




Speech By
Michael Hart

MEMBER FOR BURLEIGH

COMMERCIAL ARBITRATION BILL

 **Mr HART** (Burleigh—LNP) (8.40 pm): I thank the member for Moggill for giving me 10 minutes to recover my composure after the speech from the member seated beside me! I will endeavour not to enter into a debate as to who has the biggest brewery. After all, we know that it is not the size that counts but the taste of the beer.

I rise to speak in support of the Commercial Arbitration Bill 2012, introduced to the parliament on 30 October 2012 by the Hon. Attorney-General and Minister for Justice, the member for Kawana. This bill, like many other bills that the Newman government has introduced, is about streamlining processes to make it simpler for Queensland residents and particularly Queensland businesses to undertake commercial arbitration rather than necessarily be forced into the world of litigation.

As we move into a national and global business environment, this bill creates a high level of consistency with the national arbitration regime and similar legislation already adopted in other states and territories. As I personally experienced before becoming a member of this House, the difference in the cost and the time commitment when involved in arbitration rather than litigation can be enormous and more complex when working across multiple jurisdictions within Australia. The passing of this bill will be welcomed enthusiastically by businesses across Queensland.

This bill also harmonises the Queensland domestic commercial arbitration regime within the Commonwealth International Arbitration Act 1974. Once again, this will assist in arbitration across multiple jurisdictions. The benefits to those involved will be lower cost and, hopefully, speedier results and outcomes. By allowing more cases to settle through arbitration rather than litigation, pressure should be reduced on the state court system, which we acknowledge is under a load that leads to higher costs for those involved and lengthy lead times that are inconsistent with business continuity.

As previously noted, we are increasingly part of a national and worldwide business community. This bill ensures that Queensland businesses are supported by adherence to world standards in commercial dispute resolution.

It has been increasingly said that arbitration to date has become too litigious and the advantages of an arbitration action have become lessened when it comes to cost and time. However, the former Standing Committee of Attorneys-General agreed to update and modernise the uniform acts, thus ensuring they reflect international best practice. This in turn supports arbitration as an efficient and cost-effective alternative to litigation. I would like to quote from an excellent article by correspondent Ben Christoffel of Norton Rose Australia on 2 February this year. He says—

The changes introduced in section 1AC of the Arbitration Bill are aimed at ensuring that arbitration in Queensland is an efficient, cost-effective alternative to litigation. The Arbitration Bill aims to achieve this objective by:

1. enabling parties to agree how their commercial disputes are to be resolved; and
2. providing arbitration procedures that enable commercial disputes to be resolved in a cost effective manner, informally and quickly.

This section is a reminder that one of the main advantages of commercial arbitration, in the domestic context, is the ability of parties and arbitrators to tailor arbitration procedures for the most efficient resolution of the dispute.

Parties may have a preference for an arbitration that is as formal as court proceedings or for something that is relatively inexpensive and quick.

There is often difficulty when the parties have varying views of where on the line between these two extremes the arbitration should sit. Parties may also have differing expectations to that of the arbitrator, and, as can often be the case, those expectations may sit outside the realms of practicality and reality.

Regardless, these issues should be taken into consideration by the arbitrator to ensure that procedures are appropriate to the nature and value of the dispute.

That is an excellent overview of section 1AC of the bill.

There are a number of changes which, when passed, will mean that arbitration in Queensland will be more time and cost-effective for all involved. This is reinforced with changes in section 5 of the bill, which has been somewhat controversial in some circles. This effect comes into play when parties agree to the process of arbitration to resolve a dispute. This section ensures that by agreeing to an arbitration process they are excluding the court system as a method to resolve the dispute. They are making a conscious decision to do so. And the result of the arbitration will be binding on all parties. This means that there will be no more changes in direction part way through a process if a relevant party is, for example, not happy with the proceedings. Once there is an agreement to settle a dispute by arbitration, no longer will that party suddenly be able to say that they wish to change direction and will now go to court to have the matter resolved. This allows certainty and clarity at the commencement of a proceedings.

Until now there were numerous examples in commercial disputes of a sudden switch from arbitration to, say, the Supreme Court being used as a tactic to stall or extend the time frame to come to a resolution. I am sure we have all heard of those instances. You only have to read our newspapers to see these sorts of things happening. In fact, this tactic has often extended a dispute by many years. Once the matter becomes bogged down in the court system, it just seems to hang there and hang there. This section has been adopted unamended by all jurisdictions that are based on the modern bill.

The other amendments that take effect in this bill all work together to achieve desired aims of time efficiency, cost efficiency and lessening court involvement in arbitration matters.

Importantly, this bill is part of the state government's ongoing plan to reduce red tape and reduce the cost of doing business in Queensland while endeavouring to free up litigation through the court system. What this bill achieves is legislative harmonisation with all other jurisdictions and is another step in the process of making it easier to do business in Queensland.

I commend the Hon. Attorney-General and Minister for Justice, the member for Kawana, for the work associated in bringing this bill to the House. I also thank the chair and members of the Legal Affairs and Community Safety Committee for their work on this legislation. It is a great pleasure to commend this bill to the House.