




Speech By
Hon. Jarrod Bleijie

MEMBER FOR KAWANA

COMMERCIAL ARBITRATION BILL

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (10.03 pm), in reply: I start by thanking all speakers, particularly all the speakers who joined the debate as the night progressed who were not anticipating to be engaged in such a lengthy debate—

Mr Stevens: Rigorous debate.

Mr BLEIJIE: Rigorous debate on a good piece of legislation. Members, as always, were well informed of the most important issues. We had members discussing the four pillars of the Queensland economy that the LNP strive to advance. We had the member for Kallangur telling a joke about genies in bottles. So I do thank all honourable members for assisting the Attorney-General tonight in filling some very important time in the important debate.

Mr Rickuss: It was the issue we were after.

Mr BLEIJIE: It was. The quality of the debate was excellent. It is good to see the Treasurer in the chamber at the moment, because this is the Commercial Arbitration Bill which saves business money, cuts red tape and speeds up dispute resolution processes, although I must say that I was nearly caused on some occasions when I was in the chamber tonight to rise to points of order relating to offensive language by my parliamentary colleagues when they talked about lawyers—about how terrible all these lawyers are and how great this bill is because lawyers will now go broke. We heard great contributions, though, from the lawyers in the chamber tonight, sticking up for the profession. We had the great bush lawyers of the west such as the member for Gregory sticking up for the lawyers. I thank the member for Gregory for his great contribution to the debate tonight.

Mr Johnson: Want to debate me some time?

Mr BLEIJIE: I am happy to debate the member for Gregory any night of the week.

If I can summarise the debate in its entirety with 28 minutes of further contribution, I start by saying that the bill reflects international best practice. That is why we are doing this. It harmonises Queensland's commercial arbitration regime with other Australian domestic regimes. It has the support of stakeholders and the Legal Affairs and Community Safety Committee. I thank the honourable the Deputy Premier for kick-starting the debate tonight when I was unable to read the second reading speech. I thank the Deputy Premier for taking the reins at short notice and delivering such a great speech—

Mr Seeney: Riveting.

Mr BLEIJIE: The riveting speech we had prepared earlier for him. I thank the Deputy Premier.

This is a contribution to the government's policy of building a four-pillar economy. This bill empowers the parties to have an arbitration process to suit their circumstances. It promotes an arbitration process which values confidentiality and expediency and will assist businesses in resolving disputes with minimal delay and the expense that goes with it.

A few weeks ago I attended the international trade law reform convention at the UQ Business School in town. I thank the participants in that trade convention. It offered a great insight into this type of legislation.

The Leader of the Opposition claimed that these were Labor laws introduced by former Attorney-General Paul Lucas in the dying days of the former government. They were introduced by the former government but never debated.

Ms Palaszczuk: Come on.

Mr BLEIJIE: I cannot let the opposition leader take credit for these laws just because the former government introduced them. They never made it a priority to get the laws debated.

Mr Stevens: They failed to deliver.

Mr BLEIJIE: I take the interjection from the Leader of the House: they failed to deliver.

Ms Palaszczuk interjected.

Mr BLEIJIE: I never said that I was going to be nice. If I recall correctly, it was very close to the end of the former government's term when the bill was introduced. Obviously it went through a very consultative process with the former committee. I recall that the former Attorney-General came to me in the final sitting week of 2011, prior to the election, and asked if we could just run this through. I said no, that it required appropriate debate and that in the context of the election campaign and the now government's four pillars of the economy—agriculture, construction, tourism and resources—it was important that it was an LNP government that lead this legislation through tonight. I thank all honourable members for their contributions but do acknowledge that the former government did introduce some laws but never debated them. I am pleased that the Liberal National government is actually putting this through for debate tonight. Hasn't it been a wonderful, long debate?

