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51ST PARLIAMENT

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Tuesday, 11 May 2004

BY AUTHORITY
L.J. OSMOND, ACTING CHIEF HANSARD REPORTER—2004

BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS BILL

Second Reading

Resumed from 18 March (see p. 72).

Mr HOPPER (Darling Downs—NPA) (5.30 p.m.): I would hope that the minister pays attention to what I am about to say as he is not in the chamber at the moment and I have done a darn lot of work on this. Today I rise to speak on the Building and Construction Industry Payments Bill 2004. I must say that the more one has to do with this industry, the more one questions whether there is ever a light at the end of the tunnel. I have quite often heard people talk about Noah and the ark, maybe insinuating that Noah, too, had variations with his sons after building commenced. But I have also heard people say that the ark was built by amateurs and the *Titanic* was built by professionals. Let us hope and pray that divine intervention will be the strong partner of the amateurs forever.

Similarly, I must say that divine intervention is required to ensure that every player within the construction industry gets paid in full what is rightfully their share. I have shadowed the current minister for most of the last term and certainly know that wisdom comes through listening and learning, continual hard work and a willingness to acknowledge and digest the sound advice given along the way. All members in this House know of my enthusiasm to ensure that all contractors and subcontractors get paid—an issue this legislation is attempting to address. However, I am happy to acknowledge that to completely secure payment for all participants within the construction industry is a very big ask. Nevertheless, all honourable members should never, ever admit defeat on this issue. To do so goes against the grain of the Australian ethos where we accept and expect a fair day's pay for a fair day's work. Whether a fellow is a ringer or a brickie, they deserve recognition of their labours and they should be valued and paid their worth.

That was not the case, however, with regard to the construction of Suncorp Stadium. Its design and construction procedures left a lot to be desired, and I know that I certainly would have handled the design and construction of Suncorp Stadium very differently from the way the current government did. The pressure that this government and in particular the Minister for Public Works, Housing and Racing put on all those involved with the construction was, to say the least, immense. If this bill had been in place then, I hope it would have helped the subcontractors to get paid.

The disputes that are still taking place are simply caused by the time limits put on this job by a government in a terrible hurry to complete this stadium in time for a football game. Do not get me wrong; I have attended games at this stadium and it is undoubtedly a world-class venue. I just think it is very sad that there are some contractors out there who are in the middle of a major dispute involving millions of dollars. Sun Engineering has been in the construction industry in Queensland for over 20 years and has employed up to 270 staff at times. It is now down to 100 or less. These are the sorts of builders and businessmen we need in Queensland. They should be encouraged and not destroyed.

On a more positive note, let me say that it is pleasing to see the minister making an attempt to address some of these problems involved with industry payments. No doubt it will be a big ask for the minister, but I will support any attempt to resolve these disputes or lessen the frequency of dispute. I will be very interested in the minister's response to see if he covers the concerns that I have with different sections of the bill which I will explain later in my contribution. If not, I will be pursuing those issues in debate on the clauses.

The first part of the bill that I want to touch on relates to progress payments. This is a step in the right direction. From what I can see, the minister is presenting progress payments not only for work that has been done by the subcontractor but also for materials supplied for the job. A judgment on a minor dispute or even a major dispute and payments arranged by the said process will no doubt provide some security to the wellbeing of all concerned. It will not only allow the job to be finished but will also speed up the whole process and provide some sort of security within the industry. I must say that it would be foolish not to welcome this part of the legislation.

The introduction of an independent arbitrator is good, and I simply say that there must be strict criteria involved for anyone taking on this position. The independent arbitrator will, from what I understand, be able to make quick decisions to resolve disputes within the construction industry. After these decisions have been made, progress payments will be put in place that will allow jobs to continue and help to reduce the lengthy stalemates. Because of the domino effect down the contractual chain, this will also be an advantage to those below the disputing party or parties. Hopefully, this will help to put an end to the restricted cash flow so often experienced and, in some cases, often resulting in insolvency.

The explanatory notes say that the adjudication process will cover all forms of construction contracts, whether in writing or verbal contracts, other than contracts for the carrying out of a domestic building where an ordinary resident owner is a party to the contract. Maybe the minister could explain later why this is so. Why does a resident owner not come under this category? Contractors working for the builder will be able to use the process if the builder is not paying, but the builder is vulnerable to the domestic owner not paying without being able to use the rapid adjudication process.

A user pays system is to be set up and the Queensland Building Services Authority will provide registered services for the adjudication process. It will be responsible for registering the independent adjudicators. I would ask the minister to explain what would be the criteria one would have to meet to be able to fill this position, who will be the authorised nominating authority and who will select these people? It will be vital to the success of the process that the authorised nominating authorities and the adjudicators be totally neutral. I do not see any clauses in the bill which make provision for disciplinary action to be taken if the decisions are not impartial.

I now return to a couple of issues I was going to touch on before. In the second reading speech, under the heading 'Consultation', mention was made of the extensive consultation that was undertaken

with industry stakeholders throughout Queensland. This included a statewide series of meetings with relevant stakeholders. The reason I mention this is simply that I have met with a number of people who attended some of these meetings. In fact, two years ago the BSA conducted roadshows all over Queensland to explain the aspects of this bill to builders and subcontractors. However, the bill has now been presented and does differ somewhat from the presentations made at that time. I now want to explain the aspects of this bill that have been brought to my attention which differ from what was explained at those roadshows.

There are certain aspects of this bill which are contradictory to the discussion paper used at the roadshows in February and March 2002. For a start, in the discussion paper used at these meetings, the Subcontractors' Charges Act and rapid adjudication were to be used together to complement each other. This bill is now contradictory to that advice, as the subbie has to choose only one process. Also, the retentions from subbies were to be held on deemed trust by the building contractors to safeguard against the builder becoming insolvent. There is no mention of this in the bill. At no time was there any mention or indication that section 67H of the QBSA Act would be omitted or that the set-off clause, section 67J, would be amended. To say the least, it is simply not surprising that this sort of thing is happening. It is a case of 'try to keep them happy but don't reveal all you know'. It is a case of 'let's hope they don't realise what we're up to'.

There are a lot of negative aspects of the bill which, in a very brief summary, I will try to explain. Subcontractors are denied the use of the Subcontractors' Charges Act, allowing them to put on hold moneys owing while awaiting a decision under the rapid adjudication process. Under the payments bill, they must opt for one process or the other. If the subcontractor chooses to make application for adjudication and it is the last payment for the project and the application is made under section 22(1) (b) of the payments bill and he follows time frames set out under sections 22 to 25 of the bill, he may be denied placing a charge on moneys owing. He may be denied the use of the Subcontractors' Charges Act as the charge must be placed within three months of completing work on the site and the adjudication process will exceed that time frame.

The QBSA Act is to be amended by omitting section 67H of part 4A. With regard to schedule 1 of the bill, this removes the legal requirement to have a variation to a contract in writing and price. This could have disastrous outcomes as many money disputes arise from variations. If the variation is not priced and not in writing, what documentation can be used to prove a claim to the adjudicator or the courts, as the case may be?

Section 26 of the payments bill provides very strict guidelines for the adjudication decision. Removing section 47H of the act legalises the current practices of some of the rogues and shonks in the industry who, at the end of the job when the final payment is due, just say, 'We can't pay for that variation. You don't not have it in writing.' Because of that, we see a weakness in the bill.

Section 67(1) of the BSA Act remains. It provides for a contracting party to give a direction for additional works without the agreement of the contracted party and without the contracted party knowing whether he would be paid for the work or how much he would be paid. However, the contracted party cannot refuse to do the work, which is the subject of the direction. Clearly, this part of the bill could produce some very negative outcomes for builders and subcontractors. I refer members to Suncorp Stadium. As I mentioned, the issues in relation to that matter are still not resolved. It is difficult to see the reasoning for removing section 67H from the act by this bill, which claims to be providing security of payment.

This bill also amends section 67J of the QBSA Act, which relates to set-offs. I wonder how much industry consultation was involved in this part of the bill. As at the end of October last year, the draft bill contained a mention of the changes to section 67J, yet the bill as presented allows a contracting party to charge whatever he likes for a set-off—for example, cleaning—without notifying the contracted party in writing as to how much he is going to set-off. The contracting party can deduct that amount for any moneys owing to the contracted party. I cannot find a definition for the word 'set-off' in this bill or in the QBSA Act. It seems that the definition for 'an amount owed' as defined in the bill is very broad and will capture anything that a contracting party may dredge up at the end of a job as an amount owing by the contracted party to avoid having to make a final payment.

Written notice must be given within 28 days after the event. Through the changes that this bill makes, the contracting party is now not required at all to advise the contracted party as to how much is owed. Governments do not allow banks to charge interest without telling the customer how much that interest will be. Real estate agents are not allowed to charge commissions without first telling the customer how much that commission will be. This bill makes builders and subcontractors very vulnerable to the practices of shonks and rogues who can simply say, 'We have done all that the legislation requires us to do.' A building contract must state the amount to be charged, but a set-off is open ended. I think that the minister can understand the point that I am making.

I also believe that liquidated damages is not considered a set-off in this bill. Liquidated damages can be charged at the end of the job, or at any time after completion as part of a defence and counterclaim. That could be six months or more after the completion of the job. The legislation has no guidelines or rules to define 'liquidated damages'. Surely, damages should be charged only if the contracted party has caused the project to extend beyond the expected completion date; the cause of the delay is not something beyond his control—for example, rain, or availability of materials; damages should not be

charged without first notifying the contracted party in writing that he is now in a liquidated damages; and the principal has charged liquidated damages to the contracted party.

Mr Schwarten interjected.

Mr HOPPER: I refer to a standard contract written by a large Queensland construction company. This might help the minister understand what I am saying. This contract relates to subcontracted tradespeople in the industry and where the subcontractor has made an application in writing for an extension of time. It states—

The builder shall inform the Subcontractor within a reasonable time (being not less than twenty-eight (28) days) of receiving a claim for an extension of time, whether or not the builder has granted any extension of time and, if so, the period of the extension, and whether the Float has been reduced.

It states further—

Where the builder does not so advise the Subcontractor within fifty-six (56) days of the receipt of a claim for an extension of time, then the claim shall be deemed to be rejected and the claim must be referred to dispute resolution by the Subcontractor in accordance with Clause 24 within sixty-two (62) days of the receipt of the claim by the Builder or failing this it shall be deemed to be abandoned and released.

Does that seem like an abuse of contractual power? How many subcontractors will have read 22 pages of clauses such as these? How can a subcontractor be expected to wait 56 days to be informed whether his claim for an extension of time has been granted? The job will more than likely be finished by then.

This same contract has a notice on the front that states—

The standard provisions of this subcontract agreement are not to be altered, unless previously agreed with ... and amendment shall be made by special conditions attached to the standard conditions.

That sounds like bullying practices to me. This is clearly a case of the big print giveth and the fine print taketh away.

Clause 99 of the bill provides the no contracting out provisions of the bill. This clause would be a good opportunity to put in place some protective measures to protect the builders and subbies in relation to set-offs and liquidated damages that could not be contracted out.

I turn now to the security of payments issues that are not addressed by this bill. Firstly, there are no requirements in this bill for the owner/developer to prove that the money is available before the construction commences. So if there is no money, there is no security of payment regardless of the rapid adjudication. If a builder goes into liquidation for whatever reason, there is no money. There is still no security, regardless of the rapid adjudication. The bill does not pretend to address this area of non-payment.

At this stage, there are a lot of aspects of the bill that are contradictory to the discussion paper that was used at the road shows in February/March 2002. I do not mean to sound too negative, because there are a few positive things about this bill that I would like to touch on. Firstly, the bill provides for quick decisions on the payment of progress payments to builders, subcontractors and suppliers in the building and construction industry. I think that is something that we have needed for a very, very long time. That should free up the flow of funds down the contractual chain. That will also allow for the suspension of works if the flow of funds is not happening without the suspending party being penalised. Parties who opt to use the subcontractors act will be excluded as they will not be able to suspend works without penalty.

