




Speech By  
**Shane King**

**MEMBER FOR KALLANGUR**

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### **BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) BILL**

 **Mr KING** (Kallangur—ALP) (12.45 pm): I rise today to make a contribution to this debate of the Building Industry Fairness (Security of Payment) Bill 2017. This bill is another on which I am proud to speak. My electorate has a lot of tradies like myself and small business men who work hard and deserve the comfort of knowing they will be paid for the work they do. Why should subcontractors bear the risk of not being paid when they are the backbone of the building and construction industry? Those with the least power should not have to shoulder the most responsibility. This is an unfair situation and, as the name of the bill implies, we are seeking to create fairness in the industry.

This bill will improve security of payment for subcontractors in the building and construction industry by providing for effective, efficient and fair processes for securing payment, including the establishment of a framework to establish project bank accounts. It will modernise and simplify the provisions for making a subcontractors charge; increase ease of access to security of payment legislation; and improve legislation to provide increased ability of the Queensland Building and Construction Commission to provide regulatory oversight to the building and construction industry.

Security of payment for subcontractors has been an issue in the construction industry for years. I am proud to be part of the Palaszczuk Labor government that has had the fortitude to enact real change. For almost two years we have listened to people in industry across the state. I know that when I was a candidate and as an MP I heard many stories of tradies going out and having a crack only to lose everything: their business, their home, their family and, tragically for some, their life. In a past life, when I was working on the construction of high-voltage substations throughout the state, there were many workers with a sad story about themselves or a mate who had suffered a setback due to non-payment or late payment. These new laws are landmark Labor reforms, seen nowhere else in the country yet. They will help make sure that subbies are paid in full, on time, every time.

This bill will establish a framework for project bank accounts, initially for government building and construction projects in phase 1 for projects between \$1 million to \$10 million for a period of not less than 12 months. After a review, phase 2 will see the project bank accounts extend to all construction projects that are over a million dollars. Engineering projects will be excluded, as will residential work unless it is three dwellings or more or valued over a million dollars.

The PBA is required to be made up of three trust accounts: a general trust account for the management of progress payments, a retention account for amounts held as retention and a disputed funds account for amounts that are the subject of a payment dispute. There was strong support for the PBAs from affected stakeholders and their representative groups including the Master Electricians Australia, the mighty Electrical Trades Union, the Master Plumbers' Association of Queensland, the Plumbers Union, the Subcontractors Alliance and the National Fire Industry Association. They all stated that these changes will go a significant way towards addressing the payment issues that subcontractors and their employees face. It must be a good piece of legislation to bring some of those groups together in such a strongly supportive way. The National Fire Industry Association stated—

... in 2017 we still have poor payment to subcontractors; an unfair power equation that forces subcontractors to accept unfair payment and contract conditions; onerous contract provisions; subcontractors simply not getting paid for the work they perform;

subcontractors being put out of business by the builder going bust; and the Dutch auction that occurs at the end of the job when payments, final payments and retentions are withheld, disputed and simply not paid by builders. Those issues continue on and on and on.

While many builders are first class professional operations who enjoy great relationships with trade contractors, the reality is that too many abuse the current system. We cannot continue to tolerate a biased system which favours one party over another.

Some stakeholders representing larger organisations said that they did not see a benefit in the PBAs; however, the Department of Housing and Public Works subsequently advised that independent economic analysis commissioned by them demonstrated that PBAs will benefit the construction industry.

The bill will also increase the penalty for operating while unlicensed under the QBCC Act. This bill will raise the penalty from the current 250 penalty units to a graduated system which will provide for increasing penalties for each offence. The first instance will incur the current penalty of 250 penalty units; a subsequent offence will increase to a maximum of 300 penalty units; and third and subsequent offences will be 350 penalty units or a year's imprisonment.

Another change will increase the strength of excluded individual provisions. The new provisions will affect any person who is involved with a company failure in other jurisdictions or who is a director of a company for up to two years prior to a company's failure. These individuals will be excluded from obtaining a QBCC licence. Any person who is banned under these provisions will face huge penalties if they are caught trying to run another building company either in their own name or secretly behind the scenes.

When the Public Works and Utilities Committee went through this bill we came up with a few recommendations, and I will touch on some of them. First, we recommended that the bill be passed. We also recommended that the minister consider amending the bill to require the QBCC to provide licensees with the opportunity to rectify building work within a specified time frame before a direction to rectify is issued and a demerit point penalty applied. I am pleased to see that the government accepted our committee's recommendation. The minister noted that amendments will be moved during consideration in detail that will sanction licensees who obstruct or delay compliance with a direction to rectify. A contravention of this requirement will attract four demerit points. In the event the licensee fails to discharge a direction to rectify, demerit points will apply as they do under the current law.

The current law applies a fixed penalty of 10 demerit points. Rather than retain this large, fixed demerit point penalty, the government will move amendments during consideration in detail so that a failure to discharge a direction to rectify attracts a minimum of four and a maximum of 10 penalty units. This will ensure that licensees are afforded the opportunity to rectify defective building work or remedy consequential damage while still providing certainty for consumers that rectification work will be carried out to completion in a timely manner.

We also recommended that the minister consult with the building and construction industry when developing regulations that will mandate and prohibit certain conditions for building contracts and with regard to any subsequent amendments to the regulation. The government accepted our recommendation, and it is intended that the supporting regulation, including provisions that will mandate and prohibit certain contract conditions, will be developed in consultation with the Ministerial Construction Council.

The Ministerial Construction Council is a representative body that is made up of parties from both sides who submitted varying opinions. The Ministerial Construction Council is comprised of Australian Institute of Building Surveyors; Plumbing and Pipe Trades Employees Union; Australian Institute of Architects; Air Conditioning & Mechanical Contractors' Association of Australia; Engineers Australia; Housing Industry Association; Master Builders Association of Queensland; Master Plumbers' Association of Queensland; National Association of Women in Construction; Master Painters Queensland; Master Concreters Australia; Australian Manufacturing and Workers Union; National Fire Industry Association; Association of the Wall and Ceiling Industry; Queensland Building and Construction Commission; Landscape Queensland; Construction, Forestry, Mining and Energy Union; Queensland Council of Unions; Subcontractors Alliance; Master Electricians Australia; and the mighty Electrical Trades Union.

I would like to thank the members of the Public Works and Utilities Committee for their work on this bill as well as our amazing secretariat: Kate, Rachele, Michelle and Lyn. This bill is all about fairness. It will make great changes to the way our subcontractors are able to go about their business. It will give them greater confidence and surety that they will get paid for what they do, and that is why I am happy to commend this bill to the House.