




Speech By
Michael Hart

MEMBER FOR BURLEIGH

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**BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) AND OTHER
LEGISLATION AMENDMENT BILL**

 **Mr HART** (Burleigh—LNP) (5.09 pm): I say at the outset that the LNP will not be opposing this bill. The LNP's position is firm on the principle that everybody deserves to be paid for the work they do. Unfortunately, late payments and non-payment of Queensland tradies remains an ongoing concern in the building and construction industry. While the LNP has concerns about the project bank account process which I will outline later in my speech, it is clear that there is a level of support in the building industry for a process to ensure subbies and suppliers are paid. The LNP will therefore not oppose the legislation.

It is also clear to me that the government is not completely convinced that this process will work, either. By way of background, project bank accounts were an election commitment by the Labor Party in 2015. The Labor government endeavoured to address this issue with its Building Industry Fairness (Security of Payment) Bill 2017. At the time, the LNP opposition forced around 53 amendments on the government to make that particular bill a better bill.

I would like to talk about a couple of press releases put out by the minister. I table the press releases.

On 26 October 2017 a press release stated—

'For far too long, subcontractors have had to shoulder most of the financial risk on building projects, but that changes today,' Mr de Brenni said.

'These reforms help ensure that subcontractors in the building and construction industry are paid in full and on time, every time.

That has not happened. Another press release of 1 March 2018 stated—

'This Labor Government is committed to a fair go for construction businesses, for workers, and for families,' Mr de Brenni said.

'Queensland's \$45 billion construction sector employs over 220,000 people and it is vitally important that subcontractors and suppliers feel confident—

and here it is again—

they will be paid in full, on time and every time.

Again, this is not happening. However, with non-payment of subcontractors along with company collapses and the allegations of systemic fraud continuing throughout 2018, the LNP called for a commission of inquiry into all aspects of the building industry. Labor did not support this approach, but eventually it did respond by establishing a joint task force to investigate non-payment complaints and allegations of fraudulent activity. I will have more to say about that later.

In February 2019 the *Courier-Mail* published an article headed, 'Housing Minister defends tough laws to protect subbies.' It stated—

The State Housing Minister has defended his government's stance on protecting subbies "ripped off under a broken system" as the Opposition calls his department out for not doing enough fast enough, saying the industry is in crisis.

Remember, this was an election promise in 2015, a bill was introduced in 2017 and debated in 2018, and here we were in 2019. The article went on to say—

'Everyone in the building industry deserves the confidence they will be paid on time, in full, every time ... my resolve to deliver effective security of payment reforms has never been stronger,' he said.

The minister kept repeating that statement, but let us look at the facts. Companies continue to collapse and subbies were not paid under this government: RCR Tomlinson Australia, \$630 million in 2019; Ostwald Brothers in Dalby, \$55.5 million in 2018; Cullen Group, Gold Coast, \$45 million in 2017; CRCG Rimfire, a Queensland and Chinese company, \$41 million in 2018; and JM Kelly project builders—and we all have heard that name before, haven't we, members?—in Rockhampton—there were plenty of questions around JM Kelly in 2016—where \$31 million did not get paid to the subbies.

Remember again that this was an election promise in 2015 and a bill was introduced in 2017, yet companies continue to go broke: Bloomer Constructions on the Gold Coast, \$35 million in 2017; Gary Deane Constructions, \$16.7 million in 2017; CMF Projects in Brisbane, \$12 million in 2017; Bluestone, Gold Coast, \$6.8 million in 2017; CKP Construction, Brisbane, \$6.22 million in 2017; Rimfire Constructions, Brisbane, \$6 million in 2018; Stirling Homes, Ipswich, \$6 million in 2018; and Q1 Homes, Gold Coast, \$5.4 million. I can go on all day. There are pages and pages of companies that have gone broke owing millions of dollars and subbies were not paid—after this government and this minister went on and on about subcontractors being paid on time, every time. Even on 13 May this year the *Noosa News* stated, referring to Minister de Brenni—

He rejected criticism from key industry group the Subcontractors Alliance that the Palaszczuk Government's slow implementation of Project Bank Accounts meant to guarantee payment security represented a broken promise.

Mr de Brenni said that his government did not waver from its commitment to deliver Project Bank Accounts.