However, let me paint a scenario. An owner/builder/developer does not have the money for the project for which he is contracting to build. There is no requirement for him to produce any proof of available funds. Currently, the builder does not get paid. He therefore cannot pay subbies and cannot pay suppliers. Everyone loses except the owner and the finance provider. Under this bill, if the owner/ developers's money runs out, the builder can apply for adjudication and obtain judgment. If there is no money and the owner/ developer liquidates, no-one gets paid. The financial institution gets the assets and the subbie ends up with nothing simply because he has no security.

What if the owner pays the builder, who then does not pass on the money to the subbies and the suppliers? The subbies and the suppliers do not get paid. Currently, the subbie can do a subcontractor's charge and then must commence legal action, which will take four to five years and a heck of a lot of money. Under the provisions of this bill, when the builder is slow passing the money on to subbies and suppliers, an application can be made for rapid adjudication. Provided all the time frames are strictly adhered to, the subbies and the suppliers can obtain a fast decision from the adjudicator. One can only agree with that. That is brilliant.

Mr Schwarten interjected.

Mr HOPPER: Money will change hands in most instances. This is an interim decision and the court may still be required to determine complex contractual disputes, as we have seen in the case of Suncorp Stadium. What if a builder goes into liquidation, voluntary or forced, resulting in the subbies and suppliers not getting paid? At the moment, the subbie can do a subcontractor's charge and get a few cents in the dollar and that is considered a good outcome. This bill will have no effect in this situation whatsoever, except that it may force builders into liquidation sooner rather than later, or it may have a negative effect for subbies, who opt to use the rapid adjudication process and then miss out on securing funds under the subbies charge.

What if the owner/developer chooses to cheat the builder or the builder chooses to cheat the subbies at the end of the job by not paying for the variations and/or not making final payment? The attitude of the cheat is 'accept what we are offering or take us to court'. With the present legislation, the result of this is that the subbie does not have the money he is owed and therefore does not have the money to go to court. The subbie can do a subcontractor's charge but must start court proceedings within one month. The subbie then does not have the money to go to court. Under the payments bill this is a situation in which rapid adjudication should work well for the builders, subbies and suppliers. The application should be cost effective. All documents are put out before the adjudicator and a decision should follow promptly. There will still be a problem in getting the money, however judgment is a step in the right direction. Just because we have a decision, it does not automatically follow that we get the money, but it is a great start.

Let us look at what happens with a claim under proposed subsection (1) (b) if a subbie gives a payment claim and the builder does not respond within 10 business days and does not pay the full amount on the due date for payment. The subbie can obtain judgment in any court of competent jurisdiction. A claim must then be made in a relevant court. The subbie has then opted for a court action and cannot apply for adjudication. However, if the subbie opts not to go to the court he can apply for adjudication. He must within 20 business days immediately following the due date for payment notify the builder that he is going to apply for adjudication. He must then give the builder five business days to provide a payment schedule. Then the application must be made within 10 business days after the five-day period has expired. If he misses any of these time frames he is out. Under proposed subsection (1) (a) (i), if a subbie gives a payment claim and the builder provides a payment schedule advising a lesser payment than that claimed, different time frames do apply.

The bill has made no provisions for education. Many industry groups that will be covered by the legislation will not be registered with the BSA, for example suppliers, engineers, architects, developers, civil contractors and earth moving contractors among others. How will all of these groups be given the tools to use the legislation effectively, especially considering the crucial time frames involved? Learning by experience is sometimes very painful.

Mr Schwarten: They have all done that.

Mr HOPPER: I have done it, too. These groups will not be on any mailing list with the BSA and will have to rely on seminars and the media to advise them. Let us consider the scenario of a one-time investor who decides to build a commercial premises. The situation could be that the builder gives him a payment claim for the first payment. How does he know that he must give the builder a payment schedule within 10 days? He is not in the industry. This is the first time he has done it. It is all new. What if the claim was three times the value of the work performed? On the due date for payment, if the total amount of the claim has not been paid the builder can go to the court and get a judgment for the amount of the claim and the investor cannot use any defence.

Suppliers will need to ensure that invoices contain all the requirements under the bill to comply with 'payment claim' status. Builders and subbies will need to be constantly scrutinising their supplier invoices within 10 days to ensure they are not being overcharged for products. If they have not produced a payment schedule within 10 days advising of the overcharge then they could have a judgment against them with no recourse to a defence. Large construction companies will have access to lawyers and solicitors to ensure systems are in place to meet the new requirements, but how will the small builders and subcontractors learn the time frames to ensure they fully utilise the legislation to gain payment for their work? Quite an education process will have to be put in place.

Currently, under the QBSA Act 1999 there is a legal requirement for variations to the contract to be priced and in writing. As many disputes in the industry relate to payment for variations to the contract, the requirement to have it committed to paper makes it easier to substantiate a claim when the need arises, whether it is in court or at the tribunal. With this section of the act removed and section 671 remaining, contracted parties may be required to perform additional works to that contract without knowing how much they will be paid or even if they will be paid. When they apply for adjudication they will not be able to substantiate their claim with documentation, according to proposed section 27(2) of the payments bill. If the larger entities in the building industry find it difficult to comply with written variation approvals with a price, then surely this is not a good reason to increase the subbies' exposure to non-payment.

This bill goes some way to alleviating the payment problems, but fundamental change and reform are required within the industry to protect those subbies from being screwed over by the rogues and shonks. I really look forward to the minister continually monitoring this legislation during this term to ensure the rogues and shonks do not win and that the fundamental reform will continue within the building and construction industry. I support the bill before the House.

Mr LIVINGSTONE (Ipswich West—ALP) (5.55 p.m.): I rise in support of the Building and Construction Industry Payments Bill 2004. Firstly, I would like to congratulate the Minister for Public Works, Housing and Racing and the Building Services Authority on producing a bill which will have such a positive impact upon the Queensland building and construction industry.

This bill is a watershed and clearly indicates the Beattie government's ongoing commitment towards improving the industry in Queensland. The Queensland building and construction industry is worth approximately $18 billion to the state's economy annually and provides direct and indirect employment for thousands of hardworking Queenslanders. Since 1998 the Beattie government has introduced two major

legislative initiatives which have improved payment outcomes for subcontractors working in the building and construction industry.

In October 1999 the Better Building Industry reforms came into effect. Among a host of initiatives, the reforms included the introduction of tough contractor licensing financial criteria, a series of commercial contractual protection measures and the banning of persons from holding a contractors licence in the event of being associated in any significant manner with a failed business venture.

More recently, in July 2003, building on the previous reforms, significant amendments to the Queensland Building Services Authority Act 1991 came into effect, extending the powers of the BSA to ban persons from holding any form of building licence to include persons who continually displayed a lack of regard for their contractual and payment obligations. These reforms have proved effective, with two individuals having been suspended for life and another receiving 30 demerit points, resulting in his licence being disqualified for three years.

These recent legislative reforms, coupled with the longstanding Subcontractors' Charges Act 1974, mean that subcontractors working in Queensland enjoy a raft of legislative protection measures designed to improve their payment prospects. However, these legislative measures in themselves do not result in any improved cash flow outcomes for parties operating in the building and construction industry. A system where payment disputes can be quickly and relatively cheaply resolved on an interim basis is required to complement the current legislative measures. The system of rapid adjudication established by the passing of this bill will fulfil this crucial element to improve the payment outcomes for contractors within the industry. The bill will further improve the standards and integrity of the building and construction industry in Queensland. I commend the bill to the House.

Mr POOLE (Gaven—ALP) (5.58 p.m.): I rise in support of the Building and Construction Industry Payments Bill 2004 as it provides the hardworking individuals in this industry with an alternative dispute resolution mechanism to the courts to overcome payment issues in a fast and efficient manner. The bill is groundbreaking and will impact on payment relationships between parties involved in the performance of construction work. During my time as a local member I have had many contractors from the building and construction industry contact my office regarding payment disputes.

While the Beattie government has improved the payment prospects for contractors through a series of legislative initiatives, this bill sets out a process whereby payment disputes can be dealt with in a fast and efficient manner. The bill addresses the balance of power between contracting parties. Previously a contractor has not paid and a subbie has had to justify why he should be paid for doing work. Now the contractor receiving a payment claim endorsed under the bill and wishing to dispute payment has to sufficiently explain and give reasons why they are refusing to pay the subbie for their hard work.

In future, when contractors come to my office with matters involving payment disputes in the building and construction industry, I will be able to point them in the direction of rapid adjudication and have the knowledge that a decision will be reached in a much shorter period of time, rather than dragging a payment dispute through the courts. If payment of the adjudicated amount is not paid, the claimant can request an adjudication certificate which can then be lodged in a court of competent jurisdiction as a judgment debt.

Under the Queensland Building Services Authority Act, a judgment debt now attracts 10 demerit points to the licensed contractor's record. If any BSA licensee receives 30 demerit points, their licence is suspended for a period of three years. As an added incentive to do the right thing, demerit points are also listed on a licensee's historical search available to members of the public on the BSA's web site, which is www.bsa.qld.gov.au, which will no doubt affect licensees' future work opportunities. I would like to take this opportunity to congratulate Minister Schwarten on the development of this bill and support the introduction of the Building and Construction Industry Payments Bill.

Mr LANGBROEK (Surfers Paradise—Lib) (6.01 p.m.): As Liberal shadow minister for public works, housing and racing, I am very pleased to lead the Liberal Party on the Building and Construction Industry Payments Bill—a bill which the Liberal Party does not oppose. The Liberal Party welcomes this legislation, albeit cautiously, and we agree with the intent of the bill. The problems in the construction industry with regard to the non-payment of subcontractors are immense. A bill that is aimed at addressing and rectifying these problems should be welcomed by the House.

This legislation was on the table during the last parliament after being on the agenda for over two years. This legislation has been a long time coming—too long for the unfortunate subcontractors who have been stung by unscrupulous and deceitful builders who would prefer to stall rather than pay what they owe. The object of this bill is to provide progress payments to subcontractors at regular intervals to ensure that cash flow is steady and constant in the construction industry. An important change also is the introduction of rapid adjudication which aims to balance time and efficiency with legal precision. As a consequence of this rapid adjudication, a certificate is provided that can be presented to a court of an appropriate jurisdiction. From there, the debt can be claimed.

As I have previously mentioned, the problems in the industry are endemic. Subcontractors have for too long been the little brother picked on by builders and developers with no intent to pay them for the work they have done. I must say at the outset that the vast majority of builders and developers are honourable business people who work hard to make a success of their businesses. I have every respect for developers who make a living via the legitimate and ethical method of paying subcontractors for their hard work. For that unethical small portion, though, their practice of ripping off honest, hardworking

Queenslanders must stop. In speaking on a similar bill in New South Wales, Premier Bob Carr called the practice un-Australian. This is a very true statement and any measures that can be implemented to stop this un-Australian practice must be implemented.

This government should be commended for bringing this bill before the House. It is a bill that provides greater protection for subcontractors, helping them to be paid rightly for work and materials they have provided. The building industry contributes millions and millions of dollars to the Queensland economy each year. The major threat to that huge contribution is a break in the chain of contract that exists in the building and construction industry. If those at the top of that chain of contract, the developers, are not paying what they should to the next level, the subcontractors, the effect is exponential. The more this practice goes on at the top level, the greater the difference it makes to the overall bottom line and the lives of thousands of Queenslanders.

Prompt payment of subcontractors speeds up the cash flow through the industry. When cash flow is accelerated, the industry can function at its most efficient. A greater portion of time will be spent on the building and construction side of the industry and less on the administration and money chasing that bogs down construction output. This bill is aimed at securing that efficiency and output. No system is perfect. I am sure there will still be the odd case of poor and delayed payment for subcontractors. This bill, though, significantly improves the mechanisms for payment recovery and provides disincentives to rogue builders and developers.

The major improvement to payment recovery mechanisms is the rapid adjudication process. The model used in this bill is one that has been used to very good effect in other states and overseas. It has proven to work and it will work in Queensland. The reason this method of payment recovery works is that it comprehensively thwarts any attempts to delay payment by a builder. This bill makes the practice of stalling much harder.