In terms of stakeholder support, we have far-reaching support from the Bar Association and the Chartered Institute of Arbitrators Australia. They made suggestions for amendments and the Leader of the Opposition asked whether we would be prepared to take them on board. I say that we are, but first we must put them forward to the appropriate stakeholders when we look at these model laws in the future. Members will know that I generally have hesitation in supporting any reform that is a national or model law reform because I believe that Queensland ought to do it best—and oftentimes we do it better than the Commonwealth. This is a particular reform for which industry and businesses have been crying out. It certainly saves a lot of money. The honourable the Deputy Premier mentioned on my behalf that I will write to my counterparts in other states and territories advising them of the matters raised in the context of this debate for consideration as part of any future review of the model bill by the now Standing Council on Law and Justice. We will follow through with that. I am confident that the key stakeholders will continue to monitor the operation of the legislation and advise the council should amendments be considered desirable in the future.

The member for Ipswich West talks about good legislation. He congratulated the government on introducing this type of initiative and bringing it forward, about which I am pleased. The member for Ipswich talked about the Legal Affairs and Community Safety Committee—and I thank the committee for its work on this bill. It also suggested that the stakeholders support the bill. The member for Ipswich also said it was extremely important for business that we keep pace, otherwise they will arbitrate in other jurisdictions. Incidentally, while we are talking about all things other than this bill, we announced recently that we are reintroducing the title of Queen's Counsel in this great state of Queensland. We do that because we see the benefit in being a competitive state, competing with our counterparts in New South Wales and Victoria. Particularly in the Asian market there is a perception that QCs are higher than an SC, which we know is fundamentally not correct. We are in the process of working with the Bar Association to reintroduce the title of Queen's Counsel and abolish the title of Senior Counsel. You may ask what the relevance is to this bill. It is relevant because if we are talking about commercial disputes, lawyers will still be involved, despite some of the members not wanting that. Incidentally, I have just received a letter from a Victorian Senior Counsel stating that he has recently written to the Victorian Bar Association asking it to follow Queensland's lead and reintroduce the term Queen's Counsel to Victoria.

Mrs Frecklington interjected.

Mr BLEIJIE: I acknowledge the member for Nanango's strong support for that initiative. Obviously under the guidance of the Treasurer, the member for Nanango supports that initiative. I think it is a great initiative and it is fantastic that at the time of the announcement of the change to this policy I said that it would be great if we had a situation where learned colleagues in other jurisdictions

pushed their Bar Associations for the reintroduction of the title of Queen's Counsel. So it is great to see that that debate has now started in Victoria. I did digress a little, but it is important in terms of the commercial context of this bill.

The member for Broadwater said that it is fantastic that the opposition is supporting the bill. That is a good start. She also says that the bill is fantastic for business and arbitrators in Queensland. The government is continuing to reduce red tape and make it easier to do business. This is fundamentally what this government is about. How can business get on with business and do business, which is what they do best in Queensland? I have said on many occasions that the best thing governments can do for business in Queensland is to get out of their way. The best thing we can do as legislators is free up the road blocks and free up the roads in front of business and let them get on with business because they do it best. If we do that, if we can reduce red tape, compliance costs and government costs of business then businesses can employ people. I congratulate the honourable the Treasurer, particularly for the increase in the payroll tax threshold by \$100,000, because it has allowed business to get on with the job and employ people, contributing to the government's overall target of reducing unemployment in this state by 2.4 per cent in the next five years. It is a challenge. No-one is saying it is an easy job to achieve that target but we are certainly on the way with these types of bills and legislation. I thank the member for Broadwater for her commentary on the bill.

The member for Bulimba said that it is great to see a bill which will result in the promotion of greater autonomy and participation of parties, finality of awards, protection of confidentiality and access to alternative methods of dispute resolution—very similar to the explanatory notes. I thank the member for Bulimba and look forward to seeing the positive effect that he says it will have on industry. That is what we are all about: the positive impact this will have on the Queensland economy and industry.

The member for Toowoomba North, the honourable Deputy Speaker sitting in the chair now, gave a great presentation and extended the debate out to dinner this evening. I thank him for his contribution tonight. He talked about the dispute resolution mechanisms that will be efficient and effective, which are important. That is why they are a part of this bill. The member for Toowoomba North also talked about being competitive on the world stage. This is where we want to be. We believe in competitive federalism but we also want to compete on the world stage. Having these international model laws for commercial arbitration in Queensland will certainly allow our businesses to compete on this national stage.

