CONSTRUCTION CONTRACTS AMENDMENT BILL 2016

Second Reading

Resumed from an earlier stage of the sitting.

MR W.J. JOHNSTON (Cannington) [9.20 pm]: Before I was so rudely interrupted by question time —

Mr S.K. L'Estrange: Quite some time ago!

Mr W.J. JOHNSTON: Yes; it has been seven hours and 21 minutes since I spoke on this important piece of legislation, and I get the joy of continuing now. I was going through the commentary from the report of the Senate Economics References Committee titled "I just want to be paid", which was tabled in December 2015, and I was making some comments about company phoenixing. When the Speaker was in the chair in the lead-up to question time, I was explaining how I had heard about a contractor who had phoenix companies in the United Kingdom and then moved to Australia and had phoenix companies in Perth and is now headed back to the UK to do whatever may happen. The point is that he has left the jurisdiction and it will now be effectively impossible to chase him down for his criminal behaviour. That is one of the problems. The report states —

> Over three thousand possible cases of civil misconduct and nearly 250 possible criminal offences under the *Corporations Act 2001* were reported in a single year in the construction industry.

Often the Liberal Party at the federal level talks about the lawless construction industry in reference to trade unions. If there were 250 criminal offences in the Construction, Forestry, Mining and Energy Union in a year, it would be a front-page story. In fact, there have been fewer than that in the CFMEU, yet employers are involved in 250 criminal offences, and I am still waiting for the Liberal Party to get upset, I am still waiting for it to do something about it and I am still waiting for it to shed a single tear on behalf of the subcontractors who have had their money stolen effectively by these head contractors through phoenixing. It is an absolute disgrace, and that is not to leave aside what happened with the death of a worker on a building site last week. I was simply shocked to find that WorkSafe did not investigate the accident on the day it occurred. I am also shocked that the employer put out a statement to the media about what happened prior to an investigation. Is it not interesting that when there is a workplace death, usually the employer runs around and says, "Let's not speculate on what happened", yet Gerry Hanssen from Hanssen Pty Ltd was running around saying what had happened. It is an absolute outrage that he got away with that behaviour. Let us make it clear that an employer is solely responsible for workplace safety. Of course, workers have to behave in a safe manner, but the employer's sole responsibility is to provide a safe workplace. According to Mr Hanssen, that worker was apparently working without proper safety equipment. That is what he has said in the media. That means that he is admitting guilt. I hope that now he has admitted that he was at fault in the death of that worker, the government does not delay prosecution. It would be an outrage for Mr Hanssen to get away from being responsible for the death of a worker by not being prosecuted.

[Member's time extended.]

Mr W.J. JOHNSTON: Often there is commentary about the need to put corrupt union officials in jail, and if there are corrupt union officials, they should go to jail. As a former union official, the one thing I cannot stand is a corrupt union official. But what about some manslaughter charges against employers who admit that they are guilty of not providing a safe workplace? That is exactly what happened with Mr Hanssen. He said in the media that the worker was permitted by his company to work in an unsafe manner. That is exactly what he said in the media. It is an absolute outrage that he did that. Then he sent that stupid email to the family of the victim. Has anybody ever heard of more offensive behaviour by a company director than to send an email to the family of a dead worker blaming that worker for their own death? What appalling behaviour! I will be interested to hear what action the minister responsible for this bill will take. That is of course the Minister for Commerce who also has responsibility for WorkSafe. I do not read every single media release put out by the minister, but I have not seen a media release from him on that death. I have not seen him take any action. I have not heard of him making a statement to the Parliament. I have not heard him referring the matter to the police for proper investigation of how Mr Hanssen was able to get away with his behaviour last week. It is an outrage. As I say, there are 250 possible criminal offences under the Corporations Act. How many charges or prosecutions arose from those? We know the answer—none. This is a lawless industry, but it is a lawless industry for the employers. They are the ones against whom there is evidence of breaking the law.

I will read further from the report of the Senate Economics References Committee. Under the heading "Insolvency affects everyone" it states —

> In one tragic case, the committee heard evidence from a man whose father, a highly respected and successful Perth businessman, took his own life while fighting for payment for work his company had

> completed for one of the biggest construction companies in the country on a major public works project in Western Australia.