As with any legislation, there will no doubt be some teething problems in its introduction into the industry. Some of these problems can no doubt be foreseen from similar problems which have been encountered in other states. As the Liberal shadow minister for housing, I will be watching very closely over the next 12 months and looking for ways the reforms could be further refined to promote even greater efficiency and output.

As much as I do commend the bill and its intent, I have a number of reservations. These are reservations industry representatives have expressed to me. First, there is the grave concern that variations do not have to be fully costed prior to the commencement of work. This point increases the risk of non-payment down the track. If a variation to the original contract needs to be made, it is generally made on site with no paperwork or record whatsoever. These verbal agreements can be disputed at a later date. As it stands under this legislation, variations do not need to be considered as mandatory clauses in the contract, nor can variations be subject to the benefits of rapid adjudication.

If a site supervisor instructs a subcontractor to make a variation on a property and the variation is substantial enough, it can be argued that the agreement was a separate contract. As such, for any dispute, remedy can only be sought in a court of law. This does not alter the current situation and leaves this level of paperwork and red tape for subcontractors to wade through. It also leaves the subcontractor open to considerable risk of non-payment as it is very difficult to verify these ad hoc contracts in a court of law.

Second, I would like to register my concerns about the practicality of the time frames involved in the lodgment of paperwork under this act. The purpose of this bill is based on the premise that subcontractors are far too busy with their work to be chasing up accounts. Yet there are a number of very tight time constraints by which subcontractors need to abide. I am worried that some disputes will be deemed invalid by virtue of not being handed in legitimately on these tight time constraints. The reason for this failure to comply may simply be that the subcontractor is too busy working. The intent of this bill is to protect subcontractors. The only reason for tight time constraints would be to prevent one party stalling. In this case, the party that wants to prevent stalling is the subcontractor. So there is no need to place them under such a time constraint. Relaxing the time constraints would enhance the ease with which subcontractors could recover their money rather than hinder it.

Third, my greatest concern is that the benefits of this bill will not be passed on to the subcontractors via an education process. The Building Services Authority does not have the resources required to educate concerned parties as to the changes this act implements. While I am sure many subcontractors will be pleasantly surprised at some of the initiatives contained in this bill, some differences, though, if not brought to their attention may work to the subcontractors' detriment. For example, under the existing legislation a payment must be made as per the contract or at a default period of 15 days for builders and 25 days for subcontractors. The bill before the House suggests a default 10-day period for payment.

The reason the new default period—a provision in conflict with the Building Services Authority Act—is 10 days is that this bill is a carbon copy of the one presented to the New South Wales parliament. The difference, though, is there is no Building Services Authority Act or equivalent in their legislation. As such, there is no conflict in New South Wales. To stay in time with part 4A of the Building Services Authority Act here in Queensland, and for that matter with the practicality of implementation, it would make sense to leave the default period at 15 days for builders and 25 days for subcontractors.

The problem is that, without education, subcontractors and builders may not know what they should do and when they should do it by. Some builders may be in violation of the act though they had no intention

of stalling whatsoever. For this reason, I suggest that resources be allocated to the BSA to educate concerned parties or, more importantly, the current default periods be carried over to the new legislation so as to avoid a situation where well-intentioned parties are found in violation of the act. If this matter is not attended to, confusion will reign with regard to this bill over when and under what circumstances a person may be paid.

Like many people, I have experienced the trials and tribulations of building a home first-hand. I have many trade contractor friends who tell me of the many times they have been left out of pocket due to lack of payment by unscrupulous builders. These are honest, hardworking people deprived of the payment that is rightfully theirs. I support the intent of the bill. I will, however, be watching very closely over the next 12 months for ways to refine the reforms to make the industry more efficient.

Mr HOOLIHAN (Keppel—ALP) (6.09 p.m.): It is with pleasure that I speak in favour of the Building and Construction Industry Payments Bill 2004. Part of my background involved trying to enforce charges under the Subcontractors' Charges Act, which was somewhat akin to a nightmare. For many years the building and construction industry has experienced difficulties with payments between different levels of contracting parties, as has already been set out. It is pleasing that we have a minister who has a background in the construction and building industry, and I congratulate him on the thrust of this bill.

Any member of this House who has practised law in the area of building contracts will be aware of the difficulties experienced by subcontractors in obtaining payments from certain unscrupulous builders and even some decent operators who have difficulties with cash flow or where a dispute exists over a contract. The member for Darling Downs has pointed out that, in some ways, this bill does not go far enough, but the shortcomings relate more to the ultimate recovery of moneys owed if a claim for the unpaid amount is filed as a judgment for a debt in a court of competent jurisdiction. Company liquidation or bankruptcy could still frustrate the payment. If the respondent is going bust or is a company close to liquidation, the money may never be paid in full, but this situation does not affect the real improvement that will be implemented under this bill and that will protect the majority of industry operators.

The bill substantially expands the definition of 'work' which can attract the payment provisions and give certainty to a claimant. The original Subcontractors' Charges Act was very prescriptive in respect of the areas that attracted the operation of that act and the time frames were very tight, and I will mention that later in my speech. The chain of payments was also attacked further up the chain thereby causing cash flow problems for the whole contractual chain.

If the non-paying entity or person had only some temporary difficulties in their cash flow and had not wished to become part of any resolution because of a perceived backlash by the industry, the requirement in this act for a payment schedule should give both parties the opportunity to be open with each other and perhaps enter into meaningful discussions for resolution. Even if only some payment is to be made now, that will protect the claimant's position in the interim and give them a continuing right to receive the balance of their money.

The present requirements under the Subcontractors' Charges Act caused long and involved proceedings. Anecdotally, it appeared that the main argument usually raised against any claimant was that the work was substandard or had not been completed. The onus of proving all aspects of the claim rested on the claimant's subcontractor and virtually became a trial on a breach of contract.

I note that the research brief produced by the Parliamentary Library sets out the limitations under the existing act, one of which is 'that courts have strictly interpreted the act because of the special position it confers on subcontractors'. To any lawyer acting in that field, that comment is a substantial understatement. Because of the nature of most subcontractors' operations, they work on a small profit margin and a substantial cost in enforcing any claim—together with the strict interpretations and sometimes coupled with the loss of the payment—caused them to face ruin. In addition, they were not able to cease work under the contract as the mere cessation would thereby constitute a breach of the contract.

Various amendments were made to the original Subcontractors' Charges Act over the years, but the difficulties for any claimant in securing payment has never been completely resolved. To have a defined process with specific time frames does give some certainty to claimants while endeavouring not to disrupt the payment chain. A procedure allowing a claim, then requiring submission of a payment schedule, adjudication of any disputed claim and payments of progress payments should streamline the resolution of any disputes.

The act makes provision for the registration of an authorised nominating authority and also for separate registration as an adjudicator. It is the nominating authority that must register the adjudicators in accordance with the act, but I would have preferred to see the QBSA itself register the adjudicators, thereby removing one tier of bureaucracy. The criteria for registration is, however, set out in the act and should ensure a high quality of adjudicator. In addition, the failure of an adjudicator to meet the time limits set out in the act for his or her adjudication would result in the loss of right of payment of the adjudicator, and that should set a high quality of persons entering the field.

The Commercial and Consumer Tribunal Act is amended and given review powers in relation to the registration of the nominating authority or the adjudicator, and this power may ultimately resolve any of my perceived problems. The authority is required to report to the minister as to the operation of the adjudication registry in each year and it may be necessary to review that aspect of the appointment of adjudicators after consideration of that report.

Although causing difficulties in its enforcement, the Subcontractors' Charges Act has not been discarded altogether and it still may have some relevance under certain circumstances. The claimant has the option to choose which procedure they wish to follow. That was mentioned by the member for Darling Downs. However, in fact they may switch from one procedure to the other if circumstances change.

The Queensland Building Services Authority Act is also amended to change the application of that act to certain contracts, and that is under section 67. In fact, it amends part 4A of the act to allow the provisions of the new bill to operate in the manner envisioned.

As with much legislation, the proposed operations can only be assessed against comparable provisions in other states or assessed against its own operation over time. The minister and his department have addressed the difficulties for payment to contractors by the procedures proposed. I believe the majority of operators in the building industry will accept the legislation and try to operate within its framework. Those who do not accept the procedures are the ones who caused the problem in the first place and, hopefully, the application of the bill will banish them from the industry. I commend the bill to the House.

Mr FINN (Yeerongpilly—ALP) (6.16 p.m.): I rise today in support of the Building and Construction Industry Payments Bill 2004. This bill is a reintroduction of the bill presented prior to the House rising for the election campaign. Today I will make brief comment on the scope and important exemption of this legislation.

Entitlement to payment for work performed in the building and construction industry by contractors and subcontractors has, to date, been governed primarily by the common law of contract. Subsequently, any rights arising out of the various contracts between owners, contractors and subcontractors are usually enforced through orders of the court.

Firstly, a court judgment for the amount owing is obtained and then one of the more traditional avenues of debt recovery, such as commencing bankruptcy proceedings against defaulting individuals, is initiated. These actions under common law can be both lengthy and costly. This bill creates an alternative statutory process to those traditional means currently available for the enforcement of contractual rights in the building and construction industry.

The bill affects Queensland's 55,000 BSA licensed builders and trade contractors and takes into account other industries working in building and construction that do not fall under BSA's immediate jurisdiction but which provide related goods and services. The bill applies to most contractors, subcontractors, suppliers of constructional plant whether by sale or hire, and suppliers of architectural, engineering, surveying, decorating or landscape advice by making provision for these entities, in the case of disputed payments, to lodge a payment claim with an independent adjudicator.

Importantly, though, no contractor or subcontractor carrying out construction work in Queensland will be forced to rely on the adjudication process established under this bill if they are content to rely on the relevant contractual arrangements. However, a contractor or subcontractor wishing to utilise the adjudication process, in addition to preserving their contractual rights, is required to give notice of intention to the person receiving the payment claim. This notice provision ensures that the person receiving the payment claim has had an opportunity to inform themselves of their obligations and respond if they wish to dispute the payment.

There is one major category of exemption from the application of the bill. The builder of a house for occupation by a client defined as a resident owner under the Domestic Building Contracts Act 2000 cannot make a payment claim against the client. This exemption protects, for example, those families—the mum and dad owners—who may only build a new home or renovate an existing home once or twice in their lifetimes. That is an important protection, as this exemption ensures that a builder is not able to lodge a payment claim which, if not met within the expiration of 10 business days, would require full payment to be subject to a payment order. The protection ensures that resident owners, like mum and dad owners, are not disadvantaged when they may have good reason to withhold or defer payments.

By contrast, the speedy and definitive payment regime is well known to the majority of persons or companies working in the commercial sector of the industry as most standard form contracts in use in this sector contain similar payment provisions. The BSA has consulted widely in the formation of this bill and received overwhelming support for its introduction. Notwithstanding this, the Minister for Public Works, Housing and Racing has directed that the legislation be reviewed after being in effect for 12 months. This is in keeping with this government's commitment to continued consultation within the building and construction industry. The member for Surfers Paradise can rest easy—we are looking at it too.

This bill is supported by industry stakeholders, enables dispute resolution without reference to courts and the associated costs of court action, does not extinguish the right of recourse through the common law of contracts and keeps the cash flow moving down the hierarchy of the construction industry. In the end, this bill is about ensuring that contractors, many of whom are small and medium size businesses, are able to rapidly access moneys owed to them and without high recovery costs. This means protection for businesses and their employees. I commend the bill to the House.

Miss SIMPSON (Maroochydore—NPA) (6.20 p.m.): I am happy to speak in support of the Building and Construction Industry Payments Bill. I note that the primary provision is the rapid adjudication process for subbies. This is the big issue. We can have other legal processes for resolving contracts, but if someone financially starves to death while waiting to receive justice it is very hard to accept. This

legislation which provides a statutory framework for the rapid adjudication of contractual disputes in the building industry, particularly in the commercial building industry, is certainly welcomed.

