




Speech By
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MEMBER FOR SOUTHPORT

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BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) BILL

 **Mr MOLHOEK** (Southport—LNP) (12.55 pm): I also rise to speak to the Building Industry Fairness (Security of Payment) Bill 2017. At the outset I want to raise some concerns. We will not be opposing this bill. I think we have made that very clear. Like the government, those of us on this side of the House are very concerned that subcontractors are dealt with fairly, paid in a timely manner and have security of payment. Unfortunately, like so much of the legislation we have seen from Minister de Brenni, it has been ill thought out, rushed through the House and is incomplete. It is like the 10-year Housing Strategy that we heard so much about during estimates. You do not have to be good at maths to understand that if it is a \$1.8 billion strategy over 10 years that is \$180 million a year. That is actually a reduction in spending, so I am not quite sure where the minister is getting his advice or where he learned to add up.


Like so much of what we have heard from the minister, this bill promises a lot but fails to deliver real solutions. I support the trial, and I am pleased that in response to the committee's report the minister said they would be prepared to report back to the House before the implementation of stage 2 and we would get to have a close look at whether stage 1—the proposed project bank accounts and the rollout around government contracts from \$1 million to \$10 million—actually works. We have consistently heard from industry that, while this bill provides an improved payment process, it does not deliver any certainty of payment. Construction companies can still go broke and contractors will still struggle to get through the project from time to time. There will still be failures but there is still no absolute certainty of payment for subbies.

If I had to rate the bill, yesterday I would have given the Housing Legislation (Building Better Futures) Amendment Bill a five out of 10 because it only got halfway there. Frankly, I would give this bill a one out of 10. Seventy per cent of the subcontractors in Queensland are offered absolutely no additional protection under this bill because 70 per cent of the subcontractors in Queensland work on projects under \$1 million, so there is absolutely nothing in there for them. The minister has proudly gone around the state and consulted widely. He has told everyone what a great piece of legislation this is and how it will ensure that all subcontractors get paid and are treated fairly, but 70 per cent of the subcontractors across the state are not covered by this legislation. I give it a one out of 10 because of the 10 per cent of work that is done under government contracts. The other contract work, which is commercial work over \$1 million, does not even get a look-in for another 12 to 18 months until a review has been conducted.

I am disappointed that the minister has not gone further with this bill. The mere fact that there are some 143 amendments demonstrates that this legislation has been rushed and ill considered. I would even go so far as to suggest that, a bit like some of the other bills we have seen come to the House in recent times, this has been rushed in as a big, shiny bauble in time for Christmas, just ahead of the election, so that those on the other side of the House can rush around Queensland and tell everybody

how much they care and how hard they are working to change things. All they are actually doing, like the Housing Strategy and like this bill, is offering a lot of false hope.

The committee received quite a number of submissions during the process. One of the submissions that I thought needed more consideration was that of Hutchinson Builders which presented a very balanced submission.

 **Mr MOLHOEK** (Southport—LNP) (3.02 pm), continuing: I am pleased to pick up where I left off before lunch and continue speaking on the Building Industry Fairness (Security of Payment) Bill 2017. On reflection, I cannot help but wonder whether the bill would be more appropriately called the building industry fairness (security of progress payments) bill, because, from the intent of the bill in relation to project bank accounts, it is very clear that the proposal should ensure more timeliness of payments in the trial. However, I am concerned that there is no guarantee that ensuring the timeliness of progress payments will mean that projects will go to completion.

I asked the Parliamentary Library to do some research for me, as I was struggling to get the information from the QBCC or the department. I wanted to know how many known insolvencies there are in Queensland. I was informed that in 2013-14, 309 Queensland construction industry companies entered into external administration. That is a very sad number that highlights the need for genuine and real reform of the process of payments for subcontractors and a real need to provide genuine security of payment, not just for progress payments but also to ensure that subcontractors are paid in full. In 2014-15, some 281 companies entered external administration; in 2015-16, the figure was 328; and in the period 2016 to June 2017 there were 303 recorded companies. This information comes from the Australian Securities and Investments Commission. I am sure there are plenty of other examples of smaller cases outside of those known companies entering insolvency or external administration.

