



Speech by

Mrs D. PRATT

MEMBER FOR BARAMBAH

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DOMESTIC BUILDING CONTRACTS BILL; QUEENSLAND BUILDING TRIBUNAL BILL

Mrs PRATT (Barambah—IND) (3.49 p.m.): I rise to speak to the Domestic Building Contracts Bill. I acknowledge the object of this Bill as stated in issue 13 of the Alert Digest, that is, to help consumers avoid the pitfalls in procuring domestic building services.

Most of us do not commit to having a home built more than once or perhaps twice in our lifetime, and most of us need to be guided through this area because it is all unfamiliar territory. This can in some instances, as is stated, put the client at a distinct disadvantage. Those who are in the know, whether deliberately or inadvertently, sometimes leave the consumer wondering why they ever bothered to build at all and why they did not purchase an already constructed establishment.

As has been recorded on numerous occasions, for whatever reason things do go wrong and the persons entering into this commitment of building their dream home are left with a nightmare situation through no fault of their own. This legislation aims to ensure that these nightmares are a thing of the past. The legislation aims to protect the consumer. This is not a bad thing and should be commended. In wanting to protect the consumer, we must also be very careful that we do not impose so many restrictions on building services providers that they can no longer provide the services whilst endeavouring to conform to the requirements of the legislation.

Although there are many areas of the Bill which I totally support, I have to question the section of the Bill which relates to variations. It almost creates an opening for litigation if those on either side, builder or client, want to make changes during the building process. A letter from a person within the building industry states—

"The reality is that many variations of a minor nature are done on the run, over the phone or on site. The owner verbally instructs the builder and the builder agrees to the work. The prescription that is in the Bill will only lead to builders not agreeing to any changes from the contract as they may apply to variations (big or small)."

It states further—

"The requirement to state the effect that the variation will have on the work as a whole is unintelligible and will no doubt give rise to litigation."

Part of building a house is seeing what is on paper become reality. It is often found that things appear slightly different in reality from what was pictured in the mind's eye, and making alterations along the way is par for the course. That kind of give and take between a building contractor and his client is an issue other than a legislative principle issue.

The unforeseen effects of legislation can be seen in a recent case which crossed my desk. In October 1999, major amendments were made to the Queensland Building Services Authority Act 1991 to give effect to the Better Building Industry reform package that had been developed jointly by industry and Government. The introduction of the more stringent financial requirements for licensing was one of the significant changes brought about by the amendments.

Experience has shown that a major cause of financial failure among contractors is undercapitalisation relative to turnover and insufficient liquidity to ensure that debts are paid as and when they fall due. No-one would dispute that the amendments were necessary. What concerned me

at the time was the lack of lead-in time. The provisions did in fact penalise contractors whose renewal fell immediately after the implementation date, whilst other contractors who were overcommitted but did not face licence renewal until almost 12 months later could make arrangements to overcome their difficulties by having another contractor come to their assistance.

I spent quite some time in conversations with members of the Minister's office, and I cannot thank them enough for their assistance. I am informed from other sources that many building contractors found themselves in the same position and threatened with bankruptcy, the cancellation of licences or a drop to a lesser building status. Again I emphasise the need for the amendments, but this example shows how easily legislation may affect people in ways we do not necessarily envisage at the time of its passage through the House.

One area of this Bill which I feel is commendable relates to clause 96, which addresses the situation whereby a contractor can declare bankruptcy and then pop up again under a new licence. The Alert Digest referred to it as a phoenix rising from the ashes. It is a complaint heard more often than the industry would like and there needs to be a deterrent for recidivist offenders. I do not believe anyone would object to the harshest measures being used in those cases.

It concerns me that the Housing Industry Association, which has been consulted in relation to this Bill, in a letter forwarded to me stated—

"The consultation was in the form of attempting to make a bad idea work rather than to find the most appropriate content for this type of legislation."

It further states—

"The Bill does contain some elements that improve both industry performance and consumer protection. The main concerns arise from the complex drafting style and language used. It is unlikely that builders and consumers will be able to understand their rights and obligations without seeking legal advice."

Although there is much in this Bill that I and the industry support, there is also much that the industry, it appears, does not. Although there is an undeniable need to protect consumers, we must not enact legislation which imposes restrictions that may take more from the consumer and the industry than is expected. Hopefully that will not occur in this case. I support the Bill, but I would like to think the Minister will continue to consult the industry to iron out its concerns.