Of course, the public works project that the committee was referring to is the Perth Children's Hospital, where a subcontractor got in dispute with John Holland and took his life when it was felt he had no alternative. That matter has been widely reported in the media in Western Australia. Again, where is the prosecution? On a government job, a subcontractor does not get paid and takes his own life. What happened? What was the government's response? I am still waiting. We are still waiting for the government to respond. We know what the problems are. Of course, one of the key problems is the minister, the Attorney General; Minister for Commerce. I imagine that if someone were to go into his office, they would not be able to see him sitting behind his desk because there would be so many reports sitting on it not being dealt with. There is report after report in every aspect of his portfolio and none of them are responded to. Here we are three and a half years after the original 2013 report by David Eaton into the subcontractor problems under Building the Education Revolution and it is only now that the government takes action for a problem that occurred four years ago, with seven days of Parliament to go in this chamber and 10 in the other chamber.

That is the priority the government has given to this problem. We had four years of talk and only now, after the Labor Party came out with a policy statement, does the government react. The Labor Party was very happy to lead the government into taking action, and I commend the Labor Party's "Protection for Subcontractors" policy statement of August 2016, which sets out a detailed plan to improve the situation for subcontractors. It is interesting, too, with insolvencies, that employees who are employed by an insolvent business have their entitlements guaranteed under a federal government scheme, but there is no similar scheme for subcontractors. More and more people in the construction industry have been pushed into subcontracting arrangements. As a former industrial practitioner—the member for Fremantle is another former industrial practitioner—I know that many of those contracts would not survive review by court, but who has the money to take a matter to the civil courts to get proof that the subcontract arrangement is a sham and they are in fact employees? I am sure that the member for Fremantle, like me, would have dealt with a number of cases in the Industrial Relations Court of Australia when we had that wonderful jurisdiction, which was a great low-cost jurisdiction for working people. I remember dealing with a number of IRCA matters in which the basic issue was whether people were contractors or employees. That is becoming much more difficult. The Fair Work Commission is not a court, and a commission cannot enforce its own orders. People can get an order from the commission, but they must get it enforced by the court. Although the Fair Work Commission is a low-cost jurisdiction, people still have to go back to court to enforce its orders; whereas the Industrial Relations Court of Australia, because it was a court, could issue an order and that order was therefore automatically enforced, which is a better position and a lower cost jurisdiction. Someone can get an order from the Fair Work Commission that they are an employee, but they then have to get that order enforced, which is a two-step process.

The WA Labor policy paper, which the government has meekly followed in our wake, sets out a detailed system to improve the position of subcontractors. As I said, the opposition will not oppose the Construction Contracts Amendment Bill 2016, but it notes that it is not good enough.

The Labor Party's policy includes a review of how government departments have implemented the recommendations in the "Construction Subcontractors Investigation" report, which came down over three years ago but which has not been properly implemented by the government. Labor's policy proposes the establishment of project trust accounts for government contracts to protect access to progress payments between head contractors and subcontractors, and the establishment of a security payments mechanism for government and non-government contracts to provide more transparency and structure for progress payments between head contractors and subcontractors. The policy proposes the consideration of introducing a demerit point system to encourage change in the subcontracting industry, as is done in Queensland quite effectively. The policy proposes to institute a clearly defined procedure for calculating deductions from progress claims and examination methods to ensure that reimbursement payments are made within a reasonable time. It will ensure that retention moneys are held in project trust accounts. It will investigate a more reliable process for pre-tender assessment of head contractors. This is absolutely essential. In Western Australia, contractors have received work from the Liberal government and then those head contractors have gone broke almost immediately. That means there was no proper due diligence. How can it be that they are awarded these multimillion-dollar contracts and the government has not exercised any proper due diligence? It is an absolute disgrace.

It is proposed in the policy paper that we —

- Standardise and simplify subcontractor agreements and enforce the Australian Standards to make documentation fairer and more transparent for all.
- Apply mechanisms to clarify the procedures in the Construction Contracts Act 2004 relating to variation agreements between the head contractor and subcontractor …

As I explained before question time, that is one of the big areas that subcontractors end up in disputes with their head contractors over. The document continues —

- Work with industry and subcontractors on an accreditation process for subcontractors in various trades and task the Department of Commerce to establish a support mechanism to protect and assist subcontractors when dealing with head contractors.

Much more can be done to try to drive out these problems.

As I say, John Howard's brother was the director of a company that went into receivership and the employees got direct payments from the federal government to cover all the company's losses, and that is the only time that has ever happened in the history of Australia. That one individual case led to the protection of worker entitlements through a national compensation scheme, but in the construction industry the head contractors are pushing more and more workers into subcontractor arrangements under which they are not covered by the commonwealth security-of-payment scheme. Therefore, we need to look at the inevitable result, because inquiry after inquiry has demonstrated the problems, and the one I particularly referred to was the Senate Economics References Committee. These are serious problems; they have literally led to deaths and it is an indictment on the Liberal Party. The Liberal Party likes to wrap itself in the idea that it is somehow protecting small business and that it is on the side of small business, but when the rubber hits the road, it is nowhere to be seen. After eight years in government, four years after the Building the Education Revolution debacle, and three and a half years after the Eaton inquiry was handed down, only now is the Liberal government even talking about doing anything, and what it is doing is simply not good enough.