That takes me back to the point that I made before lunch and that I want to repeat because I think it is a really important point. The real concern is that in Queensland 70 per cent of subcontractors will not be a party to this scheme and will not be offered any protection as a result of this legislation. In fact, all we are really looking at is a 12- or 18-month trial in respect of government contracts.

The other concern that I started to speak about prior to lunch is simply the cost of this proposed legislation. During the public hearings we heard from Hutchinson Builders. They presented a very simple, one-page analysis of what this will mean for their company. Within the building industry there has been a lot of discussion about the additional administrative costs associated with maintaining the accounts and implementing the changes, which could add as much as three per cent to the cost of construction in Queensland. That is the last thing we need when we are trying to keep the costs of housing down and make Queensland more competitive and housing more affordable.

I would be very happy to table this document submitted by Hutchinson Builders. In summary, this company has a turnover of \$2.4 billion, average payments of \$200 million per month, a debt-free balance sheet and some 300 projects a year. They told the public hearing that, as a result of this, they were going to have to significantly increase their accounting staff; it would have potential impacts on the free cash available for their business to invest in other projects; and, just in Queensland, it would actually increase their operating costs by some \$3 million or \$4 million per year, because of the required extra burdens. With the House's permission, I will table that document, because I think it gives a good practical example of some of the challenges that this legislation represents.

Tabled paper: Document, dated 20 September 2017, titled 'Hutchinson Builders, project bank accounts' [\[2139\]](#).

During the committee process we also heard from the parliament's technical scrutiny team. During technical scrutiny of the bill the committee considered that significant sections of the bill failed to meet fundamental legislative standards in that clauses 8, 14, 16, 28, 31, 36, 50, 51, 54, 65, 68, 79, 82, 122, 161, 165, 258 and 276 defer a wide variety of powers to regulation in order to prescribe potentially significant matters. It may be argued that, given the importance of those matters, they should be set out in the primary act and not in regulation. As such, these clauses potentially breach section 4(4)(a) of the LSA, which requires the bill to allow the delegation of legislative power only in an appropriate case and only to appropriate persons, and also section 4(5)(c) of the LSA, which provides that subordinate legislation should contain only matters appropriate to that level of legislation. That was the finding of the Technical Scrutiny Secretariat.

Another concern raised during the committee process was that some of the proposed new offences could be seen as inappropriate. The bill proposes some 70 new offences. I do not think anyone in the House would disagree with the need to take these matters seriously and that there should be significant penalties for people who fail to meet their obligations. However, of the 70 proposed new penalties, nearly 28 suggest jail time. The real concern is around the definition of the term 'reasonable

excuse'. I sincerely hope that, if there are any recurrences where the QBCC or anyone else is inclined to make referrals for further prosecution, there is some real clarity around the term 'reasonable excuse' and that there is fairness both ways.

I take a moment to thank my colleagues on the committee. There were certainly moments of great bipartisanship and then there were also moments of great contention. There were a number of occasions when members on both sides of the committee needed to suspend the meeting briefly to further discuss issues. This is complex legislation. The time frame we had made it particularly challenging to review it in full.

I note that some 143 amendments will be brought before the House today. This demonstrates the fact that this legislation has been rushed. While the minister has taken on board some of the recommendations of the committee, sadly these amendments will still not result in a bill that looks after 70 per cent of our subcontractors who are out there every day providing basic services, maintenance, repairs and renovations. That is what concerns me.

I have repeatedly described this bill, the minister's Housing Strategy and even the building better futures bill we considered yesterday as shiny baubles—great to look at but hollow and full of empty promises. I find it incredibly frustrating that the minister has been somewhat disingenuous in the way that he has approached these very serious matters.