Speech by

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BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS BILL

Mr LANGBROEK (Surfers Paradise—Lib) (6.01 p.m.): As Liberal shadow minister for public works, housing and racing, I am very pleased to lead the Liberal Party on the Building and Construction Industry Payments Bill—a bill which the Liberal Party does not oppose. The Liberal Party welcomes this legislation, albeit cautiously, and we agree with the intent of the bill. The problems in the construction industry with regard to the non-payment of subcontractors are immense. A bill that is aimed at addressing and rectifying these problems should be welcomed by the House.

This legislation was on the table during the last parliament after being on the agenda for over two years. This legislation has been a long time coming—too long for the unfortunate subcontractors who have been stung by unscrupulous and deceitful builders who would prefer to stall rather than pay what they owe. The object of this bill is to provide progress payments to subcontractors at regular intervals to ensure that cash flow is steady and constant in the construction industry. An important change also is the introduction of rapid adjudication which aims to balance time and efficiency with legal precision. As a consequence of this rapid adjudication, a certificate is provided that can be presented to a court of an appropriate jurisdiction. From there, the debt can be claimed.

As I have previously mentioned, the problems in the industry are endemic. Subcontractors have for too long been the little brother picked on by builders and developers with no intent to pay them for the work they have done. I must say at the outset that the vast majority of builders and developers are honourable businesspeople who work hard to make a success of their businesses. I have every respect for developers who make a living via the legitimate and ethical method of paying subcontractors for their hard work. For that unethical small portion, though, their practice of ripping off honest, hardworking Queenslanders must stop. In speaking on a similar bill in New South Wales, Premier Bob Carr called the practice un-Australian. This is a very true statement and any measures that can be implemented to stop this un-Australian practice must be implemented.

This government should be commended for bringing this bill before the House. It is a bill that provides greater protection for subcontractors, helping them to be paid rightly for work and materials they have provided. The building industry contributes millions and millions of dollars to the Queensland economy each year. The major threat to that huge contribution is a break in the chain of contract that exists in the building and construction industry. If those at the top of that chain of contract, the developers, are not paying what they should to the next level, the subcontractors, the effect is exponential. The more this practice goes on at the top level, the greater the difference it makes to the overall bottom line and the lives of thousands of Queenslanders.

Prompt payment of subcontractors speeds up the cash flow through the industry. When cash flow is accelerated, the industry can function at its most efficient. A greater portion of time will be spent on the building and construction side of the industry and less on the administration and money chasing that bogs down construction output. This bill is aimed at securing that efficiency and output. No system is perfect. I am sure there will still be the odd case of poor and delayed payment for subcontractors. This bill, though, significantly improves the mechanisms for payment recovery and provides disincentives to rogue builders and developers.

The major improvement to payment recovery mechanisms is the rapid adjudication process. The model used in this bill is one that has been used to very good effect in other states and overseas. It has proven to work and it will work in Queensland. The reason this method of payment recovery works is that it comprehensively thwarts any attempts to delay payment by a builder. This bill makes the practice of stalling much harder.

As with any legislation, there will no doubt be some teething problems in its introduction into the industry. Some of these problems can no doubt be foreseen from similar problems which have been encountered in other states. As the Liberal shadow minister for housing, I will be watching very closely over the next 12 months and looking for ways the reforms could be further refined to promote even greater efficiency and output.

As much as I do commend the bill and its intent, I have a number of reservations. These are reservations industry representatives have expressed to me. First, there is the grave concern that variations do not have to be fully costed prior to the commencement of work. This point increases the risk of non-payment down the track. If a variation to the original contract needs to be made, it is generally made on site with no paperwork or record whatsoever. These verbal agreements can be disputed at a later date. As it stands under this legislation, variations do not need to be considered as mandatory clauses in the contract, nor can variations be subject to the benefits of rapid adjudication.

If a site supervisor instructs a subcontractor to make a variation on a property and the variation is substantial enough, it can be argued that the agreement was a separate contract. As such, for any dispute, remedy can only be sought in a court of law. This does not alter the current situation and leaves this level of paperwork and red tape for subcontractors to wade through. It also leaves the subcontractor open to considerable risk of non-payment as it is very difficult to verify these ad hoc contracts in a court of law.

Second, I would like to register my concerns about the practicality of the time frames involved in the lodgment of paperwork under this act. The purpose of this bill is based on the premise that subcontractors are far too busy with their work to be chasing up accounts. Yet there are a number of very tight time constraints by which subcontractors need to abide. I am worried that some disputes will be deemed invalid by virtue of not being handed in legitimately on these tight time constraints. The reason for this failure to comply may simply be that the subcontractor is too busy working. The intent of this bill is to protect subcontractors. The only reason for tight time constraints would be to prevent one party stalling. In this case, the party that wants to prevent stalling is the subcontractor. So there is no need to place them under such a time constraint. Relaxing the time constraints would enhance the ease with which subcontractors could recover their money rather than hinder it.

Third, my greatest concern is that the benefits of this bill will not be passed on to the subcontractors via an education process. The Building Services Authority does not have the resources required to educate concerned parties as to the changes this act implements. While I am sure many subcontractors will be pleasantly surprised at some of the initiatives contained in this bill, some differences, though, if not brought to their attention may work to the subcontractors' detriment. For example, under the existing legislation a payment must be made as per the contract or at a default period of 15 days for builders and 25 days for subcontractors. The bill before the House suggests a default 10-day period for payment.

The reason the new default period—a provision in conflict with the Building Services Authority Act—is 10 days is that this bill is a carbon copy of the one presented to the New South Wales parliament. The difference, though, is there is no Building Services Authority Act or equivalent in their legislation. As such, there is no conflict in New South Wales. To stay in time with part 4A of the Building Services Authority Act here in Queensland, and for that matter with the practicality of implementation, it would make sense to leave the default period at 15 days for builders and 25 days for subcontractors.

The problem is that, without education, subcontractors and builders may not know what they should do and when they should do it by. Some builders may be in violation of the act though they had no intention of stalling whatsoever. For this reason, I suggest that resources be allocated to the BSA to educate concerned parties or, more importantly, the current default periods be carried over to the new legislation so as to avoid a situation where well-intentioned parties are found in violation of the act. If this matter is not attended to, confusion will reign with regard to this bill over when and under what circumstances a person may be paid.

Like many people, I have experienced the trials and tribulations of building a home first-hand. I have many trade contractor friends who tell me of the many times they have been left out of pocket due to lack of payment by unscrupulous builders. These are honest, hardworking people deprived of the payment that is rightfully theirs. I support the intent of the bill. I will, however, be watching very closely over the next 12 months for ways to refine the reforms to make the industry more efficient.