A drowning man will grab at anything. For the subcontractors in the industry who are in such terrible situations, as I have described, this is obviously an improvement, but it is not good enough and the Labor Party will continue to campaign for proper protections for subcontractors, not just this pitiful little single step after eight long years of this tired government that has run out of ideas and is led by the most unpopular Premier in the state's history. It is a disgrace that we have had to wait so long even for this pitiful little bit of action.

MR M.P. MURRAY (Collie–Preston) [9.37 pm]: My contribution will not be as long as many others, but I certainly feel that I have to stand and put a real story, if that is the word, to the bill. Sometime back I was contacted by two smaller companies, one of which was reasonably established and the other trying to become established. People had bought gear to work in their particular industries and they were certainly not what we would call flush with cash by any means. They were certainly not in the bigger realms of contracting; one had about 35 workers and the other about nine. When we look at it from that point of view, they are our majority employees in Western Australia, especially now that construction in the major areas has finished. These people were put under pressure because the bills had not been paid by the lead contractor. The lead contractor was contracted to Main Roads at the time and, unfortunately, the bills started to mount up for the small contractors. I will read out an email—it is only a short email—about how it affected them. This is probably the second or third email I got from them. The email states —

> Hi Mick,
>
> Just touching base and hope all is well?
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> What actions do you recommend from here on in with regards to LGC getting paid the owed money from Brierty's as a large loss like this is really starting to cripple our business and in turn will affect the 90 odd staff we have in the South West and Perth Metro regions.

That company also contacted the member for Vasse on the same matter. She mentioned that to me and said that she had handed the email on to a minister, but nothing has happened. I am not even sure whether anything happened today, because I have not been able to contact them to find out whether any of the bills have been paid. However, we know that the lead company has another contract at Boddington that is worth a couple of hundred million dollars, yet the person who is screwed is down the bottom. The bill deals with some of the problems in the tiered system, but how far down the line does it go? In some cases, especially in construction work, a subbie is fifth down the line and, of course, the companies above are bigger and get paid first. The fifth in line hopes for a trickle-down effect. The bill does not go far enough to protect what I call number five. Number five may employ only two or three workers, but he is just as important and has put out the same amount of money as the company at the top that has put out a large sum and with 90 workers. In this case, 90 workers across Western Australia is a lot. It does not matter where or what job it is, 90 workers is an extraordinary number of workers to take out of a country town.

Another person caught up in the same issue in the matter mentioned in that email is a local contractor who has about 35 people working for him. In that scenario when contracts are not written in, only those at the top get the money and then the banks move in to collect their share. That leaves smaller contractors down the line stuck within that tiered system.

How many times do we see a ute with a wheelbarrow, shovel and a couple of implements on the back, and a dog and a couple of mates inside, drinking choc milk on the way to work? Sometimes they do not even know whether they are going to get paid. They have families like everyone else and they should have the same rights as everyone else. They should not be told to get over it and get another job down the road because they are only small contractors. Unpaid bills, whether they are $100 or $1 000, hurt that person. In some cases, it is far easier for large companies to move on, because they are able to pick up a large contract somewhere else, as the company I mentioned in the email did, and are able to pay their creditors over time. Many smaller contractors will go out of business if they are not paid. That is probably the crux of the matter. How far down the line do we go? Who do we look after? How do we do look after them? The how is a very big question.

As I have said, the Labor Party is not opposed to any move that helps contractors, but let us look at it from a larger perspective and consider all the contractors, not just a few. We have to remember that small business employs the majority of people in Western Australia. It is not large businesses but small businesses that pick people up. A small business such as the subbie who is number five in the line is indirectly contracted by number one and although he or she has to wait for their money, they still have to pay bills at the concrete supplier or local hardware store. Do members see the problems that can arise when we go only halfway or just over halfway? This affects even the corner shop, where people grab a smoko early in the week and promise to pay up on Friday. But if there is no pay on Friday, the corner shop is not paid for the pie and juice bought during the week and that, in the main, is not the fault of the person who booked those items up during the week. That has been around for hundreds of years—"We'll fix you up"—certainly not by the dockets of old, but there has always been a relationship between those sorts of delis and the contractors around the place. It is a concern, and I think we have more work to do. We have to look after those people further down the line.

