



Speech by

CHRISTINE SMITH

MEMBER FOR BURLEIGH

Hansard 21 February 2002

SUBCONTRACTORS' CHARGES AMENDMENT BILL

Mrs SMITH (Burleigh—ALP) (5.16 p.m.): I am pleased to support the Subcontractors' Charges Amendment Bill 2001. This bill is a result of contractors, subcontractors, legal specialists and government working together to further improve security of payment within the building and construction industry. A number of significant policy initiatives are contained within the bill in addition to enhancements to aid interpretation.

The Burleigh electorate has an extremely high number of subcontractors in all areas of the building and construction industry. Contact with them has shown that there is a continuing problem with payments, and many of them have been driven out of the industry and, indeed, some have faced personal bankruptcy. In recent times two matters of concern have been raised by industry in relation to this bill and, in particular, subcontractors groups. These issues, which were the subject of extensive consultation over a number of months, have been bandied around the industry and have at times fuelled confusion in some cases. I would like to address two issues of concern during the debate today: payment of 1c and deeds of company agreement.

The amendments to section 21 of the act provide a circumstance in which a person is taken to be prejudicially affected by a claim of charge. The argument that has been doing the rounds recently asserts that a payment of 1c by a superior contractor will allow them to have a charge struck out on the basis that they are prejudicially affected. I am advised that the Office of the Queensland Parliamentary Counsel has considered this issue in detail and stridently disagrees with this interpretation of the provision.

If a superior contractor makes a payment to a subcontractor for only 1c in relation to a claim, the superior contractor is prejudicially affected by the claim of charge. However, the prejudicial effect of that payment, or any payment, will be to the extent of that payment only, that is, to the extent of 1c. Section 21(1)(b) of the act, which by the way this bill does not amend, allows a court to modify the effect of a claim. In hearing the matter, the court will determine the extent to which a claim is prejudicial and modify the charge to that extent. If a superior contractor pays only 1c, the court will lessen the charge by only 1c. The reason for the amendment to these provisions is only to provide additional guidance to the courts on how to determine whether a superior contractor is indeed prejudicially affected. The existing provision in the act is not amended by the bill.

With regards to deeds of company arrangement, the act currently refers to what happens to a charge when a compromise or arrangement is entered into under the Companies (Queensland) Code or the Companies Act 1961. Although these provisions were current in 1974, they have been repealed and replaced a number of times by the Corporations Law and now the Corporations Act 2001.

Legal advice obtained from Crown Law maintains that the operation of the Corporations Act 2001 and the Bankruptcy Act 1966 cannot be overridden by a provision contained in the Subcontractors' Charges Act 1974 or, for that matter, any other state act. As to the existing operation of the act, which contains provisions referring to the Companies Code, I am advised that these provisions are to be read as the current equivalent and relevant provisions of the Corporations Act 2001.

The amendment proposed by the bill will omit section 7A of the act, making it clear to all parties that the act is subordinate to the Commonwealth legislation in terms of insolvencies and the effectiveness of charges. This bill will not affect the current interpretation of the deeds of company arrangement. I commend this bill to the House.