totally different issue to the insolvency issues. They are important, but we will address those with a different vehicle. This act is all about giving subcontractors an opportunity to receive progress payments even if it is not in the contract and to make sure that when there is a dispute about that, there is a process to actually bring about a resolution as quickly as possible. That is the idea of the act. The act has, in the main, worked, but there have been some unintended consequences. That is what we are addressing with these amendments.

In conclusion, I would like to thank once more all honourable members who have contributed to this debate. I thank the officers in my department who have been working on this for quite some time. There has been an incredible amount of work put into this and an incredible amount of consultation. I again thank Mr Andrew Wallace for his contribution to this. He is a man who lives and breathes BCIPA. In my opinion, there is nobody who knows this act better—other than the registrar. I thank Mr Chesterman for the role he has played in bringing this together. On that note, I commend the bill to the House.