I hope people do not get too embarrassed about me reading those examples out, but I get a little frustrated when I know it has been taken to the minister—up until a couple of days ago nothing had happened. Let us hope that we look at it on a broader scale; let us hope that we are able to keep those small contractors in their jobs. Some of those people work very hard for three or four weeks and then have breaks because there is no further job until the next one comes up. Yes, they do get reasonable pay, but they work bloody hard when they are in there and get the job done to the best of their ability. Roadworks is one, but we need to look at many other areas of construction.

If we go down this road, I hope this is not the end of it; I hope the Construction Contracts Amendment Bill 2016 is only the start. To be quite honest, we have a long way to go. The other side of that is to think about, again, the casual worker who is below the contractor, the apprentice who is below the contractor, and some of those from group schemes get only three or four days with a contractor and are put back into the scheme again. If they all collapse, we will have more people out of work and bigger social problems. It is not only about cash flow—it is not only about keeping the bank happy or the corner shop, or the small bank as they say at times, happy—it is about making sure that when that money comes in from a government contract, everyone gets their fair share.

MR S.K. L'ESTRANGE (Churchlands — Minister for Small Business) [9.47 pm] — in reply: I thank members opposite for their contributions to the second reading debate on the Construction Contracts Amendment Bill 2016. Some very, very important points were raised in respect to supporting subcontractors, particularly small businesses that are part of the contracting chain on many of our large projects throughout Western Australia.

As many members who have spoken today and this evening understand, in September 2015 Professor Evans completed his independent statutory review. His conclusion was that the Construction Contracts Act has provided a useful mechanism for resolving contractual payment disputes. He saw some great strengths in the Construction Contracts Act, but he made 28 recommendations. Members know that a large number of those recommendations, bar, I think, two, are supported by government.

As Minister for Small Business, on 12 August I made an announcement on behalf of the government about seeing how we could put in place a suite of measures aimed at improving the security of payment for subcontractors. Members will recall that they included things such as the introduction of project bank accounts for Building Management and Works projects valued at over $1.5 million. Those were all covered as of 30 September 2016. We also aim to introduce the building and construction industry code of conduct to, I suppose, support the intent of the Construction Contracts Act. We will also be putting in place, through the Department of Commerce, a building and construction compliance unit. We will also expand the role of the Small Business Commissioner to be able to review and mediate disputes, so that he particularly has the authority to get information from both parties to increase his capacity to mediate. Of course, one of the key measures in that suite is making amendments to the Construction Contracts Act; that is what we are here about today.

This 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.

It addresses a key concern that the 28 calendar–day time limit acts as an impediment for some participants, particularly small subcontractors, from accessing the rapid adjudication scheme.

Several members sought clarification on some points from me as the minister with carriage of this Construction Contracts Amendment Bill in this house. I will address some of them now, but some points will be better addressed during consideration in detail. Following are some of the key points I took notes on. The first was: why put in project bank accounts on Building Management and Works projects only to a value of $1.5 million up to $100 million, and not strategic projects? It has been determined that the majority of head contractor failures have been on projects between $1.5 million and $6 million. Head contractors working on these smaller value projects are more likely to face cash flow problems that result in difficulties paying subcontractors. They genuinely want to pay but very often they cannot. For larger projects, such as Department of Treasury contracts, they require a parent company guarantee whereby the contractor's parent company is contractually bound to the state to deliver the contract obligations if the contractor does not, and substantial performance bonds, which the state may call upon in the event of contractor default. Treasury contracts also allow the state to pay subcontractors direct if a genuine payment entitlement has been withheld from the main contractor. That is one of the key reasons our focus here has been on the Building Management and Works projects, as I said before, over the value of $1.5 million, up to around $100 million.

Another point raised today concerned Professor Evans' recommendation that section 4(3)(c) be amended to bring the construction of extracting and processing plant within the jurisdiction of the act. I think the member for Mirrabooka asked about that. The reason it was not supported is in the government's response to that report. It states —

> The Government does not accept this recommendation. The construction of processing plant is considered highly specialised and is not usually carried out under typical construction contracts. However, further work will be undertaken by the Building Commission to assess whether amendments could be made to better align the Act with judicial findings on the scope of the exempted activities.

In short, it is saying not at this stage, let us stick to what we know construction is and we will look at that over time.

Another recommendation is that the act be amended so that construction contracts are to be in writing. The government did not support that because it considers that amending the act to require construction contracts to be in writing will place unnecessary restriction on the freedom of parties to contract as they see fit. The government is concerned also that in instances in which an oral contract is used, statutory protections afforded by the act to the parties would be removed and that is considered an undesirable outcome. As I said before, members can find all the government's responses to those various recommendations.

