

Minister for Housing and Public Works and Minister for Sport

Queensland Government Response to Public Works and Utilities Committee Report No. 50

Building Industry Fairness (Security of Payment) Bill 2017

introduction

On 22 August 2017, the Building Industry Fairness (Security of Payment) Bill 2017 (the Bill) was introduced into the Parliament.

The Bill was referred to the Public Works and Utilities Committee (the Committee) on 22 August 2017 with a report back date of 13 October 2017.

On 13 October 2017, the Committee tabled its Report No. 50, of the 55th Parliament on the Bill.

The Queensland Government response to the Committee's Report and recommendations is provided below.

Committee Recommendation 1

The committee recommends the Building Industry Fairness (Security of Payment) Bill 2017 be passed.

Response

The Government thanks the Committee for its thorough and considered examination of the Bill and notes the recommendation that the Bill be passed.

Committee Recommendation 2

The committee recommends that the Minister consider ensuring the review of phase 1 of the Project Bank Account provisions:

- *commence at least three months prior to the commencement of phase 2;*
- *be undertaken in consultation with representatives of the building and construction industry; and*
- *the Minister report the review findings to the Legislative Assembly prior to the sections of the bill that commence phase 2 being proclaimed.*

Response

The Government thanks the Committee for its recommendation.

Amendments will be moved in consideration in detail to establish a statutory requirement for an independent review of phase 1 of Project Bank Accounts. It is envisaged that the review will be led by an eminent independent person who will be joined by senior figures with expertise. The review panel will be complemented by a reference group and will also consult with representative bodies.

Committee Recommendation 3

The committee recommends that the Minister review the appropriateness of the proposed imprisonment penalties for a number of new offences contained in the bill.

Response

The Government accepts the Committee's recommendation.

The penalties in the Bill that relate to Project Bank Accounts are largely consistent with offences relating to trust matters in other legislation, such as the Agents Financial Administration Act 2014 and the Trust Accounts Act 1973.

The offences that attract the possibility of imprisonment, such as the requirement to only withdraw money from a Project Bank Account in strict circumstances, are a deterrent to unscrupulous behaviour that threatens to undermine security of payment.

The increased penalties under the Queensland Building and Construction Commission Act 1991 (the Act) for offences relating to unlicensed work are also considered appropriate given the significant financial and safety risks this conduct poses to consumers.

The possibility of imprisonment for third and subsequent offences, or unlicensed work that is grossly defective, is particularly targeted at repeat offenders who deliberately and wilfully avoid complying with the Act. Introducing higher penalties, which are similar to those for equivalent offences in other jurisdictions, will provide a greater deterrent to unlicensed persons entering the market. This, in turn, is expected to improve the rate of compliance with standards and protect consumers and licensees from loss.

It is therefore considered that these penalties in the Bill are proportionate to, and reflect the seriousness of the breaches to which they apply.

Committee Recommendation 4

The committee recommends that the Minister consider amending the bill to require the QBCC to provide licensees with the opportunity to rectify building work, within a specified timeframe, before a direction to rectify is issued and a demerit point penalty is applied.

Response

The Government accepts the Committee's recommendation.

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 retaining this large fixed demerit point penalty, the Government will move amendments during consideration in detail so that failure to discharge a direction to rectify attracts a minimum of four penalty units and may attract up to 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.

Committee Recommendation 5

The committee recommends the Minister consult with the building and construction industry when developing the regulation that will mandate and prohibit certain conditions for building contracts and with regard to any subsequent amendments to the regulation.

Response

The Government accepts the Committee's recommendation.

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 comprises the following industry bodies: Australian Institute of Building Surveyors; Plumbing and Pipe Trades Employees Union QLD/NT; Australian Institute of Architects; Air Conditioning and Mechanical Contractors' Association; Engineers Australia; Housing Industry Association; Master Builders Association Queensland; Master Plumbers Association of Queensland; National Association of Women in Construction; Master Painters Queensland; Master Concreters Australia; Australian Manufacturers and Workers Union; National Fire Industry Association; Association of Wall and Ceiling Industry Queensland; Queensland Building and Construction Commission; Landscape Queensland; Construction, Forestry, Mining and Energy Union; Queensland Council of Unions; Subcontractors Alliance; Master Electricians Australia; and electrical Trades Union.

Committee Recommendation 6

The committee recommends that the Minister report to the House during the second reading speech on those issues raised by stakeholders about the bill where the department indicated it would undertake further consideration.

Response

The Government accepts the Committee's recommendation.

In accordance with the recommendation, the Minister will report to the House on these issues during the second reading speech.

Committee Recommendation 7

The committee recommends that the Minister in his second reading speech provide examples of any proposed regulations that he intends to make should the bill be passed.

Response

The Government accepts the committee's recommendation.

The Minister will illustrate examples of matters for which regulations are proposed to be made in future subject to the passage of the Bill. As indicated in the response to recommendation 5 above, any such future regulation will be developed with appropriate consultation with the Ministerial Construction Council.