



Speech by

Hon. JUDY SPENCE

MEMBER FOR MOUNT GRAVATT

Hansard 29 October 1999

DOMESTIC BUILDING CONTRACTS BILL; QUEENSLAND BUILDING TRIBUNAL BILL

Hon. J. C. SPENCE (Mount Gravatt— ALP) (Minister for Aboriginal and Torres Strait Islander Policy and Minister for Women's Policy and Minister for Fair Trading) (10.31 a.m.): I move—

"That the Bills be now read a second time."

Today I table two Bills that complete the historic Better Building Industry legislative reform package. The Domestic Building Contracts Bill 1999 and the Queensland Building Tribunal Bill 1999 follow the Queensland Building Services Authority Amendment Bill, which has been passed by the House and has largely taken effect. Having delivered unprecedented protection to subcontractors, we are now focused on improved service and certainty for consumers. With these two Bills completing the package, Queensland will have a system of building industry regulation unsurpassed in Australia.

The Domestic Building Contracts Bill 1999 and the Queensland Building Tribunal Bill 1999 are entirely new pieces of legislation that will work together to deliver best practice in domestic building contracts. The Domestic Building Contracts Bill 1999 ensures that Queenslanders who are renovating, or building their dream home, will be armed with more and better information than ever before.

The Bill regulates all domestic building contracts worth \$3,000 or more. These contracts must now be in writing. The Bill gives consumers a range of rights, without burdening them with unnecessary obligations. It covers contracts with builders and contracts with trade contractors, such as painters, plumbers and carpenters. This is a first for Queensland, where contracts with trade contractors have not previously been regulated. It responds to consumer demand, as expressed through complaints about trade contracts.

In a series of firsts, the Bill also mandates that consumers receive a contract information statement. Statements must be authorised by the Queensland Building Services Authority, and will contain advice about consumer rights and dispute resolution procedures. This is part of the Government's aim to ensure that Queensland consumers are better informed than ever before.

Reinforcing consumer protection, the Bill establishes a cooling-off period spanning five business days. A contract will be voidable if the consumer is not advised in writing about the cooling-off period. The cooling-off period begins when consumers receive a signed contract or contract information statement— whichever is the latest. Within five days, they will be able to cancel a contract without penalty, other than the builder's reasonable expenses and a flat \$100.

If a consumer does not receive an information statement, or if a contract does not contain the required advice about a cooling-off period, that consumer can withdraw at a more advanced stage of the contract. The cooling-off period will not apply if the owner has had formal legal advice before entering into the contract, or where there has been a previous contract for similar work between the two parties. The consumer can also waive the cooling-off period if urgent repairs are required.

There is also an important safety net for consumers facing an unexpected increase in the cost of work. Consumers will have the right to terminate a contract unilaterally if the price rises by more than 15%, or if the completion time blows out by 50%. Any variations must clearly state in writing how the variation will affect the cost and completion time. Variations must also be acquitted at the time of payment for completion of a stage. The amounts payable on completion of each stage must not exceed a specified proportion of the contract price. Flexible stage payment arrangements are allowed

for small or unusual contracts. It will be an offence for a builder to breach any mandatory or prohibited contract provision. Such offences may be taken into account by the QBSA if disciplinary action arises.

The Bill also proscribes unconscionable provisions, including—

- caveats over the owner's title;
- deposits greater than 5% of the contract price, or 10% on contracts under \$20,000;
- progress payments greater than specified proportions of the original contract price; and
- compulsory arbitration clauses.

The Bill requires contracts to contain a set of provisions aimed at enabling consumers to budget and plan while work is in progress. These provisions include—

- a starting date and estimated time of completion;
- a contract price covering all fixtures and fittings and reasonable estimates of prime cost items and, where cost is unknown, provisional sums;
- advice about the cooling-off period; and
- contractor's licence details.

Importantly, the Bill legislates for statutory warranties. These extend consumer protection above and beyond the QBSA's powers to direct rectification of work.

This legislation will give consumers statutory and enforceable rights, even when the QBSA cannot assist. The statutory warranties cover—

- adherence to plans and specifications;
- compliance with legal requirements;
- standard of work;
- diligence; and
- suitability of premises for occupation.

There is also a statutory warranty that materials will be suitable for the purpose and, unless specified otherwise, new. It is recognised that in certain cases the owner assumes the risk that a material will fail, and the Bill removes the contractor's liability in these instances. For example, where the owner has chosen a material without any assistance from the builder, the builder may be relieved of the warranty. If the builder is—or should be—aware that the materials selected by the owner are unsuitable, however, the builder is only relieved of the warranty if the builder gives the owner written advice against using the materials.