I note that my colleague the member for Darling Downs has raised some concerns. We await the minister's response in that regard. My only comment would be why we are not looking at an extension of this into the residential building sector. Obviously, this is something of concern to subbies in the non-commercial sector and they also need protection afforded to them. I would certainly welcome the minister's comments about that. That continues to be of concern because subbies will still be exposed to the risk of unpaid contracts, having those contracts dragged out and not having a cash flow. This legislation does not cover that issue.

With regard to the commercial industry, I note that there is one exception, as has been mentioned—that is, non-commercial, low cost contracts. That relates to owner builders who engage contractors and tradespeople in a building contract role. Subbies in this case will have recourse to this legislation to seek rapid adjudication.

The Subcontractors Charges Act 1974 is a very interesting piece of legislation which was based on very sound principles. I believe that largely this is a good piece of legislation. I am pleased that the legislation that we are considering seeks to dovetail with that legislation. Once again, it is about trying to get a fair outcome but also making sure that these outcomes are achieved in a timely way.

I note that the legislation does provide for default provisions with regard to contracts. In other words, where the contract or the agreement is silent on progress payments there is an ability for the adjudicator to use the default provisions in the resolution of these particular issues. As has been noted, this legislation will come up for review in 12 months. Subcontractor issues have been traditionally very difficult issues. They are issues that both sides of politics have sought to address with goodwill over the years. We know that these issues do need to be revisited to make sure that the laws as intended do have the desired outcome.

Obviously, the building industry is important to the future of Queensland. It is a major employer of people. It is a major part of the investment for the state. For most people the majority of their investment will be in the property sector. We have to ensure that we have a healthy building industry that goes hand in hand with the property sector. This is vital.

Traditionally, there have been a lot of victims who have not been able to be paid in a timely way. The vexed issue has been the payment of subcontractors who are often at the end of the food chain. They are the ones who pay the price of bad business decisions that are made higher up the food chain. Sometimes there are unfortunate circumstances where people go under. At the end of the day, we need a fair system for subcontractors. We need a fair system for all industry players so that people know that there is a process to resolve disputes.

This legislation does not remove a party's contractual rights to obtain a final determination of a payment dispute by a court or a tribunal of competent jurisdiction. What it does allow is for rapid interim adjudication so that the party who is considered to have the most commendable case, as determined by the adjudicator, is able to have that matter resolved on an interim basis. That is a significant fact. It means that there is ultimately still a final determination of the issue. But there is recognition that people need to have a quick outcome to keep people alive as far as their cash flow is concerned. If this does not happen the final determination in the court will never come about because someone will go belly up and be unable to take the time to continue to pursue the matter and will often cuts their losses. Accumulatively, that is an extremely expensive process.

Often subcontractors have been criticised for being the creators of these problems. There has not been an understanding that they have the bad luck of having done the appropriate checks, considered the people they are doing business with and are still losing out in the end by not being paid in a timely manner. While the issue of good business practice is relevant for any player within the building industry, it has been the lack of power of the subcontractors that has often made them extremely vulnerable. They often have a lack of capital to carry them through to the long-term resolution of issues.

We will look towards the review and the outcome of the assessment of the legislation as it is implemented. We will also be looking at the issue of private adjudicators and the establishment of a process ensuring that the appropriate people are in place, are appropriately trained and are brought in line under this legislation to deliver this very important service. On the whole, I welcome the legislation before the House.

Sitting suspended from 6.27 p.m. to 7.30 p.m.

Mr FRASER (Mount Coot-tha—ALP) (7.30 p.m.): I rise tonight in support of the Building and Construction Industry Payments Bill 2004 which will provide for the establishment of a system of rapid adjudication over payment disputes. In my electorate of Mount Coot-tha, I doorknocked many subcontractors in the lead-up to the election campaign. Sometimes when one walks down a street in my electorate, they can be forgiven for thinking that renovation is the national pastime. As the minister has said, cash flow is the lifeblood of the building and construction industry—an industry characterised by operations often with limited capital backing—and the adjudication process that this bill proposes will provide a cost-effective process for providing interim decisions on disputes. The adjudicator to which decisions about payment will be referred to under the bill has the power to call for submissions, view the

site and hold a conference when considering a dispute. The important part about this bill is that the adjudicator only has 10 business days to make a decision from that time.

What this bill is doing is not trying to replace the cowboy antics with shoot-from-the-hip justice. Importantly, rapid adjudication does not extinguish a party's ordinary contractual rights to obtain a final determination of a payment dispute by a court or a tribunal of competent jurisdiction. The significance of the adjudicator's decision is that pending final determination of the payment dispute the party with the most commendable case as determined by the adjudicator retains the moneys in dispute. Significantly, decisions by an adjudicator are then enforceable as a judgment debt if a contracting party fails to pay moneys to a contracted party as determined by the adjudicator. In accordance with the principles of natural justice, the adjudicator must provide reasons for the decision to both parties.

The best part about this bill is not the adjudication process which it seeks to usher in but rather the important secondary benefits and change of culture in the industry which the bill will surely usher in. Apart from allowing for a prompt interim decision on disputed payments, the process encourages communication between parties about disputed matters. Indeed, its very presence encourages a more focused attention in evaluating payment claims because most parties to a construction contract will wish to avoid the rigours of the adjudication process. Indeed, it has been the New South Wales experience where similar legislation is in force that these secondary benefits are being shown to be very significant and effective in bringing about that culture change in the industry in New South Wales.

This is a bill that will ensure that the cowboys are out of the construction industry—those who operate on a predatory principle against the subcontractors who, by definition, are operating in honesty in accordance with the interests of good practice in the industry. This is a bill that will assist in preventing insolvency forced upon the small and legitimate contractors by the unmeritorious withholding of payment by larger contractors. This is a bill that will help ensure there is fairness and equality for those working in the Queensland building and construction industry, and I commend the bill to the House.

Ms MALE (Glass House—ALP) (7.34 p.m.): I rise in support of the Building and Construction Industry Payments Bill 2004 and congratulate the minister on reintroducing this bill, because it is a very important piece of legislation. It will have a significant impact in the electorate of Glass House because it is one of the fastest growing areas in the state. Members are probably well aware of the growth occurring around Caboolture and the number of new subdivisions which are springing up on what seems like a weekly basis. The quick rise in the cost of housing in the past two years is forcing more and more people to look at alternatives outside the Brisbane metropolitan area. The cheaper land and house deals around Caboolture and Glass House makes our area a very attractive place to live, not to mention the fantastic scenery and the wonderful people who live there.

What some members may not be aware of is the large number of development approvals for the Sunshine Coast hinterland towns. Caloundra City Council has approved major developments in and around Beerwah and Glasshouse Mountains which will see a major housing boom over the next five years. This bill will give greater security to builders and subcontractors who will benefit from this housing boom in my area. The bill borrows from the experience of New South Wales legislators and is a very worthwhile advance in the security of payment issue which has been around for decades. It addresses the most important problem facing building subcontractors when confronted with payment difficulties, and that is timeliness. The time limit of 10 business days to settle a payment dispute gives building contractors surety and greatly improves security but does not cut off their other avenues within the law to secure payment. However, court battles over payment of debts can be drawn out affairs which eat up resources, something building contractors can ill afford. This bill provides a quick and easy settlement of a dispute by streamlining processes while at the same time still protecting the legal rights of participants.

I am also pleased to see that this bill addresses the anomaly surrounding owner builder issues. It clearly sets out the role of an owner builder in payment disputes, and for work valued over $11,000 owner builders will be required to undertake training so they are under no illusions as to their roles and responsibilities. As I mentioned before, payment of building subcontractors has been around for decades. During the 1996 Mundingburra by-election it became a major issue and the Borbidge-Sheldon opposition promised to fix the problem. On the basis of these types of promises and the dodgy deal with the Police Union, the coalition won the Mundingburra by-election and was subsequently supported by the member for Gladstone to become the government. The Borbidge-Sheldon government appointed Ray Connor to fix the subcontractors' problem, and his first act was to establish the expensive Scurr review to examine the payment of subcontractors. The benefits to flow from this expensive inquiry were minimal for building subcontractors, and perhaps the greatest benefit the Borbidge-Sheldon government bestowed on the building industry was to sack Ray Connor as its minister.

The failure to fix the building subcontractors issue was just another example of how ill prepared the coalition was to form a government in 1996. Since then, the coalition has lost even more experienced members, so just imagine how badly it will perform in government the next time around—assuming of course the Liberals can swallow their pride, resolve the glaring policy differences with people such as the member for Darling Downs and sign another coalition agreement with the Nationals. I believe that the Liberals have more support across the electorate than the Nationals do anyway, so they should probably be the leading party. But back to the bill, as I have been discussing all along. It was left to the Beattie government to clean up after the failed Borbidge-Sheldon government, and we are continually refining and

improving the laws surrounding the building industry. This bill is another example of this, and I commend the bill to the House.

Mr WELLINGTON (Nicklin—Ind) (7.37 p.m.): I rise to speak in support of the Building and Construction Industry Payments Bill 2004. Isn't it great to hear so many members of parliament speaking in support of this new bill and hopefully new act of parliament in Queensland? It is certainly a great step forward to have a rapid adjudication process. It is a significant improvement on the law in Queensland. I really hope that we can see this precedent extended to other laws in Queensland. Far too often solicitors and plaintiffs have used legal technicalities in order to drag out disputes so that the payment of money or the resolution of the dispute takes a long period of time to be resolved.

This is a great step forward. It is a great precedent for other ministers to look at to see how we can improve the adjudication process, to see how we can improve the mediation process to simply solve problems and conflict. Again, I congratulate the minister and say well done. I am certainly looking forward to the review in 12 months, and hopefully by then we will be able to see this extended to other areas of the law in Queensland. I do imagine, though, that after the bill becomes an act of parliament in Queensland we may see some teething problems that have been identified earlier. I would hope that, if these teething problems are identified and do eventuate, the minister will act as quickly as possible to rectify whatever these problems are and that we do not have to wait 12 months for rectification or amendment to the law in Queensland.

As I said earlier, it is a great bill and I am looking forward to the day that it becomes law in Queensland—a new act of parliament. My question to the minister is: when does he anticipate that this bill will be an enforceable act of parliament, operational and available for Queenslanders to access? I am certainly prepared to put up my hand and put my shoulder to the wheel to assist and inform constituents in my electorate of Nicklin on the Sunshine Coast, which adjoins the electorate of the member for Glass House. Our electorates have many things in common: we have growth, we have a great environment and we have great places in which to live.

Ms Male: We share the Blackall Range.

Mr WELLINGTON: That is right. We also have many builders in our electorates and there is a lot of construction work happening. I am prepared to put my shoulder to the wheel to assist in informing the building industry and my constituents on the Sunshine Coast as to how they can have access to this new law. My question to the minister is: how can we assist him in informing Queenslanders about how they can access this new law? I believe that the challenge today is not simply just passing the laws; we really have to inform Queenslanders about how those new laws can assist them. So often when I speak with people in the construction industry they say, 'Peter, look, we just want to build the buildings and get paid. We find it too difficult to understand all the legal technicalities and all the red tape that we have to go through.' So my challenge to the minister is: let us really look at seeing not how we can just have a good law but how we can inform Queenslanders of the availability of this new law and that it is simple and easy to access. I commend the bill to the House.

Mrs CARRYN SULLIVAN (Pumicestone—ALP) (7.41 p.m.): I rise to support the Building and Construction Industry Payments Bill 2004, which was reintroduced by Minister Robert Schwarten earlier this year. I offer my congratulations not only to the minister but also to his diligent and very hardworking staff. For the first time there is legislation that will go a long way towards protecting all parties in an industry that history has shown is very vulnerable to major downturns in the economy. Who could forget the early to mid-1970s, which saw high inflation and the severe scarcity of building resources and qualified staff, or the late 1980s to early 1990s with the general recession and a collapse in the property market. As these catastrophic collapses occurred, it was difficult to measure the total cascading effect on all the other levels of the industry, particularly on subcontractors and their clients.