Well, they actually have not delivered any project bank accounts yet, except for government jobs worth between the figures mentioned before. We all know, of course, that government always pays its bills so these project bank accounts were never going to fail. It is not a real test of the system, but it is an indication of what cost might be involved in these project bank accounts. The article continued—

Alliance head Les Williams, speaking in the wake of the latest building company collapse on the Sunshine Coast, said 85 per cent of the industry responsible for employing 250,000 Queenslanders had been put placed at greater risk by the tardiness.

He is here talking about the minister's tardiness. The article continued—

Administrator FTI Consulting has yet to release data on the total debt left by RGD Group and RGD Constructions.

Mr Williams said if Project Bank Accounts were already in place, nearly seven years after the Walton Construction collapse in 2013 rocked the industry, subbies would still not be being caught by failed builders.

He also took aim at the Queensland Building and Construction Commission, calling for it to be disbanded in its current form.

'The QBCC knows false statutory declarations (that subbies have been paid) and false financials are mechanisms of fraud,' he said.

We may have heard some of that mentioned in my speeches about JM Kelly in Rockhampton. It went on—

'But we've seen no significant investigations or charges laid. We've said repeatedly this won't stop until someone goes to jail for destroying small businesses and their families.'

I agree with him. It went on—

Mr de Brenni said the criticism was not justified with Queensland the only state to legislate for Project Bank Accounts and the only state with the accounts on government contracts.

That is true: they are on government contracts, but governments usually pay their bills. It continued—

'It's been a long time coming but we want our system to be a model for the rest of the country,' he said.

'I wouldn't want to be a tradie in any other state. We are at the end of a process started in 2015.'

Tabled paper: Bundle of documents relating to changes to legislation to ensure protection for subcontractors and suppliers [1158](#).

We are not at the end of the process started in 2015—by the way, that is five years ago—because the minister has just told us that there will be 69 amendments to this piece of legislation which we have not yet seen. Members will be really surprised about that. In fact, I had a briefing from the minister at 2.30—a 10- or 15-minute talk about what amendments were likely to come up tonight. I was promised a copy of those amendments, but that has not been forthcoming. It would be good to see those. I checked my emails before the minister started his speech tonight and I still had not received those amendments. Members on this side of the House who will be talking on this bill obviously have not seen those amendments. The first they will have learned about the changes to the implementation dates was during the minister's speech.

The government is all talk and no action on this issue. We are now hearing that the dates for implementation will be by proclamation. In terms of proclamation versus regulation—what it was supposed to be—this does provide the government with some flexibility. It really just pushes the matter further down the track because, despite having the legislation, nothing is really in place from an actual commencement point of view. Industry is looking for certainty here. At the end of the day it wants to know when these things are going to kick in and it wants to know how it will plan for that. This change to the implementation was supposed to apply as of 1 July 2020. We all know that we are past 1 July now.

This bill has been sitting on the *Notice Paper* for a number of months and all of a sudden it has come up for debate—we found out it was coming up for debate yesterday—and there are a whole lot of amendments at the last minute. Members in this House are getting used to the fact that this government springs things on them at the last minute. I am not saying that there is anything untoward with these amendments. Later in the day when I get to look at the amendments and tear them apart—have a look at them—I may well speak to the amendments in the consideration in detail stage, but I suspect that again I will not get the opportunity to speak to those amendments because this bill will be guillotined and everything will just happen automatically, as is the way that this government seems to bring everything before us.

My understanding from what the minister told me earlier in the day and what has just been said is that the implementation dates have been pushed back and now the next phase of this will start on 1 March—and correct me if I am wrong, Minister—next year. It has been extended and it has been broken apart so that some of the government contracts will start on 1 January 2022 and some later on 1 July 2022, but the real crux of this matter is that for those private contracts of \$1 million or more project bank accounts will not start until 1 January 2023. This was an election promise promised in 2015, just to remind members again. Legislation was put to the House in 2017, but the core of this—getting to the stage where projects over \$1 million in the private sector will be covered by this so-called project bank account that will pay subbies on time every time—does not happen until 1 January 2023 by proclamation, mind you, so that could in fact change. We are not 100 per cent sure about that.

