

CONSTRUCTION CONTRACTS AMENDMENT BILL 2016

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [2.17 pm]: I move —

That the bill be now read a second time.

In September 2015, Professor Philip Evans completed an independent statutory review of the Construction Contracts Act 2004. Professor Evans' review concluded that the Construction Contracts Act has provided a useful mechanism for resolving contractual payment disputes and continues to provide building contractors, subcontractors and suppliers with a right to be paid within a reasonable period of time, and a low-cost method of enforcing that right. The findings of Professor Evans' review did not identify a need for significant structural reform but did forward 28 recommendations to improve the operation and effectiveness of the Construction Contracts Act. These recommendations have formed the basis for the broad and comprehensive package of reforms that was announced by the Liberal-National government on 12 August 2016 and seeks to improve security of payment for subcontractors.

The Construction Contracts Amendment Bill 2016 brings in important reform to improve the operation of and access to the rapid adjudication process for resolving payment disputes under construction contracts. This bill comprises a first raft of amendments aimed at producing immediate improvements to the security of payment for subcontractors and other operators in the building and construction industry. A second raft of reforms that require further detailed work and consultation with the building industry will be introduced at a later date.

One key amendment that will be enacted by this bill is the reduction of maximum contractual payment terms permitted under the act from 50 calendar days to 42 calendar days. This reform will provide that construction contracts that purport to require payment more than 42 calendar days after the payment is claimed will be read as requiring payment within 42 calendar days of being claimed. This will improve prompt payment and increase cash flow in the industry.

The bill will increase the time limit in the Construction Contracts Act for lodging an application for adjudication from 28 calendar days to 90 business days. This amendment addresses a key concern that the current 28-calendar-day time limit is acting as an impediment for some participants, particularly smaller subcontractors, from accessing the rapid adjudication scheme. Several submissions received during Professor Evans' review of the act indicated that many smaller subcontractors often wait longer than 28 days after a payment dispute arises with their main contractor before deciding to take further action for fear of losing future work with that contractor, thereby preventing themselves from accessing the rapid adjudication process. By increasing the time frame for lodging an application for adjudication to 90 business days, a better balance can be reached between increasing accessibility for smaller contractors and maintaining the rapid nature of the scheme.

Another key reform in the bill is the enablement of what is known as "claims recycling". This will allow a party whose initial claim for a progress payment under a construction contract has been rejected or disputed to include those disputed matters in a subsequent progress payment claim, with the time period for applying for rapid adjudication to run from when the second claim is disputed. This is currently permitted under equivalent legislation in other states and territories and will provide a similar level of flexibility for applicants seeking adjudication in Western Australia.

The bill also amends all time frames related to the processes of adjudicating payment disputes from calendar days to business days, while excluding traditional industry shutdown periods, such as during the Christmas and new year break between 24 December and 7 January and the Easter break from Good Friday to Easter Monday.

Other measures incorporated in this bill include the following. It refines section 4(3)(c) of the Construction Contracts Act to make it clear that only the fabricating and assembling of items of plant used for extracting or processing oil, natural gas or other minerals is excluded from the definition of "construction work" and that normal construction work associated with processing facilities is not excluded. It provides that the construction of wholly artistic work is no longer excluded from the definition of "construction work". It clarifies when a payment dispute commences for the purposes of section 6(1) of the Construction Contracts Act to make it clear to the parties when an application for adjudication of the dispute should be made. It requires the adjudicator to dismiss an application for adjudication if the applicant gives written notice of their intention to withdraw. It provides an express power when the parties to a dispute have reached a settlement for the adjudicator to issue a determination giving effect to the terms of that settlement. It ensures a greater focus on the substance over form of adjudication applications by giving the adjudicator jurisdiction to continue to determine a payment dispute where satisfied that the application sufficiently complies with the information required under

section 26(2)(a) of the Construction Contracts Act. It also provides a speedy and more efficient process in the Construction Contracts Act for the registration of adjudication determinations with the courts. All of these other measures were recommended by Professor Evans.

In summary, this bill will further improve the operation of the Construction Contracts Act by keeping the money flowing in the contracting chain in the building and construction industry in Western Australia. The bill also supports other key reforms this government is progressing that will improve the security of payment for operators in the building and construction industry. Having listened to the concerns of subcontractors and other stakeholders, the Liberal–National government is taking effective action to encourage better industry behaviour and implement enhanced payment protection for subcontractors across the building and construction sector in this state.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 4841.]

Debate adjourned, pursuant to standing orders.