




Speech By
Stephen Bennett

MEMBER FOR BURNETT

Record of Proceedings, 25 May 2022

BUILDING AND OTHER LEGISLATION AMENDMENT BILL

 **Mr BENNETT** (Burnett—LNP) (2.00 pm): In addressing the amendments to the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act, I will again prosecute, as I have over many years in this place, the legislation relating to building and security of payments. I have to say it continues to be complicated. I will limit my contribution to the bill as it relates to combustible cladding. Many others have spoken about the nuances of the legislation.

We know that subcontractors have fought for the introduction of a statutory trusts regime in Queensland and I think a lot of them feel the same way about it being complicated. Other affected parties who have been fierce opponents of these sorts of security of payment issues may feel differently. My observation is that the legislation is written by lawyers for politicians to consider and debate. On the passing of the legislation, it is then up to the lawyers and legally qualified persons to talk to stakeholder groups and disseminate information to the general public on its interpretation. What can go wrong? Plenty! There is no surprise that the information disseminated to the general public is legally focused and that that remains a problem. The construction industry is strengthened and, indeed, protected by the laws that do meet community expectations. Lawyers play a very important role in ensuring industry is sustainable for all parties performing work. However, we would all agree that parties that contract for work to be carried out should be protected.

However, legislation is developed, debated and then extensively commented on in this legal bubble which means that the average industry stakeholder has little to no understanding of how it will affect them because it is heavily based in legal language. For years a lot has been said about the rollout of legislation reforms which are complex to the average worker, supplier and contractor. In other words, the language cannot be understood by parties. The issues are serious. There are many recent examples which show why we have significant issues with the legislation, and I do commend that we are trying to fix some things today. We will always be supportive of attempts to make things better. However, I want to bring to the attention of the House a statement from Condev, who unfortunately have recently found themselves in a bit of trouble. The spokesperson for Condev insisted that all subcontractors, suppliers and staff had been paid. I note an article appeared the next day about the liquidator comment. It stated—

Failed building giant Condev owes creditors and other suppliers more than \$30m while its 107 workers are out of pocket for \$2.45m.

In a report lodged with ASIC ... insolvency partner ... said unsecured and subcontractor retentions total almost \$31m—owed to about 700 people and entities—while the Australian Taxation Office is owed \$530,000—

and—

Westpac is owed about \$6.3m.

Unfortunately, there are other high-profile cases currently. I am talking about Probuild and Metricon and their delays. It has been reported in the traditional media that, according to information tabled at a Probuild creditors meeting on 4 March this year, employees are owed \$14 million with an

amount yet to be determined owed to thousands of creditors. It is fair that until all the facts on these issues regarding the reasons are known and reported on by respective insolvency practitioners, I put to members that we must reflect on how this happens and how it continues to happen.

It has been the experience in the construction industry for over 25 years that the cash retentions by head contractors, which are mentioned in the bill in terms of the security of payments issue, has always confronted subcontractors. The two main concerns with the cash retentions are: the ability for subcontractors to cover or claim retention amounts held by a head contractor; and the loss of these funds when insolvency of the head contractor occurs. I acknowledge that in 2018 there was a lot of talk about the misuse of cash retentions. It was said that we in this state should perhaps look at a statutory scheme to deal with this issue and not rely on these contractors to get this right.

I want to acknowledge those who have continued to express opinions over the last five to seven years advocating to empower the industry through education and insight rather than continuing to add layers of bureaucracy and regulation. We all have a role to play in making sure the industry is more sophisticated and informed about the issues.

This legislation is enabling prosecution in relation to the combustible cladding checklist. It has been stated—and I think many in the House have acknowledged—there are still 30 government sites where flammable cladding is allegedly still present such as schools, hospitals and libraries. They are listed on the government's website. There are people living and working in these buildings every day. The cladding crisis—and it is a crisis—is a significant issue. We know there are potentially hundreds of buildings in Queensland containing dangerous cladding which, according to a report I read from Master Builders, may cost up to \$300 million to rectify the product that was previously approved to be installed. All members of the House and the federal parliament have known about this issue for decades, and it is now 2022.

Combustible cladding is banned from type A and type C buildings. I think there are still issues within the residential sector in that this material can still be used. I need to put on the record during my contribution that there are still problems with certifying and certification, and an insurance crisis still confronts us. I was talking to a couple of certifiers today who are still very much caught up with the problems of being able to afford to keep their professional indemnity insurance. Even though there is an exemption, it is still a real issue.

As we know, prior to 1998 local governments were solely responsible for building certification. Since 1998 the certification industry in Queensland has been privatised. In 2019 in order for a building certifier to be licensed as a private certifier, they had to hold professional indemnity insurance. This House debated long and hard during that period, and I acknowledge the exemption was brought back. Those policies have caused many to suffer major losses due to this regulatory issue.

In August 2019—and the minister is in the House—the minister brought back in the requirement for the exemption. However, it remains a problem that some certifiers, even with PI insurance excluding external cladding, will still be reluctant to offer their services to clients where the assessment of external cladding is involved. The issues I raise may result in some private certifiers with PI insurance with cladding exclusions declining to assist building owners of an 'affected private building' to undertake necessary rectification work. Obviously those private certifiers who are unable to obtain suitable PI coverage or afford same will also not be able to assist building owners in this regard.

The issue of the number of available licensed certifiers operating in Queensland is irrelevant because there is ample building work out there for them that does not involve any form of external combustible cladding and that gives them plenty of work without getting involved in the quagmire of insurance. There are concerns that private certifiers will decline to assess any form of external cladding in relation to existing projects because of the potential legal and financial risks they are exposed to. It needs to be remembered that the banning of dangerous combustible cladding only applies in respect of new projects, so this initiative, worthwhile as it is, is still a problem. I do not think it will provide comfort to those certifiers working on these unsafe affected buildings.

As I started out, I want to acknowledge that this bill is ticking some of the boxes for reform. The reason for my contribution in which I have talked about the issues, particularly around security of payments and combustible cladding, was to highlight that, as someone who has been in the industry for over 30 years and is still a registered builder with the QBCC, I hear these things daily from colleagues and friends. I have been in this place for a little while and we continue to talk about building reforms and legislative reforms. There is clearly more to be done. It is a good way forward to get this bill on the record to start to tick those boxes.

I would like to see more of these building issues brought back to the chamber. I would love to see all the stakeholders involved in trying to find solutions to stop these perpetual subcontractors being absolutely smashed when we see serious failures of these large project builders, construction firms and commercial firms. It is such a tragedy when we see these builders go down.

I would like to think that this House could consider a statutory organisation that could hold some of this money—like the residential tenancy group that we dismantled yesterday. Something like that may offer people some recourse to get their money back from a head contractor. I will be supporting the bill. I close by saying that we need to do more to protect and, to quote the minister, make sure people get paid on time every time.