




Speech By
Hon. Meaghan Scanlon

MEMBER FOR GAVEN

Record of Proceedings, 14 February 2024

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

Introduction

 **Hon. MAJ SCANLON** (Gaven—ALP) (Minister for Housing, Local Government and Planning and Minister for Public Works) (11.29 am): I present a bill for an act to amend the Architects Act 2002, the Building Act 1975, the Building Industry Fairness (Security of Payment) Act 2017, the Plumbing and Drainage Act 2018, the Professional Engineers Act 2002 and the Queensland Building and Construction Commission Act 1991 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Housing, Big Build and Manufacturing Committee to consider the bill.

Tabled paper: Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024 [184](#).

Tabled paper: Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024, explanatory notes [185](#).

Tabled paper: Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024, statement of compatibility with human rights [186](#).

I am pleased to rise to introduce the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024. This is a bill for Queensland's building and construction industry—an industry that is a key economic driver for the state. It is an industry that currently adds around \$50 billion a year to the state's economy and puts pay in the pockets of an estimated 250,000 workers. It is an industry that will continue to support more Queensland jobs as it meets the state's needs for new housing and infrastructure, particularly as we deliver our plan for homes for Queenslanders.

In demonstrating our commitment to the sustainability of the industry, the government continues to deliver the Queensland Building Plan 2017 and its 2021 update and to monitor the implementation of these reforms. It would be remiss of me not to acknowledge the work of the former minister, Mick de Brenni, who I know did a lot of work on this bill. Since 2015, under the Queensland Building Plan, we have focused on creating a safer, fairer and more sustainable construction industry and protections for consumers. We have introduced nation-leading protections against the use of nonconforming building products that ensure the building materials used in Queensland are compliant with relevant standards, fit for purpose and meet community expectations.

Queensland's strong stance on nonconforming building products has ensured that our community can feel safe in the building in which they live, work and play. We have also strengthened the Queensland Home Warranty Scheme—Australia's first resort compensation scheme. We have expanded coverage and provided more flexible scheme options, and we continue to listen to the community and industry about how we can best enhance these services. We also recognise that a strong building and construction industry needs a strong, independent regulator to support it. The

Queensland Building and Construction Commission plays a vital role in providing a fair, consistent and stable environment that tradies and consumers can count on. Soon I will speak more on how this bill builds on our record of strengthening the QBCC.

Through all of these enhancements to the building and construction industry, our strong focus has been on improving security of payment protections for subcontractors. The cornerstone of these protections is the project trust account framework enshrined in the Building Industry Fairness (Security of Payment) Act. We believe that if you do the work you should be paid in full on time every time. This bill supports the continued rollout of the trust account framework by making it easier for industry to comply. By increasing the workability of the framework, the bill not only strengthens existing protections for subcontractors, it supports compliance of head contractors. By supporting industry to manage their business accounting and financial responsibilities, the bill allows contractors to get on with their work delivering Queensland's Big Build. The bill also formalises the government's response to several recommendations of the Queensland Building and Construction Commission Governance Review and includes minor amendments to other building legislation to enhance existing provisions and processes.

I will turn first to the security of payment reform. Queensland continues to lead the nation with a suite of payment protections under the Building Industry Fairness (Security of Payment) Act. These protections ensure that everyone in the building industry gets paid for the work they do. Examples of existing protections in the Building Industry Fairness (Security of Payment) Act include: the adjudication process, subcontractors' charges, payment withholding requests and charges over property. Additionally, we have introduced a trust account framework designed to protect progress payments and cash retention amounts for the benefit of subcontractor payments. Since trust accounts were first introduced in 2018, they have secured funds under more than 1,200 contracts to the value of more than \$20.7 billion—that is, \$20.7 billion in safekeeping to ensure that subbies get paid for the work that they do.

The framework is being implemented in phases. It currently applies to eligible Queensland government contracts of \$1 million or more. It also applies to private sector, local government, statutory authority and government owned corporation contracts of \$10 million or more. The trust account framework is a driver of significant cultural change for industry. It is important that we continue to listen to industry to support this transition so they can get on with their work on the ground.

The department recently commissioned an independent assessment of the trust account framework. I am pleased to report that the independent report found that the industry is successfully adapting to the fundamental requirements of the new framework. This is no surprise. The building and construction industry is consistently evolving, but the industry always knows how to get in and get the job done. The independent assessment of the trust account framework gave us the opportunity to hear from industry and to consider how the rollout of the trust account framework could be enhanced.

We heard from industry that there is an opportunity to facilitate compliance by improving accounting software capability and simplifying the trust account framework. Specifically, we heard there was uncertainty as to who was protected by and paid through a project trust account. The present approach uses a definition of 'protected work'. We heard from the industry that making protections referable to certain 'work' rather than to the parties performing the work created some ambiguity. The bill clarifies this ambiguity and takes a simpler approach. Rather than the protections being referable to types of work, they will be referable to specific parties and the specific services for which the relevant licence is required. This change will ensure that no-one gets left behind as we continue to strengthen our payment protections.

By aligning with a long established industry requirement to hold a licence, the change will also reduce the administrative effort for trustees and help subcontractors to understand when their payments are protected by a project trust account. We also heard from industry and software providers that the current record keeping requirements could be simplified. The current provisions are detailed and prescriptive. Industry told us that there is uncertainty as to how and when to record trust liabilities. This uncertainty limits options for software providers to respond with automated and streamlined solutions for business record keeping.