Another question was about education and how the sector will be informed of and educated on the changes. I am advised that the Building Commission will commence training sessions in metropolitan regional locations on the amended Construction Contracts Act. It will aim the sessions at subcontractors and they will commence in December 2016. The Building Commission is making changes to its online material to provide information on the Construction Contracts Act and rapid adjudication process. The Building Commission will also have a dedicated phone line for information on the Construction Contracts Act for subcontractors.

In conclusion, the Construction Contracts Amendment Bill will further improve the operation of the Construction Contracts Act. It will aim to, and should, help keep the money flowing in the contracting chain in the building and construction industry in Western Australia. It supports those other key reforms that we are progressing as a government and that will improve the security of payment for operators in the building and construction industry. Having listened to the concerns of the subcontractors and their stakeholders, the Liberal–National government is taking effective action to encourage better industry behaviour and to implement enhanced payment protection for those subcontractors across the building and construction sector in this state.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Ms J.M. FREEMAN: I think it is appropriate to ask this question at clause 1 of the Construction Contracts Amendment Bill. The bill was based on a statutory review by Professor Evans. Was the statutory review a provision of the Construction Contracts Act 2004? Will it be an ongoing, regular review? A consequence of that review was this bill and therefore the short title. Is that something that is simply done on the decision of government or is there a regular review period?

Mr S.K. L'ESTRANGE: The short answer is yes. With regards to the review of the act, the act states —

> As soon as practicable after the 5th anniversary of its commencement, the Minister must review the operation and effectiveness of this Act and prepare a report about the review.

Ms J.M. FREEMAN: The answer is yes, it will happen five years later. Will there be a subsequent five-year review? Now that a review has been done and this Construction Contracts Amendment Bill has been introduced on the basis of it, are there any more statutory requirements for a subsequent review?

The ACTING SPEAKER (Mr I.M. Britza): I remind everyone concerned that questions must be about the short title of the bill. It is not a debate at this point.

Mr S.K. L'ESTRANGE: There are no more statutory requirements with regards to that review. However, we are going to move forward with a second package of amendments at a later stage to further enhance what we are trying to achieve through this bill.

Clause put and passed.

Clause 2: Commencement —

Ms J.M. FREEMAN: The bill has three operation dates. The short title and commencement come into operation on the day of royal assent. The rest of the bill comes into operation on 15 December 2016, and sections 7 and 20 come into operation on 3 April. I have a couple of questions. My first question is: what will happens if the date of royal assent is after 15 December in the case of paragraph (b), or after 3 April in the case of paragraph (c)? Does that mean that those particular aspects of the act will be retrospective?

Mr S.K. L'ESTRANGE: The advice I am given is that royal assent will occur prior to those dates.

Ms J.M. FREEMAN: Is it anticipated that the minister will get this bill through this house either tonight or tomorrow, and then up to the Legislative Council? In order to get royal assent before those dates, given that we have only three more weeks of sitting in the Legislative Council, and 15 December is bearing down on us as we stand in this Parliament, can the minister give the time line for how that will occur before 15 December?

Mr S.K. L'ESTRANGE: I am advised that the intention of the government is to make sure this is concluded during this session of Parliament.

Ms J.M. FREEMAN: I am asking for a time line. I want to know what the time line is. I am happy to sit down if the minister can give me a time line, otherwise I will get out my diary and look at it. The government has three weeks of sitting left. What time line is the minister envisaging for getting this bill through this house?

Mr S.K. L'ESTRANGE: It is certainly the government's intention to get this bill through this house this week. As the member would know, it is entirely dependent on the cooperation of the opposition in the upper house to ensure that we can get this bill through the upper house before it rises for the summer break. That is our intent. That is what we are endeavouring to do.

Ms J.M. FREEMAN: The minister and the Leader of the House have a majority in the Legislative Council. The opposition agrees with this bill, and we have not had many members speak today on this bill so that it can proceed through this house quickly. Will the government be seeking to have this bill dealt with in the other place as an urgent bill, or is it expected that this bill will lay on the table of the house for the seven days for which it needs to lay on the table in that first week? I want to understand that the minister will be able to meet the dates that he has set for this bill, because those dates are very particular. Clause 2 states —

> This Act comes into operation as follows —
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> …
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> (b) the rest of the Act other than sections 7 and 20 — on15 December 2016;
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> (c) sections 7 and 20 — on 3 April 2017.

Perhaps the minister can take advice from the Leader of the House on what agreement he had made to ensure that this bill is expedited in the other place. The opposition agrees with the bill. However, it is the government that sets the legislative agenda in the upper house, as it does in this house.

