



Speech by

LINDY NELSON-CARR

MEMBER FOR MUNDINGBURRA

Hansard 26 August 1999

QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT BILL

Ms NELSON-CARR (Mundingburra—ALP) (3.29 p.m.): What does the Queensland Building Services Authority Amendment Bill have for subcontractors? This Bill finally delivers improved security of payment for subcontractors after years of talk and hedging by the previous Government, and it fulfils a commitment the Minister made a year ago.

Part 4A of the Bill establishes the regulation of commercial contracts and subcontracts in the housing sector for the first time. Key reforms relating to subcontracts include the following: retentions and securities under subcontracts will be limited to 5% of the contract price and the Bill will establish the right of subcontractors to exchange cash retentions for valuable instruments such as bank guarantees. This will provide some security against cash retentions from subcontractors being dissipated as being part of a builder's ordinary cash flow.

It will also secure retentions against claims by liquidators. Progress payment periods for subcontracts, which are not in writing at the time of work commencing, will be deemed to be 35 days. This addresses the key concern of subcontractors that they are often required to commence work without a written contract and discover only after starting work that the terms of the contract are unfavourable, for example, when there are 60-day payment periods.

Subcontractors will have the right to suspend works for non-payment of an undisputed progress payment regardless of the terms of the contract. This ensures that contracts cannot be written so as to render rights of suspension virtually unenforceable. It also allows a subcontractor to stop work where they are not paid without reason. It excludes "pay if paid" clauses, and they will be void if they are included in a contract. Variations of subcontracts, whether agreed or directed under the contract, will be required to be in writing. This will serve to ensure that subcontractors have reference to written instructions where a dispute subsequently arises over whether directed works are a variation to the contract.

Set-offs will be required under subcontracts to be claimed within 28 days of the builder being aware of the right of set-off, or where the builder ought reasonably have been aware. This ensures that set-offs, for example for site cleaning, are claimed in a timely manner. This will allow subcontractors to resist set-offs that are not reasonably claimable under the contract.

Finally, penalty rates of interest of approximately 15% will apply to outstanding progress payments, whether in part or in whole. This will promote the prompt settlement of progress claims and provide a disincentive to builders manufacturing a dispute to avoid subcontractors suspending work for non-payment.

These measures are designed so that subcontractors are fully aware of their contractual terms prior to commencing works. Events that may impact on the subcontractor's right of payment will be dealt with in a timely manner. By establishing various deemed rights, the Government has addressed imbalances in contractual bargaining power. Ultimately, subcontractors must be willing to exercise the new powers available to them. I commend this Bill to the House.