The bill provides a regulation making power to prescribe simplified record keeping requirements, and introduces a head of power to produce guidelines for compliance. These amendments will ensure the trust account requirements stay fit for purpose and can rapidly respond to emerging industry practices. These changes also support an uplift in how payments and cash flow are understood and managed for the benefit of everyone in the contracting chain.

We have also heard from industry that their capacity to obtain a trust account review is impacted by the limited availability of registered auditors. We understand there is limited availability of registered auditors nationally, but we are responding at a state level so that our industry is supported. We are

expanding industry capacity by empowering other professionals such as accountants to conduct account reviews. This should reduce the cost to industry of obtaining a report while still ensuring protection through independent oversight.

We are also reducing cost to industry by expanding the circumstances in which a trustee may apply for an exemption by providing an account review report. Currently, the exemption only applies if the account held no funds during the review period. This bill expands the circumstances in which an exemption might apply. For example, where there have been no new transactions or changes to the account, there may be no need to provide a report.

This bill ensures our protections are practical and effective by including reasonable exemptions where appropriate. Additionally, the bill clarifies that the trust protections apply to the full retention amount, including GST. This simple change reduces the risk of shortfalls in retention trust accounts in the event of insolvency.

The bill also clarifies several transitional matters, including what happens when contract amendments occur and what criteria apply as the two remaining phases are rolled out. These changes address industry concerns about ambiguity and put beyond doubt how the framework should operate. This bill is about simplifying and clarifying trust accounting processes so that the industry can get on with the important work of delivering Queensland's Big Build. To get on with the job, we also need an efficient, transparent regulator to enable industry and protect consumers.

In addition to simplifying the trust account framework, this bill implements important changes to the governance of the Queensland Building and Construction Commission. These changes formalise the government's response to the Queensland Building and Construction Commission Governance Review. The QBCC Governance Review examined the roles and responsibilities of the Queensland Building and Construction Commission and the board, along with their respective policies, procedures and practices. The purpose of the review was to ensure the commission's governance arrangements reflected best practice for a building and construction industry regulator and were fit for purpose to deliver on the objectives of the Queensland Building and Construction Commission Act.

One of the recommendations from the Queensland Building and Construction Commission Governance Review report was to reduce the size of the Queensland Building and Construction Commission Board. This bill reflects that recommendation. Although the QBCC has already adopted a best practice approach and reduced the size of its board from 10 to seven people, this bill enshrines this board size in the Queensland Building and Construction Commission Act, ensuring future efficiency.

The QBCC has also proactively responded to the governance review by implementing a conflict-of-interest register. This bill supports the commission's proactive response by codifying the requirement for a conflict-of-interest register to ensure transparency and accountability moving forward. This will be achieved by requiring the detail of disclosure of conflicts of interest in the QBCC Board minutes to be published.

The governance review also recommended that the QBCC refocus its regulatory role on licensing and compliance. This bill responds to that recommendation by transferring responsibility for prescribing technical qualification requirements issued under the Plumbing and Drainage Act and the Building Act from the Queensland Building and Construction Commission to the department. The department is currently responsible for developing policy and legislation for the QBCC, while the commission has operational and regulatory responsibilities.

Transferring the approval of qualifications from the commissioner to the department aligns with existing policy functions performed by the department. It also provides greater separation between the functions performed by the department and the QBCC. In this way, these amendments refocus the QBCC on licensing and compliance so that it can be more efficient and effective in enabling industry and protecting consumers.

The bill also makes several minor and technical amendments to various pieces of Queensland's building and construction legislation. For example, the Architects Act 2002 and Professional Engineers Act 2002 establish independent regulators for Queensland's architecture and engineering professions, which are the Board of Architects of Queensland and the Board of Professional Engineers of Queensland.

The amendments in the bill are primarily operational. Specifically, the bill ensures that information provided during registration processes for architects and professional engineers is accurate and reliable, and provides guidance to the Queensland Civil and Administrative Tribunal and the courts about awarding reasonable legal and investigation costs if a person is found guilty of breaching the Architects Act. The changes in the Architects Act for awarding reasonable costs align with similar

provisions of the Professional Engineers Act. Clarifying these provisions will support the boards in maintaining the integrity of Queensland's architecture and engineering professions and registration framework.

Finally, several minor, operational amendments are proposed to the Queensland Building and Construction Commission Act concerning licence suspensions and cancellations, internal review applications and disclosure of information for monitoring the effectiveness of legislation. This disclosure power also applies to the building industry fairness act. These minor amendments are necessary to improve regulatory processes, clarify existing provisions and support industry and consumers.

In conclusion, the amendments in this bill will ensure Queensland continues to have one of the most robust building regulatory frameworks in the country. These frameworks underpin our strong security of payment, licensing and financial sustainability requirements which protect contractors, consumers and the industry more broadly.

The bill supports our progression towards a safer, fairer and more sustainable building and construction industry, while making life easier for contractors so they can focus on their important work for Queensland. By listening to and working with industry we will continue to deliver Queensland's Big Build safely, sustainably and in partnership with the people on the ground.

First Reading

Hon. MAJ SCANLON (Gaven—ALP) (Minister for Housing, Local Government and Planning and Minister for Public Works) (11.43 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Housing, Big Build and Manufacturing Committee

Mr DEPUTY SPEAKER (Mr Lister): In accordance with standing order 131, the bill is now referred to the Housing, Big Build and Manufacturing Committee.