The member for Nanango, who gave a great presentation and was very supportive of the government's QC policy, talked about a trucking company whose trucks travelled through all electorates and about how this legislation would improve the processes for them—and this is interesting coming from the member for Nanango—and reduce money paid to lawyers. That is interesting because the member for Nanango was a lawyer. So I would not have expected the member for Nanango to advocate for that sort of regime. In any event, she did.

Mrs Frecklington: I have the green here.

Mr BLEIJIE: Absolutely! The member for Albert talked about the importance of promoting the growth of business, particularly in Queensland. This is important for all the school leavers in Albert and across Queensland looking for jobs. This is what this government is about: creating jobs for young people so they can live, learn and earn locally no matter which electorate they live in.

I thank the member for Moggill for his contribution and for confirming that he is a real doctor. He was talking about real lawyers and bush lawyers, and he confirmed that he is a real doctor. He also told us that he had engaged in many disputes of his own and that he can come to this debate tonight with plenty of personal experience in disputes. I thank the member for Moggill. The member for Moggill talked about the consultation on the bill. Having gone before two committees now—under the previous parliament and this parliament—it has probably been the most consulted bill. When I became the Attorney-General one of the meetings I had was with the associations representing commercial arbitration in Australia. They are very much of the view that we should get on with the job and bring this bill before the House. They were disappointed that the former government did not get their act together and get the bill passed through the former parliament. They are very happy to see that this is finally on the agenda.

The member for Mermaid Beach made a contribution tonight and talked about disputes going to QCAT and certain issues with respect to that. He also talked about the fact that the Commercial Arbitration Bill will save certain litigation. As a former lawyer, I always find it difficult when we talk about saving litigation. However, believe it or not, I think all lawyers aspire to save parties litigation.

It is more cost-effective if parties can mediate and arbitrate their matters rather than litigating their matters. Not only does it cost people a lot less money; mentally it does not impact as much on

people, because we know that litigation and courts can be a trying experience for many people and it is a difficult and confusing process for people to go to litigation and to court. The other issue I would mention in that respect is not only the cost but the difficulty if they cannot afford representation and lawyers to go to court and then one would be self-represented, which always presents difficulties for the individual.

The member for Southport again attacked lawyers. I will defend lawyers, although I think given the majority of the contributors to the debate tonight—I would hasten to say, member for Nanango, member for Broadwater, member for Caloundra, member for Clayfield, member for Ipswich—we would be outnumbered in terms of the debate tonight unfortunately. We would certainly be outnumbered. However, the member for Southport did talk about six-minute increments that lawyers are known for. The point is that I will always stick up for the profession of lawyers because at the end of the day—I missed the member for Beaudesert of course—people need assistance sometimes to travel through these difficult legal processes and sometimes they just need a little hand to do that. The member for Gregory, although acknowledging himself as a bush lawyer in the member for Nanango's speech, said that lawyers are reputable people and it is a reputable profession. I thank the member for Gregory.

A government member: Did he say that?

Mr BLEIJIE: He did say that, Minister, and I could not do anything but agree with the member for Gregory. The member for Kallangur made a very interesting contribution tonight. It took me back to Aladdin and the 40 thieves and the genie in the bottle with the joke that he made. I am going to have to read *Hansard* tomorrow because I still do not quite understand what the joke was about, but I am sure the *Hansard* reporters will understand it and will be able to make some sense of it, or perhaps the member for Kallangur might give a private show later to make me fully understand what the joke was about! To the member for Kallangur's credit, I did ask for a bit of filibustering tonight, so thank you and thanks to the Deputy Speaker for not pulling you up for being totally irrelevant to the piece of legislation you were speaking on. But I digress again. We are getting on with the job of this Commercial Arbitration Bill. I thought what I might do in my remaining 12 minutes is just ask some rhetorical—

Ms Palaszczuk: Not that you would know how to do that, Attorney-General.

Mr BLEIJIE: I take the interjection. It is not that I like filibustering; it is just that I have always got a good contribution to make to the debate, you see. What I thought I might do is ask myself a couple of rhetorical questions just in case members were unaware where I stand on this bill and—

Ms PALASZCZUK: I rise to a point of order. I draw the Attorney to relevance.

