Speech By

Rob Molhoek

MEMBER FOR SOUTHPORT

COMMERCIAL ARBITRATION BILL

Mr MOLHOEK (Southport—LNP) (9.07 pm): I am pleased to rise in the House this evening to speak in support of the Commercial Arbitration Bill 2012. The Newman government is committed to updating and modernising Queensland's commercial arbitration law in line with national and international best practice. Arbitration, as my colleagues would know, is intended to provide parties to disputes with cost-effective, expedient access to an enforceable determination as an alternative to lengthy, expensive public court hearings.

It may interest the House to know that in one of my many former careers I had the pleasure of being the CEO of a legal firm on the Gold Coast for some 18 months to two years as it was transitioning through a range of fairly interesting partnership issues. One of the things that I came to learn during that time was that the bane of every legal firm's life is having to deal with long, protracted, expensive litigation cases, often over sometimes fairly trivial matters. The process and the cost burden on both the law firm and the clients is quite onerous. The problem with some of these very lengthy litigation cases is that in the end nobody seems to win. They are expensive. They are quite stressful for all parties concerned. I believe that this bill that we are debating tonight to simplify and streamline the arbitration process and to bring it into line with all of the other states of Australia is not only a significant step forward but a very important move in terms of red-tape reduction and reducing the cost of business and bringing some common standards across the nation, particularly in a state like Queensland where we have so many people moving here from interstate.

My job was not, as we heard from the member for Ipswich this afternoon, to bill in six-minute increments. I was not a lawyer. As the member for Mansfield, the Hon. Ian Walker, the Assistant Minister for Planning Reform would know, the way a lawyer makes a living is by billing in six-minute increments. I am sure the member for Ipswich would understand the importance of even charging $1.40 per page for the photocopying and for processing all the paperwork and the recording of telephone conversations and emails. That process gets quite expensive.

Mr Berry: It is hard work.

Mr MOLHOEK: It is hard work, but it is not particularly a cost-effective process for some business operators who are just trying to get on with business and move on with their lives. When you have to wait for a court hearing and you are waiting for a solicitor's advice and you are waiting for the other party to get back to you, it can be incredibly challenging and a huge impost on business. I recall a case where a client had been overcharged for some repairs to a jet ski. If I recall correctly, at the time the jet ski cost about $20,000. It was only about nine months old. I think the owner's son had been giving it a fair thrashing out in the surf. The bill for the repairs came in and it was some $5,500 to get this jet ski repaired. This client really took exception to that, so he challenged the firm that had undertaken the repairs. I can tell members that the matter went on for some 12 to 18 months. I think he ended up spending over $10,000 in legal fees and he still did not win the battle. He ended up having to repay the repair bill because it was deemed appropriate to do so.

I want to run through some of the important features of this legislation because it is important that we understand fully what we are going to be adopting a little later this evening. Arbitration is a formal dispute resolution process in which two or more parties refer their commercial dispute to an independent third person, the arbitrator, for determination. The result of the arbitration is known as the award and it is enforceable in the same manner as a court judgement. Commercial arbitration is commonly used by the insurance, construction, engineering, oil, gas, shipping, banking and finance industries when resolving their disputes. Given the LNP's commitment to the four pillars and our determination to really get the construction industry going, our focus on improving tourism as an industry across the state and our commitment to lowering the cost of living and to red-tape reduction, when you look at all the different sectors that rely on this particular legal process of arbitration to resolve disputes in a cost-effective manner this is really important legislation that we are here to consider.

Arbitration is intended to provide parties to disputes with cost-effective, expedient access to an enforceable determination as an alternative to lengthy, expensive public court proceedings—similar to the one that I spoke just a little earlier. Currently, Queensland's Commercial Arbitration Act 1990 governs the conduct of domestic commercial arbitrations in Queensland. It is one of a series of substantially uniform laws across Australia that are commonly referred to as the uniform commercial arbitration acts, which were developed under the auspices of the former Standing Committee of Attorneys-General a couple of years ago.

The new model commercial arbitration legislation was agreed by this Standing Committee of Attorneys-General and settled in July 2012 to address criticisms that arbitrations in Australia had become too litigious, with proceedings increasingly resembling those of a court and that there was a need to modernise and update 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.

All states in Australia except Queensland and the Australian Capital Territory have passed this model legislation. This model bill is based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration. It is also consistent with the Commonwealth International Arbitration Act 1974. It is further supplemented by provisions relevant to the domestic commercial arbitration setting.

There was an attempt to bring this bill to the House under the previous government back in 2011. It was referred to the Legal Affairs, Police and Corrective Services and Emergency Services Committee. That committee tabled its report on 16 February 2012 and recommended the passage of the bill. Unfortunately, the bill lapsed upon the dissolution of parliament for the general election earlier last year. This bill will benefit Queensland businesses by modernising and updating Queensland commercial arbitration law and aligning it with other Australian jurisdictions, adopting international best practice and strengthening the underpinning attractions of arbitration as an alternative to litigation, namely, expediency, cost-effectiveness and autonomy.

I am pleased to support this bill. I would like to summarise what I see are its main features. It applies to domestic commercial arbitration only and expressly recognises that the Commonwealth act governs international commercial arbitrations. It defines the form and scope of arbitration agreements and it provides for the selection, appointment and challenge of arbiters. It also sets out an arbiter's powers. It contains procedural provisions. It applies a confidentiality regime to the parties and arbitral tribunal alike, but contains a consensual opt-out provision. So there is the opportunity for the parties involved in an arbitration to opt out of privacy if they are wanting their findings or the results of that arbitration to be made public.

I am pleased to support this bill. It addresses the making of awards and the determination of proceedings, including costs and settlement. It outlines preconditions for applications to court to have an award set aside or to appeal on a question of law. It recognises interstate awards as binding and allows applications to a court for their enforcement. I commend this bill to the House.