Problems with regard to the payment of subcontractors in the building and construction industry have always been prevalent due to the very nature of its structure. Even though the industry is subject to a number of acts, problems in enforcing payment claims under that legislation have resulted in its failing in practice to achieve an outcome of fair and just payments for contractors and subcontractors and their clients. In talking to people in the industry, I have found that the nature of the building and construction industry is that developers, professionals, tradesmen and suppliers are bound together under the building contract. Owing to factors such as low profit margins, the high level of skills required, the high mobile work force and changing building environments, the building and construction industry is riddled with complexity and disputes. As such, when one player in the chain breaks down, more often than not that tends to have a domino effect on the entire team.

This state government in its last term introduced the subcontractors' charges legislation to ensure payment from head contractors to subcontractors. That is good legislation that serves to address some of the problems regarding payment issues between subbies and contractors. However, this Beattie government also recognises that if the payment of the head contractor is being unfairly withheld by the client, then the Subcontractors' Charges Act may not deliver the desired outcome as the head contractor may not be able to pay the subbies, notwithstanding the provision of the existing act. This bill serves to correct that by enabling any party involved in a building contract to improve payment outcomes by establishing a statutory base system of rapid adjudication for the quick resolution of payment disputes on an interim basis by an appropriately qualified and independent adjudicator. That will allow for payments to flow quickly down the contractual chain.

As the minister alluded to in his second reading speech, rapid adjudication does not extinguish a party's ordinary contractual obligations to obtain a final determination of a payment dispute by a court or tribunal of competent jurisdiction. The Scrutiny of Legislation Committee, of which I am pleased to be a member for a second term, suggests that the bill introduces a further statutory remedy that subcontractors may opt to employ. It creates a level playing field where disputes relating only to progress payments are dealt with in a relatively simple and flexible manner. At the same time, the legal equation is removed, therefore not allowing for the level of structured examination of those claims equivalent to that associated with a court hearing. However, the adjudication process does not extinguish either party's ordinary contractual rights to take the matter further and obtain a final resolution of a payment dispute by a court or a tribunal of competent jurisdiction.

The adjudicator must decide within 10 working days any application before him or her and must provide adequate reasons to both parties for the decision made. The advantages of this rapid adjudication process include the allowance for a prompt interim decision on disputed payments. It encourages communication between parties about disputed issues, and it is a much cheaper alternative. This adjudication process also lets unpaid parties suspend work or goods until the payment is received.

I am pleased that extensive consultation was carried out with the industry stakeholders. It included a statewide series of meetings with various state government departments, the release of two discussion papers and articles in the Queensland Building Services Authority's quarterly journal. I look forward to the results of the review which will be carried out by this government in 12 months' time. I commend the bill to the House.

Mr DEPUTY SPEAKER (Mr Shine): Before calling the honourable member for Noosa, might I draw to the attention of the House that this is the honourable member's birthday.

Mr Schwarten: Twenty-six today.

Ms MOLLOY (Noosa—ALP) (7.46 p.m.) I would love to be 26. I rise to speak to the Building And Construction Industry Payments Bill 2004.

Mrs Carryn Sullivan interjected.

Ms MOLLOY: I will take that interjection from the member for Pumicestone. The objectives of this bill are to ensure that those people who perform construction work are entitled to timely payment for the work that they carry out, including providing goods and services. This may appear a given to many of us in the community. One may even question why the government is forced to create legislation to protect construction workers. The answer lies in the actions of unscrupulous individuals. Although this situation occurs across a plethora of industries, it seems to dog this particular industry. From ongoing research and evidence scrutinised over many years, it would appear that this area in particular, by its very nature of having a hierarchical structure and an associated imbalance in bargaining powers, fares poorly.

Since 1998, the Beattie government has legislated to protect subcontractors, hence increasing those individuals' payment outcomes. In October 1999, the Better Building Industry reforms came into effect. Some of the reforms included tough financial criteria for contractor licensing, a series of commercial contractual protection measures and the banning of persons from holding a contractor's licence in the event of them being associated in any significant manner with a failed business venture.

Further, in July 2003 improvements were added to the Queensland Building Services Authority Act 1991, extending the power of the BSA to in fact ban people from the industry who continually displayed a total lack of regard for their contractual and payment obligations. The more recent reforms, coupled with the existing Subcontractors' Charges Act 1974, have meant that subcontractors in the state of Queensland are ensured of better payment prospects, and rightly so. But this is not a sure-plan guarantee of receiving better cash flow outcomes for those individuals operating in the building and construction industry.

In an area of rapid growth in south-east Queensland, the building industry is a key economic driver. I have been able to discuss this bill with building industry stakeholders along with generally interested consumers. The Sunshine Coast has seen its share of Dodgy Brothers Inc. and from my discussions I have been able to glean that the bill is well received. The question is: how will it be done? Minister Schwarten explained the following in a building press release dated 18 March 2004—

> As in other states it is proposed private adjudicators conduct the adjudication on a user pays basis. The adjudicator must make a decision on the dispute within 10 working days from either receiving the adjudication's response or the expiry of the specified time frame for receiving an adjudication response.

What happens then is the adjudicator gives both parties a response, including the reasons for that decision, the amount to be paid and when it is to be paid.

I think this legislation is terrific. It addresses matters of social justice, ensuring the building industry treats its workers fairly—a fair day's work for a fair day's pay, and there is nothing wrong with that. Nor is there any room for the rogues who have in the past given this industry such a bad name. The industry is a very large employer of Queenslanders, and it is only right that the government, in concert with industry stakeholders, addresses problems encountered unfairly by the building industry. I congratulate the minister and his staff on tackling this complex matter and for bringing the legislation forward.

Mrs LIZ CUNNINGHAM (Gladstone—Ind) (7.50 p.m.): I rise to support the Building and Construction Industry Payments Bill. Building subcontractors have over a number of years expressed concern about their inability to have payments made in a timely manner. They are in a disproportionate position as far as negotiation is concerned. Small business, which relies heavily on its cash flow, finds it

difficult to sustain itself over even the short to medium term without those on whom they rely for prompt payment doing so.

I found it interesting to read in today's paper—it is not necessarily a building services issue, but the principle is the same—allegations in relation to the Gold Coast council, which admitted that it had paid only 43 per cent of suppliers' bills on time in the past year. Its targeted benchmark was 95 per cent. It was stated that a painting contractor had to pay his staff out of his own pocket because the council did not settle its accounts. This contractor was really hurting but he was reluctant to complain. Chamber of commerce chairman Don Jones said the council's go-slow policy was 'not good enough'. He said—

Cashflow is critical for most small businesses these days and if payments are held up it can be enough to tip companies over the edge.

...

There really is no excuse for the council not to be paying its bills on time.

I know that this minister, in the period he has been Minister for Housing, and previous ministers for housing and public works before him know of businesses that have been quite successful small businesses—they are often family-run businesses—that have been sufficiently denied prompt payment that they have gone broke. It has been usually as a result of a larger company, a contractor, who could well afford to pay the bills on time withholding that payment. The current Minister for Housing and others have addressed this situation incrementally over time. This current bill is another step in that direction of addressing those concerns.

When the original bill was brought into the House last year I sent a copy of it to Sid Marr. I know that the minister would know Sid. Sid has been involved over many years in subcontractor issues. He held some concerns in relation to this legislation. What I seek from the minister is a commitment that if the theory of these changes does not match the reality—that is, that the process being put in place is more convoluted than expected or the time frames can, through mechanisms unforeseen at this point in time, be pushed out—he will re-examine the bill and remedy those circumstances.

Mr Schwarten: I am committed to doing it within 12 months. I told Sid that. He would be happy with that.

Mrs LIZ CUNNINGHAM: It is important, because sometimes the theory sounds really excellent but the reality is quite different. I thank the minister for that undertaking. I look forward to this giving some relief to those hardworking small businesses, usually family businesses, who do the work in good faith and who expect payment in order that they can pay people to whom they owe money. If they are not paid promptly others suffer. I certainly commend the minister and his staff on the legislation.

Mr WILSON (Ferny Grove—ALP) (7.54 p.m.): It is my pleasure to stand and support the Building and Construction Industry Payments Bill 2004. I particularly commend this minister for this legislation. I think Minister Schwarten has shown on many occasions that he is prepared to take all appropriate steps to defend and protect the building and construction industry in Queensland, particularly the livelihood of the thousands of workers this industry employs and the families of those workers who are so dependent upon their continuous employment. I am particularly interested in this area, as the minister would know, because of my previous employment background in the construction industry through the CFMEU, both at a Queensland state level and also at a national level in the federal office.

It seems to me that the key point in this legislation from a policy perspective is about protecting jobs and employment opportunities. One of the five key policy planks of the Beattie Labor government is more jobs for Queenslanders and improved employment opportunities for Queenslanders. Many of the members who have spoken previously have identified features of the construction industry that are unique to that industry and put the issue of not only continuity of employment but also the availability of permanent, long-term employment very much up in the air. Those features are hard to change. They are very much part and parcel of the industry, particularly the subcontracting system throughout the industry.

The industry operates on very limited margins. When you add to the subcontracting feature of the industry the seven- or eight-year business cycle the industry goes through, in the down times there is much more pressure on the subcontracting system. The low margins that are ordinarily operating for many builders, contractors and subcontractors are squeezed even further and there is great risk to cash flows. Ultimately the risk then is to the long-term financial viability of employers in the construction industry. That means the jobs of many workers are at if not constant risk at periodic risk throughout the working year.

The objective of the rapid adjudication scheme is a fantastic one. It gives an alternative mechanism whereby there can be full and timely payment of contractors and subcontractors. If the cash flow can be continued, then we can guarantee that, at least for the present, workers will stay in work and their families will be safeguarded.

I will outline some of the reasons for the problems around appropriate and timely payment throughout the industry. There is a minority of rogue builders. Unavoidably that is the case. This legislation will be a direct hit in the face for those rogue builders. Non-payment of accounts and bills between subcontractors is from time to time, and particularly by the larger contractors, used as a bargaining tool. That shifts disproportionately the power balance between the companies and the businesses involved in subcontracting. Of course, when you have financially struggling builders it is often the case that they

cannot pay their subbies and because of the pressures on their cash flows they hit the wall. Ultimately, of course, some builders become insolvent, bankruptcies occur and corporations go into liquidation.

The significance of this legislation from a job protection and employment opportunity protection point of view I think is best illustrated by some information about the size and significance of the building and construction industry in Queensland. I will give some figures that the research department of the Parliamentary Library has been able to provide to me to give some brief illustration of this significance. The construction industry is one of the largest industries in Queensland. It is perhaps trite to say it, but sometimes these things that are taken for granted need to be repeated. At June 2001, whilst property and business services was the largest industry sector in Queensland with about 82,000 businesses, representing 20 per cent of the total, the construction industry was second in line with about 67,000 businesses, or 17 per cent of all Queensland businesses located in one place. That industry was followed by agriculture and forestry. So it is second in line in terms of the number of businesses in the industry.

If we look at the number of persons employed or engaged in the industry as of 30 June 2001, about 147,000 workers either were self-employed or employed as employees in the industry. In fact, 64 per cent of that number were, if not direct employees, employees in one form or another. That constitutes about 6.8 per cent of the total Queensland work force.

The other figure that might give some added significance to this legislation as a job protection and employment opportunity protection mechanism is that in the area of bankruptcies—and we are dealing only with bankruptcies here rather than liquidations of corporations—if we look at the statistics for Queensland in the year 2002-03, trades persons and related bankruptcies amounted to a total of 835. Some 330 of those 835 were for construction trades persons and that 330 was double the next largest tradesmen category of bankruptcies in that year.

I mention those figures to bring some statistical reality to how important this legislation is. There is similar legislation in Victoria, New South Wales and Western Australia. I can assure the minister—and no doubt he already knows this—that this legislation will be very welcome by the many, many construction workers throughout Queensland, many of them represented by the CFMEU—either the construction division of the CFMEU or the builders labourers division of the CFMEU. I heartily commend the bill to the House.

Dr LESLEY CLARK (Barron River—ALP) (8.02 p.m.): I rise to make a brief contribution to this legislation in the House tonight because I sincerely hope that we are seeing a final stage in what has been a very long saga to bring to fruition legislation that will effectively provide security of payment for subcontractors. It has been a significant issue throughout the state but certainly in far-north Queensland nearly for as long as I have been a member of parliament. I well remember our first attempts in the early nineties to address this issue. Throughout that decade various attempts were made and reforms brought to this House. But I have still, as other members here tonight have indicated, witnessed small businesses and families being destroyed because of not getting paid by developers and builders.