Mr DEPUTY SPEAKER (Mr Watts): Attorney, if you could keep to the title of the bill please.

Mr BLEIJIE: Thank you, Mr Deputy Speaker. The questions that I am about to pose to myself have been drafted by the Department of Justice and Attorney-General and I trust that my trusty department staff have been completely relevant.

Ms Palaszczuk: You should've got us to ask them.

Mr BLEIJIE: I might hand one across that you might want to ask. We must be quick; we only have 11 minutes to go. People may ask why we are debating the Commercial Arbitration Bill.

An honourable member: Why are we?

An honourable member: Yes, why?

Mr BLEIJIE: Thank you, honourable members. I could say to you tonight categorically why we are debating the Commercial Arbitration Bill. It currently, as we would appreciate, governs domestic commercial arbitrations in Queensland and was developed under the auspices of the then Standing Committee of Attorneys-General, SCAG, and is a series of substantially uniform laws across Australia that are commonly referred to as the Uniform Commercial Arbitration Acts. In April—

Ms PALASZCZUK: I rise to a point of order—repetition.

Mr BLEIJIE: Mr Deputy Speaker, I actually have not said this because the Deputy Premier—

Mr DEPUTY SPEAKER: There is no point of order.

Mr BLEIJIE:—gave that speech. So it may be repetitious of what the Deputy Premier said, but I actually have not said it quite yet.

Mr Seeney: So the rule of repetition doesn't apply.

Mr BLEIJIE: Exactly. I take the interjection from the Deputy Premier: the rule of repetition ought not apply in this instance. In 2009, as I said, SCAG developed a new uniform commercial arbitration law, updating and modernising the Uniform Commercial Arbitration Acts to ensure that arbitration provides an efficient and cost-effective alternative to litigation which is consistent with international best practice. SCAG agreed to implement the model law and in July 2011 all aspects of the bill were passed, but it has taken a couple of years to get to this point in time. The bill replaces the Commercial Arbitration Act 1990 Queensland with a new model based on the United Nations Commission on International Trade Law model law on international commercial arbitration and supplemented by provisions relevant for the domestic commercial arbitration setting.

The bill will make Queensland's commercial arbitration law as consistent as possible with the new commercial arbitration legislation already enacted in other Australian jurisdictions and help align the domestic commercial arbitration regime with the Commonwealth's International Arbitration Act 1974. The bill will create—and this is the exciting part for honourable members—an environment which encourages better use of the domestic commercial arbitration regime to ensure that businesses have better access to processes for fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense and will ensure Queensland is recognised as a jurisdiction which meets world standards for facilitating the resolution of commercial disputes. Honourable members may also be interested to ask what impacts this new legislation will have on business and government.

Mr Stevens: What impact will it have on business and government?

Mr BLEIJIE: I take the interjection from the Leader of the House and the question. No doubt the member for Hervey Bay is interested if this will impose any new costs on anyone. I have the answer—

Mr DEPUTY SPEAKER: Minister, resume your seat. Honourable members, the level of background conversation is beginning to get to a level where I cannot hear the Attorney-General. If you could keep your conversations down please.

Mr BLEIJIE: It is very rude, isn't it, Mr Deputy Speaker? The member for Hervey Bay asked me the question as to whether it will impose any additional costs. I am happy to answer the member for Hervey Bay because he had a particular interest in this. The bill will apply to commercial arbitration a formal dispute resolution process whereby parties refer their commercial disputes to an independent third person—the arbiter—for determination. The overriding objective of this bill as articulated in clause 1AC is to facilitate the fair and final resolution of disputes by an impartial tribunal and ensuring procedures around the conduct of arbitrations result in disputes being resolved more informally, quickly and with less cost than if the dispute had been resolved by a court.

An honourable member interjected.

Mr BLEIJIE: I will take the interjection in a minute. Under the bill, parties to the arbitration are generally free to agree how their disputes are to be resolved. This, coupled with the procedural framework provided under the bill, gives parties greater control over proceedings, resulting in less regulatory burden for business when resolving their disputes. Accordingly, it is expected that the proposed policy option will have a positive—I repeat a positive—or at the very least a neutral impact on business. Also, the proposed reforms are expected to have a cost-neutral, if not positive, impact on the cost to government, which the Treasurer would be particularly pleased about. As discussed, the bill reduces the role of the court in commercial arbitration and therefore has the potential to positively impact on resourcing and the workload of the court.