Mr S.K. L'ESTRANGE: The Leader of the House has informed me that this is a high-priority bill. The sooner we can get onto clause 3, the sooner we can get the bill to the upper house.

Mr J.H.D. Day: We need to reach the end of consideration in detail tonight, so you can assist in doing that.

Ms J.M. FREEMAN: When have I not assisted the minister? I have always assisted him. If he speaks to me like that, I will stop assisting him. He does that to me every time.

Mr J.H.D. Day interjected.

The DEPUTY SPEAKER: Order!

Ms J.M. FREEMAN: It is like a red rag to a bull. He comes over and makes comments to me. He is so rude!

Mr J.H.D. Day: I did not say you were not assisting. I said you can assist, and please feel free.

Ms J.M. FREEMAN: No, minister.

The DEPUTY SPEAKER: Order, members! It is late. Let us get back to the question at hand.

Ms J.M. FREEMAN: I know from the commencement clause of this bill that the rest of the provisions of the bill, other than proposed sections 7 and 20, will commence on 15 December 2016. Proposed sections 7 and 20 will commence on 3 April 2017. For the record, and so it is understood, because that is important for the interpretation of the bill, can the minister explain why proposed sections 7 and 20 have to commence some four or five months after the rest of the proposed sections?

Mr S.K. L'ESTRANGE: The government considers that the commencement on 3 April 2017 will provide a sufficient opportunity for business to prepare for the change. Clause 20 of the bill provides a transitional provision to accommodate the proposed change in clause 7 to section 10 of the Construction Contracts Act. Therefore, it is necessary that this also commences operation on 3 April 2017.

Clause put and passed.

Clause 3: Act amended —

Ms J.M. FREEMAN: This act amends the Construction Contracts Act. In the minister's second reading speech he talked about the Small Business Commissioner having carriage of parts of that act. I want the minister to clarify whether that act is under the jurisdiction of Small Business Development Corporation or the Department of Commerce. Which department has oversight of this act? Under the definitions in the act, when the bill refers to "Building Commissioner", it means —

> … the officer referred to in the *Building Services (Complaint Resolution and Administration) Act 2011* section 85;

The Building Commissioner, as I understand, is an officer within the Consumer Protection departmental area. I am intrigued and slightly confused about where there is a role for the Small Business Commissioner under this amended act, given the minister's second reading speech. Given that this bill amends the Construction Contracts Act, when this bill is enacted, who will have primary responsibility for ensuring its proper operation and that it meets the stated aims and intent of the act?

Mr S.K. L'ESTRANGE: The member is quite right that the Small Business Development Corporation's commissioner or the Small Business Commissioner has a role to play as part of the government's overarching package or its suite of measures dealing with how to support and protect subcontractors' security and speed of payment. But the Small Business Commissioner has no role under the Construction Contracts Act as amended by this bill. The responsible minister for the act is the Minister for Commerce and the Building Commissioner will have administrative oversight of the act.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Section 4 amended —

Ms J.M. FREEMAN: I may have misheard, given the time in the evening, but the minister talked about the fact that this clause does not change the reference to the processing of oil or natural gas, or a derivative of natural gas or any mineral bearing substance. That is certainly how I heard it. I see here that section 4 is to be amended so that refers to the fabricating or assembling items of plant used for extracting or processing oil, natural gas or a derivative of natural gas or any mineral bearing and other substance. I am interested in getting on record what the difference is. I understand this is connected with a State Administrative Tribunal case. I have not had an opportunity to look at that case, although I think the shadow spokesperson in the other house has received the details, so she may have had an opportunity. I am interested to know why this was necessary. What was the particular issue that that case highlighted? Why is this needed to resolve that issue, and what clarification will this make to the jurisdiction of this act?

Mr S.K. L'ESTRANGE: I am advised that Professor Evans recommended the removal of section 4(3)(c) of the act in its entirety. However, the government believes that the scope of the exemption should be refined rather than removed entirely to better clarify the type of work that is excluded. Parties to contracts and adjudicators have been unsure whether the use of plant in section 4(3)(c) is intended to refer to individual items of equipment that form part of a larger project, for example, a catalytic cracker within an oil refinery, or the whole of the project—the oil refinery itself. That is the reason we made that exclusion.

Ms J.M. FREEMAN: I am assuming that the removal of the exemption for sculptural works, installations and murals has been done to make sure that Sculptures by the Sea is captured by the act. Section 4(3)(d) states —

> constructing, installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing, or removing, wholly artistic works, including sculptures, installations and murals;

Can the minister confirm that that would mean that something like Sculptures by the Sea is considered for the purposes of the Construction Contracts Act, and perhaps clarify why this was found necessary?