As a local member of parliament when people come to you in severe financial distress through no fault of their own it is very hard to tell them, 'I am sorry, the legislation that we have in place is not sufficient to help you.' We have never said that any legislation can take away all the risks. There will always be some risk in this industry but up until this point of time I believe subcontractors have been unfairly exposed, being at the bottom of the chain, and they have had to suffer increasing significant financial hardship as a result of this.

It is something that has been of concern to me, and I do commend the Building Services Authority and this minister for continuing to persevere with a solution. The research they did looking at legislation in Western Australia and New South Wales to bring something to this House that would work—that is, this rapid adjudication system in this legislation—is something that I am looking forward to.

I am encouraged, too, by the attitude of the Subcontractors Association. In my electorate we have Ron Crew, who has worked very hard on behalf of subcontractors in his role with the Subcontractors Association, and I am pleased that he supports the underlying principles in this legislation that will enable for the first time contractors to deal with their cash flow by having the ability with the rapid adjudication system to get the money that they deserve. I am pleased that it is rapid—they have to have provision within 10 days of bringing a claim for a progress payment—and that it will not be overly legalistic. They will be able to bring their case to the attention of the adjudicator. They simply have to seek payment. The person seeking payment simply has to make a payment claim. The person from whom payment is sought provides a payment schedule, and then there is a referral of the disputed claim to the adjudicator for decision. Then payment of that progress amount is so decided and paid.

That is something that subcontractors have been looking for for a long time so they can get some justice. It is also important to note the adjudicator's decision that pending final determination of a payment dispute the party with the most commendable case as determined by the adjudicator retains the moneys in dispute.

As I said, I want to commend the minister. This has been long overdue. I hope when we have a review of this legislation we will find it has worked. As I have said in this House on a number of occasions, I will keep coming back and I will continue to make representations until subcontractors get the justice they deserve and they get paid for the work that they do. I commend the bill to the House.

Mr CHRIS FOLEY (Maryborough—Ind) (8.06 p.m.): I rise to speak to the Building and Construction Industry Payments Bill 2004. Two of the great mysteries of business life to me are how tradesmen can say 'I will be there at 9 o'clock in the morning' and turn up two to three weeks later and how subcontractors can survive in business when they continue to be ripped off and not get paid. That has become an endemic problem in the whole industry.

The minister notes in his second reading speech that security of payment has been an issue for many decades, particularly in relation to subcontractors. Whilst bad debts are not unique to the building and construction industry, the industry is particularly vulnerable to payment problems because it generally operates under a hierarchical chain of contracts, and that is true. But of course there are broader issues for the industry than that. I also note the minister has said there are instances in the industry where a claim for payment by a subcontractor or a supplier is disputed by his or her superior contractor, resulting in payments being held up for lengthy periods whilst the dispute is being resolved. There is potential in the industry for these payments to be withheld unfairly to the disadvantage of the claimant. I know from the experience of my brother-in-law, who is a registered builder, about the difficulties between subbies and contractors along the way.

On the matter of adjudicators, my only concern is that the adjudicator has suitable teeth for putting some bite into this legislation. I have said before in this House that I would personally have preferred to have seen a regime where funds are partly paid in and then eventually fully paid into a trust account and that independent trust fund work in conjunction with a suitable adjudicator. However, I think the concept of rapid adjudication is a good thing—to get it sorted out quickly. It does not, as the minister has said, extinguish a party's ordinary contractual rights to obtain a final determination of payment by a court or a tribunal of competent jurisdiction. Obviously that is a fairly reasonable fall-back position in this case.

One of the things that I find particularly distressing about the horrible situation that subcontractors are working under currently is that unscrupulous operators have virtually made a blood sport out of ripping off subbies who often do not have the financial and legal resources to effectively defend themselves. In the second reading speech the minister said that this legislation represents a significant shift from the current system, where responsibility for enforcing payment has ordinarily been left to the contracted party who has performed the construction work. In my experience of dealing with subbies, it is just so true that often times they do not have the muscle to fight for themselves in this regard.

I notice that the bill states that there will be nothing to stop subcontractors from switching from one statutory initiative to the other if they believe that, due to changing circumstances, the alternative option will result in a better payment outcome. I would ask the minister if there are any filing fees or other costs in doing so.

Also on the subject of the adjudicator, I ask the minister how they will be selected. In his second reading speech the minister said that an independent adjudicator who has relevant experience and is registered to hear disputes will be contracted by authorised nominated authorities. The minister states that in other states it is also proposed that private adjudicators conduct the adjudication on a user-pays basis. The question that I ask of the minister is: how much are the adjudicators likely to be paid? Also, will an adjudicator in this situation have the power to award costs as is the case with a normal court situation?

I would like clarification from the minister on clause 60, and particularly subclauses 1 and 2. I note that there are nine issues that are taken into account when considering the suitability of a person nominated to be registered as an adjudicator, but only one of them seems to refer to experience and qualifications. My experience is that that person may be the world's best adjudicator, but if they are not an expert builder they can easily be snowed by conflicting information from warring parties.

On balance, I feel very positive about the legislation. It is one of the bills that has come to this House that I have felt a lot of enthusiasm for, because the whole situation of subbies being ripped off has been a distressing thing for a long time. On balance, subject to the clarification of the issues that I raise, I commend the bill to the House.

Mr LEE (Indooroopilly—ALP) (8.11 p.m.): I am delighted to rise in the House tonight in support of the Building and Construction Industry Payments Bill 2004, which has been reintroduced by Mr Schwarten following the recent election. I place on record my support for the bill's objective, which is improving payment outcomes for all parties involved in the building and construction industries.

Obviously construction is of vital importance to Queensland's economic development and wellbeing. It is a priority of this government to ensure that this industry, which employs significant numbers of Queenslanders, continues to function well. For a long time within the construction industry, security of payment has been a significant issue. I am delighted that this bill will go a good way towards solving some of those problems.

Over the last four years there has been significant construction within my electorate, particularly in the suburb of Indooroopilly. I know that the many subcontractors who work in and around that area will be delighted with the bill.

I also note that the building and construction industries play a key role in Queensland's and also the national economy. Tonight the federal Treasurer delivered his budget. I suggest that if he actually worked a little bit on developing some broader scale industry policy—and the federal government is in a great position to do that—in the medium term at least, we might be able to work on decreasing what I think is a persistent case of long-term unemployment in this country. I am delighted to support the bill.

Mr NEIL ROBERTS (Nudgee—ALP) (8.13 p.m.): As a number of speakers have said in this debate, we are dealing with an exceptionally important industry. As outlined by the member for Ferny Grove, around 67,000 businesses rely on the building and construction industry for their survival. Of course, that includes many employees who also have a stake in this issue before the House tonight.

As is the case with many issues in our society, it is often the behaviour of the minority that establishes the principles and the need for governments to intervene, particularly when it concerns economic activity in the community. The building and construction industry is no exception. It has been said by many members—and it is true—that the majority of people involved in this industry conduct themselves appropriately. In relation to payment, they pay on time.

Mr Schwarten interjected.

Mr NEIL ROBERTS: That is the majority. The underhanded actions of a few have led to the need for further regulatory reform of the subcontractors' payment scheme in this industry.

All of us have either met or know someone who is directly involved in the building and construction industry, whether they be plumbers, plasterers, electricians and so on. It is a tough business and it is very competitive. In general, those people work on very tight margins. Therefore, cash flow is an important aspect of sustaining their businesses, not just for their own benefit but also in terms of the payment of their employees.

As I have indicated, the underhanded behaviour of some business participants has caused significant harm to and, in some cases, insolvency of businesses. Of course, that impacts not just on those businesses but also on their employees.

Over the past couple of years, the government has introduced a raft of legislation to assist subcontractors to get their money. For example, we have introduced tough financial standards for contractor licensing. We have introduced five-year bans for people involved in the financial failure of a builder, life bans for second or subsequent failures, and asset stripping for grossly defective building work. We have also established the Commercial and Consumer Tribunal which has improved the processes for people in the industry to resolve disputes. Despite these reforms, even the best of processes will falter if unscrupulous people set their minds to it. That is partly the reason behind the reforms that we are seeing here tonight.

This bill provides for a rapid adjudication scheme as an alternative to the current proceedings under the Subcontractors' Charges Act, which sometimes can be very costly and time consuming. As outlined by the member for Keppel, who has had a direct experience in this area, sometimes it can be quite a nightmare and can get bogged down in legal argument and delaying tactics. Under this bill, subcontractors will have to choose the process that they want to follow, either the new process or that under the Subcontractors' Charges Act. The legislation is substantially based on the New South Wales legislation which, the evidence to date suggests, has improved the resolution of the payment issue in that state, essentially by changing the culture and the relationship between the parties to those disputes.

A number of other speakers have detailed quite extensively the provisions of the bill. I will not cover that in any more detail. It has been supported by the major stakeholders within the industry. Accordingly, I commend the bill to the House.

Mrs ATTWOOD (Mount Ommaney—ALP) (8.17 p.m.): It gives me great pleasure to rise in support of the bill before the House today. I take pleasure in the assurance that the builders and subcontractors in my electorate will be paid for work done.

The legislation gives the right to certain persons who carry out construction work or who supply related goods or services of timely payment for the work they carry out and the goods and services they supply. This will be achieved through establishing a procedure for securing progress payments to which a person becomes entitled under the bill.

I have often heard of contractors and subbies complaining about the inordinate amount of time that they have to wait for payment for a job often long completed. They are expected to have to pay for the hardware, building supplies and materials used to fabricate, construct, assemble and build whatever is required by the owner. It is only fair that they, in turn, are paid for their labour and supplied materials. I know that disputes can and do arise over the costs associated with building. However, it is appropriate that both parties, the builder/subbie and the contractor/owner, have some mechanism to quickly deal with the issue.

This bill creates a statutory based system of swift mediation for the interim resolution of payment on disputes involving building and construction work contracts. This represents a significant shift from the current system, where responsibility for enforcing payment has been ordinarily left to the contracted party who has performed the construction work or supplied the related goods or services for the benefit of the contracting party.

This rapid adjudication will be conducted by an independent referee with relevant expertise. If the decision of the referee is totally or partially in favour of the applicant, the respondent is required to pay the specified amount directed by the referee to the applicant. Decisions by the referee are enforceable as a judgment debt. This process of adjudication does not extinguish a party's ordinary contractual rights to obtain a final resolution of a payment dispute by a court or tribunal of competent jurisdiction. The adjudication process will cover all forms of construction contracts other than contracts for the carrying out

of domestic building work where an ordinary resident owner/owner builder is a party to the contract under the Domestic Building Contracts Act 2000.

The bill will, however, cover owner-builders who engage contractors and tradespeople in a building contractor role. The important benefits of the process are that it allows for a prompt interim decision on disputed payments, encourages communication between the parties about disputed matters and provides parties with a much faster and cheaper alternative to resolve the dispute without entering the court system.

The bill amends components of the Subcontractors' Charges Act 1974 and the Queensland Building Services Authority Act 1991 to facilitate and match up with the rapid adjudication process.

The Beattie government and the Hon. Robert Schwarten, the Minister for Public Works, Housing and Racing, believe that adequate consultation is essential to achieving good, cohesive policy and it is clearly evident in this bill. I know from the experiences in my electorate concerning public housing that the minister goes the extra bit to ensure concerns are addressed, and it is much appreciated.

Consultations in the preparation of this bill were conducted with representatives from various government departments, including the Department of State Department, Queensland Treasury, the Department of Public Works, the Department of Industrial Relations, the Department of Transport, the Department of Main Roads, Local Government and Planning, the Department of Housing and the Department of Employment and Training.

Extensive community consultation was undertaken with industry stakeholders throughout Queensland. This vitally important consultation included a statewide series of meetings with relevant stakeholders, the release of two discussion papers and articles in the Queensland Building Services Authority quarterly journal. There was far-reaching consultation, without a doubt. This would have been an enormous undertaking for the minister and his staff.

