



Speech by

**DON LIVINGSTONE**

**MEMBER FOR IPSWICH WEST**

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Hansard 21 February 2002

**SUBCONTRACTORS' CHARGES AMENDMENT BILL**

**Mr LIVINGSTONE** (Ipswich West—ALP) (4.59 p.m.): I rise today in support of the Subcontractors' Charges Amendment Bill. In so doing, I congratulate the minister, his department and staff—and other ministers before him—for the tremendous job they have done and the consultation that has gone into this bill. I also congratulate Judy Spence. They have certainly done a great job. The proposed amendments to the Subcontractors' Charges Act 1974 currently before the House will make payments for subcontractors more secure by addressing several points that are not adequately covered in the current legislation. In the current legislation, there is an ability for subcontractors to leapfrog another subcontractor in order to secure payment for work, and other members have already mentioned leapfrogging in the debate today.

Members not familiar with the construction industry may think that I have hopped off into the fascinating study of herpetology, but I can assure them that leapfrogging refers to a practice in the industry used by subcontractors to acquire payment. Leapfrogging is a practice allowed under the act where a subcontractor has engaged his own subcontractor and the secondary subcontractor has the ability to lodge a claim of charge directly onto the employer for a project. Effectively, this means that the secondary subcontractor is securing payment of moneys owing to him from parties more than two steps up the contractual chain. Ordinarily, the secondary subcontractor and the employer have no direct link. Often, in a practical sense, they do not know that the other person exists.

The current legislation provides some opportunity for the first subcontractor to establish a legal relationship between parties to secure payment. This bill will not remove the practice of leapfrogging but will more clearly define when a primary contractor is prejudicially affected by a leapfrogging claim. This would be of relevance particularly in circumstances where a primary contractor has already paid his own subcontractor but is having money withheld from him because the subcontractor has not paid the subcontractor below him.

In this instance, the primary contractor would have to make application to the court to have the claim of charge modified to adjust any prejudicial effect or to be struck out entirely. The bill does not actually expand the grounds on which a charge may be modified or struck out; it merely provides the circumstances by which it is likely to occur. This amendment will ensure that subcontractors have an opportunity to secure payment for their work whilst limiting any prejudicial effects that leapfrogging might have for any contractor above them. This will make the act fairer for all parties and will clarify certain ambiguous areas of the current legislation. I commend the bill to the House.