The Queensland Domestic Building Contracts Bill will be neatly complemented by the Queensland Building Tribunal Bill. Despite the checks and balances prescribed in the contracts legislation, disputes emerge between consumers and builders or tradespeople from time to time.

The Queensland Building Tribunal, established under the Queensland Building Services Authority Act 1991, will now have its own solid grounding in separate legislation. The legislation will make the tribunal more responsive to the needs of consumers and of industry. It will clearly delineate the tribunal from the QBSA, removing any possible perception that the arbitrator is too close to the regulator. The new-look tribunal will be more responsive to the needs of consumers and industry.

The Bill itself is user friendly, a virtual do-it-yourself guide for parties to disputes. Legalese and court jargon have been avoided wherever practical. The language and layout of the Bill, along with many measures contained within it, are designed to encourage lay people to represent themselves, to avoid the costs of legal representation and to reduce the likelihood of appeals. The tribunal will be uniquely informal, and equipped with the discretion to prevent parties from inadvertently taking action to disadvantage themselves, such as withdrawal when a counterclaim is still on foot.

The Bill guides both the tribunal and parties to disputes on the exercise of the tribunal's discretion. It lists the discretionary factors to be taken into account in matters such as—

- awarding of costs;
- service of documents;
- offers to settle;
- withdrawal by a party;
- summary decisions; and
- default decisions for debts.

These procedures are based on the Uniform Civil Procedure Rules 1999, modified to take account of the unique informal environment of the tribunal.

The Bill responds to the fact that many disputes between consumers and builders, and between builders and subcontractors, revolve around straightforward issues and involve amounts under \$10,000. In many of these cases, justice delayed is justice denied. Accordingly, the Bill speeds resolution of these minor building disputes by a special new procedure involving timed mediation and same-day expedited hearing processes. Time in an expedited hearing is to be limited and allocated equally between the parties. This procedure will enable parties to proceed with confidence that the case will be decided on a definite date.

The tribunal will also be armed with powers to help it deal swiftly with cases. These include power to authorise entry to buildings or land, such as where building work can only be inspected from adjoining property, and the power to make interim orders. Awarding of costs is a valuable tool encouraging parties to settle early and not to prolong proceedings without good cause. The tribunal will be able to assess and award costs in all proceedings.

The Bill also gives a wide power of joinder, enabling anyone relevant to the proceedings, such as engineers or suppliers of materials, to be joined in a proceeding. Vexatious proceedings or proceedings being conducted by a party in a way that disadvantages another party, such as repeated unnecessary adjournments, may be dismissed as against the defaulting party, with costs. Forum shopping causes needless expense to the advantage of the better resourced party in a proceeding. If proceedings over which the tribunal has jurisdiction are brought in a court, an application by a party will compel their removal to the tribunal. The tribunal may also transfer proceedings or parts of proceedings to a court, and may state a case on a point of law for adjudication by a court. In the event of problems with the interpretation or implementation of a decision or where there has been a mistake or error in a decision, it may be revisited and altered by the tribunal.

The Bill establishes two new jurisdictions for the tribunal—commercial building disputes and public examinations. Access to the tribunal for commercial building disputes will deliver huge benefits for subcontractors in terms of cost and speed. This has been a key element of the extensive consultation with industry stakeholders that is a feature of the whole Better Building Industry package. The commercial building dispute jurisdiction under this Bill includes all minor commercial building disputes worth less than \$50,000. Other commercial building disputes come within its ambit, if all parties consent.

The tribunal's new public examination jurisdiction is a first in Queensland law. Modelled on the Commonwealth Corporations Law, this jurisdiction will allow the industry regulator—the QBSA—to use the tribunal as a forum to examine witnesses on oath about the conduct and competence of a building contractor. The tribunal will ensure that appropriate procedures and protection for witnesses are observed. In a limited duplication of the Commonwealth's public examination procedure, witnesses will not be able to use self-incrimination as a valid excuse for refusal to answer a question in a public examination, but only when the question relates to the person's financial affairs. Lack of access to such a power in the past has cost consumers, employees, subcontractors, suppliers and the Queensland community generally many millions of dollars as insolvent and incompetent contractors have continued to trade.

These two Bills underline the stark contrast between this Government and our predecessors. The measures canvassed by the previous Government offered precisely nothing to consumers. In fact, consumers were set to lose some of their access to an independent, transparent dispute resolution system through the mooted abolition of the Queensland Building Tribunal. This Government listens to consumers as well as to industry. And it understands that well informed, confident consumers are the essence of an industry such as building and construction. Anyone involved in construction knows a chain is as strong as its weakest link.

The Queensland Domestic Building Contracts Bill and the Queensland Building Tribunal Bill are the two cast-iron links that were missing from the previous Government's moribund plan for one of Queensland's most vital industries. I commend the Bills to the House.