There is no doubt that this landmark bill will impact in a significant manner on payment relationships between parties involved in the performance of construction work. I thank the minister and his dedicated staff for the tremendous effort to consult widely and secure the future of genuine subcontractors.

The government intends to review the operations of this legislation after it has been in effect for 12 months. The general community, the building and construction industry, and particularly contractors and subcontractors in the Mount Ommaney electorate will benefit substantially from the introduction of this bill. I commend the bill to the House.

Hon. R.E. SCHWARTEN (Rockhampton—ALP) (Minister for Public Works, Housing and Racing) (8.23 p.m.), in reply: I firstly thank the last honourable member for her wonderful comments. I pass on my condolences to her and her wonderful husband Ron on the loss of her family member. I know how much effort she has put into this night. I appreciate in her time of grief that she has made effort to do this. I table the response to the Scrutiny of Legislation Committee issues raised. I believe the responses addresses all of those issue.

I thank honourable members for their general support for the Building and Construction Industry Payments Bill 2004. I am pleased to respond to the issues raised in this debate. For the past two years the Queensland Building Services Authority has been working hard to deliver yet another tool which will improve payment outcomes for workers in the building and construction industry. While I cannot and will not guarantee 100 per cent security of payments in 100 per cent of cases, this legislation develops, as I said, yet another tool for contractors and subcontractors which complements existing legislation introduced by the Beattie government.

As I have said in this place many times, the reality is that there is no system in the world that will guarantee 100 per cent of the payment 100 per cent of the time. We would be fooling ourselves if we believed that that is the case. I heard the member for Maryborough talk about trust. Trust funds, where they have tried them in the world, do not work. They simply hold up the contractual business. It ends up that money is put into the pockets of lawyers rather than the pockets of workers in the building industry.

All we can do is continue to do what this parliament has done since I have been minister and before that. I thank the opposition for its support. It has always been there when I have asked for it. The Liberal Party and the Independents have shown the same support. When Judy Spence was bringing legislation of this nature into this parliament the support was unanimous. While we need to have robust debate on it, it is important that at every step we go forward.

The bill is a watershed for the industry in Queensland and clearly indicates the Beattie government's ongoing commitment towards improving the industry in Queensland. The Queensland building and construction industry is worth $18 billion to the state's economy annually and provides direct and indirect employment for around 135,000 hardworking Queenslanders—or if members listened to the member for Nudgee the figure is 147,000. There are a lot more people in this industry than in the racing industry. I know my friend opposite will disagree with me. There are only 4,800 licensed in that industry but there are 55,000 builders. Over 135,000 are directly employed in this industry. So the members who have contributed to this debate tonight did so with the certainty that they are helping significant proportion of their electoral population.

The Building and Construction Industry Payments Bill 2004 directly addresses issues of non-payment and will make a significant difference to the working and payment culture of the building and

construction industry. I am very proud to have the support of members to bring this important piece of legislation into the House.

I would like to specifically address a number of issues raised by the member for Darling Downs. They are quite legitimate issues to raise. The member advised me that he wrote that speech himself. I know from being in opposition that is what one has to do. I congratulate him on the thoughtfulness he put into that task.

I will give an assurance to those subcontractors who have legitimate claims for payment and who afford themselves of the opportunities presented by this bill that they will find a vast improvement in their cash flow. A number of speakers have referred to the New South Wales experience. I do not claim this as my idea. I have spent my time as a minister looking around not trying to reinvent the wheel but borrow from other people's experience to ensure that we do not make the same mistakes and that we improve where we can. This is another example.

That legislation has been extremely positive in affecting improvements in the payment regime. The member for Maryborough raised an issue about the adjudication of funds. He was suggesting that perhaps it might be prohibitive. The market experience in New South Wales of an average claim of under $5,000 is costing a typical subcontractor just over $300 in adjudication fees. Adjudication cannot award legal costs but can apportion adjudication fees to be paid by one or other of the parties. The member for Maryborough would like to see those funds paid into trust funds. I do not accept that. I am happy to talk to him further about that later on.

I am not able to give any assurance on the level of complaints, but I believe these will be dramatically reduced. This is based on the experience interstate. The issue of the outstanding claims on the Suncorp Stadium project have been aired a number of times. I have been on *Stateline* and the honourable member has been on *Stateline*. We will never agree on this. I heard what the member said about if he were the minister he would have done it differently. I doubt that that would be the case.

I advise that there are two of these claims. One is by subcontractor Sun Engineering and the other is subcontractor Abbey Contractors, which is a very big company. We are not talking about a small subbie. Abbey Contractors is one of the biggest builders in Australia. They happen to have been in a subcontractual arrangement in this affair.

Both of these involve court action by the subcontractor, which is their right, against the joint head contractor. The state is not involved in these actions other than the withholding of moneys in accordance with the provision of the Subcontractors' Charges Act. One of the parties believes that the provisions of that act are being manipulated against them. That is another matter.

I stress that this government has had no direct contractual responsibilities with subcontractors. We never do in these arrangements, especially in managing contracts such as this. At all times, we have tried, within the bounds of the law, to assist these subcontractors who believe that they are somewhat disadvantaged.

I might just make the point that there are less people now employed by Sun Engineering. That ought not to come as a surprise to anybody, because in the building industry there are peaks and troughs. Of course, there were always going to be more people employed at Sun Engineering when it had the biggest project in Queensland on its books. It is a simple fact of life that that is the case. With regard to the ordinary mums and dads, the bill specifically excludes these individuals. The policy rationale for adopting such a position is that the ordinary mums and dads—I do not like that word 'ordinary'. Someone else wrote this speech for me, Ray, rather than my writing it myself. There is nothing ordinary about my mum or anybody else's mum. We had a wonderful Mother's Day the other day with my great mum. And there is nothing ordinary about my old dad either.

But the fact is that they may only ever build a new home or renovate an existing home once or twice in their lifetime. So we actually did not want to capture them in this legislation, which is designed to deal with the big end of town as it were where we are experiencing this problem. Therefore, it would be most unfair for them to be caught by the application of the bill, because any failure on their part to respond to a payment claim—which sort of gets to the point that the opposition's spokesman was making—within 10 business days by serving a payment schedule on the builder would result in the full amount claim becoming due and payable despite the fact that they might have good reasons for denying payment. This process is suitable for the commercial sector and in the residential sector between the builder and the subcontractor, because they should be well aware of their contractual rights.

Let me clearly state that a subcontractor working directly for a builder who is carrying out domestic building work for an ordinary mum and dad—and there is that word again; I will get rid of that word 'ordinary'—for a mum and dad has the right to lodge a payment claim under the act and therefore seek a rapid adjudication of the payment dispute against the builder. So a subbie in a domestic building circumstance is not denied, but the person who is not involved with it is the mum and dad in the contractual arrangement.

At the outset I want to make it perfectly clear that by introducing this bill the government is determined that it is not proposed to make any amendments to the Subcontractors' Charges Act 1974, nor is there anything in the bill preventing a subcontractor from utilising this longstanding legislation if they deem lodging a charge as an appropriate course of action. There are parallel pieces of legislation. One of them is about tying up the money and the other one is about freeing up the money, if you like. I asked the

same question that the member did when we put this legislation together—that is, could we not run those things in parallel? We cannot, because if someone uses the Subcontractors' Charges Act on a builder, that money is then put aside. It is set aside. So then if they go after them through this adjudication process, there is no money to free up. It does not stop them at any time, however, coming back in and using the Subcontractors' Charges Act if, for example, they thought the builder was going broke.

It is going to be a matter of judgement for the subcontractor concerned, because they are going to have to work out whether or not the builder is deliberately holding them out, and the adjudication process helps in that regard. If the builder is simply not going to pay, they can get straight into adjudication. However, if they think that the builder is going broke, then they are more likely to go with the Subcontractors' Charges Act. But I hear what the member says about the Subcontractors' Charges Act. I have given a commitment to review this, and we will review that act at the same time.

The policy position adopted in respect of denying subcontractors the ability to have both a notice of claim or charge under the contract or act and an adjudication application on foot at the same time is to ensure that there is no possibility of the legislative initiative being activated at the same time by the subcontractor. That gets to the point of what I was saying before. Basically, if the subcontractor could rely on legislative initiatives at the same time, it would be possible for a subcontractor to prevent the flow of moneys from the principal to the builder but at the same time the builder would be obliged to comply with an adjudication decision to pay the contract. That is exactly the point that I made before. In other words, you cannot tie the money up in one hand and expect the builder to free it up with the other.

The discussion paper was intended to obtain feedback. The member opposite referred to the discussion paper, and rightly so. People believed some of the things contained in the discussion paper, and I have had people knock on my own door about this and say, 'That was in the discussion paper but you didn't do it.' Discussion papers are about engendering people's discussion. It has been reported that section 67H could be used, and this relates to the variations. This is a rather complicated piece of the legislation. It has been reported that section 67H could be used as a mechanism by a contracted building contractor to refuse to carry out a directed variation to the work under a contract where the agreement of the contracted party is not required if the variation is not agreed to in respect of certain terms. In essence, the contracted party refuses to perform the varied work as required under the contract by purportedly relying on this statutory provision. It was never intended that this statutory provision should clash with such a widely utilised contractual provision enabling a principal to direct a contracted party to perform a variation within the scope of the contract.

Basically, shadow minister, what the story is here is that if you were to use the process correctly, it could be stymied by a subbie saying, 'We will not perform that work at an agreed price,' or 'We will set the agreed price.' For example, let us take this room. It was in the scope of work and we want to put in another tier. The builder says, 'That is in the original scope of work. We know it's going to cost more money.' However, they have been directed to do it. They would direct them to do that in writing.

The defence in this rapid adjudication process would then be that it is in writing. Of course it is going to cost more money. The fact is that in that scope of works if you direct the person to do the work then that subcontractor must carry out that job. But in so doing, that person has the right to demand from you a written statement to that effect. Currently, that is the case anyway.

Mr Hopper: Can you just repeat that?

Mr SCHWARTEN: If I am the builder and the member opposite is the subcontractor and I want to put another row in here, I can say to you, 'That's within the original scope of the works.' It depends on what the contractual arrangements are. But, by and large, that is the case. It is within the scope. I cannot say to you, 'Go and build another Parliament House across the road.' But I can say, 'Within the scope of the works here, put another tier of seats in here.' What a written contract would then do under the variation procedures is set a sum to do that.

What the subcontractor could then do is set a sum at, say, $5million to do that work. If the builder does not agree to do it, it would never be built. So the protection that the subcontractor has, however, is this: that subcontractor then goes to the rapid adjudication process and says, 'I've put the extra level in here and I reckon it's cost me $8million.' If he has put that on and the builder will not pay him but says that he will give the subbie $2million, the subbie can go to the adjudicator and the adjudicator says, 'It's worth $8million,' and the builder has to pay the money. So it is a protection that was not there previously, and I believe it will get over a lot of the problems in that it will get summary justice a lot quicker in that regard. The experience in New South Wales is that it has worked to that effect.

In relation to set-offs, the right to be given a notice under section 67J still remains. It has been modified so that a notice does not have to be given in two situations: firstly, where the work is taken out of the contractor’s hands; and, secondly, where a subcontractor's charges claim has been lodged and the moneys are to be used to make payments into the court. In relation to suitability criteria for authorised nominating authorities and adjudicators, they will be registered by the adjudication registrar and will be registered against a comprehensive suitability criteria that will ensure only professional and competent organisations or individuals will be able to play a role in the rapid adjudication process.

For example, persons wishing to be adjudicators must obtain an adjudication qualification, must not be convicted of a relevant offence, must not have been refused a similar licence or registration, and must disclose if they have ever been bankrupt. So in answer to the question raised by the shadow minister, this

is making sure that these people are at arm's length from the government and from the industry and making sure that they have the necessary integrity checks.

I have made a commitment to review this legislation in 12 months. Any amendments that can improve the effectiveness of this legislation—and this answers the query raised by the member for Gladstone—will be seriously considered. I can assure the House that a comprehensive education campaign will be undertaken by the Building Services Authority prior to the commencement of this bill, which is intended to be 1 October 2004.