Mr S.K. L'ESTRANGE: We are talking here about construction projects. We are not talking about art exhibitions. Professor Evans identified that determining the limits of construction work that is artistic has proven quite problematic and that this has become more so as more artistic works, sculptures and features are included within the design of a building or affixed to the building. That is the reason we are now including those types of construction products, which some may view to be artistic, to be part of the Construction Contracts Act.

Clause put and passed.

Clause 6: Section 6 amended —

Ms J.M. FREEMAN: I understand that clause 6 relates to payments that are structured —

[Interruption.]

Ms J.M. FREEMAN: It is not mine!

The DEPUTY SPEAKER: What is that sound?

Ms J.M. FREEMAN: It is the member for Hillarys' Find My iPhone alert; he is trying to find his iPhone!

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Ms J.M. FREEMAN: As I understand clause 6, in contracts, there are a series of progress payments as the contract goes along. The difficulty for subcontractors is that if they miss one progress payment dispute period when they could pursue something, they will lose the capacity for a speedy resolution adjudication. The subparagraph states —

> (aa) a payment claim is rejected or wholly or partly disputed; or

This change is so that subcontractors can go back and include that in the dispute within the designated period. For the purpose of the record, it is probably worthwhile for the minister to clarify whether my understanding is correct, but I am okay if it is not.

Mr S.K. L'ESTRANGE: I am advised that the amendment clarifies that a payment dispute arises at the earliest when the payment claim is rejected, or wholly or partly disputed; or, by the time the amount claimed is due to be paid under the contract, and the amount has not been paid in full.

Ms J.M. FREEMAN: That is what the act says, minister. I can read the act! I am pretty good at reading acts. I have been reading acts for a long time; I am pretty good at it, but thanks for that. I want the minister to tell me whether this clause provides that if there are progress payments and a progress dispute is not dealt with within 28 days—or what will now be 90 days—a subcontractor will not be prejudiced against when they have flicked over to a further progress payment period. If a subcontractor has a progress payment dispute and the contractor says, "No, no, you probably haven't done a few things that you're supposed to do", they may keep going until their next progress payment, but they have still not received their progress payment. Under the previous legislation, I understand that the subcontractor would not be able to pursue that under the speedy adjudication process but this change has been made so that they can pick up a progress payment dispute further on. I can read what the clause says; I am good at reading. I want the minister to tell me the purpose and the intent of the amendment.

Mr S.K. L'ESTRANGE: I am advised that clause 3 probably best addresses what the member is asking. Clause 6 is there to support clause 3 to enable anything —

Ms J.M. Freeman: Subclause 3?

Mr S.K. L'ESTRANGE: No, clause 3.

Ms J.M. Freeman interjected.

Mr S.K. L'ESTRANGE: Sorry, I am advised that is a mistake; it is clause 4(2)(b).

Ms J.M. FREEMAN: Subclause (2)(b) has not been amended. Yes, I understand what the minister is saying. I am talking about the amendment to the definition. For clarification, clause 6 supports clause 4, but of course it

would because the payment dispute is defined in clause 4. The payment claim is defined. That is the definition and clause 6 is the mechanism for that definition. Is that what the minister is saying?

Mr S.K. L'ESTRANGE: That is correct.

Clause put and passed.

Clause 7: Section 10 amended —

Mr S.K. L'ESTRANGE — by leave: I move —

Page 4, line 21 — To delete "30" and substitute —

42

Page 4, line 25 — To delete "**30**" and substitute —

42

Ms J.M. FREEMAN: I probably agree with the amendments but I want to know why. If the minister is going to move amendments, it would be good to understand them. This clause will ensure that a head contractor cannot say that subcontractors will not be paid for 50 days. We could call this the Rio Tinto and BHP Billiton clause, because it will address the problems that many subcontractors had when Rio and BHP told them that although they had previously paid their invoices within 30 days, they would now pay them within 50 days, as outlined in the act. That made it untenable for people to operate. I understand the purpose of deleting "30", but what I do not understand, if I am at the right spot—am I at the right spot, minister?

Mr S.K. L'Estrange: I can explain the reason for the change if you like. We are on clause 7.

The DEPUTY SPEAKER: We are dealing with clause 7 and the amendments are on page 9 of the notice paper.

Ms J.M. FREEMAN: Clause 7 amends section 10 and deletes "50 days" and inserts "30 days".

Mr S.K. L'Estrange: We are changing "30" to "42".

Ms J.M. FREEMAN: I am looking at the wrong bit, clearly. It would be good to know why it is being changed to 42 days, given that 30 days is usually the period in which invoices are paid. It was to be reduced by 20 days but now it will be reduced by eight days, not 10. How will that assist small businesses and subcontractors, and what consultation has been undertaken to change it to 42 days? Forty-two days is really odd. It is like the meaning of life, is it not—42? Is it because the minister took the idea from *The Hitchhiker's Guide to the Galaxy*?

