



Speech by

Fiona Simpson

MEMBER FOR MAROOCHYDORE

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BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS BILL

Miss SIMPSON (Maroochydore—NPA) (6.20 p.m.): I am happy to speak in support of the Building and Construction Industry Payments Bill. I note that the primary provision is the rapid adjudication process for subbies. This is the big issue. We can have other legal processes for resolving contracts, but if someone financially starves to death while waiting to receive justice it is very hard to accept. This legislation which provides a statutory framework for the rapid adjudication of contractual disputes in the building industry, particularly in the commercial building industry, is certainly welcomed.

I note that my colleague the member for Darling Downs has raised some concerns. We await the minister's response in that regard. My only comment would be why we are not looking at an extension of this into the residential building sector. Obviously, this is something of concern to subbies in the non-commercial sector and they also need protection afforded to them. I would certainly welcome the minister's comments about that. That continues to be of concern because subbies will still be exposed to the risk of unpaid contracts, having those contracts dragged out and not having a cash flow. This legislation does not cover that issue.

With regard to the commercial industry, I note that there is one exception, as has been mentioned—that is, non-commercial, low cost contracts. That relates to owner-builders who engage contractors and tradespeople in a building contract role. Subbies in this case will have recourse to this legislation to seek rapid adjudication.

The Subcontractors' Charges Act 1974 is a very interesting piece of legislation which was based on very sound principles. I believe that largely this is a good piece of legislation. I am pleased that the legislation that we are considering seeks to dovetail with that legislation. Once again, it is about trying to get a fair outcome but also making sure that these outcomes are achieved in a timely way.

I note that the legislation does provide for default provisions with regard to contracts. In other words, where the contract or the agreement is silent on progress payments there is an ability for the adjudicator to use the default provisions in the resolution of these particular issues. As has been noted, this legislation will come up for review in 12 months. Subcontractor issues have been traditionally very difficult issues. They are issues that both sides of politics have sought to address with goodwill over the years. We know that these issues do need to be revisited to make sure that the laws as intended do have the desired outcome.

Obviously, the building industry is important to the future of Queensland. It is a major employer of people. It is a major part of the investment for the state. For most people the majority of their investment will be in the property sector. We have to ensure that we have a healthy building industry that goes hand in hand with the property sector. This is vital.

Traditionally, there have been a lot of victims who have not been able to be paid in a timely way. The vexed issue has been the payment of subcontractors who are often at the end of the food chain. They are the ones who pay the price of bad business decisions that are made higher up the food chain. Sometimes there are unfortunate circumstances where people go under. At the end of the day, we need a fair system for subcontractors. We need a fair system for all industry players so that people know that there is a process to resolve disputes.

This legislation does not remove a party's contractual rights to obtain a final determination of a payment dispute by a court or a tribunal of competent jurisdiction. What it does allow is for rapid interim adjudication so that the party who is considered to have the most commendable case, as determined by the adjudicator, is able to have that matter resolved on an interim basis. That is a significant fact. It means that there is ultimately still a final determination of the issue. But there is recognition that people need to have a quick outcome to keep people alive as far as their cash flow is concerned. If this does not happen, the final determination in the court will never come about because someone will go belly up and be unable to take the time to continue to pursue the matter and will often cut their losses. Accumulatively, that is an extremely expensive process.

Often subcontractors have been criticised for being the creators of these problems. There has not been an understanding that they have the bad luck of having done the appropriate checks, considered the people they are doing business with and are still losing out in the end by not being paid in a timely manner. While the issue of good business practice is relevant for any player within the building industry, it has been the lack of power of the subcontractors that has often made them extremely vulnerable. They often have a lack of capital to carry them through to the long-term resolution of issues.

We will look towards the review and the outcome of the assessment of the legislation as it is implemented. We will also be looking at the issue of private adjudicators and the establishment of a process ensuring that the appropriate people are in place, are appropriately trained and are brought in line under this legislation to deliver this very important service. On the whole, I welcome the legislation before the House.