In conclusion, this is not, as I said at the outset, the complete answer to all the problems in the building industry. The shadow minister made reference to the ark. I would like to think that Noah built it by himself with his own hands. That is the way that I was brought up to believe he built it. But the member can guarantee that, if Noah built the ark by himself, he got paid. If Noah employed subcontractors, then the chances are that he probably tried to pay them as little as he possibly could. In case I get struck down, I will not continue with those biblical references.

I want to thank each and every member who has participated in this debate in a very intelligent and thoughtful way. It is progressive legislation. The Minister for Police and Corrective Services started this process of reform back in 1999 when she was the minister in charge of the building industry. We will progressively and incrementally continue to tighten the noose around the necks of the undesirables in the industry and continue to provide weapons of mass destruction to the subcontractors where possible. I commend the bill to the House.

Motion agreed to.

Committee

Hon. R.E. SCHWARTEN (Rockhampton—ALP) (Minister for Public Works, Housing and Racing) in charge of the bill.

Clauses 1 to 14, as read, agreed to.

Clause 15—

Mr LANGBROEK (8.43 p.m.): I am interested in following up something that I mentioned during my speech. Section 4A of the Building Services Authority Act has a default period of 15 days for builders and 25 days for subcontractors. I note that this legislation, which seems to be taken from the New South Wales legislation, has a default period of 10 business days. I just thought that that may lead to some confusion. I know that the Master Builders Association had indicated that it would like consideration to be given to that default period being a copy of the Building Services Authority Act.

Mr SCHWARTEN: I apologise to the honourable member for not answering that question previously. Basically, the Master Builders Association of Queensland, with whom I have a great rapport—it is a wonderful organisation—proposed a paid-if-paid clause. That is what that is all about. I have indicated to them that I do not support that provision. At the end of the day, all that means is that we will end up with the big builders simply not paying their way. As the member reflected in his speech, from time to time developers, big builders and all of those people would use their might and power against the small subcontractors. This legislation is about protecting the small subcontractors. On this occasion I disagree with the Master Builders Association. I agree with them 99 per cent of the time, but I disagree with them on this one.

Clause 15, as read, agreed to.

Clauses 16 to 21, as read, agreed to.

Clause 22—

Mr HOPPER (8.45 p.m.): We have studied this bill in detail, but there are a few things that I want to clear up. In relation to clause 22, who actually is in charge of appointing an adjudicator? What criteria must the person meet to qualify as an adjudicator? From what I have read in the bill, this person will be put in a very serious judgment position. He could be dealing with matters amounting to hundreds and thousands of dollars. So could the minister explain exactly how we are going to go about appointing these people. I just see a terrible danger if the right person was not put in this position. That person is going to be making judgments. It is a very, very important position to take on. I would just like the minister to explain that.

Mr SCHWARTEN: Authorising a nominated authority is the answer to it. As I indicated in my reply, these organisations will be nominated authorities that will have expertise in those areas. It will be expected of those organisations that they will appoint adjudicators to a specific set of criteria that is established by us. In other words, those people will have to undergo integrity checks. They will have to have experience. I agree with the member that they will have to be chosen carefully. We will ensure that that is done.

The reality is that these nominating authorities could come from any group of people, but they will not come from the government. Somebody suggested to me that they should come from the Building Services Authority. I have stated that that cannot be the case, because at the end of the day the BSA is there to regulate. We want these people to adjudicate, because their final recourse might come from there.

So we will ask for expressions of interest from people or organisations that currently exist to be nominating authorities. A number of organisations readily spring to mind. The Salvation Army might decide to become involved in it and recruit people with the necessary experience to carry it out. The criteria for those people is that they will have to be beyond reproach and have to have knowledge of the building industry.

Mr HOPPER: Just to expand on that, from what the minister is describing to me now, they are not necessarily going to be absolutely industry based. They do not have to come out of this industry to meet that criteria. Is that what the minister is saying?

Mr SCHWARTEN: The Institute of Arbitrators and Mediators is the organisation. It would almost beggar belief to suggest that anybody could do this job without having an intimate knowledge of the building industry. They will have to be people who have had significant experience either in dealing with legal matters in the building industry or have been part of the building industry. There will be qualifications required. There are subjects available to be studied in this regard. As I said, we will set the highest possible standards and the legislation allows for us to do this.

Clause 22, as read, agreed to.

Clauses 23 to 34, as read, agreed to.

Clause 35—

Mr HOPPER (8.49 p.m.): I refer to the adjudicator's payment. How will the adjudicator establish his fees? Will it be a percentage or a set rate, or will it be decided before the application is heard? If all parties cannot agree on an amount, who decides what will be reasonable at that time?

Mr SCHWARTEN: An adjudicator is entitled to be paid for adjudicating an adjudication application. The amount by way of fees and expenses is agreed between the adjudicator and the parties to the adjudication or, if no amount is agreed, the amount for fees and expenses that is reasonable having regard to the work done and expenses incurred by the adjudicator. The claimant and respondent are jointly and severally liable to pay the adjudicator's fees and expenses. The claimant and respondent are each liable to contribute to the payment of the adjudicator's fees and expenses in equal proportions or in the proportions the adjudicator decides. An adjudicator is not entitled to be paid any fees or expenses for the adjudication of an adjudication application if the adjudicator fails to make a decision on the application other than because the application is withdrawn or the dispute between the claimant and respondent is resolved within the time allowed by section 25(3) of the act.

The entire adjudication process is underpinned by the concept of a user pays system. Parties that become embroiled in disputes over the payment of progress payments will meet the total costs involved in resolving these disputes. At this stage there is no intention to legislate or regulate the adjudicator's fees. However, that is something that will be subject to review within the next 12 months. As I said before, the $300 fee for the $5,000 sum adjudicated in New South Wales gives us a fair idea in that regard, but we do not want to have a schedule of rates. We would prefer that the parties resolve it between themselves.

Clause 35, as read, agreed to.

Clauses 36 to 45, as read, agreed to.

Clause 46—

Mr HOPPER (8.52 p.m.): We are talking about the suitability of a person to be registered. Before appointing an authorised nominating authority, the registrar must be satisfied that the applicant is a suitable person. So if the applicant does not have a conviction for a relevant offence and has not been refused or had cancelled registration or a licence then he can be appointed. It indicates that industry groups such as the Master Builders Association could apply and become an ANA. The ANA appoints the adjudicator. Am I right in saying this?

Mr Schwarten: No.

Mr HOPPER: Could the minister please explain?

Mr SCHWARTEN: Master Builders or any peak group such as that will not be entitled to become an ANA. That is the point I made before. We do not want people with a conflict of interest in this regard. It will be separate from the building industry.

Clause 46, as read, agreed to.

Clauses 47 to 111, as read, agreed to.

Clause 112—

Mr HOPPER (8.54 p.m.): Clause 112 sets out the transitional provision for adjudication qualification. It mentions a three-month period. Who will the minister get to stand in as adjudicators during this transitional stage? Where will these people come from? Obviously we have to get people to stand in until this is totally established. If a transitional adjudicator is appointed, is it a condition of that appointment that he obtain adjudication qualification within that three months?

Mr SCHWARTEN: My initial reaction to that would be no, he would not in a temporary arrangement situation. Whatever the arrangement is, it will be of a temporary nature. It was considered necessary to allow a minimum of three months for appropriate industry consultation by the adjudication registrar to finalise the drafting of the adjudication qualification and the assessment of bodies suitable to conduct

courses in adjudication. This means that the regulation of the adjudication qualification is expected to take effect from 1 October 2004, coinciding with when provisions of the act relating to adjudication of payment matters are also proposed to commence. The drafting of the act was necessary to make this provision.

It is envisaged that a small number of eminently qualified persons will be initially registered as adjudicators, which goes to the point I made before. They would have due regard for the fact that the people they would be appointing on a temporary basis would be the sort of people who would qualify once the process was put in place. It is to be noted that conditional registration will only be granted subject to thorough scrutiny of the applicant's background, experience and, most importantly, qualifications, especially pertaining to their ability to competently decide adjudication applications.

In terms of whether or not they will have to do the course the member is talking about, the answer is yes. That is provided, of course, that we can find people who are suitably qualified in that regard.

Clause 112, as read, agreed to.

Clause 113, as read, agreed to.

Schedule 1—

Mr HOPPER (8.57 p.m.): In relation to clause 7 of schedule 1, on what grounds does the minister think contractors and subcontractors should commit themselves to doing any work on a building site—I know that the minister discussed it before, but I want him to clarify it—without written agreement that they will get paid for the work they do and the materials they supply? Also, I thank the minister for going through these questions. It was brilliant.

Mr SCHWARTEN: Not a problem at all. If I was working in the building industry and I was a subcontractor, I would not accept any direction unless it was backed up in writing.

Mr Hopper: That is a worry.

Mr SCHWARTEN: It is not a worry, because the BSA Act actually specifies that you are covered in demanding it in writing to yourself that that is the case. I think people are getting confused about the fact that written variations are external to the contracts—where they are asking you to do something that was not in the original or could not be described in the original contract. Written variations as they apply in that are not covered under this because it is not something reasonable that you could be asked to do.

As I said earlier, it is designed to make sure there is rapid adjudication of the problems and that no party can hold the job up. Believe you me, I have been through a process where I have seen subbies—they are not all angels, either—actually hold a job to ransom. In my own case, where I had a house being renovated, the plasterers just did not turn up. The builder had to try to grapple with that until they bothered to turn up. Currently we are seeing a lot of that in an overheated building industry at the moment. The subbies are God on jobs these days in a lot of cases. Of course, the next group of people who come on are the people who work for them. So we cannot have a situation where the subbies control the job, either. If we were to rely on the written variation—the agreement in price in it—then we could be there until the good Lord returned trying to resolve the problem.

Let us pick the stadium over there, for example. Say we said on level 6 that the original contract provided for 3,000 seats and suddenly it was changed and the joint venture said, 'We need to get 4,000 seats up there and fewer seats on level 4.' This did not happen; this is just a hypothetical. The subcontractor who was doing that job could say under the written variation arrangement, 'We will not do that for anything under $5 million,' and that would be the written variation because it must specify the price. Therefore, you could hold the job up indefinitely because a price could not be agreed on. This protects the subbie in accepting a direction. I go back to what I said before: I would not do anything on a job unless I got it in writing. I would also make sure that I use the provisions of the BSA Act to protect myself. Believe me, a lot of people on the job now just do not do it. They do not write variations into the project and that is half the problem that we have.

To answer the member's question, yes, they should always do it in all circumstances, but rapid adjudication will allow them to get to an adjudication process quickly and to say, 'We have done the work. There is the written instruction to do the work.' We say that work is worth $5 million. The contractor, on the other hand, says that it is worth $5. Clearly he is wrong and we are right, but the adjudicator will sort it out very quickly. If the contractor does not comply, then the provisions of the act kick in.

I think this is a far better system. My experience even with written variations is that they are still subject—and we are seeing it at the moment with Abbey and Sun Engineering. Even though they have written contracts, that still does not protect them from going to the court and saying that they lose money. The problem with the fixed price that is agreed to and that is written in, using my own case as an example, is that I could have knocked the builder off because the price ended up being a lot more than what he said it was going to cost. I paid the difference because he is an honest bloke and we have been mates for a long, long time and he was telling the truth. But he misquoted it and, if I had wanted to, the law says that is what I could have paid him. The subbies are in the same boat.

I know there is nothing to be alarmed at in this legislation. The fact is that I have been through it and through it and through it. The provision is there to ensure that the builder can do a job but the protection is there, with the rapid adjudication, to ensure that the subbie can get into rapid adjudication if the builder is going to rip him off.

Schedule 1, as read, agreed to.

Schedule 2, as read, agreed to.

Bill reported, without amendment.

Third Reading

Bill, on motion of Mr Schwarten, by leave, read a third time.

ADJOURNMENT

Hon. J.C. SPENCE (Mount Gravatt—ALP) (Minister for Police and Corrective Services) (9.05 p.m.): I move—

That the House do now adjourn.