Mr S.K. L'ESTRANGE: I thank the member for the question; it is a very good question. On 12 August when I announced the government's suite of measures to support business and subcontractors, I announced that it would be 30 business days. Thirty business days equates to 42 calendar days; hence the 42. We then tried to achieve a further reduction. Industry was looking for 30 business days. We tried to achieve more by getting it down to 20 business days. That proved problematic with the functioning of project bank accounts. We have moved this amendment to change it back to 30 business days so that the program we are trying to achieve can work. Thirty business days is the industry standard. That was what we originally consulted on and that is what industry was expecting. I suppose I could say that the Liberal–National government was overzealous in trying to get it down to 30 calendar days. We have realised that it cannot be done and that in the long term the business sector will be disadvantaged, because compressing it to that amount of time would have meant that project bank accounts probably would not have worked and therefore the subcontractors would not have been as well supported as they could have been; hence the need to move to 42 calendar days. Throughout this bill and the act, whenever there is a reference to disputes, it is termed in business days anyway.

Ms J.M. FREEMAN: There is an application for adjudication and it goes to 90 business days. The minister has just told me that there will be the number of the meaning of life, 42, which is not a number of days that most accountants and people in business equate to accounting standards. It is usually 30 business days. Why in the amendment to section 10 of the act is there not a reference to 30 business days instead of 42 calendar days, which equates to 30 business days. It seems quite bizarre, to tell the truth, on the basis that when a person applies for adjudication, business days are referred to. Why would such a complexity be added to a bill about which the government's own investigator has said there needed to be better education and understanding in the community? It makes no sense.

Mr S.K. L'ESTRANGE: The amendment the government is making to section 3 of the act is to insert a new definition of "business day" to include any day other than a weekend, public holiday or the period between Christmas and 7 January. If business days were to be used in section 10, the maximum payment term prescribed by the legislation would fluctuate depending on when the work is being done, hence the need to go to business days.

Ms J.M. Freeman: No, hence not to go to business days in the case of the 42 days. I am getting a nod from the minister.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 8 to 12 put and passed.

Clause 13: Section 32 amended —

Ms J.M. FREEMAN: This clause is about the adjudication process. This amendment deletes section 32(3)(c) from the act, which states —

> with the consent of all the parties concerned, adjudicate the payment dispute simultaneously with another payment dispute.

And replaces it with —

> adjudicate a payment dispute simultaneously with one or more other payment disputes if satisfied that doing so will not adversely affect the adjudicator's ability to adjudicate the disputes in accordance with section 30.

I seek clarification about the reasons for that amendment in terms of the adjudicator and the object of the adjudication process. I assume that the intention is that there continues to be speedy dispute resolution.

Mr S.K. L'ESTRANGE: That is correct. I am advised that Professor Evans recommended that when the same parties have multiple payment disputes, the current requirement for the adjudicator to obtain consent to adjudicate the dispute simultaneously should be removed. The government supports the recommendation, as it relates to other payment disputes, for example when there are more than two different applicants, but one respondent, provided that the adjudicator is satisfied that it would not adversely affect their ability to determine each dispute as fairly, quickly, informally and inexpensively as possible. This clause gives effect to this recommendation.

Clause put and passed.

Clauses 14 to 16 put and passed.

Clause 17: Section 43 amended —

Ms J.M. FREEMAN: This clause is about enforcement of judgements. Obviously enforcement has been difficult because parties were required to seek leave of a court. Will this ensure that such leave is not necessary and enforcement is a right? I assume that "the court of competent jurisdiction" is not the State Administrative Tribunal, but is based on the amount of the determination. Could the minister give me an overview of the impact of these changes and which court jurisdiction enforcement will fall under?

Mr S.K. L'ESTRANGE: The member is correct that the court is based on the amount of the determination; therefore, it could be the Magistrates Court, District Court or the Supreme Court. The member wanted me to explain the reason for this change. I am advised that Professor Evans recommended that the requirement in section 43(2) of the Construction Contracts Act to first seek leave of the court of competent jurisdiction to have a determination in force added unnecessary delay for parties and increased complexity and legal costs. It also provided an opportunity for a respondent to frustrate the enforcement process by arguing myriad reasons the court should not grant leave, ultimately delaying the payment of money owing. This clause seeks to rectify this issue.

Clause put and passed.

Clauses 18 to 20 put and passed.

Title put and passed.

House adjourned at 10.33 pm