In a nutshell, this bill is all about achieving the objectives of the four pillars of the Queensland economy—resources, construction, tourism and agriculture—and this government is very unapologetic in terms of striving for that objective. I thought I may for the benefit of honourable members explain how the process will work, because some honourable members who did not speak on the bill may be interested to take back to their constituency the details of this in terms of this bill and how it will operate. I know the Deputy Premier is a very keen tweeter now. He may be keen to tweet. In fact, the Deputy Premier has spoken so much about tweeting I had to check that he was on Twitter, and he is. Absolutely. I now follow the Deputy Premier on Twitter.

How does it work in practice? In practice, the parties will generally agree to their arbitrations being conducted according to institutional rules provided by bodies such as the Institute of Arbitrators and Mediators Australia or the Australian Centre for International Commercial Arbitration. Both bodies have draft arbitration clauses to this effect that can be included in the contractual arrangements of

parties. The institutional rules of those bodies provide an extensive framework dealing with the commencement of the arbitration, the composition of the arbitral tribunal, the proceedings themselves, the award and the fees applicable.

Where is the arbitration to be conducted and what laws will apply? It will usually be dealt with by an arbitrator or arbitrators appointed pursuant to an arbitrator agreement. That agreement usually determines the jurisdictional seat for the arbitration. Disputes regarding the enforceability or seeking judicial review of the arbitrator's award are dealt with in the court of relevant jurisdiction depending upon where the arbitration took place.

How will the proceedings commence? In relation to the commencement, clause 21 of the bill provides that, unless otherwise agreed, the arbitral proceedings in relation to a particular dispute start on the date on which a request for the dispute to be referred to arbitration is received by the respondent. This occurs outside of the court proceedings when one party serves a notice of arbitration on the other. Clause 8 deals with the cases where one of the parties commences action before the court where the subject matter of the dispute is the subject of an arbitration clause. This clause imposes a requirement on the court where the court is valid and the party requests a stay in favour of arbitration pursuant to an arbitration agreement to refer that matter to arbitration.

In conclusion I thank all honourable members for their contributions. The committee that had oversight of this bill made the recommendations to the bill, particularly those recommendations from the Bar Association, known to the government. The Bar Association had six recommendations, largely relating to the use of terminology and suggestions for clarification and placement of certain provisions. As I said, we ought to get the bill passed by this parliament and into action. Then at such time I am more than happy to make those recommendations to the other stakeholders in other participating jurisdictions if the model laws are, in fact, amended in the future and we may be in a position to be able to support those other amendments. Because this has all been agreed, it is difficult to unilaterally just change the legislation. So we will take them on board—and I give a commitment tonight that those recommendations have been taken on board—and the department will continue to monitor with our stakeholders what other participating jurisdictions do and we will ensure that, come the appropriate time, if those particular amendments are able to be made to these laws, we will support them.

This is all about commercial arbitration in Queensland. This is about giving business a fair go. This is about efficiencies of business. This is about saving money. This is about reducing red tape and regulation. Certainly, that all aligns very much so with what the Liberal National Party government in Queensland is doing. We are a government that is unapologetic that we are helping small business. Over the past 11 months our policies have reflected that. We are a government that believes that government ought to get out of the way of business.

Today, we heard the Minister for Environment talk about how we can save lots of businesses lots of money by getting rid of the waste levy and other initiatives that the Minister for Environment has introduced with the environmental laws. We have seen the Deputy Premier get on with the job and get things building and being constructed in this great state of Queensland. We have seen the Minister for Communities, Child Safety and Disability Services get on with the job of the Carmody commission of inquiry so that Queensland can be the safest place to raise a child. I acknowledge all honourable government members on the backbench and the frontbench for the work that they have done in getting our message out there that Queensland is open for business. We are pro business. We love small business in this state. Small business is the bedrock of society and this economy. By having international best practice in our commercial arbitration laws we can get out of the way and let small business get on with their job. It will help reduce unemployment and get young kids employed in Queensland.