The amendments to the bill will implement the government's response to the recommendation of the task force. In addition, the amendments proposed seek to implement the recommendations of the Building Industry Fairness Reforms Implementation and Evaluation Panel, which, by the way, was a suggestion that the LNP put to the 2017 bill and the government at the time did not support an implementation panel, but thank God it finally saw sense because, as the minister said in his speech, some good recommendations came out of that. Those changes will be made and again that is why we are not opposing this bill.

With regard to the statement of reservations by the LNP members of the committee, it was a very good statement of reservations and I commend the LNP members of the committee. What they said in their statement of reservations was that, while the evaluation panel report on PBAs was provided to the government in March 2019, it took until November before it was tabled and before the opposition got a chance to have a look at it. Given the changes made to the reporting associated with minimum financial requirements, it is disappointing that Labor still has not got it right, with a significant percentage of contractors still not complying. The complexity of the bill means that even when contractors are endeavouring to comply they are often in contravention of the laws.

The deadline for the next phase of reforms was quite tight—that is, 1 July 2020. I wrote this speech a number of months ago, because this bill has been sitting on the *Notice Paper* for quite a while, so that is why that date of 1 July 2020 is in there but it is now 1 March 2021. That does give the industry a little bit of time to prepare, which it really did need. The LNP members also suggested that given the constructive recommendations provided by the evaluation panel it may have been prudent to retain this panel until the cascading schedule for activating the project bank accounts to all building and construction contracts valued at \$1 million or more has been concluded. We are suggesting that that implementation panel should stay until 1 January 2023, so there is a job for it for quite a while.

The LNP members of the committee also said that, notwithstanding the importance of ongoing professional training and development, there was no recommendation from the committee on this important matter. If members look at the joint special task force report recommendations, there is a whole section there on education. It says that the task force considers that greater understanding of relevant laws, contractual obligations and business, financial and contract management would improve subcontractors' bargaining power and payment outcomes and that, while acknowledging the power imbalances with which subcontractors must contend, the task force encountered cases where subcontractors did not take steps to protect their own interests—for example, by omitting to ensure that the subcontract was properly documented and executed, properly identified the parties, and enforced their legal rights in accordance with the statutory requirements.

The New South Wales Small Business Commissioner, in a recent review of the collapse of a civil construction company, found poor financial literacy amongst some of the contractors and subcontractors and poor commercial acumen and management of non-payment along the contracting chain. As a result, that commission is developing a new induction approach for small business subcontractors that is focused on improving financial literacy and awareness of security of payment mechanisms. The task force considered how Queensland's supervisory powers address education and training. One of the objects of the QBCC Act is to provide support, education and advice for those undertaking building works and consumers, and it goes on for quite a bit. It says that this proposal should be pursued by the government. It would be beneficial to ensure that financial and business management form part of the training options available to licensees.

I know Master Builders Queensland and the HIA are very interested in the ongoing professional development of builders, and it appears that this is something that the government has not even taken into account. In fact, the Special Joint Taskforce's recommendation 6 is that the government note the work of the QBCC to identify appropriate education and training operators for subcontractors.

Other objects of the bill are to implement the recommendation of the Building Industry Fairness Reforms Implementation and Evaluation Panel; to implement the recommendations of the Special Joint Taskforce that investigated subcontractor non-payment in the building industry; enhance Queensland's security of payment legislation and further extend the protections for industry; improve the QBCC's ability to address fraudulent behaviour in the industry; implement reforms arising from the Building Confidence report such as enhancements to the regulation of architects and registered professionals; and ensure the continuation of external review rights for decisions about transition plans for retirement villages.

The centrepiece of the building industry fairness act 2017 introduced by the Labor government was the introduction of the project bank accounts. These require money to be held in trust for subcontractors, and in 2018 these were put in place initially for government contracts between \$1 million and \$10 million. It is supposed to be rolled out to the private sector.

The BIF Act required the initial implementation be reviewed by the independent panel. The independent panel made 20 recommendations which were accepted by the government. Again, we have not seen the government's response to this committee report. It has been tabled but we have not actually seen it yet. The recommendations related to simplifying the framework, improving protections and oversight and managing the financial transition, and these are contained in the proposed amendments in this bill. I want to quote from part of the implementation panel's report to show how tardy the minister has actually been in delivering—

Madam DEPUTY SPEAKER (Ms McMillan): Honourable member, the time for government business is now over.